

1 Peter E. Soskin (SBN 280347)  
peter.soskin@klgates.com  
2 **K&L GATES LLP**  
Four Embarcadero Center, Suite 1200  
3 San Francisco, CA 94111  
Telephone: +1 415 882 8200  
4 Facsimile: +1 415 882 8220

5 Benjamin E. Weed (pro hac vice)  
Benjamin.Weed@klgates.com  
6 Gina A. Johnson (pro hac vice)  
Gina.Johnson@klgates.com  
7 Melissa M. Haulcomb (pro hac vice)  
Melissa.Haulcomb@klgates.com  
8 Amanda C. Maxfield (pro hac vice)  
Amanda.Maxfield@klgates.com

9 **K&L GATES LLP**  
70 W. Madison  
10 Suite 3300  
Chicago, IL 60602  
11 Telephone: +1 312 372 1121  
Facsimile: +1 312 827 8000

12 *Attorneys for Plaintiff Koss Corporation*

13  
14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

16 KOSS CORPORATION,  
17 Plaintiff,  
18 v.  
19 PLANTRONICS, INC. and POLYCOM, INC.,  
20 Defendants.

Case No. 21-cv-03854-JST  
**SECOND AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT**  
**DEMAND FOR JURY TRIAL**

21  
22 **SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

23 Plaintiff, Koss Corporation (“Koss”), files this second amended complaint for patent  
24 infringement against Plantronics, Inc. and Polycom, Inc. (“Plantronics” or “Defendants”) alleging,  
25 based on its own knowledge as to itself and its own actions, and based on information and belief as  
26 to all other matters, as follows:  
27  
28

1 **NATURE OF THE ACTION**

2 1. This is a civil action arising under the patent laws of the United States, 35 U.S.C.  
3 § 1 et seq., including specifically 35 U.S.C. § 271, based on Plantronics’s willful infringement of  
4 U.S. Patent Nos. 10,206,025 (the “’025 Patent”), 10,469,934 (the “’934 Patent”), 10,506,325 (the  
5 “’325 Patent”), 10,757,498 (the “’498 Patent”), and 10,848,852 (the “852 Patent”) (collectively the  
6 “Patents-in-Suit”).

7 **THE PARTIES**

8 2. Plaintiff Koss Corporation is a corporation existing under the laws of the State of  
9 Delaware having its principal place of business located at 4129 North Port Washington Avenue,  
10 Milwaukee, Wisconsin 53212.

11 3. Koss markets a complete line of high-fidelity headphones and audio accessories.  
12 Koss’s products, branded under the Koss brand name or private label brands, are sold at various  
13 retail chains throughout the United States and the world, including Walmart stores and other large  
14 brick-and-mortar establishments, as well as direct to customers in at least the following cities in  
15 this District: San Jose, San Leandro, Richmond, Mountain View, San Ramon, Milpitas, Livermore,  
16 and Union City.

17 4. Koss also serves as an Original Equipment Manufacturer (“OEM”) for a customer  
18 in this Judicial District. In this role, Koss manufactures OEM headphones sold under its customer’s  
19 brand.

20 5. On information and belief, Plantronics, Inc. is a Delaware Corporation with its  
21 principal place of business at 345 Encinal St., Santa Cruz, California 95060. Plantronics may be  
22 served through its registered agent CT Corporation System, 818 Seventh Street, Ste. 930 Los  
23 Angeles, CA 90017. On information and belief, Plantronics, Inc. is registered to do business in the  
24 State of California and has been since at least May 24, 1989.

25 6. On information and belief, Polycom, Inc. is a Delaware Corporation with its  
26 principal place of business at 345 Encinal Street, Santa Cruz, California 95060. Polycom, Inc. may  
27 be served through its registered agent CT Corporation System, 818 Seventh Street, Ste. 930 Los  
28

1 Angeles, CA 90017. On information and belief, Polycom, Inc. is registered to do business in the  
2 State of California and has been since at least May 17, 1991.

3 7. On information and belief, on or about March 28, 2018, Plantronics, Inc. acquired  
4 Polycom, Inc. On information and belief, by March 2019, Plantronics, Inc. and Polycom, Inc.  
5 integrated their business operations, management, facilities, and product offerings. On information  
6 and belief, the combined businesses of Plantronics, Inc. and its wholly-owned subsidiary Polycom,  
7 Inc. conducts their combined business operations under the name “Poly.” On March 18, 2019,  
8 “Plantronics, Inc. . . . announced that the company will transform into Poly, a technology company  
9 focused on the human experience of communications and collaboration, aiming to make  
10 communication as rich and natural as in-person. Poly, which means, ‘many’ leverages the legendary  
11 audio and video expertise of Plantronics and Polycom . . . .” Meet Poly: Plantronics + Polycom  
12 Relaunches To Focus On Driving The Power Of Many, POLY WEBSITE, available at:  
13 <https://www.poly.com/us/en/about/newsroom/plantronics-and-polycom-nowtogether-as-poly>.

14 8. On information and belief, product development and marketing for the alleged  
15 infringing Plantronics and/or Polycom products takes place in Santa Cruz, California.

16 9. Plantronics has transacted business in this District and has committed acts of direct  
17 and indirect infringement in this District by, among other things, importing, offering to sell, and  
18 selling products that infringe the asserted patents.

19 **JURISDICTION AND VENUE**

20 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a)  
21 because the claims herein arise under the patent laws of the United States, 35 U.S.C. § 1 et seq.,  
22 including 35 U.S.C. § 271.

23 11. This Court has personal jurisdiction over Plantronics in this action because  
24 Plantronics has committed acts of infringement within the State of California and within this  
25 District through, for example, the sale of Plantronics headphones, such as BackBeat-branded  
26 headphones, both online and from the retail locations of its partners in this District. Plantronics  
27 regularly transacts business in the State of California and within this District. Plantronics engages  
28 in other persistent courses of conduct and derives substantial revenue from products and/or services

1 provided in this District and in California, and has purposefully established substantial, systematic,  
2 and continuous contacts within this District and should reasonably expect to be sued in a court in  
3 this District. For example, Plantronics’s principal place of business is in this District and it has a  
4 California registered agent for service. Plantronics operates a website and various advertising  
5 campaigns that solicit sales of the infringing products by consumers in California and this District.  
6 Plantronics has entered into partnerships with numerous resellers and distributors to sell and offer  
7 for sale the various at-issue headphone or earphone products to consumers in this District, both  
8 online and in stores, and offers support service to customers in this District. Given these contacts,  
9 the Court’s exercise of jurisdiction over Plantronics will not offend traditional notions of fair play  
10 and substantial justice.

11 12. Venue in the Northern District of California is proper pursuant to 28 U.S.C. §§  
12 1391(b), (c) and 1400(b). Plantronics has at least one regular and established place of business in  
13 this District, including, at 345 Encinal St., Santa Cruz, California 95060.

14 13. Plantronics has committed acts within this judicial district giving rise to this action.  
15 Plantronics continues to conduct business in this judicial district, including one or more acts of  
16 making, selling, using, importing and/or offering for sale infringing products or providing support  
17 service to Plantronics’s customers in this District.

18 **KOSS’S LEGACY OF AUDIO INNOVATION**

19 14. Koss was founded in 1953 as a television rental company in Milwaukee, Wisconsin.

20 15. In 1958, John C. Koss invented the world’s first SP/3 Stereophone as part of a  
21 “private listening system” that would enable the wearer to listen to a phonograph without disturbing  
22 others in the vicinity:  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



16. The SP/3 Stereophone provided, for the first time, a high-quality stereophonic headphone that approximated the sounds of a concert hall.

17. John C. Koss demonstrated the SP/3 Stereophone at a Wisconsin audio show in 1958. Initially designed to demonstrate the high-fidelity stereo sound that a portable phonograph player delivered, these revolutionary SP/3 Stereophones became the hit of the show.

18. The SP/3 Stereophone has since been enshrined in the Smithsonian Museum's collection in Washington, DC, with John C. Koss delivering the SP/3 for enshrinement along with an explanation of the story of the SP/3 in 1972:



1           19. Koss's commitment to headphone development continued into the 1960s and  
2 beyond. In 1962, Koss developed and brought to market the PRO/4 Stereophone, which was  
3 bestowed with Consumer Union Magazine's #1 choice award in 1963:



13           20. Due to the success and quality of the Pro/4, the United States government awarded  
14 Koss with a contract to install fifty (50) Pro/4 units in the staff, press, and presidential quarters of  
15 Air Force One. Passengers accessing the aircraft's state-of-the-art entertainment system listened  
16 to the system using the Pro/4:





1           21.     In 1970, Koss moved its World Headquarters to the current location at 4129 North  
2 Port Washington Ave., Milwaukee, Wisconsin:



12           22.     Also in 1970, Koss set the standard for full-size professional headphones with its  
13 Pro/4AA:



23           23.     At the time of introduction, the Pro/4AA was regarded as the first dynamic  
24 headphones to deliver true full frequency and high-fidelity performance with noise-isolating  
25 capabilities.

26           24.     Koss continued improving its Stereophone product line throughout the 1970s and  
27 into the 1980s. In 1984, Koss introduced the Porta Pro, an acclaimed product that set performance  
28 and comfort standards for on-the-go listening:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



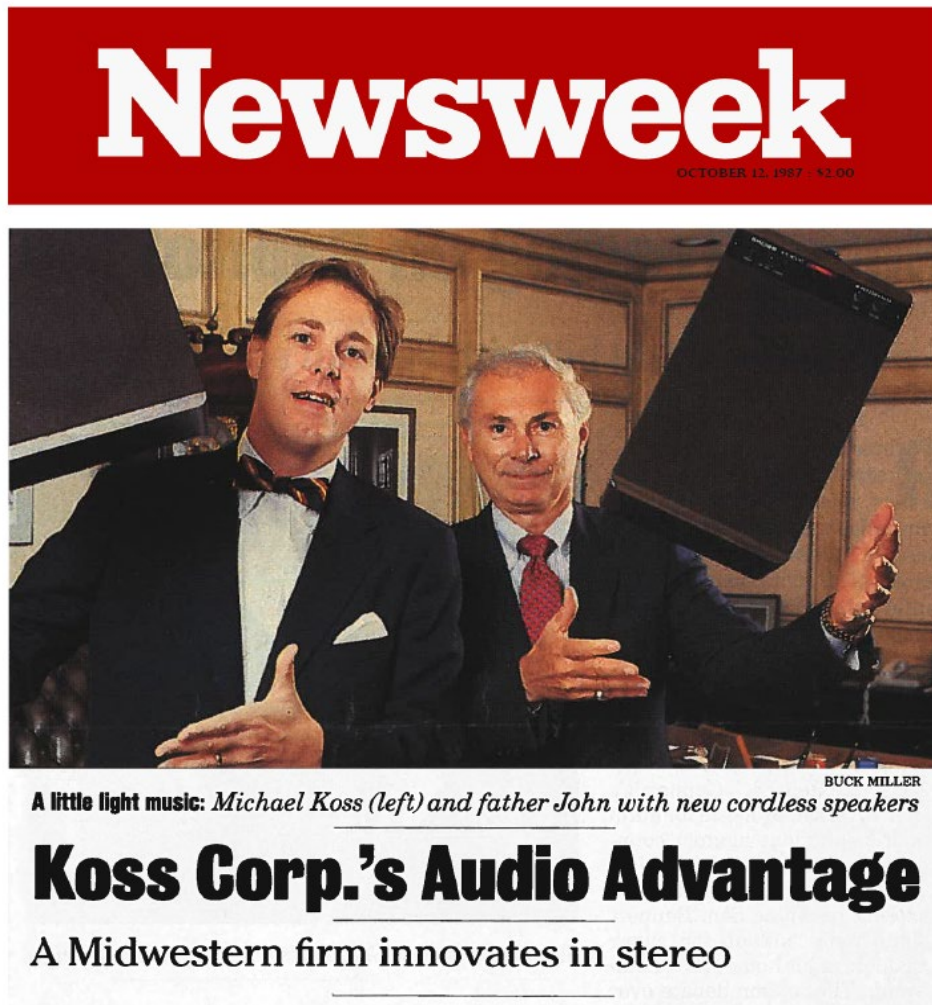
25. The Porta Pro continues to be one of the most popular headphone products around the world, particularly because of its exceptional audio fidelity and performance capabilities. In fact, as recently as 2008, CNET awarded the Porta Pros a four-star rating of 8.3 (out of 10), with a performance score of 9 (out of 10), stating that “there’s no denying the sound quality here: they’re the ideal companion for mobile audiophiles and home theater enthusiasts.” (<https://www.cnet.com/reviews/koss-portapro-with-case-review/>).

26. In 1965, Koss introduced the award-winning speaker, the Acoustech X, which was heralded as a breakthrough product by Billboard Magazine, touting its concert hall quality and ability to accurately amplify an acoustic guitar to large concert halls. *Acoustic System Succeeds In Classical Guitar Concert*, BILLBOARD, May 27, 1967, at 71.

27. Following on Acoustech X, Koss went on to develop a number of additional products: the world’s first computer maximized loudspeaker in 1976; the Kossfire speaker line in the 1980s; the dynamic audio/video Dynamite bookshelf series speaker line; a line of portable/desktop computer speakers that employed a unique magnetic shield to protect nearby computer video and data equipment; and an amplified portable loudspeaker, the M/100, in early 1987.



1           28. In 1987, Koss pioneered one of the earliest completely wireless infrared speaker  
2 systems: the JCK 5000. In 1986, Koss also unveiled a portable speaker, the KSC/50, which was  
3 utilized by thousands of members of the United States military during the Gulf War in 1990.  
4 Related to the KSC/50, Koss's KSC/5000 included a built-in amplifier. Those products were  
5 profiled in a Newsweek feature on October 12, 1987:



23           29. Over the following years, Koss continued to expand its portable speaker offerings,  
24 including by expanding into speakerphones for teleconferencing systems with the Speakeasy line,  
25 followed by various additional wireless models for portable use.

26           30. Elite musicians including Tony Bennett, Les Brown, and Frank Sinatra Jr., have  
27 used Koss headphones, including the Pro/4, while recording and/or performing. Koss's official  
28

1 spokespeople have included music legends Mel Tormé and Doc Severinsen, the trumpet-playing  
2 bandleader for Johnny Carson’s Tonight Show band.

3 31. In 1979, John C. Koss was inducted into the Audio Hall of Fame.

4 32. In 2000, John C. Koss was inducted into the inaugural class of the Consumer  
5 Electronics Hall of Fame.

6 33. In 2004, John C. Koss was inducted into the Wisconsin Business Hall of Fame.

7 **KOSS DEVELOPS THE FIRST EVER TRUE WIRELESS HEADPHONES**

8 34. Continuing its culture of innovation in high-fidelity audio equipment, in the early  
9 2000s, Koss began developing what became known as the “Striva” project. The vision for the  
10 Striva project was borne out of Koss’s recognition that wireless headphones were going to be an  
11 integral part of peoples’ audio consumption. In particular, Koss recognized that as radios were  
12 needing progressive less power and as batteries and other power sources became smaller and more  
13 efficient, people would eventually consume audio content through headphones wirelessly  
14 connected to some kind of a source, be it a handheld computing device or in the cloud.

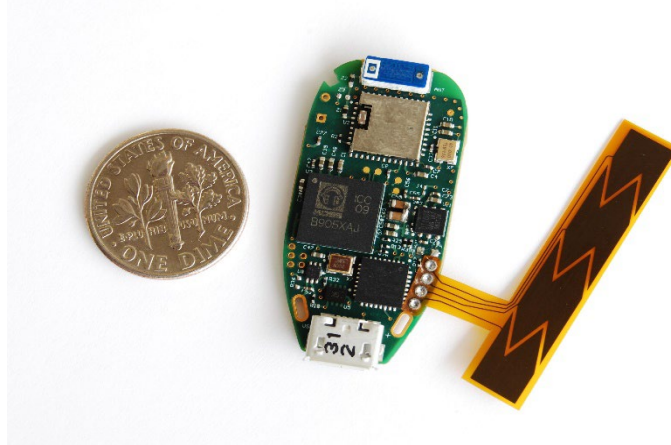
15 35. In the early 2000s, Koss began making substantial monetary investments in the  
16 Striva project, with the goal of bringing “True Wireless” listening to its loyal customers as the next  
17 in a long series of headphone innovations.

18 36. Koss recognized that the future was a wireless world, complete with mobile internet  
19 connectivity that went beyond traditional hardwired, or computer-based, network topologies. It  
20 recognized that wireless ubiquity was coming, and would extend to wearable devices, including  
21 Koss’s area of expertise: the headphone.

22 37. With these recognitions in mind, Koss made a substantial commitment to investing  
23 in what it saw as the future of headphone technology. This work eventually became the Striva  
24 project, and over the course of its work, Koss invested tens of millions of dollars developing chips,  
25 fabrication techniques, prototype headphones, and other related technology to bring the Striva  
26 vision to life.

27  
28

1           38.     In particular, Koss’s work on Striva resulted in the development of a system-on-chip  
2 smaller than a human fingertip that could provide audio and wireless communications processing  
3 on a low power budget for incorporation into headphones of various form factors:



4  
5  
6  
7  
8  
9  
10  
11  
12           39.     Koss’s work to develop Striva also predicted some of the interactions that modern  
13 headphone users take for granted today. In particular, Koss recognized early on that the inclusion  
14 of a microphone (with appropriate voice recognition software and circuitry) could provide a  
15 convenient, hands-free way to interact with wireless headphones. Koss developed technology that  
16 could react to such voice prompts, and in fact implemented prototypes that reacted to users saying  
17 “Striva” into a headphone-mounted microphone to begin a voice-based interaction to, for example,  
18 switch tracks or adjust headphone volume.

19           40.     Koss also recognized a headphone concept that users today take for granted:  
20 different headphones for different applications. In particular, as part of the Striva project, Koss  
21 developed different form factors with different performance capabilities depending on anticipated  
22 use. Over-ear headphones provided users with higher-quality sound, ambient noise dampening  
23 capabilities, and better battery life (due to additional battery real estate), while in-ear headphones  
24 provided portability and capability in a smaller, less-intrusive package.

25           41.     Koss developed prototype in-ear headphones that relied on its chip development  
26 efforts, with working prototypes from the mid-2000s looking very much like commonly-known  
27 consumer products that flood the market a decade-and-a-half later:  
28



1  
2  
3  
4  
5  
6  
7  
8       42.     In 2012, Koss introduced Wi-Fi enabled headphones, the result of its Striva project,  
9     which BizTimes hailed as the first wireless headphones to use Wi-Fi transmission and credited  
10    Koss with “introducing personal listening to the Internet.” (<https://biztimes.com/koss-creates-wireless-headphones-for-wi-fi-music-access/>).

11  
12       43.     In April 2012, Koss brought to market both an in-ear and over-ear embodiment of  
13    the Striva vision, with the Striva Pro model being the first true Wi-Fi over the ear headphones (and  
14    mirroring many features and aesthetics modern-day users expect in wireless, over-ear headphones):



15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25       44.     The Striva Tap, a smaller, in-ear version of the Striva Pro Wi-Fi headphone,  
26    provided users with some of the features that modern-day consumers take for granted in in-ear  
27    headphones, like independent wireless earphones with touch gestures to control listening  
28    preferences by manipulating the surface of the headphones:





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11 45. Koss also developed (though ultimately did not market) a smart speaker that  
12 incorporated many of the Striva features, albeit in a non-wearable form factor. The Striva-based  
13 speaker product had a capacitive touch interface to mimic the features of the Striva headphones,  
14 and also included a microphone for voice control. In addition, the Striva-based speaker had the  
15 capability to be included in a distributed network as part of a precursor to the presently-understood  
16 Internet of Things, such that the input devices (e.g., the microphone) could be used to control other  
17 items in the distributed network (e.g., light switches). The speaker therefore allowed, for example,  
18 a user to say “Striva, turn on the lights,” and the lights would turn on.

19 46. The Striva-based speaker product, referred to as the LS2, exists as a working  
20 prototype:







1 and accurate copy of the '025 Patent is attached hereto as Exhibit A.

2 55. On November 5, 2019, U.S. Patent No. 10,469,934, entitled "System with Wireless  
3 Earphones," was duly and legally issued by the United States Patent and Trademark Office. A true  
4 and accurate copy of the '934 Patent is attached hereto as Exhibit B.

5 56. On December 10, 2019, U.S. Patent No. 10,506,325, entitled "System with Wireless  
6 Earphones," was duly and legally issued by the United States Patent and Trademark Office. A true  
7 and accurate copy of the '325 Patent is attached hereto as Exhibit C.

8 57. On August 25, 2020, U.S. Patent No. 10,757,498, entitled "System with Wireless  
9 Earphones," was duly and legally issued by the United States Patent and Trademark Office. A true  
10 and accurate copy of the '498 Patent is attached hereto as Exhibit D.

11 58. On November 24, 2020, U.S. Patent No. 10,848,852, entitled "System with Wireless  
12 Earphones," was duly and legally issued by the United States Patent and Trademark Office. A true  
13 and accurate copy of the '852 Patent is attached hereto as Exhibit E.

14 59. Collectively, the '025 Patent, the '934 Patent, the '325 Patent, the '498 Patent, and  
15 the '852 Patent are referred to herein as the "Patents-in-Suit."

16 60. The Patents-in-Suit represent Koss's significant investment into the wireless  
17 headphone and wearable technology space, including its commitment in the form of decades of  
18 research and millions of dollars.

19 **DEFENDANTS' KNOWLEDGE OF THE PATENTS-IN-SUIT**

20 61. On July 10, 2020, Defendants were notified of their infringement of the '025 Patent,  
21 the '934 Patent, and the '325 Patent by way of the letter attached hereto as Exhibit F.

22 62. On September 30, 2021, Defendants were notified of their infringement of the '498  
23 Patent and the 852 Patent by way of the letter attached hereto as Exhibit G.

24 63. On October 1, 2021, Koss filed and served a First Amended Complaint asserting  
25 each of the Patents-in-Suit against Defendants.

26 64. October 5, 2021, Koss served amended infringement contentions on Defendants  
27 detailing why Defendants infringe each of the presently Patents-in-Suit.  
28



1           73.     The Patent Trial and Appeal Board (the “PTAB” or “Board”) has already confirmed  
2 the patentability of the asserted claims of the ’025 Patent, and thus has already confirmed at least  
3 that they are directed to an inventive concept.

4           74.     The ’025 Patent has been challenged at the PTAB in *inter partes* review on four (4)  
5 different occasions.

6           75.     In particular, Apple Inc. (“Apple”) filed three (3) IPR petitions against the ’025  
7 Patent.

8           76.     All three of Apple’s IPR petitions—IPR2021-00546, IPR2021-00626, and  
9 IPR2022-000053—were denied institution on the basis that Apple did not demonstrate a reasonable  
10 likelihood that one or more of the claims of the ’025 Patent was unpatentable.

11           77.     Bose Corporation (“Bose”) filed one (1) IPR petition as to the ’025 Patent—  
12 IPR2021-00612.

13           78.     In the Final Written Decision on Bose’s IPR, the PTAB found that certain claims of  
14 the ’025 Patent, including those claims identified in this Second Amended Complaint, are not  
15 unpatentable. The Final Written Decision is attached hereto as Exhibit H.

16           79.     In particular, the Board held that “Claim 4 is representative” of the so-called “Signal  
17 Strength” claims.

18           80.     In finding that the Signal Strength claims (including Claim 4) are not unpatentable,  
19 the Board found that “We are not persuaded by Petitioner’s arguments and evidence. Petitioner  
20 does not show that Harada [a prior art reference] teaches playing digital audio content received  
21 from multiple sources.”

22           81.     The Board ultimately found that the Signal Strength claims (including Claim 4) are  
23 not unpatentable because “[t]his claimed feature is missing from the combination of Rezvani-446,  
24 Rezvani-875, and Skulley and is not found in Harada.”

25           82.     Considering alternative arguments, the Board found that “even under a more  
26 generous reading of Petitioner’s combination, Harada still does not teach the transitioning that is  
27 missing from the combination of Rezvani-446, Rezvani-875, and Skulley.”  
28

1           83.     The Board ultimately found, therefore, that “[i]n sum, because Harada does not  
2 supply the limitation missing from Rezvani-446, Rezvani-875, and Skulley (either under the  
3 combination proposed in the Petition or the Dissent’s broader reading of that combination) and  
4 because Petitioner has not articulated a reason, with rational underpinning, to combine Rezvani-  
5 446, Rezvani-875, and Skulley with Harada, Petitioner has not proved, by a preponderance of the  
6 evidence, that Claims 4, 5, 7, 9, 14, 15, 17, 19, 23, 24, 26, and 28 would have been obvious over  
7 Rezvani-446, Rezvani-875, Skulley, and Harada.”

8           84.     The only IPR filed against the ’025 Patent to both be instituted and reach final  
9 written decision thus concluded that certain claims, including Claim 4 (identified herein), are not  
10 unpatentable.

11           85.     Plantronics has never filed an *inter partes* review Petition with regard to the ’025  
12 Patent.

13           86.     Plantronics is statutorily estopped from filing *inter partes* review petitions with  
14 regard to the ’025 Patent, as it was served with an original complaint for patent infringement on the  
15 ’025 Patent more than one year ago.

16           87.     The claims of the ’025 Patent were all prosecuted after the Supreme Court’s  
17 decision in *Alice Corp. v. CLS Bank Int’l.*, 578 U.S. 208 (2014), and were thus examined against  
18 the backdrop of the Supreme Court’s guidance.

19           88.     The claims of the ’025 Patent were never rejected under 35 U.S.C. § 101.

20           89.     In Koss’ now-resolved case with Apple, Apple did not present expert testimony  
21 about, and did not plan to present at trial, the theory that the claims of the ’025 Patent were directed  
22 to patent ineligible subject matter.

23           90.     Claim 4 of the ’025 Patent depends from Claims 3, 2, 1 and recites as follows:

- 24           1. A system comprising:  
25                 a mobile, digital audio player that stores digital audio content; and  
26                 a headphone assembly, separate from and in wireless communication with  
27                 the mobile digital audio player, wherein the headphone assembly comprises:  
28                         first and second earphones, wherein each of the first and second  
                               earphones comprises an acoustic transducer;  
                               an antenna for receiving wireless signals from the mobile, digital  
                               audio player via one or more ad hoc wireless communication links;



1 a wireless communication circuit connected to the at least one  
2 antenna, wherein the at least one wireless communication circuit is for  
3 receiving and transmitting wireless signals to and from the headphone  
4 assembly;  
5 a processor;  
6 a rechargeable battery for powering the headphone assembly; and  
7 a microphone for picking up utterances by a user of the headphone  
8 assembly; and  
9 a remote, network-connected server that is in wireless communication with  
10 the mobile, digital audio player;  
11 wherein the mobile, digital audio player is for transmitting digital audio  
12 content to the headphone assembly via the one or more ad hoc wireless  
13 communication links, such that the digital audio content received by the headphone  
14 assembly from the mobile, digital audio player is playable by the first and second  
15 earphones; and  
16 wherein the processor is for, upon activation of a user-control of the  
17 headphone assembly, initiating transmission of a request to the remote, network-  
18 connected server.

12 2. The system of claim 1, wherein:  
13 in a first audio play mode, the first and second earphones play audio content  
14 stored on the mobile, digital audio player and transmitted to the headphone  
15 assembly from the mobile, digital audio player via the one or more ad hoc wireless  
16 communication links; and  
17 in a second audio play mode, the earphones play audio content streamed  
18 from the remote, network-connected server.

17 3. The system of claim 2, wherein the processor of the headphone assembly  
18 is further for:  
19 processing audible utterances by the user picked up by the microphone in  
20 response to activation of the microphone by the user; and  
21 transmitting a communication based on the audible utterances via the one  
22 or more ad hoc wireless communication links.

21 4. The system of claim 3, wherein:  
22 the mobile, digital audio player is a first digital audio source;  
23 the system further comprises a second digital audio source that is different  
24 from the first digital audio source; and  
25 the headphone assembly transitions to play digital audio content received  
26 wirelessly from the second digital audio source via a second wireless  
27 communication link based on, at least, a signal strength level for the second wireless  
28 communication link.

26 91. The inventions recited in Claim 4 address technological problems and provide  
27 technological solutions that were not well-understood, routine, or conventional at the time of the  
28 invention. This is demonstrated by (1) the initial issuance of the '025 Patent and (2) the Board's

1 confirmation, both through denial of certain petitions and through a final written decision, of the  
2 patentability of Claim 4 of the '025 Patent.

3 92. A person of ordinary skill in the art reading the '025 Patent and its claims (including  
4 claim 4) would understand that (a) the Asserted Patents' disclosures and claims are drawn to solving  
5 specific, technical problems and (b) the claimed subject matter represents an advancement in the  
6 technical field of the Asserted Patents. For example, as to both (a) and (b), the hardware and  
7 software included in the recited headphone assembly of Claim 4 to transition from one source of  
8 audio information to another source of audio information based, at least in part, on a determined  
9 signal strength of a second wireless communication link (i.e., the link of the source of audio  
10 information to which the headphone assembly is transitioning) contributes to solving the technical  
11 problem that wireless headphone assemblies would be improved if they could account for the  
12 situation where a user walks away from one device and near another device, both of which are  
13 sources of audio content. The hardware for handling this situation, and permitting the headphone  
14 assembly to transition to another source of information when appropriate, further contributes to  
15 solving this technical problem. See, e.g., Exhibit A, '025 Patent at col. 10:4-45.

16 93. The claims of the '025 Patent do not preempt all techniques for or approaches to  
17 accomplishing the same or a similar end to what they recite. For example, the claims do not preempt  
18 the use of the techniques taught in the prior art cited on the face of the Asserted Patents, nor the art  
19 cited in the various PTAB proceedings involving the '025 Patent, none of which, as the patent  
20 examiners found, disclose or render obvious the claimed inventions, further showing that the claims  
21 are not well-understood, routine, or conventional.

22 94. The claims of the '025 Patent do not merely recite the performance of some generic  
23 computing technique. Instead, the '025 Patent claims recite one or more inventive concepts that  
24 are rooted in headphone systems and audio technology, whose inventiveness has already been  
25 confirmed by the PTAB's final written decision and by various parties' failure to even secure  
26 institution of IPRs. Specifically, the '025 Patent addresses and provides a solution to a long-  
27 standing problem in the area of wireless headphone technology: the problem presented by the fact  
28

1 that a wireless headphone user can simply walk away, and distance himself or herself from, the  
2 source of the wireless data being played back in the headphones.

3 95. With the inventive concepts recited in at least the claims the PTAB has already  
4 confirmed are patentable, systems involving wireless headphone assemblies can now seamlessly  
5 address the problem that a user may walk away from one source of audio information and toward  
6 another source of audio information. A person of ordinary skill in the art would thus understand  
7 that the claims of the Asserted Patents are directed to specific improvements in headphone  
8 assemblies and similar systems.

9 96. Nor can it be said that the major difference between the prior art and Koss's claimed  
10 invention in Claim 4 of the '025 Patent is wireless, with the attendant benefits that such a system  
11 provides. Indeed, Claim 4 of the '025 Patent demonstrates a technological improvement, and not  
12 simply a feature of wireless communication; the PTAB has confirmed this to be the case. And the  
13 PTAB's analysis confirms that the system recited in Claim 4 of the '025 Patent is not "well  
14 understood."

15 97. Moreover, Claim 4 of the '025 Patent recites physical components that improve the  
16 technology of wireless communication. The Board has confirmed that prior systems did not have  
17 the hardware and software required to perform the "signal strength" aspects of Claim 4, and thus  
18 confirmed that these features indeed improve the technology of wireless communication.

19 98. The asserted claims of the '025 Patent are not directed to wireless communication  
20 over a network generally, but rather are limited to a particular application of wireless  
21 communication over a network, in that they are limited to "earphones" with a processor that, "upon  
22 activation of a user-control ..., initiate[s] transmission of a request to a remote, network-connected  
23 server," and that transition from playing digital audio content received wireless from a first digital  
24 audio source received via a first wireless communication link to playing digital audio content  
25 received wireless from a second digital audio source received via a second wireless communication  
26 link, based on the signal strength for the second wireless communication link.

27 99. A third party could communicate wirelessly over a network without practicing the  
28 asserted claims of the '025 Patent, such as by not using "earphones" for the wireless communication

1 over the network, not using a processor that, “upon activation of a user-control ..., initiate[s]  
2 transmission of a request to a remote, network-connected server” for the wireless communication  
3 over the network, and/or that do not transition from playing digital audio content received wireless  
4 from a first digital audio source received via a first wireless communication link to playing digital  
5 audio content received wireless from a second digital audio source received via a second wireless  
6 communication link, based on the signal strength for the second wireless communication link.

7 100. In addition to wireless communication elements, the asserted claims of the '025  
8 Patent recite components that transform one form of energy to another form of energy. The asserted  
9 claims of the '025 Patent recite that the claimed headphone assembly comprises both acoustic  
10 transducers and a microphone. In this context, an acoustic transducer converts an electrical signal  
11 to mechanical energy (i.e., sound waves), such as by vibrating a membrane in the acoustic  
12 transducer. A microphone converts mechanical energy (i.e., sound waves) to an electrical signal  
13 based on vibrations of a membrane of the microphone caused by the sound waves.

14 101. Claim 4 of the '025 Patent is therefore not directed to an abstract idea, and is patent  
15 eligible subject matter pursuant to *Alice*, step 1.

16 102. What is more, Claim 4 of the '025 Patent is an inventive concept at least because  
17 the combination of claim limitations was not well-understood, routine, or conventional. In  
18 particular, despite repeated challenges at the PTAB, the Board has consistently found (in denial of  
19 institution and in a final written decision) that Claim 4 is directed to an inventive concept.

20 103. These statements of inventiveness are not conclusory; quite to the contrary, some of  
21 the largest headphone manufacturers in the world mustered the strength of some of the most  
22 sophisticated lawyers and experts in the world and, in the one (of four) IPR petitions to reach final  
23 written decision, the PTAB nevertheless found that Claim 4 (among others) is directed to an  
24 inventive concept.

25 104. Thus, in the event *Alice*'s step 2 is reached, Claim 4 of the '025 Patent recites an  
26 inventive concept and demonstrates that that claim is directed to patent eligible subject matter.

27 105. Further confirming that the '025 Patent is directed to patent eligible subject matter,  
28 the examiner in a family member application recently issued a notice of allowance for a similar set

1 of claims to Claim 4 of the '025 Patent in view of considering this Court's Dkt. 88 Order dismissing  
2 Koss' First Amended Complaint.

3 106. In particular, Koss submitted this Court's Dkt. 88 Order in an IDS during  
4 examination of U.S. Application Serial No. 17/812,911, which is in the same patent family as the  
5 '025 Patent and which claims priority through several continuation applications to the '025 Patent.

6 107. The Examiner issued a "Corrected Notice of Allowance" on November 30, 2022  
7 (Exhibit J) in which he stated that "[t]he Office carefully review [sic] IDS (Koss Corp V.  
8 Plantronics Inc) filed on 11/21/2022 Order Granting Motion Dismiss" and nevertheless allowed the  
9 pending claims.

10 108. This confirms that the Office, which issued the '025 Patent in view of the Supreme  
11 Court's *Alice* ruling without rejecting the claims under that ruling (or under 35 U.S.C. § 101 at all)  
12 views the subject matter of Koss' patent portfolio as being directed to patent eligible subject matter.

13 109. There is no reason to disturb the presumption of validity under 35 U.S.C. § 101 that  
14 the '025 Patent (and any issued patent) enjoys.

15 110. Plantronics has made, had made, used, imported, supplied, distributed, sold, and/or  
16 offered for sale products and/or systems, including systems in which its BackBeat-branded products  
17 and/or systems, including, but not limited to, the BackBeat Fit 2100 Headphones, are incorporated  
18 ("Accused '025 Headphones").

19 111. As set forth in the attached non-limiting claim chart (Exhibit I), Plantronics has  
20 infringed and is infringing at least Claim 4 of the '025 Patent by making, having made, using,  
21 importing, supplying, distributing, selling, and/or offering for sale the Accused '025 Headphones,  
22 with specific reference in the claim chart to the BackBeat Fit 2100 Product. In particular, the use  
23 of the Accused '025 Headphones by Plantronics to, for example, demonstrate those products in  
24 brick-and-mortar stores in the San Francisco Bay Area, California or to, for example, test those  
25 products, constitute acts of direct infringement of Claim 4 of the '025 Patent.

26 112. Plantronics actively induces infringement of at least Claim 4 of the '025 Patent by  
27 selling the Accused '025 Headphones with instructions as to how to use the Accused  
28 '025Headphones in a system such as that recited in the '025 Patent. Plantronics aids, instructs, or



1 otherwise acts with the intent to cause an end user to use the Accused '025 Headphones in an  
2 infringing manner. Plantronics knew of the '025 Patent and knew that its use and sale of the  
3 Accused '025 Headphones infringe at least Claim 4 of the '025 Patent. When a customer of  
4 Plantronics uses the Accused '025 Headphones as specifically instructed by Plantronics, the  
5 customer uses the headphones in a manner that completes the system of Claim 4, thereby infringing  
6 Claim 4 of the '025 Patent.

7 113. Plantronics is also liable for contributory infringement of at least Claim 4 of the '025  
8 Patent by providing, and by having knowingly provided, a material part of the instrumentalities,  
9 namely the Accused '025 Headphones, used to infringe Claim 4 of the '025 Patent. The Accused  
10 '025 Headphones have no substantial non-infringing uses. When an end user uses the Accused  
11 '025 Headphones in combination with, for example, a smart phone such as, for example, an  
12 Android-based smart phone and/or a peripheral device such as, for example, an Android-based  
13 tablet, the end user directly infringes Claim 4 of the '025 Patent. Plantronics knew that the Accused  
14 '025 Headphones were especially made for use in an infringing manner prior to the filing of this  
15 lawsuit. For at least the reasons set forth above, Plantronics contributes to the infringement of the  
16 '025 Patent by others.

17 114. Koss has been damaged as a result of the infringing conduct by Plantronics alleged  
18 above. Thus, Plantronics is liable to Koss in an amount that compensates it for such infringement,  
19 which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by  
20 this Court under 35 U.S.C. § 284.

21 115. Plantronics's infringement of the '025 Patent has caused, and will continue to cause,  
22 Koss to suffer substantial and irreparable harm.

23 116. Plantronics has been aware that it infringes the '025 Patent since at least July 10,  
24 2020, upon the receipt of the letter attached as Exhibit F. Since obtaining knowledge of its  
25 infringing activities, Plantronics has failed to cease its infringing activities. Further, Plantronics  
26 has continued its infringing activities, disregarding Koss's patent rights, since the filing of the  
27 original complaint on July 22, 2020.  
28

1 117. Plantronics's infringement of the '025 Patent is, has been, and continues to be,  
2 willful, intentional, deliberate, and/or in conscious disregard of Koss's rights under the patent.

3 118. Koss has complied with 35 U.S.C. § 287 with respect to the '025 Patent.

4 **SECOND CAUSE OF ACTION**

5 **(Infringement of the '934 Patent)**

6 119. Koss incorporates by reference and realleges each and every allegation of  
7 Paragraphs 1 through 118 as if set forth herein.

8 120. Koss owns all substantial rights, interest, and title in and to the '934 Patent,  
9 including the sole and exclusive right to prosecute this action and enforce the '934 Patent against  
10 infringers, and to collect damages for all relevant times.

11 121. The '934 Patent generally describes wireless earphones that comprise a transceiver  
12 circuit for receiving streaming audio from a data source, such as a digital audio player or a  
13 computer, over a wireless network. The '934 Patent also describes and claims how these wireless  
14 earphones use the claimed microphone to pick up utterances of a user and how, upon activation of  
15 a user-control of the headphone assembly, a request is initiated to a remote server. It further  
16 describes and claims the receipt and storage of firmware upgrades. Various additional functional  
17 and hardware limitations are described and claimed in the dependent claims of the '934 Patent.

18 122. The written description of the '934 Patent describes in technical detail each of the  
19 limitations of the claims, allowing a skilled artisan to understand the scope of the claims and how  
20 the non-conventional and non-generic combination of claim limitations is patentably distinct from  
21 and improved upon what may have been considered conventional or generic in the art at the time  
22 of the invention.

23 123. The claims of the '934 Patent are directed to statutorily eligible subject matter, as  
24 they do not recite an abstract idea and are also directed to an inventive concept.

25 124. The PTAB has already confirmed the patentability of the asserted claims of the '934  
26 Patent, and thus has already confirmed at least that they are directed to an inventive concept.

27 125. The '934 Patent has been challenged at the PTAB in *inter partes* review on four (4)  
28 different occasions.

1           126. In particular, Apple filed three (3) IPR petitions against the '934 Patent.

2           127. Two of Apple's IPR petitions—IPR2021-00693 and IPR2022-00168—were denied  
3 institution.

4           128. One of Apple's IPR petitions—IPR2021-592—was instituted, but dismissed prior  
5 to a final written decision by agreement of the parties.

6           129. Bose filed one (1) IPR petition as to the '934 Patent—IPR2021-00680.

7           130. In the Final Written Decision on Bose's IPR, the PTAB found that certain claims of  
8 the '934 Patent, including those claims identified in this Amended Complaint, are not unpatentable.  
9 The Final Written Decision is attached hereto as Exhibit K.

10           131. In particular, the Board held that "Claim 4 is representative" of the so-called "Signal  
11 Strength" claims.

12           132. In finding that the Signal Strength claims (including Claim 4) are not unpatentable,  
13 the Board found that "We are not persuaded by Petitioner's arguments and evidence. Petitioner  
14 does not show that Harada [a prior art reference] teaches playing digital audio content received  
15 from multiple sources."

16           133. The Board ultimately found that the Signal Strength claims (including Claim 4) are  
17 not unpatentable because "This claimed feature is missing from the Schragger-Goldstein  
18 combination and is not found in Harada."

19           134. Considering alternative arguments, the Board found that "even under a more  
20 generous reading of Petitioner's combination, Harada still does not teach the transitioning that is  
21 missing from the combination of Goldstein and Schragger."

22           135. The Board ultimately found, therefore, that "[i]n sum, because Harada does not  
23 supply the limitation missing from Goldstein and Schragger (either under the combination proposed  
24 in the Petition or the Dissent's broader reading of that combination) and because Petitioner has not  
25 articulated a reason, with rational underpinning, to combine Goldstein and Schragger with Harada,  
26 Petitioner has not proved, by a preponderance of the evidence, that Claims 4, 6, 8, 12, 13, 38, 40,  
27 41, and 58–62 would have been obvious over Goldstein, Schragger, and Harada, or that Claims 17,  
28 18, 20, and 22 would have been obvious over Goldstein, Schragger, Skulley, and Harada."

1           136. The only IPR filed against the '934 Patent to both be instituted and reach final  
2 written decision thus concluded that certain claims, including Claim 4 (identified herein), are not  
3 unpatentable.

4           137. Plantronics has never filed an *inter partes* review Petition with regard to the '934  
5 Patent.

6           138. Plantronics is statutorily estopped from filing *inter partes* review petitions with  
7 regard to the '934 Patent, as it was served with an original complaint for patent infringement on the  
8 '934 Patent more than one year ago.

9           139. The claims of the '934 Patent were all prosecuted after the Supreme Court's  
10 decision in *Alice Corp. v. CLS Bank Int'l.*, 578 U.S. 208 (2014), and were thus examined against  
11 the backdrop of the Supreme Court's guidance.

12           140. The claims of the '934 Patent were never rejected under 35 U.S.C. § 101.

13           141. In Koss' now-resolved case with Apple, Apple did not present expert testimony  
14 about, and did not plan to present at trial, the theory that the claims of the '934 Patent were directed  
15 to patent ineligible subject matter.

16           142. Claim 4 of the '934 Patent depends from Claims 3, 2, 1 and recites as follows:

17           1. A headphone assembly comprising:

18                 first and second earphones, wherein each of the first and second earphones  
19 comprises an acoustic transducer; and

20                 an antenna for receiving wireless signals from a mobile, digital audio player  
21 via one or more ad hoc wireless communication links;

22                 a wireless communication circuit connected to the antenna, wherein the  
23 wireless communication circuit is for receiving and transmitting wireless signals to  
24 and from the headphone assembly;

                   a processor;

                   a memory for storing firmware that is executed by the processor;

                   a rechargeable battery for powering the headphone assembly; and

25                 a microphone for picking up utterances by a user of the headphone  
26 assembly; and

                   wherein the headphone assembly is configured to play, by the first and  
27 second earphones, digital audio content transmitted by the mobile, digital audio  
28 player via the one or more ad hoc wireless communication links;

                   wherein the processor is configured to, upon activation of a user-control of  
the headphone assembly, initiate transmission of a request to a remote, network-  
connected server that is in wireless communication with the mobile, digital audio

1 player; and wherein the headphone assembly is for receiving firmware upgrades  
2 transmitted from the remote, network-connected server.

3 2. The headphone assembly of claim 1, wherein:

4 in a first audio play mode, the first and second earphones play audio content  
5 stored on a mobile, digital audio player and transmitted to the headphone assembly  
6 from the mobile, digital audio player via the one or more ad hoc wireless  
7 communication links; and

8 in a second audio play mode, the earphones play audio content streamed  
9 from the remote, network-connected server.

10 3. The headphone assembly of claim 2, wherein the processor is for:

11 processing audible utterances by the user picked up by the microphone in  
12 response to activation of the microphone by the user; and

13 transmitting a communication based on the audible utterances via the one  
14 or more ad hoc wireless communication links.

15 4. The headphone assembly of claim 3, wherein:

16 the mobile, digital audio player is a first digital audio source;

17 the headphone assembly transitions to play digital audio content received  
18 wirelessly from a second digital audio source via a second wireless communication  
19 link based on, at least, a signal strength level for the second wireless communication  
20 link, wherein the second digital audio source is different from the first digital audio  
21 source.

22 143. The inventions recited in Claim 4 address technological problems and provide  
23 technological solutions that were not well-understood, routine, or conventional at the time of the  
24 invention. This is demonstrated by (1) the initial issuance of the '934 Patent and (2) the Board's  
25 confirmation, both through denial of certain petitions and through a final written decision, of the  
26 patentability of Claim 4 of the '934 Patent.

27 144. In particular, the inventions recited in Claim 4 address the following technological  
28 problems and provide technological solutions that were not well understood, routine, or  
conventional at the time of the invention:

a. First and second audio play modes whereby the source of audio varies from one  
mode to the other

b. Detecting, processing, and reacting to audible utterances by the user

c. Transitioning to play digital audio content from a second digital audio source based  
on at least a signal strength level of a second wireless communication link



1           145. At least these features confine the claim to a series of particular solutions to a series  
2 of identified problems.

3           146. The physical components required to perform these technical innovations (e.g., a  
4 microphone to detect audible utterances) are the focus of the '934 Patent and in particular asserted  
5 claim 4.

6           147. These features, which drove the PTAB to find that Claim 4 is not unpatentable,  
7 demonstrate some of the differences between the claim and the prior art, and demonstrate that it is  
8 not true that “the major difference between the prior art and Koss’s claimed invention is that the  
9 claimed invention is wireless...”

10           148. A person of ordinary skill in the art reading the '934 Patent and its claims (including  
11 Claim 4) would understand that (a) the Asserted Patents’ disclosures and claims are drawn to  
12 solving specific, technical problems and (b) the claimed subject matter represents an advancement  
13 in the technical field of the Asserted Patents. For example, as to both (a) and (b), the hardware and  
14 software included in the recited headphone assembly of Claim 4 to transition from one source of  
15 audio information to another source of audio information based, at least in part, on a determined  
16 signal strength of a second wireless communication link (i.e., the link of the source of audio  
17 information to which the headphone assembly is transitioning) contributes to solving the technical  
18 problem that wireless headphone assemblies would be improved if they could account for the  
19 situation where a user walks away from one device and near another device, both of which are  
20 sources of audio content. The hardware for handling this situation, and permitting the headphone  
21 assembly to transition to another source of information when appropriate, further contributes to  
22 solving this technical problem. See, e.g., Exhibit B, '934 Patent at col. 10:7-48.

23           149. The claims of the '934 Patent do not preempt all techniques for or approaches to  
24 accomplishing the same or a similar end to what they recite. For example, the claims do not preempt  
25 the use of the techniques taught in the prior art cited on the face of the Asserted Patents, nor the art  
26 cited in the various PTAB proceedings regarding the '934 Patent, none of which, as the patent  
27 examiners found, disclose or render obvious the claimed inventions, further showing that the claims  
28 are not well-understood, routine, or conventional.

1           150. The claims of the '934 Patent do not merely recite the performance of some generic  
2 computing technique. Instead, the '934 Patent claims recite one or more inventive concepts that  
3 are rooted in headphone systems and audio technology, whose inventiveness has already been  
4 confirmed by the PTAB's final written decision and by various parties' failure to even secure  
5 institution of IPRs. Specifically, the '934 Patent addresses and provides a solution to a long-  
6 standing problem in the area of wireless headphone technology: the problem presented by the fact  
7 that a wireless headphone user can simply walk away, and distance himself or herself from, the  
8 source of the wireless data being played back in the headphones.

9           151. With the inventive concepts recited in at least the claims the PTAB has already  
10 confirmed are patentable, systems involving wireless headphone assemblies can now seamlessly  
11 address the problem that a user may walk away from one source of audio information and toward  
12 another source of audio information. A person of ordinary skill in the art would thus understand  
13 that the claims of the Asserted Patents are directed to specific improvements in headphone  
14 assemblies and similar systems.

15           152. Nor can it be said that the major difference between the prior art and Koss's claimed  
16 invention in Claim 4 of the '934 Patent is wireless, with the attendant benefits that such a system  
17 provides. Indeed, Claim 4 of the '934 Patent demonstrates a technological improvement, and not  
18 simply a feature of wireless communication; the PTAB has confirmed this to be the case. And the  
19 PTAB's analysis confirms that the system recited in Claim 4 of the '934 Patent is not "well  
20 understood."

21           153. Moreover, Claim 4 of the '934 Patent recites physical components that improve the  
22 technology of wireless communication. The Board has confirmed that prior systems did not have  
23 the hardware and software required to perform the "signal strength" aspects of Claim 4, and thus  
24 confirmed that these features indeed improve the technology of wireless communication.

25           154. The asserted claims of the '934 Patent are not directed to wireless communication  
26 over a network generally, but rather are limited to a particular application of wireless  
27 communication over a network, in that they are limited to "earphones" with a processor that, "upon  
28 activation of a user-control ..., initiate[s] transmission of a request to a remote, network-connected

1 server,” that are for “receiving firmware upgrades transmitted from the emote, network-connected  
2 server,” and that transition from playing digital audio content received wireless from a first digital  
3 audio source received via a first wireless communication link to playing digital audio content  
4 received wireless from a second digital audio source received via a second wireless communication  
5 link, based on the signal strength for the second wireless communication link.

6 155. A third party could communicate wirelessly over a network without practicing the  
7 asserted claims of the ’934 Patent, such as by not using “earphones” for the wireless communication  
8 over the network, not using a processor that, “upon activation of a user-control ..., initiate[s]  
9 transmission of a request to a remote, network-connected server” for the wireless communication  
10 over the network, that do not “receiv[e] firmware upgrades transmitted from the emote, network-  
11 connected server,” and/or that do not transition from playing digital audio content received wireless  
12 from a first digital audio source received via a first wireless communication link to playing digital  
13 audio content received wireless from a second digital audio source received via a second wireless  
14 communication link, based on the signal strength for the second wireless communication link.

15 156. In addition to the wireless communication elements, the asserted claims of the ’934  
16 Patent recite components that transform one form of energy to another form of energy. The asserted  
17 claims of the ’934 Patent recite that the claimed headphone assembly comprises both acoustic  
18 transducers and a microphone. In this context, an acoustic transducer converts an electrical signal  
19 to mechanical energy (i.e., sound waves), such as by vibrating a membrane in the acoustic  
20 transducer. A microphone converts mechanical energy (i.e., sound waves) to an electrical signal  
21 based on vibrations of a membrane of the microphone caused by the sound waves.

22 157. Claim 4 of the ’934 Patent is therefore not directed to an abstract idea, and is patent  
23 eligible subject matter pursuant to *Alice*, step 1.

24 158. What is more, Claim 4 of the ’934 Patent is an inventive concept at least because  
25 the combination of claim limitations was not well-understood, routine, or conventional. In  
26 particular, despite repeated challenges at the PTAB, the Board has consistently found (in denial of  
27 institution and in a final written decision) that Claim 4 is directed to an inventive concept.  
28

1           159. These statements of inventiveness are not conclusory; quite to the contrary, some of  
2 the largest headphone manufacturers in the world mustered the strength of some of the most  
3 sophisticated lawyers and experts in the world and, in the one (of four) IPR petitions to reach final  
4 written decision, the PTAB nevertheless found that Claim 4 (among others) is directed to an  
5 inventive concept.

6           160. Thus, in the event *Alice*'s step 2 is reached, Claim 4 of the '934 Patent recites an  
7 inventive concept and demonstrates that that claim is directed to patent eligible subject matter.

8           161. Further confirming that the '934 Patent is directed to patent eligible subject matter,  
9 the examiner in a family member application recently issued a notice of allowance for a similar set  
10 of claims to Claim 4 of the '934 Patent in view of considering this Court's Dkt. 88 Order dismissing  
11 Koss' First Amended Complaint.

12           162. In particular, Koss submitted this Court's Dkt. 88 Order in an IDS during  
13 examination of U.S. Application Serial No. 17/812,911, which is in the same patent family as the  
14 '934 Patent and which claims priority through several continuation applications to the '934 Patent.

15           163. The Examiner issued a "Corrected Notice of Allowance" on November 30, 2022  
16 (Exhibit J) in which he stated that "[t]he Office carefully review [sic] IDS (Koss Corp V.  
17 Plantronics Inc) filed on 11/21/2022 Order Granting Motion Dismiss" and nevertheless allowed the  
18 pending claims.

19           164. This confirms that the Office, which issued the '934 Patent in view of the Supreme  
20 Court's *Alice* ruling without rejecting the claims, under that ruling (or under 35 U.S.C. § 101 at all)  
21 views the subject matter of Koss' patent portfolio as being directed to patent eligible subject matter.

22           165. There is no reason to disturb the presumption of validity under 35 U.S.C. § 101 that  
23 the '934 Patent (and any issued patent) enjoys.

24           166. Plantronics has made, had made, used, imported, supplied, distributed, sold, and/or  
25 offered for sale products and/or systems, including systems in which its BackBeat-branded products  
26 and/or systems, including, but not limited to, the BackBeat Fit 300 Headphones are incorporated  
27 ("Accused '934 Headphones").  
28

1           167. As set forth in the attached non-limiting claim chart (Exhibit L), Plantronics has  
2 infringed and is infringing at least Claim 4 of the '934 Patent by making, having made, using,  
3 importing, supplying, distributing, selling, and/or offering for sale the Accused '934 Headphones,  
4 with specific reference in the claim chart to the BackBeat Fit 300 product. In particular, the use of  
5 the Accused '934 Headphones by Plantronics to, for example, demonstrate those products in brick-  
6 and-mortar stores in San Francisco Bay Area, California or to, for example, test those products,  
7 constitute acts of direct infringement of Claim 4 of the '934 Patent.

8           168. Plantronics actively induces infringement of at least Claim 4 of the '934 Patent by  
9 selling the Accused '934 Headphones with instructions as to how to use the Accused '934  
10 Headphones in a system such as that recited in the '934 Patent. Plantronics aids, instructs, or  
11 otherwise acts with the intent to cause an end user to use the Accused '934 Headphones in an  
12 infringing manner. Plantronics knew of the '934 Patent and knew that its use and sale of the  
13 Accused '934 Headphones infringe at least Claim 4 of the '934 Patent. When a customer of  
14 Plantronics uses the Accused '934 Headphones as specifically instructed by Plantronics, the  
15 customer uses the headphones in a manner that infringes at least Claim 4 of the '934 Patent.

16           169. Plantronics is also liable for contributory infringement of at least Claim 4 of the '934  
17 Patent by providing, and by having knowingly provided, a material part of the instrumentalities,  
18 namely the Accused '934 Headphones, used to infringe Claim 4 of the '934 Patent. The Accused  
19 '934 Headphones have no substantial non-infringing uses. When an end user uses the Accused '934  
20 Headphones in combination with, for example, a smart phone such as, for example, an Android-  
21 based smart phone and/or a peripheral device such as, for example, an Android-based tablet, the  
22 end user directly infringes Claim 4 of the '934 Patent. Plantronics knew that the Accused '934  
23 Headphones were especially made for use in an infringing manner prior to the filing of this lawsuit.  
24 For at least the reasons set forth above, Plantronics contributes to the infringement of the '934  
25 Patent by others.

26           170. Koss has been damaged as a result of the infringing conduct by Plantronics alleged  
27 above. Thus, Plantronics is liable to Koss in an amount that compensates it for such infringement,  
28

1 which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by  
2 this Court under 35 U.S.C. § 284.

3 171. Plantronics's infringement of the '934 Patent has caused, and will continue to cause,  
4 Koss to suffer substantial and irreparable harm.

5 172. Plantronics has been aware that it infringes the '934 Patent since at least July 10,  
6 2020, upon the receipt of the letter attached as Exhibit F. Since obtaining knowledge of its  
7 infringing activities, Plantronics has failed to cease its infringing activities. Further, Plantronics  
8 has continued its infringing activities, disregarding Koss's patent rights, since the filing of the  
9 original complaint on July 22, 2020.

10 173. Plantronics's infringement of the '934 Patent is, has been, and continues to be,  
11 willful, intentional, deliberate, and/or in conscious disregard of Koss's rights under the patent.

12 174. Koss has complied with 35 U.S.C. § 287 with respect to the '934 Patent.

13 **THIRD CAUSE OF ACTION**

14 **(Infringement of the '325 Patent)**

15 175. Koss incorporates by reference and realleges each and every allegation of  
16 Paragraphs 1 through 174 as if set forth herein.

17 176. Koss owns all substantial rights, interest, and title in and to the '325 Patent,  
18 including the sole and exclusive right to prosecute this action and enforce the '325 Patent against  
19 infringers, and to collect damages for all relevant times.

20 177. The '325 Patent generally describes wireless earphones that comprise a transceiver  
21 circuit for receiving streaming audio from a data source, such as a digital audio player or a  
22 computer, over a wireless network. The '325 Patent also describes and claims how these wireless  
23 earphones use the claimed microphone to pick up utterances of a user and specific limitations as to  
24 the curved hanger bar with a portion that rests upon the user's ear. It further describes and claims  
25 a docking station for charging the earphones. Various additional functional and hardware  
26 limitations are described and claimed in the dependent claims of the '325 Patent. Importantly,  
27 Claim 18 of the '325 Patent describes and claims a digital signal processor and a baseband processor  
28 to further improve the headphone assemblies over the prior art.



1           178. The written description of the '325 Patent describes in technical detail each of the  
2 limitations of the claims, allowing a skilled artisan to understand the scope of the claims and how  
3 the non-conventional and non-generic combination of claim limitations is patentably distinct from  
4 and improved upon what may have been considered conventional or generic in the art at the time  
5 of the invention.

6           179. The claims of the '325 Patent are directed to statutorily eligible subject matter, as  
7 they do not recite an abstract idea and are also directed to an inventive concept.

8           180. The PTAB has already confirmed the patentability of the asserted claims of the '325  
9 Patent, and thus has already confirmed at least that they are directed to an inventive concept.

10           181. The '325 Patent has been challenged at the PTAB in *inter partes* review on two (2)  
11 different occasions.

12           182. In particular, Apple filed two (2) IPR Petitions against the '325 Patent.

13           183. One of Apple's IPR petitions—IPR2021-00579—was denied institution.

14           184. One of Apple's IPR petitions—IPR2021-00305—was instituted, and resulted in a  
15 final written decision that at least Claim 18 of the '325 Patent was not unpatentable. The Final  
16 Written Decision is attached hereto as Exhibit M.

17           185. In particular, the Board held that “Petitioner has not shown, by a preponderance of  
18 the evidence, that the combination of Rosener and Huddart teaches ‘wherein the processor circuit  
19 of each of the first and second earphones comprises: a digital signal processor that provides a sound  
20 quality enhancement for the audio content played by the at least one acoustic transducers of the  
21 earphone,’ as recited in claim 18.”

22           186. The only IPR filed against the '325 Patent to both be instituted and reach final  
23 written decision thus concluded that Claim 18 is not unpatentable.

24           187. There will be no appeal of the Board's finding that Claim 18 is not unpatentable, as  
25 Apple and Koss have resolved their disputes.

26           188. Plantronics has never filed an *inter partes* review Petition with regard to the '325  
27 Patent.

28

1           189. Plantronics is statutorily estopped from filing *inter partes* review petitions with  
2 regard to the '325 Patent, as it was served with an original complaint for patent infringement on the  
3 '325 Patent more than one year ago.

4           190. The claims of the '325 Patent were all prosecuted after the Supreme Court's  
5 decision in *Alice Corp. v. CLS Bank Int'l.*, 578 U.S. 208 (2014), and were thus examined against  
6 the backdrop of the Supreme Court's guidance.

7           191. The claims of the '325 Patent were never rejected under 35 U.S.C. § 101.

8           192. Claim 18 of the '325 Patent depends from Claim 1 and recites as follows:

9                   1. Headphones comprising:

10                   a pair of first and second wireless earphones to be worn simultaneously by  
11 a user, wherein the first and second earphones are separate such that when the  
12 headphones are worn by the user, the first and second earphones are not physically  
13 connected, wherein each of the first and second earphones comprises:

14                           a body portion;

15                           an earbud extending from the body portion that is inserted into an  
16 ear of the user when worn by the user;

17                           a curved hanger bar connected to the body portion, wherein the  
18 curved hanger bar comprises a portion that rests upon an upper external  
19 curvature of an ear of the user behind an upper portion of an auricula of the  
20 ear of the user;

21                           a wireless communication circuit for receiving and transmitting  
22 wireless signals;

23                           a processor circuit connected to the wireless communication circuit;

24                           at least one acoustic transducer for producing audible sound from  
25 the earbud;

26                           a microphone for picking up utterances of a user of the headphones;

27                           an antenna connected to the wireless communication circuit; and

28                           a rechargeable power source; and

                  a docking station for holding at least the first wireless earphone, wherein  
the docking station comprises a power cable for connecting to an external  
device to power the docking station, and wherein the docking station is for  
charging at least the first wireless earphone when the first wireless earphone  
is placed in the docking station.

                  18. The headphones of claim 1, wherein the processor circuit of each of the  
first and second earphones comprises:

                          a digital signal processor that provides a sound quality enhancement for the  
audio content played by the at least one acoustic transducers of the earphone; and

                          a baseband processor circuit that is in communication with the wireless  
communication circuit of the earphone.

1           193. The inventions recited in Claim 18 address technological problems and provide  
2 technological solutions that were not well-understood, routine, or conventional at the time of the  
3 invention. This is demonstrated by (1) the initial issuance of the '325 Patent and (2) the Board's  
4 confirmation, both through denial of one petition and through a final written decision, of the  
5 patentability of claim 18 of the '325 Patent.

6           194. In particular, the inventions recited in Claim 18 address the following technological  
7 problems and provide technological solutions that were not well understood, routine, or  
8 conventional at the time of the invention:

- 9                   a. A digital signal processor that provides a sound quality enhancement for audio  
10 content played back through the earphones and  
11                   b. A baseband processor in communication with the wireless circuit.

12           195. At least these features confine the claim to a series of particular solutions to a series  
13 of identified problems.

14           196. The physical components required to perform these technical innovations (e.g., a  
15 digital signal processor and a baseband circuit) are the focus of Claim 18 of the '325 Patent.

16           197. These features, which drove the PTAB to find that Claim 18 is not unpatentable,  
17 demonstrate some of the differences between the claim and the prior art, and demonstrate that it is  
18 not true that "the major difference between the prior art and Koss's claimed invention is that the  
19 claimed invention is wireless..."

20           198. A person of ordinary skill in the art reading the '325 Patent and its claims (including  
21 claim 18) would understand that (a) the Asserted Patents' disclosures and claims are drawn to  
22 solving specific, technical problems and (b) the claimed subject matter represents an advancement  
23 in the technical field of the Asserted Patents. For example, as to both (a) and (b), the hardware and  
24 software included in the recited headphone assembly of Claim 18 to provide sound quality  
25 enhancements with certain digital signal processors and to implement a saleable headphone  
26 assembly using a baseband processor contributes to solving the technical problem of how to make  
27 a relatively small wireless device sound good and provide adequate battery life. The hardware for  
28

1 handling this situation, and recited specifically in Claim 18, contributes to the solution of this  
2 technical problem.

3 199. The claims of the '325 Patent do not preempt all techniques for or approaches to  
4 accomplishing the same or a similar end to what they recite. For example, the claims do not preempt  
5 the use of the techniques taught in the prior art cited on the face of the Asserted Patents, nor the art  
6 cited in the various PTAB proceedings regarding the '325 Patent, none of which, as the patent  
7 examiners found, disclose or render obvious the claimed inventions, further showing that the claims  
8 are not well-understood, routine, or conventional.

9 200. The claims of the '325 Patent do not merely recite the performance of some generic  
10 computing technique. Instead, the '325 Patent claims recite one or more inventive concepts that  
11 are rooted in headphone systems and audio technology, whose inventiveness has already been  
12 confirmed by the PTAB's final written decision and by various parties' failure to even secure  
13 institution of IPRs. Specifically, the '325 Patent addresses and provides a solution to a long-  
14 standing problem in the area of wireless headphone technology: the problem of providing  
15 acceptable quality audio in a battery operated device for an acceptable amount of time between  
16 charging.

17 201. With the inventive concepts recited in at least the claims the PTAB has already  
18 confirmed are patentable, systems involving wireless headphone assemblies can now seamlessly  
19 address the problem of low quality audio in a device with short battery life. A person of ordinary  
20 skill in the art would thus understand that the claims of the Asserted Patents are directed to specific  
21 improvements in headphone assemblies and similar systems.

22 202. Nor can it be said that the major difference between the prior art and Koss's claimed  
23 invention in Claim 18 of the '325 Patent is focused on the wireless capability, and not any of the  
24 recited physical components in the claim. Indeed, Claim 18 of the '325 Patent demonstrates a  
25 technological improvement, and not simply a feature of wireless communication; the PTAB has  
26 confirmed this to be the case. And the PTAB's analysis confirms that the system recited in Claim  
27 18 of the '325 Patent merely contains "generic physical elements of the prior art."  
28

1           203. Moreover, Claim 18 of the '325 Patent recites physical components that improve  
2 the technology of wireless headphones. The Board has confirmed that prior systems did not have  
3 the hardware and software required by Claim 18, and thus confirmed that these features indeed  
4 improve the technology of wireless communication.

5           204. The asserted claims of the '325 Patent are not directed to wireless communication  
6 over a network generally, but rather are limited to a particular application of wireless  
7 communication over a network, in that they are limited to “earphones” with “a digital signal  
8 processor that provides a sound quality enhancement for the audio content played by the at least  
9 one acoustic transducers of the earphone; and a baseband processor circuit that is in communication  
10 with the wireless communication circuit of the earphone.

11           205. A third party could communicate wirelessly over a network without practicing the  
12 asserted claims of the '325 Patent, such as by not using “earphones” for wireless communication  
13 over the network, not using earphones that have a baseband processor and a digital signal processor,  
14 or not using earphones with a docking station.

15           206. In addition to the wireless communication elements, the asserted claims of the '325  
16 Patent therefore recite components that transform one form of energy to another form of energy.  
17 The asserted claims of the '325 Patent recite that the claimed headphone assembly comprises both  
18 acoustic transducers and a microphone. In this context, an acoustic transducer converts an electrical  
19 signal to mechanical energy (i.e., sound waves), such as by vibrating a membrane in the acoustic  
20 transducer. A microphone converts mechanical energy (i.e., sound waves) to an electrical signal  
21 based on vibrations of a membrane of the microphone caused by the sound waves.

22           207. Claim 18 of the '325 Patent is therefore not directed to an abstract idea, and is patent  
23 eligible subject matter pursuant to *Alice*, step 1.

24           208. What is more, Claim 18 of the '325 Patent is an inventive concept at least because  
25 the combination of claim limitations was not well-understood, routine, or conventional. In  
26 particular, despite repeated challenges at the PTAB, the Board has consistently found (in denial of  
27 institution and in a final written decision) that Claim 18 is directed to an inventive concept.  
28

1           209. These statements of inventiveness are not conclusory; quite to the contrary, some of  
2 the largest headphone manufacturers in the world mustered the strength of some of the most  
3 sophisticated lawyers and experts in the world and, in the one (of two) IPR petitions to reach final  
4 written decision, the PTAB nevertheless found that Claim 18 is directed to an inventive concept.

5           210. Thus, in the event *Alice*'s step 2 is reached, Claim 18 of the '325 Patent recites an  
6 inventive concept and demonstrates that that claim is directed to patent eligible subject matter.

7           211. Further confirming that the '325 Patent is directed to patent eligible subject matter,  
8 the examiner in a family member application recently issued a notice of allowance for a similar set  
9 of claims to Claim 18 of the '325 Patent in view of considering this Court's Dkt. 88 Order  
10 dismissing Koss' First Amended Complaint.

11           212. In particular, Koss submitted this Court's Dkt. 88 Order in an IDS during  
12 examination of U.S. Application Serial No. 17/812,911, which is in the same patent family as the  
13 '325 Patent and which claims priority through several continuation applications to the '325 Patent.

14           213. The Examiner issued a "Corrected Notice of Allowance" on November 30, 2022  
15 (Exhibit J) in which he stated that "[t]he Office carefully review [sic] IDS (Koss Corp V.  
16 Plantronics Inc) filed on 11/21/2022 Order Granting Motion Dismiss" and nevertheless allowed the  
17 pending claims.

18           214. This confirms that the Office, which issued the '325 Patent in view of the Supreme  
19 Court's *Alice* ruling without rejecting the claims, under that ruling (or under 35 U.S.C. § 101 at all)  
20 views the subject matter of Koss' patent portfolio as being directed to patent eligible subject matter.

21           215. There is no reason to disturb the presumption of validity under 35 U.S.C. § 101 that  
22 the '325 Patent (and any issued patent) enjoys.

23           216. Plantronics has made, had made, used, imported, supplied, distributed, sold, and/or  
24 offered for sale products and/or systems, including systems in which certain BackBeat branded  
25 products and/or systems, including, but not limited to, the BackBeat Fit 3100 Headphones, are  
26 incorporated ("Accused '325 Headphones").

27           217. As set forth in the attached non-limiting claim chart (Exhibit N), Plantronics has  
28 infringed and is infringing at least Claim 18 of the '325 Patent by making, having made, using,



1 importing, supplying, distributing, selling, and/or offering for sale the Accused '325 Headphones,  
2 with specific reference in the claim chart to the BackBeat Fit 3100 product. In particular, the use  
3 of the Accused '325 Headphones by Plantronics to, for example, demonstrate those products in  
4 brick-and-mortar stores in San Francisco Bay Area, California or to, for example, test those  
5 products, constitute acts of direct infringement of Claim 18 of the '325 Patent.

6 218. Plantronics actively induces infringement of at least Claim 18 of the '325 Patent by  
7 selling the Accused '325 Headphones with instructions as to how to use the Accused '325  
8 Headphones in a system such as that recited in the '325 Patent. Plantronics aids, instructs, or  
9 otherwise acts with the intent to cause an end user to use the Accused '325 Headphones in an  
10 infringing manner. Plantronics knew of the '325 Patent and knew that its use and sale of the  
11 Accused '325 Headphones infringe at least Claim 18 of the '325 Patent. When a customer of  
12 Plantronics uses the Accused '325 Headphones as specifically instructed by Plantronics, the  
13 customer uses the headphones in a manner that infringes at least Claim 18 of the '325 Patent.

14 219. Plantronics is also liable for contributory infringement of at least Claim 18 of the  
15 '325 Patent by providing, and by having knowingly provided, a material part of the  
16 instrumentalities, namely the Accused '325 Headphones, used to infringe Claim 18 of the '325  
17 Patent. The Accused '325 Headphones, have no substantial non-infringing uses. When an end user  
18 uses the Accused '325 Headphones in combination with, for example, a smart phone such as, for  
19 example, an Apple iPhone and/or an Apple Watch, the end user directly infringes Claim 18 of the  
20 '325 Patent. Plantronics knew that the Accused '325 Headphones were especially made for use in  
21 an infringing manner prior to the filing of this lawsuit. For at least the reasons set forth above,  
22 Plantronics contributes to the infringement of the '325 Patent by others.

23 220. Koss has been damaged as a result of the infringing conduct by Plantronics alleged  
24 above. Thus, Plantronics is liable to Koss in an amount that compensates it for such infringement,  
25 which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by  
26 this Court under 35 U.S.C. § 284.

27 221. Plantronics's infringement of the '325 Patent has caused, and will continue to cause,  
28 Koss to suffer substantial and irreparable harm.



1           230. The '498 Patent has been challenged at the PTAB in *inter partes* review on only one  
2 (1) occasion.

3           231. In particular, on the second-to-last day of its statutory one-year period to file,  
4 Plantronics filed an IPR petition against the '498 Patent. An institution decision is expected by  
5 early May, 2023.

6           232. Plantronics' IPR petition as to the '498 Patent includes a single ground addressing  
7 Claim 23; that ground relies on five (5) different prior art references in purported combination.  
8 Indeed, Plantronics' sole ground for purported invalidity of independent Claim 1 (from which claim  
9 23 depends) relies on four (4) different prior art references. This alone demonstrates that the claims  
10 of the '498 patent are directed to an inventive concept; Plantronics, even with the benefit of all of  
11 Apple's and Bose's prior IPR work, needs to resort to four- and five- reference combinations for  
12 purposes of demonstrating what Plantronics believes to be obviousness.

13           233. Claim 23 of the '498 Patent contains a similar "Signal Strength" limitation to the  
14 one that the Board has consistently found not to be unpatentable.

15           234. The claims of the '498 Patent were all prosecuted after the Supreme Court's decision  
16 in *Alice Corp. v. CLS Bank Int'l.*, 578 U.S. 208 (2014), and were thus examined against the  
17 backdrop of the Supreme Court's guidance.

18           235. The claims of the '498 Patent were never rejected under 35 U.S.C. § 101.

19           236. Claim 23 of the '498 Patent depends from claim 1 and recites as follows:

20           1. Headphones comprising:

21                 a pair of first and second wireless earphones to be worn simultaneously by  
22 a user, wherein each of the first and second wireless earphones comprises at least  
23 one acoustic transducer for producing audible sound;

                  wherein the first wireless earphone comprises a first system-on-chip (SOC),  
24 wherein the first SOC comprises:

                      a first wireless communication circuit for receiving and transmitting  
25 wireless signals;

                      a first processor circuit connected to the first wireless  
26 communication circuit; and

                      a first memory unit in communication with the first processor circuit  
27 for storing firmware updates pushed to the headphones from a remote  
28 network server;

                  wherein the first wireless communication circuit is for receiving audio  
content streamed wirelessly to the headphones from a first audio content source,

1 such that the first and second wireless earphones play the audio content streamed  
2 wirelessly to the headphones; and  
3 wherein the first processor circuit is configured to, in response to detecting  
4 an incoming wireless communication to the headphones:  
5 mute the audio content streamed wirelessly to the headphone being  
6 played by the headphones; and  
7 output audio of the incoming wireless communication circuit via the  
8 first and second wireless earphones.

9 23. The headphones of claim 1, wherein the processor circuit for each earphone is  
10 configured to transition from playing the audio content streamed wirelessly to the  
11 headphones from the first digital audio source via a first wireless communication  
12 link to playing the audio content streamed wirelessly to the headphones from a  
13 second digital audio source via a second wireless communication link automatically  
14 based on, at least in part, a signal strength for the second wireless communication  
15 link.

16 237. The inventions recited in Claim 23 address technological problems and provide  
17 technological solutions that were not well-understood, routine, or conventional at the time of the  
18 invention. This is demonstrated by (1) the initial issuance of the '498 Patent and (2) the Board's  
19 repeated confirmation, in IPR petitions filed by Apple and Bose, that claims reciting the "Signal  
20 Strength" concept are not unpatentable.

21 238. In particular, the inventions recited in Claim 23 address the following technological  
22 problems and provide technological solutions that were not well understood, routine, or  
23 conventional at the time of the invention:

- 24 a. Selectively muting and unmuting headphones in a headphone assembly
- 25 b. Transitioning to play digital audio content from a second digital audio source based  
26 on at least a signal strength level of a second wireless communication link

27 239. At least these features confine the claim to a series of particular solutions to a series  
28 of identified problems.

29 240. These features, which have driven the PTAB to find that claims reciting similar  
30 features are not unpatentable, demonstrate some of the differences between the claim and the prior  
31 art, and demonstrate that it is not true that "the major difference between the prior art and Koss's  
32 claimed invention is that the claimed invention is wireless..."

1           241. A person of ordinary skill in the art reading the '498 Patent and its claims (including  
2 Claim 23) would understand that (a) the Asserted Patents' disclosures and claims are drawn to  
3 solving specific, technical problems and (b) the claimed subject matter represents an advancement  
4 in the technical field of the Asserted Patents. For example, as to both (a) and (b), the hardware and  
5 software included in the recited headphone assembly of Claim 23 to transition from one source of  
6 audio information to another source of audio information based, at least in part, on a determined  
7 signal strength of a second wireless communication link (i.e., the link of the source of audio  
8 information to which the headphone assembly is transitioning) contributes to solving the technical  
9 problem that wireless headphone assemblies would be improved if they could account for the  
10 situation where a user walks away from one device and near another device, both of which are  
11 sources of audio content. The hardware for handling this situation, and permitting the headphone  
12 assembly to transition to another source of information when appropriate, further contributes to  
13 solving this technical problem.

14           242. The claims of the '498 Patent do not preempt all techniques for or approaches to  
15 accomplishing the same or a similar end to what they recite. For example, the claims do not preempt  
16 the use of the techniques taught in the prior art cited on the face of the Asserted Patents, none of  
17 which, as the patent examiners found, disclose or render obvious the claimed inventions, further  
18 showing that the claims are not well-understood, routine, or conventional.

19           243. The claims of the '498 Patent do not merely recite the performance of some generic  
20 computing technique. Instead, the '498 Patent claims recite one or more inventive concepts that  
21 are rooted in headphone systems and audio technology, whose inventiveness has already been  
22 confirmed by the PTAB's final written decisions on similar claim scope. Specifically, the '498  
23 Patent addresses and provides a solution to a long-standing problem in the area of wireless  
24 headphone technology: the problem presented by the fact that a wireless headphone user can simply  
25 walk away, and distance himself or herself from, the source of the wireless data being played back  
26 in the headphones.

27           244. With the inventive concepts recited in at least similar claims the PTAB has already  
28 confirmed are patentable, systems involving wireless headphone assemblies can now seamlessly

1 address the problem that a user may walk away from one source of audio information and toward  
2 another source of audio information. A person of ordinary skill in the art would thus understand  
3 that the claims of the Asserted Patents are directed to specific improvements in headphone  
4 assemblies and similar systems.

5 245. Nor can it be said that the major difference between the prior art and Koss's claimed  
6 invention in Claim 23 of the '498 Patent is wireless, with the attendant benefits that such a system  
7 provides. Indeed, Claim 23 of the '498 Patent demonstrates a technological improvement, and not  
8 simply a feature of wireless communication; the PTAB has confirmed this to be the case. And the  
9 PTAB's analysis of similar claim scope confirms that the system recited in Claim 23 of the '498  
10 Patent is not "well understood."

11 246. Moreover, Claim 23 of the '498 Patent recites physical components that improve  
12 the technology of wireless communication. The Board has confirmed that prior systems did not  
13 have the hardware and software required to perform the "signal strength" aspects of Claim 23, and  
14 thus confirmed that these features indeed improve the technology of wireless communication.

15 247. In addition to wireless communication elements, the asserted claims of the '498  
16 Patent are not directed to wireless communication over a network generally, but rather are limited  
17 to a particular application of wireless communication over a network, in that they are limited to  
18 "earphones" with an "SOC" that, "mute the audio content streamed wirelessly to the headphone  
19 being played by the headphones" and "output audio of the incoming wireless communication circuit  
20 via the first and second wireless earphones" and that transition from playing digital audio content  
21 received wireless from a first digital audio source received via a first wireless communication link  
22 to playing digital audio content received wireless from a second digital audio source received via  
23 a second wireless communication link, based on the signal strength for the second wireless  
24 communication link.

25 248. A third party could communicate wirelessly over a network without practicing the  
26 asserted claims of the '498 Patent, such as by not using "earphones" for the wireless communication  
27 over the network, not implementing the earphones with an SOC, not using an SOC that performs  
28 the mute/output required, and/or not transitioning from playing digital audio content received



1 wireless from a first digital audio source received via a first wireless communication link to playing  
2 digital audio content received wireless from a second digital audio source received via a second  
3 wireless communication link, based on the signal strength for the second wireless communication  
4 link.

5 249. The asserted claims of the '498 Patent recite components that transform one form  
6 of energy to another form of energy. The asserted claims of the '498 Patent recite that the claimed  
7 headphone assembly comprises both acoustic transducers and a microphone. In this context, an  
8 acoustic transducer converts an electrical signal to mechanical energy (i.e., sound waves), such as  
9 by vibrating a membrane in the acoustic transducer. A microphone converts mechanical energy  
10 (i.e., sound waves) to an electrical signal based on vibrations of a membrane of the microphone  
11 caused by the sound waves.

12 250. Claim 23 of the '498 Patent is therefore not directed to an abstract idea, and is patent  
13 eligible subject matter pursuant to *Alice*, step 1.

14 251. What is more, Claim 23 of the '498 Patent is an inventive concept at least because  
15 the combination of claim limitations was not well-understood, routine, or conventional. In  
16 particular, despite repeated challenges at the PTAB, the Board has consistently found (in denial of  
17 institution and in a final written decision) that claim 23 is directed to an inventive concept.

18 252. These statements of inventiveness are not conclusory; quite to the contrary, some of  
19 the largest headphone manufacturers in the world mustered the strength of some of the most  
20 sophisticated lawyers and experts in the world and the PTAB nevertheless repeatedly found that  
21 scope like that recited in Claim 23 of the '498 is patent eligible.

22 253. Thus, in the event *Alice*'s step 2 is reached, Claim 23 of the '498 Patent recites an  
23 inventive concept and demonstrates that that claim is directed to patent eligible subject matter.

24 254. Further confirming that the '498 Patent is directed to patent eligible subject matter,  
25 the examiner in a family member application recently issued a notice of allowance for a similar set  
26 of claims to Claim 23 of the '498 Patent in view of considering this Court's Dkt. 88 Order  
27 dismissing Koss' First Amended Complaint.  
28

1           255. In particular, Koss submitted this Court’s Dkt. 88 Order in an IDS during  
2 examination of U.S. Application Serial No. 17/812,911, which is in the same patent family as the  
3 ’498 Patent and which claims priority through several continuation applications to the ’498 Patent.

4           256. The Examiner issued a “Corrected Notice of Allowance” on November 30, 2022  
5 (Exhibit J) in which he stated that “[t]he Office carefully review [sic] IDS (Koss Corp V.  
6 Plantronics Inc) filed on 11/21/2022 Order Granting Motion Dismiss” and nevertheless allowed the  
7 pending claims.

8           257. This confirms that the Office, which issued the ’498 Patent in view of the Supreme  
9 Court’s *Alice* ruling without rejecting the claims, under that ruling (or under 35 U.S.C. § 101 at all)  
10 views the subject matter of Koss’ patent portfolio as being directed to patent eligible subject matter.

11           258. There is no reason to disturb the presumption of validity under 35 U.S.C. § 101 that  
12 the ’498 Patent (and any issued patent) enjoys.

13           259. Plantronics has made, had made, used, imported, supplied, distributed, sold, and/or  
14 offered for sale products and/or systems, including systems in which its BackBeat-branded products  
15 and/or systems, including, but not limited to, the BackBeat FIT 300 Headphones, as well as certain  
16 Voyager branded headphones are incorporated (“Accused ’498 Headphones”). On information and  
17 belief, the BackBeat Fit 300 headphones were offered for sale and actually sold by Plantronics as  
18 of August 26, 2020.

19           260. As set forth in the attached non-limiting claim chart (Exhibit O), Plantronics has  
20 infringed and is infringing at least Claim 23 of the ’498 Patent by making, having made, using,  
21 importing, supplying, distributing, selling, and/or offering for sale the Accused ’498 Headphones,  
22 with specific reference in the claim chart to the BackBeat Fit 300 product. In particular, the use of  
23 the Accused ’498 Headphones by Plantronics to, for example, demonstrate those products in brick-  
24 and-mortar stores in San Francisco Bay Area, California or to, for example, test those products,  
25 constitute acts of direct infringement of Claim 23 of the ’498 Patent.

26           261. Plantronics actively induces infringement of at least Claim 23 of the ’498 Patent by  
27 selling the Accused ’498 Headphones with instructions as to how to use the Accused ’498  
28 Headphones in a system such as that recited in the ’498 Patent. Plantronics aids, instructs, or

1 otherwise acts with the intent to cause an end user to use the Accused '498 Headphones in an  
2 infringing manner. Plantronics knew of the '498 Patent and knew that its use and sale of the  
3 Accused '498 Headphones infringe at least Claim 23 of the '498 Patent. When a customer of  
4 Plantronics uses the Accused '498 Headphones as specifically instructed by Plantronics, the  
5 customer uses the headphones in a manner that infringes at least Claim 23 of the '498 Patent.

6 262. Plantronics is also liable for contributory infringement of at least Claim 23 of the  
7 '498 Patent by providing, and by having knowingly provided, a material part of the  
8 instrumentalities, namely the Accused '498 Headphones, used to infringe Claim 23 of the '498  
9 Patent. The Accused '498 Headphones have no substantial non-infringing uses. When an end user  
10 uses the Accused '498 Headphones in combination with, for example, a smart phone such as, for  
11 example, an Android-based smart phone and/or a peripheral device such as, for example, an  
12 Android-based tablet, the end user directly infringes Claim 23 of the '498 Patent. Plantronics knew  
13 that the Accused '498 Headphones were especially made for use in an infringing manner prior to  
14 the filing of this lawsuit. For at least the reasons set forth above, Plantronics contributes to the  
15 infringement of the '498 Patent by others.

16 263. Koss has been damaged as a result of the infringing conduct by Plantronics alleged  
17 above. Thus, Plantronics is liable to Koss in an amount that compensates it for such infringement,  
18 which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by  
19 this Court under 35 U.S.C. § 284.

20 264. Plantronics's infringement of the '498 Patent has caused, and will continue to cause,  
21 Koss to suffer substantial and irreparable harm.

22 265. Plantronics has been aware that it infringes the '498 Patent since at least September  
23 30, 2021, upon the receipt of the letter attached as Exhibit G. Since obtaining knowledge of its  
24 infringing activities, Plantronics has failed to cease its infringing activities.

25 266. Plantronics's infringement of the '498 Patent is, has been, and continues to be,  
26 willful, intentional, deliberate, and/or in conscious disregard of Koss's rights under the patent.

27 267. Koss has complied with 35 U.S.C. § 287 with respect to the '498 Patent.  
28

**FIFTH CAUSE OF ACTION**

**(Infringement of the '852 Patent)**

1  
2  
3 268. Koss incorporates by reference and realleges each and every allegation of  
4 Paragraphs 1 through 267 as if set forth herein.

5 269. Koss owns all substantial rights, interest, and title in and to the '852 Patent,  
6 including the sole and exclusive right to prosecute this action and enforce the '852 Patent against  
7 infringers, and to collect damages for all relevant times.

8 270. The '852 Patent generally describes wireless earphones that comprise a transceiver  
9 circuit for receiving streaming audio from a data source, such as a digital audio player or a  
10 computer, over a wireless network. The '852 Patent describes and claims a system that includes a  
11 mobile computing device with a graphical user interface thereon to allow the user to select an audio  
12 control setting for the wireless headphones. Various additional functional and hardware limitations  
13 are described and claimed in the dependent claims of the '852 Patent.

14 271. The written description of the '852 Patent describes in technical detail each of the  
15 limitations of the claims, allowing a skilled artisan to understand the scope of the claims and how  
16 the non-conventional and non-generic combination of claim limitations is patentably distinct from  
17 and improved upon what may have been considered conventional or generic in the art at the time  
18 of the invention.

19 272. The claims of the '852 Patent are directed to statutorily eligible subject matter, as  
20 they do not recite an abstract idea and are also directed to an inventive concept.

21 273. The '852 Patent has been challenged at the PTAB in *inter partes* review on only one  
22 (1) occasion.

23 274. In particular, on the second-to-last day of its statutory one-year period to file,  
24 Plantronics filed an IPR petition against the '852 Patent. An institution decision is expected by  
25 early May, 2023.

26 275. Plantronics' IPR petition as to the '852 Patent includes a single ground addressing  
27 claim 15; that ground relies on six (6) different prior art references in purported combination.  
28 Indeed, Plantronics' sole ground for purported invalidity of independent claim 1 (from which claim

1 15 ultimately depends) relies on four (4) different prior art references. This alone demonstrates  
2 that the claims of the '852 patent are directed to an inventive concept; Plantronics, even with the  
3 benefit of all of Apple's and Bose's prior IPR work, needs to resort to four-, five-, or six-reference  
4 combinations for purposes of demonstrating what Plantronics believes to be obviousness.

5 276. Claim 15 of the '852 Patent contains a similar "digital signal processor" limitation  
6 to the one that the Board has found not to be unpatentable with regard to the '325 Patent.

7 277. The claims of the '852 Patent were all prosecuted after the Supreme Court's decision  
8 in *Alice Corp. v. CLS Bank Int'l.*, 578 U.S. 208 (2014), and were thus examined against the  
9 backdrop of the Supreme Court's guidance.

10 278. The claims of the '852 Patent were never rejected under 35 U.S.C. § 101.

11 279. Claim 15 of the '852 Patent depends from Claim 9, Claim 8, and ultimately Claim  
12 1 and recites as follows:

13 1. A system comprising:

14 wireless headphones comprising first and second earphones; and  
15 a mobile computer device that is in wireless communication with, and  
16 untethered to, the wireless headphones, wherein the mobile computer device is for  
17 wirelessly pairing with the wireless headphones such that the wireless headphones  
18 play audio content transmitted wirelessly to the wireless headphones from the  
19 mobile computer device, wherein the mobile computer device is for wirelessly  
pairing with the wireless headphones via an ad hoc wireless communication link  
between the mobile computer device and the wireless headphones, and wherein the  
ad hoc wireless communication link comprises a Bluetooth wireless  
communication link; and

20 wherein the mobile computer device comprises a screen that is configured  
21 to display a graphical user interface through which a user of the wireless  
22 headphones selects an audio control setting for the wireless headphones to be  
23 applied to the wireless headphones when the wireless headphones play the audio  
content, and wherein the wireless headphones receive the audio control setting via  
a wireless data communication link.

24 8. The system of claim 1, wherein the first and second earphones are physically  
25 separate such that when the wireless headphones are worn by the user, the first and  
second earphones are not physically connected.

26 9. The system of claim 8, wherein each of the first and second earphone comprises:  
27 an acoustic transducer; a processor circuit; a wireless communication circuit; a  
28 microphone; and a rechargeable battery.

1 15. The system of claim 9, wherein the processor circuit of each of the first and  
2 second earphones comprises a digital signal processor circuit that provides a sound  
3 quality enhancement for the audio content played by the acoustic transducer of the  
earphone.

4 280. The inventions recited in Claim 15 address technological problems and provide  
5 technological solutions that were not well-understood, routine, or conventional at the time of the  
6 invention. This is demonstrated by (1) the initial issuance of the '852 Patent and (2) the Board's  
7 confirmation, in an IPR filed by Apple that claims reciting a "digital signal processor" are not  
8 unpatentable.

9 281. In particular, the inventions recited in Claim 15 address the following technological  
10 problems and provide technological solutions that were not well understood, routine, or  
11 conventional at the time of the invention:

- 12 a. A digital signal processor that provides a sound quality enhancement for audio  
13 content played back through the earphones and
- 14 b. A separate mobile computer device that provides users with

15 282. At least these features confine the claim to a series of particular solutions to a series  
16 of identified problems.

17 283. The physical components required to perform these technical innovations (e.g., a  
18 digital signal processor) are the focus of Claim 15 of the '852 Patent.

19 284. These features, which drove the PTAB to find that a claim with features similar to  
20 Claim 15 is not unpatentable, demonstrate some of the differences between the claim and the prior  
21 art, and demonstrate that it is not true that "the major difference between the prior art and Koss's  
22 claimed invention is that the claimed invention is wireless..."

23 285. A person of ordinary skill in the art reading the '852 Patent and its claims (including  
24 Claim 15) would understand that (a) the Asserted Patents' disclosures and claims are drawn to  
25 solving specific, technical problems and (b) the claimed subject matter represents an advancement  
26 in the technical field of the Asserted Patents. For example, as to both (a) and (b), the hardware and  
27 software included in the recited headphone assembly of Claim 15 to provide sound quality  
28 enhancements with certain digital signal processors contributes to solving the technical problem of



1 how to make a relatively small wireless device sound good and provide adequate battery life. The  
2 hardware for handling this situation, and recited specifically in Claim 15, contributes to the solution  
3 of this technical problem.

4 286. The claims of the '852 Patent do not preempt all techniques for or approaches to  
5 accomplishing the same or a similar end to what they recite. For example, the claims do not preempt  
6 the use of the techniques taught in the prior art cited on the face of the Asserted Patents, nor the art  
7 cited in the various PTAB proceedings regarding the '325 Patent, none of which, as the patent  
8 examiners found, disclose or render obvious the claimed inventions, further showing that the claims  
9 are not well-understood, routine, or conventional.

10 287. The claims of the '852 Patent do not merely recite the performance of some generic  
11 computing technique. Instead, the '852 Patent claims recite one or more inventive concepts that  
12 are rooted in headphone systems and audio technology, whose inventiveness has already been  
13 confirmed by the PTAB's final written decision as to the '325 Patent and by various parties' failure  
14 to even secure institution of IPRs on the '325 Patent. Specifically, the '852 Patent addresses and  
15 provides a solution to a long-standing problem in the area of wireless headphone technology: the  
16 problem of providing acceptable quality audio in a battery operated device for an acceptable amount  
17 of time between charging.

18 288. With the inventive concepts recited in at least claims that contain limitations the  
19 PTAB has already confirmed are patentable, systems involving wireless headphone assemblies can  
20 now seamlessly address the problem of low quality audio in a device with short battery life. A  
21 person of ordinary skill in the art would thus understand that the claims of the Asserted Patents are  
22 directed to specific improvements in headphone assemblies and similar systems.

23 289. Nor can it be said that the major difference between the prior art and Koss's claimed  
24 invention in Claim 15 of the '852 Patent is focused on the wireless capability, and not any of the  
25 recited physical components in the claim. Indeed, Claim 15 of the '852 Patent demonstrates a  
26 technological improvement, and not simply a feature of wireless communication; the PTAB has  
27 confirmed this to be the case. And the PTAB's analysis of the '325 Patent confirms that the system  
28 recited in Claim 15 of the '852 Patent merely contains "generic physical elements of the prior art."

1           290. Moreover, Claim 15 of the '852 Patent recites physical components that improve  
2 the technology of wireless headphones. The Board has confirmed, in connection with the '325  
3 Patent, that prior systems did not have the hardware and software required by Claim 15, and thus  
4 confirmed that these features indeed improve the technology of wireless communication.

5           291. In addition to wireless communication elements, the asserted claims of the '852  
6 Patent are not directed to wireless communication over a network generally, but rather are limited  
7 to a particular application of wireless communication over a network, in that they are limited to  
8 “earphones” with “a digital signal processor circuit that provides a sound quality enhancement for  
9 the audio content played by the acoustic transducer of the earphone.”

10           292. A third party could communicate wirelessly over a network without practicing the  
11 asserted claims of the '852 Patent, such as by not using “earphones” for wireless communication  
12 over the network, not using earphones that have a digital signal processor, or not using earphones  
13 that rely on a user interface for configuration.

14           293. The asserted claims of the '852 Patent therefore recite components that transform  
15 one form of energy to another form of energy. The asserted claims of the '852 Patent recite that  
16 the claimed headphone assembly comprises both acoustic transducers and a microphone. In this  
17 context, an acoustic transducer converts an electrical signal to mechanical energy (i.e., sound  
18 waves), such as by vibrating a membrane in the acoustic transducer. A microphone converts  
19 mechanical energy (i.e., sound waves) to an electrical signal based on vibrations of a membrane of  
20 the microphone caused by the sound waves.

21           294. Claim 15 of the '852 Patent is therefore not directed to an abstract idea, and is patent  
22 eligible subject matter pursuant to *Alice*, step 1.

23           295. What is more, Claim 15 of the '852 Patent is an inventive concept at least because  
24 the combination of claim limitations was not well-understood, routine, or conventional. In  
25 particular, despite repeated challenges at the PTAB, the Board has consistently found (in denial of  
26 institution and in a final written decision) that claims with similar subject matter are directed to an  
27 inventive concept.  
28

1           296. These statements of inventiveness are not conclusory; quite to the contrary, some of  
2 the largest headphone manufacturers in the world mustered the strength of some of the most  
3 sophisticated lawyers and experts in the world and, in the one (of two) IPR petitions to reach final  
4 written decision, the PTAB nevertheless found that claims with similar scope to Claim 15 of the  
5 '852 Patent are directed to an inventive concept.

6           297. Thus, in the event *Alice*'s step 2 is reached, Claim 15 of the '852 Patent recites an  
7 inventive concept and demonstrates that that claim is directed to patent eligible subject matter.

8           298. Further confirming that the '852 Patent is directed to patent eligible subject matter,  
9 the examiner in a family member application recently issued a notice of allowance for a similar set  
10 of claims to Claim 15 of the '852 Patent in view of considering this Court's Dkt. 88 Order  
11 dismissing Koss' First Amended Complaint.

12           299. In particular, Koss submitted this Court's Dkt. 88 Order in an IDS during  
13 examination of U.S. Application Serial No. 17/812,911, which is in the same patent family as the  
14 '852 Patent and which claims priority through several continuation applications to the '852 Patent.

15           300. The Examiner issued a "Corrected Notice of Allowance" on November 30, 2022  
16 (Exhibit J) in which he stated that "[t]he Office carefully review [sic] IDS (Koss Corp V.  
17 Plantronics Inc) filed on 11/21/2022 Order Granting Motion Dismiss" and nevertheless allowed the  
18 pending claims.

19           301. This confirms that the Office, which issued the '852 Patent in view of the Supreme  
20 Court's *Alice* ruling without rejecting the claims, under that ruling (or under 35 U.S.C. § 101 at all)  
21 views the subject matter of Koss' patent portfolio as being directed to patent eligible subject matter.

22           302. There is no reason to disturb the presumption of validity under 35 U.S.C. § 101 that  
23 the '852 Patent (and any issued patent) enjoys.

24           303. Plantronics has made, had made, used, imported, supplied, distributed, sold, and/or  
25 offered for sale products and/or systems, including systems in which its BackBeat-branded products  
26 and/or systems, including, but not limited to, the BackBeat FIT 3100 Headphones, as well as other  
27 BackBeat Fit, BackBeat Go, and BackBeat Pro headphones are incorporated ("Accused '852  
28 Headphones"). On information and belief, the BackBeat Fit 3100 headphones were offered for sale

1 and actually sold by Plantronics for use with its BackBeat Mobile Application as of November 25,  
2 2020. On information and belief, the BackBeat mobile application is still supported by Plantronics  
3 and the mobile application is still available for its customers to download as of October 1, 2021.

4 304. As set forth in the attached non-limiting claim chart (Exhibit N), Plantronics has  
5 infringed and is infringing at least Claim 15 of the '852 Patent by making, having made, using,  
6 importing, supplying, distributing, selling, and/or offering for sale the Accused '852 Headphones  
7 along with its BackBeat branded mobile application, with specific reference in the claim chart to  
8 the BackBeat Fit 3100 product. In particular, the use of the Accused '852 Headphones by  
9 Plantronics to, for example, demonstrate those products in brick-and-mortar stores in San Francisco  
10 Bay Area, California or to, for example, test those products, constitute acts of direct infringement  
11 of Claim 15 of the '852 Patent.

12 305. Plantronics actively induces infringement of at least Claim 15 of the '852 Patent by  
13 selling the Accused '852 Headphones with instructions as to how to use the Accused '852  
14 Headphones in a system such as that recited in the '852 Patent. Plantronics aids, instructs, or  
15 otherwise acts with the intent to cause an end user to use the Accused '852 Headphones along with  
16 the BackBeat mobile application in an infringing manner. Plantronics knew of the '852 Patent and  
17 knew that its use and sale of the Accused '852 Headphones infringe at least Claim 15 of the '852  
18 Patent. When a customer of Plantronics uses the Accused '852 Headphones as specifically  
19 instructed by Plantronics, the customer uses the headphones in a manner that completes the system  
20 of Claim 15, thereby infringing Claim 15 of the '852 Patent.

21 306. Plantronics is also liable for contributory infringement of at least Claim 15 of the  
22 '852 Patent by providing, and by having knowingly provided, a material part of the  
23 instrumentalities, namely the Accused '852 Headphones along with the BackBeat mobile  
24 application, used to infringe Claim 15 of the '852 Patent. The Accused '852 Headphones have no  
25 substantial non-infringing uses. When an end user uses the Accused '852 Headphones in  
26 combination with, for example, a smart phone such as, for example, an Apple iPhone and/or a  
27 peripheral device such as, for example, an Apple Watch, the end user directly infringes Claim 15  
28 of the '852 Patent. Plantronics knew that the Accused '852 Headphones were especially made for

1 use in an infringing manner prior to the filing of this lawsuit. For at least the reasons set forth  
2 above, Plantronics contributes to the infringement of the '852 Patent by others.

3 307. Koss has been damaged as a result of the infringing conduct by Plantronics alleged  
4 above. Thus, Plantronics is liable to Koss in an amount that compensates it for such infringement,  
5 which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by  
6 this Court under 35 U.S.C. § 284.

7 308. Plantronics's infringement of the '852 Patent has caused, and will continue to cause,  
8 Koss to suffer substantial and irreparable harm.

9 309. Plantronics has been aware that it infringes the '852 Patent since at least September  
10 30, 2021, upon the receipt of the letter attached as Exhibit L. Since obtaining knowledge of its  
11 infringing activities, Plantronics has failed to cease its infringing activities.

12 310. Plantronics's infringement of the '852 Patent is, has been, and continues to be,  
13 willful, intentional, deliberate, and/or in conscious disregard of Koss's rights under the patent.

14 311. Koss has complied with 35 U.S.C. § 287 with respect to the '852 Patent.

15 **JURY DEMAND**

16 Koss hereby requests a trial by jury on all issues so triable by right.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Koss requests that:

19 A. The Court find that Plantronics has directly infringed the Patents-in-Suit and hold  
20 Plantronics liable for such infringement;

21 B. The Court find that Plantronics has indirectly infringed the Patents-in-Suit by  
22 inducing its customers to directly infringe the Patents-in-Suit and hold Plantronics liable for such  
23 infringement;

24 C. The Court find that Plantronics has indirectly infringed the Patents-in-Suit by  
25 contributing to Plantronics's customers' direct infringement of the Patents-in-Suit and hold  
26 Plantronics liable for such infringement;

1 D. The Court award damages pursuant to 35 U.S.C. § 284 adequate to compensate Koss  
2 for Plantronics's past infringement of the Patents-in-Suit, including both pre- and post-judgment  
3 interest and costs as fixed by the Court;

4 E. The Court increase the damages to be awarded to Koss by three times the amount  
5 found by the jury or assessed by the Court;

6 F. The Court declare that this is an exceptional case entitling Koss to its reasonable  
7 attorneys' fees under 35 U.S.C. § 285; and

8 G. The Court award such other relief as the Court may deem just and proper.

9  
10 Dated: December 7, 2022

Respectfully submitted,

11 By: /s/ Peter E. Soskin

12 Peter E. Soskin  
13 **K&L Gates LLP**  
14 Four Embarcadero Center, Suite 1200  
15 San Francisco, CA 94111  
16 peter.soskin@klgates.com  
17 Tel: (415) 882-8200  
18 Fax: (415) 882-8220

19 Benjamin E. Weed (pro hac vice)  
20 Gina A. Johnson (pro hac vice)  
21 Melissa M. Haulcomb (pro hac vice)  
22 Amanda C. Maxfield (pro hac vice)  
23 **K&L GATES LLP**  
24 70 W. Madison  
25 Suite 3300  
26 Chicago, IL 60602  
27 Benjamin.Weed@klgates.com  
28 Gina.Johnson@klgates.com  
Melissa.Haulcomb@klgates.com  
Amanda.Maxfield@klgates.com  
Telephone: (312) 372-1121  
Facsimile: (312) 827-8000

**Attorneys for Plaintiff Koss Corporation**