

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

1964 EARS, LLC,
Petitioner,

v.

JERRY HARVEY AUDIO HOLDING, LLC,
Patent Owner.

Case IPR2017-01084 (Patent 8,567,555 B2)
Case IPR2017-01091 (Patent 8,925,674 B2)
Case IPR2017-01092 (Patent 9,197,960 B2)

Record of Oral Hearing
Held: December 17, 2018

Before BRIAN J. McNAMARA, JOHN F. HORVATH, and
AARON W. MOORE, *Administrative Patent Judges*.

Case IPR2017-01084 (Patent 8,567,555 B2)
Case IPR2017-01091 (Patent 8,925,674 B2)
Case IPR2017-01092 (Patent 9,197,960 B2)

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The above-entitled matters came on for hearing on Monday, December 17, 2018, commencing at 1:00 p.m. at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

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P R O C E E D I N G S

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JUDGE MOORE: Good afternoon. We will hear argument now in our case number IPR2017-01084, IPR2017-01091, and IPR2017-01092. The petitioner in the three cases is 1964 Ears, LLC. Patent owner is Jerry Harvey Audio Holding, LLC. The patents at issue in the respective proceedings are 8,567,555, 8,925,674, and 9,197,960.

I'm Judge Moore. To my right is Judge McNamara. On the video screen is Judge Horvath. Would the counsel for the parties please identify yourselves, starting with petitioner?

MS. HOMEN: Thank you, Your Honor. My name is Delfina Homen, and I am backup counsel for petitioner 1964 Ears, LLC. I'm here with my co-counsel and the lead counsel in this proceeding, Ms. Hillary Brooks. She has lost her voice, so she will not be speaking today. Thank you.

MR. RAVICHER: Good afternoon, your Honors. This is Dan Ravicher for patent owner Jerry Harvey Audio Holding, LLC. With me is co-counsel David Garrod.

JUDGE MOORE: Thank you and welcome to the Board. Pursuant to our December 7th order, we will hear the 1084 case first with 35 minutes of argument time per side. We'll take a break and then hear the 1091 and 1092 cases together with each side allocated 70 minutes of time.

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1 Petitioner here bears the burden of proving any proposition of
2 unpatentability by a preponderance of the evidence, and I'll remind everyone
3 that this hearing is open to the public and the transcripts of the hearing will be
4 published, and will become part of the public record.

5 So with that, I'll invite petitioner to begin.

6 MS. HOMEN: May I please approach with demonstrative exhibits?

7 JUDGE MOORE: I'm sorry?

8 MS. HOMEN: May I please approach with the demonstrative
9 exhibits?

10 JUDGE MOORE: Yes. Counsel, these are identical to the ones
11 that were submitted?

12 MS. HOMEN: Correct.

13 JUDGE MOORE: Do you wish to reserve any time for rebuttal?

14 MS. HOMEN: Yes, please. I would like to reserve ten minutes.
15 Thank you very much for granting petitioner's request for oral argument in
16 this proceeding. My presentation today will focus on, with respect to the 555
17 patent, will focus on the unpatentability of the original claims, as well as the
18 unpatentability of the proposed new claims.

19 Petitioner has on file in this proceeding a pending motion to exclude.
20 Petitioner rests on the briefing with respect to that motion.

21 Before discussing the unpatentability of the original claims, it's
22 helpful to briefly discuss the state of the art at the time of the alleged invention.
23 The '555 patent is directed to a system, a canalphone, that has a high-

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1 frequency driver, a low-frequency driver, and two sound bores, one for each
2 driver. Claim one is representative of the subject matter claimed in the '555
3 patent.

4 The basic structure of the claim's canalphone was already known in
5 the art. Both Saggio which is reproduced on this slide to the left and Harvey
6 '806 reproduced to the right include figures showing a canalphone with one
7 high-frequency driver, one low-frequency driver, and sound bores for each
8 driver as prior art.

9 Canal phones are more commonly referred to as in-ear monitors or
10 IEMs. I may use those terms interchangeably today. Drivers are also
11 referred to as receivers or transducers, all of which are terms that I might use
12 interchangeably. They convert electrical energy (an audio signal) to
13 acoustical energy (sound). They can be referred to by the frequency of the
14 sound they reproduce, like a low-frequency driver, sometimes abbreviated
15 LFD, or a high-frequency driver abbreviated HFD.

16 Sound bores are also commonly referred to as sound tubes or audio
17 tubes and, again, these are terms that might be used interchangeably today.
18 They direct sound from the driver to an outlet at the ear tip of the IEM.

19 Turning to the unpatentability challenge, I will first address the
20 unpatentability of the limitations directed to the basic structure, a housing with
21 two drivers and two sound bores. Patent owner has not contested that these
22 limitations are taught by the prior art. In this proceeding, that piece of prior
23 art is LoPresti.

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