GOOGLE LLC v. DDC TECHNOLOGY, LLC, Appeals Nos. 2025-1315, 2025-1316, 2025-1330 (Fed. Cir. Nov. 5, 2026). Before Reyna, Hughes, and Stark. Appealed from PTAB.

Background:

Google petitioned for inter partes review (IPR) of three DDC Technology virtual reality viewer patents, asserting obviousness based on a combination of prior art (Kondo and Chu). The PTAB agreed the prior art taught every limitation and that a skilled artisan would have been motivated to combine them with a reasonable expectation of success. However, the PTAB also found DDC established strong evidence of copying by Google and moderate evidence of industry praise, weighing both heavily in favor of nonobviousness. Ultimately, the PTAB held that DDC's objective indicia of nonobviousness outweighed Google's evidence of obviousness. Google appealed.

Issue/Holding:

Did the PTAB err in determining that DDC's objective indicia of nonobviousness outweighed Google's prima facie case of obviousness? No, affirmed.

Discussion:

Google argued that its "strong prima facie case" of obviousness should easily overcome DDC's secondary considerations. The Federal Circuit rejected this premise, clarifying that the "prima facie case" is a burden-shifting procedural tool designed for patent examination at the USPTO, not for adjudicatory IPR proceedings. While the burden shifts to the applicant during examination, a petitioner in an IPR retains the burden of persuasion throughout the entire proceeding.

Instead of applying a formal burden-shifting test, the PTAB correctly evaluated all factual findings concurrently. The Board weighed the technical obviousness evidence against DDC's objective indicia—specifically, the "strong" evidence of copying and "moderate" evidence of industry praise—and legally concluded that the nonobviousness evidence outweighed the obviousness evidence. The Federal Circuit found no legal error in this balancing test, noting that the weight afforded to objective indicia is a factual determination entitled to deference.

Regarding copying, Google argued the PTAB erred by comparing its VR viewer directly to DDC's product instead of the patent claims. The Federal Circuit rejected this, holding that product-to-product comparison is the correct legal standard because "copying requires the replication of a specific product". The court reasoned that if the standard merely required comparing a competitor's product to the claims, "every infringement suit would automatically confirm the nonobviousness of the patent". Therefore, the PTAB's side-by-side product comparison and finding of copying were upheld.


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