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U.S. PATENT & TRADEMARK OFFICE

Paper No. ___
Filed: October 10, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONOS, INC.,
Petitioner,

v.

IMPLICIT, LLC,
Patent Owner.

Case No. IPR2018-00767
Patent No. 8,942,252

PATENT OWNER'S SECOND AMENDED NOTICE OF APPEAL

Pursuant to 35 U.S.C. §§ 141(c) and 319 and 37 C.F.R. §§ 90.2(a) and 90.3(b)(1), and *Implicit, LLC, v. Sonos, Inc.*, Case Nos. 2020-1173, -1174, Dkt. No. 90 (Fed. Cir. Oct. 6, 2023), Patent Owner hereby provides its Notice that it appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered September 16, 2019, (Paper 40), from the Final Written Decision on Remand entered on September 19, 2023 (Paper 60), and from all underlying

orders, decisions, rulings, and opinions regarding U.S. Patent No. 8,942,252 B2 (“the ’252 patent”) set forth in *Inter Partes Review* IPR2018-00767.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), the issues on appeal include, but are not limited to:

1. whether the Board erred when it found that claims 1–3, 8, 11, and 17 of the ’252 Patent were shown to be unpatentable under 35 U.S.C. § 103(a) as obvious in view of U.S. Patent No. 7,296,338 (“Janevski”) and Azevedo¹, Janevski and Mills², Janevski and Berthaud³, and/or Janeveski and Eidson⁴;
2. whether the Board erred when it concluded that Janevski is prior art to the ’252 patent under 35 U.S.C. § 102.
3. whether the Board erred when it construed terms of the claims of the ’252 patent;
4. whether the Board erred in assessing the correction of inventorship certificate in “consider[ing] the impact of these intervening circumstances on the decisions on appeal in the first instance,” and whether or not it properly

¹ Azevedo, *Fault-Tolerant Clock Synchronization for Distributed Systems with High Message Delay Variation*, IEEE Workshop on Fault-Tolerance Par. and Dist. Syst., (1994) (“Azevedo”).

² Mills, *Network Time Protocol (Version 3) Specification, Implementation and Analysis*, Network Working Group, University of Delaware (March 1992) (“Mills”).

³ Jean-Marc Berthaud, *Time Synchronization Over Networks Using Convex Closures*, IEEE/ACM Transactions on Networking (Apr. 2000) (“Berthaud”).

⁴ U.S. Patent No. 6,278,710 (“Eidson”).

“issue[d] an order addressing what, if any, impact the certificates of correction would have on the final written decisions in these cases.” *Implicit, LLC, v. Sonos, Inc.*, Case Nos. 2020-1173, -1174, Dkt. No. 85 (Fed. Cir. Nov. 9, 2022).

5. whether judicial estoppel and waiver were proper grounds for the Board to rely on in response to the Court’s limited remand order and whether these doctrines were applied without error. *See id*
6. whether the February 7, 2022 Order (Paper 47), issued by Commissioner for Patents, Andrew Hirshfeld, as the Official Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, comports with the Supreme Court’s decision in *United States v. Arthrex, Inc.*, 141 S. Ct. 1970 (2021) or the Federal Vacancies Reform Act;
7. whether Commissioner for Patents, Andrew Hirschfeld, as the Official Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office erred when denying Patent Owner’s Request for Director Review, including application of improper procedures;
8. all other issues decided adversely to Patent Owner in any order, decision, ruling or opinion underlying or supporting the Final Written Decision (Paper

40) or the Order Denying Patent Owner's Request for Director Review (Paper 47), or the Final Written Decision on Remand entered on September 19, 2023 (Paper 60), or any other order adversely affecting Patent Owner. Copies of the decisions being appealed are attached to this Notice.

Pursuant to 35 U.S.C. § 142 and 37 C.F.R. § 90.2(a), this Notice is being filed with the Director of the United States Patent and Trademark Office, and a copy of this Notice is being concurrently filed with the Patent Trial and Appeal Board. In addition, a copy of this Notice is being filed with the Clerk's Office for the United States Court of Appeals for the Federal Circuit via CM/ECF.⁵

Dated: October 10, 2023

By: /Timothy P. McAnulty/
Timothy P. McAnulty (Back-up Counsel)
Reg. No. 56,939
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

⁵ Pursuant the United States Court of Appeals for the Federal Circuit Order dated February 28, 2022, “[n]o additional docketing fee is required for any amended notices of appeal in this matter.” *Implicit, LLC, v. Sonos, Inc.*, Case Nos. 2020-1173, -1174, Dkt. No. 72 (Fed. Cir. Feb. 28, 2022); *Implicit, LLC, v. Sonos, Inc.*, Case Nos. 2020-1173, -1174, Dkt. No. 85 (Fed. Cir. Nov. 9, 2022) (“This court retains jurisdiction over the appeals.”).

CERTIFICATE OF SERVICE AND FILING

I hereby certify that on this 10th day of October 2023, in addition to being filed and served electronically through the Board's P-TACTS System, a true and correct copy of the foregoing "**PATENT OWNER'S SECOND AMENDED NOTICE OF APPEAL**," was filed and served on the Director of the United States Patent and Trademark Office by hand delivery at the following address:

Office of the General Counsel
U.S. Patent and Trademark Office
Madison Building East, Room 10B20
600 Dulany Street
Alexandria, Virginia 22314

I also hereby certify that on this 10th day of October 2023, a true and correct copy of the foregoing "**PATENT OWNER'S SECOND AMENDED NOTICE OF APPEAL**" was filed with the Clerk's Office of the United States Court of Appeals for the Federal Circuit, via CM/ECF.

I also hereby certify that on this 10th day of October 2023, a true and correct copy of the foregoing "**PATENT OWNER'S SECOND AMENDED NOTICE OF APPEAL**," was served electronically by email in its entirety upon Petitioner as follows:

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