

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RED DIAMOND, INC.
Petitioner,

v.

SOUTHERN VISIONS, LLP.
Patent Owner.

Case IPR2019-01671
Patent No. 9,468,330

PATENT OWNER'S NOTICE OF APPEAL

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450 Alexandria, VA 22313

Notice is hereby given, pursuant to 37 C.F.R. § 90.2(a), that Patent Owner Southern Visions, LLP (“Southern Visions”) hereby appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered by the Patent Trial and Appeal Board (“PTAB”) on March 31, 2021 (Paper 35) (the “Final Written Decision”), and from all underlying orders, decisions, rulings and opinions, including without limitation, the Decision to Initiate Trial for *Inter Partes* Review entered on April 1, 2020 (Paper 6).

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Patent Owner Southern Visions further indicates that the issues on appeal include, but are not limited to: 1) whether Administrative Patent Judges (APJs) are principal officers who must be appointed by the president and confirmed by the Senate, or inferior officers whose appointment has been properly vested in a department head; and whether, if APJs are principal officers, *inter partes* review proceedings are unconstitutional; 2) the inconsistencies between the PTAB’s Preliminary Guidance regarding Patent Owner’s Motion to Amend and the PTAB’s Final Written Decision; 3) the PTAB’s determination that proposed substitute claims 18 and 20 are indefinite; 4) the PTAB’s determination that proposed substitute claims 19 and 21 are indefinite; 5) the PTAB’s determination that proposed substitute claim 22 is unpatentable as obvious in view of Cooper, Thijssen, and admitted prior art; 6) whether the PTAB abused its discretion by allowing the submission of evidence that was not made newly relevant by the revised

motion to amend and was evidence available before the revised motion to amend; 7) the PTAB's reliance on the Thijssen reference, which is not analogous art; 8) the PTAB's reliance on admitted prior art in its obviousness analysis; 9) the PTAB's incomplete obviousness analysis, that focused only on the subject matter Patent Owner added in the proposed substitute claims; 10) the PTAB's failure to accord appropriate weight to the objective evidence of non-obviousness presented by Patent Owner; and 11) any finding or determination supporting or related to those issues, as well as all other issues decided adversely to Patent Owner in any orders, decisions, rulings and opinions.

Simultaneous with this submission, a copy of this Notice of Appeal is being filed with the Patent Trial and Appeal Board. In addition, a copy of this Notice of Appeal, along with the required docketing fees, are being filed with the Clerk's Office for the United States Court of Appeals for the Federal Circuit.

Dated: June 1, 2021

Respectfully Submitted by:

/J. Matthew Miller III/
Raymond Areaux #33643
Joseph Miller #66178
CARVER, DARDEN, KORETSKY,
TESSIER, FINN, BLOSSMAN & AREAUX
L.L.C.
1100 Poydras Street, Suite 3100
New Orleans, Louisiana 70163
Telephone: (504) 585-3803
Facsimile: (504) 585-3801
areaux@carverdarden.com
miller@carverdarden.com

Matthew L. Cutler, Reg. No. 43574
Harness, Dickey & Pierce P.L.C.
7700 Bonhomme Ave., Suite 400
Saint Louis, MO 63105
Telephone: (314) 726-7500
Facsimile: (314) 726-7501
mcutler@hdp.com

Attorneys for Patent Owner

CERTIFICATE OF SERVICE

I hereby certify that, in addition to being filed electronically through the Patent Trial and Appeal Board's Patent Review Processing System (PRPS), the original version of the foregoing, PATENT OWNER SOUTHERN VISION'S NOTICE OF APPEAL, was served by Priority Mail Express (USPS Tracking No. 9470 1036 9930 0058 7405 40) on this 1st day of June, 2021, with the Director of the United States Patent and Trademark Office, at the following address:

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing, PATENT OWNER SOUTHERN VISION'S NOTICE OF APPEAL, was filed electronically on this 1st day of June, 2021, with the Clerk's Office of the United States Court of Appeals for the Federal Circuit:

United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W., Suite 401
Washington, DC 20005

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing, PATENT OWNER SOUTHERN VISION'S NOTICE OF APPEAL, was served, in accordance with the parties' electronic service agreement, by electronic mail on this 1st day of June, 2021, on the following counsel of record for Petitioners.

Jamaica Potts Szeliga (Reg. No. 67647)

SEYFARTH SHAW, LLP
975 F. St. N.W.
Washington, DC 20004
Tel. 202-463-2400
Fax. 202-463-2400
Mobile. 703-655-1872
jszeliga@seyfarth.com

James M. Robertson (Reg. No. 36905)

J.M. ROBERTSON, LLC
2140 11th Avenue South – Suite 212
Birmingham, AL 35205
Tel. 205-212-7620
Fax. 205-212-7621
Mobile: 864-621-0454
jrobertson@jmrpatents.com

Attorneys for Petitioner

/J. Matthew Miller III/