

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOM ENTERPRISES, LLC,
Petitioner,

v.

ELAINE AND REINHOLD W. VIETH,
Patent Owners

Case IPR2023-00726
Patent 9,066,958 B2

PATENT OWNERS' NOTICE OF APPEAL

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

Notice is hereby given, pursuant to 35 U.S.C. §§ 141, 142 and 319, and 37 C.F.R. §90.2, that Patent Owners Elaine and Reinhold W. Vieth hereby appeal to the United States Court of Appeals for the Federal Circuit from the Final Written Decision of the Patent Trial and Appeal Board (the “Board”) entered on September 10, 2024 (Paper 112), and from all underlying orders, decisions, rulings, and opinions regarding the inter partes review of U.S. Patent No. 9,066,958 (“the ‘958 Patent”) in Case No. IPR 2023-00726. This notice is timely filed within 63 days of the Final Written Decision. 37 C.F.R. § 90.3(a)(1).

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Patent Owners further indicate that the anticipated issues on appeal may include, but are not limited to, the following, as well as any underlying factual findings, conclusions of law, determinations, rulings, decisions, opinions, or other related matters:

(1) Whether the Board erred in determining that claims 1-3 and 5 of the ‘958 Patent are unpatentable under 35 U.S.C. §103;

(2) Whether the Board erred in its consideration of expert testimony, prior art and other evidence in the record, including its failure to consider expert testimony and other evidence in the record;

(3) Whether the Board's factual findings, conclusions of law, and other determinations, including evidentiary determinations, were erroneous as a matter of law or arbitrary and capricious in light of the evidence in the record;

(4) Whether the Board erred in its conclusions concerning the evidence of secondary considerations/objective indicia of non-obviousness; and

(5) Whether the Board acted in a manner that was arbitrary, capricious, an abuse of discretion, or otherwise not according to law, exceeded statutory limitations, and without observance of procedures required by law, or was based on findings unsupported by substantial evidence.

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. A copy of this Notice is being concurrently filed with the Patent Trial and Appeal Board. In addition, in accordance with Federal Circuit Rule 15(a)(1) and 37 C.F.R. §90.2(a)(2), a copy of this Notice and the required docketing fees set forth in Federal Circuit Rule 52 are being filed with the Clerk of Court for the United States Court of Appeals for the Federal Circuit via CM/ECF.

Dated: November 4, 2024.

Respectfully Submitted,

/Mark E Ungerman/

Mark E. Ungerman (Reg. No. 32,070)
UNGERMAN IP PLLC
2305 Calvert St., N.W.
Washington, DC 20008
Tel: (202) 461-3200
Fax: (202) 350-2547
Email: mungerman@ungermanip.com

Alan M Anderson (*pro hac vice*) (lead counsel)
L. Reagan Florence (*pro hac vice*)
Matthew Palen, *of counsel* (*pro hac vice*)
ALAN ANDERSON LAW FIRM LLC
Crescent Ridge Corporate Center
11100 Wayzata Blvd., Suite 545
Minneapolis, MN 55305
TEL: 612-756-7010
FAX: 612-756-7050
Email: aanderson@anderson-lawfirm.com
rflorence@anderson-lawfirm.com
mattpalen@comcast.net

Counsel for Patent Owners

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PATENT OWNERS' NOTICE OF APPEAL** is being served on November 4, 2024, by filing this document through the Patent Trial and Appeal Case Tracking System, as well as electronically via email, to the following counsel of record for Petitioner:

David B. Conrad
Lance E. Wyatt
Sarika Patel
Casey Kraning
Fish and Richardson P.C.
To: *IPR53953-0001IP1@fr.com*

The undersigned further certifies that in addition to being filed electronically through the Patent Trial and Appeal Case Tracking System, a true and correct copy of the foregoing **PATENT OWNERS' NOTICE OF APPEAL** is being served via email to *efileSO@uspto.gov* on November 4, 2024, on the Director of the United States Patent and Trademark Office:

Director of the United States Patent and Trademark Office
c/o Office of the Solicitor
United States Patent and Trademark Office
Mail Stop 8, P.O. Box 1450
Alexandria, VA 22314

The undersigned also certifies that a true and correct copy of the foregoing
PATENT OWNER'S NOTICE OF APPEAL is being filed electronically on
November 4, 2024, with the United States Court of Appeals for the Federal Circuit.

Date: November 4, 2024.

/Mark E Ungerman/

Mark E. Ungerman (Reg. No. 32,070)