

## Kelvin Varghese in IP & Technology Law Journal: No Need to Neglect Nexus: Prosecution Lessons from FOX Factory v. SRAM

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**PRACTICES** Patents, Patent Prosecution and Counseling, Intellectual Property

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On Dec. 18, 2019, in *FOX Factory, Inc. v. SRAM, LLC*<sup>1</sup> (“Fox Factory”), the U.S. Court of Appeals for the Federal Circuit addressed the conditions under which a patent owner is entitled to the presumption of a nexus between a claimed invention and evidence of secondary considerations.

Secondary considerations or objective indicia of non-obviousness, if present, must be considered in determining whether a patent claim is obvious. Evidence of secondary considerations may help demonstrate that the claim is not obvious, even when the prior art would have suggested that the claim is obvious. Secondary considerations include long-felt but unsolved needs, failure of others, unexpected results, commercial success, copying, licensing, and praise.

To be relevant, secondary considerations evidence must be commensurate in scope with the claimed invention. In that regard, there must be a “nexus,” or sufficient connection, between the claimed invention and the evidence of secondary considerations. In some circumstances, the patent owner is entitled to a presumption of nexus, which makes it easier for the patent owner to demonstrate that a nexus exists between the claims and the evidence.

Excerpted from the *Intellectual Property & Technology Law Journal*. To read the full article, click on the PDF linked below:

[Varghese-Patent-Presumption-of-Nexus.PDF](#)