

THIS ORDER IS NOT A
PRECEDENT OF THE TTAB

Mailed:
October 30, 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Bose Corporation
v.
Hexawave, Inc.

Opposition No. 91157315

Decision on Remand

Charles Hieken and Amy L. Brosius of Fish & Richardson P.C.
for Bose Corporation.

Morton J. Rosenberg of Rosenberg, Klein & Lee for Hexawave
Inc.

Before Rogers,¹ Drost and Kuhlke, Administrative Trademark
Judges.

Order by Kuhlke, Administrative Trademark Judge:

On November 6, 2007, the Board held in favor of
defendant Hexawave on its counterclaim to cancel opposer's

¹ Judge Rogers is substituted for Judge Hohein.

Registration No. 1633789. Thereafter, on April 9, 2008, the Board denied opposer's request for reconsideration.

After the Board's decision, opposer appealed to the U.S. Court of Appeals for the Federal Circuit. On August 31, 2009, the Court reversed the Board's decision on the counterclaim and remanded the case stating the following:

We agree with the Board, however, that because the WAVE mark is no longer in use on audio tape recorders and players, the registration needs to be restricted to reflect commercial reality. See Bose, 88 USPQ2d at 1338. We thus remand the case to the Board for appropriate proceedings.

In re Bose, 580 F.3d 1240, 91 USPQ2d 1938, 1942 (Fed. Cir. 2009).

In view thereof, the identification of goods in Registration No. 1633789 has been amended by deleting the following, "audio tape recorders and players, portable radio and cassette recorder combinations."²

* * *

² This amendment reflects the request filed by registrant on January 3, 2008 with the Post Registration Office of the USPTO which includes in the deletion "portable radio and cassette recorder combinations." The amendment was previously entered by Post Registration on October 28, 2008.