

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COLLEGE PRODUCTS, INC.
Petitioner,

v.

INTIRION CORPORATION
Patent Owner

Case PGR2024-00004
Patent No. 11,674,746

PETITIONER'S NOTICE OF APPEAL

Pursuant to 35 U.S.C. §§141(c), 142, and 329 and 37 C.F.R. §§42.75(e)(3), 90.2(a), and 90.3(b)(1), Petitioner College Products, Inc. (“Petitioner”) hereby provides notice that it appeals to the United States Court of Appeals for the Federal Circuit from the Order Denying Director Review of the Final Written Decision, entered on June 20, 2025 (Paper No. 54) (“Director’s Order”), the Final Written Decision of the Patent Trial and Appeal Board (“Board”), entered on April 9, 2025 (Paper No. 49) (“Final Written Decision”)¹, and all underlying orders, decisions, rulings, and opinions that were adverse to Petitioner in the post-grant review of U.S. Patent No. 11,674,746 (“the ’746 patent”) in Case No. PGR2024-00004. This Notice is timely under 37 C.F.R. §§42.75(e)(3) and 90.3(b)(1), having been filed no later than sixty-three (63) days after issuance of the Director’s Order.

For the limited purpose of providing the Director with the information requested under 37 C.F.R. §90.2(a)(3)(ii), Petitioner states that it anticipates the issues on appeal may include, but are not limited to:

- The Board’s determination that claims 6, 13, and 21 of the ’746 patent were not shown to be unpatentable under 35 U.S.C. §103 as obvious in view of Emma (Ex. 1011) combined with Butt (Ex. 1015) (Ground 3) and/or in view of Emma combined with Butt and Smith (Ex. 1014) (Ground 4);

¹ The Final Written Decision includes the parties’ confidential information and was sealed by the Board. A redacted version of that decision was filed with the Board on April 22, 2025 (Paper 51).

- The Board's Order Denying Petitioner's Motion for Additional Discovery, dated September 9, 2024 (Paper 22), which precluded Petitioner from taking limited discovery from Northeastern University to confirm ISDU (Ex. 1012) was publicly available before the '746 patent's priority date and is prior art for purposes of Grounds 1, 5, and 7;
- The Board determining that Ground 2 is subsumed within its patentability decision for Grounds 3 and 4 (*see* Final Written Decision at 73) and not separately considering whether claims 6, 13, and 21 of the '746 patent are obvious in view of the references asserted in Ground 2, i.e., Emma combined with Smith;
- The Board determining without explanation that Grounds 6 and 8 included ISDU as a prior art reference and failing to consider whether claims 4, 7, 8, 12, 18 and 19 of the '746 patent are obvious under 35 U.S.C. §103 in view of the references actually asserted in those grounds, i.e., Emma combined with Smith and further combined with the knowledge of a POSITA (Ground 6) and/or Emma combined with Smith and further combined with the knowledge of a POSITA (Ground 8);
- The Board's weighing of the *Graham* factors, including the Board summarily concluding without explanation that the combination of Emma, Butt, and Smith weighs slightly in favor obviousness for claims 1-3, 5-6, 8-11, 13-17

and 20-24 of the '745 patent and the Board's finding that secondary considerations overcame its obviousness determination for claims 6, 13, and 21;

- The Board's findings and conclusions that were adverse to Petitioner regarding objective indicia of non-obviousness, including copying, commercial success, and the Board's determination regarding the nexus between such evidence and the alleged inventions;
- The Director's Order denying Director review of the Final Written Decision;
- The Board's and/or Director's factual findings, conclusions of law, and/or other determinations supporting or relating to the foregoing issues; and
- All other issues, factual findings, legal conclusions, or rulings decided adversely to Petitioner in any order, decision, or opinion underlying or supporting the Final Written Decision and/or the Director's Order.

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 United States Patent and Trademark Office, and a copy of this Notice is being concurrently filed with the Board. In addition, a copy of this Notice and the required docketing fees are being filed with the Clerk's Office for the United States Court of Appeals for the Federal Circuit via CM/ECF in accordance with 37 C.F.R. §90.2(a)(2), Federal Rule of Appellate Procedure 15, and Federal Circuit Rule 15.

Dated: August 22, 2025

Respectfully submitted,

/Domingo M. LLagostera/

Domingo M. LLagostera

Reg. No. 70,684

Lead Counsel for Petitioner

CERTIFICATE OF SERVICE AND FILING

I hereby certify that on August 22, 2025, in addition to being filed and served electronically through the Patent Trial and Appeal Board's P-TACTS system, this **PETITIONER'S NOTICE OF APPEAL** was filed with and served on the Director of the United States Patent and Trademark Office via e-mail at the below address in accordance with 37 C.F.R. §90.2(a):

Office of the General Counsel
U.S. Patent and Trademark Office
efileSO@uspto.gov

I also hereby certify that on August 22, 2025, this **PETITIONER'S NOTICE OF APPEAL** and the requisite docketing fees were filed with the Clerk's Office of the United States Court of Appeals for the Federal Circuit via CM/ECF.

I further hereby certify that on August 22, 2025, this **PETITIONER'S NOTICE OF APPEAL** was served by electronic mail on the following counsel for Patent Owner:

R. Scott Johnson
rsjohnson@fredlaw.com

Thomas M. Patton
tpatton@fredlaw.com

Cara S. Donels
cdonels@fredlaw.com

Dated: August 22, 2025

Respectfully submitted,

Domingo M. LLagostera/

Domingo M. LLagostera

Reg. No. 70,684

Lead Counsel for Petitioner