

**Akin Gump**  
STRAUSS HAUER & FELD LLP

# IP Newsflash



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## PATENT TRIAL AND APPEAL BOARD

### **Objective Indicia of Non-Obviousness Proffered by Patent Owner Deemed Insufficient to Establish Nexus**

A PTAB panel has rejected a patent owner's evidence of objective indicia of non-obviousness because it lacked the proper nexus with the claimed subject matter. In its brief, the patent owner had argued that praise by others, particularly a competitor, is evidence of non-obviousness. According to the Board, however, the magazine article offered as evidence by the patent owner did not establish a specific nexus between the laudatory comments in the magazine and the claimed subject matter. Instead, the Board interpreted those comments as referring more generally to the patent owner's technology and vision, and not necessarily to the claimed subject matter. The Board also rejected the patent owner's arguments that the success of certain commercial devices was evidence of non-obviousness because that success alone did not establish the requisite nexus. According to the Board, the patent owner's argument was predicated on the assumption that the commercial products implemented the features of the subject patent claims. The Board explained, however, that where the patent is said to cover a feature or component of a product, the patent owner has the burden of showing that the commercial success derives from the claimed features. In this case, the Board determined that the patent owner had failed to address numerous other features cited as important to the commercial success of the product. The Board also contrasted the expert declaration of the patent owner's technical expert with that of the petitioner's expert in marketing and consumer behavior. The latter testified that the success was due to numerous factors, including promotions and price. In light of all the evidence presented, the Board found that the objective indicia cited by the patent owner did not overcome the case of obviousness established by the petitioner by a preponderance of the evidence.

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*Kyocera Corp. et al. v. Softview LLC*, IPR2013-00004 (PTAB March 27, 2014) [Moore, McNamara (Opinion), White]

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