

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZYXEL COMMUNICATIONS CORPORATION,
Petitioner,

v.

UNM RAINFOREST INNOVATIONS,
Patent Owner.

Case IPR2021-00734
Joined with case IPR2021-00375

Patent No. 8,265,096 B2

PETITIONER'S NOTICE OF APPEAL
35 U.S.C. § 142 & 35 C.F.R. 90.2

Mail Stop:

via PTAB E2E
Patent Trial & Appeal Board

via Priority Mail Express
Director of the United States Patent and Trademark Office
Office of the General Counsel
P.O. Box 1450
Alexandria, Virginia 22313-1450.

via CM/ECF
United States Court of Appeals for the Federal Circuit

Please take notice, under 5 U.S.C. § 702; 28 U.S.C. § 1295(a)(4)(A); 35 U.S.C. §§ 141(c), 142 and 319; 37 C.F.R. § 90.2(a)(1); Fed. R. App. P. 15(a), that ZyXEL Communications Corporation (“ZyXEL”) hereby appeals to the United States Court of Appeals for the Federal Circuit from the final written decision under 35 U.S.C. § 318(a) of a panel of members of the Patent Trial and Appeal Board (“Board”) of the United States Patent and Trademark Office (“Office”) entered in the above-captioned inter partes review of U.S. Patent No. 8,265,096 (“’096 Patent”) on July 15, 2022, Paper 68 (“Final Written Decision”) (Exhibit A attached hereto).

ZyXEL, Petitioner in IPR2021-00734, was joined to IPR2021-00375, and the Final Written Decision identifies ZyXEL as a party to the joined proceeding. Accordingly, ZyXEL files this appeal of the joined action pursuant to 35 C.F.R. § 319. *See Mylan Pharm. Inc. v. Research Corp. Techs., Inc.*, 914 F.3d 1366, 1373 (Fed. Cir. 2019) (“Joined parties, as provided in § 315, may appeal pursuant to § 319.”).¹ This notice is filed in the period for filing an appeal of the judgment of

¹ Pursuant to instructions from the PTAB E2E support center, this Notice was filed in proceeding IPR2021-00734. Out of an abundance of caution this paper is also being filed in IPR2021-00375 pursuant to the Board’s order (IPR2021-00734 Paper 17 at 23) that all filings should be in the IPR2021-00375 proceeding. ZyXEL files this Notice of Appeal pursuant to its rights under 35 C.F.R. § 319, without any involvement by the original petitioner in IPR2021-00375, which has not joined or been consulted in taking this appeal.

the Board under 37 C.F.R. § 90.2(a)(1) as calculated based on the issuance date of the Board's final written decision.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), this notice provides that ZyXEL's issues on appeal may include, but are not limited to:

- (i) the Board's determination that claim 8 of the '096 patent was not shown to be unpatentable, including the Board's determination that Petitioner raised new arguments upon reply and the Board's determination that a Person of Ordinary Skill in the Art would not have been motivated to combine Talukdar and Nystrom;
- (ii) the Board's decision to grant Patent Owner's Motion to Amend (Paper 37), including the Board's determination that Patent Owner could provide written description support for the amended claims for the first time on reply; and
- (iii) any further findings or determinations by the Director or the Board supporting or relating to the issues above, including the Board's consideration of the expert testimony, prior art, and other evidence in the record; the Board's claim constructions; and the Board's factual findings, conclusions of law, or other determinations supporting or related to the issues above.

In accordance with Fed. Cir. R. 15, and related Practice Note, ZyXEL attaches to this Notice of Appeal copies of the decision referenced above from which review is sought. Concurrently with the present submission, ZyXEL is filing a copy of this Notice of Appeal with the Director, and a copy of the same along with the required docketing fee, with the Clerk of the United States Court of Appeals for the Federal Circuit as set forth in the accompanying certificate of service.

Dated: September 12, 2022

Respectfully submitted,

By: /Peter J. Chassman/

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ZyXEL Communications Corporation*

CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4) the undersigned certifies that on September 12, 2022, a complete and entire copy of this Petitioner's Notice of Appeal, and the accompanying exhibits, was electronically filed through the Patent Trial & Appeal Board's E2E system in accordance with 37 C.F.R. § 42.6(b)(1), and was served by email to the Patent Owner at the following correspondence address of record pursuant to 37 C.F.R. § 42.6(e):

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Dated: September 12, 2022

Respectfully submitted,

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*Attorneys for Petitioner/Appellant
ZyXEL Communications Corporation*

CERTIFICATE OF SERVICE

The undersigned certifies that in addition to being filed electronically through the Patent Trial and Appeal Board's E2E system, the foregoing Petitioner's Notice of Appeal, and the accompanying exhibits, was served on the Director of the United States Patent and Trademark Office, via U.S. Priority Mail Express to the following address (in accordance with 37 C.F.R. §§ 90.2(a), 104.2(a)):

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

Dated: September 12, 2022

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*Attorneys for Petitioner/Appellant
ZyXEL Communications Corporation*

CERTIFICATE OF FILING

The undersigned certifies that a true and correct copy of the foregoing Petitioner's Notice of Appeal, and the accompanying exhibits, was filed electronically with the Clerk's Office of the United States Court of Appeals for the Federal Circuit via CM/ECF.

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 CFR § 90.3(a) the undersigned certifies that the notice of appeal is filed with the Director of the United States Patent and Trademark Office no later than sixty-three (63) days after the date of the final Board decision, which issued on July 15, 2022.

Dated: September 12, 2022

Respectfully submitted,

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