

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ALCON INC., ALCON VISION, LLC, ALCON LABORATORIES, INC., AND ALCON  
RESEARCH, LLC,  
Petitioners,

v.

AMO DEVELOPMENT, LLC,  
Patent Owner.

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IPR2021-00841  
U.S. Patent No. 9,474,648

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**PETITIONERS' NOTICE OF APPEAL**

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Under 35 U.S.C. §§ 319, 141(c), and 142 and 37 C.F.R. §§ 90.2(a) and 90.3(a)(1), Petitioners Alcon Inc., Alcon Vision, LLC, Alcon Laboratories, Inc., and Alcon Research, LLC hereby appeal to the United States Court of Appeals for the Federal Circuit from the Patent Trial and Appeal Board's final written decision, entered November 14, 2022 (Paper No. 52), 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), Petitioners further indicate that the issues on appeal may include, but are not limited to, for the challenged claims:

1. Whether the Board properly held claims 1-5 and 12-15 were not unpatentable as obvious under 35 U.S.C. § 103 over the asserted combination of U.S. Patent No. 6,325,792 to Swinger et al. ("Swinger"), Georges Baikoff, MD et al., *Static and Dynamics Analysis of the Anterior Segment with Optical Coherence Tomography*, 30 J. CATARACT REFRACT. SURG. 1843 (2004) ("Baikoff"), and Y. Li et al., *Automated Anterior Chamber Biometry with High-Speed Optical Coherence Tomography*, ARVO Annual Meeting Abstract, 44 INVESTIGATIVE OPHTHALMOLOGY & VISUAL SCI. 3604 (2003) ("Li");
2. Whether the Board properly held claims 6-9 were not unpatentable as obvious under 35 U.S.C. § 103 over the asserted combination of

Swinger, Baikoff, Li, and Thomas Hoppeler & Balder Gloor, *Preliminary Clinical Results with the ISL Laser*, 1644 OPTHALMIC TECHS. II 96 (1992) (“Hoppeler”);

3. Whether the Board properly held claims 10 and 11 were not unpatentable as obvious under 35 U.S.C. § 103 over the asserted combination of Swinger, Baikoff, Li, and U.S. Patent No. 4,538,608 to Francis A. L’Esperance, Jr. (“L’Esperance”);
4. Whether the Board properly held claims 1-5 and 12-15 were not unpatentable as obvious under 35 U.S.C. § 103 over the asserted combination of U.S. Patent No. 6,454,761 to Philip D. Freedman (“Freedman”) and Swinger;
5. Whether the Board properly held claims 6-9 were not unpatentable as obvious under 35 U.S.C. § 103 over the asserted combination of Freedman, Swinger, and Hoppeler;
6. Whether the Board properly held claims 10 and 11 were not unpatentable as obvious under 35 U.S.C. § 103 over the asserted combination of Freedman, Swinger, and L’Esperance;
7. Whether the Board erred in its application of the law of obviousness;
8. Whether the Board’s findings of fact lack substantial evidence;

9. Whether the Board legally erred by considering Petitioners' prior statements in separate proceedings to resolve the grounds raised in the Petition in this proceeding;
10. Whether the Board legally erred by crediting expert testimony predicated on an incorrect understanding of the law of obviousness;
11. Whether the Board violated the Administrative Procedure Act by disregarding principal arguments and evidence regarding obviousness of the challenged claims;
12. Whether the Board violated the Administrative Procedure Act by not providing a reasoned explanation for its determinations;
13. Whether the Board violated the Administrative Procedure Act by making factual findings and drawing legal conclusions that are inconsistent with findings and conclusions made in parallel *inter partes* review proceedings; and
14. Whether the Board erred in its construction of claim terms and/or phrases.

Petitioners further reserve the right to challenge any finding or determination supporting or relating to the issues above.

Under 37 C.F.R. § 90.2(a), Petitioners are also filing this notice with the Director and serving it on the Federal Circuit with the requisite filing fee.

DATED: December 12, 2022

Respectfully submitted,

/s/ Noah S. Frank

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*Counsel for Petitioners Alcon Inc.,  
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Inc., and Alcon Research, LLC*

**CERTIFICATE OF SERVICE**

I certify that on December 12, 2022, this document was served on the Director at this address, under 35 U.S.C. § 142 and 37 C.F.R. §§ 90.2(a)(1) and 90.3(a)(1).

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

I certify that on December 12, 2022, this document was electronically served on the United States Court of Appeals for the Federal Circuit, under 37 C.F.R. § 90.2(a)(2), Fed. Cir. R. 15(a), and Fed. R. App. P. 15(a).

I certify that on December 12, 2022, this document was electronically served on counsel for Patent Owner, under 37 C.F.R. § 42.6(e)(1)-(3):

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