No. 20-1289, -1290

United States Court Of Appeals for the Federal Circuit

THE CHEMOURS COMPANY FC, LLC,

APPELLANT,

V.

DAIKIN INDUSTRIES, LTD., DAIKIN AMERICA, INC.,

APPELLEES,

ANDREW HIRSHFELD, PERFORMING THE FUNCTIONS AND DUTIES OF THE UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE,
INTERVENOR.

APPEAL FROM THE PATENT TRIAL AND APPEAL BOARD OF THE UNITED STATES PATENT AND TRADEMARK OFFICE IN PROCEEDING NOS. IPR2018-00992 AND IPR2018-00993

APPELLANT THE CHEMOURS COMPANY FC, LLC'S CORRECTED RESPONSE TO APPELLEES' COMBINED PETITION FOR PANEL REHEARING AND REHEARING EN BANC

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October 12, 2021

AMENDED CERTIFICATE OF INTEREST

Counsel for the Appellant The Chemours Company FC, LLC certifies the following:

1. Provide the full names of all entities represented by undersigned counsel in this case.

   The Chemours Company FC, LLC.

2. Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.

   Not applicable

3. Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.

   The Chemours Company

4. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

   Fish & Richardson P.C.: Dorothy P. Whelan, Gwilym J. O. Attwell

5. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

   Chemours Company FC, LLC v. Daikin Industries, LTD and Daikin America, Inc., C.A. No. 17-1612-MN (D. Del.)

6. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

   Not Applicable

Dated: October 12, 2021

/s/ Nitika Gupta Fiorella
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INTRODUCTION

This case involves an IPR petitioner that simply failed to meet its burden, which left the Board with an insufficient record from which to hold the challenged claims obvious. Yet the Board held exactly that, so the majority righted that wrong. Nothing about the majority's decision conflicts with this Court's precedent or presents a question of exceptional importance. And nothing warrants rehearing.

Daikin's suggestions otherwise ring hollow. First, Daikin repeatedly and forcefully says that Chemours "disclaimed" any "teaching away" theory, citing a single out-of-context sentence from briefing before the Board, and ignoring the plethora of record evidence stating otherwise. Tellingly, Daikin ignores that the Board in fact ***addressed*** the "teaching away" argument Daikin says Chemours waived. That is likely why the panel dismissed Daikin's waiver argument without a second look.

Second, Daikin contends that the majority's opinion conflicts with other "teaching away" cases and that the majority engaged in "appellate factfinding." Not so. The majority made no legal pronouncements on "teaching away" or how it should be applied, but instead limited its holding to the facts of this case, where the Board ***ignored*** teaching away evidence in finding the claims obvious. The majority did no "factfinding"; instead it concluded that the Board did not adequately support ***its*** supposed "factfinding" with the requisite evidentiary support.

Finally, Daikin criticizes the panel's nexus holding based solely on a misreading of the Board's decision. Indeed, Daikin does not even address this Court's case law,

which the panel cited, condemning the Board's rationale for finding no nexus.

Simply put, nothing in Daikin's petition raises an issue that merits rehearing. Daikin's petition should be denied, and the majority's decision based on the facts in this case should be left intact.

BACKGROUND

I. Chemours Invents a Breakthrough Polymer with a Higher Melt Flow Rate than the Sole Prior Art at Issue

The patents in this case[1] relate to an improved fluoropolymer, sold as a highly successful commercial product, FEP9494. (Appx213-218; Appx3392-3397; *see* Appx1013-1016; Appx975-978; Appx1098-1102.) This improved fluoropolymer has a unique combination of properties such that it can produce high-quality insulation coatings for communication cables at high speeds over a broad temperature range. (Appx214 at 1:53-63; Appx215 at 3:50-56.)

The property most relevant here is that the claimed fluoropolymer has a high "melt flow rate of about 30±3 g/10 min." Melt flow rate is an indicator of how fast melted polymer can flow under pressure, i.e. during extrusion. Increasing the polymer's melt flow rate thus increases the speed at which the polymer can be coated onto a wire. (Appx335 at 2:51-53; Appx1150-1151 at ¶ 32.) But that came at a cost: prior art polymers with high melt flow rates suffered quality flaws, at times making

[1] U.S. Patents 7,122,609 and 8,076,431.

them unusable. (Appx1098-1101; Appx1150-1151 at ¶¶ 32-33; Appx1271-1272 at 36:7-38:18.)

The sole prior art reference relevant to this appeal is Kaulbach, U.S. Patent No. 6,541,588. (Appx345-351.) The highest melt flow rate Kaulbach discloses that would work for its invention is 24 g/10 min, which the parties agree falls ***outside*** the claimed melt flow rate range. (Appx1161-1163 at ¶¶ 55-59; Appx198-199; Appx1106.) Kaulbach also says that its melt flow rate "practically does not change" during processing, which, as even Daikin's expert agreed, Kaulbach touts as a benefit of its invention. (Appx347 at 3:48-51, 4:1-2, 7-11; Appx1280 at 69:10-70:19.)

Further, Kaulbach's invention is a unique polymer, one with a "very narrow molecular weight distribution." (Appx347 at 3:34-35, 59-65.) Before Kaulbach's invention, it was believed that polymers in high-speed extrusion applications had to have broad molecular weight distributions to produce high-quality coating. It is undisputed that Kaulbach's discovery was that "a narrow molecular weight distribution performs better" for his applications than a broad molecular weight distribution, "thus overcoming a well established prejudice." (*Id.* at 3:61-65; Appx346 at 1:57-59; *see also* Appx1282-1283 at 79:16-81:8.)

II. The Board Holds the Claims Obvious Based on an Insufficient Record

Daikin petitioned for review of all claims, asserting a number of anticipation and obviousness grounds. The Board held the claims unpatentable under only one: obviousness based on Kaulbach alone. (Appx66; Appx128.)

Daikin's Kaulbach-based arguments focused on the generic desire to increase processing speeds, which, according to Daikin, provided the requisite motivation to increase Kaulbach's melt flow rate from 24 g/10 min to within the claimed range of about 30±3 g/10. (Appx199.) But the evidence before the Board was that all known methods of increasing a polymer's melt flow rate necessarily involved broadening its molecular weight distribution. (BB8-9; Appx1122-1130; *see also* Appx1138-1167 at ¶¶ 26-38, 52-68.) As Chemours explained, modifying Kaulbach in the necessary ways to achieve the claimed invention would thus ***eviscerate*** the essence of Kaulbach's invention: a polymer "ha[ving] a very narrow molecular-weight distribution" whose melt flow rate does not change during processing. (Appx1122 (citing Appx347 at 3:34-35; 4:1-2, 4:7-11).) Indeed, that is why, as Chemours pointed out, Kaulbach ***teaches against*** using methods known to increase melt flow rate, precisely because they would broaden molecular weight distribution as well. (BB20-21; Appx2155.)

Despite having the burden to show obviousness, Daikin failed to address these points with any evidence before the Board. (BB12.) Neither Daikin's IPR petitions nor its expert declarations even mention molecular weight distribution. In the absence of any affirmative showing from Daikin of a motivation to modify Kaulbach, the Board's Final Written Decisions advanced new theories of obviousness, never presented by Daikin. First, the Board determined that ***Chemours*** had not shown that Kaulbach's narrow-molecular-weight-distribution discovery ***would prevent*** a skilled artisan from considering techniques that would nonetheless broaden molecular weight

distribution. (Appx50-51; Appx111-112.) Second, the Board said "it is ***plausible*** that the skilled artisan ***may have been able*** to slightly increase Sample A11's melt flow rate to be within the claimed range, and still end up with a 'narrow' [molecular weight distribution] as suggested by Kaulbach, even if that meant slightly 'broadening' Sample A11's [molecular weight distribution]." (Appx48-49; Appx110-111.) Not only did the Board employ improper burden shifting and incorrect legal standards, but, likely because Daikin did not make these arguments, the Board had no evidentiary support for these conclusions either.

The Board then compounded its errors by disregarding Chemours' evidence of objective indicia of non-obviousness based on three legally incorrect theories. (Appx52-61; Appx113-123.) Relevant here, the Board found no nexus existed between Chemours' objective evidence and the claimed invention because it said all of the claim limitations could individually be found in different prior art references. In doing so, the Board ignored that virtually every obviousness analysis involves a combination of known elements, and disregarded explicit case law condemning the Board's stated rationale. (Appx55-56; Appx117-119.)

III. The Majority Reverses the Board's Unsupported Findings

The majority carefully considered the record evidence and the Board's reasoning, and concluded that the Board simply did not have the requisite proof to support its obviousness findings. (Op. at 6-9.) Without such proof, the Board's decision could not stand, so the majority properly reversed.

The majority recognized that the Board improperly ***ignored*** Kaulbach's teachings against using methods to increase melt flow rate that broadened molecular weight distribution and thus concluded that the Board "did not adequately grapple with why a skilled artisan would find it obvious to increase Kaulbach's polymer's melt flow rate to the claimed range while retaining its 'very narrow molecular-weight distribution.'" (Op. at 9.) Further, the majority dismissed the Board's contention that a skilled artisan may have been able to increase Kaulbach's polymer's melt flow rate to within the claimed range and only ***slightly*** broaden its molecular weight distribution. (Op. at 10.) As the majority noted, the Board did not identify any factual support that a skilled artisan would have been motivated to broaden Kaulbach's polymer's molecular weight distribution ***at all***, particularly given the teachings in Kaulbach ***against*** doing so. (Op. at 9-10.)

Ultimately, the majority concluded that the Board relied on an "inadequate evidentiary basis and failed to articulate satisfactory explanation that is based on substantial evidence for why a POSA would have been motivated to increase Kaulbach's melt flow rate to the claimed range, when doing so would necessarily involve altering Kaulbach's inventive concept." (Op. at 11.)

On objective indicia, the majority concluded that the Board misapplied the test for nexus and said, consistent with other cases from this Court, that "the separate disclosure of individual limitations, where the invention is a unique combination of three interdependent properties, does not negate a nexus." (Op. at 12.)

REASONS FOR DENYING THE PETITION

No "exceptional circumstances" exist to justify rehearing or en banc review. The majority applied prevailing law to review the Board's decision and correctly found that, on these particular facts, substantial evidence did not support the Board's obviousness findings. Indeed, the majority's rationale was the epitome of case-specific; it recognized that the Board "relied on an inadequate evidentiary basis and failed to articulate a satisfactory explanation that is based on substantial evidence" for its finding that a skilled artisan would have been motivated to modify Kaulbach to achieve the claimed invention. (Op. at 11.) The majority did not make any new legal pronouncements, nor did it bind any future panel from coming to a different conclusion on a different set of facts.

I. The Majority's Decision Does Not Violate the APA Because Chemours Did Not Disavow Any Teaching Away Argument

Daikin's petition is rife with repeated allegations of Chemours' supposed "disclaimer" of its teaching away argument, but noticeably light on support. Indeed, Daikin's entire APA violation argument rests on a single sentence it plucked, without context, from Chemours' sur-reply brief before the Board.[2] Notably, Daikin made

[2] Daikin also improperly tries to shift the burden of proof to Chemours to support its APA argument. While the burden of *production* on "teaching away" can shift to the patentee, that is only true in overlapping ranges cases. *See E.I. DuPont de Nemours & Co. v. Synvina C.V.*, 904 F.3d 996, 1008 (Fed. Cir. 2018). Despite Daikin's

this waiver[3] argument to the panel, based on that same lone sentence, but the panel dismissed it without a second look. Because "waiver is a matter of discretion," the panel's decision to not apply waiver here is alone sufficient to cast aside Daikin's waiver argument. *Apple Inc. v. Qualcomm Inc.*, 992 F.3d 1378, 1382 (Fed. Cir. 2021). Beyond that, the dissent made clear that Chemours ***did*** present "the teaching away theory" to the Board, repeatedly discussing the Board's analysis of the theory and concluding that it would "affirm the Board's ***determination that Kaulbach does not teach away from the claimed invention***." (Dissent at 2, 4.) The Court could not have been "deprive[d] . . . of the benefit of the PTAB's informed judgment" on the teaching away theory to implicate waiver, when the Board provided just that and the panel evaluated just that. (Pet. at 3 (internal quotation marks omitted).)

Further, a cursory look at the record illustrates the paucity of Daikin's waiver argument and undermines its inflated rhetoric of disclaimer. Chemours' argument through the IPR and on appeal was consistent: Kaulbach's invention is a polymer with a "very ***narrow*** molecular weight distribution"; the known methods at the time

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mischaracterizations as such before the panel (*see* GB3-7), this is not an overlapping range case, so both the burden of production and proof rested squarely on Daikin.

[3] While Daikin uses many terms to describe Chemours' alleged actions before the Board—including that it "disclaimed," "disavowed," "forfeited," "abandoned," and "surrendered" the teaching away argument (Pet. at 1, 2, 8, 11, 13, 14)—the only case it cites in support is a waiver case, so Chemours treats Daikin's argument as such. (Pet. at 3, 14 (citing *In re Nuvasive, Inc.*, 842 F.3d 1376, 1380–81 (Fed. Cir. 2016)).)

of the invention for increasing melt flow rate involved ***broadening*** molecular weight distribution; so a skilled artisan would not have found it obvious to increase Kaulbach's polymer's melt flow rate when doing so would eviscerate Kaulbach's invention. (Appx1117-1130; BB20; BB35; *see also* Op. at 11.) As part of that argument, Chemours contended before the Board that Kaulbach "teaches against" methods that broadened molecular weight distribution:

> Consistent with his stated goal [of a narrow molecular weight distribution], Kaulbach ***teaches against*** common practices that were known to broaden the molecular weight distribution of a polymer and thereby increase melt flow rate.

(Appx1120-1121 (citations omitted); Appx2835-2836.) The Board acknowledged and evaluated ***that very argument*** in its Final Written Decision:

> Thus, Patent Owner argues, Kaulbach teaches against common practices that were known to broaden the molecular weight distribution of a polymer, such as using chain transfer agents during polymerization, and against using high fluorination temperatures.

(Appx48.) Chemours made this same argument repeatedly on appeal (*see, e.g.*, BB at 6, 9, 20-21), and the majority credited it in concluding that the Board did not have the requisite proof to support an obviousness finding (*see* Op. at 10).

Against this backdrop, Daikin takes a lone sentence in Chemours' sur-reply brief before the Board out of context, where, in responding to Daikin's arguments, Chemours said, "Nor is whether Kaulbach ***teaches away*** from the claimed range relevant." (Appx2836.) This sentence has nothing to do with Chemours' argument that Kaulbach teaches away from methods to increase melt flow rate that broaden

molecular weight distribution (an argument Chemours made on the very same page of the very same brief). Instead, Chemours was responding to ***Daikin's*** argument that Kaulbach does not "teach away from the claimed MFR range," because nothing in Kaulbach "carves [the claimed range] out of its MFR range." (Appx 2115-2116.) In other words, Daikin had framed the "teaching away" argument as whether or not Kaulbach expressly excludes the "about 30±3 g/10 min" range from its disclosure, and it was this improper framing of the "teaching away" argument that Chemours said was not relevant.

Particularly given this context, and Chemours' express and repeated argument to the Board on the very "teaching away" issue it made to this Court, the sentence Daikin relies on does not come close to the level of waiver, much less disclaimer.

II. The Majority Applied Established Law and Properly Concluded that Substantial Evidence did not Support the Board's Obviousness Determination

The majority carefully considered the record before the Board and concluded that, in this case, the record did not support the Board's obviousness determination. While Daikin tries to make the majority's opinion all about "teaching away," the majority's holding was much simpler: the law requires the Board to have a sufficient evidentiary basis for its obviousness determination, *see NuVasive*, 842 F.3d. at 1382, and the majority found it did not have that here.

Daikin's and the dissent's concerns regarding the majority's application of the "teaching away" doctrine are misplaced. The majority did not make any bright-line

pronouncements about what is required for "teaching away," or otherwise elevate a mere preference for one alternative to the level of showing a "teaching away." All the majority said was that, in this case, Kaulbach expressly taught not to use certain methods in making its polymer, so the Board erred by not fully grappling with these disclosures when the same methods were—as the record evidence showed—***necessary*** to increase Kaulbach's melt flow rate to within the claimed range. The majority's opinion thus stands for the uncontroversial proposition that, in a single-reference obviousness case, where the reference expressly teaches against making the modifications necessary to achieve the claimed invention (because such modifications would eviscerate the reference's invention), the Board needs "competent proof" showing a skilled artisan would nonetheless be motivated to, and reasonably be able to, make those modifications in order to find the claims obvious. (Op. at 11.)

The majority's opinion is fully consistent with this Court's "teaching away" cases, including *DePuy Spine Inc. v. Medtronic Sofamor Danek, Inc.*, in which this Court recognized that, where a prior art reference's "teachings undermine the very reason being proffered as to why a person of ordinary skill would have combined the known elements," the "inference of nonobviousness is especially strong." 567 F.3d 1314, 1326 (Fed. Cir. 2009). Daikin's suggestion otherwise misses the mark. While Daikin cites *Meiresomme*, *Bayer*, or *In re Mouttet* (Pet. at 1), none of these cases involved the fact-finder's failure to "adequately grapple" with the evidence of "teaching away" and failure to "articulate a satisfactory explanation" of motivation despite the "teaching

away" evidence, so they are irrelevant. Critically, because of its narrow holding, the majority's opinion in no way limits what any other panel may decide about whether another reference, in another case, satisfies the test for "teaching away" from the claimed invention.[4]

The majority also did not engage in any "appellate factfinding." (Pet. at 14.) The "facts" before the Board were as follows: (1) Kaulbach's invention is a narrow molecular weight distribution polymer (Appx1120-1121; Appx347 at 3:34-38, 59-65; *see also* GB12-13); (2) Kaulbach's polymer's melt flow rate was below the claimed range (Appx42; Appx198-199; Appx1106); (3) all known methods for increasing melt flow rate at the time of the invention involved broadening the molecular weight distribution (Appx1119-1120; Appx1151-1154 ¶¶ 34-38; *see also* GB13-14); and (4) Kaulbach expressly taught not to use those methods when making its polymer (Appx1120-1121; Appx2835-2836; *see also* GB10). The majority simply compared these facts to the Board's conclusion that a skilled artisan would nonetheless have found it obvious to modify Kaulbach's polymer to achieve the claimed invention, and

[4] Even without the "teaching away" label, the result is the same: Kaulbach teaches avoiding methods that broaden molecular weight distribution, and the Board did not address those teachings in its motivation analysis, so the majority properly found a failure of proof. *See e.g.*, *Apple Inc. v. Samsung Elecs. Co.*, 839 F.3d 1034, 1052 n.15 (Fed. Cir. 2016); *Rembrandt Wireless Techs., LP v. Samsung Elecs. Co.*, 853 F.3d 1370, 1379–80 (Fed. Cir. 2017) ("[T]he absence of a formal teaching away in one reference does not automatically establish a motivation to combine it with another reference in the same field.").

found the requisite support lacking.

Daikin's petition attempts to re-argue many of these facts, but its purported distinctions are unsupported. For example, relying solely on an out-of-context passage from Chemours' expert's deposition testimony, Daikin contends there was evidence in the record that all known methods for increasing melt flow rate ***did not*** broaden molecular weight distribution, and that the majority erred when it failed to address that evidence. (Pet. at 15-16.) First, there is no requirement—and Daikin cites none—that this Court needs to expressly address every argument made to it. Second, Daikin made these same arguments to the Board, and the Board did not credit them. (*See, e.g.*, BB12, 21-25.) The only evidence in the record for this Court to consider was thus, as Chemours argued, that all known methods to increase melt flow rate also broadened molecular weight distribution. The majority expressly noted the record evidence on this point (Op. at 10-11), and the dissent did so implicitly by focusing on whether a skilled artisan would have found it obvious to increase Kaulbach's polymer's melt flow rate ***even though*** doing so would broaden its molecular weight distribution (Dissent Op. at 3-4).[5]

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[5] Daikin also makes much of the fact that Chemours' counsel said at the Board hearing that she did not know of any method of increasing melt flow rate while maintaining a narrow molecular weight distribution. (Pet. at 10.) But that is wholly consistent with—and certainly not a "far cry" from—Chemours' arguments and evidence that all ***known*** methods would broaden molecular weight distribution because there was no evidence otherwise.

Daikin's contention that Kaulbach merely expressed a "preference" for a narrow molecular weight distribution polymer is similarly unsupported. As an initial matter, Daikin never made that argument to the Board, likely in part because its expert agreed that Kaulbach "***discovered***" that narrow distribution polymers perform better than broad ones. (*See* RB12-13 (citing Appx1282-1283).) To the extent the Board made any factual finding on this point, no evidence supports it, much less substantial evidence. Indeed, even the dissent recognized, "it is true that Kaulbach's invention is a narrow molecular weight distribution polymer." (Dissent Op. at 3.)

Daikin is also wrong that the majority should have credited the Board's theory that a skilled artisan could have increased Kaulbach's polymer's melt flow rate to within the claimed range "while honoring Kaulbach's preference for a molecular-weight distribution." (Pet. at 14-15.) The majority acknowledged this argument, but correctly found it was not sufficient to explain why a skilled artisan would have been motivated to broaden Kaulbach's molecular weight distribution ***at all***, given Kaulbach's teachings to avoid the known methods for doing so. (Op. at 9-10.) Further, both Daikin and the dissent go awry by focusing on the ***lack*** of support to prove the Board's theory ***wrong***. (Pet. at 14-15; Dissent Op. at 4.) Chemours had no burden to prove or disprove anything; it was ***Daikin*****'s** burden to provide sufficient evidence from which the Board could conclude that increasing Kaulbach's melt flow rate to within the claimed range ***would not*** broaden molecular weight distribution beyond Kaulbach's limits. But Daikin presented no evidence as to how much

Kaulbach's molecular weight distribution would broaden per unit of increased melt flow rate, so the Board had no evidence to support its finding on this issue. That is all the majority held. The majority did not, as Daikin and the dissent contend (Pet. at 14-15; Dissent Op. at 4), come to a ***contrary*** conclusion from the Board—i.e. that increasing Kaulbach's melt flow rate to within the claimed range ***would*** broaden its molecular weight distribution beyond Kaulbach's limits. Instead, the majority simply recognized that the Board's finding lacked an adequate evidentiary basis and thus was not entitled to deference.

III. The Panel's Objective Indicia Holdings Are Consistent with Precedent

Daikin also challenges the panel's[6] holding on nexus—just one of the panel's three holdings related to the Board's treatment of objective indicia—in an attempt to secure en banc review. But Daikin mischaracterizes the Board's nexus analysis, asserting that the Board found that Kaulbach alone disclosed all three features of the challenged claims. (Pet. at 19.) Tellingly, Daikin itself acknowledged that Kaulbach alone ***fails*** to disclose each and every limitation of the claims when it raised only an obviousness challenge based on Kaulbach, and not an anticipation challenge.

Further, as the Board recognized, the highest melt flow rate that Kaulbach actually discloses is 24 g/10 min. (Appx56.) Although the Board mentioned that

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[6] While somewhat unclear, it appears Judge Dyk only dissented from Part II of the majority's holding, not Part III, where the majority addressed objective indicia. (Dissent Op. at 1-2.)

Kaulbach's background described high speed wire extrusion polymers as those with melt flow rates of greater than or equal to 15 g/10 min, the Board plainly relied on other references to piece together a composition that meets all the claimed limitations, including the "about 30±3 g/10 min" melt flow rate limitation. (*Id.*) That was improper under the law. *See WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1332 (Fed. Cir. 2016) (holding that an "inventive combination of known elements" showed sufficient nexus). The panel's opinion on this issue is thus fully consistent with the precedent of this Court and presents no issue warranting en banc review.

CONCLUSION

For the reasons discussed above, Daikin's petition for rehearing or rehearing en banc should be denied.

Dated: October 12, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE AND FILING

I certify that I electronically filed the foregoing document using the Court's CM/ECF filing system on October 12, 2021. Counsel was served via CM/ECF on October 12, 2021.

/s/Nitika Gupta Fiorella
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CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that Appellant The Chemours Company FC, LLC's Corrected Response to Appellees' Combined Petition for Panel Rehearing and Rehearing En Banc complies with the type-volume limitation set forth in Fed. R. App. P. 32(a)(7)(B). The relevant portions of the brief, including all footnotes, contains 3,874 words, as determined by Microsoft Word.

Dated: October 12, 2021

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