

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EVERSTAR MERCHANDISE CO. LTD.,

Petitioner

v.

WILLIS ELECTRIC CO., LTD.,

Patent Owner

Case PGR2019-00056

Patent 10,222,037

PETITIONER'S NOTICE OF APPEAL

PGR2019-00056
U.S. Patent No. 10,222,037

Notice is hereby given, pursuant to 35 U.S.C. §§ 141 & 142 and 37 C.F.R. § 90.2(a), that Petitioner Everstar Merchandise Co. Ltd. (“Everstar”) hereby appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision on Remand in PGR2019-00056 entered on October 11, 2022 (the “Final Written Decision on Remand,” Paper 45) of the Patent Trial and Appeal Board (“PTAB”) of the United States Patent and Trademark Office (“USPTO”), and the Order Denying Director Review of that decision in PGR2019-00056 entered on January 25, 2023 (the “Order Denying Director Review,” Paper 49) of the USPTO.

Copies of the Final Written Decision on Remand and the Order Denying Director Review are attached.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Everstar further indicates that the issues on appeal include, but are not limited to, the following:

- 1) The Board’s determination that Everstar failed to meet its burden of proof that claims 1-33 of U.S. Patent 10,222,037 (“the ’037 patent”) are unpatentable for obviousness over the asserted prior art, as set forth in the Final Written Decision on Remand;
- 2) The Board’s obviousness analyses for demonstrating a reason to combine the prior art references, including but not limited to, physical

combinability of the references and quantification of the material properties of that resulting combination;

- 3) The Board's determination of the level of ordinary skill in the art;
- 4) The Board's consideration, or lack thereof, of the expert testimony, prior art references, knowledge of a person of ordinary skill in the art, and other evidence in the record;
- 5) The Board's factual findings, conclusions of law, evidentiary rulings, and/or other determinations supporting, opposing, or otherwise relating to the above issues; and
- 6) The Board's compliance, or lack thereof, with its rules, regulations, and the Administrative Procedures Act.

This Notice of Appeal is timely, having been filed within 63 days after the USPTO issued its Order Denying Director Review. 37 C.F.R. §§ 90.3(a)(1) & (b)(1); *see* PTAB Interim Process for Director Review, <https://www.uspto.gov/patents/patent-trial-and-appeal-board/interim-process-director-review> (“A timely Request for Rehearing by the Director will be considered a request for rehearing under 37 CFR 90.3(b) and will reset the time for appeal or civil action as set forth in that rule.”). Copies of this Notice of Appeal are being filed concurrently with

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the Director, the Board, and the Clerk of the United States Court of Appeals for the Federal Circuit, along with the Court's requisite filing fee.

March 23, 2023

Respectfully submitted,

Brenton R. Babcock

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Counsel for Petitioner

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that, in addition to being filed with the Patent Trial and Appeal Board through the P-TACTS System, a true and correct copy of the foregoing NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT BY PETITIONER EVERSTAR MERCHANDISE CO. LTD., is being sent via the U.S. Postal Service to the Director of the United States Patent and Trademark Office, at the following address:

Office of the Solicitor
United States Patent and Trademark Office
Mail Stop 8, P.O. Box 1450
Alexandria, VA 22313-1450

I also certify that a true and correct copy of the foregoing NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT BY PETITIONER EVERSTAR MERCHANDISE CO. LTD. and the prescribed fees were filed via the electronic filing system, CM/ECF and pay.gov, on this 23rd day of March 2023, with the Clerk's Office of the United States Court of Appeals for the Federal Circuit.

I also certify that a true and correct copy of the foregoing NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT BY PETITIONER EVERSTAR MERCHANDISE CO.

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