

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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APPLE INC.,  
Petitioner,

v.

KOSS CORPORATION,  
Patent Owner.

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CASE: IPR2021-00381  
U.S. PATENT NO. 10,491,982

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**PATENT OWNER SUR-REPLY**

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<i>Chums, Inc. v. Cablz, Inc.</i> , IPR2014-01240, Paper 43 (PTAB Feb. 8, 2016).....	13
<i>FOX Factory, Inc. v. SRAM LLC</i> , 944 F.3d 1366 (Fed. Cir. 2019) .....	22-25
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<i>Hybritech Inc. v. Abbott Labs.</i> , 4 U.S.P.Q.2d 1001 (C.D. Cal. 1987) .....	8
<i>Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.</i> , 821 F.3d 1359 (Fed. Cir. 2016) .....	19
<i>KCJ Corp. v. Kinetic Concepts, Inc.</i> , 223 F.3d 1351 (Fed. Cir. 2000) .....	24
<i>KSR Int’l Co. v. Teleflex, Inc.</i> , 550 U.S. 398 (2007).....	4
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<i>Praxair Tech., Inc. v. Entegris, Inc.</i> , IPR2016-01845, Paper 20 (PTAB Mar. 29, 2018) .....	14
<i>RPX Corp. v. IYM Techs. LLC</i> , IPR2017-01888, Paper 35 (PTAB Mar. 6, 2019).....	19
<i>W.L. Gore &amp; Assoc., Inc. v. Garlock, Inc.</i> , 721 F.2d 1540 (Fed. Cir. 1983) .....	4

## EXHIBIT LISTING

Exhibit	Description
KOSS-2001	Docket Report, <i>Koss Corp. v. Apple Inc.</i> , Case 6-20-cv-00665-ADA (W.D. Tex.) (as of April 19, 2021)
KOSS-2002	Sample Order Governing Proceedings - Patent Case, November 5, 2020, Judge Albright, United States District Court for the Western District of Texas, Waco Division
KOSS-2003	“Fauci predicts by April it will be ‘open season’ for vaccinations in the US,” Boston Globe, February 11, 2021 ( <a href="http://www.bostonglobe.com/2021/02/11/nation/fauci-predicts-by-april-it-will-be-open-season-vaccinations-us/">www.bostonglobe.com/2021/02/11/nation/fauci-predicts-by-april-it-will-be-open-season-vaccinations-us/</a> ) (last accessed April 19, 2021)
KOSS-2004	K. Thomas, “Top U.S. health experts say vaccine supplies and vaccinations will increase by spring,” New York Times, Feb. 7, 2021 ( <a href="http://www.nytimes.com/2021/02/07/us/cdc-vaccine-supply.html">www.nytimes.com/2021/02/07/us/cdc-vaccine-supply.html</a> ) (last accessed April 19, 2021)
KOSS-2005	B. Lovelace Jr., et al., “Biden says 90% of U.S. adults will be eligible for Covid shots by April 19 with sites within five miles of home,” Mar. 29, 2021, CNBC ( <a href="http://www.cnbc.com/2021/03/29/biden-to-announce-90percent-of-us-adults-will-eligible-for-covid-shots-by-april-19-with-sites-within-five-miles-of-home.html">www.cnbc.com/2021/03/29/biden-to-announce-90percent-of-us-adults-will-eligible-for-covid-shots-by-april-19-with-sites-within-five-miles-of-home.html</a> ) (last accessed April 19, 2021)
KOSS-2006	Order Resetting Markman Hearing, <i>Koss Corp. v. Apple Inc.</i> , Case 6:20-cv-00665-ADA, Dkt. 58 (Mar. 24, 2021 W.D. Tex.)
KOSS-2007	Defendant Apple Inc.’s Invalidity Contentions, <i>Koss Corp. v. Apple Inc.</i> , Case 6:20-cv-00665-ADA (W.D. Tex.) served Jan. 15, 2021
KOSS-2008	Exhibit D8 to Apple Inc.’s Invalidity Contentions, <i>Koss Corp. v. Apple Inc.</i> , Case 6:20-cv-00665-ADA (W.D. Tex.) served Jan. 15, 2021

Exhibit	Description
KOSS-2009	Exhibit D6 to Apple Inc.'s Invalidation Contentions, <i>Koss Corp. v. Apple Inc.</i> , Case 6:20-cv-00665-ADA (W.D. Tex.) served Jan. 15, 2021
KOSS-2010	Appendix A to Apple Inc.'s Invalidation Contentions, <i>Koss Corp. v. Apple Inc.</i> , Case 6:20-cv-00665-ADA (W.D. Tex.) served Jan. 15, 2021
KOSS-2011	U.S. Patent 10,469,934 B2
KOSS-2012	U.S. Patent 10,368,155 B2
KOSS-2013	U.S. Patent 10,206,025 B2
KOSS-2014	U.S. Patent 9,986,325 B2
KOSS-2015	U.S. Patent 9,729,959 B2
KOSS-2016	U.S. Patent 9,497,535 B2
KOSS-2017	U.S. Patent 9,438,987 B2
KOSS-2018	U.S. Patent 9,049,502 B2
KOSS-2019	U.S. Patent 8,571,544 B2
KOSS-2020	U.S. Patent 8,190,203 B2
KOSS-2021	U.S. Patent 8,655,420 B2

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