

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZOLL LIFECOR CORPORATION
Appellant,

v.

MICHELLE K. LEE, Deputy Director, United States
Patent and Trademark Office,

and

KONINKLIJKE PHILIPS ELECTRONICS N.V.
Patent Owner-Appellee

Case IPR2013-00607
Patent 5,749,904

**NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT BY ZOLL LIFECOR CORPORATION**

Notice is hereby given that Petitioner, ZOLL LIFECOR CORPORATION (“ZOLL LIFECOR”) hereby appeals to the United States Court of Appeals for the Federal Circuit for the instant matter, Case IPR2013-00607, ZOLL LIFECOR CORPORATION v. PHILIPS ELECTRONICS NORTH AMERICA CORPORATION.

ZOLL LIFECOR appeals the decision denying Institution of Inter Partes Review, paper 13, entered March 20, 2014, by the Patent Trials and Appeals Board. The appellee is the United States Patent and Trademark Office as represented by Deputy Director, Michelle K. Lee. Jurisdiction for the appeal is founded at least upon two wholly separate bases:

- 28 U.S.C. § 1295(a)(4)(A) (granting the Federal Circuit jurisdiction “with respect to a patent application, derivation proceeding, reexamination, post-grant review, or *inter partes* review under title 35), alone or in combination with 35 U.S.C. §§ 311 (establishing *inter partes* review under title 35), and 312 (governing requirements for naming real party in interest).
- 28 U.S.C. § 1295(a)(4)(A) and 35 U.S.C. § 314 (governing authorization of review based on “a reasonable likelihood that the petitioner would prevail with respect to at least one of the claims challenged in the petition”). ZOLL LIFECOR recognizes that this

latter basis for jurisdiction is presently foreclosed by the panel decision in *St. Jude Med., Cardiology Div., Inc. v. Volcano Corp.*, --- F.3d ---, 2014 WL 1623676 (Fed. Cir. Apr. 24, 2014), and has identified the basis for jurisdiction in order to preserve the issue for later review.

ZOLL LIFECOR also appeals all other opinions, orders, findings, or rulings prior to, during, or after the final decision, including but not limited to the denial of the Institution of *Inter Partes Review*.

Respectfully submitted,

Date: May 21, 2014

/John C. Phillips/
John C. Phillips
Reg. No. 35,322

Fish & Richardson P.C.
Telephone: (858) 678-4304
Facsimile: (877) 769-7945

CERTIFICATE OF SERVICE

I, John C. Phillips, certify that the documents referenced below:
NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT BY ZOLL LIFECOR CORPORATION
was caused to be served on May 21, 2014, upon counsel of record in this
matter either by causing them to be delivered by electronic mail;
electronically filing the documents with the Patent Trials and Appeals
Board's PRPS system; or by service by US First Class Mail and Express
Mail, as follows:

United States Patent and Trademark Office (by Express Mail)
Office of the General Counsel,
10B20, Madison Building East, 600 Dulany Street
Alexandria, Virginia 22314-5793

United States Court of Appeals for the Federal Circuit (by US mail)
717 Madison Place NW, Washington, D.C. 20005

J. Michael Jakes (by email) mike.jakes@finnegan.com,
PTABdocket@finnegan.com, Philips-Zoll@finnegan.com
Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.
901 New York Avenue, NW, Washington, DC 20001-4413

Denise W. DeFranco (by email) denise.defranco@finnegan.com
Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.
Two Seaport Lane, 6th Floor, Boston, MA 02210-2001

/John C. Phillips/
John C. Phillips