

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC. and
FITBIT, INC.,
Petitioner,

v.

VALENCELL, INC.,
Patent Owner.

Case IPR2017-00319
U.S. Patent No. 8,923,941¹

FITBIT, INC.'S NOTICE OF APPEAL

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

Office of the General Counsel
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

Notice is hereby given, pursuant to 37 C.F.R. § 90.2(a), that Petitioner Fitbit, Inc. appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision of the Patent Trial and Appeal Board in Case No. IPR2075-00319, entered August 6, 2018 (Paper No. 43). In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Petitioner indicates that the issues on appeal include, but are not limited to the following:

1. Whether the PTAB erred in finding that Petitioner has not shown by a preponderance of the evidence that claims 3-5 of U.S. Patent No. 8,923,941 (“the ‘941 Patent”) are unpatentable.
2. Whether the PTAB erred in finding that Petitioner has not shown by a preponderance of the evidence that claim 3 is unpatentable under 35 U.S.C. § 103(a) as obvious in view of U.S. Patent Application No. 2008/0200774 A1 to Luo, filed February 16, 2007; published August 21, 2008 (“Luo”) and U.S. Patent Application Publication No. 2008/0133699 A1 to Crow, filed February 16, 2007; published August 21, 2008 (“Crow”).
3. Whether the PTAB erred in finding that Petitioner has not shown by a preponderance of the evidence that claim 3 is unpatentable under 35 U.S.C. § 103(a) as obvious in view of U.S. Patent No. 6,513,532 B2 to Mault et al., issued February 4, 2003 (“Mault”), U.S. Patent Application Publication No. 2003/0181798 (“Al-Ali”), and R.G. Lee et al. “A Mobile Care System with Alert Mechanism” IEEE Transactions on information Technology in Biomedicine, Vol. 11, Issue 5, September 2007 (“Lee”).

4. Whether the PTAB erred in finding that Petitioner has not shown by a preponderance of the evidence that claims 4-5 are unpatentable under 35 U.S.C. § 103(a) as obvious in view of U.S. Patent Application No. 2008/0200774 A1 to Luo, filed February 16, 2007; published August 21, 2008 (“Luo”), U.S. Patent Application Publication No. 2008/0133699 A1 to Craw, filed February 16, 2007; published August 21, 2008 (“Craw”) and U.S. Patent Application Publication No. 2007/0197881 A1 to Wolf *et al.*, published August 23, 2007 (“Wolf”).
5. Whether the PTAB erred in finding that Petitioner has not shown by a preponderance of the evidence that claims 4 and 5 are unpatentable under 35 U.S.C. § 103(a) as obvious in view of Mault, Al-Ali, and International Patent Application Publication No. WO 2006/009830 to Behar *et al.*, published January 26, 2006 (“Behar”).
6. Whether the PTAB erred in not providing any reason or rationale for its findings that Petitioner failed to show by a preponderance of the evidence that claims 3-5 are unpatentable under 35 U.S.C. § 103(a) in view of the foregoing obviousness combinations.
7. Whether the PTAB erred in not reviewing whether claims 3-5 are unpatentable under 35 U.S.C. § 103(a) in view of the foregoing obviousness combinations.
8. Whether the PTAB erred in not adopting Petitioner’s proposed construction of the term “application-specific interface (API).”
9. Whether the PTAB erred in not applying its construction of the term “application-specific interface (API)” in Case IPR2017-00321, or in the alternative erred in not properly construing the term “application-specific interface (API).”
10. Whether the PTAB erred in finding that the term “the application” in claim 4 did not contain a typographical error.
11. Whether the PTAB erred in its findings regarding the dependency of claims 4-5.
12. Whether the PTAB erred in finding claims 3-5 are not unpatentable.

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13. Whether the PTAB erred in one or more procedural orders, discovery orders, or other findings and determinations in arriving at the erroneous conclusions in the Final Written Decision.

Simultaneous with this submission, a copy of this Notice of Appeal is being filed with the Patent Trial and Appeal Board. In addition, this Notice of Appeal, along with the required docketing fees, is being filed with the Clerk's Office for the United States Court of Appeals for the Federal Circuit.

Respectfully submitted,

Date: October 5, 2018

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Counsel for Fitbit, Inc.

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. 42.6(e)(1), the parties have agreed to accept service by electronic means. I hereby certify that on October 5, 2018, I caused a copy of the foregoing document to be served via electronic mail to:

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I hereby certify that on October 5, 2018, I caused a copy of the foregoing document to be served via Express Mail to the following:

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