

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

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CAPTIONCALL, LLC  
Petitioner

v.

ULTRATEC, INC.,  
Patent Owner

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Case IPR2015-01889  
Patent 9,131,045

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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 April 11 2017 (Paper 119) (“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 1-74 of U.S. Patent No. 9,131,045 B2 (“‘045 Patent”) are unpatentable as being obvious under 35 U.S.C. § 103 over the Liebermann reference (U.S. Patent No. 5,982,853), the Engelke ‘405 reference (U.S. Patent No. 5,724,405), the Mukherji reference (U.S. Patent No. 7,117,152), and the Engelke ‘482 reference (U.S. Patent No. 5,909,482).
2. Whether the PTAB erred in construing the terms of claims 1-74 of the ‘045 Patent, including whether the PTAB erred in applying the “broadest reasonable interpretation” standard (*see e.g., Oil States Energy Svcs. v.*

*Greene's Energy Group.*, No. 16-712 (S. Ct. *petition for cert. filed* Nov. 23, 2016)), and specifically erred, for example and without limitation, in construing the following terms: “substantially in real time,” “the words spoken by the hearing person and received by the processor...are broadcast via the speaker substantially in real time as the words are received by the processor,” “broadcasting the words spoken by the hearing person to the assisted user via the speaker substantially in real time as the words spoken by the hearing person are received by the captioned device,” “a speaker for broadcasting voice messages received by the captioned device to the assisted user substantially in real time as voice messages from the hearing person are received at the captioned device,” “without disturbing,” “relay caption services can be provided to the assisted user without disturbing the telephone call on the first communication link between the assisted user and the hearing user,” “completely independent,” “the first communication link is completely independent of the second communication link,” and “restricting the signals on the first communication link to only the hearing user’s voice and the assisted user’s voice.”

3. Whether the PTAB erred in denying Patent Owner’s Motion to Exclude (Paper 82) the deposition transcripts of Ms. Brenda Battat (Exhibits 1096

and 1121), the testimony of Petitioner's declarant, Mr. Occhiogrosso as set forth in Exhibits 1009 and 1049, or the testimony of Petitioner's declarant, Mr. Malackowski as set forth in Exhibits 1126.

4. Whether the PTAB erred in granting Petitioner's Motion to Exclude (Paper 84) of Exhibits 2117, 2118, and 2164.
5. Whether the PTAB erred in finding the elements of claims 1-74 of the '045 Patent present in the prior art both individually and in combination, for purposes of a finding of obviousness under 35 U.S.C. § 103.
6. 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.
7. 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 shifted the burden of proof on factual issues to Patent Owner.
8. Whether the PTAB erred in denying Patent Owner's Motion to Dismiss (Paper No. 15 (sealed), Paper No. 18 (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.

9. Whether the PTAB erred in denying Patent Owner's Contingent Motion to Amend (Paper 43), including whether the PTAB erred in placing the burden of persuasion and/or production on Patent Owner regarding the patentability of the proposed substitute claims (*see e.g., In re Aqua Products, Inc.*, 833 F.3d 1335, 1335-36 (Fed. Cir. August 12, 2016) (granting Aqua Product's petition for rehearing *en banc* the same) and whether the amendment process implemented by the PTAB in this proceeding and in *inter partes* review proceedings generally conflicts with this Court's decision in *Cuozzo Speed Technologies, LLC v. Lee*, 136 S. Ct. 2131 (2016) (*see e.g., Oil States Energy Svcs. v. Greene's Energy Group.*, No. 16-712 (S. Ct. *petition for cert. filed* Nov. 23, 2016)).
10. Whether the PTAB erred in relying on new arguments and evidence improperly raised for the first time in Petitioner's Reply and which Patent Owner had moved to strike in accordance with 37 CFR § 42.23(b). (*See* Nov. 22, 2016 Hearing Tr. 17:24-18:12; 19:11-20; 22:12-23:9 (Paper 113 (Redacted))).
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, and to the extent the PTAB is further empowered to preclude patent owners from seeking to amend claims without first satisfying unduly restrictive and prohibitive threshold requirements via motion. (*see, e.g., Oil States Energy Svcs. v. Greene's Energy Group.*, No. 16-712 (S. Ct. *petition for cert. filed* Nov. 23, 2016)).

12. Whether 35 U.S.C. § 318(b) violates Article III of the United States Constitution, including because it empowers an executive agency tribunal to assert judicial power cancelling a private property right amongst private parties embroiled in a private federal dispute of a type known in the common law courts of 1789, rather than merely issue an advisory opinion as an adjunct to a trial court. *See e.g., Oil States Energy Svcs. v. Greene's Energy Group.*, No. 16-712 (S. Ct. *petition for cert. filed* Nov. 23, 2016).

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: May 9, 2017

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SORENSEN COMMUNICATIONS, INC.  
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Case IPR2015-01889  
Patent 9,131,045

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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 May 9, 2017, using the PTAB E2E System pursuant to 37 C.F.R. § 42.6(b)(1).

The undersigned further certifies that on May 9, 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 May 9, 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  
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

The undersigned further certifies that on May 9, 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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