

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION

KOSS CORPORATION,

Plaintiff,

v.

APPLE, INC.,

Defendant.

Case No. 6:20-cv-00665

**PLAINTIFF KOSS CORPORATION'S  
PRELIMINARY INFRINGEMENT CONTENTIONS**

Pursuant to this Court's sample order governing patent cases,<sup>1</sup> Plaintiff Koss Corporation ("Koss") hereby provides its initial infringement contentions and accompanying claim charts ("Infringement Contentions") to Defendant Apple, Inc. ("Apple" or "Defendant").

**I. INTRODUCTION**

These Infringement Contentions are based in whole or in part on Koss' current knowledge, its current understanding of the proper construction of the asserted claims of U.S. Patent Nos. 10,206,025 ("the '025 Patent"); 10,298,451 ("the '451 Patent"); 10,469,934 ("the '934 Patent"); 10,491,982 ("the '982 Patent"); and 10,506,325 ("the '325 Patent") (collectively, the "Koss Patents-in-Suit"), and its investigation to date. As fact discovery has not yet begun, and will not

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<sup>1</sup> A schedule has yet to be entered in this case, however Koss provides these Initial Infringement Contentions consistent with the Default Schedule for this Court, which requires preliminary infringement contentions seven days before the case management conference.

until after the *Markman* process under this Court’s default schedule, and as Defendant’s core technical documents are not scheduled to be produced until seven weeks after the CMC (which is deemed to have been held on November 13, 2020), these contentions are preliminary and Koss reserves its right to supplement upon the discovery of additional information.

Further, given that the parties have not yet identified proposed terms for construction from the Koss Patents-in-Suit or provided proposed constructions for terms in the Koss Patents-in-Suit, and that the Court has not yet made any claim construction ruling in this action, Koss’ Infringement Contentions herein may be made in a variety of alternatives, and not all interpretations are intended to be consistent with each other and/or Koss’ other contentions in this action, and should not be otherwise construed. Koss’ Infringement Contentions do not constitute admissions or adoptions of any particular claim scope or construction. Koss’ Infringement Contentions may apply a variety of constructions in order to provide as full a disclosure as possible in advance of claim construction. Koss objects to any attempt to deduce claim construction positions from these Infringement Contentions.

## **II. OVERVIEW OF THE INFRINGEMENT CONTENTIONS**

Koss contends certain Apple-branded and Apple-sold products and/or systems (collectively, “Accused Products”) infringe, directly and/or indirectly, either literally or under the doctrine of equivalents, the following claims of the ‘025 Patent, the ‘451 Patent, the ‘934 Patent, the ‘982 Patent and the ‘325 Patent:

- Claims 1–56 of the ‘025 Patent;
  - Apple- and Beats- branded headphones, including AirPods, AirPods Pro, Powerbeats Pro, Powerbeats, Solo Pro, Solo3, Studio3, and any other product that functions in substantially the same manner as reflected in the attached charts, A-1–A-7.
- Claims 1–7, 9–14, and 16–21 of the ‘451 Patent;

- Apple HomePod, and any other product that functions in substantially the same manner as reflected in the attached chart, B-1.
- Claims 1–62 of the ‘934 Patent; and
  - Apple- and Beats- branded headphones, including Airpods, Airpods Pro, Powerbeats Pro, Powerbeats, Solo Pro, Solo3, Studio3, and any other product that functions in substantially the same manner as reflected in the attached charts, C-1 - C-7.
- Claims 1–20 of the ‘982 Patent.
  - Apple- and Beats- branded headphones, including Airpods, Airpods Pro, and any other product that functions in substantially the same manner as reflected in the attached charts, D-1–D-2.
- Claims 1–18 of the ‘325 Patent;
  - Apple- and Beats- branded headphones, including Powerbeats Pro, and any other product that functions in substantially the same manner as reflected in the attached chart, E-1.

The claim charts attached hereto as Exhibits A-1–E-1 respectively illustrate how the Accused Products satisfy the various elements of the asserted claims. Koss reserves the right to prove infringement by relying on documents and/or portions of documents other than those cited in Exhibits A-1–E-1, which are intended to be merely exemplary. Koss further reserves the right to supplement and/or amend these Infringement Contentions as appropriate and as permitted under this Court’s model schedule, including in response to any non-infringement or claim construction theory asserted by Defendant, in response to any claim construction order issued by the Court, following or in the course of fact or expert discovery, and/or upon the discovery of additional relevant evidence or information.

Koss further reserves the right to prove infringement of any claim limitation under the doctrine of equivalents in the event that claim limitation is deemed not to be satisfied literally, whether due to claim construction or any other reason. Koss additionally reserves the right to supplement and/or amend its Infringement Contentions relating to indirect infringement.

### III. ADDITIONAL DISCLOSURES

Pursuant to the default schedule, Koss also provides the following disclosures regarding the earliest priority date for the above identified asserted claims in this action. Koss reserves the right to supplement these dates should additional evidence be uncovered during discovery. Further produced herewith are copies of the file histories of the Patents-in-Suit.

Asserted Patent/Claims	Date	Bates Range of Supporting Documents
Claims 1–56 of the ‘025 Patent	At least as early as January 1, 2007	KOSS_002718 - KOSS_002909
Claims 1–7, 9–14, and 16–21 of the ‘451 Patent	At least as early as July 12, 2010	KOSS_002910 - KOSS_002916
Claims 1–62 of the ‘934 Patent	At least as early as January 1, 2007	KOSS_002718 - KOSS_002909
Claims 1–20 of the ‘982 Patent	At least as early as January 1, 2007	KOSS_002718 - KOSS_002909
Claims 1–18 of the ‘325 Patent	At least as early as January 1, 2007	KOSS_002718 - KOSS_002909

Koss further has certain hard copy documents and product-type prototypes available for Defendant’s inspection in Milwaukee, Wisconsin upon request at a to-be-negotiated date.

Additionally, accompanying this disclosure is a Koss privilege log as well as copies of the file histories of the Patents-in-Suit, found at bates range KOSS\_000001 - KOSS\_002717.

Dated: November 6, 2020

Respectfully submitted,

/s/ Darlene F. Ghavimi

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