

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.,
Petitioner,

v.

KOSS CORPORATION,
Patent Owner.

IPR2021-00381
Patent 10,491,982 B1

Before DAVID C. McKONE, GREGG I. ANDERSON, and
NORMAN H. BEAMER, *Administrative Patent Judges*.

ANDERSON, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining Some Challenged Claims Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

Apple, Inc. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–5 and 14–20 of U.S. Patent No. 10,491,982 (Ex. 1001, “the ’982 patent”). Paper 2 (“Pet.”). Koss Corporation (“Patent Owner”) filed a Preliminary Response. Paper 10 (“Prelim. Resp.”). Upon our authorization, Petitioner filed a Preliminary Reply relating to discretionary denial based on the factors set forth in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential). Paper 11 (“Prelim. Reply”). Patent Owner filed a Preliminary Sur-Reply. Paper 12 (“Prelim. Sur-Reply”). We instituted *inter partes* review on July 2, 2021. Paper 15 (“Inst. Dec.”). Patent Owner filed a Response (Paper 19, “PO Resp.”), Petitioner filed a Reply (Paper 31, “Reply”), and Patent Owner filed a Sur-Reply (Paper 34, “Sur-Reply”). A hearing was held on April 5, 2022, and a transcript has been made of record. Paper 42 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6. This Decision is a final written decision under 35 U.S.C. § 318(a) as to the patentability of claims 1–5 and 14–20. Based on the record before us, Petitioner has proved, by a preponderance of the evidence, that claims 1–5 and 14–18 are unpatentable, but has not proved that claims 19 and 20 are unpatentable.

II. BACKGROUND

A. *Real Parties in Interest*

Petitioner states it is the real party-in-interest. Pet. 85. Patent Owner states it is the real party-in-interest. Paper 4 (“Mandatory Notice by Patent Owner”), 1; *see also* Papers 6–9 (Updates to Mandatory Notice).

B. Related Matters

Both parties list a related lawsuit alleging infringement of the '982 patent, *Koss Corporation v. Apple Inc.*, Case No. 6:20-cv-00665 (W.D. Tex.) (“District Court Lawsuit”). Pet. 86. Patent Owner lists the District Court Lawsuit and other lawsuits involving the '982 patent, United States applications to which the '982 patent claims priority, and pending *inter partes* reviews as Related Matters. Paper 9, 1–2.

1. Other Lawsuits

Patent Owner identifies five other lawsuits involving the '982 patent: *Koss Corporation v. PEAG LLC d/b/a JLab Audio*, Case No. 6:20-cv-00662 (W.D. Tex.); *Koss Corporation v. Skullcandy, Inc.*, Case No. 6:20-cv-00664 (W.D. Tex.); *Apple Inc. v. Koss Corporation*, Case No. 4:20-cv-05504 (N.D. Cal.); *Koss Corporation v. Apple Inc.*, Case No. 6-20-cv-00665 (W.D. Tex.); and *Koss Corporation v. Skullcandy, Inc.*, Case No. 2:21-cv-00203 (D. Utah). Paper 9, 1.

2. United States Applications

Patent Owner lists the following as Related Applications to which the '982 patent claims priority: PCT application No. PCT/US2009/039754, filed April 7, 2009 (the “PCT Application”) and provisional application Serial No. 61/123,265, filed April 8, 2008 (the “Provisional Application”). Paper 9, 1.

3. *Inter Partes Review Proceedings*

Patent Owner lists the following *inter partes* review proceedings¹ challenging patents that claim priority to the PCT Application and the Provisional Application:

Bose Corporation v. Koss Corporation, IPR2021-00297, filed December 7, 2020, challenging US Patent 10,368,155 B2;

Apple Inc. v. Koss Corporation, IPR2021-00305, filed December 15, 2020, challenging US Patent 10,506,325 B1;

Apple Inc. v. Koss Corporation, IPR2021-00546, filed February 22, 2021, challenging US Patent 10,206,025 B2;

Apple Inc. v. Koss Corporation, IPR2021-00592, filed March 2, 2021, challenging US Patent 10,469,934 B2;

Apple Inc. v. Koss Corporation, IPR2021-00612, filed March 3, 2021, challenging U.S. Patent 10,206,025;

Apple Inc. v. Koss Corporation, IPR2021-00626, filed March 17, 2021, challenging US Patent 10,206,025 B2;

Bose Corporation v. Koss Corporation, IPR2021-00680, filed March 17, 2021, challenging US Patent 10,469,934 B2;

Apple Inc. v. Koss Corporation, IPR2021-00679, filed March 22, 2021, challenging US Patent 10,506,325 B1; and

¹ *Apple Inc. v. Koss Corporation*, IPR2021-00255, filed November 25, 2020, and *Apple Inc. v. Koss Corporation*, IPR2021-00600, filed March 7, 2021, both challenging US Patent 10,298,451 B1, and *Apple Inc. v. Koss Corporation*, IPR2021-00686, filed March 22, 2021, challenging US Patent 10,491,982 B1, are also pending *inter partes* reviews between these same parties.

Apple Inc. v. Koss Corporation, IPR2021-00693, filed March 23, 2021, challenging US Patent 10,469,934 B2.

Paper 9. 1–2.

C. The '982 Patent

The application for the '982 patent's earliest priority dates are April 7, 2009, to the PCT Application and April 8, 2008², to the Provisional Application. Ex. 1001, codes (60), (63). See Section II.B.2 above.

1. Background Technology

The '982 patent explains that wired headphones interconnecting headphones and a data storage unit are “cumbersome.” Ex. 1001, 1:56–59. “Recently, cordless headphones that connect wirelessly via IEEE 802.11 to a WLAN-ready laptop or personal computer (PC) have been proposed, but “such headphones are also quite large and not in-ear type phones.” *Id.* at 1:66–2:4.

2. The '982 Patent's Wireless Earphones

The '982 patent describes and claims “a wireless earphone that receives streaming audio data via ad hoc wireless networks and infrastructure wireless networks, and that transitions seamlessly between wireless networks.” Ex. 1001, 2:64–66. “[T]he earphone may transition automatically from an ad hoc wireless network to an infrastructure wireless network, without user intervention.” *Id.* at 3:8–11. The '982 patent defines “ad hoc wireless network” as “a network where two . . . wireless-capable devices, such as the earphone and a data source, communicate directly and wirelessly, without using an access point.” *Id.* at 3:8–14. The '982 patent defines “infrastructure wireless network” as “a wireless network that uses

² The priority date is not in dispute. See Pet. 2.

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