

Filed on behalf of Valencell, Inc.  
By: Justin B. Kimble (justin@nbafirm.com)  
Nelson Bumgardner Albritton PC  
3131 West 7th St., Ste. 300  
Fort Worth, TX 76107  
Tel: 817.377.9111  
Fax: 817.377.3485

UNITED STATES PATENT AND TRADEMARK OFFICE  

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

FITBIT, INC.,<sup>1</sup>  
Petitioner,

v.

VALENCELL, INC.,  
Patent Owner.

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Case IPR2017-00319<sup>2</sup>  
U.S. Patent No. 8,923,941  

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**PATENT OWNER'S NOTICE OF APPEAL**

Mail Stop PATENT BOARD  
Patent Trial and Appeal Board  
U.S. Patent & Trademark Office  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

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<sup>1</sup> Petitioner Apple Inc. ("Apple") is no longer a party in this proceeding.

<sup>2</sup> Case IPR2017-01555 has been joined with this proceeding.

Pursuant to 37 C.F.R. § 90.2 and 35 U.S.C. § 142, notice is hereby given that Patent Owner Valencell, Inc. (“Valencell”) appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision on Remand Determining All Challenged Claims Unpatentable entered on April 5, 2021 (Paper 73) and from all underlying and related findings, orders, decisions, rulings, and opinions.

For the limited purpose of providing the Director with the information requested in 37 C.F.R. § 90.2(a)(3)(ii), Valencell further indicates that the issues on appeal may include, but are not limited to:

(1) the Board’s determination that Petitioner demonstrated by a preponderance of the evidence that claim 3 of the ’941 patent is unpatentable as obvious under 35 U.S.C. § 103(a) over Luo in view of Craw;

(2) the Board’s determination that Petitioner demonstrated by a preponderance of the evidence that claims 4–5 of the ’941 patent are unpatentable as obvious under 35 U.S.C. § 103(a) over Luo in view of Craw and Wolf;

(3) whether, for the purposes of the Constitution’s appointments clause, administrative patent judges of the U.S. Patent and Trademark Office are principal officers who must be appointed by the president with the Senate’s advice and consent, or “inferior Officers” whose appointment Congress has permissibly vested in a department head; and

(4) whether, if administrative patent judges are principal officers, the Federal Circuit in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019), properly cured any appointments clause defect in the current statutory scheme prospectively by severing the application of 5 U.S.C. § 7513(a) to those judges.

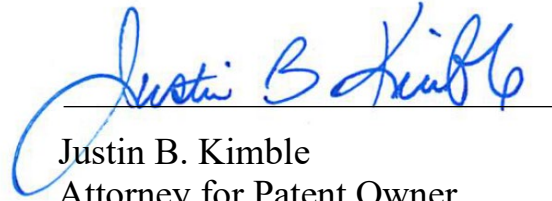
Valencell further reserves the right to challenge any finding or determination supporting or relating to the issues listed above, and to challenge any other issues decided adversely to Valencell in the Board's Final Written Decision on Remand Determining All Challenged Claims Unpatentable or in any other order, decision, ruling or opinion underlying that decision.

Simultaneous with this submission, this Notice of Appeal are being filed with the Clerk of the United States Court of Appeals for the Federal Circuit, together with the requisite fee in the amount of \$500. In addition, a copy of this Notice of Appeal is being filed with the Patent Trial and Appeal Board and served upon counsel of record for Petitioner.

Case IPR2017-00319  
U.S. Pat. No. 8,923,941

Dated: June 7, 2021

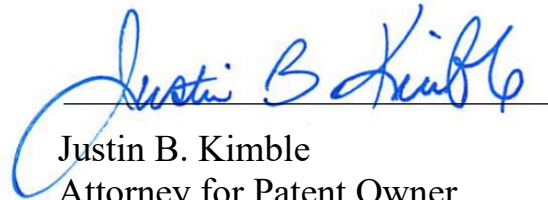
Respectfully submitted,



Justin B. Kimble  
Attorney for Patent Owner  
Registration No. 58,591  
Nelson Bumgardner Albritton PC  
3131 West 7th St., Ste. 300  
Fort Worth, TX 76107  
Tel: 817.377.9111  
Email: [justin@nbafirm.com](mailto:justin@nbafirm.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document was served via electronic mail on June 7, 2021, to Petitioner via counsel, James M. Glass, Sam Stake, and Ogi Zivojnovic at the email addresses: jimglass@quinnemanuel.com, samstake@quinnemanuel.com, ogizivojnovic@quinnemanuel.com, pursuant to Petitioner's consent in its Updated Mandatory Notices at page 2.



Justin B. Kimble  
Attorney for Patent Owner  
Registration No. 58,591  
Nelson Bumgardner Albritton PC  
3131 West 7th St., Ste. 300  
Fort Worth, TX 76107  
Tel: 817.377.9111  
Email: justin@nbafirm.com