

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAPTIONCALL, LLC,
Petitioner

v.

ULTRATEC, INC.,
Patent Owner

Case IPR2015-01355
U.S. Patent 5,974,116

PATENT OWNER ULTRATEC INC.'S NOTICE OF APPEAL

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
Madison Building East, 10B20
600 Dulany Street
Alexandria, VA 22314-5793

Patent Owner Ultratec, Inc. hereby gives notice, pursuant to 37 C.F.R. § 90.2(a), that it is appealing to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered on December 14, 2016 (Paper 75) (“Final Written Decision”) and such other orders and rulings as set forth below.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Patent Owner further indicates that the issues on appeal include:

1. Whether the Patent Trial and Appeal Board (“PTAB”) erred in finding that the Petitioner had proved by a preponderance of the evidence that claims 1-3, 5, 9, 10, and 18 of U.S. Patent No. 5,974,116 (“’116 Patent”) are unpatentable as being obvious under 35 U.S.C. § 103 over the Liebermann reference (U.S. Patent No. 5,982,853) and the Aronow reference (U.S. Patent No. 5,521,960).
2. Whether the Patent Trial and Appeal Board (“PTAB”) erred in finding that the Petitioner had proved by a preponderance of the evidence that claims 4, 6, 11-13, and 15 are unpatentable as being obvious under 35 U.S.C. § 103 over the Liebermann reference, Aronow reference, and the

O'Toole reference (U.S. Patent No. 5,889,856).

3. Whether the Patent Trial and Appeal Board ("PTAB") erred in finding that the Petitioner had proved by a preponderance of the evidence that claims 7 and 8 are unpatentable as being obvious under 35 U.S.C. § 103 over the Liebermann reference, Aronow reference, and the McLaughlin reference (U.S. Patent No. 6,181,736 B1).
4. Whether the PTAB erred in construing the terms of claims 1-13, 15, and 18 of the '116 Patent, for example and without limitation, the following terms: "a transcription," "digital text communications representing a transcription," "a modem connected to receive digital text communications representing a transcription," "microprocessor," "the microprocessor connected to display the words of the text communications received through the modem on the display," "the microphone connected so that the voice picked up is transmitted to the relay," "a microprocessor controlling the operation of the components of the digital electronic personal interpreter device," "near-to-real time," and "so that the user receives a near-to-real time text version of the words spoken by the hearing person."
5. Whether the PTAB erred in denying Patent Owner's Motion to Exclude (Paper 63) the testimony of Petitioner's declarant, Mr. Occhiogrosso,

- including specifically Mr. Occhiogrosso's testimony as set forth in Exhibits 1008, 1043, 2105-08.
6. Whether the PTAB erred in finding the elements of claims 1-13, 15, and 18 of the '116 Patent present in the prior art both individually and in combination, for purposes of a finding of obviousness under 35 U.S.C. § 103.
 7. Whether the PTAB erred in determining that a person of ordinary skill in the art would have had a motivation or rationale for combining the cited references.
 8. Whether the PTAB exceeded its statutory and regulatory authority in making its factual findings supporting the ultimate conclusion of obviousness, including but not limited to whether the PTAB improperly conducted independent research and/or relied on arguments and evidence not addressed by either party, and/or improperly shifted the burden of proof on factual issues to Patent Owner.
 9. Whether the PTAB erred in denying Patent Owner's Motion to Dismiss (Paper No. 29 (sealed), Paper No. 32 (redacted)), including whether the proceedings should have been dismissed, because the Petitioner failed to identify all real parties in interest, including as required under 35 U.S.C. § 312(a)(2) and related regulations, and consequently whether the PTAB

lacked authority to proceed in rendering the Final Written Decision.

10. Whether the PTAB erred in denying Patent Owner's Motion for Additional Discovery concerning whether Petitioner properly identified the real parties in interest (Paper 16) and Patent Owner's Request for Rehearing on the PTAB's denial of Patent Owner's Motion for Additional Discovery (Paper 34).

11. Whether the Inter Partes Review proceedings in general, and this case in particular, are unconstitutional and in violation of principles of administrative agency authority, including to the extent the PTAB is empowered (including under 35 U.S.C. §§ 311 and 316) to invalidate, cancel, and/or render unpatentable an issued patent without affording any deference or presumption of validity to the issued claims.

Simultaneous with this submission, a copy of this Notice of Appeal is being filed with the Patent Trial and Appeal Board. In addition, three copies of this Notice of Appeal, along with the required docketing fees, are being filed with the Clerk's Office for the United States Court of Appeals for the Federal Circuit.

Respectfully submitted,

Date: February 14, 2017

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CERTIFICATE OF FILING AND SERVICE

Filed Electronically via PTAB E2E

The undersigned hereby certifies that the foregoing PATENT OWNER ULTRATEC, INC.'S NOTICE OF APPEAL was filed with the Patent Trial and Appeal Board on February 14, 2017, using the PTAB E2E System pursuant to 37 C.F.R. § 42.6(b)(1).

The undersigned further certifies that on February 14, 2017, a copy of the foregoing PATENT OWNER ULTRATEC, INC.'S NOTICE OF APPEAL and the Final Written Decision (along with the fee set forth in Federal Circuit Rule 52), were electronically filed with the Federal Circuit using the Court's CM/ECF System.

The undersigned further certifies that on February 14, 2017, a copy of the foregoing PATENT OWNER ULTRATEC, INC.'S NOTICE OF APPEAL and the Final Written Decision were filed by hand delivery with the Director of the United States Patent and Trademark Office, at the following address:

Michelle K. Lee
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The undersigned further certifies that on February 14, 2017, a copy of the foregoing PATENT OWNER ULTRATEC, INC.'S NOTICE OF APPEAL was served via UPS Next Day Air on lead counsel for Petitioner and via email on all counsel for Petitioner:

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