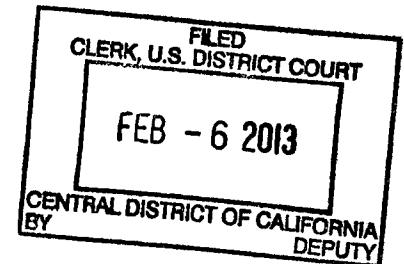


KARIN G. PAGNANELLI (174763)
kgp@msk.com
ALEXA L. LEWIS (235867)
all@msk.com
MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
Los Angeles, CA 90064-1683
Telephone: (310) 312-2000
Facsimile: (310) 312-3100

MICHAEL G. KELBER (*pro hac vice pending*)
BRADLEY F. RADEMAKER (*pro hac vice pending*)
LAWRENCE E. JAMES (*pro hac vice pending*)
KATHERINE DENNIS NYE (*pro hac vice pending*)
NEAL, GERBER & EISENBERG LLP
Two North LaSalle Street, Suite 1700
Chicago, Illinois 60602
Telephone: (312) 269-8000
Facsimile: (312) 269-1747

Attorneys for Plaintiff
BEATS ELECTRONICS, LLC



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SACV13-0209 CJC(JPRx)

BEATS ELECTRONICS, LLC, a
Delaware Limited Liability Company,

Plaintiff,

v.

YAMAHA CORPORATION OF
AMERICA, a California Corporation,

Defendant.

CASE NO.

**COMPLAINT FOR TRADE DRESS
INFRINGEMENT, PATENT
INFRINGEMENT AND UNFAIR
COMPETITION**

JURY TRIAL DEMANDED

1 Plaintiff, Beats Electronics, LLC (“Beats”), by its attorneys, asserts claims
 2 against Defendant, Yamaha Corporation of America (“Yamaha”), for violation of
 3 Beats’ proprietary rights relating to the product configuration and appearance of
 4 Beats’ headphone products. For its Complaint, Beats alleges as follows:

5 6 **PARTIES**

7 1. Plaintiff Beats is a limited liability company organized under the laws
 8 of Delaware, with a principal place of business at 1601 Cloverfield Boulevard,
 9 Suite 5000N, Santa Monica, California 90404. Beats is a world-class producer of
 10 cutting-edge audio equipment, including its “Pro,” “Solo,” “Studio,” and
 11 “Wireless” headphone products, all of which feature Beats’ proprietary product
 12 design protected by trade dress rights and U.S. Design Patents owned by Beats.

13 2. Upon information and belief, Yamaha is a California corporation with
 14 a principal place of business at 6600 Orangethorpe Avenue, Buena Park, California
 15 90620.

16 17 **NATURE OF THE ACTION**

18 3. This Complaint is brought because of Yamaha’s on-going
 19 manufacture, importation, marketing and/or sales of “Pro 300,” “Pro 400” and “Pro
 20 500” headphones (collectively, the “Infringing Headphones”), which are knock-
 21 offs of Beats’ world-famous “Studio,” “Solo” and “Wireless” model headphones
 22 (respectively, the “Studio Headphones,” “Solo Headphones” and “Wireless
 23 Headphones”)(collectively, the “Beats Headphones.”) As a result of these actions,
 24 Yamaha has: [i] infringed Beats’ famous and distinctive trade dress and committed
 25 unfair competition in violation of 15 U.S.C. § 1125(a); [ii] infringed Beats’ United
 26 States Patents, Pat. Nos. D632,668 (the “’668 Patent,” and D552,077 (the “’077
 27 Patent”) (collectively, “Beats Patents”), in violation of 35 U.S.C. § 271(a); [iii]
 28 committed unfair competition in violation of the California Unfair Practices Act,

1 Cal. Bus. & Prof. Code § 17200 *et. seq.*; and [iv] committed trade dress
2 infringement and unfair competition in violation of California common law.

3
4 **JURISDICTION AND VENUE**

5 4. This Court has subject matter jurisdiction under one or more of the
6 following statutes: 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338 (patents
7 and trademarks), and 28 U.S.C. § 1367 (supplemental jurisdiction).

8 5. Personal jurisdiction is proper in the Central District of California
9 under 28 U.S.C. § 1391(b) and (c) with respect to Defendant, because a substantial
10 part of the events giving rise to the claims occurred in this District. Upon
11 information and belief, Defendant is located within this District, conducts regular
12 business within this District, and specifically has marketed and continues to market
13 the Infringing Headphones in this District.

14 6. Venue is proper under 28 U.S.C. § 1391 (a), (b) and (c), as well as 28
15 U.S.C. § 1400(b).

16
17 **BACKGROUND AND FACTS RELATED TO THIS ACTION**

18 7. Beats grew out of collaboration between legendary artist and producer
19 Andre Young (professionally known as Dr. Dre) and Jimmy Iovine, Chairman of
20 Interscope Geffen A&M Records. Among its products, Beats has developed a new
21 line of revolutionary headphones with the capacity to reproduce the full spectrum
22 of sound that musical artists and producers hear when producing music. Among
23 these revolutionary headphones are the Beats Studio Headphones, the Beats Solo
24 Headphones, and the Beats Wireless Headphones. Several copies of photographs
25 of the Studio Headphones are attached hereto as Exhibit A, copies of photographs
26 of the Solo Headphones are attached hereto as Exhibit B, and copies of
27 photographs of the Wireless Headphones are attached hereto as Exhibit C.

1 8. The designs of the Beats Studio, Solo and Wireless Headphones were
2 revolutionary when they were introduced. In contrast to the headphones on the
3 market at the time, the Beats' Headphones were highly stylized and sleek.
4 Consumers appreciated the design, as well as the sound quality, of the Beats
5 Headphones and began wearing the Beats Headphones around their necks as a
6 fashion accessory even when not listening to music. In fact, the design of the Beats
7 Headphones has been a significant driver of the commercial success the products.

8 9. Since their introduction, Beats' Headphones have enjoyed tremendous
9 popularity and sales. The Studio Headphones have been featured with Dr. Dre in
10 commercials for Dr. Pepper, and have been endorsed in commercials by numerous
11 performing artists, such as William Adams (professionally known as will.i.am) and
12 Ellie Goulding. Beats Headphones are regularly worn by collegiate and
13 professional athletes during nationally broadcast sporting events including college
14 and professional football and basketball games.

15 10. Moreover, through Beats' extensive sales and promotion of the Beats
16 Headphones, consumers have come to associate the distinctive appearance of
17 Beats' Studio Headphones, Solo Headphones, and Wireless Headphones with a
18 single source, namely Beats. Accordingly, the distinctive appearance of the Studio
19 Headphones, Solo Headphones and Wireless Headphones constitute Beats'
20 protectable, proprietary trade dress rights. More particularly, Beats' Trade Dress
21 rights in these products consists of the overall appearance of the shape and design
22 of the headphones, including the size, proportion and curvature of the headband,
23 yoke and earcups, as depicted in the collection of products shown in Exhibits A-C
24 ("Beats' Trade Dress Rights"). As a result, Beats' Trade Dress Rights, along with
25 the valuable goodwill associated with both Beats' name and its products, are very
26 valuable assets of Beats.

1 11. To further protect its revolutionary designs, Beats has obtained patent
2 protection for the design of its headphones, and owns the Beats Patents. A copy of
3 each of the Beats Patents is attached collectively hereto as Exhibit D.

4 12. In an effort to trade off of the goodwill and tremendous success of the
5 Beats Headphones, Defendant has brought to market a new line of headphones that
6 copied the distinctive aspects of the Beats' Headphones that comprise Beats' Trade
7 Dress Rights.

8 13. Notably, the design and appearance of Defendant's Infringing
9 Headphones, as shown in Exhibit E, are a significant departure from that of the
10 headphones offered by Defendant prior to Beats' introduction of its revolutionary
11 headphone design.

12 14. Defendant has, and continues to, manufacture or have manufactured,
13 import, market, distribute and sell the infringing line of headphones as its "PRO"
14 line of headphone products. These Infringing Headphones are substantially the
15 same as the designs in the Beats Patents, such that they infringe the Beats Patents.
16 The Infringing Headphones are also confusingly similar to the Beats Headphones
17 such that they infringe Beats' Trade Dress Rights and Beats' Patents, and trade off
18 of Beats' goodwill in its products. A side-by-side comparison of the Infringing
19 Headphones and an exemplary Beats Headphone, attached hereto as Exhibit F,
20 evidences the confusing similarity between Defendant's headphones and the Beats
21 products embodying Beats' Trade Dress rights and Beats' Patent rights.

22 15. The advertisements reproduced below, which include references to
23 either Beats or Dr. Dre and have been displayed by Defendant or its affiliate at
24 www.facebook.com/Yamahabackstagepass#!/yamahaAVau?fref=ts, further show
25 Defendant's intention to copy the distinctive design of Beats' headphones and/or
26 its intention to trade off of the goodwill associated with Beats' product appearance.



1 16. On November 30th, 2012, Beats, through its counsel, notified
 2 Defendant that the Infringing Headphones violate the Beats Patents and Beats'
 3 Trade Dress Rights. Thus, at least as of November 30th, 2012, Defendant had
 4 actual knowledge of the Beats Patents and Beats' Trade Dress Rights.
 5 Nevertheless, Defendant continues to manufacture or have manufactured, import,
 6 distribute and sell the Infringing Headphones, thereby willfully infringing the
 7 Beats Patents and Beats' Trade Dress Rights.

8 9 **CAUSES OF ACTION**

10 **COUNT I**

11 **Trade Dress Infringement and Unfair Competition**

12 **(Section 43(a) of the Lanham Act: 15 U.S.C. §1125(a))**

13 17. Beats realleges and incorporates herein the preceding paragraphs 1–16
 14 of this Complaint.

15 18. As set forth above, Beats has owned a valid and protectable interest in
 16 its Studio Headphones, Solo Headphones, and Wireless Headphones since before
 17 the acts of Defendant complained of herein. As a result of Beats' continuous,
 18 exclusive and extensive promotion and sale of the Studio Headphones, Solo
 19 Headphones, and Wireless Headphones in interstate commerce and the commercial
 20 success of these headphones, Beats' unique Trade Dress has developed secondary
 21 meaning amongst the relevant consumers as an identifier of the source of the
 22 headphones.

23 19. Due to Beats' expansive advertising campaign and other efforts,
 24 Beats' Trade Dress is widely recognized by the general consuming public as a
 25 source of Beats' goods. Beats' headphones are advertised and sold throughout the
 26 United States, and have been advertised and publicized by both Beats and third
 27 parties. Indeed, as early as 2010, Advertising Age named Beats one of the hottest
 28 brands in America. Since 2010, Beats' brand recognition and the strength of its

1 Trade Dress have continued to grow. As such, Beats' Trade Dress is a strong
2 mark, and became well-known before Defendant began selling or advertising its
3 Infringing Headphones.

4 20. The features that comprise the Beats' Trade Dress and the
5 combination of those features are non-functional.

6 21. Defendant's conduct is causing, and is likely to continue to cause in
7 the future, confusion, mistake or deception as to the affiliation, connection or
8 association of Defendant with Beats, and as to the origin, sponsorship or approval
9 of Defendant's goods, in violation of Section 43 of the Lanham Act, 15 U.S.C.
10 § 1125(a)(1).

11 22. Defendant's unauthorized and tortious conduct also has deprived, and
12 will continue to deprive, Beats of the ability to control the consumer perception of
13 its goods marketed under Beats' Trade Dress Rights, placing the valuable
14 reputation and goodwill of Beats in the hands of Defendant, over whom Beats has
15 no control.

16 23. Defendant's knowledge of Beats' Trade Dress Rights and reckless
17 disregard for the likely confusion caused by its acts renders this case exceptional
18 under 15 U.S.C. § 1117(a).

19 24. As a result of Defendant's aforesaid conduct, Beats has suffered
20 substantial damage and irreparable harm constituting an injury for which it has no
21 adequate remedy at law. Unless this Court enjoins Defendant's conduct, Beats will
22 continue to suffer irreparable harm.

23
24 **COUNT II**

25 **Patent Infringement - the '668 Patent**

26 **(35 U.S.C. § 271(a))**

27 25. Beats realleges and incorporated herein its preceding paragraphs 1 –
28 24 of this Complaint.

33. In violation of 35 U.S.C. § 271(a), Defendant is directly infringing the '077 Patent by making, having made, using, importing, offering for sale, selling and/or marketing the Infringing Headphones.

34. Based on the near-identical similarity between the Infringing Headphones and Beats' Studio Headphones, it is clear that Defendant knowingly and intentionally copied Beats' '077 Patent, and is willfully infringing Beats' rights.

35. This is an exceptional case within the meaning of 35 U.S.C. § 285, which warrants reimbursement of Beats' reasonable attorneys' fees.

36. As a result of Defendant's aforesaid conduct, Beats has suffered substantial damage and irreparable harm constituting an injury for which it has no adequate remedy at law. Unless this Court enjoins Defendant's conduct, Beats will continue to suffer irreparable harm.

COUNT IV

Violation of California Unfair Practices Act

(Cal. Bus. & Prof. Code § 17200 *et. seq.*)

37. Beats realleges and incorporates herein the preceding paragraphs 1 – 36 of this Complaint.

38. Due to Beats' expansive advertising campaign and other efforts, Beats' Trade Dress is widely recognized in California and throughout the United States by the general consuming public as a source of Beats' goods. Beats' Headphones are advertised in California and throughout the United States, and have been advertised and publicized by both Beats and third parties. As such, Beats' Trade Dress is a strong mark, and became well-known before Defendant began selling or advertising its Infringing Headphones.

39. The features that comprise the Beats' Trade Dress and the combination of those features are non-functional.

- 1 ii. selling, offering for sale, holding for sale, importing,
- 2 advertising, or promoting any merchandise, goods, or services
- 3 using trade dress that infringes Beats' Trade Dress or any trade
- 4 dress confusingly similar thereto; or
- 5 iii. doing any other act or thing that is likely to induce the belief
- 6 that the Defendant's goods or services are in some way
- 7 connected with Beats' goods or their respective businesses;

8 E. Judgment be entered that this case is an exceptional case under 35
9 U.S.C. § 285;

10 F. Defendant be held liable and ordered to account for and pay to Beats:

- 11 i. damages adequate to compensate Beats for Defendant's
- 12 infringement of the Beats Patents in an amount no less than a
- 13 reasonable royalty pursuant to 35 U.S.C. § 284;
- 14 ii. Defendant's respective total profits pursuant to 35 U.S.C.
- 15 § 289;
- 16 iii. treble damages pursuant to 35 U.S.C. § 284 based on
- 17 Defendant's willful infringement of the Beats Patents, and
- 18 pursuant to 15 U.S.C. § 1117(a) based on Defendant's willful
- 19 infringement of Beats' Trade Dress;
- 20 iv. all gains, benefits, and advantages derived from the Defendant's
- 21 wrongful use, misappropriation, and infringement of Beats'
- 22 Trade Dress;
- 23 v. all losses and damages, including lost profits and costs for
- 24 corrective advertising, suffered by Beats as a result of the
- 25 Defendant's wrongful use and infringement of Beats' Trade
- 26 Dress, including prejudgment interest and costs pursuant to 15
- 27 U.S.C. § 1117;
- 28

1 vi. Beats' reasonable attorneys' fees under 35 U.S.C. § 285 and 15
2 U.S.C. § 1117(a); and

3 vii. Beats' pre-judgment and post-judgment interest and costs
4 pursuant to 35 U.S.C. § 284 and 15 U.S.C. § 1117(a);

5 G. Requiring Defendant to deliver to Beats for destruction all Infringing
6 Headphones and any other products or other articles in its possession or control
7 bearing Beats' Trade Dress, or any reproduction, counterfeit, copy or colorable
8 imitation thereof, and all plates, molds, matrices, screens or other means of making
9 the same; and, that Defendant be required to recall all Infringing Headphones and
10 any other products bearing Beats' Trade Dress from its customers and refund any
11 monies paid for such products to its customers;

12 H. Requiring Defendant to deliver to Beats for destruction any and all
13 stationery, circulars, catalogs, charts, brochures, advertising, labels, packages,
14 signs, and all other material in its possession or under its control which depict the
15 Infringing Headphones or any other infringing trade dress or any trade dress
16 confusingly similar thereto;

17 I. Declaring that Defendant's actions complained of above constitute a
18 violation of the California Unfair Practices Act, Cal. Bus. & Prof. Code § 17200 *et*.
19 *seq.*, and enjoining Defendant from continuing such acts;

20 J. Declaring that Defendant's actions complained of above constitute a
21 violation of California common law trade dress infringement and unfair
22 competition and enjoining Defendant from continuing such acts; and

23 //

24 //

25 //

26 //

27 //

1 K. Granting Beats damages and such other and future relief as this Court
2 deems just and proper.

3 PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES.

4 Respectfully Submitted,

5
6 Dated: February 5, 2012

7 By: 

Attorneys for Plaintiff
Beats Electronics, LLC

8 Michael G. Kelber
9 Bradley F. Rademaker
10 Lawrence E. James
11 Katherine Dennis Nye
12 Neal, Gerber & Eisenberg, LLP
13 Two North LaSalle Street
Suite 1700
Chicago, Illinois 60602
Telephone: (312) 269-8000
Facsimile: (312) 269-1747

14
15 Dated: February 5, 2012

16 By: 

Attorneys for Plaintiff
Beats Electronics, LLC

17 Karin G. Pagnanelli (SBN 174763)
18 Alexa L. Lewis (SBN 235867)
19 Mitchell Silberberg & Knupp LLP
20 11377 West Olympic Boulevard
Los Angeles, California 90064-1683
Telephone: (310) 312-2000
Facsimile: (310) 312-3100

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: February 5, 2012

By: 

Attorneys for Plaintiff
Beats Electronics, LLC

Michael G. Kelber
Bradley F. Rademaker
Lawrence E. James
Katherine Dennis Nye
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, Illinois 60602
Telephone: (312) 269-8000
Facsimile: (312) 269-1747

Dated: February 5, 2012

By: 

Attorneys for Plaintiff
Beats Electronics, LLC

Karin G. Pagnanelli (SBN 174763)
Alexa L. Lewis (SBN 235867)
Mitchell Silberberg & Knupp LLP
11377 West Olympic Boulevard
Los Angeles, California 90064-1683
Telephone: (310) 312-2000
Facsimile: (310) 312-3100

NGEDOCs: 2054886.1

EXHIBIT A

EXHIBIT A



EXHIBIT B

EXHIBIT B



EXHIBIT C

EXHIBIT C



EXHIBIT D



US00D632668S

(12) **United States Design Patent** (10) **Patent No.:** **US D632,668 S**
Brunner et al. (45) **Date of Patent:** **** *Feb. 15, 2011**

(54) **AUDIO LISTENING SYSTEM**

OTHER PUBLICATIONS

(75) Inventors: **Robert Brunner**, San Francisco, CA (US); **Gregoire Vandenbussche**, San Francisco, CA (US); **Chris Fruhauf**, San Anselmo, CA (US)

U.S. Appl. No. 29/353,186 filed Jan. 4, 2010 (which is not being furnished herewith, pursuant to the Commissioner's Notice dated Sep. 21, 2004).

Primary Examiner—Paula Greene

(73) Assignee: **Beats Electronics, LLC**, Santa Monica, CA (US)

(74) *Attorney, Agent, or Firm*—Michael G. Kelber; Neal, Gerber & Eisenberg LLP

(**) Term: **14 Years**

(57) **CLAIM**

(21) Appl. No.: **29/357,430**

The ornamental design for an audio listening system, as shown and described.

(22) Filed: **Mar. 11, 2010**

(51) **LOC (9) Cl.** **14-01**

(52) **U.S. Cl.** **D14/205**

(58) **Field of Classification Search** D14/205,
D14/206, 223, 188, 192; 181/129, 130, 135;
379/430, 433.01; 381/380, 381; 128/864,
128/865, 866; D29/112

See application file for complete search history.

(56) **References Cited****U.S. PATENT DOCUMENTS**

3,104,398 A	9/1963	Georg	
4,173,715 A	11/1979	Gosman	
D254,876 S *	5/1980	Reitenga et al.	D29/112
4,634,816 A *	1/1987	O'Malley et al.	379/430
D313,092 S	12/1990	Nilsson	
5,018,599 A	5/1991	Dohi et al.	
5,035,005 A	7/1991	Hung	
D328,074 S *	7/1992	Yamazaki et al.	D14/205
D328,461 S	8/1992	Daido et al.	
D351,172 S	10/1994	Nakamura	
D358,389 S *	5/1995	Isono	D14/205
D420,356 S	2/2000	Suzuki	
6,081,604 A	6/2000	Hikichi et al.	
D430,140 S	8/2000	Roman	
D457,512 S	5/2002	Yoneda	
6,449,806 B1	9/2002	Engelhard et al.	
D484,485 S *	12/2003	Matsuoka	D14/205

(Continued)

DESCRIPTION

FIG. 1 is a perspective view of an audio listening system showing my new design, the opposite perspective view is a mirror image;

FIG. 2 is back view of the embodiment of an audio listening system depicted in FIG. 1;

FIG. 3 is a front view of the embodiment of an audio listening system depicted in FIG. 1;

FIG. 4 is a first side view of the embodiment of an audio listening system depicted in FIG. 1;

FIG. 5 is a second side view of the embodiment of an audio listening system depicted in FIG. 1, from the opposite side depicted in FIG. 4;

FIG. 6 is a top plan view of the embodiment of an audio listening system depicted in FIG. 1; and,

FIG. 7 is a bottom plan view of the embodiment of an audio listening system depicted in FIG. 1.

The broken lines showing the environment in the Figures are for illustrative purposes only and form no part of the claimed design.

1 Claim, 2 Drawing Sheets



US D632,668 S

Page 2

U.S. PATENT DOCUMENTS

6,654,966 B2	12/2003	Rolla		D582,890 S *	12/2008	Koza et al.	D14/205
D484,868 S	1/2004	Suzuki		D585,871 S *	2/2009	Lee	D14/205
D491,163 S	6/2004	Green		D585,872 S	2/2009	Lee	
D532,407 S	11/2006	Motoishi		D588,098 S	3/2009	Kurihara	
D534,155 S *	12/2006	Obata	D14/205	D588,100 S *	3/2009	Densho et al.	D14/205
D534,156 S *	12/2006	Obata	D14/205	D591,263 S *	4/2009	Shimizu	D14/205
7,172,052 B2 *	2/2007	Lenhard-Backhaus	181/129	D592,182 S *	5/2009	Sanguinetti	D14/205
D540,301 S *	4/2007	Obata	D14/205	D592,640 S *	5/2009	Tkachuk	D14/205
D541,257 S *	4/2007	Thursfield	D14/205	D593,995 S *	6/2009	Shimizu	D14/205
D552,077 S *	10/2007	Brunner et al.	D14/205	D603,370 S	11/2009	Suzuki	
D557,684 S *	12/2007	Pundsack et al.	D14/205	D603,371 S *	11/2009	Boateng et al.	D14/205
D563,382 S *	3/2008	Wikel	D14/205	D616,865 S	6/2010	Marchand et al.	
				D617,769 S *	6/2010	Birger	D14/205

* cited by examiner

U.S. Patent

Feb. 15, 2011

Sheet 1 of 2

US D632,668 S

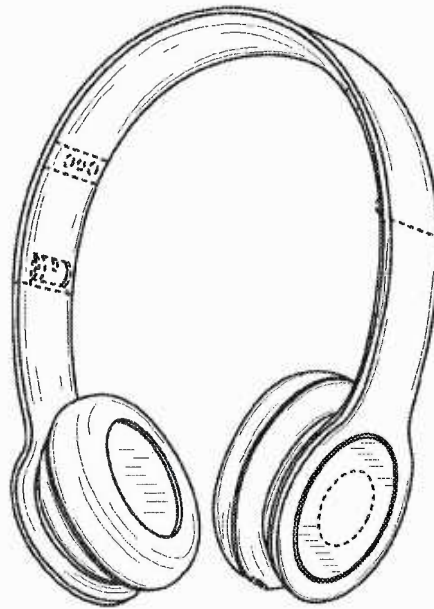


FIG. 1

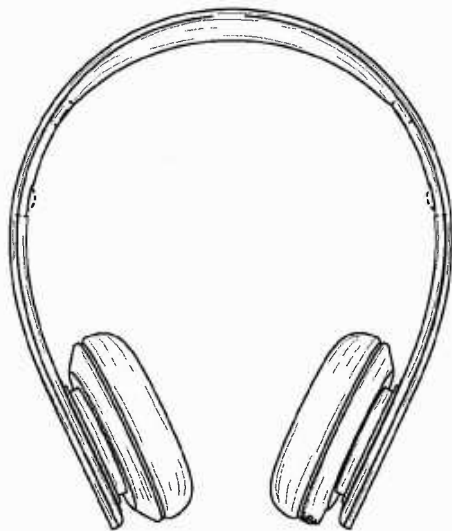


FIG. 2

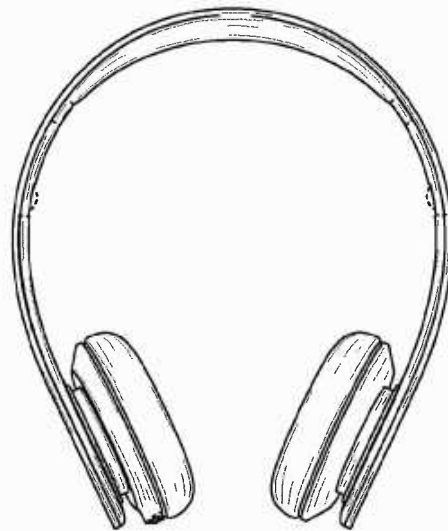


FIG. 3

U.S. Patent

Feb. 15, 2011

Sheet 2 of 2

US D632,668 S

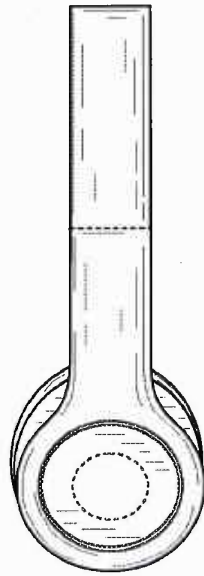


FIG. 4

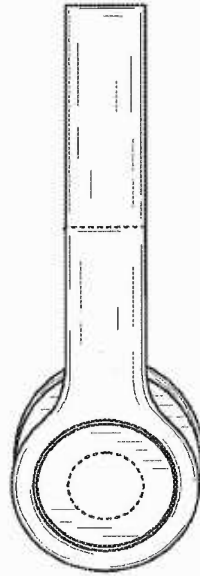


FIG. 5

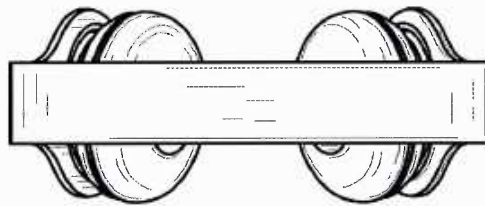


FIG. 6

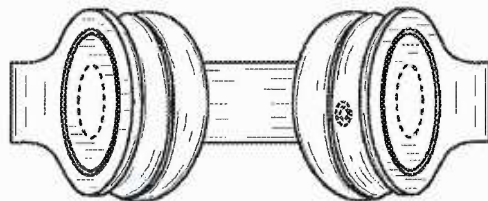


FIG. 7



US00D552077S

(12) **United States Design Patent** (10) **Patent No.:** **US D552,077 S**
Brunner et al. (45) **Date of Patent:** **** Oct. 2, 2007**

(54) **HEADPHONE**

(76) Inventors: **Robert Brunner**, 642 Carolina St., San Francisco, CA (US) 94107; **Francois Nguyen**, 1830 Ellis St. #C, San Francisco, CA (US) 94115

(**) Term: **14 Years**

(21) Appl. No.: **29/261,443**

(22) Filed: **Jun. 13, 2006**

(51) **LOC (8) Cl.** **14-01**

(52) **U.S. Cl.** **D14/205**

(58) **Field of Classification Search** D14/188,
D14/192, 205-206, 223; 2/209; 181/129-130;
379/430-431; 381/379, 380, 383, 371, 382;
24/3.1; D29/112

See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

3,104,398 A * 9/1963 Palmaer 2/209

(Continued)

Primary Examiner—Paula A. Greene

(74) Attorney, Agent, or Firm—Dergosits & Noah LLP

(57) **CLAIM**

The ornamental design for headphone, as shown.

DESCRIPTION

FIG. 1 is a perspective view of a headphone, according to one embodiment of the present invention;

FIG. 2 is a front view of the headphone illustrated in FIG. 1, according to one embodiment of the present invention;

FIG. 3 is a back view of the headphone illustrated in FIG. 1, according to one embodiment of the present invention;

FIG. 4 is a left side view of the headphone illustrated in FIG. 1, according to one embodiment of the present invention;

FIG. 5 is a right side view of the headphone illustrated in FIG. 1, according to one embodiment of the present invention;

FIG. 6 is a top view of the headphone illustrated in FIG. 1, according to one embodiment of the present invention;

FIG. 7 is a bottom view of the headphone illustrated in FIG. 1, according to one embodiment of the present invention;

FIG. 8 is a perspective view of a headphone, according to another embodiment of the present invention;

FIG. 9 is a front view of the headphone illustrated in FIG. 8, according to another embodiment of the present invention;

FIG. 10 is a back view of the headphone illustrated in FIG. 8, according to another embodiment of the present invention;

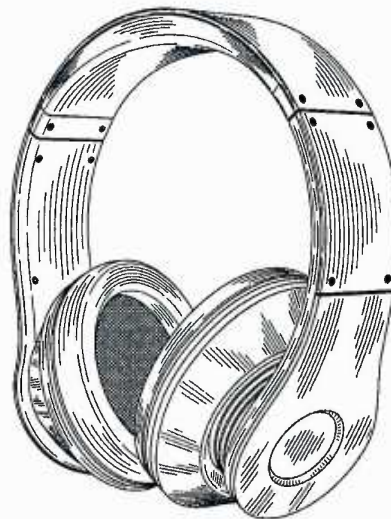
FIG. 11 is a left side view of the headphone illustrated in FIG. 8, according to another embodiment of the present invention;

FIG. 12 is a right side view of the headphone illustrated in FIG. 8, according to another embodiment of the present invention;

FIG. 13 is a top view of the headphone illustrated in FIG. 8, according to another embodiment of the present invention; and,

FIG. 14 is a bottom view of the headphone illustrated in FIG. 8, according to another embodiment of the present invention.

1 Claim, 8 Drawing Sheets



US D552,077 S

Page 2

U.S. PATENT DOCUMENTS

4,173,715 A *	11/1979	Gosman	381/382	6,449,806 B1 *	9/2002	Engelhard et al.	24/3.1
D313,092 S *	12/1990	Nilsson	D29/112	6,654,966 B2 *	12/2003	Rolla	2/209
D420,356 S *	2/2000	Suzuki	D14/205	D484,868 S *	1/2004	Suzuki	D14/205
6,081,604 A *	6/2000	Hikichi et al.	381/371	D532,407 S *	11/2006	Motoishi	D14/205
D457,512 S *	5/2002	Yoneda	D14/205				

* cited by examiner

U.S. Patent

Oct. 2, 2007

Sheet 1 of 8

US D552,077 S

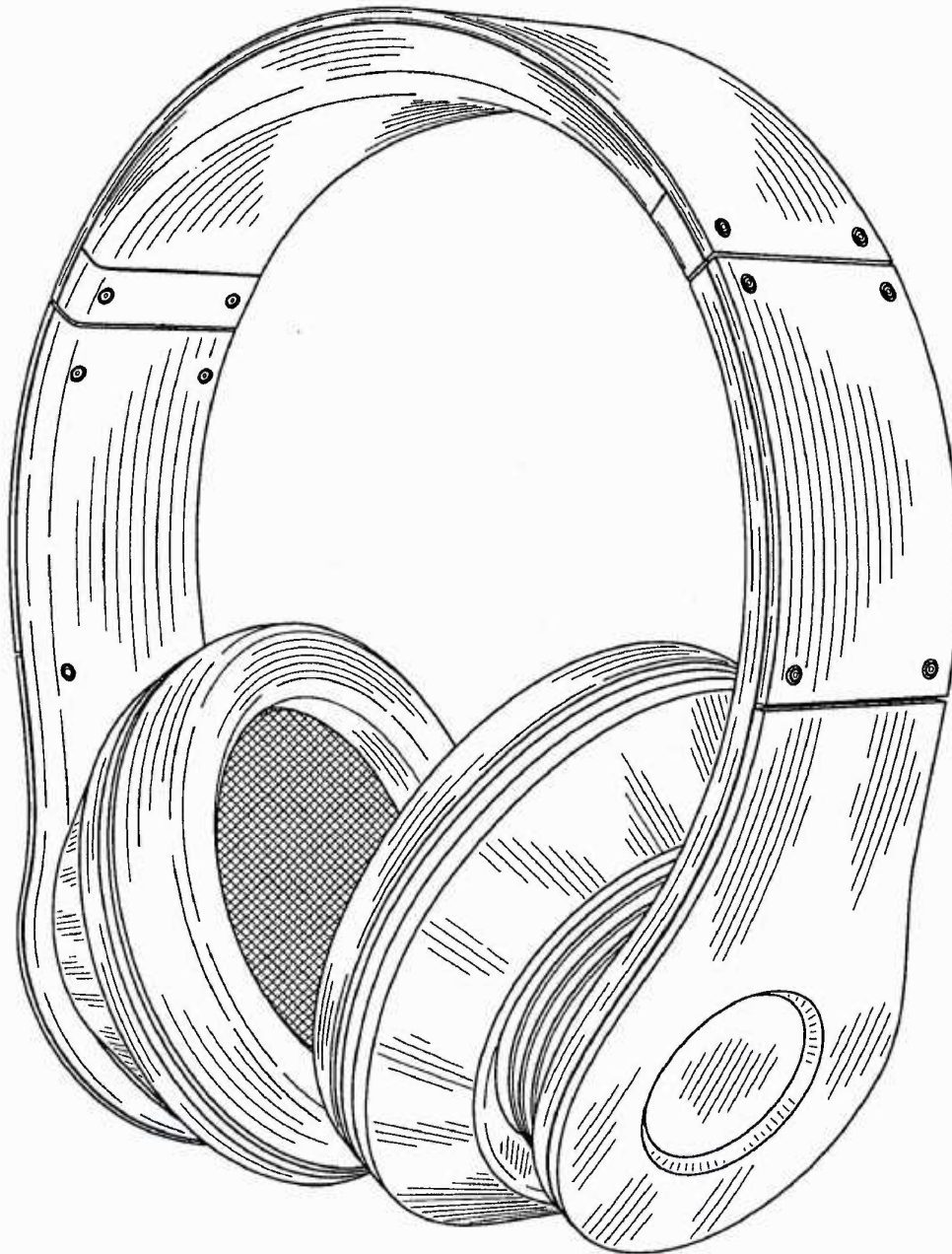


FIG. 1

U.S. Patent

Oct. 2, 2007

Sheet 2 of 8

US D552,077 S



FIG. 2



FIG. 3

U.S. Patent

Oct. 2, 2007

Sheet 3 of 8

US D552,077 S

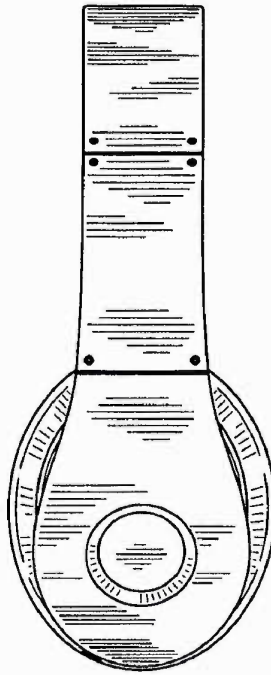


FIG. 4

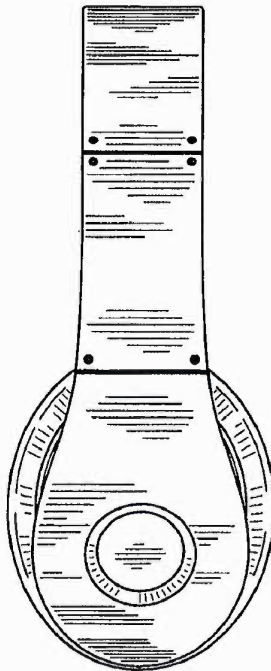


FIG. 5

U.S. Patent

Oct. 2, 2007

Sheet 4 of 8

US D552,077 S

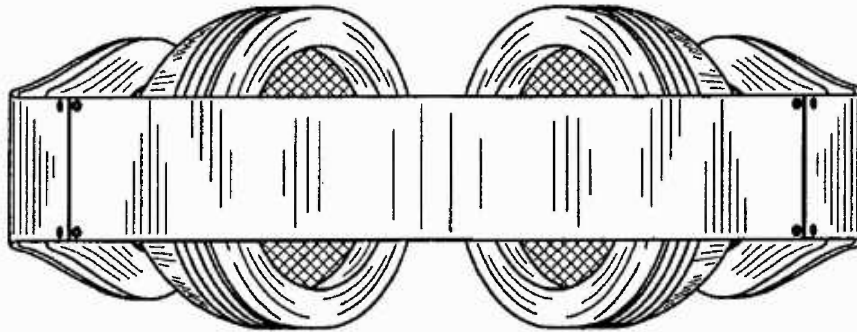


FIG. 6

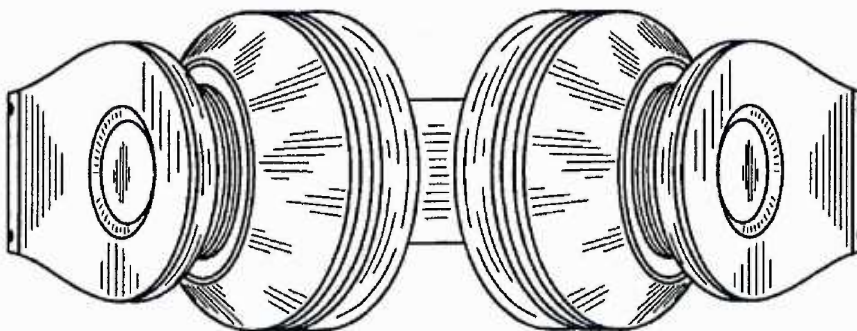


FIG. 7

U.S. Patent

Oct. 2, 2007

Sheet 5 of 8

US D552,077 S

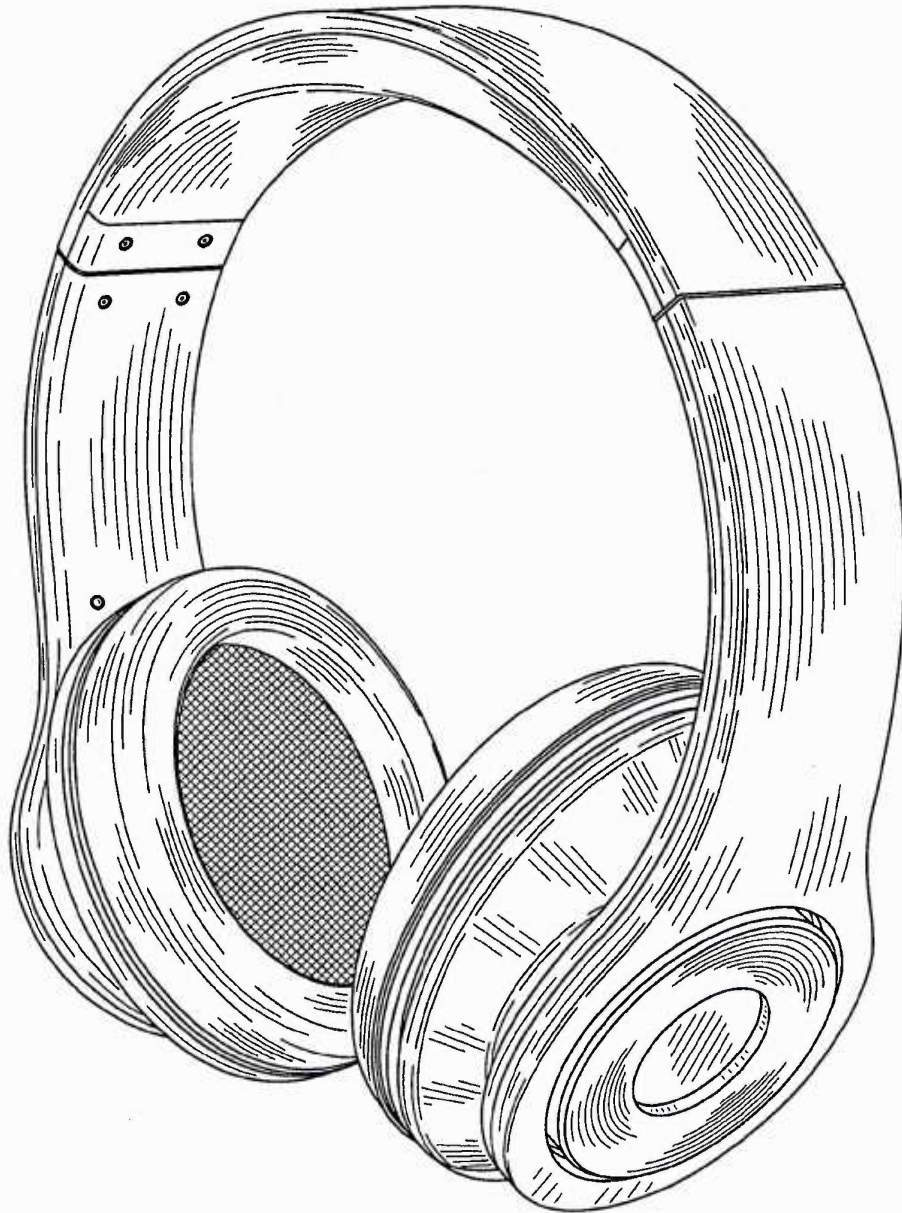


FIG. 8

U.S. Patent

Oct. 2, 2007

Sheet 6 of 8

US D552,077 S



FIG. 9



FIG. 10

U.S. Patent

Oct. 2, 2007

Sheet 7 of 8

US D552,077 S

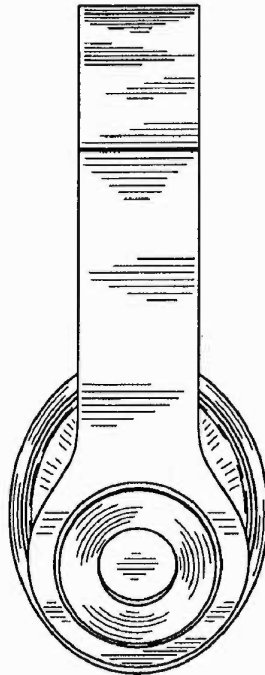


FIG. 11

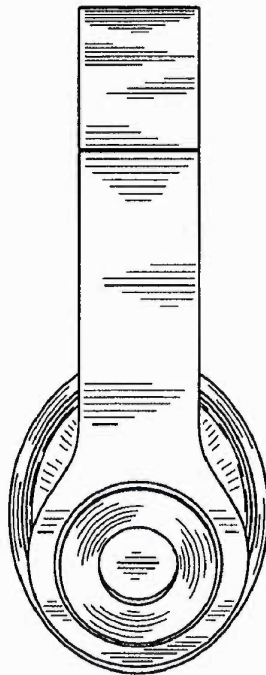


FIG. 12

U.S. Patent

Oct. 2, 2007

Sheet 8 of 8

US D552,077 S

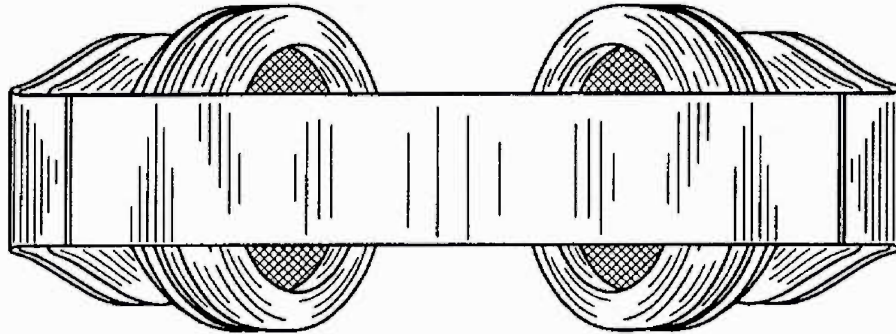


FIG. 13

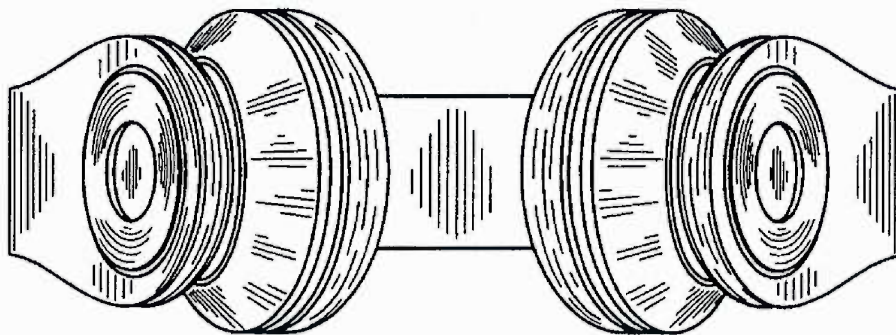


FIG. 14

EXHIBIT E

EXHIBIT E

YAMAHA PRO 300, 400 and 500



EXHIBIT F

EXHIBIT F

BEATS SOLO vs. YAMAHA 300:



**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Cormac J. Carney and the assigned discovery Magistrate Judge is Jean P. Rosenbluth.

The case number on all documents filed with the Court should read as follows:

SACV13- 209 CJC (JPRx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☒ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Case 8:13-cv-00209-CJC-JPR Document 1
KARIN G. PAGNANELLI (1/4/63) kgp@msk.com
ALEXA L. LEWIS (235867) all@msk.com
MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
Los Angeles, CA 90064-1683
Telephone: (310) 312-2000
Facsimile: (310) 312-3100
Attorneys for Plaintiff BEATS ELECTRONICS, LLC

Filed 02/06/13 Page 43 of 45 Page ID #:43

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BEATS ELECTRONICS, LLC, a Delaware Limited
Liability Company,

PLAINTIFF(S)

v.

YAMAHA CORPORATION OF AMERICA, a
California Corporation,

DEFENDANT(S).

CASE NUMBER

SACV13-0209

CJC (JPRx)

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Alexa L. Lewis, whose address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, CA 90064-1683. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

FEB - 6 2013

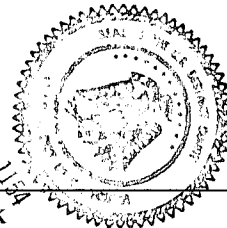
Dated: _____

Clerk, U.S. District Court

By: _____

JULIE PRADO

Deputy Clerk



(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) BEATS ELECTRONICS, LLC		DEFENDANTS YAMAHA CORPORATION OF AMERICA	
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Karin G. Pagnanelli (SBN 174763) kgp@msk.com Alexa L. Lewis (SBN 235867) all@msk.com MITCHELL SILBERBERG & KNUPP LLP 11377 W. Olympic Blvd., Los Angeles, CA 90064 Telephone: 310-312-2000 Facsimile: 310-312-3100		Attorneys (If Known)	

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:30%; border: none;">Citizen of This State</td> <td style="width:10%; border: none;">PTF</td> <td style="width:10%; border: none;">DEF</td> <td style="width:50%; border: none;"></td> <td style="width:10%; border: none;">PTF</td> <td style="width:10%; border: none;">DEF</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 1</td> <td style="border: none;"><input type="checkbox"/> 1</td> <td style="border: none;"><input type="checkbox"/> 1</td> <td style="border: none;">Incorporated or Principal Place of Business in this State</td> <td style="border: none;"><input type="checkbox"/> 4</td> <td style="border: none;"><input type="checkbox"/> 4</td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none;"><input type="checkbox"/> 2</td> <td style="border: none;"><input type="checkbox"/> 2</td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none;"><input type="checkbox"/> 5</td> <td style="border: none;"><input type="checkbox"/> 5</td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none;"><input type="checkbox"/> 3</td> <td style="border: none;"><input type="checkbox"/> 3</td> <td style="border: none;">Foreign Nation</td> <td style="border: none;"><input type="checkbox"/> 6</td> <td style="border: none;"><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF	DEF		PTF	DEF	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF	DEF		PTF	DEF																				
<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
--

V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.) CLASS ACTION under F.R.C.P. 23: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No MONEY DEMANDED IN COMPLAINT: \$ various damages
--

VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) 35 U.S.C. § 271 <i>et seq.</i> , patent infringement; 15 U.S.C. § 1125(a), trade dress infringement					
---	--	--	--	--	--

VII. NATURE OF SUIT (Place an X in one box only.)					
OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 22 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 61 HIA(1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW 405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

SACV13-0209

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Orange

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):


Alexa L. Lewis

Date February 5, 2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))