

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC., and AUGUST HOME, INC.,
Petitioner,

v.

MARK W. KILBOURNE,
Patent Owner.

Case IPR2019-00233

Patent 7,373,795

PATENT OWNER'S NOTICE OF APPEAL

Pursuant to 37 C.F.R. § 90.2(a), notice is hereby given that Patent Owner Mark W. Kilbourne (“Mr. Kilbourne”) appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision of the Patent Trial and Appeal Board (“PTAB”) entered on March 25, 2020 (Paper 40) in Case No. IPR2019-00233, and from all underlying orders, decisions, rulings, and opinions.

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

- I. The PTAB’s claim constructions.
- II. The PTAB’s determination that Petitioners Apple Inc. (“Apple”) and August Home, Inc. (“August”) have shown, by a preponderance of the evidence, that claims 11-15 and 17 of the ‘795 patent are determined to be unpatentable under 35 U.S.C. § 103 in light of U.S. Patent No. 6,282,931, issued Sept. 4, 2001 (“Padiak”) in view of U.S. Patent No. 6,318,218, issued Nov. 20, 2001 (“Anderson”).)
- III. The PTAB’s determination that Petitioners Apple and August have shown, by a preponderance of the evidence, that claim 16 of the ‘795 patent is determined to be unpatentable under 35 U.S.C. § 103 in light of Padiak in view of Anderson and further in view of the International Code Council, Inc., *Int’l Building Code* (2000) (“2000 International Building Code”).)

- IV. The PTAB's retroactive application of *inter partes* review to the '795 Patent, which issued prior to the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (effective September 16, 2012).
- V. Any findings or determinations relating to the foregoing issues, as well as all other issues decided adversely to Mr. Kilbourne in any orders, decisions, rulings, or opinions.

Pursuant to 37 C.F.R. § 90.2(a), this Notice of Appeal is being filed with the Director of the United States Patent and Trademark Office as provided in 37 C.F.R. § 104.2; with the Patent Trial and Appeal Board as provided in 37 C.F.R. § 42.6(b); and with the Clerk's Office for the United States Court of Appeals for the Federal Circuit as provided in Fed. Cir. R. 15(a)(1) and 25(b)(1), along with payment of the required fee.

Date: April 2, 2020

Respectfully submitted,
/ Robert J. McAughan, Jr. /
Robert J. McAughan, Jr., Reg. #36,599
Lead Counsel for Patent Owner

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 2, 2020 I caused a true and correct copy of the foregoing Patent Owner's Notice of Appeal to be served via email, as previously agreed by the parties, on the following Counsel for Petitioner:

Joseph A. Hynds at jhynds@rfem.com, Reg. No. 34,627
Jennifer P. Nock at jnock@rfem.com, Reg. No. 76,478
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The undersigned hereby also certifies that the foregoing Patent Owner's Notice of Appeal was filed and served electronically through the Board's E2E System, as per 37 C.F.R. § 42.6(b)(1) with a paper copy sent to the Office of the General Counsel, United States Patent and Trademark Office via UPS overnight mail per 37 C.F.R. §104.2(b) to:

Office of the General Counsel
United States Patent and Trademark Office
Madison Building East, Room 10B20
600 Dulany Street
Alexandria, VA 22314

The undersigned hereby also certifies that the foregoing document was filed on April 2, 2020 with the Clerk's Office of the United States Court of Appeals for the Federal Circuit through the court's Case Management and Electronic Case Files (CM/ECF) system along with the requisite fee. As per Administrative Order

20-01 of March 20, 2020, of the Court of Appeals for the Federal Circuit, no paper copies of this document were served to the Court.

Date: April 2, 2020

Respectfully submitted,
/ Robert J. McAughan, Jr. /
Robert J. McAughan, Jr., Reg. #36,599
Lead Counsel for Patent Owner