

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VOLKSWAGEN GROUP OF AMERICA, INC.,
Petitioner

v.

STRATOSAUDIO, INC.,
Patent Owner

IPR2021-00716
U.S. Patent No. 8,688,028

**PETITIONER VOLKSWAGEN GROUP OF AMERICA, INC.'S REPLY TO
PATENT OWNER'S RESPONSE**

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PETITIONER'S UPDATED EXHIBIT LIST

<i>Exhibit No.</i>	<i>Description</i>
1001	U.S. Patent No. 8,688,028
1002	File History of U.S. Patent No. 8,688,028
1003	Declaration of Dr. Vijay Madisetti
1004	U.S. Patent No. 5,579,537 (Takahisa)
1005	U.S. Patent No. 6,317,784 (Mackintosh)
1006	<i>Sand Revolution II, LLC v. Continental Intermodal Grp. – Trucking LLC</i> , IPR2019-01393, Patent Owner's Supplemental Brief
1007	[Proposed] Second Amended Joint Scheduling Order
1008	Volkswagen's Motion to Dismiss, or Transfer, for Improper Venue
1009	September 3, 2021 Email Stipulation re IPR Grounds
1010	Declaration of Mark Hannemann in support of <i>pro hac vice</i> admission
1011	Declaration of Thomas R. Makin in support of <i>pro hac vice</i> admission
1012-1017	Intentionally Left Blank
1018	Declaration of Dr. Vijay Madisetti in Support of Petitioner's Reply to Patent Owner's Response ("Madisetti Reply Decl.").
1019	Deposition Transcript of John C. Hart, taken March 31, 2022.

I. INTRODUCTION

The Petition demonstrated that all challenged claims of the '028 patent are unpatentable. The Patent Owner Response (POR) confirms this. Rather than address the merits of the Petition and the Board's Institution Decision, the POR presents a misguided interpretation of "broadcast segment" that ignores fundamental canons of claim construction in an unavailing attempt to salvage the claims. PO reads numerous limitations into this simple term that are inconsistent with the claims and specification. PO's expert provides little help. Statements in his declaration are conclusory and during deposition, he was unable to provide any examples that would satisfy his construction. EX1019, 38:17-40:23.

Moreover, little weight should be given to his opinions as he failed to consider the entire prosecution history including parent patents, failed to consider the claim construction briefs and *Markman* order in the co-pending district court litigation, and acknowledged having limited broadcast-related experience.

EX1019, 13:18-14:11, 30:24-32:19, 42:4-44:9, All leading to the conclusion that PO's "broadcast segment" construction is simply wrong.

The limited additional POR arguments are inconsistent with the '028 patent disclosures and those of the prior art. Furthermore, they mischaracterize the Petition. But as explained below, the Petition demonstrates that Takahisa and Mackintosh disclose the challenged claims when proper claim constructions are

used and even under PO's flawed claim constructions and mischaracterizations.

Therefore, the Board should find claims 11, 14-16, and 18 of the '028 patent unpatentable.

II. CLAIM CONSTRUCTION

A. Broadcast Segment

PO proposes that the term "*broadcast segment*" be construed as a "discretely identifiable portion of programming as broadcasted." POR, 17-20. On its face, this definition is consistent with Petitioner's construction: "a distinguishable piece or portion of a broadcast stream,' such as an individual song, speech, or video." Pet., 11. Yet PO's discussion improperly imports additional limitations that should be rejected. EX1018, ¶¶9-14. The Board should reject these additional limitations because they amount to an impermissible rewriting of the claims. POR, 17-20; *GE Lighting Solutions, LLC v. AgiLight, Inc.*, 750 F.3d 1304, 1317 (Fed. Cir. 2014).

These additional limitations include:

- (1) each broadcast segment must be "discretely identifiable relative to all other 'broadcast segments' transmitted" and "contextually unique to all others" (POR, 17-18);
 - (2) "a broadcast segment can occur once and only once" (*id.*, 18);
 - (3) each broadcast segment "must have a temporal component" (*id.*, 19);
- and

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