UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FOX Factory, Inc.
Petitioner

v.

SRAM, LLC
Patent Owner

Case No. IPR2017-00118
U.S. Patent No. 9,182,027

PATENT OWNER'S REPLY BRIEF ON REMAND

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I. INTRODUCTION

FOX's response on remand mimics its position at trial: replete with unsupported attorney conjecture, but lacking actual admissible evidence needed to rebut SRAM's direct nexus evidence linking the Challenged Claims of U.S. Patent No. 9,182,027 ("the '027 patent") and the objective evidence of long-felt need, failure of others, passage of time, licensing, and copying. Rather than put forward supportable, admissible evidence to counter SRAM's nexus evidence, FOX attempts to distract the Board, ignores and misrepresents the actual evidence at trial, and misstates the applicable law. The Board should reject FOX's diversions and again uphold the Challenged Claims' patentability, because substantial objective evidence clearly outweighs the "adequate" rationale to combine Thompson and JP-Shimano.

II. SRAM'S OBJECTIVE EVIDENCE OF NONOBVIOUSNESS CONFIRMS THE CHALLENGED CLAIMS' PATENTABILITY.

A. Burden of Proof Regarding Direct Nexus

FOX tries to obfuscate the nexus burden, inaccurately arguing that SRAM had to provide testing data or expert testimony on "how" and "why" the Challenged Claims met the industry's long-felt need. *See* Paper 66 (FOX's Br.) at 1, 3, 5.

In truth, SRAM only "retains the burden of ***proving the degree*** to which evidence of secondary considerations tied to a product is attributable to a particular claimed invention." *Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1378 (Fed.

Cir. 2019) (emphasis added). SRAM does not have to prove a negative or that the objective evidence is "tied exclusively to claim elements that are not disclosed in a particular prior art reference in order for that evidence to carry substantial weight." *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1331 (Fed. Cir. 2016). SRAM proves nexus when objective evidence is attributable to "the combination of the two prior art features … that is the purportedly inventive aspect of the [challenged] patent". *Ethicon Endo-Surgery, Inc. v. Covidien LP*, 812 F.3d 1023, 1035 (Fed. Cir. 2016).

Contrary to FOX's implications, there is no required way or manner of meeting this burden. "Questions of nexus are highly fact-dependent and, as such are not resolvable by appellate-created categorical rules and hierarchies as to the relative weight or significance of proffered evidence." *WBIP*, 829 F.3d at 1331. As the fact finder, this Board's role is "to resolve these factual disputes regarding whether a nexus exists between [the objective evidence and the] patented features, and to determine the probative value" of that evidence as part of the overall analysis. *Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1574 (Fed. Cir. 1996).

Here, SRAM submitted sworn testimony from three witnesses, the admissions of FOX's own technical expert, and substantial documentary evidence supporting a direct nexus between this evidence and the claimed invention of the '027 patent. SRAM has satisfied its burden of proof, and, at trial and in its brief, FOX failed to submit any bona fide evidence contravening SRAM's proven objective evidence.

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