

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BOSE CORP.,
Petitioner,

v.

KOSS CORP.,
Patent Owner.

IPR2021-00680
Patent 10,469,934 B2

Before KARL D. EASTHOM, PATRICK R. SCANLON, and
DAVID C. McKONE, *Administrative Patent Judges*.

EASTHOM, *Administrative Patent Judge*.

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

I. INTRODUCTION

Bose Corp. (“Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting an *inter partes* review of claims 1–22, 32–41, 47, and 49–62 of U.S. Patent No. 10,469,934 B2 (Ex. 1001, “the ’934 patent”). Koss Corp. (“Patent Owner”) filed a Preliminary Response (Paper 10, “Prelim. Resp.”). Thereafter, Petitioner filed an authorized Preliminary Reply (Paper 11, “Prelim. Reply”), and Patent Owner filed an authorized Preliminary Sur-reply (Paper 12, “Prelim. Sur-reply”). *See* Ex. 3001 (authorizing email).

We have authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314 (2018); 37 C.F.R. § 42.4(a) (2020). To institute an *inter partes* review, we must determine that the information presented in the Petition shows “a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). For the reasons set forth below, we determine that the information presented in the Petition establishes a reasonable likelihood that Petitioner will prevail with respect to at least one challenged claim. Accordingly, we institute an *inter partes* review of the ’934 patent.

II. BACKGROUND

A. *Real Parties in Interest*

The parties identify themselves as the real parties in interest. Pet. xix; Paper 3, 1.

B. *Related Matters*

The parties identify the following proceedings as related matters involving the ’934 patent:

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Koss Corp. v. Bose Corp., No. 6:20-cv-00661 (W.D. Tex.) (the “Bose Litigation”) (dismissed);¹

Koss Corp. v. Plantronics, Inc., No. 6:20-cv-00663 (W.D. Tex.) (transferred to N.D. Cal.);

Koss Corp. v. Skullcandy, Inc., No. 6:20-cv-00664 (W.D. Tex.) (dismissed);

Koss Corp. v. Apple Inc., No. 6:20-cv-00665 (W.D. Tex.) (the “Apple Litigation”);

Bose Corp. v. Koss Corp., No. 1:20-cv-12193 (D. Mass.);

Apple Inc. v. Koss Corp., No. 4:20-cv-05504 (N.D. Cal.);

Apple Inc. v. Koss Corp., No. 6:21-cv-00495 (W.D. Tex.); and

Koss Corp. v. Skullcandy, Inc., No. 2:21-cv-00203 (D. Utah).

Pet. xx–xxi; Paper 3, 1; Paper 5, 1; Paper 7, 2.

In addition, the parties identify the following *inter partes* review proceedings challenging the ’934 patent or patents related to the ’934 patent as related matters:²

Bose Corp. v. Koss Corp., IPR2021-00297, filed December 7, 2020, challenging U.S. Patent No. 10,368,155 B2;

Apple Inc. v. Koss Corp., IPR2021-00305, filed December 15, 2020, challenging U.S. Patent No. 10,506,325 B1;

Apple Inc. v. Koss Corp., IPR2021-00381, filed January 4, 2021, challenging U.S. Patent No. 10,491,982 B1;

Bose Corp. v. Koss Corp., IPR2021-00546, filed February 22, 2021, challenging U.S. Patent No. 10,206,025 B2;

Apple Inc. v. Koss Corp., IPR2021-00592, filed March 2, 2021, challenging U.S. Patent No. 10,469,934 B2;

¹ Ex. 2003.

² *Apple Inc. v. Koss Corp.*, IPR2021-00255, filed November 25, 2020, and *Apple Inc. v. Koss Corp.*, IPR2021-00600, filed March 7, 2021, both challenging U.S. Patent No. 10,298,451 B1, are also pending.

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Bose Corp. v. Koss Corp., IPR2021-00612, filed March 3, 2021, challenging U.S. Patent No. 10,206,025 B2;

Apple Inc. v. Koss Corp., IPR2021-00626, filed March 17, 2021, challenging U.S. Patent No. 10,206,025 B2;

Apple Inc. v. Koss Corp., IPR2021-00679, filed March 22, 2021, challenging U.S. Patent No. 10,506,325 B1;

Apple Inc. v. Koss Corp., IPR2021-00686, filed March 22, 2021, challenging U.S. Patent No. 10,491,982 B1; and

Apple Inc. v. Koss Corp., IPR2021-00693, filed March 23, 2021, challenging U.S. Patent No. 10,469,934 B2.

Pet. xx; Paper 3, 1; Paper 5, 1; Paper 7, 2.

C. *The '934 Patent*

The '934 patent, titled “System with Wireless Earphones,” issued November 5, 2019, with claims 1–62, and claims priority through several applications dating to April 7, 2008.³ Ex. 1001, codes (45), (54), (60), (63), 1:3–30, 18:2–25:23. The '934 patent relates to “a wireless earphone that comprises a transceiver circuit for receiving streaming audio from a data source, such as a digital audio player or a computer, over an ad hoc wireless network.” *Id.* at 1:67–2:3. The '934 patent defines an “ad hoc wireless network” as “a network where two (or more) wireless-capable devices, such as the earphone and a data source, communicate directly and wirelessly, without using an access point.” *Id.* at 3:3–6. Some embodiments include two discrete wireless earphones, one in each ear. *Id.* at 3:47–48.

³ Petitioner asserts that “the references are prior art” even “[i]f the claims are entitled to the earliest claimed priority—April 7, 2008.” *See* Pet. 3.

Figure 2A of the '934 patent follows:

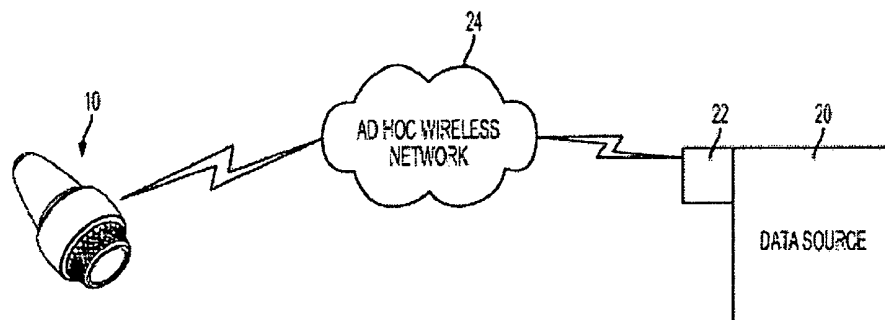


FIG. 2A

Figure 2A illustrates wireless earphone 10 connected via ad hoc wireless network 24 to data source 20. Ex. 1001, 4:26–28. “[D]ata source 20 may be a digital audio player (DAP), such as an [MP]3 player or an iPod, or any other suitable [DAP] device, such as a laptop or personal computer, that stores and/or plays digital audio files.” *Id.* at 4:32–36. “When in range, the data source 20 may communicate with the earphone 10 via the ad hoc wireless network 24 using any suitable wireless communication protocol,” including Wi-Fi, Bluetooth, and other communication protocols. *Id.* at 4:56–61.

In one embodiment, earphone 10 connects to network-enabled host server 40 via networks 30a, 42 so that host server 40 can transmit streaming digital audio to earphone 10. Ex. 1001, 5:56–62, Fig. 2D. Alternatively, host server 40 may transmit a network address to earphone 10 for streaming digital audio content server 70. *Id.* at 5:62–65, Fig. 2D. In this case, earphone 10 uses the received address to connect to content server 70 via networks 30a, 42 and receive digital audio from content server 70. *Id.* at 5:66–6:2. In one embodiment, content server 70 is an Internet radio station

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