UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEX RECREATION CORPORATION and
BESTWAY (USA) INC.,
Petitioners

v.

TEAM WORLDWIDE CORPORATION,
Patent Owner

Case: IPR2018-00870
Patent 7,246,394

PATENT OWNER'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

Notice is hereby given, pursuant to 35 U.S.C. §§ 141 and 142 and 37 C.F.R. §§ 90.2 and 90.3, that Patent Owner Team Worldwide Corporation. ("TWW") hereby appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision of the Patent Trial and Appeal Board entered on September 12, 2019 (Paper 135, which is sealed and subject to protective order and which is referenced by the Notice of Disposition of Sealed Final Written Decision Determining All Challenged Claims Unpatentable entered on September 25, 2019 (Paper 141)), and from all underlying orders, decisions, rulings and opinions that are adverse to Patent Owner, including, without limitation, those within the Decision on Institution of *Inter Partes* Review, (Paper 14) entered on September 14, 2018.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Patent Owner TWW further indicates that the issues on appeal include, but are not limited to, claim construction and determination of unpatentability of claims 1-12, and 16-23 of U.S. Patent No. 7,246,394.

Furthermore, Patent Owner TWW further submits that the Final Written Decision must be vacated and remanded pursuant to the Federal Circuit opinion in *Arthrex, Inc. v. Smith & Nephew, Inc*., No. 2018-2140, 2019 U.S. App. LEXIS 32613 (Fed. Cir. Oct. 31, 2019), because the appointment by the Secretary of Commerce of the Board's Administrative Patent Judges who issued the Final Written Decision, as currently set forth in Title 35, violates the Appointments Clause, U.S. Const., art. II, § 2, cl. 2.

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

No fees are believed to be due to the United States Patent and Trademark Office in connection with this filing, but authorization is hereby given for any required fees to be charged to Schwegman, Lundberg & Woessner, P.A. Deposit Account No. 19-0743.

Respectfully submitted,

Date: November 12, 2019

/s/ Timothy E. Bianchi

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/s/ Ronald Wielkopolski

Ronald Wielkopolski
USPTO Reg. No. 69,359

RuyakCherian, LLP

CERTIFICATE OF SERVICE IN THE PTAB TRIAL

The undersigned certifies service of the Patent Owner's Notice of Appeal pursuant to 37 C.F.R. § 42.6(e) on counsel of record for the Petitioner by email as authorized by the Petitioner at the following e-mail addresses:

Trevor.Carter@faegrebd.com
Andrew.McCoy.PTAB@faegrebd.com
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Respectfully submitted,

Date: November 12, 2019

By */s/ Timothy E. Bianchi*

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CERTIFICATE OF FILING WITH THE FEDERAL CIRCUIT

I hereby certify that the requisite number of true and correct copies of the foregoing PATENT OWNER'S NOTICE OF APPEAL was filed electronically through CM/ECF with the United States Court of Appeals for the Federal Circuit on November 12, 2019 at the following address:

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

Date: November 12, 2019

By *<u>/s/ Timothy E. Bianchi</u>*

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CERTIFICATE OF SERVICE TO THE USPTO OFFICE OF THE GENERAL COUNSEL

I hereby certify that, in addition to being filed electronically through the Board's E2E System and the Court's CM/ECF System, the original version of the foregoing Patent Owner's Notice of Appeal was filed by Priority Mail Express on November 12, 2019, addressed to:

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

Date: November 12, 2019

By */s/Timothy E. Bianchi*
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