NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

ELAINE VIETH, REINHOLD W. VIETH,
Appellants

v.

MOM ENTERPRISES, LLC,
Appellee

2025-1159

Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. IPR2023-00726.

Decided: September 2, 2026

ALAN ANDERSON, Alan Anderson Law Firm LLC, Minneapolis, MN, argued for appellants. Also represented by L. REAGAN FLORENCE, MATTHEW ROBERT PALEN; MARK E. UNGERMAN, Ungerman IP PLLC, Washington, DC.

LAUREN ANN DEGNAN, Fish & Richardson PC, Washington, DC, argued for appellee. Also represented by DAVID BRANDON CONRAD, Dallas, TX; CASEY KRANING, Wilmington, DE.

Before LOURIE, SCHALL, and TARANTO, *Circuit Judges*.

SCHALL, *Circuit Judge*.

Mrs. Elaine Vieth and her husband, Dr. Reinhold W. Vieth, appeal the September 10, 2024 final written decision of the Patent Trial and Appeal Board ("Board") determining that claims 1 and 3–5 of the Vieths' U.S. Patent No. 9,066,958 ("the '958 patent") are unpatentable. J.A. 1–108. For the reasons set forth below, we *affirm*.

BACKGROUND

The '958 patent states that "[a] balanced level of vitamin D has long been recognized as essential to health," and that pediatric associations "strongly encourage starting vitamin D supplementation from birth onwards." '958 patent col. 1 ll. 16–17, 60–63. This is particularly important for breastfed infants, the '958 patent explains, because breast milk provides little vitamin D. *Id.* col. 1 ll. 65–66; *see also id.* col. 2 ll. 13–18. To avoid what it contends are problems in prior art supplementation methods, the '958 patent describes a "[c]omposition of vitamin D in medium-chain triglycerides" (MCTs) that "are applied to an object, such as skin or in the case of an infant to a woman's nipple or pacifier from which the infant sucks off the composition." '958 patent, Abstract.

The only independent claim pertinent to this appeal is claim 1, which recites:

> 1. A method of delivering a nutritional or therapeutic amount of vitamin D to a human being, said method comprising:
>
> (i) applying one drop of a composition consisting of a nutritional or therapeutic effective amount of 9 to 9000 mcg/ml vitamin D in a liquid triglyceride of 6 to 12 carbon chain length, to an exterior surface of

> an object, wherein said drop adheres to the surface of said object; and
>
> (ii) having said human being suck or lick said composition directly from said object.

Id. col. 9 ll. 34–44. Dependent claim 3 recites that the human being is an infant and that the object is a woman's nipple or a pacifier. *Id.* col. 9 ll. 48–50. Claim 4 recites a narrower range of vitamin D doses (150 to 450 mcg/ml) for the drop, while claim 5 recites that 95% of the triglyceride must have a carbon chain length of 8 to 10. *Id.* col. 10 ll. 1–6.

MOM Enterprises, LLC ("MOM"), the maker of Mommy's Bliss Baby Organic Vitamin D Drops ("Mommy's Bliss"), filed a petition for inter partes review of claims 1 and 3–5 of the '958 patent citing five prior art references: Harder,[1] Wolf,[2] an excerpt from European Pharmacopoeia,[3] Blass,[4] and Gartner.[5] J.A. 2–3. The petition challenged the claims on three grounds: first, that claims 1 and

---

[1] U. Harder, Wochenbettbetreuung in der Klinik und zu Hause, § 15.9 (Hippokrates Verlag 2003), as translated into English ("Harder"). J.A. 2123–31.

[2] H. Wolf, Aktuelle Therapie: Rachitisprophylaxe beim Säugling, Vol. 95, Deutsche Medizinische Wochenschrift, 1530–32 (1970), as translated into English ("Wolf"). J.A. 2138–46.

[3] Council of Europe, European Pharmacopoeia 4th ed. Supp. 4.3, 3148–51 (2002) ("European Pharmacopoeia"). J.A. 2147–54.

[4] E. M. Blass et al., Suckling- and sucrose-induced analgesia in human newborns, 83 Pain 611–23 (1999) ("Blass"). J.A. 2155–72.

[5] L. M. Gartner et al., Prevention of Rickets and Vitamin D Deficiency: New Guidelines for Vitamin D. Intake, 111(4) Pediatrics 908–10 (2003) ("Gartner").

5 are unpatentable as obvious over Harder, Wolf, and European Pharmacopoeia; second, that claim 3 is unpatentable as obvious over these three references in addition to Blass; and third, that claim 4 is unpatentable as obvious over Harder, Wolf, European Pharmacopoeia, and Gartner. J.A. 7–8.

In the final written decision, the Board adopted the parties' agreed construction of the claim limitation "wherein said drop adheres to the surface of said object" ("the adheres limitation"), which appears in claim 1. J.A. 14–15. That construction required two elements: (1) the drop does not immediately drip or roll away ("the non-dripping element"); and (2) the drop does not coat or adhere to the object so as to prevent efficient removal of the drop from the object ("the non-coating element"). *Id.*[6]

Addressing the first ground of the petition, the Board found that Harder teaches administering one drop of Vigantol® oil, a prescription medication containing vitamin D, to an infant from a spoon, and having the infant lick the drop directly from the tip of the spoon. J.A. 15, 32. The Board also found that Wolf's disclosure that a drop of Vigantol® oil contains 505.04 mcg/ml of vitamin D teaches the claimed vitamin D range. J.A. 32–33. With respect to the carbon chain length, the Board found that Harder teaches that Vigantol® oil "contains only one excipient as

---

[6] In its entirety, the construction agreed to by the parties and adopted by the Board states:

> [T]he drop is sufficiently viscous so that one drop does not immediately drip or roll away from the object that enters the mouth, so that no portion would drip off the object and surface. The drop does not coat or adhere to the object so as to prevent efficient removal of the drop from the object.

J.A. 14–15.

a vehicle for the fat-soluble vitamin D, namely medium-chain triglycerides (vegetable oil)," and that European Pharmacopoeia teaches that MCTs have a carbon chain length of 8 to 10, as required by claim 1 and dependent claim 5. J.A. 32–33, J.A. 36.

As for the adheres limitation, the Board found it to be inherently taught by Harder because "Harder teaches . . . a composition that consists only of vitamin D in MCT, and the ['958 patent] Specification teaches that MCT necessarily adheres to the surface of objects, in the manner claimed." J.A. 34 (citation omitted). According to the Board, moreover, the '958 patent specification "identifies only viscosity and triglyceride chain length as impacting adherence." J.A. 33–34. In other words, the Board stated, Harder's composition would necessarily adhere to the surface of an object because Harder "teaches that Vigantol[®] oil has the same composition as the oil tested in the Specification (i.e., MCT), which is taught to 'adhere.'" J.A. 34. In concluding that Harder teaches the adheres limitation, the Board rejected the Vieths' argument that the adheres limitation could not be met because, in testing performed by their expert, Dr. Reid, a drop "immediately rolled toward the bottom of [a] spoon and left a film or coating on the spoon." J.A. 43. The Board stated that "[e]ven if the drop rolls into the bowl of the spoon (as observed by Dr. Reid), we disagree with [the Vieths] that this makes efficient removal of the drop difficult if not impossible," since the drop "can be either licked or sucked off the bowl of the spoon." J.A. 45 (internal quotation marks omitted).

The Board also determined that, even if the adheres limitation was not inherent in Harder, it is suggested by Harder through its teaching of delivering vitamin D in a composition of MCTs by placing one drop on the tip of a spoon for the infant to lick off. J.A. 35.

After addressing MOM's prima facie case of obviousness for claims 1 and 5, the Board turned to the Vieths' argument regarding secondary indicia of non-obviousness. The Vieths exclusively license the '958 patent to Ddrops Company ("Ddrops"), which sells a product called Baby Ddrops, a liquid vitamin D supplement for babies. J.A. 56. The Board found that the Vieths were not entitled to a presumption of nexus, or alternately, that MOM had rebutted any presumption. J.A. 57. That is because, the Board found, the Vieths had not shown that Baby Ddrops or Mommy's Bliss were coextensive with the claimed method due to the presence of unclaimed, prior art methods on the products' labels. J.A. 57–58. The Board then considered whether the Vieths had proven nexus "by showing that the evidence of secondary considerations is the direct result of the unique characteristics of the claimed invention." J.A. 58 (quoting *Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1373–74 (Fed. Cir. 2019)). The Board determined that the Vieths had not established nexus in fact for its evidence of commercial success or industry praise, J.A. 65–72, and that the Vieths had not proven long-felt but unmet need, J.A. 63–64. Although the Board found that there was at least some circumstantial evidence of copying by MOM, the Board found that the evidence was weak and that, even if MOM had copied Baby Ddrops, the record as a whole did not establish non-obviousness of claims 1 and 5. J.A. 58–61, 82–83.

Turning to the second ground in the petition, the Board next concluded that MOM had demonstrated by a preponderance of the evidence that claim 3 was unpatentable as obvious over Harder, Wolf, European Pharmacopoeia, and Blass. J.A. 86–87. In reaching that conclusion the Board found that Blass describes delivering a substance to an infant's mouth by applying it to a pacifier. J.A. 83. The Board also found that it would have been obvious to a skilled artisan to improve the method of Harder by applying the drop to a pacifier instead of a spoon, since a pacifier

would be more likely to trigger the sucking reflex of an infant. J.A. 83–84.

The Board ultimately determined that MOM had proven each of the three grounds set forth in the petition and thus had proven claims 1 and 3–5 to be unpatentable. J.A. 106.[7] The Vieths appealed. We have jurisdiction under 28 U.S.C. § 1295(a)(4)(A).

DISCUSSION

Obviousness is a question of law based on underlying factual findings, including the scope and content of the prior art; the differences between the claims and the prior art; whether there is motivation to combine prior art references; the level of ordinary skill in the pertinent art; and any secondary considerations of non-obviousness. *In re Affinity Labs of Tex., LLC*, 856 F.3d 883, 898 (Fed. Cir. 2017). We review the Board's obviousness determinations de novo and its underlying factual findings for substantial evidence. *Volvo Penta of the Ams., LLC v. Brunswick Corp.*, 81 F.4th 1202, 1208 (Fed. Cir. 2023). Substantial evidence exists when, reviewing the record as a whole, "a reasonable fact finder could have arrived at" the finding on review. *In re Gartside*, 203 F.3d 1305, 1312 (Fed. Cir. 2000). We review the Board's determination that a party forfeited an argument for abuse of discretion. *Centripetal Networks, LLC v. Palo Alto Networks, Inc.*, 156 F.4th 1368, 1374 (Fed. Cir. 2025).

The Vieths make four main arguments in their appeal. We address each one in turn.

---

[7] In their appeal, the Vieths do not separately argue the patentability of claim 4. We therefore need not set forth the Board's findings for the petition's third ground.

I

To begin, the Vieths take issue with the Board's conclusion that Harder inherently discloses the adheres limitation. As noted above, the Board found that "Harder teaches . . . a composition that consists only of vitamin D in MCT," and the Board relied on the '958 patent as teaching that MCT necessarily adheres to the surface of objects. The Vieths assert that Harder's statement that Vigantol® contains only "medium-chain triglycerides (vegetable oil)" does not unambiguously disclose a composition that consists *only* of vitamin D in MCT, because vegetable oil "generally includes" long-chain triglycerides. Appellants' Br. 25–28, 29–32; *id.* at 31 ("Vigantol[®] oil *possibly* consists of vitamin D and MCT only, or Vigantol[®] oil *possibly* contains vegetable oil, too."); Reply Br. 6–13.

In the final written decision, the Board found the Vieths had forfeited this argument because it was not included in their Patent Owner Response. J.A. 37 & n.22. Before us, the Vieths assert that they argued in their Patent Owner Response that "Harder provides no information regarding the composition of the oil she used – Vigantol[®]," Appellants' Br. 26 (citing J.A. 698), and that they properly elaborated on this argument in their Sur-Reply, Reply Br. 8 (citing *Provisur Techs., Inc. v. Weber, Inc.*, 50 F.4th 117, 122 (Fed. Cir. 2022); *Chamberlain Grp., Inc. v. One World Techs., Inc.*, 944 F.3d 919, 925 (Fed. Cir. 2019)). The Vieths also argue that MOM raised the issue in its Reply brief when MOM argued that Harder disclosed Vigantol® oil as being composed of MCT, omitting reference to "vegetable oil," and that the Board should have considered their Sur-Reply argument demonstrating that MOM had mischaracterized Harder's disclosure. Appellants' Br. 27 (citing J.A. 847, 849).

We see no abuse of the Board's discretion. Comparing the positions made in the Vieths' Sur-Reply and in their Patent Owner Response, it is evident that the Vieths did

not expand their argument but instead changed their posture from arguing that Harder provided *no* information regarding the composition of the oil to arguing that Harder taught the composition *may include vegetable oil*. *See ParkerVision, Inc. v. Vidal*, 88 F.4th 969, 980–81 (Fed. Cir. 2023) (holding that the Board did not abuse its direction in excluding ParkerVision's sur-reply arguments "because they proceeded in a 'new direction' relative to ParkerVision's patent owner's response"). And, to the extent that the Vieths argue that consideration of their Sur-Reply was proper because MOM shifted its obviousness challenge in its Reply brief, we disagree. The statements the Vieths cite in MOM's Reply brief closely track statements MOM made in the Petition. *Compare* J.A. 847, 849 *with* J.A. 152.[8]

II

Next, the Vieths argue that the Board failed to properly apply the construction of the adheres limitation. Specifically, the Vieths assert (a) that the Board failed to address whether the prior art teaches the non-coating element of the adheres claim limitation and instead only looked to whether the non-dripping element was met, Appellants' Br. 18–20, 23–25, 33–34; and (b) that "the Board improperly disregarded the role of the 'object' in the adheres limitation" and "wrongly concluded that the '[s]pecification

---

[8] Before our court, the Vieths make this argument challenging the Board's inherency finding. Appellants' Br. 26, 29–32. We note that the Board found that, to the extent the adheres limitation is not inherent in Harder, it is taught or suggested by Harder. J.A. 34–35. This finding is supported by substantial evidence. *See id.* (citing J.A. 2127–28; J.A. 1735–36 (¶¶ 52–53); J.A. 1750 (¶ 103)); Discussion § II, *infra*.

identifies only viscosity and triglyceride chain length as impacting adherence," Appellants' Br. 21–22; Reply Br. 3.

As noted above, the non-coating element of the adheres construction requires that a drop not coat or adhere to an object to prevent efficient removal of the drop from the object. J.A. 14–15. As counsel for the Vieths explained at oral argument, "the key is[,] you have to be able to remove [the drop] efficiently so that you get a therapeutic dose." Oral arg. at 8:20–50, https://www.cafc.uscourts.gov/oral-arguments/25-1159_06082026.mp3. Contrary to the Vieths' argument, the Board specifically addressed whether Harder inherently disclosed or suggested the non-coating element in the final written decision. It did so when it rejected the Vieths' argument that a drop of vitamin D in MCT, as taught by Harder, would "coat" the spoon, as shown in testing performed by the Vieths' expert, Dr. Reid. J.A. 42–45. The Board explained: "[e]ven if the drop in Dr. Reid's test immediately rolled toward the bottom of the spoon, left a film or coating on the spoon, and never remained on the tip of the spoon, none of these actions is prohibited under the agreed construction of the 'adhere' term that applies in this proceeding." J.A. 44. The Board proceeded to state that, "[e]ven if [a] drop rolls into the bowl of the spoon (as observed by Dr. Reid), we disagree with [the Vieths] that this makes efficient removal of the drop difficult if not impossible" since the drop "can be either licked or sucked off the bowl of the spoon." J.A. 45 (internal quotation marks omitted).

The finding that Harder inherently discloses, or in the alternative teaches, the non-coating element of the adheres limitation is supported by substantial evidence in the form of expert testimony and Harder itself. *See* J.A. 2988–89 (¶¶ 21–22) (MOM's expert, Dr. Raj, explaining that to administer a drop one can tilt the spoon "downwards when presenting it to a baby so that the drop [will] roll forward to the tip of the spoon" or the spoon "can be given to a baby into its mouth so that the drop can be either licked or

sucked off the bowl of the spoon"); J.A. 7147–48 (111:10–112:6) (Dr. Raj explaining that the whole spoon can be put into the baby's mouth);[9] J.A. 2127–28 (Harder stating that its spoon method had "proved to be successful" as one option "for the prophylaxis of rickets").

As noted, the Vieths also assert that, because the Board ignored the "object" requirement, it erroneously applied the Board's construction of the adheres limitation when it found that the specification "teaches that MCT necessarily adheres to the surface of [all] objects," generally, when the specification only addressed nipples and pacifiers and did not address spoons like those discussed in Harder. Appellants' Br. 22.

In the final written decision, the Board found that this argument was "not sufficiently developed in any brief such that [the Board could] ascertain the basis of the argument." J.A. 46–47. In its brief to our court, MOM asserts that the Vieths first raised this issue at oral argument before the Board. Appellee's Br. 21 (citing J.A. 1294 (68:10–18)). In their Reply, the Vieths do not dispute this other than to argue that they were citing the specification's use of nipples and pacifiers to rebut the Board's overly narrow finding that adherence is dictated solely by viscosity and triglyceride chain length. Reply Br. 3. We therefore see no abuse of discretion in the Board's determination that the Vieths had forfeited this argument. Furthermore, we note that the Board's finding that the '958 specification identi-

---

[9] We disagree that Dr. Raj's testimony is *ipse dixit* as the Vieths contend. Appellants' Br. 24–25. Instead, Dr. Raj's opinion was based on her professional experience feeding babies with spoons and her first-hand observation of manipulating a drop of the claimed composition on a spoon. J.A. 7126 (90:9–91:11); J.A. 7147–48 (111:22–112:6); J.A. 2987–89.

fies only viscosity and triglyceride chain length as impacting adherence is supported by substantial evidence in the form of expert testimony, J.A. 1734–35 (¶¶ 50–52), and the '958 specification itself, '958 patent col. 6 l. 34–col. 7 l. 27. *See, e.g.*, *Alcon Research, Ltd. v. Apotex Inc.*, 687 F.3d 1362, 1369 (Fed. Cir. 2012) (analyzing inherency based on the disclosure of the "patent itself"). Thus, even if the Vieths had made this argument before the Board, it is not persuasive.

III

Next, the Vieths separately contest the Board's finding of obviousness with respect to dependent claim 3, asserting that Blass is non-analogous prior art to the '958 patent because Blass's "field of endeavor" does not relate to the same industry as that of the '958 patent claims. Appellants' Br. 34–38 (quoting *In re Clay*, 966 F.2d 656, 658–59 (Fed. Cir. 1992)). The Vieths also assert that Blass is not otherwise "reasonably pertinent to" the problem addressed by the inventors of the '958 patent. *Id.* at 38–41 (quoting *Clay*, 966 F.2d at 659). Even if Blass is analogous, the Vieths assert that the Board did not articulate a sufficient motivation to combine Blass with Harder, Wolf, and European Pharmacopoeia. Appellants' Br. 41–45.

In the final written decision, the Board noted that the Vieths first made the argument that Blass "is in an entirely different field" in their Sur-Reply brief and thus, the Vieths had forfeited any argument that Blass is non-analogous art. J.A. 84 n.33. We see no abuse of discretion in the Board's conclusion that the Vieths forfeited this argument. Before our court, the Vieths point to several places in the record where they say they "have consistently contrasted the field of Blass . . . with the field of the '958 patent." Reply Br. 22. Even if the Vieths did argue that Blass is not from the same field of endeavor as the '958 patent, this does not mean that the Vieths presented an argument that Blass was not analogous. This is because "[t]wo separate

tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved." *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004). The Vieths point to no place in the record where they argued to the Board that, despite being in a different field of endeavor, Blass is not reasonably pertinent to the problem the inventors of the '958 patent were involved. We thus see no abuse of discretion in the Board's finding that the Vieths forfeited this argument.

As for motivation to combine, the Board found that a skilled artisan "would have looked to Blass to improve Harder's method . . . by replacing the spoon with a pacifier, because they would have known that a pacifier is more likely to trigger the sucking reflex than a spoon, thus better ensuring delivery of the complete vitamin D drop that Harder teaches to administer to the infant." J.A. 83–84; *see also* J.A. 85 ("We agree with Petitioner that Blass would have motivated a [skilled artisan] to use a pacifier, because Blass teaches that a pacifier is an effective surface to trigger a sucking reflex."). This finding is supported by substantial evidence. J.A. 1745–46 (¶¶ 85–87) ("Based on Blass, a [skilled artisan] would be motivated to use a surface that would more likely trigger the sucking reflex to ensure delivery of the complete dose applied to the surface of a pacifier."); J.A. 1752 (¶ 106) (similar); J.A. 7074 (38:11–13) (Dr. Raj stating that "all babies have a very strong suck reflex"); J.A. 5568–69 (¶ 6.h) (noting that "using a hard object like a spoon in the way Harder advises, makes it impossible to meet the need" for infants below 4 to 6 months of age).

IV

Last, the Vieths contend that the Board erred when it found there was no nexus between the Vieths' secondary

indicia evidence and the claims of the '958 patent. Appellants' Br. 46–64.

The Vieths assert that the Board erred when it found that they were not entitled to a presumption of nexus or that MOM had rebutted the presumption. The Board found this to be the case because the labels for both Baby Ddrops and Mommy's Bliss set forth a non-infringing use that does not involve the claimed method: mixing the products into another substance, e.g., milk. J.A. 56–57. The Vieths assert that the existence of noncritical, unclaimed features does not mean that nexus cannot be presumed under our precedent. Appellants' Br. 47–48 (citing *Fox Factory*, 944 F.3d at 1374).

A presumption of nexus applies when "the patentee shows that the asserted objective evidence is tied to a specific product and that product embodies the claimed features, and is coextensive with them." *Fox Factory*, 944 F.3d at 1373 (internal quotation marks and citation omitted). The Board's determination that Baby Ddrops and Mommy's Bliss are not "coextensive" with the claims is supported by substantial evidence. That evidence is the packaging of the two products, which each set forth alternative methods of use that were specifically identified as prior art in the patent specification and that do not use the claimed method. *See* J.A. 6744 (Baby Ddrops label stating "[p]lace 1 drop daily onto mother's nipple . . . and allow baby to suck for at least 30 seconds, "*[o]r mix one drop daily with milk, juice or other food*") (emphasis added); J.A. 5395 (Mommy's Bliss label stating "[p]lace one drop daily onto mother's nipple or a pacifier, *or mix with formula, breast milk, juice, or other foods*") (emphasis added); '958 patent col. 3 ll. 8–12 (describing a prior art method for use involving "mixing two drops into . . . milk or mash," and stating that "[t]his is not a practical way to provide vitamin D for breast-fed infants younger than two months of age.").

Even if the presumption of nexus does not apply, the Vieths argue that each category of secondary considerations establishes nexus. The Vieths cite evidence of the commercial success of Baby Ddrops and that of Mommy's Bliss, evidence of industry praise for Baby Ddrops, and evidence of long-felt but unmet need in the form of testimony from Ddrops' president and Dr. Vieth. Appellants' Br. 56–64. The Vieths also cite evidence of MOM's copying of Baby Ddrops, since both products had, for example, a one-drop serving, a 90-dose supply, and similar application instructions. *Id.* at 53–56.

The Board reasonably found that the Vieths had not established a nexus in fact for its evidence of commercial success or industry praise. The commercial success of and industry praise for a product are relevant to the non-obviousness of a claim only insofar as the success of the product is due to the claimed invention. *Geo. M. Martin Co. v. Alliance Mach. Sys. Int'l LLC*, 618 F.3d 1294, 1304–05 (Fed. Cir. 2010). As the Board noted, the Vieths have not established that their evidence of commercial success, or their evidence of industry praise, is tied to the method of the claims. J.A. 65–75. And the Board did not err in concluding that the testimony of the Vieths' company's own officer was self-serving. J.A. 69.

The Board's finding that the Vieths had not established long-felt but unmet need is also supported by substantial evidence. That evidence is Harder and Wolf, which disclose a method of administering to an infant a precise amount of vitamin D in a liquid on an object. J.A. 2127–28 (describing the administration of a drop of Vigantol® oil to an infant on a spoon to deliver vitamin D); J.A. 2143–45 (describing Vigantol® as one option for the daily administration of vitamin D for babies). "Where the differences between the prior art and the claimed invention are as minimal as they are here, . . . it cannot be said that any long-felt need was unsolved. *Geo. M. Martin*, 618 F.3d at 1304.

As for copying, the Board reasonably determined that the Vieths' evidence was weak. The Vieths did not show how MOM arrived at its product instructions, and there is no evidence of intentional copying of Baby Ddrops. Moreover, the Board stated that, even if it assumed that MOM had copied Baby Ddrops, the record as a whole did not demonstrate non-obviousness. J.A. 60–61, 82. Thus, even if the Board erred in its copying analysis, we see no reason to disturb the Board's obviousness conclusion.

CONCLUSION

We have considered the Vieths' remaining arguments but find them unpersuasive. For the foregoing reasons, we *affirm* the Board's decision.

AFFIRMED