

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

APPLE INC.,  
Petitioner,

v.

KOSS CORPORATION,  
Patent Owner.

---

Case IPR2021-00255  
Patent 10,298,451

---

**PATENT OWNER RESPONSE**

## TABLE OF CONTENTS

	<b>Page</b>
I. INTRODUCTION .....	1
II. BACKGROUND .....	2
A. Summary of the '451 Patent.....	2
B. Person of Ordinary Skill in the Art .....	6
C. Petitioner's Invalidation Grounds and Evidence .....	7
1. Brown.....	10
2. Scherzer.....	12
3. Cooperstock's Testimony .....	17
III. THE CHALLENGED CLAIMS WOULD NOT HAVE BEEN OBVIOUS.....	18
A. The Brown-Scherzer Combination .....	18
B. Relevant Issues for Obviousness Determination.....	23
C. A POSITA Would Not Attempt To Use Scherzer's Access Credentials With an Unregistered Device.....	24
1. Transmission and Use of Scherzer's Access Credentials By an Unregistered Device Ignores the Account Acceptability Requirement and Associated Tracking in Scherzer.....	25
2. Scherzer, As a Whole, Discourages Unfettered Dissemination of Access Credentials to Unregistered Devices.....	29
3. A Simpler Approach to Network Connectivity Exists .....	30
B. The Petition's Obviousness Analysis Relies on Impermissible Hindsight Reconstruction.....	30

1.	Defects In The Petition’s First Example.....	31
2.	Defects in the Petition’s Second Example.....	34
3.	Defects in Cooperstock’s Testimony .....	36
C.	The Petition’s Flawed Analysis Obscures Any Comparison of Brown and Scherzer to the Challenged Claims .....	38
IV.	OBJECTIVE INDICIA OF NONOBVIOUSNESS CONFIRM THAT THE CHALLENGED CLAIMS ARE PATENTABLE .....	40
A.	Background .....	40
B.	Legal Principles.....	41
C.	There is a Nexus Between the HomePods and the Claims of ’451 Patent.....	42
D.	There is Evidence that the HomePod and HomePod Mini Have Achieved Commercial Success Since their Debut.....	44
V.	CONCLUSION.....	45

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Ecolochem, Inc. v. S. Cal. Edison Co.</i> , 227 F.3d 1361 (Fed. Cir. 2000) .....	41
<i>Fox Factory, Inc. v. SRAM, LLC</i> , 944 F.3d 1366 (Fed. Cir. 2019) .....	42, 43, 44
<i>Graham v John Deere Co.</i> , 383 U.S. 1 (1966).....	<i>passim</i>
<i>In re Keller</i> , 642 F.2d 413 (C.C.P.A. 1981) .....	24
<i>Merck &amp; Co., Inc. v. Teva Pharm. USA, Inc.</i> , 395 F.3d 1364 (Fed. Cir. 2005) .....	41
<i>Mintz v. Dietz &amp; Watson, Inc.</i> , 679 F.3d 1372 (Fed. Cir. 2012) .....	39
<i>Nautilus Hyosung Inc. v. Diebold, Inc.</i> , IPR2016-00633, Paper 9 (PTAB Aug. 22, 2016).....	36
<i>In re NTP, Inc.</i> , 654 F.3d 1279 (Fed. Cir. 2011) .....	9, 34, 38
<i>In re Schweickert</i> , 676 F. App'x. 988 (Fed. Cir. 2017) .....	34
<i>SightSound Techs., LLC v. Apple Inc.</i> , 809 F.3d 1307 (Fed. Cir. 2015) .....	41, 43
<i>W.L. Gore &amp; Assoc., Inc. v. Garlock, Inc.</i> , 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983).....	38

**EXHIBIT LISTING**

<b>EXHIBIT NO.</b>	<b>DESCRIPTION</b>
KOSS-2001	Sample Order Governing Proceedings - Patent Case, November 5, 2020, Judge Albright, United States District Court for the Western District of Texas, Waco Division
KOSS-2002	<i>Markman</i> Hearing, <i>MV3 Partners, LLC v. Roku, Inc.</i> , Case No. W-18-cv-308, Dkt. No. 83 (W. D. Tex. July 19, 2019)
KOSS-2003	E. Cunningham et al., "Fauci predicts vaccine 'open season' by April," <i>Washington Post</i> , Feb. 11, 2021 ( <a href="http://www.washingtonpost.com/nation/2021/02/11/coronavirus-covid-live-updates-us/">www.washingtonpost.com/nation/2021/02/11/coronavirus-covid-live-updates-us/</a> ) (last accessed February 25, 2021)
KOSS-2004	Docket Report, <i>Koss Corp. v. Apple Inc.</i> , Case No. 6:20-cv-00665-ADA (W.D. Tex.) (as of March 2, 2021)
KOSS-2005	Complaint, <i>Apple Inc. v. Koss Corporation</i> , Case No. 5:20-cv-05504, Dkt. No. 1 (N.D. Cal. Aug. 7, 2020)
KOSS-2006	Notice of Trial Procedures, <i>VLSI Tech. LLC v. Intel Corp.</i> , Case No. 6:21-cv-00057-ADA, Dkt. No. 421 (W.D. Tex. February 10, 2021)
KOSS-2007	R. Thebault, "Fauci says U.S. vaccinations to increase in spring as Biden administration nears dose goal," <i>Washington Post</i> , Feb. 7, 2021 ( <a href="http://www.washingtonpost.com/health/2021/02/07/fauci-vaccination-increase/">www.washingtonpost.com/health/2021/02/07/fauci-vaccination-increase/</a> ) (last accessed February 25, 2021)
KOSS-2008	K. Buehler, "WDTX Judge Albright Touts Revamped Courtroom Tech," IPLAW360, February 26, 2021.
KOSS-2009	Email dated March 8, 2021 from Michael Pieja to Darlene Ghavimi, including attachment that is letter dated March 6, 2021 Michael Pieja to Darlene Ghavimi
KOSS-2010	Claim Construction Order, <i>Koss Corp. v. Apple, Inc.</i> , Case No. 6-20-cv-00665-ADA, Dkt. 83 (W.D. Tex. June 2, 2021)

# 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.