Filed on behalf of Valencell, Inc.
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

VALENCELL, INC.,
Patent Owner.

Case IPR2017-00315
U.S. Patent No. 8,929,965[1]

PATENT OWNER VALENCELL, INC.'S NOTICE OF APPEAL

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

[1] Case IPR2017-01552 has been joined to this proceeding.

Pursuant to 35 U.S.C. § 141 and 37 C.F.R. § 90.2, notice is hereby given that Patent Owner Valencell, Inc. ("Valencell") appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision in IPR2017-00315 that the Patent Trial and Appeal Board ("PTAB") entered on May 31, 2018 (Paper No. 45), and from all underlying orders, decisions, rulings and opinions, including, without limitation the Decision on Institution of *Inter Partes* Review entered on June 2, 2017 (Paper No. 9).

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Valencell states that the issues on appeal include, but are not limited to:

(1) the PTAB erroneously based its obviousness determinations with respect to claims 1-12 on arguments that were raised by neither party, and to which Valencell lacked an opportunity to respond;

(2) the PTAB's erroneous determination that Petitioner Apple Inc. ("Apple") met its burden to prove that claims 1, 2, and 12 are unpatentable under 35 U.S.C. § 103(a) as obvious over Japanese Patent Appl. Publication No. 2005/040261 ("Numaga");

(3) the PTAB's erroneous determination that Apple met its burden to prove that claims 3 and 4 are unpatentable under 35 U.S.C. § 103(a) as obvious over Numaga and U.S. Patent Appl. Publication No. 2003/0065269 ("Vetter");

(4) the PTAB's erroneous determination that Apple met its burden to prove that claim 5 is allegedly unpatentable under 35 U.S.C. § 103(a) as obvious over Numaga and U.S. Patent No. 6,702,752 ("Dekker");

(5) the PTAB's erroneous determination that Apple met its burden to prove that claims 6 and 7 are allegedly unpatentable under 35 U.S.C. § 103(a) as obvious over Numaga and U.S. Patent Appl. Publication No. 2008/0081972 ("Debreczeny");

(6) the PTAB's erroneous determination that Apple met its burden to prove that claims 8 and 9 are allegedly unpatentable under 35 U.S.C. § 103(a) as obvious over Numaga and U.S. Patent No. 5,817,008 ("Rafert");

(7) the PTAB's erroneous determination that Apple met its burden to prove that claim 10 is allegedly unpatentable under 35 U.S.C. § 103(a) as obvious over Numaga and U.S. Patent Application Publication No. 2005/0212405 ("Negley");

(8) the PTAB's erroneous determination that Apple met its burden to prove that claim 11 is allegedly unpatentable under 35 U.S.C. § 103(a) as obvious over Numaga and International Patent Appl. Publication No. 2005/036212 ("Miao");

(9) the PTAB's erroneous determination that Apple met its burden to prove that claims 1 and 8-12 are unpatentable under 35 U.S.C. § 102 as

anticipated by U.S. Patent Appl. Publication No. 2005/0209516 ("Fraden"), including the PTAB's erroneous application of its claim constructions;

(10) the PTAB's erroneous determination that Apple met its burden to prove that claims 2-4 are allegedly unpatentable under 35 U.S.C. § 103(a) as obvious over Fraden and U.S. Patent Appl. Publication No. 2003/0233051 ("Verjus"), including the PTAB's erroneous application of its claim constructions;

(11) the PTAB's erroneous determination that Apple met its burden to prove that claim 5 is allegedly unpatentable under 35 U.S.C. § 103(a) as obvious over Fraden and Verjus and in further view of U.S. Patent Appl. Publication No. 2009/0105556 ("Fricke"), including the PTAB's erroneous application of its claim constructions;

(12) the PTAB's erroneous determination that Apple met its burden to prove that claims 6-7 are allegedly unpatentable under 35 U.S.C. § 103(a) as obvious over Fraden and Debreczeny, including the PTAB's erroneous application of its claim constructions;

(13) the PTAB's erroneous determination that claims 1-12 are unpatentable as obvious under 35 U.S.C. § 103(a) notwithstanding Valencell's

independent, objective evidence of non-obviousness, including evidence of unexpected results;

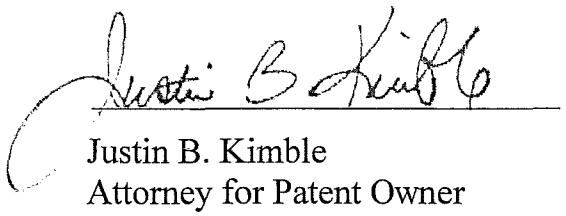
(14) the PTAB's denial of Valencell's contingent Conditional Motion to Amend (Paper No. 22), including, for example, the PTAB's erroneous determination that Valencell's proposed substitute claims are indefinite under 35 U.S.C. § 112, and the PTAB's erroneous determination that Valencell did not provide sufficient evidence to antedate U.S. Patent Appl. Publication No. 2013/0158372 ("Haisley");

(15) any finding or determination supporting or relating to those issues, as well as all other issues decided adversely to Valencell in any orders, decisions, rulings and opinions.

Simultaneous with this submission, three 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 Patent Trial and Appeal Board and served upon counsel of record for Apple.

Dated: August 2, 2018

Respectfully submitted,



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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 90.2(a)(1) and 104.2(b), the undersigned hereby certifies that on August 3, 2018, the original of the foregoing Notice of Appeal was filed with the Director of the United States Patent and Trademark Office by hand-delivery, at the following address:

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

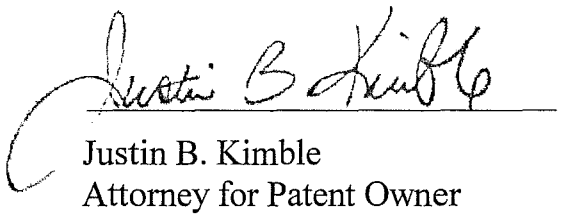
In addition, pursuant to 37 C.F.R. § 90.2(a)(1) and 37 C.F.R. § 42.6(b), the undersigned certifies that on August 3, 2018, a copy of the foregoing Notice of Appeal was filed electronically with the Board through the Board's End-to-End System.

In addition, pursuant to 37 C.F.R. § 90.2(a)(2) and Federal Circuit Rule 15(a)(1), the undersigned certifies that on August 3, 2018, the requisite fee for the appeal and three (3) true and correct copies of the foregoing Notice of Appeal were

filed with the Clerk of Court of the United States Court of Appeals for the Federal Circuit by hand-delivery, at the following address:

Daniel E. O'Toole
Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW, Room 401
Washington, DC 20439

In addition, the undersigned hereby certifies that this document was served via electronic mail on August 2, 2018, to Petitioner at mspecht-PTAB@skgf.com, holoubek-PTAB@skgf.com, bpickard@skgf.com, and PTAB@skgf.com, pursuant to Petitioner's consent in its Petition at page 67 and Updated Mandatory Notices and Motion to Withdraw and Substitute Counsel, and harper.batts@bakerbotts.com, jeremy.talor@bakerbotts.com, and dlfitbit-valencell@bakerbotts.com.



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