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

PATENT OWNER PRELIMINARY RESPONSE



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Eli Lilly & Co. v. Sicor Pharms., Inc., 705 F. Supp. 2d 971 (S.D. Ind. 2010)	23
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