

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

KOSS CORPORATION,

Plaintiff,

v.

APPLE INC.,

Defendant

Case No. 6:20-cv-00665-ADA

JURY TRIAL DEMANDED

FINAL PRETRIAL ORDER

The Court hereby issues its final pretrial order.

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II. STATEMENT OF JURISDICTION

This Court has subject-matter jurisdiction of the action under Title 28, U.S.C. §§ 1331 and 1338(a), because this action arises under the Patent Laws of the United States, 35 U.S.C. § 1 et seq. Subject-matter jurisdiction, personal jurisdiction, and venue under 28 U.S.C. §§ 1391(b) and 1400(b) are not disputed in this case.

III. JOINT STATEMENT OF THE CASE

This is a civil action for patent infringement in which Plaintiff Koss Corporation (“Koss”) accuses Defendant Apple Inc. (“Apple”) of infringing claims 8 and 10 of U.S. Patent No. 10,469,934 (“934 Patent”) and claim 61 of U.S. Patent No. 10,491,982 (“982 Patent”) (collectively, the “Asserted Claims”) by making, using, selling, offering for sale, or importing the U.S. various headphone products, including certain AirPods line of headphone products and various Beats-branded headphone products. The accused products include: AirPods (2nd, and 3rd Generation); AirPods Pro; AirPods Max; Powerbeats (2, 3, and 4); Powerbeats Pro; Beats Fit Pro;

Beats Studio3; Beats Solo3; and Beats Solo Pro.¹ Plaintiff seeks pre-verdict reasonable royalty damages to compensate Koss for the alleged infringement and an on-going per-unit royalty rate for future infringement for the remaining life of the Asserted Patents. Plaintiff contends that Defendant's infringement was willful.

Apple alleges that it does not infringe, directly or indirectly, any Asserted Claim of the Asserted Patents. Apple further alleges that it does not willfully infringe any Asserted Claim of the Asserted Patents. Apple further alleges that the Asserted Claims are invalid as being anticipated or obvious, or for lacking enablement or written description. Apple further alleges that the Asserted Patents are unenforceable under the doctrine of prosecution laches. Apple alleges that Koss is not entitled to any damages. In the event Apple is found to have infringed a valid claim, Apple disputes the amount of damages that should be awarded to Koss. To the extent any damages are awarded, Apple alleges that damages should be a reasonable royalty in the form of a fully-paid-up lump sum license.

¹ **Koss:** The Accused Products also include the AirPods 1st generation and the Beats Studio Buds.

Apple: The AirPods 1st generation is no longer an Accused Product because it was not sold after the earliest issue date of the remaining patents-in-suit. The Studio Buds are no longer an Accused Product because Koss did not assert, through its infringement expert report, allegations against the Studio Buds for claim 61 of the '934 Patent or claims 8 and 10 of the '982 Patent.

Court: Disputes regarding the Studio Buds will be heard as an objection when expert testimony is offered. The parties shall approach the bench, and Koss shall indicate where its expert reports include allegations against the Studio Buds for claim 61 of the '934 Patent or claims 8 and 10 of the '982 Patent. Koss may contend that Accused Products include AirPods 1st generation if it has evidence of infringement, and Apple may seek a directed verdict or judgement as a matter of law regarding the AirPods if Koss presents no evidence of sales during the lifetime of the remaining patents.

IV. CONTENTIONS OF THE PARTIES

A. Plaintiff's Statement of Contentions

Koss is the sole and rightful owner of the '982 Patent (entitled "System with Wireless Earphones") and the '934 Patent (entitled "System with Wireless Headphones"), with full rights to pursue recovery of royalties or damages for infringement, including for Apple's infringement, thereof. Defendant directly, indirectly, and willfully infringed the Asserted Claims of the '982 Patent and the '934 Patent under 35 U.S.C. § 271 by making, using, selling, offering to sell, or importing in the U.S. their AirPods and Beats lines of headphone products in violation of 35 U.S.C. § 271. The Asserted Claims are not unenforceable for any reason, including because of alleged inequitable conduct or prosecution laches, or for any other reason Apple may contend supports a finding of unenforceability.

Koss contends that it is not barred by the Confidentiality Agreement with Apple from using or attempting to use, or from using or disclosing the existence of, any pre-suit communications between the parties during the term of the Agreement in this litigation, including at trial, for any purpose, including to show notice, knowledge, induced infringement, or willful infringement of any patent, or to support any other request for enhanced damages, fees, or costs in this or any litigation.

Koss contends that Apple is not entitled to any relief with regard to the Confidentiality Agreement, and in particular that Apple is not entitled to a permanent injunction enjoining Koss from using or attempting to use, or from disclosing the existence of, any pre-suit communications between the parties during the term of the Confidentiality Agreement in any future litigation or any other administrative or court proceeding, for any purpose.

Koss seeks the following relief:

1. A judgment that Defendant has infringed the '982 Patent;

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