

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 IPR2017-01091
Patent 8,925,674 B2

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

MOORE, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

ORDER ON MOTION TO AMEND
35 U.S.C. § 316(d) and 37 C.F.R. § 42.121

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I. INTRODUCTION

A. *Background*

1964 Ears, LLC (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–21 of U.S. Patent No. 8,925,674 B2 (Ex. 1001, “the ’674 patent”). Paper 1 (“Pet.”). Jerry Harvey Audio Holding, LLC (“Patent Owner”) filed a Preliminary Response. Paper 7 (“Prelim. Resp.”).

On October 3, 2017, we instituted an *inter partes* review of claims 1–11, 13–18, and 20 on several grounds of unpatentability. Paper 8 (“Inst. Dec.”), 62–63. Patent Owner then filed a Patent Owner Response (Paper 20, “PO Resp.”) and Petitioner filed a Reply (Paper 22, “Pet. Reply”).

Following the Supreme Court’s decision in *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348 (2018), we modified the Institution Decision to include review of all claims on all grounds presented in the Petition. *See* Paper 43. Petitioner then requested, and was granted, adverse judgment with respect to the anticipation ground based on Saggio. *See* Paper 52. Patent Owner filed a Supplemental Response regarding the added claims (Paper 57, “Supp. Resp.”), Petitioner filed a Supplemental Reply (Paper 58, “Supp. Reply”), and Patent Owner filed a Supplemental Sur-Reply (Paper 64, “Supp Sur-Reply”).

Patent Owner has also filed a Contingent Motion to Amend (Paper 21, “Mot. to Amend”), Petitioner filed an Opposition (Paper 23, “Mot. to Amend Opp.”), Patent Owner filed a Reply (Paper 31, “Mot. to Amend Reply”), and Petitioner filed a Sur-Reply (Paper 33, “Mot. to Amend Sur-Reply”).

Patent Owner also filed a Motion for Observations (Paper 35), and Petitioner filed a Response (Paper 41).

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