

Filed on behalf of Valencell, Inc.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner,

v.

VALENCELL, INC.,  
Patent Owner.

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Case IPR2017-00321  
U.S. Patent No. 8,923,941

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***PRO HAC VICE* MOTION TO ADMIT ATTORNEY  
T. WILLIAM KENNEDY PURSUANT TO 37 C.F.R. § 42.10(c)**

**EXHIBIT 2009: DECLARATION OF T. WILLIAM KENNEDY**

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

I, T. William Kennedy, make the following declaration based on my own personal knowledge and, if called to testify before the court, could and would testify as follows:

1. I am an attorney with the law firm of Bragalone Conroy, P.C., located at 2200 Ross Avenue, Suite 4500-West, Dallas, TX 75201.
2. I am a member in good standing of the Texas State Bar.
3. I have never been subject to any suspensions or disbarments from practice before any court or administrative body.
4. None of my applications for admission to practice before any court or administrative body has ever been denied.
5. I have never been sanctioned nor had contempt citations imposed by any court or administrative body.
6. I have 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.
7. I 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).
8. During the past three years, I have applied to appear *pro hac vice* before the PTAB in fourteen other proceedings, six of which have been

granted, two of which involved IPRs that were joined with those for which my *pro hac vice* motion had been already granted, and two remained pending throughout the life of the IPR. Each of these IPRs involved patent owner Innovative Display Technologies LLC or Delaware Display Group LLC. The other four remain pending and each involve the patent owner Valencell, Inc.

- i. IPR2014-01096 (*granted*);
- ii. IPR2014-01097 (*pending – final decision issued*);
- iii. IPR2014-01362 (*pending – final decision issued*);
- iv. IPR2015-00487 (*granted*);
- v. IPR2015-00506 (*granted*);
- vi. IPR2015-01666 (*joined with IPR2015-00506 above*);
- vii. IPR2015-01717 (*joined with IPR2015-00487 above*);
- viii. IPR2015-01866 (*granted*);
- ix. IPR2015-01867 (*granted*);
- x. IPR2015-01868 (*granted*);
- xi. IPR2017-00315 (*pending, filed concurrently herewith*);
- xii. IPR2017-00317 (*pending, filed concurrently herewith*);
- xiii. IPR2017-00318 (*pending, filed concurrently herewith*); and
- xiv. IPR2017-00319 (*pending, filed concurrently herewith*).

I have not applied to appear *pro hac vice* in any other proceeding before the PTAB.

9. I currently represent the Patent Owner Valencell, Inc. in its assertion of the patent at issue in this proceeding and related patents in two cases in the Eastern District of North Carolina. *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, I have become very familiar with the subject matter at issue in this proceeding, *e.g.*, physiological monitoring technology. Furthermore, in those lawsuits I have developed infringement allegations that assert the patent-at-issue in this petition against various products, including, for example watches with heart rate monitoring functionality. I have also taken and defended several depositions in those matters. In my role as counsel in those litigations, I have spent significant time learning about physiological monitoring technology such as that found in the patent-at-issue in this proceeding. Moreover, I have analyzed the prior art involved in this petition as well as in the petitions for related patents.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3<sup>rd</sup> day of August, 2017.



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