

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.,
Petitioner,

v.

ALIVECOR, INC.,
Patent Owner

IPR2021-00972
U.S. Patent No. 10,638,941

PATENT OWNER'S NOTICE OF APPEAL

Office of the General Counsel
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

Notice is hereby given, pursuant to 37 C.F.R. § 90.2(a) and 35 U.S.C. §§ 141(c), 142, and 319, that Patent Owner AliveCor Inc. appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision of the Patent Trial and Appeal Board in Case No. IPR2021-00972, entered December 6, 2022 (Paper No. 43). For the limited purpose of providing the Director with the information specified in 37 C.F.R. § 90.2(a)(3)(ii), Petitioner indicates that the issues on appeal may include, but are not limited to, the following:

1. Whether the PTAB erred in finding that Petitioner has shown by a preponderance of the evidence that claims 1-23 of U.S. Patent No. 10,628,941 (“the ’941 Patent”) are unpatentable.
2. Whether the PTAB erred in finding that Petitioner has shown by a preponderance of the evidence that claims 1, 5, 7-9, 11, 12, 16, 18-20, 22, and 23 are unpatentable under 35 U.S.C. § 103 as obvious in view of WO2012/10559 (“Shmueli”) and U.S. Patent Application Publication 2014/0275840 (“Osorio”);
3. Whether the PTAB erred in finding that Petitioner has shown by a preponderance of the evidence that claims 2-4, 6, 13-15, and 17 are unpatentable under 35 U.S.C. § 103 as obvious in view of Shmueli, Osorio, and Jinseok Lee et al., Atrial Fibrillation Detection using a Smart Phone, 15:1 INT’L.J. OF BIOELECTROMAGNETISM 26–29 (2013) (“Lee-2013”);
4. Whether the PTAB erred in finding that Petitioner has shown by a preponderance of the evidence that claims 10 and 21 are unpatentable under

35 U.S.C. § 103 as obvious in view of Shmueli, Osorio, and U.S. Patent No. 7,894,888 B2 (“Chan”);

5. Whether the PTAB erred in any further findings or determinations by the Director or the Board supporting or relating to the issues above, including the Board’s consideration of the expert testimony, prior art, and other evidence in the record; the Board’s claim constructions; and the Board’s factual findings, conclusions of law, or other determinations supporting or related to the issues above (e.g., including all findings and conclusions related to the Board’s decision not to consider objective indicia of nonobviousness).

Simultaneous with this submission and in accordance with 37 C.F.R.

§ 90.2(a), a copy of this Notice of Appeal is being filed with the Director of the United States Patent and Trademark Office, filed with the Patent Trial and Appeal Board, and served upon Petitioner in accordance with 37 C.F.R. § 42.6(e). In addition, this Notice of Appeal, along with the required docketing fees, is being filed with the Clerk’s Office for the United States Court of Appeal for the Federal Circuit in accordance with Fed. Cir. R. 15(a)(1).

Respectfully submitted,

Date: February 7, 2023

By: // Sean S. Pak

Sean S. Pak (Pro hac vice)
QUINN EMANUEL URQUHART &
SULLIVAN LLP
50 California St, 22nd Floor
San Francisco, CA 94111
Email: seanpak@quinnemanuel.com
Phone: 415-875-6600
Fax: 415-875-6700

Counsel for AliveCor Inc.

CERTIFICATE OF FILING

The undersigned hereby certifies that, in addition to being filed electronically via P-TACTS, the foregoing document was filed by Express Mail on February 7, 2023, 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, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450.

CERTIFICATE OF FILING

The undersigned hereby certifies that a true and correct copy of the foregoing document was filed electronically by CM/ECF on February 7, 2023, with the Clerk's Office of the United States Court of Appeals for the Federal Circuit.

CERTIFICATE OF SERVICE (37 C.F.R. §§ 42.6(E), 42.105(A))

The undersigned hereby certifies that the foregoing document was served in its entirety on February 7, 2023 upon the following parties via Electronic Mail.

W. Karl Renner Jeremy J. Monaldo

IPR50095-0032IP1@fr.com

PTABInbound@fr.com

axf-ptab@fr.com

monaldo@fr.com

Date: February 7, 2023

By: / Sean S. Pak

Sean S. Pak (Pro hac vice)

QUINN EMANUEL URQUHART &

SULLIVAN LLP