

Paper No. \_\_\_\_\_  
Date Filed: October 3, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ARIOSIA DIAGNOSTICS, INC.,  
Petitioner

v.

ILLUMINA, INC.,  
Patent Owner

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Case IPR2014-01093  
U.S. Patent 7,955,794 B2

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**PETITIONER'S NOTICE OF APPEAL**

Petitioner Ariosa Diagnostics, Inc. (“Ariosa”) hereby gives notice to the Director of the Patent and Trademark Office, pursuant to 35 U.S.C. §§ 142 and 37 C.F.R. §§ 90.2 and 90.3, of its appeal to the United States Court of Appeals for the Federal Circuit from the Final Written Decision by the Patent Trial and Appeal Board (“the Board”) entered on January 7, 2016 (Paper 69), the Board’s Decision Denying Petitioner’s Request for Rehearing entered on September 29, 2016 (Paper 83), and from all orders, decisions, rulings, and opinions relating to or underlying those decisions, including without limitation the Decision on Patent Owner’s Motion to Terminate Reexamination under 37 C.F.R. § 42.5 (Paper 81).

For the limited purpose of providing the Director with the information requested in 37 C.F.R. § 90.2(a)(3)(ii), Petitioner anticipates that the issues on appeal include, but are not limited to: whether the Board erred when it ruled that Petitioner had not met its burden of proving that claims 1-22 of U.S. Patent No. 7,955,794 (the “Instituted Claims”) are unpatentable under 35 U.S.C. § 102; whether the Board erred in its interpretation and extension of *Dynamic Drinkware, LLC v. National Graphics, Inc.*, 800 F.3d 1375 (Fed. Cir. 2015); whether the Board erred in its decision to apply its interpretation of *Dynamic Drinkware* to this proceeding; whether the Board erred in determining that Petitioner failed to demonstrate that the Fan reference is prior art to the Instituted Claims; whether the Board erred in terminating *ex parte* reexamination Control Nos. 90/013,666,

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90/013,667, and 90/013,671; any finding or determination supporting or relating to those issues; and any other issues decided adversely to Petitioner in any orders, decisions, rulings, or opinions.

Pursuant to 37 C.F.R. § 90.3, this Notice of Appeal is timely, having been filed within 63 days after the date of the Decision Denying Petitioner's Request for Rehearing.

Copies of Petitioner's Notice of Appeal are being filed simultaneously today with the Director, the Patent Trial and Appeals Board, the Clerk of the United States Court of Appeals for the Federal Circuit, and the Patent Owner. A copy of Petitioner's Notice of Appeal is also being simultaneously filed with the Office of the General Counsel for the U.S. Patent and Trademark Office via U.S. First-Class Mail to the following address:

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

Respectfully Submitted,

Date: October 3, 2016

/Greg H. Gardella/  
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