

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BLASTERS INC.,

Petitioner,

v.

WATERBLASTING, LLC,

Patent Owner.

Case IPR2018-00504

Patent 7,255,116

PATENT OWNER'S RESPONSE

I. SUMMARY OF THE INVENTION

Waterblasting, LLC, d/b/a Waterblasting Technologies is the Owner of the '116 patent and actively practices the patent in the water blasting industry.

Disclosed in the '116 patent is a cleaning system for removing coatings and pavement markings from roadways and airport runways using ultra high pressure and a high-power vacuum. The specification of the '116 patent teaches that all the components of the cleaning system can be mounted on the truck or pulled behind the truck on a trailer. *Blasters-1001* at 2:23-33. Prior to the filing of the '116 patent on July 2, 2004, all of the necessary components of a cleaning system for roadways and runways were transported using multiple trucks and trailers, in this field of water blasting technology. This cumbersome and inefficient method of operation was extremely costly to customers. One objective of this invention was to provide a vacuum recovery, truck mounted, stripe removal system having a compact unit for safe, fast over-the-road travel to job sites. *Id* at 2:35-37. Claim 1 of the '116 patent is directed to that objective, in which all of the components of the cleaning system are mounted on one truck.

II. LEGAL STANDARDS

The Board has instituted *inter partes* review of U.S. Patent No. 7,255,116 (the '116 patent) based upon 5 grounds raised by the Petitioners. However, the

Petitioners rely only on an obviousness analysis based on prior art references implicated by unreasonably broad claim constructions proffered by Petitioners technical expert in the field of waterblasting, Mr. Scott F. Boos, who also happens to be the President and CEO of Blasters, Inc., the Petitioner. In his declaration, Mr. Boos cites to the archived PCS website. P.C.S., Inc. was started by James P. Crocker who is the named inventor of the '116 patent, and the current President and CEO of Waterblasting, LLC—the Patent Owner. The PCS website is not relied upon as prior art in the Petition. However, Mr. Boos opines that the PCS website clearly evidences the cleaning system in the '116 Patent was in use prior to 2003. *See* (Blasters-1009) p.19-20 ¶s 42-45. During his cross-examination testimony, Mr. Boos was asked whether he was aware of any other disclosures, or prior art, or people, prior to the priority date of the '116 patent, July 2, 2004, doing anything similar within the field of invention of waterblasting. Mr. Boos replied: "I'm unaware of a system that has all the components **all combined** (emphasis added), but definitely people were out there doing each of the components of the prior art." *See* Waterblasting Exhibit (20??), Cross Examination of Scott F. Boos, p. 234, ll. 7-25.

A patent is invalid for obviousness "if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a

whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” 35 U.S.C. § 103. Obviousness is a question of law based on underlying factual findings: (1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the art; and (4) objective indicia of nonobviousness. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18 (1966). The Board must consider all evidence relevant to obviousness or non-obviousness and consider the evidence collectively before reaching a conclusion regarding obviousness. *In re Cyclobenzaprine Hydrochloride Extended–Release Capsule Patent Litig.*, 676 F.3d 1063, 1078 (Fed. Cir. 2012). Petitioners bear the burden of proving obviousness by a preponderance of the evidence. 35 U.S.C. § 316(e).

As explained by the Supreme Court, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed Cir. 2006)). Specifically, a petitioner must demonstrate that, at the time of invention, a POSITA would have had a reason to attempt to make the invention and “a reasonable expectation of success in doing so.” *Procter & Gamble Co. v. Teva Pharm. USA, Inc.*, 566 F.3d 989, 995 (Fed. Cir.

2009). In an *inter partes* review, the burden of proof always rests on the Petitioner to articulate this reasoning; the burden never shifts to the Patent Owner to prove the absence of a motivation to combine. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). “To satisfy its burden of proving obviousness, a petitioner cannot employ mere conclusory statements. The petitioner must instead articulate specific reasoning, based on evidence of record, to support the legal conclusion of obviousness.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016). Similarly, it is not enough to identify what one of skill in the art “would have known” or “could have done” to meet a limitation. *Black & Decker, Inc. v. Positec USA, Inc.*, No. 2015-1646, 2016 WL 2898012 at *6 (Fed. Cir. May 18, 2016). Rather, a Petitioner must articulate why a skilled artisan would actually make a combination. *Id.* See, *Ball Aerosol & Specialty Container, Inc. v. Limited Brands, Inc. v. Limited Brands, Inc.*, 555 F.3d 984, 993 (Fed. Cir. 2009) (explaining that the skilled artisan’s motivation “should be made explicit”). The Board may not look beyond the Petition to find this reasoning. *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016) (explaining that “the Board must base its decision on arguments that were advanced by a party, and to which the opposing party was given a chance to respond”).

Based on the evidence of record, as is further explained *infra*, Petitioner has not met the burden of proving its claims of obviousness by a preponderance of the evidence. Accordingly, Patent Owner respectfully requests that the Board confirm the challenged claims of the '116 patent.

III. THE BIAS INHERENT IN THE TESTIMONY OF PETITIONER'S EXPERT DEMANDS THAT SUCH TESTIMONY SHOULD BE ENTITLED TO LITTLE OR NO WEIGHT

The technical expert that Petitioner relies on in this matter is Mr. Scott F. Boos, who happens to be the President and CEO of the petitioner. When asked how the President and CEO of the company instituting this IPR proceeding could be an independent technical expert, Mr. Boos testified that he simply removed the bias. *See* Waterblasting Exhibit (20??), Cross Examination of Scott F. Boos, pgs. 7-8. Yet, when challenged with the fact that he has a financial interest in the outcome of the cases, Mr. Boos replied, "I don't think I do, no." *Id.* p.8 ln.1. Mr. Boos ownership interest in Blasters, Inc. was 44 ½ percent. *Id.* p.100 l.1.

Accordingly, the board should afford his testimony little—or at least diminished—weight in making its decisions on patentability. *See Ethicon, Inc. v.*

U.S. Surgical Corp., 135 F.3d 1456 (Fed. Cir. 1998) (“a witness’s pecuniary interest in the outcome of a case goes to the probative weight of testimony”).

Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight. 37 C.F.R. § 42.65(a). Mr. Boos bias appears to yield testimony that raise questions about the competency of his opinion and how much weight to afford his conclusions in the petition. At the beginning of his cross examination, Mr. Boos was repeatedly asked about any contribution to his technical opinion. Mr. Boos repeatedly responded to inquiries about technical contributions, that the technical contributions in his opinion were a collaborative effort between himself and his attorneys. *See*, Waterblasting Exhibit (2000? pgs. 17-18).

In neither his Declaration or cross-examination testimony does Mr. Boos articulate a rationale as to why a person of ordinary skill in the art would have modified the references in the petition to achieve the invention disclosed in the ‘116 patent. During Mr. Boos cross examination, he was repeatedly asked to specifically articulate what would be the motivation to combine the cited references in his declaration. Exemplary of Mr. Boos repeated testimony, regarding the motivation to combine are statements such as: “And my motivation was to basically make the best system by combining the best components that are

commonly known on the market and integrate them together to have the best system.” *Id* at p.162 ll. 14-17 “The motivation would be to ultimately yield the best system.” *Id* at p. 231 ll. 17-25. This sort of testimony is thoroughly conclusory and devoid of any factual or technical basis. During Re-Direct Examination, Mr. Boos still could not articulate explicitly a rationale why a person of ordinary skill in the art would have been motivated to combine the cited references. *See*, Waterblasting (200?) pp. 240-248.

Accordingly, the board should afford the testimony of Mr. Scott F. Boos little or no weight.

IV. CLAIM CONSTRUCTIONS IN DISPUTE

As the Board noted in footnote 4 of the decision to institute the *Inter Partes* Review, both parties treat the recitations, “A cleaning system for removing coatings from a hard surface by a high pressure liquid”, in the preamble of claim 1 as limiting. Patent Owner agrees that the preamble of claim 1 does limit the “cleaning system” to a high velocity water blasting system.

A person of ordinary skill in the art upon review of the specification of the ‘116 patent would understand that the “cleaning system” described in the ‘116 patent is a hydraulic system intended to replace systems which remove strongly bonded coatings using techniques such as grinding and shot blasting. *See*,

Waterblasting (2012) Declaration of Dr. Randall K. King, Ph.D., P.E. para.20. The cleaning system disclosed in the '116 patent removes these coatings by blasting them with high velocity water jets. For example, a person of ordinary skill in the art would understand that the spray nozzles utilized in this field of technology, combined with the discharge pressures and flow rates disclosed in the specification of the '116 patent would generate exit velocities greater than the muzzle velocity of a 357 magnum handgun bullet. *Id* at para.21.

1. Coatings

The petitioner has proposed a definition for coatings that is so broad that wiping dust off a countertop would constitute removing a coating from a surface. This overly broad proposed construction of coatings fails to account for the coatings being understood by a person of ordinary skill in the art as a layer of substance that is applied to and bonded to a surface. *Id.* at para. 24 Accordingly, one of ordinary skill in the art would understand “coatings” in claim 1 of the '116 patent to mean a “layer of durable material applied and strongly adhered to a hard surface.” *Id* at para.25-26.

2. Hard Surface

Consequently, one of ordinary skill in the art would understand the term hard surface in claim 1 of the '116 patent means the surface of a material that is hard

enough to withstand high-pressure water blasting without disintegrating, for instance “paving material in common use for road, parking lot, and airport runway surfaces such as asphalt or concrete. Dr. Randall K. King, Ph.D.,P.E. further opines that “The entire purpose of this technology is to remove these tenaciously bonded outer coatings from the hard surface, to improve the surface for its intended use, say, as a runway or a highway. It would make no sense to one of ordinary skill in the art to use this powerful blasting equipment on a softer surface which would be destroyed by the process.” *Id* at para.30.

3. High Pressure

Dr. King therefore explains, “that when presented with a reasonable construction of what a person of ordinary skill in the art would understand the terms coatings and hard surface to mean, the broadest reasonable interpretation of the term “high pressure” would be a pressure sufficiently high enough to be able to blast a coating off a hard surface, by severing the bond between the coating and the hard surface. Additionally, the pressure must be sufficient to penetrate the pores and imperfections of the hard surface to remove the coating bonded or embedded within the outer layers of the hard surface. Accordingly, one of ordinary skill in the art would understand from this specific information from people actually developing, producing, and using the technology provided in the specification that

“high pressure” in claim 1 of the ‘116 patent refers to pressure greater than 25,000 psi.” *Id* at para.34.

As is discussed *supra*, the reality is that a person of ordinary skill in the art when considering the ‘116 patent in its entirety, would understand that the high pressures required to achieve the objective of the ‘116 patent are greater than 25,000 psi, which is consistent with the specification and the NLB reference. The Board identified in its decision to institute *inter partes* review of the challenged claims of the ‘116 patent, that the claim construction disputes between the parties relate only to alternative arguments by Petitioner that concern whether it could prove that the challenged claims are unpatentable without relying on NLB. Although Patent Owner does submit the proposed claim terms above to resolve the unreasonable claim constructions advanced by Petitioner, Patent owner respectfully submits that Petitioner has not met the burden of proving by a preponderance of the evidence what the motivation of a person of ordinary skill in the art would be to combine Jones, Breither and with the high pressure pump disclosed in NLB, or to combine Clemons and with the high pressure pump disclosed in NLB. .

4. Blast Head

Similarly, the Petitioner has proposed that the term “blast head” should be construed without regard for what one of skill in the art would consider high pressure in light of the specification of the ‘116 patent as discussed above. Dr. King notes in his declaration that the Petitioner’s proposed construction would include water spray heads as commonplace as a showerhead or a lawn sprinkler, and his proposed construction is therefore unreasonably overbroad. *Id.* para.37.

Dr. King further opines: “However, the Petitioner avoids the most informative words in the sentence – “high pressure nozzles delivering high pressure fluid to the surface.” As addressed above, the pressure must be greater than 25,000 psi to be reasonably considered high pressure in the context of the ‘116 Patent. With such a pressure, the “blast head” is doing more than simply “ejecting a substance onto a surface,” it is forcefully blasting the fluid at the surface to break the bonding of the coating and penetrate within the pores of the hard surface to remove the portions of the coating that are embedded within the porous surface. *Id.* at para. 38.

One of ordinary skill in the art would therefore understand the broadest reasonable interpretation of “blast head”, in accordance with the ‘116 Patent specification as: “a mechanical component having one or more high pressure nozzles for delivering high pressure fluid onto a surface.” *Id.* at para.39.

5. Articulating Link

The articulating link as described in the '116 Patent thus allows the blast head to have three degrees of freedom: horizontal translation (left and right), vertical translation (up and down), and vertical rotation (flipped up and back),

One of ordinary skill in the art would understand an “articulating link” to be a structure that mounts the blast head to the tractor and which allows the blast head to have least two translational degrees of freedom and at least one rotational degree of freedom. *See* Waterblasting (2012) para.40-44.

6. Connected to

Dr. King opines that the term “connected to” in Claims 1,2,3 and 6 of the '116 Patent is readily understandable to one of ordinary skill in the art to mean “directly joined or linked together,” in accordance with the plain meaning of joined or linked together given the Merriam Webster Unabridged Dictionary. *See* Waterblasting (2012) para.35-36.

**V. CLAIMS 1-6 AND 10 OF THE '116 PATENT ARE
PATENTABLE AND PETITIONER HAS NOT PROVEN BY A
PREPONDERANCE OF THE EVIDENCE ANY OF THE GROUNDS
RAISED**

1. Ground 1: Claims 1, 2 and 10 are patentable over the combination of Jones, Breither and NLB.

The Patent owners expert witness refutes the Petitioner's contentions asserted to support Ground 1: that claims 1,2 and 10 are obvious over Jones in view of Breither and NLB by explaining that this combination is based on Petitioner's unreasonably broad claim constructions for coatings, high pressure and hard surface.

In fact, Jones and Breither teach away from the extreme pressure used by NLB and the "high pressure" claimed in the '116 Patent – thus there would be no motivation for one to combine the references as Petitioner asserts. *See* Waterblasting 2012 para. 78.

"One of ordinary skill in the art would not be motivated to swap Jones' small 200 psi "booster pump" and small electric motor for the massive ultra high pressure pump and power source of the '116 Patent, while adding the reservoir from Breither, to turn the turf cleaning apparatus of Jones into 'a system for removing durable coatings which are tightly bonded to a hard surface by blasting away the hard surface by impacting it with high velocity water,' any more than one would be motivated to trade the motor from an electric golf cart for a large 150 horsepower diesel engine. That kind of power

and pressure would entirely remove or shred the turf that Jones is designed to clean—a counterproductive result at least.” *See id.* para.79.

Dr. King explains that the difference between the two technologies is much more than the difference in the size of the pump and power source alone. “Equipment for producing and containing this high amount of pressure – pumps, seals, hoses, tubing, nozzles, etc. is very specialized and extremely expensive. It requires a very high level of design, manufacturing, and quality control expertise. Ultra high pressures also pose significant safety hazards. Any small leak at these pressures creates a high-velocity jet of water that can immediately create a hazard that would cut through a person’s body with ease. This is true even for a very small leak, which can be very hard to see. For these reasons, it would not have been “obvious for a POSA to replace Jones’ pump with NLB’s “ultra-high pressure,” 40,000 psi pump” , nor would one of ordinary skill in the art have been motivated to do so.” *id.* para 80.

For the same reasons, one of ordinary skill in the art would not have been motivated to replace the equipment in Jones for a “hose designed for “ultra-high pressure” as disclosed in NLB”, to supply water to Jones’ cleaning head, which Petitioner equates with a “mobile blast head,” and a nozzle “designed for ultra-high-pressure disclosed in NLB,” *id* at para. 81.

One who attempted to replace the pump, hoses, blast head, and other equipment on Jones with the high-pressure equipment from NLB would be met with significant design challenges. The ultra-high pressure pump would be much, much larger and heavier than the small booster pump on Jones. Since the pressure on the NLB pump is 200 times higher than the Jones pressure, this means that it would take 200 times more horsepower to drive the pump (assuming the same flow rate). This means that the small electric motor driving the Jones pump would need to be replaced by a large power source, such as a large diesel engine. The larger power source would require a larger fuel tank. Radiator, cooling fans, etc. As the components become larger, weight distribution on the truck becomes an issue which impacts where the components can be located. These changes to the design would occur while the designer is trying to find a spot to carry the tractor on the truck. *id.* at para. 82

It would quickly become apparent that the best way to meet that objective would be to use the truck engine to drive the pump and possibly other accessories. Since the pump requires significant power, this requires large, expensive gearboxes to split the power between the pump and the drive train. Since the cooling fans are now larger, the logical way to drive them is with hydraulic motors, requiring their own pump and reservoir. Dr. King concludes that it is not a simple matter to simply replace Jones' low pressure pump and

cleaning head with ultra-high pressure equipment. It would require a significant engineering design and development effort, involving a great deal of engineering expertise, man hours, and cost. Therefore, one of ordinary skill in the art would not have been motivated to combine Jones and Breither with NLB to achieve “ultra-high pressure water,” as suggested by Petitioner. *id* at para.82.

Separately, neither Jones, Breither, nor NLB disclose the “articulating link” required by Claim 1 of the ’116 Patent. In addition to Jones, Breither and NLB teaching away from each other, a person of ordinary skill in the art with those references would still not have a reference to teach all of the required elements of Claim 1 of the ’116 Patent. *id* at para. 83.

In neither his declaration or cross-examination testimony does Mr. Boos explicitly explain the rationale as to why a POSA would have been motivated to combine the references of Jones, Breither and NLB to arrive at claims 1, 2 and 10. For example, when asked how would you interchange the NLB pump with the pump disclosed in Jones, Mr. Boos testified that, “Basically you’d have to use a larger chassis than that of Jones. You’d have to use a larger chassis to accommodate the pump.” Waterblasing (2019) p.132 ll. 5-11. When asked specifically what would motivate a person of ordinary skill in the art to modify Jones in combination with Breither on combination with NLB, Mr. Boos recites

another vague conclusory statement devoid of specific technical facts.

Waterblasting (2019) pp. 135-136.

Petitioner has not met the burden of proving obviousness by a preponderance of the evidence.

To the contrary, Patent Owner's expert witness has provided a detailed analysis as to why a POSA would not look to the combination of Jones, Breither and NLB including an explanation to the fact that Jones and Breither teach away from the extreme pressure used by NLB and the high pressure claimed in the '116 patent. Thus there would not be a motivation for a POSA to combine the references as Petitioner asserts.

2. Ground 2: Claims 3 and 4 are patentable over the combination of Jones, Breither, NLB and Herhold.

Claims 3 and 4 are both dependent on Claim 1 and they relate to the "mobile blast head" of Claim 1. Claim 3 adds a "shroud connected to said blast head" and Claim 4 attaches the blast head to a "wheeled chassis for maneuvering over the hard surface." Herhold discloses a shroud assembly made up of a "tubular sleeve 20 and pivotable end cuff 30." (Herhold at 2:32-24). However, as addressed above, there is no motivation to combine Jones, Breither and NLB, and in fact the references teach away from such a combination. The addition of Herhold's sleeve does not cure the deficiency of

combining these references nor does it supply the missing articulating link that is not disclosed by Jones, Breither or NLB.

As noted above, one of ordinary skill in the art would not have been motivated to replace the pump, hoses, spray nozzles, and cleaning head of Jones with equipment “designed for ultra-high pressure” (Petition, pp. 29n 36) for the reasons discussed. Without this ultra-high pressure equipment, a “mobile blast head” would not function as a key part of the “cleaning system” in the manner described in the ‘116 Patent as a key component of the “cleaning system.”

Therefore, one of ordinary skill in the art would not be motivated to attach a shroud or wheeled chassis to “said blast head.”

3. Ground 3: Claims 5 and 6 are patentable over the combination of Jones, Breither, NLB, Herhold and Schrunk

Claim 5 arises from a significant motivation to produce a cleaning system in which the entire system can be taken out to a jobsite by one operator in a single vehicle, and then operated at the site by the operator, with no need for additional people or vehicles to transport the equipment. Having the separate self-propelled tractor for operating in confined spaces is an important innovation, but it would normally require a separate vehicle to bring the tractor to the jobsite, requiring an additional truck and operator which greatly increases the cost of the operation and adds to congestion at the jobsite. Since the

jobsites are often on public roadways, space is normally at a premium, and additional congestion can reduce efficiency of the work and negatively impact worksite safety.

Alternatively, the tractor could also be brought to the site on a trailer pulled by the support vehicle. However, having a trailer attached to the support vehicle while the blasting is in progress makes maneuvering and placing the trailer/trailer combination much more difficult at a congested job site, and it can create unsafe working conditions. *id.* at para 88.

The '116 Patent deals with these problems by carrying the tractor on the support truck. The difficulty with this solution is that the support vehicle already contains a large amount of bulky equipment, which must be mounted, connected, and configured to operate as part of a system. In addition, placement of the heaviest components, such as the ultra high pressure pump and the water reservoir is constrained to be in certain locations to produce acceptable weight distribution on the support vehicle. *id.* para.90.

This produces a severe limitation on the possibilities for locations to carry the tractor. For instance, the ideal spot for the tractor would seem to be at the back of the truck, where it could be loaded from the rear. However, it is desirable to locate the reservoir at the back for weight distribution purposes. *id.* para. 91.

Claim 5 solves these problems by docking the tractor “transversely on said bed portion of said truck.” Since the maximum allowable width of a vehicle on US highways is 8’ 6”, the ’116 Patent discloses a method whereby “the blast head, 23, may be raised to the vertical position and then manually flipped up and back reducing the overall length to permit the tractor 20 and blast head 23 to be stowed on a truck bed sideways, consuming a space less than 8’ 6” for highway travel. The articulating link allows the blast head to be rotated up and back out of the way, and the articulating link is not disclosed by the prior art cited in the petition. *id.* para. 92.

A person of ordinary skill in the art would not understand Jones to teach the articulating link claimed in the ’116 Patent. *id.* para. 94

The Stripejet™ vehicle disclosed in NLB is identified as being 10’ 2” long. The vehicles of both NLB and Jones are incapable of fitting transversely on a truck within the legal width, No mobile cleaning vehicles in existence when the ’116 Patent was filed on July 2, 2004 have been disclosed which are capable of doing so. *id.* para. 95

Claim 6, is dependent on Claim 5, and thus to Claim 1. It discloses a “ramp pivotally connected to said bed portion . . . sized to support said tractor for docking transversely on said bed.” *id.* para. 96

The petitioner has asserted that it would have been obvious to improve the bed portion of the truck in Jones by mounting thereon a retractable ramp disclosed by Schrunk in US Patent 5,494,393 for a truck mounted vehicle carrying apparatus. However, the “small vehicle” which Schrunk’s system is meant to carry does not include a mobile blast head, as required by Claim 5. *id.* para. 97

4. Ground 4: Claims 1-4 and 10 are patentable over the combination of Clemons and NLB.

The petitioner asserts that Claims 1-4 are obvious based on Clemons in view of NLB. His arguments are very similar to the arguments for combining Jones, Breither, and NLB, as discussed above. However, since Clemons includes a water reservoir, he does not include Breither in the combination of Clemons and NLB. But in addition to there being no motivation to combine the NLB reference with Clemons, neither of the references discloses the articulating link claimed in Claim 1 of the ’116 Patent. *id.* para. 98.

Clemons discloses a self-propelled brushless surface cleaner which is a self-contained unit which sprays hot, pressurized water onto a surface to loosen dirt, rubber, oil, grease, etc.” (Clemons 1: 12-15). Clemons does not have the system separated into a motorized utility cleaning vehicle and a support vehicle,

as does Jones, but the technology is similar in many respects. Neither one constitute a “cleaning system,” that is, “a system for removing durable coatings which are tightly bonded to a hard surface by abrading away the hard surface by impacting it with high velocity water,” for reasons similar to those discussed for Ground 1 above. *id* at para. 99

A person of ordinary skill in the art would not look to Clemons for concepts to combine with NLB to “remove removing durable coatings which are tightly bonded to a hard surface by abrading away the hard surface by impacting it with high velocity water.” *id.* at para. 100.

Further, neither Clemons nor NLB disclose an articulating link as required by Claim 1 of the '116 Patent.

In neither his declaration or cross-examination testimony does Mr. Boos explicitly explain the rationale as to why a POSA would have been motivated to combine the references of Clemons in view of NLB. Examples of his deficient factual testimony is can observed in his cross-examination testimony.

Waterblasting (2019) pp.235-246.

5. Ground 5: Claims 5 and 6 are patentable over the combination of Clemons, NLB and Schrunk.

The petitioner builds on his combination of Clemons and NLB in Ground 4 and adds the retractable ramp assembly of Schrunk to assert that Claims 5 and 6 are obvious, using a similar argument to that used for Ground 2, which combined Jones, Breither, NLB, Herhold, and Schrunk. However, Clemons is not a “cleaning system” as disclosed in the “116 Patent. *id.* at para. 103

VI. CONCLUSION

The Petitioner has based its assertions of Obviousness on unreasonably broad constructions of the key claim terms: High Pressure; Hard Surface; and Coatings in attempting to combine the references asserted against independent claim 1 in Ground 1 and 4.

As to all grounds (1-5) asserted by Petitioner, it has failed to meet its burden to establish a motivation to combine the prior art references it relies upon.

Respectfully submitted,

Dated: October 25, 2018

MCHALE & SLAVIN, P.A.

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CERTIFICATE OF SERVICE

I certify that the foregoing **PATENT OWNER'S RESPONSE** was served October 25, 2018 by electronic mail upon:

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