

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 IPR2014-00343
Patent 8,401,682 B2

PATENT OWNER'S NOTICE OF APPEAL

IPR2014-00343 (Patent 8,401,682)
Bose 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 June 11, 2015 (Paper 32), and from all underlying and related findings, orders, decisions, rulings, and opinions, including without limitation the Decision on Institution of *Inter Partes* Review entered July 8, 2014 (Paper 13).

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: the Board’s determination that claims 25, 26, 52, 53, 55-61, and 75 of U.S. Patent No. 8,401,682 (the “’682 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), and the findings, rulings, and conclusions supporting or relating to that determination. 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 20), 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 consideration of arguments and evidence submitted by Petitioner in its Replies that exceed the proper scope of a reply under 37 C.F.R. § 42.23(b); and (6) the Board's claim construction of the terms "audio signal processing circuitry" and "configured to respond to signals received from the computer."

Bose further states that the foregoing issues on appeal may include one or more of the following matters or questions:¹

- (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,

¹ This listing overlaps with issues raised by the Board's Final Written Decision in IPR2013-00350 (Paper 36), which the Board explicitly referenced and relied upon in its Final Written Decision in this proceeding.

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 in IPR2013-00350;

- (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; and
- (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 on hearsay and authentication grounds, where the Irman Web Pages reference is an unauthenticated printout from the Internet Archive website and numerous federal courts and other Patent Trial and Appeal Board panels have excluded such unauthenticated Internet Archive printouts, and where no other

evidence in this proceeding or in the prior related proceeding in IPR2013-00350 substantiates its admissibility.

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 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.

Simultaneous with this submission, a copy of the foregoing Notice of Appeal was filed electronically with the United States Court of Appeals for the Federal Circuit, along with the requisite fee for the appeal, and three (3) true and correct copies of the foregoing Notice of Appeal were sent to the Clerk of Court of the United States Court of Appeals for the Federal Circuit via U.S. Mail. 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.

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Respectfully submitted,

Counsel for Patent Owner, Bose Corp.

Date: July 20, 2015

/ Mark J. Hebert /

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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 July 20, 2015, the original of the foregoing Notice of Appeal was filed with the Director of the United States Patent and Trademark Office via overnight delivery by Federal Express to 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 July 20, 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 July 20, 2015, a copy of the foregoing Notice of Appeal was filed **electronically** with the United States Court of Appeals for the Federal Circuit, along with the requisite fee for the appeal, and three (3) true and correct copies of the foregoing Notice of Appeal were sent to the Clerk of Court of the United States Court of Appeals for the Federal Circuit **via U.S. Mail**, to the following address:

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Honorable 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 July 20, 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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