

evidence in rebuttal of an obviousness rejection must not be considered merely for its knockdown value against any previously-established *prima facie* case. See MPEP 2145, and in particular, the cases cited in examples 1–3. Evidence submitted to rebut a determination of obviousness is important because it may constitute “independent evidence of nonobviousness.” *Pressure Prods. Med. Supplies, Inc. v. Greatbatch Ltd.*, 599 F.3d 1308, 1319 (Fed. Cir. 2010), quoting *Ortho-McNeil Pharm., Inc. v. Mylan Labs., Inc.*, 520 F.3d 1358, 1365 (Fed. Cir. 2008). Such evidence “may often be the most probative and cogent evidence of nonobviousness in the record.” *Ortho-McNeil*, 520 F.3d at 1365, quoting *Catalina Lighting, Inc. v. Lamps Plus, Inc.*, 295 F.3d 1277, 1288 (Fed. Cir. 2002).

It follows from the directive to consider all relevant evidence that the mere existence of a reason to modify the teachings of the prior art may not necessarily lead to a conclusion that a claimed invention would have been legally obvious. *Intercontinental Great Brands LLC v. Kellogg N. Am. Co.*, 869 F.3d 1336, 1346–47 (Fed. Cir. 2017). When stepping into the shoes of a PHOSITA, the decision-maker should seek to understand the “complete picture” regarding the PHOSITA’s perspective on obviousness, having due regard for additional evidence that may weigh against any *prima facie* case. *Id.* at 1346. In determining whether a claimed invention would have been obvious, Office personnel are charged with weighing all the evidence of record, including evidence of obviousness and evidence of nonobviousness. “If this weighing shows obviousness by a preponderance of the evidence, then the claims at issue were unpatentable.” *ACCO Brands Corp. v. Fellowes, Inc.*, 813 F.3d 1361, 1366 (Fed. Cir. 2016).

Without diminishing the need to consider all relevant evidence when making a determination about obviousness, the Federal Circuit has made it clear that an expert’s conclusory opinion about a matter relevant to the obviousness inquiry may be unavailing unless accompanied by factual support. See, for example, *Ethicon*, 844 F.3d at 1352 (concluding in the context of an ex parte appeal that the Board properly gave little weight to conclusory expert testimony regarding objective indicia); *Quanergy Sys., Inc. v. Velodyne Lidar USA, Inc.*, 24 F.4th 1406, 1417 (Fed. Cir. 2022) (agreeing with the Board, in the context of an inter partes review proceeding, that the proffered expert testimony was “incomplete, unspecific, and ultimately conclusory” and

therefore not entitled to controlling weight). Consistently, in the context of proceedings before the PTAB, Office regulations provide that “[e]xpert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.” 37 CFR 42.65(a); see also *Xerox Corp. v. Bytemark, Inc.*, No. IPR2022–00624, 2022 WL 3648989, at *6 (PTAB 2022) (precedential) (The USPTO Director affirmed that because “the cited declaration testimony is conclusory and unsupported, [it] adds little to the conclusory assertion for which it is offered to support, and is entitled to little weight.”). Further, during the examination of an application or the reexamination of a patent, any objective evidence of nonobviousness must be submitted by way of an affidavit or declaration; attorney arguments alone cannot take the place of such evidence in the record where the evidence is necessary. See 37 CFR 1.132; MPEP 716.01(c) and MPEP 2145, subsection I.

Consistent with Federal Circuit precedent, Office personnel are directed to consider all objective evidence that has been properly made of record and is relevant to the issue of obviousness at MPEP 2141, subsection II.

V. Office Personnel Will Continue To Apply Reasoning to Facts in Order To Reach a Proper Legal Determination of Obviousness

Any legally proper obviousness rejection must identify facts and then articulate sound reasoning that leads to the conclusion that the claims would have been obvious to a PHOSITA. “Obviousness is a question of law based on underlying facts. . . .” *Henny Penny Corp. v. Frymaster LLC*, 938 F.3d 1324, 1331 (Fed. Cir. 2019). During patent examination, making factual findings concerning the content of the prior art is often the first step when considering whether or not a claimed invention would have been obvious. As discussed above, the obviousness determination may also involve other facts, such as those presented in an evidentiary declaration. After making appropriate findings of fact, Office personnel must use reasoning in accordance with *Graham* and *KSR* to determine whether a claimed invention would have been obvious in view of all relevant facts. Office personnel must explain on the record how the conclusion of obviousness was reached. See MPEP 2141, subsection II: “Once the findings of fact are articulated, Office personnel must provide an explanation to support an obviousness rejection under 35 U.S.C. 103.” See also MPEP 2142.

In keeping with the flexible approach to obviousness in *KSR* and *Graham*, there is no one-size-fits-all approach to crafting an obviousness rejection. See *KSR*, 550 U.S. at 415, 127 S. Ct. at 1739. Different technologies or different factual situations may lend themselves to different formats for presentation of the relevant facts, or to different lines of reasoning to explain the legal conclusion of obviousness. Office personnel are called on to use their legal and technological expertise to determine how best to explain an obviousness rejection. See *Hyatt v. Kappos*, 625 F.3d 1320, 1343 (Fed. Cir. 2010), *aff’d* and remanded, 566 U.S. 431, 132 S. Ct. 1690 (2012). Any legally proper obviousness rejection will be characterized by findings of fact and a reasoned explanation showing why the claimed invention would have been obvious to a PHOSITA. See, for example, *In re Biedermann*, 733 F.3d 329, 335–36 (Fed. Cir. 2013); *Arctic Cat Inc. v. Bombardier Recreational Prod. Inc.*, 876 F.3d 1350, 1360–61 (Fed. Cir. 2017).

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2024–03967 Filed 2–26–24; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2023–HQ–0016]

Submission for OMB Review; Comment Request

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 28, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Reginald Lucas, (571) 372-7574,
whs.mc-alex.esd.mbx.dd-dod-
information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Air Force Recruiting Information Support System—Total Force (AFRISS-TF); OMB Control Number 0701-0150.

Type of Request: Extension.

Number of Respondents: 100,000.

Responses per Respondent: 1.

Annual Responses: 100,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 25,000.

Needs and Uses: Recruiting requires the collection of specific information on prospective Air Force, Air National Guard, and Air Force Reserve Command enlistees, officers, and health profession personnel prior to entering into duty. The information is used to create the initial personnel record that is used to prescreen and qualify enlistees, line officers, and health professionals fit for service and ultimately induct them into one of the three Air Force commands. The information is also collected to process security clearances for those individuals requiring clearances for sensitive and classified positions. The respondents are recruiting applicants of the Air Force who may seek more information or request copies of their personal information. The collection instrument is a list of questions asked by the recruiter that cannot be found on the SF-86; information taken from the SF-86 can complete the rest of the recruit's application. Collections instruments are completed by applicants and recruiters into the system of record as applicable to their recruiting and application purposes. All completed instruments of collection reside in the system of record which has safeguards in place to protect privacy information. The result of successful information collection is the successful accession of an applicant in the Air Force and the safe keeping of said applicant's personal information.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Sehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket

ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to Mr. Lucas at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil*.

Dated: February 21, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF DEFENSE**Department of the Army**

[Docket ID: USA-2023-HQ-0018]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 28, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Reginald Lucas, (571) 372-7574,
whs.mc-alex.esd.mbx.dd-dod-
information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Installation Management Command Survivor Outreach Service System (SOS IMCOM); OMB Control Number 0702-0148.

Type of Request: Revision.

Number of Respondents: 60,295.

Responses per Respondent: 2.

Annual Responses: 120,590.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 40,197.

Needs and Uses: SOS is an Army-wide program that provides dedicated and comprehensive support services to all family members of soldiers who die while on active duty, including Regular Army, United States Army National Guard and Reserves patrons. SOS Support Coordinators serve as the main Survivor advocate. They facilitate support groups, provide life skills education, assist survivors in managing applicable life-long benefit transition milestones, connect survivors with counseling resources, and represent the command in contacts with community organizations. SOS Financial Counselors help survivors by assisting with budget counseling, debt management, education, and higher education needs. SOS staff members are required to make periodic communication with Survivors—at a minimum of one contact annually—to conduct well-being checks and milestone management reviews or determine the level of support Survivors desire. Information gathered in these meetings is input into the SOS application collection instrument by SOS staff members. No customers have access to the collection instrument. SOS staff members collect the information from the survivors and document the information as a direct contact within the SOS application case notes. The successful result of the information collection is an organized and up-to-date database of essential information on survivors that allows SOS to better provide the support they deserve.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Sehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.