

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BOSE CORPORATION,

Plaintiff,

v.

KOSS CORPORATION,

Defendant.

Civil Action No. _____

DEMAND FOR JURY TRIAL

**COMPLAINT FOR DECLARATORY JUDGMENT OF
PATENT NONINFRINGEMENT**

Plaintiff Bose Corporation (“Bose”) brings this action for declaratory judgment of patent noninfringement against Koss Corporation (“Koss” or “Defendant”) and alleges as follows:

NATURE OF ACTION

1. This is an action arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the patent laws of the United States, 35 U.S.C. § 1 *et seq.* Bose brings this action for a declaration that it does not infringe any claim of U.S. Patent Nos. 10,206,025 (“the ’025 patent”), 10,368,155 (“the ’155 patent”), or 10,469,934 (“the ’934 patent”) (collectively “the Asserted Patents”).

PARTIES

2. Bose Corporation is a Delaware corporation with its principal place of business at 100 The Mountain Road, Framingham, Massachusetts 01701.

3. On information and belief, Koss Corporation is a Delaware corporation with its principal place of business at 4129 North Port Washington Avenue, Milwaukee, Wisconsin 53212.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over the declaratory judgment claims presented in this action pursuant to 28 U.S.C. §§ 1331 and 1338 because these claims arise under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

5. On July 22, 2020, Koss filed a complaint against Bose in the Western District of Texas (“the Texas Complaint” in “the Texas Litigation”) alleging that certain Bose SoundSport, 700, and QC 35 wireless headphone products (collectively, the “Accused Products”) infringe the Asserted Patents.

6. Venue is improper in the Western District of Texas because Bose is not resident in that district and Bose lacks a regular and established place of business in that district.

7. Bose intends to move to dismiss (or transfer) the Texas Litigation on the ground that venue is improper in the Western District of Texas.

8. Prior to filing the Texas Complaint, Koss sent to Bose a letter alleging that Bose infringed the Asserted Patents. Koss sent the letter on July 9, 2020 and attached a copy of the letter as Exhibit G to the Texas Complaint.

9. Koss’s counsel sent copies of the July 9, 2020 letter to (i) Bose’s Registered Agent in Boston, Massachusetts and (ii) Bose’s Chief Intellectual Property Counsel in Framingham, Massachusetts. A copy of the July 9, 2020 letter is attached hereto as Exhibit A.

10. In the July 9, 2020 letter, Koss accused Bose of infringing “one or more claim” of the Asserted Patents. Koss attached claim charts to the letter that Koss alleged show “the manner in which the aforementioned products infringe [the Asserted Patents].”

11. In the July 9, 2020 letter, Koss demanded that Bose (i) stop selling the products accused of infringement, (ii) promptly meet with Koss to discuss patent license terms, and (iii) provide Koss with sales information regarding the Accused Products.

12. Prior to Koss serving the Texas Complaint on Bose, Koss and Bose engaged in discussions in an attempt to resolve the dispute.

13. As part of that discussion process, Koss and Bose entered into a Non-Disclosure Agreement (“NDA”) to facilitate the sharing of confidential information.

14. The NDA is subject to the laws of the Commonwealth of Massachusetts.

15. Bose shared with Koss, pursuant to the NDA, confidential sales information that originated from Bose’s headquarters in Framingham, Massachusetts.

16. The July 9, 2020 letter, the Texas Complaint, and the negotiations between Koss and Bose with respect to alleged infringement by Bose, individually and collectively demonstrate that an immediate, substantial, and justiciable controversy exists between Bose and Koss regarding Bose’s alleged infringement of the Asserted Patents. Accordingly, declaratory judgment jurisdiction exists over the subject matter set forth in this complaint.

17. This Court has personal jurisdiction over Koss in this action. Koss regularly transacts business in this District. Koss derives substantial revenue from products and/or services provided in this District and has purposely established substantial, systematic and continuous contacts within this District, including distribution and sale of products within this District through, among other channels, retailers, distributors, the internet, and direct mail catalogs. For example, in the Texas Complaint, Koss alleged that its products “are sold at various retail chains throughout the United States and the world, including Walmart stores and other large brick-and-mortar establishments.”

18. As detailed above, Koss also sent the July 9, 2020 letter to Bose in this District alleging infringement, attaching claim charts and inviting Bose to negotiate a license, then followed up by engaging in negotiations, email communications and discussions with Bose in an effort to secure a payment from Bose. Bose's claims in this declaratory judgment complaint arise out of these activities by Koss within this District and relate to products designed and developed in this District.

19. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims at issue occurred in Massachusetts. Bose resides in Massachusetts. Bose designed the Accused Products in Massachusetts and sells the Accused Products in Massachusetts. Further, as discussed above, Koss's infringement threat letter was sent to Bose in Massachusetts and the discussions between Koss and Bose involved provision by Bose of confidential information from its headquarters in Massachusetts.

BOSE'S INNOVATIVE PRODUCTS

20. Bose is a leading designer and manufacturer of audio equipment, including speakers, headphones, and wearable devices. Since its founding in 1964, Bose has continually invested in research and development to become a worldwide leader in audio and communication products for home, professional, and aviation use. These investments in groundbreaking technologies have allowed Bose to be the first to bring advanced technologies to market, such as launching one of the first commercial active noise cancelling headsets. Bose has been awarded over 1,700 United States patents as a result of this culture of innovation.

21. The SoundSport, QuietComfort 35, and 700 lines of wireless headphones are among the pioneering products created as a result of Bose's efforts. The SoundSport wireless headphones are earbuds designed to be comfortable and stable within a user's ear during exercise while protecting the sensitive electronic components from damage from sweat or inclement weather. The QuietComfort 35 and 700 headphones provide premium sound while utilizing Bose's renowned active noise cancellation technology in a comfortable ergonomic design. All three products utilize Bluetooth to wirelessly connect with an audio source such as a smartphone.

PATENTS

22. The '025 patent is titled "System with Wireless Earphones." The '025 patent names as inventors Michael J. Koss, Michael J. Pelland, Michael Sagan, Steven R. Reckamp, Gregory J. Hallingstad, Jeffery K. Bovee, and Morgan J. Lowery. A true and correct copy of the '025 patent is attached as Exhibit B.

23. The assignee of the '025 patent identified on the patent's face is Koss. Koss claims to be the current owner of the '025 patent.

24. The '155 patent is titled "System with Wireless Earphones." The '155 patent names as inventors Michael J. Koss, Michael J. Pelland, Michael Sagan, Steven R. Reckamp, Gregory J. Hallingstad, Jeffery K. Bovee, and Morgan J. Lowery. A true and correct copy of the '155 patent is attached as Exhibit C.

25. The assignee of the '155 patent identified on the patent's face is Koss. Koss claims to be the current owner of the '155 patent.

26. The '934 patent is titled "System with Wireless Earphones." The '934 patent names as inventors Michael J. Koss, Michael J. Pelland, Michael Sagan, Steven R. Reckamp, Gregory J. Hallingstad, Jeffery K. Bovee, and Morgan J. Lowery. A true and correct copy of the '934 patent is attached as Exhibit D.

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