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Paper 16
Date: October 25, 2021

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
Patent 8,688,028 B2

Before JUSTIN T. ARBES, HYUN J. JUNG, and KEVIN C. TROCK, *Administrative Patent Judges.*

ARBES, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

A. Background and Summary

Petitioner Volkswagen Group of America, Inc. filed a Petition (Paper 1, "Pet.") requesting *inter partes* review of claims 11, 14–16, and 18 of U.S. Patent No. 8,688,028 B2 (Ex. 1001, "the '028 patent") pursuant to 35 U.S.C. § 311(a). Patent Owner StratosAudio, Inc. filed a Preliminary Response (Paper 6, "Prelim. Resp.") pursuant to 35 U.S.C. § 313. With our

StratosAudio Exhibit 2019

authorization (Paper 11), Petitioner filed a Reply (Paper 12, "Reply") and Patent Owner filed a Sur-Reply (Paper 14, "Sur-Reply") directed solely to the issue of whether we should exercise our discretion to deny the Petition under 35 U.S.C. § 314(a).

Pursuant to 35 U.S.C. § 314(a), the Director may not authorize an *inter partes* review unless the information in the petition and preliminary response "shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." *See* 37 C.F.R. § 42.4(a) ("The Board institutes the trial on behalf of the Director."). For the reasons that follow, we institute an *inter partes* review as to claims 11, 14–16, and 18 of the '028 patent on all grounds of unpatentability asserted in the Petition.

B. Related Matters

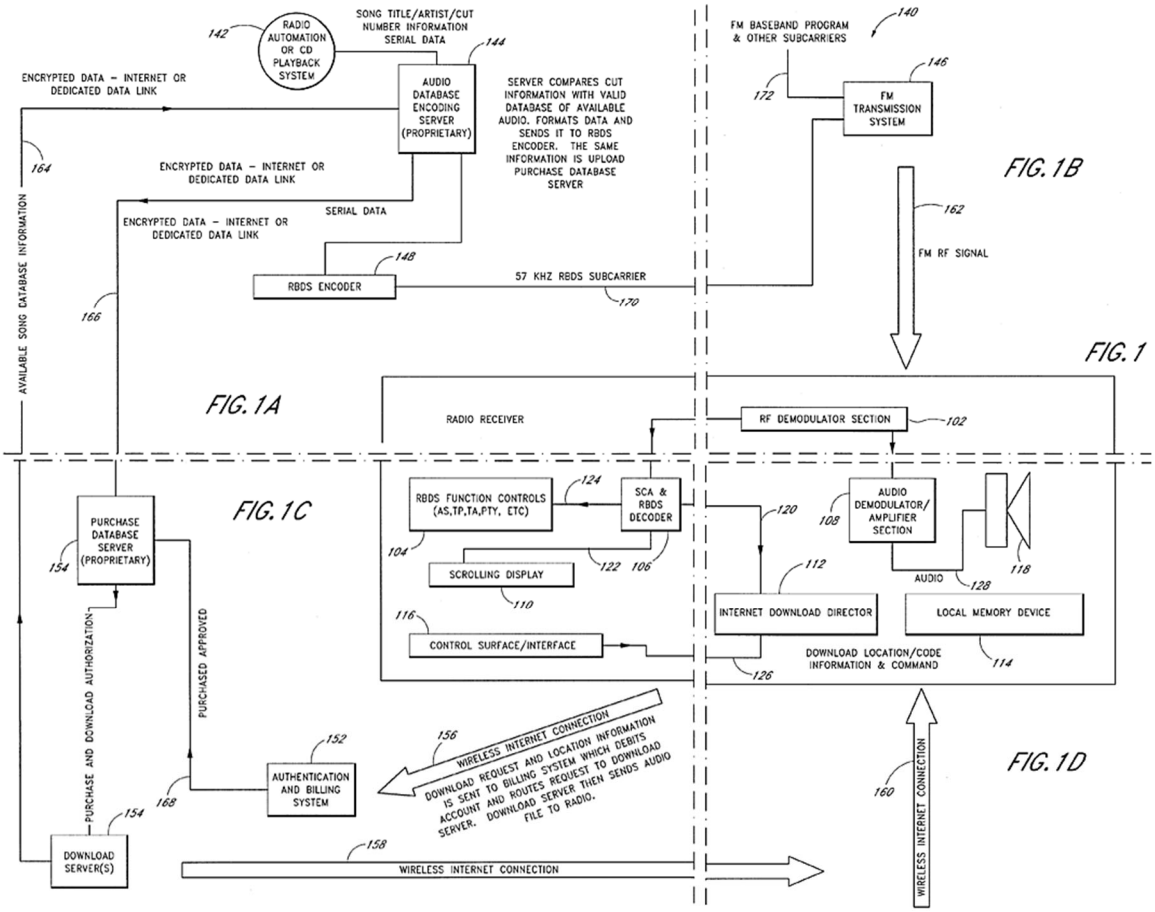
The parties indicate that the '028 patent is the subject of the following district court cases: *StratosAudio, Inc. v. Volkswagen Group of America, Inc.*, Case No. 6:20-cv-1131 (W.D. Tex.) ("the Volkswagen case"), *StratosAudio, Inc. v. Hyundai Motor America*, Case No. 6:20-cv-1125 (W.D. Tex.), *StratosAudio, Inc. v. Mazda Motor of America, Inc.*, Case No. 6:20-cv-1126 (W.D. Tex.), *StratosAudio, Inc. v. Subaru of America, Inc.*, Case No. 6:20-cv-1128 (W.D. Tex.), and *StratosAudio, Inc. v. Volvo Cars of North America, LLC*, Case No. 6:20-cv-1129 (W.D. Tex.) (collectively, "the district court cases"). *See* Pet. 1; Paper 5, 1. Petitioner filed a petition challenging claims of a patent related to the '028 patent in Case IPR2021-00712, and petitions challenging claims of other patents asserted in the district court cases in Cases IPR2021-00717, IPR2021-00718, IPR2021-00719, IPR2021-00720, and IPR2021-00721. A different

petitioner filed a petition challenging claims of the ’028 patent in Case IPR2021-01303 and petitions challenging claims of other patents asserted in the district court cases in Cases IPR2021-01267, IPR2021-01305, and IPR2021-01371.

C. The ’028 Patent

The ’028 patent discloses “[a] broadcast response system [that] provides, e.g., a radio broadcast listener with the ability to obtain media content such as music or speech while listening to the radio.” Ex. 1001, code (57). “From the early days of FM broadcast transmission, stations have included ancillary signals such as background music or reading services for the blind along with a main carrier signal.” *Id.* at col. 1, ll. 26–28. “The most current and widely used data transmission standard is the United States Radio Broadcast Data Systems (‘RBDS’) standard” in which a system “broadcast[s] a variety of program-related information,” such as station “call letters, station format, traffic alerts and scrolling text messages,” on a “subcarrier of a standard FM broadcast channel.” *Id.* at col. 1, ll. 32–53. The ’028 patent states that “[b]roadcasters using the RBDS standard can distribute information to a large number of users,” but “the standard does not allow individual users to respond to the broadcast information.” *Id.* at col. 2, ll. 26–29. For example, a user listening to the radio may like a particular song that he or she would like to purchase, but “must write down or remember the identifying information and then go to a store or online retailer to purchase the media.” *Id.* at col. 2, ll. 30–37. The ’028 patent purportedly solves that problem by allowing the user to respond to the broadcast and purchase media content. *Id.* at col. 2, ll. 53–58.

The ’028 patent includes Figures 1A–D, which are reproduced together below.



Figures 1A–D depict radio station 140, radio receiver 100, and various other devices. *Id.*at col. 4, ll. 22–25. Radio automation or CD playback system 142 “extract[s] information about songs or a radio program” from various sources and provides playlist information to Automatic Purchase System (APS) server 144, which matches the extracted information with information in a database of audio files available to download. *Id.* at col. 5, ll. 41–52. If such a file is available, APS server 144 provides download information to RBDS/RDS encoder 148. *Id.* at col. 5, ll. 52–55. RBDS/RDS encoder 148 then “transmits the RBDS/RDS information using the 57 khz RBDS/RDS subcarrier 170 to the FM transmission system 146. The RBDS/RDS

subcarrier signal 170 is mixed by the FM transmission system 146 with the FM baseband program signal 172 and any other subcarriers." *Id.* at col. 5, ll. 57–62. "The FM transmission system 146 then transmits an FM [radio frequency (RF)] signal 162 which is received by the radio receiver 100." *Id.* at col. 5, ll. 62–63.

The '028 patent describes various types of information that can be provided to the radio user using the data subcarrier signal, such as a song title, artist, album name, purchase price of the song, and IP address for the location where the digital version of the song is stored. *Id.* at col. 3, ll. 39–45, col. 5, ll. 4–13, 48–49. A "reference number" representing the information stored in a lookup table accessed by APS server 144 "can also be employed for ease of implementation." *Id.* at col. 3, ll. 42–48.

RF demodulator section 102 "splits the [received FM RF signal] into an audio signal and a data signal." *Id.* at col. 4, ll. 39–43. Audio demodulator amplifier section 108 receives the audio signal and converts it to audio signal 128 that can be output on speaker 118. *Id.* at col. 4, ll. 35–38, 53–54. RBDS/RDS decoder 106 receives the data signal and processes it to display information to the user on scrolling display 110. *Id.* at col. 4, ll. 39–47, col. 4, l. 66–col. 5, l. 3.

The '028 patent further describes a process whereby "a user can place an order to download a song using the control interface 116" of radio receiver 100. *Id.* at col. 5, ll. 14–15. Radio receiver 100 provides a signal to authentication and billing system 152 (e.g., over wireless Internet connection 156) and, when the purchase is approved, download server 154 provides the requested material to radio receiver 100 (e.g., over wireless Internet connection 158). *Id.* at col. 5, ll. 15–40. The '028 patent discloses that "[i]n one embodiment, activity of each sale using the [disclosed] system is

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