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Filed on behalf of Apple Inc.

By: Jason D. Kipnis, Reg. No. 40,680  
David L. Cavanaugh, Reg. No. 36,476  
Mary V. Sooter, Reg. No. 71,022  
Richard Goldenberg, Reg. No. 38,895  
Ravinder Deol, Reg. No. 62,165  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, Massachusetts 02109  
Tel: (617) 526-6000  
Email: Jason.Kipnis@wilmerhale.com  
David.Cavanaugh@wilmerhale.com  
Mindy.Sooter@wilmerhale.com  
Richard.Goldenberg@wilmerhale.com  
Ravi.Deol@wilmerhale.com

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.

OPTIS WIRELESS TECHNOLOGY LLC,  
Patent Owner.

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Case IPR2020-00466  
U.S. Patent No. 8,411,557 B2

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**PETITIONER'S NOTICE OF APPEAL**

Pursuant to 35 U.S.C. §§ 141-142 and 319, 5 U.S.C. §§ 701-706, 28 U.S.C. § 1295(a)(4)(A), and 28 U.S.C. § 1651, and in accordance with 37 C.F.R. §§ 90.2-90.3, and Federal Circuit Rule 15(a)(1), notice is hereby given that Petitioner Apple Inc. appeals to the U.S. Court of Appeals for the Federal Circuit from the Decision Denying Institution of Inter Partes Review entered on September 15, 2020 (Paper 13) in IPR2020-00466, attached as Exhibit A, and all prior and interlocutory rulings related thereto or subsumed therein.

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

(1) whether the U.S. Patent and Trademark Office (PTO) exceeded its statutory authority and violated the text, structure, and purpose of the Leahy-Smith America Invents Act, 35 U.S.C. §§ 311-319 (AIA), and Administrative Procedure Act, 5 U.S.C. §§ 701-706 (APA), by adopting a rule—and applying that rule to deny institution here—that purports to authorize the Patent Trial and Appeal Board (Board) to deny institution of inter partes review (IPR) based on non-statutory, discretionary factors related to the pendency of parallel patent-infringement litigation;

(2) whether the PTO exceeded its statutory authority and violated the APA by adopting a rule governing institution decisions—and applying the rule to deny

institution here—that incorporates non-statutory, discretionary factors that are arbitrary and capricious;

(3) whether the PTO exceeded its statutory authority and violated the AIA and the APA by adopting a rule to govern all institution decisions—and applying that rule to deny institution here—without following the procedures for notice-and-comment rulemaking; and

(4) whether the court of appeals has jurisdiction over this appeal, notwithstanding 35 U.S.C. § 314(d), because the PTO acted in excess of its statutory authority and outside its statutory limits or because the grounds for attacking the decision to deny institution depend on statutes, including the APA, that are less closely tied to the application and interpretation of statutes related to the decision to initiate IPR.

This Notice of Appeal is timely, having been duly filed 23 days after the date of the Decision Denying Institution of Inter Partes Review.

A copy of this Notice of Appeal is being filed simultaneously with the Board, the Clerk’s Office for the United States Court of Appeals for the Federal Circuit, and the Director of the PTO.

[Signature line on next page.]

Dated: October 8, 2020

Respectfully submitted,

/David L. Cavanaugh/

David L. Cavanaugh  
Registration No. 36,476

Jason D. Kipnis  
Registration No. 40,680  
*Lead Counsel for Petitioner Apple Inc.*

Mary V. Sooter  
Registration No. 71,022

Richard Goldenberg  
Registration No. 38,895

Ravinder Deol  
Registration No. 62,165

ATTORNEYS FOR PETITIONER  
APPLE INC.

**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. §§ 90.2(a)(1) and 104.2(a), I hereby certify that, in addition to being filed electronically through the Patent Trial and Appeal Board's End to End (PTAB E2E) system, a true and correct original version of the foregoing Petitioner's Notice of Appeal is being filed by Priority Express Mail on this 8th day of October, 2020, with the Director of the U.S. Patent and Trademark Office, at the following address:

Office of the General Counsel  
United States Patent and Trademark Office  
Madison Building East, Room 10B20  
600 Dulany Street  
Alexandria, VA 22314

Pursuant to 37 C.F.R. 90.2(a)(2) and Federal Circuit Rule 15(a)(1), and Rule 52(a), (e), I hereby certify that a true and correct copy of the foregoing Petitioner's Notice of Appeal is being filed in the United States Court of Appeals for the Federal Circuit using the Court's CM/ECF filing system on this 8th day of October, 2020, and the filing fee is being paid electronically using pay.gov.

I hereby certify that on October 8, 2020, I caused a true and correct copy of the foregoing Petitioner's Notice of Appeal to be served via email on the following counsel for Patent Owner:

Hong Annita Zhong (Reg. No. 66,530)

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