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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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 APPLE, INC., :
 :
 Petitioner, :
 :
 vs. : Case IPR2017-00315,
 : 00319, 00321
 VALENCELL, INC., :
 :
 Patent Owner. :
 :
 - - - - -X

Washington, D.C.
Wednesday, April 5, 2017

The following pages constitute the teleconferenced proceedings in the above-captioned matter before JUDGES ARPIN, McNAMARA and McSHANE, before Denise M. Brunet, RPR, a Notary Public in and for the District of Columbia, beginning at 3:30 p.m., when were present on behalf of the respective parties:

A P P E A R A N C E S

On behalf of the Petitioner:

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1 P R O C E E D I N G S

2 JUDGE ARPIN: I would like to do the
3 roll call. Who do I have on the line for
4 petitioner?

5 MS. HOLOUBEK: Michelle Holoubek from
6 Sterne Kessler representing petitioner Apple, and
7 I'm joined by my co-counsel Michael Specht and
8 Mark Consilvio, and we also have a court reporter
9 on the call.

10 JUDGE ARPIN: Who do we have on the
11 call for patent owner?

12 MR. KIMBLE: Your Honor, this is Justin
13 Kimble for the patent owner Valencell.

14 JUDGE ARPIN: Thank you. I understand
15 we have a court reporter. I'd like to address the
16 court reporter for a moment. I'd ask the court
17 reporter to please try not to interrupt. If
18 there's an issue as to the spelling of a term, I
19 hope that the parties can get together afterwards
20 and resolve that matter, but my main concern is to
21 try not to interrupt the parties when they're
22 speaking.

1 I'd also ask the court reporter when he
2 or she believes they can have the transcript of
3 this call ready.

4 (Discussion held off the record.)

5 JUDGE ARPIN: Petitioner, you requested
6 this call. I believe it's to request
7 authorization to file a reply to the preliminary
8 response, which I believe was filed about three
9 weeks ago now, and I would -- I understand that
10 there are issues of alleged misstatements and
11 alleged inconsistencies between preliminary
12 responses.

13 As a preliminary matter, I'd ask
14 petitioner is that inconsistencies between the
15 preliminary responses filed in these three cases
16 or is it inconsistencies with regard to other
17 preliminary responses?

18 MS. HOLOUBEK: Your Honor, Michelle
19 Holoubek for the petitioner. These
20 inconsistencies are between two of the POPRs,
21 namely, the 319 IPR and the 321 IPR, both of which
22 address the '941 patent.

1 JUDGE ARPIN: All right. Well, with
2 that clarification, petitioner, since you bear the
3 burden here, I'm going to let you speak first and
4 explain what you are asking for, why you think you
5 are entitled to it and if you are asking for
6 reply, I would also ask you to say exactly what
7 the scope of the reply is, length and when you
8 would propose to have this reply filed.

9 Go ahead, please.

10 MS. HOLOUBEK: Thank you. I'll address
11 each of those points. 37CFR42.108(c), gives the
12 Court authority to grant a reply to a POPR upon a
13 showing of good cause by the petitioner and here
14 we have that good cause.

15 We have identified seven instances
16 across the patent owner's POPRs in these three
17 cases that contain misrepresentations of
18 scientific principles, false statements regarding
19 the references and conflicting contradictory
20 positions taken in two different POPRs.

21 We're concerned that if the Board
22 relies on these constructions, representations of

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