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Paper No. ____

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BOSE CORPORATION,
Petitioner,

v.

KOSS CORPORATION,
Patent Owner.

Case No. IPR2021-00680
Patent No. 10,469,934

**PETITIONER'S PRELIMINARY REPLY TO
PATENT OWNER'S PRELIMINARY RESPONSE**

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When Bose filed its Petition, Patent Owner (“PO”) had four suits pending in WDTX involving the ’934 Patent. Petition, 96. Since then, three of the four suits were dismissed or transferred, including PO’s suit against Bose. POPR, 5-6. Those three suits are now pending in different district courts¹ with no trial date set for any of them and with Skullcandy’s suit stayed pending completion of the IPRs filed against PO’s patents. POPR, 5-6; *Koss v. Skullcandy*, 2:21-cv-00203 (D. Utah), Dkt. No. 43 (stay order). Only PO’s suit against Apple remains in WDTX.

Given the lack of a trial date in three of the suits involving the ’934 Patent, PO’s *Fintiv* arguments focus exclusively on its Apple suit. That suit—involving a party and products unrelated to Bose—does not warrant discretionarily denying Bose’s meritorious petition. Indeed, PO fails to cite a *single case* in which the Board discretionarily denied an otherwise diligently filed Petition due to a pending litigation involving an unrelated party and unrelated infringement allegations.

1. Factor 1: Whether the Court Will Issue a Stay Is Unknown

PO argues Judge Albright “is unlikely to grant a stay” (POPR, 9), but offers no “specific evidence” that is true and relies on generic statements the Board has previously found unpersuasive. *Facebook v. Onstream Media*, IPR2020-01525, Paper 11, 9-10 (April 5, 2021). For Apple’s suit, Factor 1 is neutral.

¹ *Koss Corp. v. Skullcandy*, 2:21-cv-00203 (D. Utah); *Koss Corp. v. Plantronics*, 4:21-cv-03854 (N.D. Cal.); *Bose Corp. v. Koss Corp.*, 1:20-cv-12193 (D. Mass.).

As for the other suits, the district court’s decision to stay the Skullcandy suit “weigh[s] *strongly against*” discretionary denial. *Snap, Inc. v. SRK Tech.*, IPR2020-00820, Paper 15, 8-9 (Oct. 21, 2020) (precedential). The potential for stays in the other suits is significant given their early stages. And now that PO has counterclaimed for infringement, Bose will seek to stay its suit with PO shortly.

2. Factors 2 and 5: Petitioner Is Not a Defendant in the Apple Suit

PO’s Factor 2 argument ignores the three pending suits in which no trial date has been scheduled. The lack of a trial date in each of those suits “weighs *significantly against*” the Board exercising its discretion to deny institution. *Google v. Uniloc 2017*, IPR2020-00441, Paper 13, 35 (July 17, 2020).

PO’s Factor 2 arguments hinge on Apple’s trial date. But Bose is not a party to the Apple suit, and thus whatever weight Factor 2 is given in view of Apple’s trial date should be offset by Factor 5. *Dolby Labs. v. Intertrust Tech.*, IPR2020-00665, Paper 11, 13-14 (Feb. 16, 2021) (“*Dolby*”) (“Factors 2 and 5 are interrelated” where the challenged patent is involved in different actions with different parties and different trial dates.). As *Fintiv* made clear: “If a petitioner,” like Bose, “is unrelated to a defendant in an earlier court proceeding, the Board has weighed this fact against exercising discretion to deny institution.” IPR2020-00019, Paper 11, 13-14 (Mar. 20, 2020) (precedential). Indeed, citing *Fintiv*, the Board has held that a pre-FWD trial involving a defendant different than the

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