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### ***Skullcandy, Inc. and Threshold Value<sup>1</sup>***

The United States Patent and Trademark Office (USPTO) may issue a patent for a novel and useful invention. Once a patent issues, a patent owner has a right to exclude others from making, using, selling, or importing the patented invention. Patent claims, filed with a patent application, define the invention within the issued patent. The patent owner may leverage the choice and definition of words used in the claims to establish a presence in a market.

When patent validity is challenged before the USPTO Patent Trial and Appeal Board (PTAB), the claims are construed, or defined, pursuant to a broadest reasonable interpretation consistent with the specification. If the patent specification does not offer a claim term definition, the PTAB considers evidence for claim construction extrinsic to the specification. The patent owner may or may not benefit from the PTAB's claim language interpretation.

The USPTO issued United States Patent Number 7,187,948 ('948 Patent) to Skullcandy, Inc. (Skullcandy) on March 6, 2007. The '948 Patent describes an apparatus that allows a user to integrate mobile phone and portable music player services. In more technical terms, the patent describes integrating a two-way communication device and audio signals with audio delivery devices. Included in independent claim 1 of the '948 Patent is the following:

means for wirelessly receiving a first audio signal from a substantially arbitrarily selectable audio delivery device;

means for wirelessly receiving a second audio signal from a substantially arbitrarily selectable two-communication device;

a coupling device independent from the audio and two-way communication devices, wherein the second audio signal is characterized by a threshold value, the second audio signal is accorded priority relative to the first audio signal, and the second audio signal interrupts the first audio signal upon reaching the threshold value....

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<sup>1</sup> Skullcandy, Inc. v. CSR Ltd., case number 16-1384 (Fed. Cir. March 2, 2017).



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In February 2010, in a legal proceeding called an *inter partes* reexamination, CSR, PLC (CSR) filed a request asking the USPTO to reconsider issuing the '948 Patent. CSR argued that, at the very least, the '948 Patent was invalid as not novel, known as anticipated in patent law, by U.K. Patent Publication 2357663A to Smith (Smith patent publication). The Smith patent publication describes a user receiving a phone call while listening to, for instance, music via an adapter. The Smith patent publication further describes the adapter stopping the music in response to receiving the phone call.

Following multiple proceedings before the PTAB and the United States Court of Appeals for the Federal Circuit (CAFC), the PTAB was tasked with construing the claim term, "threshold value", and applying the construction to the Smith patent publication. The PTAB considered the claim language, dictionary definitions, and specification to develop a single definition of threshold value understood by one of ordinary skill in the art. In particular, the PTAB described threshold value as an amount at which an audio signal is detectable and may interrupt another audio signal. As the Smith patent publication describes stopping an audio signal in response to receiving a call, the PTAB found that the Smith patent publication discloses a threshold value. Accordingly, the PTAB found the '948 Patent invalid, as not novel and anticipated by the Smith patent publication.

On March 2, 2017, over 7 years after CSR filed the request for *inter partes* reexamination, the CAFC affirmed the PTAB's decision invalidating Skullcandy's '948 Patent. Prior to the decision, Skullcandy argued that threshold value is a certain amount associated with an audio signal rather than a mere nonzero value. However, the '948 Patent provided no definition for threshold value in the claims or the written specification, which prompted the PTAB to strongly consider extrinsic evidence, such as dictionaries. Simply, without more from the specification, Skullcandy's '948 Patent was not novel.

Claim construction is a question of law. A patent applicant may influence claim construction by identifying and describing key claim terms in the written description. Hutchison Law, LLC has experience writing specifications supporting a client's desired claim term construction. To learn more about how we draft specifications to support your desired claim construction, please contact us at 410-978-7287.

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