UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CHANEL, INC.,

Petitioner,

v.

MOLO DESIGN, LTD.,

Patent Owner.

Case IPR2022-00543
U.S. Patent 7,866,366

PATENT OWNER MOLO DESIGN LTD.'S SURREPLY

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EXHIBIT LIST

Exhibit No.	Description of Exhibit Document
2001	Joint Disputed Claim Terms Chart, filed in *Molo Design Ltd. v. Chanel, Inc.*, No 21-cv-1578 (S.D.N.Y.), dated September 24, 2021 (Dkt. No. 38)
2002	Defendant Chanel, Inc.'s Claim Construction Brief, filed in *Molo Design Ltd. v. Chanel, Inc.*, No 21-cv-1578 (S.D.N.Y.), dated November 30, 2021 (Dkt. No. 43)
2003	Plaintiff Molo Design Ltd.'s Notice Regarding Chanel's Supplement Claim Construction Positions, filed in *Molo Design Ltd. v. Chanel, Inc.*, No 21-cv-1578 (S.D.N.Y.), dated February 18, 2022 (Dkt. No. 51)
2004	Chanel's Response to Molo's Supplemental Claim Construction Statement, filed in *Molo Design Ltd. v. Chanel, Inc.*, No 21-cv-1578 (S.D.N.Y.), dated February 25, 2022 (Dkt. No. 54)
2005	Pedersen, Martin C, "The Soft House," Metropolis Magazine (Jul. 2004)
2006	Affidavit of Stephanie Forsythe
2007	Affidavit of Todd MacAllen
2008	US Patent No. 7,866,366
2009	Curriculum Vitae of Alan Ball
2010	Declaration of Alan Ball in support of Patent Owner's Response
2011	Transcript of deposition of Lance Rake, taken December 20, 2022
2012	Molo softwall Product Webpage (2005)
2013	Molo softwall Product Webpage (2005)
2014	Molo softwall Product Webpage (2005)
2015	Molo softwall Product Webpage (2005)
2016	Molo softwall Product Webpage (2005)
2017	Molo softwall Product Webpage (2005)

2018	Letter from Museum of Modern Art to Stephanie Forsyth (2005)
2019	Moma.org webpage (2005)
2020	The Index Project webpage (2005)
2021	Email from Evelyn Lacson To Stephanie Forsyth (2023)
2022	Years of Emerging Voices - The Architectural Laugue of New York - Princeton Architectural Press (2021)
2023	MoMA PS1 Young Architects Program (YAP) Competition (2005)
2024	Azure Magazine - A-Z Awards (2011)
2025	Best of NeoCon - Gold Award Architectural products for softwall + softblock modular system (2014)
2026	AIT Award - Retail Trend for softwall (2014)
2027	ADEX Awards Certificate - Molo Design-Gold-softwall + softblock modular system (2015)
2028	FRAME Magazine Award at Orgatec Germany (2018)
2029	Affidavit of Leo Lubke (2021)
2030	Molo Clients – See Brands we Worth (Google Cache of https://molodesign.com/clients/)
2031	MUSEUMS & ART GALLERIES that have acquired molo products
2032	Complaint filed in *Molo Design Ltd. v. Chanel, Inc.*, No 21-cv-1578 (S.D.N.Y.), dated February 22, 2021 (Dkt. No. 1 2031)
2033	Declaration of Conor M. Civins
2034	Email from Tran Vinh to molostore.com
2035	Email from Victoria Megans to Tran Vinh
2036	Email from Tran Vihn to Victoria Megans
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I. INTRODUCTION

As explained herein, and in the Response and Alan Ball's Declaration, Petitioner Chanel, Inc. ("Chanel") has failed to prove the challenged claims unpatentable under any ground. The '366 patent claims include specific elements missing from all of the prior art: a "pair of supports" at opposite ends of a core that are both "self-supporting to provide rigidity to said core" and "flexible so as to be foldable into a tubular configuration." None of the cited references disclose supports that are "foldable," either by describing or suggesting this capability, or by illustrating supports folded into a tubular configuration.

SoftHousing I, II, and III (Exs. 1005, 1006, and 1007, the "SoftHousing references") depict certain prototypes created by the inventors of the '366 patent—but none of these prototypes included or suggested to a person of ordinary skill in the art (a "POSITA") that the ends of these prototypes were both "self-supporting to provide rigidity to said core" and "flexible so as to be foldable into a tubular configuration." Both inventors testified that these claimed features were not present in the SoftHousing references, and Chanel's Reply, with its flawed arguments and out-of-context excerpts from the inventors' testimony, does not cure these deficiencies.

The remaining references—Kaisin I-III and Okuno—suffer from the same deficiencies: a failure to teach or suggest to a POSITA a "pair of supports" at opposite ends of a core that are both "self-supporting to provide rigidity to said core" and "flexible so as to be foldable into a tubular configuration." Chanel's own expert admitted the deficiencies of these references, and Chanel's Reply does nothing to overcome the acknowledged flaws in these references.

Accordingly, the Board should confirm the patentability of all claims.

II. GROUND I: THE SOFTHOUSING REFERENCES DO NOT RENDER OBVIOUS THE CLAIMED "PAIR OF SUPPORTS…" OF CLAIM 1

A. Chanel's new evidence does not establish the images relied on in their Petition

Chanel introduces several new exhibits in an attempt to rebut Molo's argument that the images relied on in their Petition and by Professor Rake were not from the SoftHousing I reference. These exhibits should be disregarded as untimely. Chanel bears the burden of showing ***with the Petition*** whether the exhibits relied on quality as a printed publication under § 102. *See, e.g., Dropbox, Inc. v. Synchronoss Tech., Inc.*, IPR2016-00851, slip op. at 19 (PTAB Oct. 5, 2017) (Paper 40) (citing §312(a)(3)(A)) ("[I]t is Petitioner's burden to establish sufficient evidence that Exhibit [1010] is what its Petition and supporting declarations purport it to be.").

Chanel's new evidence does not establish that the images relied on in their Petition and in Professor Rake's Declaration separately qualify as a "printed publication." All the images in Exhibits 1047 and 1053-1057 are taken from the Chinese or Korean version of a US website used for SoftHousing I[1]. Chanel cannot meet its burden by showing that other versions of the US website—Korean and Chinese—were published. For example, the header on page 5 of Ex. 1047 states:

https://web.archive.org/web/20040706180614/http://www.hanssemcompe.com/***chi na***/PRI/2003/big_img/gp02-3.jpg

Ex. 1047, p. 5 (emphasis added). This URL indicates this image is from the Chinese version of hanssemcompe.com. The other URLs and associated images in Ex. 1047 have similar indicators. Such evidence could reasonably have been obtained at the

[1] As of the time of preparing this Surreply, Molo is unable to access the image from the US website at https://web.archive.org/web/20040509111623/http://www.hanssemcompe.com/english/PRI/2003/2003_gp02.asp cited by Chanel. This link results in a "The Wayback Machine has not archived that URL" error, which is presumably why Chanel did not include a copy of this image as another new exhibit.

time of filing of the Petition, and could have been submitted at that time as corroborating evidence or as a printed publication itself. *See e.g.*, 37 C.F.R. § 42.123(b) (untimely "motion to submit supplemental information must show why the supplemental information reasonably could not have been obtained earlier"). Moreover, Chanel could have authenticated the SoftHousing images relied on the Petition via comparison to the prior art images but did not provide any such evidence. *See Valve Corp. v. Ironburg Inventions Ltd.*, 8 F.4th 1364 (Fed. Cir. 2021); *See also* Ex. 2011, pp. 35-41.

Chanel also submits exhibits taken from SoftHousing II but, as noted by Chanel, these images are taken from a physical book. Petitioner's Reply (Paper 28), pp. 19-20. Chanel did not provide any evidence that these images could be enlarged digitally as were the images relied on the Petition. These images submitted in the "new" Exhibits 1058-1060 suffer from the same lack of detail discussed in Mr. Ball's Declaration. Ex. 2010, ¶ 123-124.

B. Chanel misrepresents the testimony of Mr. MacAllen and Ms. Forsythe

Chanel argues that select images from SoftHousing I show structures that have "supports" that are "self-supporting"—that have ""sufficient rigidity to resist collapse of the core." Decision (Paper 7), p. 14. To support this argument, Chanel

states that these prototypes "appear to be self-supporting" and are "in fact, self-supporting." Petitioner Reply (Paper 28), p. 22. Neither assertion is correct.

The images Chanel offers as proof of appearance of "self-supporting" are taken out-of-context from the reference and do not reflect the entirety of the reference. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984) (finding legal error when "the [prior art] references were not assessed in their entireties"). The images, taken from SoftHousing I and II, are described as "blankets of honeycomb tissue being opened into walls." SoftHousing II, p. 12. *See also* Ex. 2010, ¶ 81. A "blanket" of tissue is not self-supporting; a POSITA viewing the images of SoftHousing I and II and reading the accompanying text would understand that "neither 'blankets' nor 'tissue' describe concepts that are "self-supporting." Ex. 2010, ¶¶ 39-40, 124. The subsequent images in the SoftHousing I and II references show the material as flexible, curved, and draping. *Id.* These concepts, when viewed as a whole with the materials and properties described in SoftHousing I and II, do not teach or suggest to a POSITA that these prototypes are "self-supporting." Moreover, as discussed *supra*, the SoftHousing reference include numerous photos showing a person (Ms. Forsythe) supporting the structures. Indeed, Chanel's expert, Professor Rake, agreed

that it was unsurprising—based on the images in SoftHousing I—that the structures were not "self-supporting":

> Q. Okay. Would it surprise you that in her declaration, Ms. Forsythe not only said that that's her holding the partitions, but that none of those partitions were self-supporting or vertically stable standing on their own?
>
> ***A. That doesn't surprise me.***

Ex. 2011, pp. 60-61 (emphasis added). Without the '366 Patent as a guide, a POSITA would not impute the features of claim 1 to the SoftHousing structures.

The prototypes depicted in these images are not actually "self-supporting." Chanel mischaracterizes the testimony from Mr. MacAllen and Ms. Forsythe in its attempt to prove otherwise. In fact, the shorter "softblock" prototypes in these images were not self-supporting and only expandable for a brief moment to capture a photograph. Chanel's supposed evidence relies on an out-of-context excerpt from Mr. MacAllen's testimony. A more complete portion of the relevant testimony is provided below:

> Q So you had – strike that. On the right side of this photo, is that an expanded softwall prototype?
>
> A It is.

Q So am I correct that you had prototypes of both softwall and softblock as of 2002?

A Yes.

Q In paragraph 11 of your affidavit you write "These early prototypes did not have folding end

panels or supports, which we only developed later." Do you see that?

A Yes.

Q What did you mean by that?

A The early prototypes simply had no other – they had no means of self-support. They didn't have end panels. They didn't have folding end panels. They didn't have any kind of end panels.

…

Q So, Mr. MacAllen, in paragraph 11 of your affidavit you wrote "These early prototypes did not have folding end panels or supports, which we only developed later." Can you restate your answer for what you meant in that sentence there?

A The early prototypes didn't have a means of – of support or self-support. They had no folding end panels. They had no end panels at all.

Q What do you mean by "end panels" in this context?

A End panels would be what we later developed to make the softwalls stand on their own.

Q Did you mean that these prototypes did not have end panels that were different from the panels that formed the core of the structure?

A Correct.

Q Could the ends of these prototypes be folded in a tubular configuration?

A We know – we know now that they could be.

Ex. 1049, 24:8-25:2;26:12-27:6. The above testimony states that the prototypes did not have "end panels" that provided the missing "self-supporting" functionality present in the '366 Patent claims, regardless of foldability. It was made patently clear that the "softblock" prototypes depicted in the images were not "self-supporting" by Mr. MacAllen:

Q You also write in paragraph 11 that these prototypes were not self-supporting or vertically stable standing on their own, rendering them prone to collapse. What did you mean by that?

A They were unstable and would easily fall over.

Q Was that true for the softblock prototypes?

A Yes.

Q Did you do anything to prevent the softblock prototypes from collapsing?

A Mostly, we used time efficiently, so we would stretch the blocks as much as we could without tearing them to the point where they were as open as they could be. And then we would have a very short period of time to take a photograph before they would want to creep back into their original form. They held quite a tight shape memory. And when they creep back into their original form, of course, they become compressed and there's no stability. They just fall over.

Q For a short period of time, you were able to get a prototype softblock to stand on its own; correct?

A No.

MR. CHIBIB: Vague.

A We could –

Q Let me ask that again, because I – for a short period of time, such as the amount of time required to take a photograph, you were able to get a prototype softblock to stand on its own; correct?

A We could. We had enough time to take a photograph, and we had to be – we had to be quick.

Ex. 1049, 28:7:29:14. Ms. Forsythe concurred with Mr. MacAllen's testimony: "It is important to note that despite the fact that they're not attached to anything, doesn't mean that they're stable." Ex. 1050, 14:15-17. In summary, the "softblock" prototypes shown in the SoftHousing images that Chanel contends were "self-supporting" did not have "end panels" nor were they capable of standing on their own for more than a brief moment for a photograph before springing back and becoming unstable.

C. A POSITA would not be motivated to fold the "end panels" of the SoftHousing structures into a tubular configuration

Chanel's Reply attempts—and fails—to establish that a POSITA would be motivated to fold the end panels into a "tubular configuration." As noted in their Reply, Chanel's expert provided two justifications for this motivation: (1) "aesthetic reasons, such as when curved or rounded ends fit better with other elements of the environment"[2] and (2) for "functional reasons, such as when additional stability was desired." Petitioner's Reply (Paper 28), p. 24.

[2] As to the use of "design choice," the law cited by Molo is applicable here: "design choice" as a motivation is only appropriate in specific circumstances and is "no

As to the functional reason for a motivation to fold the end panels into a "tubular configuration," Chanel impermissibly presents a new argument in their Reply: that "folding paper is a well-known way to enhance structure." Petitioner's Reply, p. 25. However, Chanel did not provide any evidence for this assertion, either in their original Petition or in Professor Rake's Declaration. The Board should ignore Chanel's new arguments as to the motivation of a POSITA. "Shifting arguments in this fashion is foreclosed by statute, [Federal Circuit] precedent, and Board guidelines." *Wasica Fin. GmbH v. Cont'l Auto. Sys., Inc.*, 853 F.3d 1272, 1286 (Fed. Cir. 2017); *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016).

Chanel's Reply again mischaracterizes the testimony of the inventors. Chanel asserts that the materials of the SoftHousing structures were easily foldable.;

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substitute for obviousness reasoning based on factual evidence." *Ex Parte Maeda*, No. APPEAL 2010-009814, 2012 WL 5294326, at *3 (BPAI Oct. 23, 2012). Chanel provides no support for their assertion that this law does not apply when a device has both aesthetic and functional elements. Regardless, the '366 Patent specification clearly describes the "tubular configuration" of the "end panels" as functional. Ex. 1001, 3:46-47.

Petitioner's Reply (Paper 28), p. 25. They were not. Mr. MacAllen testified that folding the prototypes was not functional as the core material was too fragile. Not until more rigid end panels were employed were the prototypes able to self-support by folding the end panels:

> Q: During your development of softwall, did you ever try folding the ends of the cellular core into a tubular configuration without attaching new end panels?
>
> A: Later on – well, later into the development, as we were experimenting with different ways to make the ends supporting, one of the things that we came across was attaching more rigid surfaces to it and folding and temporarily holding the fold. ***And – and then in doing that, we realized that we could just use the paper itself. But that was not satisfactory in that you would have to repeatedly pull – pull on the paper, and it – it was too fragile.*** And so as a solution, it – it just didn't seem worthwhile to pursue on its own.

Ex. 1049, 55:24-56:14.

D. The figures of the '366 Patent do not support Chanel's interpretation of the SoftHousing references

Chanel argues that the images from the SoftHousing references and Figure 9 of the '366 Patent illustrate the same teaching to a POSITA: a "self-supporting"

structure. Petitioner's Reply (Paper 28), p. 26-29. But Chanel's argument ignores the relevant text that characterizes these images and figures. For example, the description of Figure 9 of the '366 Patent is accompanied by text that clearly states that the partition 10 depicted therein "has sufficient width to remain stable in a vertical position ***with the rigidity provided by the end supports 14 and 16***." Ex. 1001, 3:60-663. Figure 9 of the '366 Patent further illustrates the "flexibility" and different heights of the "self-supporting" partition described in the patent. *Id.* at 4:2-10. In contrast, the image from the SoftHousing reference is unaccompanied by any text to clarify that the structure is "stable in the vertical position" or otherwise stable when unsupported by a person or weights. Professor Rake found it "unsurprising" that the structure in these images was unstable. Ex. 2011, pp. 60-61.

E. SoftHousing I-II do not depict fasteners that "secure said supports in said tubular configuration and to permit connection to an adjacent support of another similar article"

With regard to the disclosure of fasteners, Chanel argues that SoftHousing I and II teach a "a plurality of fasteners on each of said supports to secure said supports in said tubular configuration and to permit connection to an adjacent support of another similar article." Petitioner's Reply (Paper 28), pp. 29-30. Chanel relies on a single image from SoftHousing I-II that allegedly shows the "end supports of two different articles placed together." *Id*. at p. 29. The image is inconclusive at best, and

the accompanying text of SoftHousing I and II does not describe an attachment of a "support" to another "support" As required by the claims. Indeed, as described by Mr. MacAllen, one of the structures Chanel refers to was actually attached to the permanent brown structure depicted in the image:

> Q: So the prototype softwalls are surrounding the kitchen in this layout?
>
> A: Yeah. The prototype softwalls are all attached to the permanent kitchen structure, which is a permanent self-supporting structure.
>
> Q: This softwall on the – shown above the kitchen in this aerial view; is that attached to the kitchen?
>
> A: Yeah, that prototype is attached to the kitchen.
>
> Q: Where is it attached to the kitchen?
>
> A: It's attached at the top. Its base is attached at the top, correct.
>
> Q: The portion that abuts up against the kitchen rectangle?
>
> A: Yes.

Ex. 1029, 49:17-50:7.

Furthermore, any teaching of fasteners in SoftHousing I-II describes attaching the structures to a wall, not to a "similar article" as required by the claims. Ex. 1007, p. 2. The SoftHousing III reference makes clear that the structure is fastened to a

wall. Ex. 1007, p. 2 ("(Velcro") fastenings attach unit to perimeter wall"). The only motivation a POSITA has to ignore these teachings and conclude that the "fasteners" briefly mentioned in the SoftHousing references can "secure said supports in said tubular configuration" is hindsight from the '366 Patent itself. Ex. 2010, ¶ 125.

III. GROUND II: THE KAISIN REFERENCES DO NOT RENDER OBVIOUS THE CLAIMED "PAIR OF SUPPORTS…" OF CLAIM 1

Chanel's attempts to argue that the Kaisin I-III references disclose a third structure that discloses supports that are "self-supporting." Petitioner's Reply (Paper 28), pp. 30-31. Chanel relies on the testimony of Molo's expert to bolster its claim. However, while Mr. Ball correctly observed that the ends of this third Kaisin configuration are "upright," he did not equate this to "self-supporting to provide rigidity to said core…" or "flexible so as to be foldable into a tubular configuration about an axis parallel to said major faces." Ex. 2030, 79:6-80:1. The mere fact that a structure is upright does not establish either of these requirements from the claims of the '366 patent.

Moreover, as argued in Molo's Response, a POSITA would not have been motivated to fold the ends of any of the Kaisin structures, as folding these supports into a "tubular configuration" would render Kaisin unsuitable for its intended purpose. Kaisin III teaches that the final operable version of the Kaisin devices were formed from "polypropylene." *See* Kaisin III, p. 4. According to Mr. Ball, this

material is not foldable: "Kaisin II is described as made from newspaper or polypropylene. Polypropylene is a relatively rigid thermoplastic, a POSITA would understand that it is not 'flaccid'." Ex. 2010, ¶ 158. There is an issue of fact as to whether this material is foldable in the manner suggested by Professor Rake, and Chanel has provided no further evidence to establish its foldability.

IV. GROUND III: OKUNO DOES NOT RENDER OBVIOUS THE CLAIMED "PAIR OF SUPPORTS…" OF CLAIM 1

The "substrates" of Okuno—the alleged "supports"—are not foldable. Chanel's Reply fails to properly consider the total context of the description of these "substrates" in Okuno.

Chanel argues that the substrate materials disclosed in Okuno are foldable. But foldability depends on the construction of these materials. Chanel's interpretation overlooks key descriptors in Okuno: the "substrates" of Okuno are "rigid" and are described as "plates." Ex. 1011, p. 339, C2. The words "rigid" and "plate" describes something that is "thick and rigid." Ex. 2010, 71:11-75:22. As discussed by Mr. Ball:

> A: They don't bend. They can't be folded. They're rigid. And I know that because the word plate is a word that's used to describe something that is thick and rigid. You often heard – you might hear something that's – like an armored vehicle has steel plate on it. It's –

> it's a – it's a thick material. And I mean, this is a really good example of where Mr. Rake's opinion fails because he sat – in his deposition told us that oh, that would be foldable. They say plate. Even if it's cardboard, if it's a plate that connotes thickness and it connotes rigidity. So if anything, this is teaching a person of ordinary skill and art reading it to make the end panels rigid, strong, not foldable.

Id. Chanel and Professor Rake may have mistakenly overlooked this section of Okuno, but their error cannot be cured by further mischaracterization. Okuno describes rigid plates for the substrates, all figures of Okuno depict rigid, flat, and unfolded plates, and the list of materials, when considered in the total context of Okuno, teaches those plates are rigid and unfoldable. Consequently, the "substrates" of Okuno do not read on the "supports" of claim 1 of the '366 patent, and a POSITA would not conclude otherwise.

Moreover, the "substrates" of Okuno must be sufficiently rigid to support an installation plate 8 provided on the substrate to secure a light bulb. Ex. 1011, p. 3, col. 4; Figures 6-7. Mr. Rake agreed with this interpretation: Q: "Now, you agree that the substrates of Okuno have to be rigid enough to support this installation plate 8 and also the light bulb and how – and its housing, correct? A. Yes," Ex. 2011, p. 104. These rigid materials—a property required by the teachings of Okuno—would

not and could not be modified by a POSITA to arrive at a "foldable" support as recited in claim 1. Chanel further relies on an irrelevant mischaracterization of Mr. MacAllen's testimony to draw an analogy between the rigid "substrates" of Okuno and the flexible softwall prototype. Petitioner's Reply (Paper 28), p. 32. The analogy is faulty. The "books" described by Mr. MacAllen were not placed on the ends of the softwall prototype—their weight was distributed on the body of the structure, and they were used to prevent the softwall prototype from "springing back" for a brief moment of time in order to capture a photograph. Ex. 1049, 22:20-25. In this position, the books were considered to be "[f]ar too temporary and unstable." *Id*. at 28:3-6.

Moreover, a modification of the supports of Okuno would not be obvious to a POSITA because the modification would render the prior art invention unsatisfactory for its intended purpose. *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984) (finding that turning a device upside down would render it inoperable for its intended purpose). Modifying the substrates of Okuno to be "foldable" would render the substrates incapable of supporting the installation plate 8 and the weight of the light bulb inserted into the plate—a requirement explicitly acknowledged by Mr. Rake. Ex. 2011, pp. 103-104; Ex. 2010, ¶ 158.

V. CHANEL FAILS TO REBUT MOLO'S OBJECTIVE EVIDENCE OF NON-OBVIOUSNESS

Chanel first argues that Molo should be denied a presumption of nexus for the '366 claims. In their arguments, Chanel relies heavily on *Fox Factory, Inc. v. SRAM* but fails to consider the full scope of the analysis set forth in that case. There exists "a presumption of nexus for objective considerations when the patentee shows that the asserted objective evidence is tied to a specific product" and that the product "is the invention disclosed and claimed in the patent." *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1329 (Fed. Cir. 2016) (internal quotation marks omitted). As restated in *Fox Factory*, "[W]hat we do require is that the patentee demonstrate that the product is essentially the claimed invention." *Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1374 (Fed. Cir. 2019). Moreover, the evaluation of a nexus—a correspondence between a product and a patent claim—is not an abrupt line:

> Put differently, the degree of correspondence between a product and a patent claim falls along a spectrum. At one end of the spectrum lies perfect or near perfect correspondence. At the other end lies no or very little correspondence, such as where "the patented invention is only a component of a commercially successful machine or process." *Id*. Although we do not require the patentee to prove perfect correspondence to meet the coextensiveness requirement, what we do

> require is that the patentee demonstrate that the product is essentially the claimed invention.

Id.

Molo is not reducing "the coextensiveness requirement to an inquiry into whether a claim in the patent broadly covers the product" as alleged by Chanel. Chanel misinterprets the case law by applying an analysis more appropriate to a patented invention that is "a component of a commercially successful machine or process." *Fox Factory*, 944 F.3d at 1374.[3] Here, the claims at issue are the product itself. Claim 1 of the '366 patent is directed to "an article of flexible furniture," i.e., the softwall + softblock product. And, as discussed below, claim 1 of the '366 patent is coextensive with the softwall + softblock products manufactured prior to 2008 and the subject of significant industry praise. *See* Ex. 1049, pp. 75:7-21.

The claims of the '366 patent are coextensive with softblock + softwall products shown in the photographs in Molo's Response and demonstrate a clear

[3] Chanel's asserts that Molo's expert used an incorrect standard. However, Chanel asked Mr. Ball to establish a legal conclusion; under further questioning, Mr. Ball clearly stated that the softwall products embody the challenged claims. Ex. 1048, p. 13, ll. 1-6.

nexus between claim 1 and these products. Chanel states that "Molo fails to address unclaimed features of softwall or to provide any analysis demonstrating that softwall is coextensive with the Challenged Claims." Petitioner's Reply (Paper 28), p. 2. Specifically, Chanel contends that the "LED lighting" and "vertical supports" claimed in later patents are not addressed by Molo's photos of the softblock + softwall products. But the products in the photographs did not include these features, nor did Chanel question the authenticity or features of the specific products in the photographs. Exs. 2012-2017. Molo provided photographs of the softwall + softblock products, and the evidence is clear on its face that those the additional features are not found in the products depicted in Exs. 2012-2017. Moreover, Mr. MacAllen provided further clarification that these products prior to 2008 and depicting in these exhibits did not include the features of the later Molo patents. *See* Ex. 1049, pp. 75:7-21.

A. Industry Praise

Chanel argues that without a presumption of nexus, Molo failed to establish a nexus with the industry praise of softwall + softblock products. Petitioner's Reply (Paper 28), pp. 5-6. Again, Chanel's argument simply attempts to obfuscate what is self-evident. The softblock + and softwall products awarded and praised at the time of the MOMA and Index awards were coextensive with independent claim 1 of the

’366 Patent and independent claims 1 and 2 of the U.S. Patent No. 9,689,161. The softwall + softblock products in this timeframe were not directed to the additional features at issue in the other Molo IPR proceedings. *See* Ex. 1049, pp. 75:7-21; As such, these awards provide a clear nexus with, and evidence of, the nonobviousness of claim 1 of the ’366 Patent.

B. Commercial Success

Chanel’s Reply attempts to rebut the presumption of a nexus between the claim 1 of the ’366 Patent and the evidence of commercial success by overly complicating clear sales data and misrepresenting the testimony of Molo owners Mr. MacAllen and Ms. Forsythe. Petitioner’s Reply (Paper 28), pp. 6-9. Contrary to Chanel’s assertion, Mr. MacAllen was not “unable” to specify which sales were for softwalls having the unique characteristics of the Challenged Claims as distinguished from softwalls having features in the other patents. Quite the contrary, Mr. MacAllen clearly explained the differences in Molo’s sales data: “All – all softblocks and softwalls produced from 2008 onwards had passageway for LED.” Ex. 1049, pp. 75:17-18.

As shown in Molo’s gross sales, softblock + softwall sales established a baseline from 2005-2007, with those products having only the features claimed in the ’366 Patent. Beginning in 2008, after introduction of the softwall + softblock

features having a passage for lighting, sales revenue increased into FY2022. Ex. 2021; Ex. 2010, ¶¶ 197-198. To be sure, the features resulting in gross sales established in 2005-2007 were at a minimum a part of the ongoing sales after 2008, with the increase related to the passage readily apparent.

Chanel provides one piece of evidence—other than attorney argument—to suggest that other purported features have any bearing on the commercial success of the patented product. Chanel argues that praise of a prototype of the invention somehow provides evidence of "clear example of a customer who purchased softwall because of features in the prior art." Petitioner's Reply (Paper 28), pp. 7-8. This minimal evidence fails to establish any significant rebuttal to Molo's commercial success. Chanel does not establish what additional features were present in the prototype or why Ms. Forsythe told the customer that the prototype was not ready for sale.

Chanel further contends that revenue data provided by Molo is "unverified" and "allegedly" reports gross sales. Petitioner's Reply (Paper 28), pp. 8-9. However, Chanel's deposition of Mrs. Forsythe verified this data. Ex. 1050, p. 39:6-21. The provided communication is what Molo said it is: an email correspondence from Molo's accountant and employee that provides the gross sales data for the softwall + softblock. Ex. 2021. There is no ambiguity as to which products this data applies

to—the title of the e-mail includes the text "Softwall and Softblock Commercial Success Chart." *Id.*, p. 1. Moreover, Chanel declined to cross-examine the Molo employee who generated this data and, when asked, Mrs. Forsythe of Molo verified the data. 1050, p. 39:6-21. Thus, there is no evidence in the record that this communication does not accurately provide the relevant gross sales of Molo's softwall + softblock product.

Chanel also mischaracterizes the case law as stating that gross sales alone are insufficient. Petitioner's Reply (Paper 28), pp. 8-9. In *Applied Materials*, Applied's evidence of "alleged market share" was found insufficient primarily because Applied ***failed to provide sales data.*** In *Huang*, the only evidence provided was the number of units sold; no market share or meaningful context was provided. In *Cable Elec. Prods*, the number of units sold were provided, as well as a profitability per unit that was not shown to be out of the ordinary for the industry. In *Diamond, Inc.*, the patent owner made an unverified statement that its market share is "high": the Board simply stated that this unverified statement does not help "define the relevant market or make clear what it believes to be its portion of the relevant market." Indeed, as acknowledged by the Board in *Diamond Inc., Ex Parte Jellá* states that "[G]ross sales figures do not show commercial success absent evidence as to market share . . . ***or as to the time period during which the product was sold***, or as to what

sales would normally be expected in the market." *Ex parte Jellá*, 90 U.S.P.Q. 2d 1009, 1012 (BPAI 2008) (precedential) (emphasis added). Here, Molo has provided "the time period during which the product was sold" as well as actual dollar (in CAD) amounts that serves to provide context for the gross sales numbers. Moreover, both Mr. MacAllen and Ms. Forsythe testified that Molo has no competitors in the marketplace. Ex. 1049, p. 64:19-21; Ex. 1050, p. 35:21-p. 36:3.

C. Copying

Chanel's assertion that they did not copy the softwall + softblock, but instead engaged a third-party vendor to so do is irrelevant. The copies were made at Chanel's behest, after detailed viewings of the products and a period of purchase negotiations. Upon failure of these negotiations, Chanel engaged a third-party to copy the softwall + softblock products. These were not products purchased "off-the-shelf" but were custom designed and manufactured to meet Chanel's needs; it was not mere coincidence that they were exact copies of the Molo products. Ex. 2032, p. 7-9; Ex. 2010, ¶¶ 324-328. Chanel alleges that it did not acquire a softwall sample before purchasing a competing product. ***This is false***. As shown in the correspondence in Exs. 2034-2037, Chanel purchased a copy of Molo's softwall + softblock product in

2017.[4] Thus, Chanel was clearly aware of Molo's softwall+softblock product at least as early as 2017 and was investigating and purchasing Molo's products for use—and subsequent copying.

Chanel states that Molo's expert, Mr. Ball, admitted that "that his copying opinion was based entirely on examining photos of the alleged copies" and somehow concludes this analysis was deficient in some way. Petitioner's Reply (Paper 28), p. 10. However, other than criticizing the process itself, Chanel has failed to provide any facts or specific evidence as to why Mr. Ball's analysis fails to establish copying. Chanel also conveniently forgot to mention that Mr. Ball examined the photos of the copies after having personally inspected the Molo products themselves. *See* Ex. 2010, ¶ 123.f. Chanel did not establish any difference between the Chanel product and the claims, nor did Chanel cross-examine Mr. Ball on what features of claim 1 of the '366 Patent are missing from the product photos he reviewed.

[4] The Board has "broad discretion to regulate the presentation of evidence." *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1078 (Fed. Cir. 2015). Moreover, "[w]here new enough matter is allowed on rebuttal, surrebuttal may be allowed." *Id*.

Accordingly, the objective evidence of nonobviousness—Molo's awards and industry praise, commercial success, and direct copying—demonstrates the patentability of these focused claims.

VI. CONCLUSION

For the foregoing reasons—Chanel's misrepresentation of the inventors' testimony, misinterpretation of the prior art, and use of improper hindsight from the challenged patent—the Board should confirm the patentability of all claims.

Respectfully Submitted,

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CERTIFICATION OF WORD COUNT

The undersigned hereby certifies that the foregoing document, excluding portions exempted under 37 C.F.R. § 42.24, contains 5,540 words, which is under the limit of 5,600 words set by 37 C.F.R. § 42.24(c)(4).

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CERTIFICATE OF SERVICE

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