

Filed on behalf of Bose Corporation

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SDI TECHNOLOGIES, INC.
Petitioner

v.

BOSE CORPORATION
Patent Owner

Case IPR2013-00465
Patent 8,364,295

PATENT OWNER'S NOTICE OF APPEAL

Pursuant to 37 C.F.R. § 90.2(a) and 35 U.S.C. § 142, Patent Owner Bose Corporation (“Bose”) hereby appeals to the United States Court of Appeals for the Federal Circuit from the Patent Trial and Appeal Board’s (“Board’s”) Final Written Decision entered November 7, 2014 (Paper 40), and from all underlying and related findings, orders, decisions, rulings, and opinions, including without limitation the Decision on Institution of *Inter Partes* Review entered December 13, 2013 (Paper 14), and also from the Order on Conduct of the Proceeding entered December 3, 2014 (Paper 43).

For the limited purpose of providing the Director with the information requested in 37 C.F.R. § 90.2(a)(3)(ii), Bose further indicates that the issues on appeal may include, but are not limited to: (1) the Board’s determination that claims 1-11, 18-21, 24, 27, 29-37, 44-47, 50, 73, and 74 of U.S. Patent No. 8,364,295 (the “’295 patent”) have been shown to be unpatentable under 35 U.S.C. § 103 as obvious over the combination of references referred to by the Board as “WinAmp”; “Irman Web Pages”; and “Altec Lansing Manual” (which are, respectively, designated Ex. 1009, Ex. 1010, and Ex. 1011 in the Final Written Decision); (2) the Board’s determination that claims 12-17, 38-43, 63, 64, 68-70, 77, and 78 of the ’295 patent have been shown to be unpatentable under 35 U.S.C. § 103 as obvious over the combination of WinAmp, Irman Web Pages, Altec Lansing Manual, and U.S. Patent No. 5,969,283 to Looney (designated Ex. 1013 in

the Final Written Decision), and the findings, rulings, and conclusions supporting or relating to those determinations. Those findings, rulings, and conclusions include, but are not limited to: (1) the Board's findings that conflict with the evidence of record and/or are not supported by substantial evidence; (2) the Board's reliance on testimony and/or evidence that conflicts with the evidence of record, is unreliable, is not admissible under the Federal Rules of Evidence, and/or violates the principles of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and its progeny; (3) the Board's failure to properly consider evidence of record; (4) the Board's failure to grant Bose's Motion to Exclude (Paper 32), including the Board's failure to grant Bose's requested relief as to Irman Web Pages (Ex. 1010) and testimony of Andrew B. Lippman (Ex. 1017); (5) the Board's reliance on brand new evidence (a web page designated Ex. 3004 in the Final Written Decision) it *sua sponte* introduced for the very first time in this proceeding in the Final Written Decision; (6) the Board's expungement of and failure to consider Bose's objections to Ex. 3004, including the Board's expungement of and refusal to consider Bose's submission of evidence (web pages designated Exs. 2030 and 2031) showing that the Board's reliance upon Ex. 3004 was incorrect; and (7) the Board's consideration of arguments and evidence submitted by Petitioner in its Replies that exceed the proper scope of a reply under 37 CFR 42.23(b).

Bose further states that the foregoing issues on appeal may include one or more of the following matters or questions:

- (a) whether the Board's reliance on Petitioner's expert's declaration that the Irman Web Pages reference came with its own remote control conflicts with the evidence of record and/or is unsupported by substantial evidence, where the undisputed evidence was that the Irman Web Pages reference did not come with a remote control, including the expert's own admissions during his deposition, the Irman Web Pages reference on its face, and the Petitioner's admissions in its Reply and presentation at oral argument;
- (b) whether the Board violated the Supreme Court's rulings in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and its progeny when it denied Bose's motion to exclude Petitioner's expert's declaration as unreliable, where the sole basis given by the Board for deeming the expert to be reliable was the Board's finding that the expert's declaration had a "rationale underpinning," but where that rationale underpinning was nothing more than the expert's demonstrably false assertion that the Irman Web Pages reference came with its own remote control;

- (c) whether the Board committed clear error and violated the Federal Rules of Evidence when it denied Bose's motion to exclude the Irman Web Pages reference, which was an unauthenticated printout from the "Internet Archive Wayback Machine," on hearsay and authentication grounds;
- (d) whether the Board committed clear error and abused its discretion when, after the close of evidence and after oral argument, the Board conducted its own investigation and found a document on the "Internet Archive Wayback Machine," which it used to justify its denial of Bose's motion to exclude the Irman Web Pages reference, which document it cited for the very first time in this proceeding as Exhibit 3004 to the Final Written Decision, without giving Bose any advance notice or opportunity to respond; and
- (e) whether the Board acted arbitrarily or capriciously, abused its discretion, or otherwise failed to act in accordance with law when it ignored Bose's timely-filed objections to new Board Exhibit 3004 submitted with the Final Written Decision, and ordered Bose's objections to Exhibit 3004 to be expunged.

Bose further reserves the right to challenge any finding or determination supporting or relating to the issues listed above, and to challenge any other issues

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decided adversely to Bose in the Board's Final Written Decision or in any other order, decision, ruling, or opinion underlying the Final Written Decision, or issuing after the Final Written Decision, e.g., in connection with the Board's reliance on Exhibit 3004 and refusal to consider Bose's objections to that exhibit.

Simultaneous with this submission, three (3) copies of this Notice of Appeal are being filed with the Clerk of the United States Court of Appeals for the Federal Circuit, together with the requisite fee in the amount of \$500. In addition, a copy of this Notice of Appeal is being filed with the Patent Trial and Appeal Board and served upon counsel of record for SDI Technologies, Inc.

No fees are believed to be due to the United States Patent and Trademark Office in connection with this filing, but authorization is hereby given for any required fees to be charged to Bose Deposit Account No. 06-1050.

Respectfully submitted,

Counsel for Patent Owner, Bose Corp.

Date: January 8, 2015

/ W. Karl Renner /

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 90.2(a)(1) and 104.2(b), the undersigned hereby certifies that on January 8, 2015, the original of the foregoing Notice of Appeal was filed with the Director of the United States Patent and Trademark Office **by hand-delivery**, at the following address:

Director of the United States Patent and Trademark Office
c/o Office of General Counsel
10B20, Madison Building East
600 Dulany Street
Alexandria, VA 22314-5793

In addition, pursuant to 37 C.F.R. § 90.2(a)(1) and 37 C.F.R. § 42.6(b), the undersigned certifies that on January 8, 2015, a copy of the foregoing Notice of Appeal was filed **electronically** with the Board through the Board's Patent Review Processing System.

In addition, pursuant to 37 C.F.R. § 90.2(a)(2) and Federal Circuit Rule 15(a)(1), the undersigned certifies that on January 8, 2015, the requisite fee for the appeal and three (3) true and correct copies of the foregoing Notice of Appeal were filed with the Clerk of Court of the United States Court of Appeals for the Federal Circuit **by hand-delivery**, at the following address:

Daniel E. O'Toole
Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW, Room 401
Washington, DC 20439

CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e)(4) and 37 C.F.R. § 90.2(a)(3)(ii), the undersigned certifies that on January 8, 2015, a true and correct copy of the foregoing the Notice of Appeal was served **via email** on the Petitioner by serving the correspondence email addresses of record below:

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