

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CRAYOLA LLC,

Petitioner

v.

UNIVERSITY OF CINCINNATI.

Patent Owner

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Case IPR 2015-00393

U.S. Patent No. 7,430,355B2

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**PATENT OWNER UNIVERSITY OF CINCINNATI'S  
NOTICE OF APPEAL**

Notice is hereby given, pursuant to 37 C.F.R. § 90.2(a), that Patent Owner, the University of Cincinnati, hereby appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered on June 6, 2016 (Paper 22) (“Final Written Decision”), ordering that claims 1, 8, 11, 12, 23, 24, 26, 27, 30, 32, 33, 42, 48, and 49 of U.S. Patent No. 7,430,335 are held unpatentable.

Moreover, in accordance with 37 C.F.R. § 90.2(a)(3)(ii), Patent Owner indicates that the issues on appeal may include, but are not necessarily limited to:

(a) Whether the Patent Trial and Appeal Board (“PTAB”) erred by improperly shifting the burden of persuasion with regard to the claim term “a waveguide,” wherein the PTAB essentially required Patent Owner to prove that the specification of the ’355 Patent did *not* support Petitioner’s unconventional understanding of that term, as opposed to requiring Petitioner to prove that the specification explicitly mandated its proffered unconventional usage? (b) Whether the PTAB erred by adopting a claim construction for the term “a waveguide” that even Petitioner concedes “deviates” from the “conventional understanding” of a waveguide? (c) Whether the PTAB erred in its construction of the phrase “ink having an optical transparency of about 50% or greater”? (d) Whether the PTAB erred by improperly shifting the burden of persuasion with regard to the scope of the prior art, especially U.S. Patent No. 4,703,572 (Chapin), wherein Patent Owner was essentially required to prove that the plain and limited disclosure that “inks

containing fluorescent dyes are substantially transparent to the induced fluorescence,” Ex. 1003 at col. 8 ll. 33-34, did not meet the limitations of the claims, as opposed to requiring Petitioner to prove that it did? (e) Whether the PTAB erred by misapprehending the scope of the prior art, e.g., the ’572 Patent, and especially, in context, the teaching that “inks containing fluorescent dyes are substantially transparent to the induced fluorescence”? *Id.* (f) Whether the PTAB erred by improperly combining references, especially in view of the clear teaching away of the ’572 Patent and the lack of analogous art? (g) Whether the PTAB erred by inconsistently applying the prior art to more than one claim at issue? (h) Whether the PTAB erred by finding that Petitioner had met its burden to show that all of the aforementioned claims are unpatentable?

Patent Owner 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 it in the Board’s Final Written Decision, or in any other order, decision, ruling, or opinion underlying the Final Written Decision.

Simultaneous with this submission, three (3) copies of this Notice of Appeal are being filed with the Clerk of the United States Court of Appeals for the Federal Circuit, together with the requisite fee in the amount of \$500. In addition, a copy of this Notice of Appeal is being filed with the PTAB and served upon counsel of record for Petitioner Crayola LLC.

Dated: August 8, 2016

Respectfully submitted,

Electronic signature: /John Paul Davis/

John Paul Davis

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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”) on this 8th day of August, 2016, the original version of the foregoing, Patent Owner University of Cincinnati’s Notice of Appeal, was sent via U.S. Express Mail overnight delivery on this 8th day of August, 2016, to the Director of the United States Patent and Trademark Office, via the Office of the General Counsel, at the following address:

Office of the Solicitor  
United States Patent and Trademark Office Mail Stop 8  
Post Office Box 1450  
Alexandria, Virginia 22313-1450

**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”) on this 8th day of August, 2016, three copies of the foregoing, Patent Owner University of Cincinnati’s Notice of Appeal, was sent via U.S. Express Mail overnight delivery on this 8th day of August, 2016, to 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, D.C. 20005

**CERTIFICATE OF SERVICE**

The undersigned certifies service pursuant to 37 C.F.R. § 42.6(e) on the Petitioner via U.S. Express Mail overnight delivery a copy of this submission of Patent Owner University of Cincinnati's Notice of Appeal at the correspondence addresses of the Petitioner, RatnerPrestia:

RatnerPrestia  
Post Office Box 980  
Valley Forge, PA 19482

Dated: August 8, 2016

Electronic signature: /John Paul Davis/  
John Paul Davis  
Registration No.: 52,798