

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BOSE CORPORATION,  
Petitioner,

v.

KOSS CORPORATION,  
Patent Owner.

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IPR2021-00297  
Patent 10,368,155 B2

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

ANDERSON, *Administrative Patent Judge*.

DECISION  
Granting Institution of *Inter Partes* Review  
35 U.S.C. § 314, 37 C.F.R. § 42.4

## I. INTRODUCTION

Bose Corporation (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–14 of U.S. Patent No. 10,368,155 B2 (Ex. 1001, “the ’155 patent”). Paper 2 (“Pet.”). Koss Corporation (“Patent Owner”) filed a Preliminary Response. Paper 9 (“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) (“*Fintiv I*”). Paper 12 (“Prelim. Reply”); *see also* Section III below (*Fintiv* analysis). Patent Owner filed a Preliminary Sur-Reply. Paper 13 (“Prelim. Sur-Reply”).

We have jurisdiction under 35 U.S.C. § 314. Upon considering the record developed thus far, for reasons discussed below, we institute *inter partes* review.

## II. BACKGROUND

### A. *Real Parties in Interest*

Petitioner states it is the real parties in interest. Pet. xvi. Patent Owner asserts it is the real party in interest. Paper 4, 2.

### B. *Related Matters*

Both parties list lawsuits, prior filed United States applications and issued patents, and pending *inter partes* reviews as Related Matters. Pet. xvi; Paper 11, 2–3.

#### 1. *Lawsuits*

Petitioner advises us that it is a defendant in a filed by case filed by Patent Owner asserting the ’155 patent in the Western District of Texas captioned *Koss Corporation v. Bose Corporation*, Case No. 6:20-cv-00661 (W.D. Tex.) (“District Court” or “District Court Lawsuit”). Pet. xvii; *see also* Paper 11, 2. The parties identify three other cases in the Western

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District involving the '155 patent: *Koss Corporation v. PEAG LLC d/b/a JLab Audio*, Case No. 6:20-cv-00662 (W.D. Tex.) (“JLab litigation”); *Koss Corporation v. Plantronics, Inc. et al.*, Case No. 6:20-cv-00663 (W.D. Tex.) (“Plantronics litigation”); and *Koss Corporation v. Skullcandy, Inc.*, Case No. 6:20-cv-00664 (W.D. Tex.) (“Skullcandy litigation”). Pet. xvii; Paper 11, 2. Patent Owner also identifies two other lawsuits, *Bose Corporation v. Koss Corporation*, Case No. 1:20-cv-12193 (D. Mass.) and *Koss Corporation v. Skullcandy, Inc.*, Case No. 2:21-cv-00203 (D. Utah) (“Massachusetts and Utah litigations<sup>1</sup>”). Paper 11, 2.

## 2. United States Applications and Issued Patents

Petitioner lists applications and corresponding issued patents to which the '155 patent is a continuation. Pet. xvi; see also Ex. 1001, code (63) (“Related U.S. Application Data” (“Related Applications”)).

Patent Owner identifies the following applications listed as Related Applications to which the '155 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 11, 2. Patent Owner identifies the following pending United States patent applications that claim priority to the PCT Application and the Provisional Application: US 17/070,295, filed October 14, 2020; US 17/070,363, filed October 14, 2020; and US 17/178,946, filed February 18, 2021. *Id.* at 3.

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<sup>1</sup> As discussed below, the Skullcandy litigation has been dismissed. See Section III.A below. It appears the lawsuit was re-filed in the Utah litigation.

### 3. *Inter Partes* Review Proceedings

Patent Owner lists the following *inter partes* review proceedings<sup>2</sup> challenging patents that claim priority to the PCT Application and the Provisional Application:

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

*Apple Inc. v. Koss Corporation*, IPR2021-00381, filed January 4, 2021, challenging US Patent 10,491,982 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;

*Bose Corporation v. Koss Corporation*, IPR2021-00612, filed March 3, 2021, challenging US Patent 10,206,025 B2;

*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, filed March 17, 2021;

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

*Apple Inc. v. Koss Corporation*, IPR2021-00686, filed March 22, 2021, challenging US Patent 10,491,982 B1; and

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

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<sup>2</sup> *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 are also pending.

### *C. The '155 Patent*

The application for the '155 patent's earliest claims priority dates are to the PCT Application filed April 7, 2009, and the Provisional Applications filed April 8, 2008. Ex. 1001, codes (63), (60). *See* Pet. xvi, 9 (acknowledging the PCT Application as a “priority application”); Prelim. Resp. 3 n.3 (“the '155 Patent claims priority to the PCT and Provisional Applications”).

#### *1. Background Technology*

The '155 patent explains that wired headphones were large and “cumbersome.” Ex. 1001, 1:43–51. The '155 patent further explains “[r]ecently, cordless headphones that connect wirelessly via IEEE 802.11” such as via Bluetooth connection, to a laptop or personal computer “have been proposed, but such headphones are also quite large and not in-ear type phones.” *Id.* at 1:58–62; *see also* Ex. 1003 ¶ 43 (describing Bluetooth as “an ad hoc wireless network”).

#### *2. The '155 Patent's Wireless Earphones*

The '155 patent describes and claims a wireless earphone with “a transceiver circuit for receiving streaming audio from a data source . . . over an ad hoc wireless network. When the data source and the earphone are out of range via the ad hoc wireless network, they may transition automatically to a common infrastructure wireless network.” Ex. 1001, 1:66–2:5. The 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 3:3–6, 4:57–60.

Figure 2A of the '155 patent is reproduced below.

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