

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

TC HEARTLAND LLC,

Petitioner,

v.

KRAFT FOODS GLOBAL BRANDS LLC,

Patent Owner.

---

Case IPR2015-01128

Patent 8,293,299

---

**PETITIONER'S NOTICE OF APPEAL TO THE  
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

NOTICE is hereby given that petitioner TC Heartland LLC appeals to the United States Court of Appeals for the Federal Circuit from the final written decision of the Patent and Trial Appeal Board (Paper 60) in IPR2015-01128.

Petitioner currently expects to raise: (1) whether the Board erred in concluding that “*Peterson* [*In re Peterson*, 315 F.3d 1325 (Fed. Cir. 2003)] does not apply in this case”; (2) whether the Board erred in relying on selected testimony of Dr. Marvin Rudolph, which testimony was not limited to explaining what a patent or printed publication discloses; (3) whether the Board erred in denying Petitioner any right to refute the testimony of Dr. Rudolph, including by refusing to consider paragraphs 11–31, 33–42, 55–59, 61, 65, and 67–71 of the Declaration of Joseph A. Ackilli; and (4) whether the Board erred in concluding that “claims 1–22 of U.S. Patent No. 8,293,299 B2 have not been shown by a preponderance of the evidence to be unpatentable” under 35 U.S.C. § 103.

Date: December 23, 2016

\_\_\_\_\_  
/Richard M. Koehl/

Richard M. Koehl  
Registration No. 54,231  
Hughes Hubbard & Reed LLP  
One Battery Park Plaza  
New York, New York 10004  
[Richard.Koehl@hugheshubbard.com](mailto:Richard.Koehl@hugheshubbard.com)  
(212) 837-6062  
Attorney for Petitioner

**CERTIFICATE OF FILING**

Pursuant to 37 C.F.R. §§ 90.2(a)(1) and 104.2(a), the undersigned hereby certifies that on December 23, 2016, in addition to being filed electronically with the Board through the Board's Patent Trial and Appeal Board End to End (PTAB E2E) System, the original foregoing Notice of Appeal was transmitted through U.S. Mail, Priority Mail Express, to the Director of the United States Patent and Trademark Office, at the following address:

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

**CERTIFICATE OF FILING**

Pursuant to 37 C.F.R. § 90.2(a)(2) and Federal Circuit Rule 15(a)(1), the undersigned hereby certifies that on December 23, 2016, a copy of the foregoing Notice of Appeal was filed via ECF, the requisite fee for the appeal was paid, and three (3) copies of the foregoing Notice of Appeal were served via U.S Mail on the Clerk of Court of the United States Court of Appeals for the Federal Circuit at the following address:

Clerk of Court  
United States Court of Appeals for the Federal Circuit  
717 Madison Place, NW, Room 401  
Washington, DC 20439

### **CERTIFICATE OF SERVICE**

Pursuant to 37 CFR § 42.6(e), the undersigned certifies that on December 23, 2016, a complete and entire copy of this Petitioner's Notice of Appeal to the United States Court of Appeals for the Federal Circuit was served by email on the attorneys of record for Patent Owner:

- Joshua A. Lorentz (joshua.lorentz@dinsmore.com)
- Richard J. McNeely (richard.mcneely@dinsmore.com)
- Jason M. Wejnert (jason.wejnert@dinsmore.com)
- Robert Zimmerman (robert.zimmerman@dinsmore.com)
- Nicole Sigurdson (nicole.sigurdson@dinsmore.com)
- John Luken (john.luken@dinsmore.com)

And by U.S. Mail, Priority Mail Express, on lead counsel for Patent Owner:

Joshua A. Lorentz, Esq.  
Dinsmore & Shohl LLP  
255 E. Fifth St., Suite 1900  
Cincinnati, OH 45202

Richard M. Koehl  
Richard M. Koehl  
Registration No. 54,231  
Hughes Hubbard & Reed LLP  
One Battery Park Plaza  
New York, New York 10004  
[Richard.Koehl@hugheshubbard.com](mailto:Richard.Koehl@hugheshubbard.com)  
(212) 837-6062  
Attorney for Petitioner