UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FOX Factory, Inc.,
Petitioner,

v.

SRAM, LLC,
Patent Owner.

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

PETITIONER'S SUR-REPLY BRIEF ON REMAND

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I. SRAM Has Failed to Meet Its Burden to Prove Nexus.

The burden on remand is entirely on SRAM to prove, if it can, "that the evidence of secondary considerations is attributable to the **claimed *combination* of wide and narrow teeth with inboard . . . offset teeth**, as opposed to, for example, prior art features in isolation or unclaimed features [in the X-Sync]." *FOX Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1378 (Fed. Cir. 2019) (bold type added). This means that SRAM must prove that its secondary considerations evidence is the "'*direct result* of the unique characteristics of the claimed invention,'" i.e., the combination of inboard offset, narrow-wide teeth, not the X-Sync. *Id.* at 1373-74 (quoting *In re Huang*, 100 F.3d 135, 140 (Fed. Cir. 1996)) (emphasis added); *see also Wm. Wrigley Jr. Co. v. Cadbury Adams USA LLC*, 683 F.3d 1356, 1364 (Fed. Cir. 2012) (finding lack of nexus where patentee failed to show the claimed combination "led to" copying); *J.T. Eaton & Co. v. Atl. Paste & Glue Co.*, 106 F.3d 1563, 1571 (Fed. Cir. 1997) (requiring patentee to show that the commercial success of the product "results from" the claimed invention).

SRAM has not met its burden to prove direct nexus. More specifically, it has not proven that the claimed inboard offset, narrow-wide teeth combination was "directly" responsible for (*FOX*, 944 F.3d at 1373-74) or "led to" (*Wrigley*, 683 F.3d at 1364) its secondary considerations evidence. SRAM tries to disguise its failure of proof by devoting most of its papers to rehashing its secondary considerations

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