

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MMODAL LLC,
Petitioner,

v.

NUANCE COMMUNICATIONS, INC.,
Patent Owner

IPR2018-01431
U.S. Patent No. 8,117,034

**PATENT OWNER NUANCE COMMUNICATION'S NOTICE OF APPEAL
UNDER 37 C.F.R. § 90.2(a)**

Pursuant to 35 U.S.C. §§ 141-144, 319 and 37 C.F.R. §§ 90.2(a) and 90.3, notice is hereby given that Patent Owner Nuance Communications, Inc. (“Nuance”) appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision (Paper No. 57), in IPR2018- 01431, entered on February 19, 2020, by the United States Patent and Trademark Office, Patent Trial and Appeal Board (the “Board”), and from all orders, decisions, rulings, and opinions antecedent to the Final Written Decision. A copy of the Final Written Decision is attached hereto as Exhibit A.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Nuance further indicates that the issues on appeal may include, but are not limited to, the Board’s determination that claims 8 and 13 of U.S. Patent Number 8,117,034 have been shown to be unpatentable under 35 U.S.C. § 103 in view of the grounds of unpatentability identified in the Board’s Final Written Decision; challenges to any findings supporting the determination; the Board’s claim constructions and any other interpretation of claim language; the Board’s failure to properly consider evidence of record; the Board’s legal errors in undertaking the obviousness analysis; the Board’s failure to consider Patent Owner’s arguments in support of patentability; the Board’s findings that conflict with the evidence of record and are not supported by substantial evidence; whether the determinations by the members of the Board in this proceeding, including the determination that claims 8 and 13 of the 034

Patent are unpatentable, are unconstitutional in view of, among other things, the principles in *Arthrex, Inc. v. Smith & Newpew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019), because the members of the Board acted as Principal Officers under the Appointments Clause of the United States Constitution, despite having been appointed by the Secretary of the Department of Commerce, in consultation with the Director of the USPTO (*see* 35 U.S.C. § 6(a)), rather than nominated by the President with the advice and consent of the Senate; and all other issues decided adversely to Nuance.

Simultaneous with this submission, a copy of this Notice of Appeal is being filed through the Patent Trial and Appeal Board End to End (“PTAB E2E”) System. In addition, a copy of the Notice of Appeal, along with the required docketing fee, is being filed with the Clerk of Court for the United States Court of Appeals for the Federal Circuit.

Dated: February 28, 2020

Respectfully submitted,

/Brian E. Ferguson/

Brian E. Ferguson (Reg. No. 36,801)
Stephen Bosco (Admitted Pro Hac Vice)
Weil, Gotshal & Manges LLP
2001 M Street NW, Suite 600
Washington DC 20036
Brian.Ferguson@weil.com
Stephen.Bosco@weil.com

Robert Magee (Reg. No. 70,227)
Amanda Branch (Admitted Pro Hac Vice)
Weil, Gotshal & Manges LLP
201 Redwood Shores Parkway
Redwood Shores, CA 94065
Robert.Magee@weil.com
Amanda.Branch@weil.com

Anish R. Desai (Reg. No. 73,760)
Sudip Kundu (Reg. No. 74,193)
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Anish.Desai@weil.com
Sudip.Kundu@weil.com

Nuance.MModal.IPR@weil.com

*Attorneys for Patent Owner
Nuance Communications, Inc.*

CERTIFICATE OF SERVICE

The undersigned certifies that, in addition to being filed electronically through the PTAB E2E System, the original version of Nuance's Notice of Appeal has been sent via priority mail on February 28, 2020, 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 the General Counsel
United States Patent and Trademark Office
Madison Building East, Room 10B20
600 Dulany Street
Alexandria, VA 22314-5793

The undersigned also certifies that a true and correct copy of Nuance's Notice of Appeal and the required filing fee were filed electronically via CM/ECF on February 28, 2020, with the Clerk of Court for the United States Court of Appeals for the Federal Circuit.

The undersigned also certifies that a true and correct copy of Nuance's Notice of Appeal was served on February 28, 2020, via electronic mail, upon the following counsel of record for Petitioner:

Jonathan M. Strang
Inge A. Osman
Kevin C. Wheeler
Latham & Watkins LLP
555 Eleventh Street, NW, Ste. 1000
Washington, D.C. 20004-1304
jonathan.strang@lw.com
inge.osman@lw.com
kevin.wheeler@lw.com

David K. Callahan
Latham & Watkins LLP
330 North Wabash Avenue, Ste. 2800
Chicago, IL 60611
david.callahan@lw.com

Dated: February 28, 2020

/Bruce Davis/

Bruce Davis
Senior Paralegal
Weil, Gotshal & Manges LLP
201 M Street NW, Suite 600
Washington, DC 20036
Bruce.Davis@weil.com