

IPR2021-01267  
U.S. Patent No. 8,166,081

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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HYUNDAI MOTOR AMERICA,  
Petitioner

v.

STRATOSAUDIO, INC.,  
Patent Owner

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IPR2021-01267  
U.S. Patent No. 8,166,081

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**PATENT OWNER'S SUPPLEMENTAL BRIEF PURSUANT TO  
AUTHORIZATION BY THE BOARD**

Pursuant to the Board’s authorization granted on September 16, 2022, Patent Owner StratosAudio, Inc. (“Patent Owner”) hereby submits this supplemental brief and accompanying exhibits which relate to arguments raised in IPR2021-01267 and the patentability of claims 9-11, 15, and 23 of U.S. Patent No. 8,166,081 (the “’081 patent”).

Patent Owner asserted the ’081 patent against Subaru of America Inc. (“Subaru”) in a district court litigation. *See StratosAudio, Inc. v. Subaru of America, Inc.*, Case No. 6:20-cv-01128-ADA (W.D. Texas). On August 1, 2022, Subaru filed a motion to strike certain of Patent Owner’s expert opinions relating to the validity of the ’081 patent, claiming Patent Owner adopted incorrect claim construction positions. *See generally* EX2018. Specifically, the briefing raised the same claim construction dispute that is also at issue in this proceeding regarding the proper construction of the term “an output system configured to present concurrently the first media content and the second media content on an output of the first receiver module or the second receiver module” in claim element 9[c] of the ’081 patent.

Subaru asserted that the district court apply the same claim construction Petitioner Hyundai made in these proceedings (and the same constructions petitioner Volkswagen made in IPR2021-00721, which also relates to the ’081 patent). *See* EX2018, 8-9. Specifically, Subaru argued that the word “or” in the

portion of the limitation reciting “an output of the first receiver module or the second receiver module” should be changed to “and/or.” *See* EX2018, 8. Alternatively, Subaru argued only one “output” was required. *See* EX2018, 8.

In opposing Subaru’s motion, Patent Owner explained that the plain and ordinary meaning of the claim limitation as understood by a person of ordinary skill in the art requires two separate receiver modules each with separate outputs—the same interpretation Patent Owner has argued here and in IPR2021-00721. *See* EX2019, 5. Patent Owner pointed the district court to case law demonstrating it was improper to change the word “or” to “and/or.” *See* EX2019, 6 (citing various cases including *Kustom Signals, Inc. v. Applied Concepts, Inc.*, 264 F.3d 1326 (Fed. Cir. 2001)); *Kustom Signals, Inc.*, 264 F.3d at 1331 (“there is no basis whatsoever for believing [patentee] intended its usage of ‘or’ somehow to embrace ‘and.’”). This same case law also demonstrates why it is inappropriate to read out one of the two outputs; because claim 9 is a system claim, the “output system” must have the capability to utilize either recited output. *See Kustom Signals, Inc.*, 264 F.3d at 1331 (noting the claim requires the capacity for operator selection between two recited modes of operation). Patent Owner also pointed out that Subaru had presumptively adopted the admission of its Co-Petitioner Volkswagen in the IPR2021-00721 proceeding that the “output” limitation requires two outputs. *See* EX2019, 6; *see also Volkswagen Group of America, Inc., et al. v.*

*StratosAudio, Inc.*, IPR2021-00721, Record of Oral Hearing (Paper 52), at 14:20-15:1 (“Judge Arbes: But why does the claim not require that two outputs exist? I – I can see your point about not making the determination, but it – it does seem to be that the claim requires that two outputs exist in order to have an output system that is configured to present the information on one or the other. They both have to exist, right? Mr. Richardson: Absolutely. Yes.”).

At the end of oral argument, the district court denied Subaru’s motion to strike, finding Patent Owner’s construction was “permissible explanation of how a person of ordinary skill in the art would understand the plain and ordinary meaning of [the output] term[.]” *See* EX2021, at 21:1-16.<sup>1</sup> Patent Owner respectfully requests that the Board adopt the same understanding as the district court when it interprets claim 9 of the ’081 patent in this proceeding.

Dated: September 23, 2022

Respectfully submitted,

/John Scheibeler/(electronically signed)  
John Scheibeler  
Reg. No. 35,346

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<sup>1</sup> As of the time of this submission, the district court has not yet issued a written order.

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