

Filed on behalf of Valencell, Inc.
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FITBIT, INC.,
Petitioner,

v.

VALENCELL, INC.,
Patent Owner.

Case IPR2017-00319¹
U.S. Patent No. 8,923,941

***PRO HAC VICE* MOTION TO ADMIT ATTORNEY
JEFFREY R. BRAGALONE PURSUANT TO 37 C.F.R. § 42.10(c)**

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

¹Case IPR2017-01555 has been joined with this proceeding.

Patent Owner Valencell, Inc. (“Valencell”) hereby files this motion pursuant to 37 C.F.R. § 42.10(c) for Jeffrey R. Bragalone to appear *pro hac vice* on its behalf before the Patent Trial and Appeal Board in IPR2017-00319.

A. Lead Counsel is a Registered Practitioner.

Valencell has already designated a registered practitioner, Justin B. Kimble (Reg. No. 58,591) as lead counsel.

B. There is Good Cause for the Board to Recognize Jeffrey R. Bragalone *pro hac vice* During This Proceeding.

1. Mr. Bragalone is an Experienced Patent Litigator.

Jeffrey R. Bragalone is an experienced litigator with over 31 years of experience. He has argued multiple patent cases before the Federal Circuit, including the case which has now been remanded to the Board: *Fitbit, Inc. v. Valencell, Inc.*, No. 2019-1048 (Fed. Cir. July 8, 2020); *see also Greenliant Sys., Inc. v. Xicor LLC*, 692 F.3d 1261 (Fed. Cir. 2012); *United Access Technologies, LLC v. Earthlink, Inc.*, 432 F. App’x 976 (Fed. Cir. 2011); *Board of Regents of the University of Texas System v. BenQ America Corp.*, 533 F.3d 1362 (Fed. Cir. 2008); and *Tegic Commc’ns Corp. v. Board of Regents of the University of Texas System*, 458 F.3d 1335 (Fed. Cir. 2006) (appeared on brief). In addition to his argument before the Federal Circuit, Mr. Bragalone has represented numerous clients in patent litigation and general litigation as lead counsel in district courts and state courts across the

United States. Mr. Bragalone has also participated in several oral arguments before the PTAB, including the argument in this case on February 27, 2018.

2. Mr. Bragalone Has an Established Familiarity with the Subject Matter at Issue in this Proceeding.

Mr. Bragalone has represented Valencell in previous patent litigation, through which he has familiarized himself with the subject matter at issue in the proceeding, *i.e.*, physiological monitoring technology. *See, e.g., Valencell, Inc. v. Apple, Inc.*, No. 5:16-cv-00001 (E.D. N.C., filed Jan. 4, 2016); *see also Valencell, Inc. v. Fitbit, Inc.*, No. 5:16-cv-00002 (E.D. N.C., filed Jan. 4, 2016). As counsel in those actions, Mr. Bragalone has become very familiar with the subject matter at issue in this proceeding, *e.g.*, physiological monitoring technology. Furthermore, in those lawsuits Mr. Bragalone has developed infringement allegations that assert the patent-at-issue in this proceeding against various products, including, for example watches with heart rate monitoring functionality. In his role as counsel in those litigations, Mr. Bragalone has spent significant time learning about physiological monitoring technology such as that found in the patent-at-issue in this proceeding. Moreover, Mr. Bragalone has analyzed the prior art involved in this petition as well as in the petitions for related patents.

In preparation for the above identified matters, Mr. Bragalone has become very familiar with the patents, technology, and prior-art that cover the technology of the patent at issue in this proceeding. Given Mr. Bragalone's familiarity with the

underlying technology, patents, and prior art, Valencell asks that the Board grant this Motion to afford Valencell the benefit of having its chosen representation to be authorized to practice before the PTAB in this matter.

C. Mr. Bragalone has Submitted a Declaration² Herewith Attesting the Following Facts.

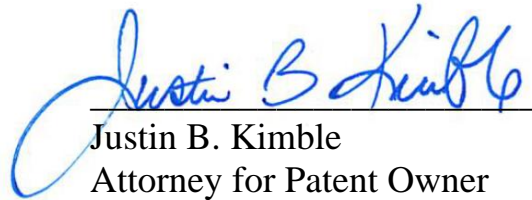
1. Mr. Bragalone is a member in good standing of the Texas State Bar.
2. Mr. Bragalone has never been subject to any suspensions or disbarments from practice before any court or administrative body.
3. None of Mr. Bragalone's applications for admission to practice before any court or administrative body has ever been denied.
4. Mr. Bragalone has never been sanctioned nor had contempt citations imposed by any court or administrative body.
5. Mr. Bragalone has read and will comply with the Office Patent Trial Practice Guide and the Board's Rules of Practice for Trials set forth in part 42 of 37 C.F.R.
6. Mr. Bragalone will be subject to the USPTO Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101 *et. seq.* and disciplinary jurisdiction under 37 C.F.R. § 11.19(a).

² See Declaration of Jeffrey R. Bragalone, attached hereto as Exhibit 2008.

7. During the past six years, Mr. Bragalone has appeared or applied to appear *pro hac vice* before the PTAB in 31 proceedings, all of which have been granted.
8. Mr. Bragalone has familiarity with the subject matter at issue in the proceeding as set forth in Section B.2 above.

Dated: September 14, 2020

Respectfully submitted,



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