

Filed on behalf of Valencell, Inc.  
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UNITED STATES PATENT AND TRADEMARK OFFICE  

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

FITBIT, INC.,<sup>1</sup>  
Petitioner,

v.

VALENCELL, INC.,  
Patent Owner.

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Case IPR2017-00319<sup>2</sup>  
U.S. Patent No. 8,923,941  

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**PATENT OWNER'S AMENDED NOTICE OF APPEAL**

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

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<sup>1</sup> Petitioner Apple Inc. (“Apple”) is no longer a party in this proceeding.

<sup>2</sup> Case IPR2017-01555 has been joined with this proceeding.

Pursuant to the March 11, 2022 Order of the U.S. Court of Appeals for the Federal Circuit in *Valencell, Inc. v. Fitbit, Inc., et al.*, No. 21-2041 (Doc. 30), Patent Owner Valencell, Inc. (“Valencell”) hereby files this Amended Notice of Appeal from the Final Written Decision on Remand Determining All Challenged Claims Unpatentable entered on April 5, 2021 (Paper 73) and the February 4, 2022 Order of Andrew Hirshfeld, Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, denying Valencell’s request for Director review (Paper 79), and from all underlying and related findings, orders, decisions, rulings, and opinions.

For the limited purpose of providing the Director with the information requested in 37 C.F.R. § 90.2(a)(3)(ii), Valencell further indicates that the issues on appeal may include, but are not limited to:

(1) the Board’s determination that Petitioner demonstrated by a preponderance of the evidence that claim 3 of the ’941 patent is unpatentable as obvious under 35 U.S.C. § 103(a) over Luo in view of Craw;

(2) the Board’s determination that Petitioner demonstrated by a preponderance of the evidence that claims 4–5 of the ’941 patent are unpatentable as obvious under 35 U.S.C. § 103(a) over Luo in view of Craw and Wolf; and

(3) whether Commissioner Hirshfeld had authority to review the Board’s

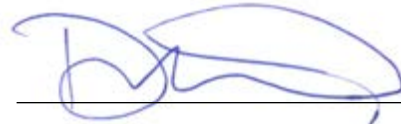
decision under the Appointments Clause, the Federal Vacancies Reform Act, or the separation of powers.

Valencell further reserves the right to challenge any finding or determination supporting or relating to the issues listed above, and to challenge any other issues decided adversely to Valencell in the Board's Final Written Decision on Remand Determining All Challenged Claims Unpatentable or in any other order, decision, ruling or opinion underlying that decision.

Case IPR2017-00319  
U.S. Pat. No. 8,923,941

Dated: April 11, 2022

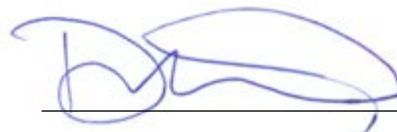
Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document was served via electronic mail on April 11, 2022, to Petitioner at the following email addresses pursuant to its consent in its Updated Mandator Notices at 1: jimglass@quinnemanuel.com, samstake@quinnemanuel.com, and ogizivojnovic@quinnemanuel.com.



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