

2022-1860

**United States Court of Appeals
for the Federal Circuit**

TEAM WORLDWIDE CORPORATION,

Appellant,

– v. –

INTEX RECREATION CORP., BESTWAY (USA), INC.,

Appellees.

*On Appeal from the United States Patent and Trademark Office,
Patent Trial and Appeal Board in No. IPR2018-00859*

**NON-CONFIDENTIAL COMBINED PETITION FOR
PANEL REHEARING AND REHEARING *EN BANC*
OF APPELLANT**

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NOVEMBER 9, 2023

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 22-1860

Short Case Caption Team Worldwide Corporation v. Intex Recreation Corp. et al.

Filing Party/Entity Team Worldwide Corporation

Instructions:

1. Complete each section of the form and select none or N/A if appropriate.
2. Please enter only one item per box; attach additional pages as needed, and check the box to indicate such pages are attached.
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4. Please do not duplicate entries within Section 5.
5. Counsel must file an amended Certificate of Interest within seven days after any information on this form changes. Fed. Cir. R. 47.4(c).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 11/09/2023

Signature: /s/ Robert M. Harkins, Jr.

Name: Robert M. Harkins, Jr.

| <p>1. Represented Entities. Fed. Cir. R. 47.4(a)(1).</p> | <p>2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).</p> | <p>3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).</p> |
|--|---|--|
| <p>Provide the full names of all entities represented by undersigned counsel in this case.</p> | <p>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.</p> <p><input checked="" type="checkbox"/> None/Not Applicable</p> | <p>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.</p> <p><input checked="" type="checkbox"/> None/Not Applicable</p> |
| <p>Team Worldwide Corporation</p> | | |
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Additional pages attached

4. Legal Representatives. 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).

None/Not Applicable Additional pages attached

| | | |
|-------------------------------------|------------------------|--------------------|
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| Schwegman, Lundberg & Woessner P.A. | J. Michael Woods | Thomas C. Reynolds |
| Korula T. Cherian | Ron Wielkopolski | |

5. Related Cases. Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

Yes (file separate notice; see below) No N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). **Please do not duplicate information.** This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

6. Organizational Victims and Bankruptcy Cases. 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).

None/Not Applicable Additional pages attached

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CONFIDENTIAL MATERIAL OMITTED

The material redacted from this brief is subject to a protective order. The confidential information on pages 1, 3, 4, and 10-17, relates to manufactures and retailers of airbed products, including sales volume, revenue, and cost of goods figures, which have been designated as confidential.

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FEDERAL CIRCUIT RULE 35(B) STATEMENT

Based on my professional judgment, I believe the panel decision is contrary to the following precedents of this court: *Volvo Penta of the Americas, LLC v. Brunswick Corp.* 2023 U.S. App. LEXIS 22303 (Fed. Cir. August 24, 2023); *In re Piasecki*, 745 F.2d 1468, 1475 (Fed. Cir. 1984); and *Leo Pharm. Prods. v. Rea*, 726 F.3d 1346, 1356 (Fed. Cir. 2013).

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I. Introduction and Points of Law and Facts Overlooked

How much evidence is needed for a company with a patented, hugely successful product to be credited with secondary considerations of non-obviousness and maintain the validity of its patent claims? Here, in a Fed. Cir. R. 36 decision, the Court affirmed a Patent Trial Appeal Board (“PTAB”) determination that not only flies in the face of established legal precedent regarding the need for specific reasons for the collective weighing of evidence of secondary considerations but sets an impossibly high bar for patentees faced with obviousness challenges.

This case should be a poster child for the strongest possible secondary considerations case, and the PTAB recognized there was evidence and nexus on multiple factors, but then without specific reasoning upheld a finding of obviousness and invalidated the challenged patent claims.

Team Worldwide Corp.’s (“TWW”)’s CEO invented a new “built in pump (BIP)” airbed design that had never been done before. This new design created an entirely new market segment. Before the ‘018 patent, there was one market for “airbeds”; after TWW introduced its first BIP airbed, the market split into two: BIP airbeds, and non-BIP airbeds. BIP airbeds enjoyed sales of more than sales, and third party reports show patented BIP airbeds selling higher volumes (at higher prices) than non-patented airbeds with external pumps. TWW itself sold millions of the patented beds, and TWW submitted evidence that the BIP design itself was

specifically desired by consumers with definite value tied to the patented design separate from all other features. TWW also participated in an arbitration against the appellees where a former federal judge determined that there was substantial value in BIP airbeds tied specifically to the '018 patent invention supporting a per-bed license fee.

In affirming under Fed. Cir. R. 36 the Board's Final Written Decision on Remand, the Court has overlooked a critical set of facts and law, all of which independently warrant a panel rehearing or rehearing *en banc*.

First, the Court overlooked the impact of the recent decision in *Volvo Penta of the Americas, LLC v. Brunswick Corp.* 2023 U.S. App. LEXIS 22303 (Fed. Cir. August 24, 2023) that supports Petitioner Team Worldwide Corporation's ("TWW") arguments in its briefs that the Board erred in its obviousness analysis by failing to explain how it weighed TWW's strong evidence of secondary considerations of nonobviousness against evidence of obviousness that the Board had previously found as weak.

Second, the Court allowed the Board to reclassify a prior art combination previously found weak as strong without support and as a result failed to properly weigh evidence of obviousness against secondary considerations evidence, in contravention of this Court's decision in *Leo Pharm. Prods. v. Rea*, 726 F.3d 1346, 1356 (Fed. Cir. 2013)."

Third, the Court overlooked that the Board failed to properly attribute weight to various secondary considerations of nonobviousness based on the significant record evidence presented by TWW. TWW presented evidence of overwhelming commercial success of products that practiced the claims of the '018 Patent. In addition, the Court overlooked that the Board erred in limiting the presumption of nexus between the accused products and the claims of the '018 Patent by not properly considering the evidence that all accused products in the [retailer] litigation were admitted to infringe the claims of the '018 Patent. The Court and the Board's error here is directly contrary to this Court's holding in *In re Piasecki*, 745 F.2d 1468, 1475 (Fed. Cir. 1984) which addresses the proper weighing of evidence of nonobviousness. The Court and the Board here have committed the same legal error, and it should be reversed for the same reasons.

The Court appears to have overlooked that, like the Board in *Volvo*, the Board here failed to provide any analysis or explanation of how it weighed TWW's strong evidence of commercial success and other indicia of nonobviousness compared to admittedly weak obviousness evidence. The Court afforded secondary considerations little weight despite overwhelming and uncontradicted evidence of commercial success, including more than [sales] in sales of products practicing the claims of the '018 Patent. For the majority of these products Petitioners [manufacturer] and [manufacturer] (TWW's competitors) admitted that their products infringed the claims

of the '018 Patent in the [retailer] Stipulation. Based on the [retailer] Settlement, all accused products in the [retailer] Litigation were admitted to infringe the claims of the '018 Patent. The Court also ignored that it has held that far lower sales constitute significant evidence of commercial success even without market share data.

Further, this Court overlooked that the Board attributed insufficient weight to TWW's objective evidence of broad acceptance and industry praise. The Board ignored statements by Petitioners [manufacturer] and [manufacturer] themselves discussing the importance of airbeds with the built-in pumps of the '018 Patent – products that were admitted to infringe the claims of the '018 Patent.

Upon rehearing, this Court should at least find that the Board's obviousness analysis failed to comply with this Court's *Volvo* decision as the Board failed to properly weigh TWW's strong evidence of secondary considerations of nonobviousness, including at least commercial success, compared to weak evidence of obviousness. At a minimum the Board failed to provide any explanation of its obviousness analysis as required by the *Volvo* decision. Also, the Board failed to collectively analyze TWW's substantial evidence of nonobviousness as required by this Court's *In re Piasecki* decision. As part of the Board's failed analysis, it erred by not properly considering that TWW's strong objective evidence of commercial success and broad acceptance and industry praise outweighs the determination of obviousness for the claims of the '018 Patent.

II. The Court Overlooked Evidence that the Board’s Obviousness Analysis Was Contrary to this Court’s *Volvo* Decision

In its affirmance of the Board’s Final Written Decision on remand, the Court overlooked that Board erred in its obviousness analysis as it did not properly weigh TWW’s strong evidence of nonobviousness against obviousness evidence the Board had previously found to be inadequate, nor did the Board provide any explanation of its weighing of this evidence. As discussed below, the Board’s actions here are directly contrary to this Court’s *Volvo* decision.

On October 4, 2023, Appellant filed a citation of Supplemental Authority, Dkt. 70, informing the Court of the very recent *Volvo* decision. In *Volvo*, with respect to secondary considerations of nonobviousness, this Court confirmed that when the Board “does not discuss the summation of the [objective evidence] factors at all other than to say, without explanation, that they collectively ‘weigh[] somewhat in favor of nonobviousness’” then “[t]hat is not sufficient to sustain its determination.” *Volvo* at *27. The Court also explained that where individual factors are assigned with “some weight” or “very little weight” that it “stands to reason that these individual weights would sum to a greater weight.” *Id.* In *Volvo*, this Court concluded that “the Board’s analysis of objective indicia of nonobviousness, including its assignments of weight to different considerations, was overly vague and ambiguous.” *Id.* at *20.

As discussed in its briefs and during oral argument, TWW contends that the Board did not properly weigh the strong evidence of nonobviousness compared to obviousness evidence the Board had initially considered weak. The Board here, like the Board in *Volvo*, made several statements about the weight of various secondary considerations of nonobviousness. For example, the Board stated that TWW was “entitled to some, but not considerable, weight with respect to the objective evidence of commercial success” and that the Board gives “the objective evidence associated with broad acceptance, industry praise, and licensing some, but not considerable, weight.” Appx49; Appx56. In concluding that TWW was “entitled to some, but not considerable, weight in favor of nonobviousness,” the Board – like the Board in *Volvo* – offered no analysis at all. Appx61. The Board’s conclusions regarding nonobviousness were just as conclusory as the Board in *Volvo*. The Board’s conclusion regarding obviousness was equally barren merely stating “Petitioner’s strong evidence of obviousness outweighs Patent Owner’s objective evidence of nonobviousness.” *Id.* The Board here offered no analysis or explanation why the obviousness evidence was “strong” and no analysis or explanation of how it weighed the evidence of obviousness and nonobviousness. The *Volvo* decision requires the Board to explain its weighing of the different indicia of nonobviousness and how this evidence compares to the evidence of obviousness. The Court here overlooked that the Board failed to provide such an explanation.

The Board's errors are shown by the Board incorrectly attributing only some weight to TWW's evidence of commercial success, failure to develop alternatives, and broad acceptance and praise for products practicing the claims of the '018 Patent. While the Board assigned "some weight," "some weight, but not considerable," and "little weight," to the various factors, it concluded that overall, the "Patent Owner is entitled to some, but not considerable, weight in favor of nonobviousness." Appx61. The Board's conclusion here contradicts this Court's holding in *Volvo*, that "it stands to reason that these individual weights would sum to a greater weight." A proper assessment of the strength of TWW's objective evidence of nonobviousness would present a strong case for nonobviousness for the claims of TWW's '018 Patent. *See e.g.*, Blue Br. at 25-28, 43-45; Yellow Br. at 6-8, 13-19.

Against the strong evidence of nonobviousness, the Court overlooked that the evidence of obviousness was weak. In its original Final Written Decision, the Board conducted a thorough review of the prior art references that were ultimately found to be the basis for an obviousness determination - Parienti in combination with Goldsmith. Appx1692-1711. The Board found that Parienti did not have a built-in pump, which is undisputed, and that Goldsmith—which is a 1940s patent directed to blowing hot air through a noninflatable, asbestos mattress— would not motivate a POSA (Person of Ordinary Skill in the Art) to alter the Parienti design. *See*

Appx1692, Appx1701-1711. In its prior opinion, this Court directed on remand to the Board that Parienti itself was “close” enough to the claims to find obviousness *unless* there was at least some evidence of secondary considerations of nonobviousness, and that, as a result, further analysis was necessary. Appx32 . This Court’s original opinion provided no assessment of the strength of the obviousness case and thus this Court did not find the obviousness case to be strong. *See* Case No. 2020-1144, Dkt. 101, at 12-13; Blue Brief, at 46.

From this, and without altering its prior analysis, the Board erroneously reclassified the obviousness case as “strong” (Appx3046), which the Federal Circuit did not do. Because there was no additional analysis other than the mandate on appeal, the finding that the obviousness case was “strong” was unsupported and in fact contradicted by the Board’s own prior analysis in its original determination of nonobviousness. As this Court has noted, “[w]ithout more, and especially in the face of such strong objective indicia of nonobviousness,” relying on insufficient support to conclude that obviousness is strong constitutes reversible error by the Board. *Leo Pharm. Prods. v. Rea*, 726 F.3d 1346, 1356 (Fed. Cir. 2013). By starting with the wrong weight on one side of the balancing test, the Board’s error caused it to reach the wrong conclusion as to the impact of the weight of the nonobviousness evidence.

In addition to *Volvo*, this Court’s finding reversing the Board in *In re Piasecki*, 745 F.2d 1468, 1475 (Fed. Cir. 1984) is instructive. In *Piasecki*, the patentee

submitted 26 items of evidence, yet the Board inappropriately gave the evidence little weight. “[T]he Board’s treatment of the rebuttal documents impels us to the conclusion that the Board did exactly that which Rinehart warns against: they viewed each piece of rebuttal evidence solely ‘on its knockdown ability.’” *Id.*, at 1473 (internal citations omitted). “This procedure, and the conclusion of obviousness flowing from this procedure, are thus flawed.” *Id.* The Court found that, by following a procedure that gave insufficient weight to the totality of the nonobviousness evidence, the Board improperly found that the evidence of obviousness outweighed the evidence of nonobviousness. *Id.* Here, TWW submitted over 90 items of evidence relating to nonobviousness and yet the Board looked at each piece of evidence for its “knockdown ability” as did the Board in *Piasecki*. The Board here has committed the same legal error, and it should be reversed for the same reasons.

This Court should reverse its affirmation of the Board’s decision as the Board erred in its obviousness analysis by failing to properly weigh TWW’s strong evidence of nonobviousness against weak evidence of obviousness, or even explain its analysis. This Court has overlooked that the Board’s actions are contrary to at least this Court’s *Volvo* and *In re Piasecki* decisions.

III. The Court Overlooked that TWW Presented Significant Evidence of Nonobviousness Including Evidence of Overwhelming Commercial Success

Contributing to the Board's failure to properly weigh evidence of nonobviousness against obviousness evidence, the Board failed to provide proper weight to TWW's substantial evidence of nonobviousness. This Court erred in not reversing or at least remanding the Board's determination regarding TWW's evidence of nonobviousness.

A. The Court Has Overlooked TWW's Evidence of Overwhelming Commercial Success

As discussed in TWW's Opening Brief and presented during oral argument, the record includes specific evidence of overwhelming sales of products that practice the claims of the '018 Patent, including all accused products from the **retailer** Litigation and TWW's own products. Contrary to the Board's determination and this Court's decision, this significant sales data for products that practice the claims of the '018 Patent provide overwhelming evidence of commercial success.

Before the Board and this Court Petitioners **manuf acturer** and **manufactur er** only reiterated the Board's determination and failed to justify the Board's disregard for the evidence in the record including the approximately **sales** in sales of accused products in the **retailer** Litigation - products which Petitioners **manufa cturer** and **manufactu rer** (and others) admitted infringed the claims of the '018 Patent. In its Final Written Decision on Remand, the Board attributed less weight to commercial success because the Board

limited the presumption of nexus to the products admitted to infringe in the [retailer] Stipulation. Appx1704. TWW submits that he accused products identified in the [retailer] Stipulation alone provide more than sufficient sales to present strong evidence of commercial success. Regardless, the Board and this Court ignored that the [retailer] Settlement agreement shows that all the accused products in the underlying [retailer] litigation infringe the claims of the '018 Patent. Appx22850. Such an extensive admission must constitute overwhelming evidence of commercial success. The [retailer] Settlement agreement demonstrates that all the approximately [sales] in sales were sales of products that infringed the claims of the '018 Patent and not just the products in the [retailer] Stipulation. Appx22850; *see also* Appx725, Appx7869-7874 ; *see Star Sci., Inc. v. R.J. Reynolds Tobacco Co.*, 655 F.3d 1364, 1376 (Fed. Cir. Aug. 26, 2011) (“[A]s evidence by Brown & Williamson’s licenses, which cost millions of dollars, Williams’ invention had achieved considerable market acceptance and commercial success.”); *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1571-1572 (Fed. Cir. Jan. 23, 1987) (Finding “[t]he strong evidence of nonobviousness, and its inescapable refutation of the view that the claimed inventions would have been obvious from the prior art, are what distinguish this case from some others. As the district court said, ‘This is a case which presents that issue [effect of nonobviousness evidence] as clearly as any I’ve seen’” including based upon Panduit’s annual sales of \$50 million.) (emphasis added).

TWW's expert, Dr. Becker, provided expert testimony on these significant sales. Specifically, for the accused products (all of which infringed the '018 Patent), Dr. Becker stated: "During the period from April 2, 2011 through April 11, 2018, [retailer] sold over [units sold] units of *air bed models that practiced the invention of the Challenged Claims of the '018 Patent, which generated sales of approximately [sales]*." Appx11765-11766 at ¶40 (emphasis added); *see also* Appx11819, Exhibit SLB-7. Dr. Becker also identified almost [sales] of sales for TWW over the 2006-2017 time frame for TWW's own products that practice the '018 Patent. Appx11762-11763 at ¶35 (emphasis added). Thus, contrary to the Board's statements, TWW identified significant sales of infringing products demonstrating very strong evidence of commercial success.

As discussed in TWW's Opening Brief and during oral argument, TWW's technical expert, Dr. Stevick confirmed that all accused products in the [retailer] Litigation infringed the claims of the '018 Patent, as admitted by the Defendant and Intervenor in that litigation. The Board ignored Dr. Stevick's expert testimony on his review of the entire airbed industry based on his study of the airbed industry for several years. Appx7866-7870, Dr. Stevick's expert analysis further confirms that all accused products in the [retailer] Litigation infringed the '018 Patent, as admitted by Petitioners [manuf acturer] and [manufactur er] and others in that litigation. Accordingly, this

Court erred in not finding that the Board failed to attribute substantial weight to TWW's objective evidence of nonobviousness for commercial success.

B. This Court's Decision Ignored Evidence That Showed Substantial Value Isolated to Just the Patent Claims

During the above referenced [retailer] arbitration, Judge Sue L. Robinson concluded that for the patented built-in pump technology, "the appropriate per unit royalty rate for all future sales of infringing BIPs is [royalty rate]" Appx22841. Further, [retailer] own data showed that it sold approximately [units sold] units of BIP models that practice the challenged claims of the '018 Patent constituting over [sales] of sales. Appx11766. [retailer] own sales data show that its gross profit of BIP beds versus non-built-in pump ("NBIP") beds represented at least [profit] per unit of increased profit. Appx11813. A royalty of [royalty rate] or each of literally millions of airbeds demonstrates overwhelming commercial success for products practicing the claims of the '018 Patent.

Further, as discussed in TWW's Opening brief and during oral argument, the Board also improperly reduced the weight it assigned to TWW's objective evidence of commercial success based on other airbed "features," such as comfort and durability, which the Board believed contributed more to customer demand than the built-in pump of the claims of the '018 Patent. Appx44-47. But the Board erred in treating "comfort and durability" as a feature, like a built-in pump, as these are different characteristics that exist for airbeds *with and without* built-in pumps.

“Comfort and durability,” relied on by the Board as allegedly driving consumer airbed demand, are characteristics common to airbeds with and without built-in pumps. Although neither Petitioners nor the Board disputed that “comfort and durability” are common for both non built-in pump (“NBIP”) and BIP airbeds, both somehow argue that these characteristics are the basis for consumer demand for just BIP airbeds. So, if all consumers wanted was “comfort and durability” they could purchase less expensive NBIP airbeds. The Board failed to account for, and this Court overlooked, the fact that comfort and durability are not unique to BIP airbeds.

In the proceedings before the Board and in briefing on appeal, Petitioners **manufa** and **manufactur** do not dispute that these unclaimed features are found in both the BIP products and NBIP products, that suppliers and retailers readily identify these products as BIP or NBIP, and that consumers can choose between BIP and NBIP models. As discussed in the Opening Brief and during oral argument, **retailer** infringing BIP airbed models – that practice the claims of the ’018 Patent - sell at higher average selling prices, earn higher gross profits per unit, and exhibit substantially more sales growth compared to NBIP models. Appx11750, ¶14. In fact, an intervenor airbed manufacturer in the underlying **retailer** litigation disclosed internal research that shows consumers are willing to pay a premium for BIP airbeds, practicing the claims of the ’018 Patent, over NBIP airbeds. Appx726.

The fact that NBIP airbeds at [retailer] were not a substitute for infringing BIP airbeds is demonstrated by the experience of an [manufacturer] sales manager at [retailer]. In an email with a [retailer] buyer, an [manufacturer] sales manager noted that [retailer] experienced reductions in airbed sales when BIP airbeds were moved from their previous aisle in store where they had been sold side-by-side with NBIP airbeds. Appx9888. Specifically, the [manufacturer] Sales Manager stated that when BIP airbeds were moved to a different section of the store from where they had been previously sold side-by-side with NBIP airbeds, [manufacturer] sales dropped by millions. *Id.* In fact, [manufacturer] found that consumers were leaving the store and shopping elsewhere when they did not find BIP airbeds in the expected section of the store. Once BIP and the less expensive NBIP airbeds were located together sales of BIP airbeds increased significantly. *Id.* Significant numbers of consumers chose not to purchase an NBIP airbed if they could not find BIP airbeds. Thus, [retailer] customers were not generally selecting airbeds based on cost as sales of BIP airbeds increased in the presence of lower cost NBIP airbeds.

This Court overlooked the Board's error in reducing the weight attributed to commercial success based on airbed features that are characteristics common to all airbeds and not just the BIP airbeds which practice the claims of the '018 Patent and had almost [sales] in sales at [retailer] alone.

C. The Court Overlooked that the Board Did Not Afford Sufficient Weight to the Substantial Evidence Demonstrating Broad Acceptance and Praise for Products that Practiced the Claims of the '018 Patent

The Court ignored that the Board improperly attributed only some, but not considerable, weight to TWW's objective evidence of broad acceptance and praise in the industry for products practicing the claims of the '018 Patent. Appx53-56. *See WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1334 (Fed. Cir. 2016) (emphasis added). Petitioners [manuf acturer] and [manufactur er] did not refute the statements of their own executives directly praising BIP airbeds which practice the claims of TWW's '018 Patent. As discussed in TWW's briefs, for example, the CEO of [manufactur er] testified to the importance of BIP airbeds to [manufactur er] stating that [manufactur er] began selling BIP airbeds at the inception of the company. Appx10049, 40:1-7. [manufactur er] Director of Risk Management testified on the importance of BIP airbeds to [manufa cturer] and tha [manufa cturer] began selling BIP airbeds once TWW entered the market with BIP airbeds in 2000. Appx9897 at 50:15-18. The [manufa cturer] Director further testified that for [manuf acturer] BIP airbeds are important because of the convenience to the customers. Appx9899 at 53:2-12.

The Board stated that this praise is only entitled to some weight because TWW is not entitled to a presumption of nexus based solely on a product having a "built-in pump." Appx55. But the Board and this Court missed the point – both [manufa cturer] and [manufactur er], who praised BIP airbeds above, have *stipulated in District Court that their BIP airbeds infringe the claims of the '018 Patent*. The Court and the Board failed

to address this critical point that Petitioners [redacted] and [redacted] themselves praised products they admitted practice the claims of the '018 Patent.

IV. Conclusion

In view of this Court overlooking and not properly considering its own precedents and record evidence of nonobviousness, this Court should grant a panel or rehearing en banc and reverse the affirmation of the Board's decision. Thus, this Court should rule that the U. S. Patent and Trademark Office erred in concluding that the evidence of obviousness outweighs the objective evidence of nonobviousness and hold that challenged claims 1, 5, 7, and 11-14 of the '018 Patent are not invalid.

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ADDENDUM

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

TEAM WORLDWIDE CORPORATION,
Appellant

v.

**INTEX RECREATION CORP., BESTWAY (USA),
INC.,**
Appellees

2022-1860

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. IPR2018-
00859.

JUDGMENT

ROBERT M. HARKINS, JR., Cherian LLP, Berkeley, CA,
argued for appellant. Also represented by JAMES MICHAEL
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Schwegman Lundberg & Woessner, PA, Minneapolis, MN.

ANDREW M. MCCOY, Faegre Drinker Biddle & Reath
LLP, Indianapolis, IN, argued for all appellees. Appellee
Intex Recreation Corp. also represented by R. TREVOR
CARTER, REID E. DODGE.

JOHN S. ARTZ, Dickinson Wright PLLC, Ann Arbor, MI,
for appellee Bestway (USA), Inc. Also represented by
STEVEN A. CALOJARO, Reno, NV.

THIS CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

PER CURIAM (LOURIE, DYK, and TARANTO, *Circuit
Judges*).

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

October 11, 2023
Date



Jarrett B. Perlow
Clerk of Court

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Case Number: 22-1860

Short Case Caption: Team Worldwide Corporation v. Intex Recreation Corp. et al.

Instructions: When computing a word, line, or page count, you may exclude any items listed as exempted under Fed. R. App. P. 5(c), Fed. R. App. P. 21(d), Fed. R. App. P. 27(d)(2), Fed. R. App. P. 32(f), or Fed. Cir. R. 32(b)(2).

The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because it meets one of the following:

- the filing has been prepared using a proportionally-spaced typeface and includes 3897 words.
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Date: 11/09/2023

Signature: /s/ Robert M. Harkins, Jr.

Name: Robert M. Harkins, Jr.

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF CONFIDENTIAL MATERIAL

Case Number: 22-1860

Short Case Caption: Team Worldwide Corporation v. Intex Recreation Corp. et al.

Instructions: When computing a confidential word count, Fed. Cir. R. 25.1(d)(1)(C) applies the following exclusions:

- Only count each unique word or number once (repeated uses of the same word do not count more than once).
- For a responsive filing, do not count words marked confidential for the first time in the preceding filing.

The limitations of Fed. Cir. R. 25.1(d)(1) do not apply to appendices; attachments; exhibits; and addenda. *See* Fed. Cir. R. 25.1(d)(1)(D).

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- This number exceeds the maximum permitted by Federal Circuit Rule 25.1(d)(1), and the filing is accompanied by a motion to waive the confidentiality requirements.

Date: 11/09/2023

Signature: /s/ Robert M. Harkins, Jr.

Name: Robert M. Harkins, Jr.