

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SAMSUNG ELECTRONICS CO., LTD.,  
Petitioner

v.

UUSI, LLC d/b/a NARTRON,  
Patent Owner.

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Case IPR2016-00908  
Patent No. 5,796,183

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**PATENT OWNER'S AMENDED NOTICE OF APPEAL  
PURSUANT TO 37 C.F.R. § 90.2(a)**

Pursuant to 35 U.S.C. §§ 141(c) and 319, and 37 C.F.R. § 90.2(a), notice is hereby given that Patent Owner UUSI, LLC d/b/a Nartron (“Nartron”) appeals to the United States Court of Appeals for the Federal Circuit in Case No. IPR2016-00908 from: (i) the Final Written Decision entered on September 17, 2020 (Paper 50) (“FWD”) by the Patent Trial and Appeal Board (“the Board”); *and* (ii) the Order denying Nartron’s Petition for Director Rehearing entered on October 15, 2021 (Paper 54); *and* (iii) all underlying orders, decisions, rulings, and opinions related thereto and included therein, to the extent that such were decided against Nartron.

#### **I. THE AMENDED NOTICE OF APPEAL IS TIMELY**

This Amended Notice of Appeal is timely under 35 U.S.C. § 142, 37 C.F.R. § 90.3, and Rule 15(a)(1) of the Federal Rules of Appellate Procedure. On October 16, 2020, Nartron filed a first Notice of Appeal from the FWD with the Director, the Board, and the Federal Circuit. That appeal was docketed as Federal Circuit Case No. 21-1060. On March 17, 2021, Nartron filed its Opening Brief at the Federal Circuit. Nartron’s Opening Brief argued, *inter alia*, that the parts of the FWD that held patent claims unpatentable were void, because the administrative patent judges (APJs) who decided the case were unconstitutional principal officers under *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Subsequently, on June 21, 2021, the Supreme Court decided *United States v. Arthrex, Inc.*, 141 S. Ct. 1970 (2021), which held that APJs are unconstitutional principal officers, and ordered the

USPTO to institute a Director rehearing process to remedy the violation.

On June 23, 2021, the Federal Circuit *sua sponte* issued an order directing Nartron to file a brief indicating how the appeal should proceed in light of *Arthrex*. On July 7, 2021, Nartron filed that brief, stating that it believed the case should be remanded to the USPTO for Director Rehearing. On August 3, 2021, the Federal Circuit remanded the case to the USPTO to allow Nartron to file a Request for Director Rehearing. The remand order directed Nartron to file its Request for Director Rehearing within 30 days of the remand order. Nartron timely filed its Request for Director Rehearing (Paper 53) with the USPTO on September 2, 2021. In the Request, Nartron argued that the Director should rehear the case, because the panel never addressed whether there was a reasonable expectation of success in combining the two primary references, and Petitioner failed to prove a reasonable expectation of success in combining those references with a third reference.

On October 15, 2021, the USPTO issued an Order (Paper 54) denying Nartron's Request for Director Rehearing. The Order contains no analysis, and is not signed by the Director (or anyone else). On October 25, 2021, Nartron filed a Notice with the Federal Circuit, indicating that Nartron's Request for Director Review had been denied. On November 12, 2021, the Federal Circuit issued an Order directing Nartron to state, within seven days, whether it intended to file a new or amended notice of appeal, to challenge the denial of Director review. On

November 15, 2021, Nartron advised the Federal Circuit that it intended to file an amended notice of appeal, to challenge the denial of Director review.

Under 37 C.F.R. § 90.3(b)(1), “[a] timely request for rehearing will reset the time for appeal or civil action to no later than sixty-three (63) days after action on the request.” Nartron’s Request for Director Rehearing was timely, because it was filed within the 30 day period set by the Federal Circuit in its remand order. Accordingly, Nartron’s deadline to file this Amended Notice of Appeal is sixty-three days from the October 15, 2021 Order (Paper 54) denying Nartron’s request for Director review: that is, December 17, 2021. This Amended Notice of Appeal is being filed by that deadline. Therefore, it is timely.

## II. ISSUES TO BE RAISED ON APPEAL

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), the issues that Nartron may raise in this appeal include, but are not necessarily limited to:

### A. On Appeal from the Final Written Decision:

(1) The Board’s erroneous determination that a person of ordinary skill in the art (“POSITA”) would have had a motivation to combine U.S. Pat. No. 5,087,825 to Ingraham (“Ingraham I”) with U.S. Pat. No. 5,594,222 to Caldwell (“Caldwell”) (*see, e.g.*, FWD at 32);

(2) The Board’s failure to explain whether and why a POSITA would have had a reasonable expectation of success in combining Ingraham I with

Caldwell, where Nartron specifically challenged the asserted Ingraham I/Caldwell combination on that ground (*see* Paper 21 at 27-30);

(3) The Board’s unexplained erroneous apparent determination that a POSITA would have had a reasonable expectation of success in combining Ingraham I with Caldwell;

(4) The Board’s erroneous determination that a POSITA would have had a reasonable expectation of success in combining U.S. Pat. No. 5,565,658 to Gerpheide (“Gerpheide”) with Ingraham I and Caldwell (FWD at 26-27);

(5) The Board’s erroneous determination that Petitioner’s asserted combination of Ingraham I, Caldwell and Gerpheide meets all the elements of claims 40, 41, 43, 45, 61, 64–67, 69, 83, 85, 86, 88, 90, 91, 94, 96, 97, 99, 101, and 102 (FWD at 28-53);

(6) The Board’s erroneous determination that claims 40, 41, 43, 45, 61, 64–67, 69, 83, 85, 86, 88, 90, 91, 94, 96, 97, 99, 101, and 102 are obvious over Ingraham I, Caldwell and Gerpheide (FWD at 28-53);

(7) The Board’s erroneous determinations that a POSITA would have had: (i) a motivation to combine Gerpheide, Ingraham I and Caldwell with U.S. Pat. No. 5,341,036 to Wheeler (“Wheeler”); and (ii) a reasonable expectation of success in making such a combination (FWD at 53-55);

(8) The Board’s erroneous ruling that claims 47, 48, 62, 63, and 84 are

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