

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

J KYLE BASS and ERICH SPANGENBERG,

Petitioners

v.

FRESENIUS KABI USA, LLC.,

Patent Owner.

Case No. IPR2016-00254

Patent No. 8,476,010 B2

**PATENT OWNER'S NOTICE OF APPEAL TO THE
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

Notice is hereby given, pursuant to 35 U.S.C. §§ 141(c), 142, 319; 37 C.F.R. §§ 90.2(a), 90.3(a), and Federal Circuit Rule 15(a)(1), that Patent Owner Fresenius Kabi USA, LLC (“Patent Owner”) appeals to the United States Court of Appeals for the Federal Circuit from the Patent Trial and Appeal Board’s Final Written Decision entered on June 7, 2017 (Paper 47), and from all underlying orders, decisions, rulings, and opinions, in the above-captioned inter partes review of U.S. Patent No. 8,476,010 (“the ’010 patent”). This notice is timely filed within 63 days of the Final Written Decision. 37 C.F.R. § 90.3(a)(1).

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Patent Owner indicates that the issues on appeal include the following: (1) whether the Board erred in holding that claims 1, 13-15, 17, 18, 20, and 24-28 are unpatentable; (2) whether the Board’s decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (3) whether the Board’s subsidiary findings were unsupported by substantial evidence and/or rested on legal error; (4) whether the Board exceeded its administrative power under the Constitution by extinguishing private property rights through a non-Article III forum without a jury under *Oil States Energy Servs., LLC v. Greene’s Energy Grp., LLC.*, 2017 WL 2507340 (U.S. June 12, 2017) when it found that claims 1, 13-15, 17, 18, 20, and 24-28 were unpatentable; and (5) all other issues decided adversely to Patent Owner, including any orders, decisions, rulings and/or opinions.

Pursuant to 35 U.S.C. § 142 and 37 C.F.R. § 90.2(a), simultaneously with this

submission, Patent Owner is filing a true and correct copy of this Notice of Appeal with the Director of the U.S. Patent and Trademark Office and filing one copy of this Notice of Appeal, along with the required docketing fees, with the Clerk of the U.S. Court of Appeals for the Federal Circuit.

Dated: August 8, 2017

Respectfully submitted,

/Cynthia Lambert Hardman/

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CERTIFICATION OF SERVICE AND FILING

The undersigned hereby certifies that **PATENT OWNER'S NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT** was served electronically via e-mail on August 8, 2017 on the following:

Dr. Gregory J. Gonsalves

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Christopher Casieri

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The undersigned hereby certifies that "PATENT OWNER'S NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT" was filed with the Director of the United States Patent and Trademark Office via hand delivery at the address below, was electronically filed with the Patent Trial and Appeal Board via PTAB E2E, and was filed with the Clerk of the United States Court of Appeals for the Federal Circuit electronically via CM/ECF and via first class mail, postage prepaid at the address below on this 8th day of August, 2017.

Via hand delivery:

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

Via first class mail:

Clerk of Court

United States Court of Appeals for the Federal Circuit

717 Madison Place, N.W.

Washington, DC 20439

Dated: August 8, 2017

/Cynthia Lambert Hardman/

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