

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

XILINX, INC.,
Petitioner,

v.

SAINT REGIS MOHAWK TRIBE,
Patent Owner.

Case IPR2018-01395
Patent 9,153,311 B1

**PATENT OWNER SAINT REGIS MOHAWK TRIBE'S
NOTICE OF APPEAL**

Notice is hereby given, under 35 U.S.C. § 141, 28 U.S.C. § 1295(a)(4)(A) and 37 C.F.R. § 90.2, that Patent Owner St. Regis Mohawk Tribe (the “Tribe”) hereby appeals to The United States Court of Appeals for the Federal Circuit from the Patent Trial and Appeal Board’s (the “Board”) Order on the Conduct of the Proceeding Denying the Parties’ Joint Motion to Extend Patent Owner’s Preliminary Response Deadline entered on October 25, 2018 as Paper No. 11 in IPR2018-01395. This notice is timely filed within 63 days of the Board’s decisions. 37 C.F.R. § 90.3(a)(1).

The Board’s decisions in the Proceedings are immediately appealable under 28 U.S.C. § 1295(a)(4)(A) via the Collateral Order Doctrine, which applies to agency adjudications rejecting sovereign immunity claims. *See, e.g., Chehazeh v. Attorney Gen. of U.S.*, 666 F.3d 118, 136 (3d Cir. 2012) (collecting cases from nine Courts of Appeals that found the Collateral Order Doctrine applies to judicial review of agency decisions); *Burlington N. & Santa Fe Ry. Co. v. Vaughn*, 509 F.3d 1085, 1094 (9th Cir. 2007) (holding that denial of tribal immunity is an immediately appealable collateral order); *Osage Tribal Council ex rel. Osage Tribe of Indians v. U.S. Dep’t of Labor*, 187 F.3d 1174, 1179 (10th Cir. 1999) (holding that the denial of tribal immunity in an agency proceeding is an immediately appealable collateral order); *see In re Board of Regents of Univ. of Texas Sys.*, 435 F. App’x 945, 947-48 (Fed. Cir. 2011) (holding that denial of Eleventh

Amendment sovereign immunity allows for immediate appeal under Collateral Order Doctrine); *Baum Research & Dev. Co. v. Univ. of Massachusetts at Lowell*, 503 F.3d 1367, 1369 (Fed. Cir. 2007) (same).

In accordance with 35 U.S.C. § 142 and 37 C.F.R. §§ 90.2 and 90.3, copies of this Notice of Appeal are being timely filed simultaneously with the Director of the United States Patent and Trademark Office and the Patent Trial and Appeal Board. In addition, a copy of this Notice of Appeal, along with the required docketing fees, are being filed electronically with the Clerk's Office of the United States Court of Appeals for the Federal Circuit via CM/ECF. A copy of this Notice of Appeal is also being served on Petitioners.

Date: October 26, 2018

Respectfully submitted,

/Alfonso Chan /

Alfonso Chan

Reg. No. 45,964

achan@shorechan.com

Christopher Evans*

cevans@shorechan.com

SHORE CHAN DEPUMPO LLP

901 Main Street, Suite 3300

Dallas, TX 75202

Tel: (214) 593-9110

Fax: (214) 593-9111

*Attorneys for Patent Owner
Saint Regis Mohawk Tribe*

CERTIFICATE OF FILING

I certify that on October 26, 2018, in addition to being filed electronically through the Patent Trial and Appeal Board's PTABE2E System, the original version of the foregoing Notice of Appeal was mailed via Certified Mail, Return Receipt Requested (No. 9414 7266 9904 2080 2702 48) to the Director of the United States Patent and Trademark Office, at the following address:

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

CERTIFICATE OF FILING

I hereby certify that a true and correct copy of the foregoing Notice of Appeal to the United States Court of Appeals for the Federal Circuit by the Saint Regis Mohawk Tribe was filed with the Clerk's Office of the United States Court of Appeals for the Federal Circuit through the federal courts' Case Management and Electronic Case Files (CM/ECF) system on October 26, 2018, along with the requisite fee. One copy was sent to the Clerk by Certified Mail, Return Receipt Requested (No. 9414 7266 9904 2080 2701 17) at the following address:

United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W., Room 401
Washington, DC 20439

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e)(4) and 42.205(b), the undersigned certifies that on October 26, 2018, a complete copy of *Patent Owner Saint Regis Mohawk Tribe's Notice of Appeal* was filed electronically through the Patent Trial and Appeal Board's PTABE2E System and provided, via electronic service, to the Petitioner by serving the correspondence address of record as follows:

David L. McCombs
David W. O'Brien
Henry L. Welch
HAYNES AND BOONES, LLP
2323 Victory Ave Suite 300
Dallas, TX 75219
David.mccombs.ipr@haynesboone.com
David.obrien.ipr@haynesboone.com
Ipr.henry.welch@hanyesboone.com
Attorneys for Xilinx, Inc.

Dated: October 26, 2018

/Alfonso Chan/
Alfonso Chan
Reg. No. 45,964
Phone: 214-593-9118