

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KINAXIS INC. and KINAXIS CORP.,
Petitioner,

v.

BLUE YONDER GROUP, INC.,
Patent Owner.

Case IPR2021-01247
Patent 7,574,383

PETITIONER'S NOTICE OF APPEAL
37 C.F.R. § 90.2(a)

Pursuant to 35 U.S.C. §§ 141(c) and 319, and 37 C.F.R. § 90.2(a), notice is hereby given that Petitioner Kinaxis Inc. and Kinaxis Corp. hereby appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision in Case No. IPR2021-01247, entered January 19, 2023 (Paper 40) (“Final Written Decision”) by the Patent Trial and Appeal Board (“the Board”), and from all underlying orders, decisions, rulings, and opinions related thereto and included therein. This appeal is timely under 35 U.S.C. § 142, 37 C.F.R. § 90.3, and Rule 15(a)(1) of the Federal Rules of Appellate Procedure.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), the expected issues on appeal include, but are not necessarily limited to:

- (1) The Board’s decision that claims 1-30 of U.S. Patent No. 7,574,383 (EX1001, “the ’383 patent”) were not shown to be obvious under 35 U.S.C. § 103 based on grounds in the Petition (Paper 2) citing Perry (U.S. Patent No. 6,947,903; EX1004), Bellini (U.S. Patent No. 5,974,395; EX1005), and Harmony (WO 2000/42553; EX1006);
- (2) The Board’s conclusion that “Petitioner presents different and unclear levels of skill for a POSITA in its Petition and Reply” (Paper 40 at 6);
- (3) The Board’s analysis regarding the level of ordinary skill for the ’383 patent, the skills and capabilities of a person of ordinary skill, and the Board’s conclusions drawn from that analysis;

- (4) The Board’s analysis regarding Petitioner’s and Patent Owner’s expert testimony on the level of ordinary skill, including district court testimony on the subject;
- (5) The Board’s enablement analysis regarding relied on prior art, including Perry;
- (6) The Board’s conclusion “that Petitioner’s Reply also presents additional arguments that deviate from the Petition and the proper scope of a reply” (Paper 40 at 14);
- (7) The Board’s *sua sponte* arguments and conclusions that were raised and adopted without providing Petitioner with notice or an opportunity to respond during the *inter partes* review;
- (8) The Board’s interpretation of the prior art;
- (9) The Board’s legal errors in undertaking the aforementioned obviousness and enablement analyses;
- (10) The Board’s findings that conflict with the evidence of record or are otherwise not supported by substantial evidence;
- (11) The Board’s failure to consider evidence of record fully and properly; and
- (12) All other issues decided adversely to Petitioner in any orders, decisions, ruling and opinion underlying or supporting the Final Written Decision.

Per 35 U.S.C. § 142 and 37 C.F.R. § 90.2(a)(1), this notice is being filed with the Director of the U.S. Patent and Trademark Office, and a copy is also being filed with the Board. Per Federal Circuit Rule 15(a)(1) and 37 C.F.R. 90.2(a)(2), Petitioner is also sending a paper copy of this Notice of Appeal to the Clerk of the U.S. Court of Appeals for the Federal Circuit, and paying the requisite docketing fee.

Respectfully submitted,

Date: March 6, 2023

/Kenneth Wayne Darby Jr./
Joshua A. Griswold, Reg. No. 46,310
Kenneth W. Darby, Reg. No. 65,068
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4) and 42.205(b), the undersigned certifies that on March 6, 2023, a complete and entire copy of this Petitioner's Notice of Appeal was provided via email to the Patent Owner by serving the correspondence address of record as follows:

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I hereby certify that, in addition to being filed electronically through the Board's PACTS System, the original version of the foregoing Notice of Appeal was filed by hand on March 6, 2023, 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
Madison Building East, 1 OB20
600 Dulany Street
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I hereby certify that on March 6, 2023, a true and correct copy of the foregoing Notice of Appeal, along with a copy of the Final Written Decision, was filed electronically with the Clerk's Office of the United States Court of Appeals for the Federal Circuit, at the following address:

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

Respectfully submitted,

Date: March 6, 2023

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