

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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VF OUTDOOR, LLC,

Petitioner,

v.

COCONA, INC.,

Patent Owner.

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Case No.: IPR2018-00190

Patent No.: 8,945,287

**VF OUTDOOR LLC'S NOTICE OF CROSS-APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

Pursuant to Federal Rule of Appellate Procedure 4(a)(3), VF Outdoor, LLC, Appellee/Cross-Appellant, hereby appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision (Paper 50) entered by the Patent Trial and Appeal Board on May 30, 2019 and from the Decision Denying Petitioner's Request for Rehearing of Final Written Decision (Paper 56) entered by the Patent Trial and Appeal Board on December 9, 2019. This Notice of Cross-Appeal is timely filed within 14 days of the Notice of Appeal filed by Cocona,

Inc., Appellant/Cross-Appellee, on February 7, 2020. The Federal Circuit assigned Case No. 2020-1448 to this matter in its Notice of Docketing issued February 10, 2020.

Appellee identifies the following issues on appeal:

- (1) Whether the Board's determination that claims 27, 28, 30, 32 and 35-39 of U.S. Patent No. 8,945,287 are not unpatentable for obviousness was incorrect, including whether the Board adequately articulated its reasoning in making that determination and whether the Board overlooked or misapprehended arguments and/or evidence in the petition, expert testimony, prior art, or other evidence in the record in making that determination;
- (2) Whether the Board violated Appellee's Due Process rights under the Administrative Procedure Act when determining that claims 38 and 39 of U.S. Patent No. 8,945,287 are not unpatentable for obviousness in the Final Written Decision;
- (3) Whether the Board erred in making any other findings, determinations, judgments or orders related to the Final Written Decision and decided adversely to Appellee.

In addition, while Appellee disagrees with Appellant's assertion, not raised below, that appointment of the administrative patent judges that constituted the Board in this proceeding was unconstitutional under the Appointments Clause, if Appellant's argument is correct, then the Board's decision that claims 27, 28, 30, 32 and 35-39 of U.S. Patent No. 8,945,287 are not unpatentable for obviousness would also be vacated and remanded.

Appellee is concurrently filing true and correct copies of this Notice of Cross-Appeal, along with the required fees, with the Director of the United States Patent and Trademark Office and the Clerk of the United States Court of Appeals for the Federal Circuit.

Dated February 21, 2020

/s/Andrew O. Larsen

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## **CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on February 21, 2020, **VF OUTDOOR LLC'S NOTICE OF CROSS-APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT** was served on the following counsel for Patent Owner:

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Date: February 21, 2020

Respectfully submitted,

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