

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

MASIMO CORPORATION,
Patent Owner.

Case IPR2020-01523
Patent 8,457,703

**PETITIONER'S NOTICE OF APPEAL TO THE
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

Pursuant to 35 U.S.C. §§ 141(c) and 319, and 37 C.F.R. § 90.2(a), notice is hereby given that Petitioner Apple Inc. hereby appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision in Case No. IPR2020-01523 entered April 11, 2022 (Paper 32) (“Final Written Decision”) by the Patent Trial and Appeal Board (“the Board”), and from all underlying orders, decisions, rulings, and opinions related thereto and included therein. This appeal is timely under 35 U.S.C. § 142, 37 C.F.R. § 90.3, Federal Rule of Appellate Procedure 15(a)(1), and Federal Circuit Rule 15(a)(1).

For the limited purpose of providing the Director with the information required by 37 C.F.R. § 90.2(a)(3)(ii) and Federal Rule of Appellate Procedure 15(a)(2)(C), the expected issues on appeal include, but are not necessarily limited to:

1. The Board’s construction of claim terms of U.S. Patent No. 8,457,703 (the “’703 patent”), including the term “processing characteristics,” the Board’s interpretation of those constructions, and the Board’s application of those constructions to the prior art;
2. The Board’s decision that claims 1–7, 9–18, and 20–24 of the ’703 patent were not shown to be unpatentable under 35 U.S.C. § 103 as obvious over U.S. Patent No. 5,632,272 to Diab (“Diab”) in view of:

- a. U.S. Patent No. 6,293,915 to Amano (“Amano”) for claims 9, 10, 12–14, 20, and 22–24;
 - b. Amano and U.S. Patent No. 6,393,311 (“Edgar”) for claims 11 and 21;
 - c. Amano and U.S. Patent No. 6,527,729 (“Turcott”) for claims 1–7, and 15–18;
 - d. The general knowledge of a person of ordinary skill in the art (“GK-POSITA”) for claims 9, 10, 12–14, 20, and 22–24;
 - e. GK-POSITA and Edgar for claims 11 and 21; and
 - f. GK-POSITA and Turcott for claims 1–7, and 15–18.
3. The Board’s decision that claims 1–3, 9, 10, 12–17, 20, 22–24 of the ’703 patent were not shown to be unpatentable under 35 U.S.C. § 103 as obvious over Amano, alone (for claims 9, 10, 12–14, 20, and 22–24) or in view of Turcott (for claims 1–3, and 15–17);
 4. All of the Board’s subsidiary findings supporting its determination that claims 1–7, 9–18, and 20–24 of the ’703 patent were not shown to be unpatentable under 35 U.S.C. § 103; the Board’s failure to consider evidence of record properly; the Board’s legal errors in undertaking the obviousness analysis; the Board’s findings that conflict with the evidence of record and are not supported by substantial evidence; and

5. All other issues decided adversely to Petitioner in any orders, decisions, rulings, or opinions underlying or supporting the Final Written Decision.

Pursuant to 35 U.S.C. § 142 and 37 C.F.R. § 90.2(a)(1), this notice is being filed with the Director of the U.S. Patent and Trademark Office, and a copy is also being filed with the Board. In addition, pursuant to Federal Circuit Rule 15(a)(1) and 37 C.F.R. § 90.2(a)(2), Petitioner also is electronically filing this notice with the Clerk of the U.S. Court of Appeals for the Federal Circuit, and paying the fee set forth in Federal Circuit Rule 52.

Respectfully submitted,

Date: June 9, 2022

/Kim H. Leung/

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4) and 42.205(b), the undersigned certifies that on June 9, 2022, a complete and entire copy of this Petitioner's Notice of Appeal was provided via email to the Patent Owner by serving the correspondence address of record as follows:

Joseph R. Re
Stephen W. Larson
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I hereby certify that, in addition to being filed electronically through the Board's E2E System, the original version of the foregoing Notice of Appeal was delivered by USPS Certified Mail on June 9, 2022, with the Director of the United States Patent and Trademark Office, at the following address:

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby certify that on June 9, 2022, a true and correct copy of the foregoing Notice of Appeal, along with a copy of the Institution Decision, was filed

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