

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MOEN, INC.,  
Petitioner

v.

KOHLER CO.,  
Patent Owner

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Case IPR2018-01053  
Patent 9,677,256

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**PETITIONER'S NOTICE OF APPEAL**

Pursuant to 35 U.S.C. § 142 and 37 C.F.R. § 90.2(a), Petitioner, Moen, Inc., hereby appeals to the United States Court of Appeals for the Federal Circuit from the Patent Trial and Appeal Board's ("Board") Final Written Decision entered on August 12, 2019 (Paper 36), and from all other underlying orders, decisions, rulings and opinions that are adverse to Petitioner in the above-captioned *inter partes* review of U.S. Patent No. 9,677,256 ("the '256 Patent").

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

(1) the Board's errors in (a) overlooking the preponderance of evidence that claims 9-16 of the '256 Patent would have been obvious to a person having ordinary skill in the art in view of the combination of U.S. Patent Publication No. 2009/0255588 by Mark S. Bors et al., entitled "Adjustable Locking Spout Shank" ("Bors") and Chinese Utility Model Patent Publication No. CN 201248644Y, entitled "A Novel Drilling-free Shower System" ("Lu"); and (b) determining that Petitioner did not establish a motivation to combine those references to arrive at the claimed invention;

(2) the Board's finding that there was no motivation to combine the adjustable locking spout shank disclosed in the Bors reference with the overhead and hand shower system disclosed in the Lu reference, particularly given

significant contrary evidence in the record and the patent owner's admissions at the hearing that support the Petitioner's position;

(3) the Board's finding that there was no basis for connecting to back-of-wall hardware an adjustable shank as disclosed in the Bors reference and then connecting the other end of that shank to an overhead and hand shower system disclosed in the Lu reference, particularly in view of the contrary positions taken by all parties to the proceeding (the patent owner and the Petitioner) and the contrary disclosure of the references in the record;

(4) the flaws in the Board's obviousness analysis;

(5) the sufficiency of the Board's explanation and support for its findings, rulings, and conclusions; and

(6) any findings or determinations supporting or related to the aforementioned issues or underlying evidence, as well as other issues decided adversely to Petitioner in any orders, decisions, rulings, or opinions.

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

Respectfully submitted,

BAKER BOTTS L.L.P.

September 5, 2019

Date

/s/ Michael Hawes

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**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. §§ 42.6, the undersigned certifies that on September 5, 2019 , a copy of the foregoing was served via email on the following counsel of record for the Patent Owner:

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Date: September 5, 2019

Respectfully Submitted,

/s/ Michael Hawes

Michael Hawes

(Reg. No. 38,487)

Attorney for Petitioner

I hereby certify that, in addition to being filed electronically through the Board's E2E System, the original version of the foregoing Notice of Appeal, was filed by hand on September 5, 2019, with 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 the General Counsel  
Madison Building East, 1 OB20  
600 Dulany Street  
Alexandria, VA 22314-5793

I hereby certify that on September 5, 2019, a true and correct copy of the foregoing Notice of Appeal, along with a copy of the Institution Decision and Final Written Decision, was filed electronically with the Clerk's Office of the United States Court of Appeals for the Federal Circuit, at the following address:

United States Court of Appeals for the Federal Circuit  
717 Madison Place, N.W., Suite 401  
Washington, DC 20005

/s/ Michael Hawes  
Michael Hawes  
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Attorney for Petitioner