

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FREEBIT AS,
Petitioner,

v.

BOSE CORPORATION,
Patent Owner.

Case IPR2017-01308
Patent 8,254,621 B2

Before KRISTEN L. DROESCH, BRYAN F. MOORE, and
JAMES B. ARPIN, *Administrative Patent Judges*.

ARPIN, *Administrative Patent Judge*.

DECISION

Denying Institution of Inter Partes Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

Freebit AS (“Petitioner”) filed a Petition to institute *inter partes* review of claims 1–11 of U.S. Patent No. 8,254,621 B2 (Ex. 1001, “the ’621 patent”). Paper 1 (“Pet.”). Bose Corporation (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). Pursuant to our grant of authorization, Petitioner filed a Reply (Paper 7) to Patent Owner’s Preliminary Response.¹ *See* Ex. 3001.

Having considered the Petition, the Preliminary Response, the Reply, and the evidence of record, and applying the standard set forth in 35 U.S.C. § 314(a), which requires demonstration of a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim; we *deny* Petitioner’s request and do not institute an *inter partes* review of any of claims 1–11 of the ’621 patent.

B. Related Matters

The parties are unaware of any related judicial proceedings that may affect or be affected by this proceeding. Pet. 1; Paper 4, 2. However, Petitioner has requested *inter partes* review of claims of related patents in IPR2017-01307 (U.S. Patent No. 8,311,253 B2) and IPR2017-01309 (U.S. Patent No. 9,036,853 B2), in each of which Petitioner applies the same references applied in this proceeding. Prelim. Resp. 1; *see* Paper 4, 2–3.

¹ *See* 37 C.F.R. § 42.108(c) (“A petitioner may seek leave to file a reply to the preliminary response in accordance with §§ 42.23 and 42.24(c). Any such request must make a showing of good cause.”); *see also* 37 C.F.R. § 42.5(a) (“The Board may determine a proper course of conduct in a proceeding for any situation not specifically covered by this part and may enter non-final orders to administer the proceeding.”).

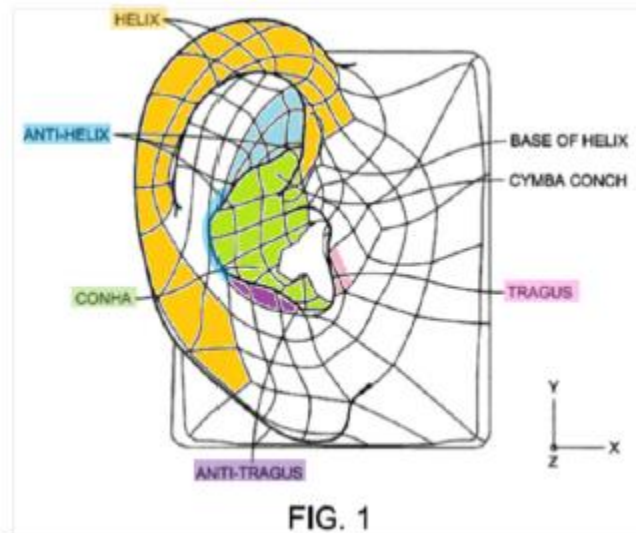
C. Overview of Human Ear Anatomy

Because the challenged claims describe an earpiece with respect to its engagement of the ear, Patent Owner provides an overview of the anatomy of the human ear. Although Patent Owner acknowledges that human ears may differ in size and geometry between individuals and the features discussed below may be more or less prominent in any particular individual, it is helpful to understand the basic anatomy of the human ear when considering the recited device. Prelim. Resp. 5.

A human ear is composed of three main parts: the outer ear, the middle ear and the inner ear. The outer ear is made up of the cartilaginous pinna (or auricle) which funnels airborne sound waves through an opening, the external auditory meatus, into the auditory canal. The anterior surface of the cartilaginous pinna is irregularly concave and presents numerous projections, depressions and other features.

Id. at 3–4.

Figure 1 of the '621 patent, as annotated by Patent Owner, is reproduced below.



Id. at 4.

As illustrated, the helix is a curled rim that extends around the outer circumference of the rear edge of the pinnae from the ear lobe to the base of helix, also known as the crus of helix. *The anti-helix is a generally ridge-like structure that curves generally concentric with and is positioned frontal to the helix on the anterior surface of the pinna. Extending from an inferior portion of the crus (located at its top) to the anti-helix-antitragus notch (at its bottom), the anti-helix includes a curve around the upper and rearward portions of a concave cavity, called the concha.* The tragus is the name given to the cartilaginous and typically stiff flap protruding outward in front of part of the concha, just forward of the exterior auditory meatus (not shown in the figure). The antitragus is a cartilaginous protrusion formed at a lower end of the anti-helix opposite the tragus and separated from it by a notch. The antitragus is located above the ear lobe at the bottom of the pinnae.

Id. at 4–5 (emphasis added); *see, e.g.*, Ex. 1001, 11:25–34 (claim 1 describing the positioning and retaining structure with respect to “the curve of the anti-helix of the user’s ear at the rear of the concha”)

D. The '621 Patent

The application, from which the '621 patent issued, was filed on March 7, 2012, but claims priority as a continuation from U.S. Patent Application Serial No. 12/860,531, filed August 20, 2010, which claims priority from U.S. Provisional Patent Application No. 61/374,107, filed August 16, 2010. Ex. 1001 at (22), (63), and (60). The '621 patent describes an earpiece including an electronics module for wirelessly receiving audio signals. Views B and E of Figure 2 of the '621 patent are reproduced below.

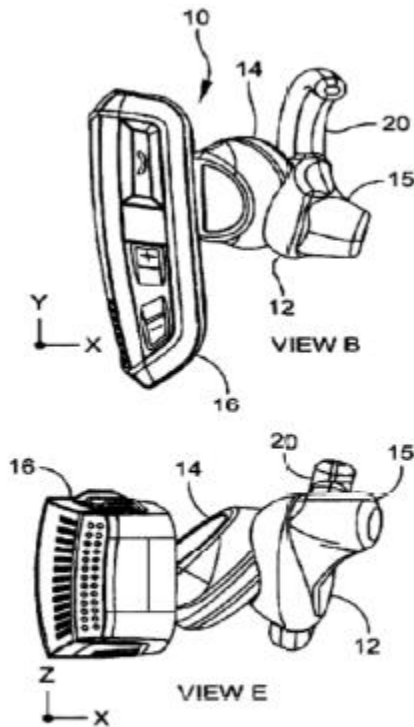


FIG. 2

Specifically, views B and E of Figure 2 depict in-ear earpiece 10 that includes: (1) body 12 with outlet section 15 that fits into the ear canal, (2) positioning and retaining structure 20; and (3) acoustic driver module 14 that is coupled to electronics module 16. Ex. 1001, 1:20–33, 4:49–53, 5:32–34. Electronics module 16 wirelessly receives incoming audio signals from an external source, such as a cellular phone, and may include microphone 11 for transducing sound into outgoing audio signals. Electronics module 16 further may include circuitry for wirelessly receiving radiated electronic signals and transmitting the audio signals to acoustic driver module 14. *Id.* at 2:5–10, 2:62–67, 4:58–65, 10:7–8, Fig. 8.

Figure 6 of the '621 patent also is reproduced below.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.