UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HYUNDAI MOTOR AMERICA, Petitioner

v.

STRATOSAUDIO, INC., Patent Owner

IPR2021-01303 U.S. Patent No. 8,688,028

PATENT OWNER PRELIMINARY RESPONSE



TABLE OF CONTENTS

I.	Introductionl		
II.	Background Of StratosAudio, Inc.		
III.	The Board Should Exercise Its Discretion Under § 314(a) To Den Institution		
	A.	Fintiv Factor 1 Favors Denial Because The District Court Has Not Granted A Stay And Is Unlikely To Do So If The Board Instituted Trial	
	В.	Fintiv Factor 2 Favors Denial Because The District Court Trial Date Is Several Months Before The Board's Statutory Deadline For Final Written Decision	
	C.	Fintiv Factor 3 Favors Denial Because Of The Substantial Investment Into The Hyundai Parallel Litigation By The District Court And Parties	
	D.	Fintiv Factor 4 Favors Denial Due To The Extensive Overlap Between The Petitioner's Invalidity Contentions In The Hyundai Parallel Litigation And The Petition	
	Е.	Fintiv Factor 5 Favors Denial Because The Same Parties Are Involved In This Petition And The Hyundai Parallel Litigation	
	F.	Fintiv Factor 6 Favors Denial Because Other Circumstances, Including The Merits, Favor Exercising Discretion23	
IV.	The Petition Should Be Denied Because It Fails To Show A Reasonable Likelihood That At Least One Challenged Claim I Unpatentable		
	A.	Ground 1 Fails To Make A Threshold Showing That Claims 11 And 13-20 Are Obvious Over Curtin	
		1. Curtin Alone Does Not Render Claim 11 Obvious26	



	a.	identifying date from the data stream, associating each media content identifying data element with at least one of a plurality of media content26
	b.	Element 11[d]: storing in an electronic memory of the communication device, at minimum, media content identifying data elements into identifying data aggregates, each identifying data aggregate associated with at least one of a plurality of media content and the at least one broadcast segment wherein the at least one broadcast segment is corollary to the at least one of the plurality of media content; and
	c.	Element 11[e]: providing for presentation of a least a portion of the data elements stored in the electronic memory of the communication device whereby the providing provides selective outputting, using an interface, of at least one of the following: the media content identifying data, the media content, the corollary broadcast segment, a temporal position of the corollary broadcast segment of the broadcast stream.
2.	Curtin	Alone Does Not Render Claim 13 Obvious31
3.	Curtin	Alone Does Not Render Claim 16 Obvious32
4.	Curtir	Alone Does Not Render Claim 17 Obvious34
5.		Alone Does Not Render Claims 14-15 And 18-20 bus
		nils To Make A Threshold Showing That Claims 11 Are Obvious Over Curtin In View Of Crosby35
		Fail To Make A Threshold Showing For Improper The Expert Declaration35



В.

C.

V.	The Board Should Exercise Its Discretion To Deny Institution39		
	A.	Petitioner Fails To Show A Reasonable Likelihood That As Least One Of The Challenged Claims Is Unpatentable In Any Of The Asserted Grounds	
	В.	Even If The Board Finds That Petitioner Demonstrates A Reasonable Likelihood Of Prevailing With Respect To One Of More Claims, The Board Should Still Exercise Its Discretion To Deny Institution	
VI	Conc	lusion 41	



TABLE OF AUTHORITIES

<u>Page(s)</u>
CASES
Apple Inc. v. Fintiv, Inc., IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020)passim
Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP, 616 F.3d 1249 (Fed. Cir. 2010)
Chevron Oronite Co. v. Infineum USA LP, IPR2018-00923, Paper 9 (PTAB Nov. 7, 2018)40
Cisco Sys., Inc. v. Egenera, Inc., IPR2017-01341, Paper 10 (PTAB Nov. 13, 2017)34
Cisco Sys. Inc. v. Monarch Networking Sols. LLC, IPR2020-01227, Paper 11 (PTAB Mar. 4, 2021)18
Comcast Cable Commc'ns, LLC v. Promptu Sys. Corp., 838 F. App'x 551 (Fed. Cir. 2021)32
Cont'l Intermodal Grp. v. Sand Revolution LLC, No. 7:18-cv-00147, Dkt. No. 104 (W.D. Tex. Jul. 22, 2020) (Albright, J.)7, 9
Corning Inc. v. DSM IP Assets B.V., IPR2013-00045, Paper 92 (PTAB May 9, 2014)38
Cuozzo Speed Techs., LLC v. Lee, 136 S. Ct. 2131 (2016)
Deeper, UAB v. Vexilar, Inc., IPR2018-01310, Paper 7 (PTAB Jan. 24, 2019)40
Diamondback Indus., Inc. v. Repeat Precision, LLC, No. 6:19-cv-00034, Dkt. No. 60 (W.D. Tex. June 2, 2019) (Albright, J.)14
E-One, Inc. v. Oshkosh Corp., IPR2019-00161, Paper 16 (PTAB May 15, 2019)



DOCKET A L A R M

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

