

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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1964 EARS, LLC,  
Petitioner,

v.

JERRY HARVEY AUDIO HOLDING, LLC,  
Patent Owner.

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Case IPR2017-01091  
Patent 8,925,674 B2

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Before JAMESON LEE, BRIAN J. McNAMARA, and  
JOHN F. HORVATH, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION

Institution of *Inter Partes* Review  
35 U.S.C. § 314(a) and 37 C.F.R. § 42.108

I. INTRODUCTION

A. Background and Summary

On March 15, 2017, Petitioner<sup>1</sup> filed a Petition (Paper 1, “Pet.”) to institute *inter partes* review of claims 1–21 of U.S. Patent No. 8,925,674 B2

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<sup>1</sup> 1964 Ears, LLC.

(Ex. 1001, “the ’674 patent”). On July 6, 2017, Patent Owner<sup>2</sup> filed a Preliminary Response (Paper 7, “Prelim. Resp.”). To institute an *inter partes* review, we must determine that the information presented in the Petition shows “that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

35 U.S.C. § 314(a). Having considered the arguments and evidence presented in the Petition and in the Preliminary Response, we determine that Petitioner has demonstrated a reasonable likelihood that it would prevail in establishing the unpatentability of each of claims 1–11, 13–18, and 20 of the ’674 patent, but not claims 12, 19, and 21 of the ’674 patent.

#### B. Related Matters

Petitioner and Patent Owner identify as a related matter involving both parties and the ’674 patent: *Jerry Harvey Audio Holding, LLC et al. v. 1964 Ears, LLC (WA) et al.*, 6:16-cv-00409-CEM-KRS (M.D. Fla.). Pet. 2, Paper 5. Patent Owner identifies the following *inter partes* review proceedings as related matters: Case IPR2017-01084 involving Patent No. 8,567,555 B2; Case IPR2017-01092 involving Patent No. 9,197,960 B2. Paper 5.

Petitioner identifies the following civil action involving both parties and Patent No. 8,897,463 B2 as a related matter: *Jerry Harvey Audio Holding, LLC et al. v. 1964 Ears, LLC et al.*, 6:14-cv-02083-CEM-KRS (M.D. Fla.). Pet. 3. Petitioner also identifies as a related matter the following *inter partes* review proceeding: Case IPR2016-00494 involving Patent No. 8,897,463 B2. *Id.*

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<sup>2</sup> Jerry Harvey Audio Holding, LLC.

C. The '674 Patent

The '674 patent is titled “Phase Correcting Canalphone System and Method.” Ex. 1001 (54). The '674 patent describes that there are many different types of personal listening devices such as headphones, earbuds, and canalphones, and that canalphones are substantially smaller than a person’s outer ear and differ from earbuds in that they are “placed directly in one end of the ear canal.” *Id.* at 1:22–31. According to the '674 patent, both earbuds and canalphones are held in position by friction between the ear and the device rather than by the support system found in most headphones. *Id.* at 1:31–34. The '674 patent states that canalphones also may be held in place by retainers that engage a portion of a listener’s head. *Id.* at 1:34–35.

In an embodiment including what is referred to as sound bores, the '674 patent discloses a canalphone system having a high frequency sound bore, a low frequency sound bore next to the high frequency sound bore, a high frequency acoustic driver delivering sound through the high frequency sound bore, and a low frequency acoustic driver delivering sound through the low frequency sound bore. *Id.* at 2:9–25.

In an embodiment including what is referred to as sound tubes, the '674 patent discloses a canalphone system having a high frequency audio driver, a low frequency audio driver adjacent to the high frequency audio driver, and an acoustical-timer “to phase correct a high audio signal from the high audio driver directed to the outside of the canalphone housing *with* delivery of a low audio signal from the low audio driver directed to the outside of the canalphone housing.” *Id.* at 2:49–57 (emphasis added). The '674 patent describes:

The acoustical-timer further includes a low audio sound-tube to carry a low audio signal from the low audio driver to outside of the canalphone housing, and a high audio sound-tube to carry a high audio signal from the high audio driver to the outside of the canalphone housing, the high audio sound-tube phase corrected with respect to the low audio sound-tube by sizing it to be longer than the low audio sound-tube. The low audio sound-tube may be sized based upon its time response for the low audio signal to pass through the low audio sound-tube.

The high audio sound-tube may be longer to slow down the high audio signal's arrival to the outside of the canalphone housing so that it is closer in time to the low audio signal from the low audio driver arrival to the outside of the canalphone housing. The arrival of the high audio [signal] to the outside of the canalphone housing is less than 0.05 milliseconds difference than the low audio signal from the low audio driver arrival to the outside of the canalphone housing.

*Id.* at 2:58 to 3:8. The '674 patent also describes an electronic implementation for the "acoustical-timer." The '674 patent states:

The acoustical-timer may include a processor to phase correct a high audio signal from the high audio driver to the outside of the canalphone housing with delivery of a low audio signal from the low audio driver to the outside of the canalphone housing.

The processor may use digital signal processing to control the high audio signal's arrival at the outside of the canalphone housing to be closer in time to the low audio signal from the low audio driver's arrival to the outside of the canalphone housing. The arrival of the high audio [signal] to the outside of the canalphone housing is less than 0.05 milliseconds difference than the low audio signal from the low audio driver arrival to the outside of the canalphone housing.

*Id.* at 3:15–27. The '674 patent describes that "[t]he acoustical-timer may use a time response for the low audio signal to pass through the canalphone

housing as a control point to set all other audio signals' phase in the system.”  
*Id.* at 3:28–31.

Alternatively, in characterizing its system as a method, the '674 patent describes (1) providing a high audio driver carried by a canalphone housing, (2) providing a low audio driver carried by the canalphone housing adjacent to the high audio driver, and (3) phase correcting a high audio signal from the high audio driver directed to the outside of the canalphone housing with delivery of a low audio signal from the low audio driver directed to the outside of the canalphone housing. *Id.* at 3:36–44. For the phase correction in such a method, the '674 patent describes two implementations, one using a longer sound-tube for the high audio driver than the low audio driver, and the other using digital signal processing. *Id.* at 3:55–4:5. For the mechanical implementation, the '674 patent states:

The method may further include slowing down the high audio signal's arrival to the outside of the canalphone housing so that it is closer in time to the low audio signal from the low audio [signal's] arrival to the outside of the canalphone housing by making the high audio sound-tube longer.

The method may additionally include timing the arrival of the high audio signal to the outside of the canalphone housing compared to the low audio signal from the low audio [signal's] arrival to the outside of the canalphone housing is within 0.05 milliseconds of each other.

*Id.* at 3:63–67. For the electronic implementation, the '674 patent states:

“The method may also include using digital signal processing to phase correct a high audio signal from the high audio driver directed to the outside of the canal-phone housing with delivery of a low audio signal from the low audio driver directed to the outside of the canalphone housing.” *Id.* at 3:67–4:5.

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