UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HYUNDAI MOTOR AMERICA,
Petitioner

v.

STRATOSAUDIO, INC.,
Patent Owner

Case No. IPR2021-01267
Patent No. 8,166,081

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

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

Whatever Subaru said in its motion to strike (Ex. 2018), filed in a district court action not involving Petitioner,[1] is inadmissible hearsay and useless as evidence of claim construction. Moreover, Patent Owner mischaracterizes the hearing transcript, implying that the district court endorsed Patent Owner's construction for limitation 9[c] of the '081 Patent in that separate action. It did not. Finally, Patent Owner's reliance on its own self-serving arguments from that separate proceeding are inadmissible hearsay. Accordingly, the Board should disregard Patent Owner's Supplemental Brief (Paper 31) and new Exhibits 2018-2021 in the current case, IPR2021-01267. They are inadmissible and irrelevant.

First, contrary to Patent Owner's suggestion, the district court did not "adopt" any understanding of the claims in ruling on Subaru's motion to strike. The district court was not asked to determine which party's construction is correct and, in fact, did not make such a determination. Rather, the district court considered whether the experts' infringement and validity opinions for limitation 9[c] permissibly applied a "plain and ordinary meaning" for the term.[2] The result of the motion was merely that each expert would be allowed to offer its respective, conflicting opinions. The hearing transcript does not reflect any determination or endorsement on claim construction. Instead, it expressly states that the court is *not* construing the claims.

---

[1] *StratosAudio, Inc. v. Subaru of Am., Inc.*, No. 6:20-cv-01128 (W.D. Tex. 2020).
[2] *See* Ex-2018, 1 (Subaru arguing that StratosAudio's experts' "arguments go far beyond simply elucidating the plain and ordinary meaning of any term").

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

Ex-2021, 21:5-11 ("I'm convinced that the discussions regarding both the output and the location are reasonable expert explanation of how a person of ordinary skill in the art would understand the phrases in the claims to be met and not to be -- ***and is not claim construction that would require the Court to conduct any further construction***." (emphasis added)). This non-construction is not evidence of construction. Accordingly, Patent Owner's request that the "Board adopt the same understanding as the district court when it interprets claim 9 of the '081 patent" here (Paper 31 at 4) makes no sense in a different proceeding addressing different facts.[3]

Second, Patent Owner seeks to rely on statements made by non-parties Subaru or Volkswagen ("VW") in another proceeding. They are inadmissible hearsay here. Subaru's or VW's statements are not reflective of the views of either party *in this case* and are thus irrelevant. The parties in *this case* have argued that no term requires construction, and the Board agreed. Paper 2 at 10-11; Paper 9 at 20-21; Paper 17 at 14. What is relevant here are Petitioner's arguments for limitation 9[c], including that Patent Owner's expert agreed with Petitioner's position during his deposition *in this case*. Paper 20 at 13-16. Non-party arguments from different cases with different facts are simply irrelevant to claim construction.

Finally, Patent Owner's own self-serving statements in Subaru's and VW's

[3] Subaru's objections to the magistrate judge's report and recommendation were not resolved before settlement, so the issue was not finally resolved. *See* No. 6:20-cv-01128, Dkt. No. 156 (objections), Dkt. No. 161 (order canceling trial).

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

proceedings, which it relies on to bolster its position here, are textbook hearsay. They are not admissible statements against interest offered against an opposing party. Fed. R. Evid. 801(d)(2). The arguments that Patent Owner has made, and that Petitioner has had the opportunity to address, are in *this* proceeding, not in the Subaru or VW proceedings. Patent Owner's request that the Board "adopt" a new, unbriefed claim construction based on hearsay could only lead to reversible error. *SAS Inst., Inc. v. ComplementSoft, LLC*, 825 F.3d 1341, 1351-52 (Fed. Cir. 2016) ("an agency may not change theories in midstream without giving respondents reasonable notice of the change" and "the opportunity to present argument under the new theory"), *rev'd on other grounds*, *SAS Inst. Inc. v. Iancu*, 138 S.Ct. 1348 (2018). Further, Patent Owner's reference to "case law" from the district court action "demonstrating it was improper to change the word 'or' to 'and/or'" should be disregarded, as no such "case law" was included in Patent Owner's Response or Sur-Reply. This is merely a tardy attempt to improperly expand Patent Owner's page limit, incorporate additional briefing by reference, and deprive Petitioner an opportunity to respond.

This irrelevant hearsay should be disregarded. Importantly, this is substantially different than the issues raised by Petitioner in IPR2021-01303 and -01305. These involved offering Patent Owner's own statements and admissions against interest, which are not hearsay (Fed. R. Evid. 801(d)(2)) and are relevant to claim construction (35 U.S.C. §301(a)(2)).

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

CERTIFICATE OF SERVICE

The undersigned certifies pursuant to 37 C.F.R. §§ 42.6(e) and 42.105 that on September 30, 2022, a true and correct copy of Petitioner's Responsive Brief to Patent Owner's Supplemental Brief Pursuant to Authorization by the Board was served by filing this document through the PTAB E2E System, as well as delivering a copy via electronic mail upon the following attorneys of record for Patent Owner:

John Scheibeler, Reg. No. 35,346 White & Case LLP 1221 Avenue of the Americas New York, NY 10020-1095 Phone: 212-819-8200 jscheibeler@whitecase.com	Ashley T. Brzezinski, Reg. No. 58,651 White & Case LLP 75 State Street Boston, MA 02109 Phone: 617-979-9344 ashley.brzezinski@whitecase.com
Jonathan Lamberson, Reg. No. 57,352 White & Case LLP 2 Palo Alto Square, Suite 900 3000 El Camino Real Palo Alto, California 94306-2109 Phone: 650-213-0384 jonathan.lamberson@whitecase.com	Hallie Kiernan White & Case LLP 1221 Avenue of the Americas New York, NY 10020-1095 Phone: 212-819-8200 hallie.kiernan@whitecase.com WCStratosAudioIPR@whitecase.com

Respectfully submitted,

/s/ Ryan K. Yagura

Ryan K. Yagura (Reg. No. 47,191)
E-Mail: ryagura@omm.com
O'Melveny & Myers LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071
Telephone: (213) 430-6000
Attorney for Petitioner

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.