

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CANON U.S.A., INC.
Petitioner

v.

CELLSPIN SOFT, INC.
Patent Owner

Patent No. 9,258,698
Inter Partes Review No. 2019-00127

**DECLARATION OF DR. MICHAEL FOLEY CONCERNING PATENT OWNER'S
SUR-REPLY TO PETITIONER'S REPLY**

I, Dr. Michael Foley, declare as follows:

I. INTRODUCTION, BACKGROUND AND QUALIFICATIONS

1. My name is Michael Foley, and I am currently the CEO of Innovative Yachtter Solutions, which provides consulting services relating to Internet-of-Things products, for example products that utilize Bluetooth® Low Energy technology.

2. Canon U.S.A., Inc. (“Petitioner” or “Canon”) filed a Petition (Doc 1,) to institute an inter partes review of claims 1-22 (“challenged claims”) of U.S. Patent No. 9,258,698 (“’698 patent”). Ex. 1001. The Petition is supported by the first declaration of Dr. Vijay Madiseti, which is Ex. 1003. The Patent Trial & Appeal Board (“PTAB” or “Board”) instituted inter parties review (Doc 7, “Institution Decision”). The Patent Owner Cellspin Soft, Inc. (“Cellspin”) filed its Preliminary Response (Doc 6) on January 30, 2019. Cellspin filed its Response (Doc 17) on July 22, 2019, along with my prior declaration at Exhibit 2009. Canon filed its Reply (Doc 24) on October 22, 2019. Canon’s Reply is supported by the Second Declaration of Dr. Madiseti, which is Ex. 1043. Unless specifically indicated otherwise herein, references herein to Dr. Madiseti’s contentions or to his “Declaration” are directed at his Second Declaration at Ex. 2043. Cellspin filed objections (Doc 28) to Canon’s Reply and to the Madiseti Declaration on October 28, 2019.

3. I have been asked by Cellspin to provide my opinions and analysis responsive to issues raised by in Canon’s Reply and/or the Strawn Declaration at Ex. 2043. For this work I am being compensated at the rate of \$400 per hour. The amount of my compensation is not dependent upon the substance of my opinions or upon the outcome of this matter.

4. A true and correct copy of my CV is at Ex. 2010. I received a Bachelor of Science degree in Electrical Engineering (“EE”) from the University of Iowa, and a Master’s degree and Ph.D. in EE from Arizona State University.

5. From 1999 to 2004, I worked at Microsoft Corporation as a wireless systems architect, where I worked on integrating wireless technology into Windows® and WinCE® platforms. I was also the Microsoft representative to several standards groups, including the Bluetooth Special Interest Group (“SIG”), the WAP Forum, and the Wi-Fi Alliance.

6. From 2004 to 2012, I worked at the Bluetooth SIG as Executive Director and CEO. My responsibilities as Director and CEO of the Bluetooth SIG included, but were not limited to, directing strategy, member relations, operations, and technology development, expanding the Bluetooth SIG into Europe and Asia, and managing Bluetooth SIG board meetings.

7. In addition to the points made in my original declaration at Ex. 2009, Canon’s Reply and the Madisetti Declaration highlight that at least these key points which are **not shown** in or rendered obvious by any of the Canon materials in which I have reviewed:

- **Paired wireless connection between a digital camera and a mobile device;**
- **Cryptographic authentication of the mobile device by the camera;**
- **Using HTTP to upload received media file along with user information;**
- **GUI’s in general and specifically not for image deletion on the wirelessly connected digital camera; and**
- **For claims 5 and 8, a single mobile application performing all the required functions (e.g., request, store, HTTP media upload, delete using GUI).**

8. In the analysis that follows, I supplement any prior pertinent analysis, focusing on responding to the Reply and Madisetti Declaration, and present my detailed analysis providing clear rationale as to why these and other items are not disclosed or rendered obvious by the asserted prior art. To the extent necessary or appropriate to provide background, context of support to the matters herein, my prior Declaration at Ex. 2009 is incorporated by reference herein.

II. LEGAL UNDERSTANDINGS

9. I am not a lawyer. My initial legal understandings are stated in my prior Declaration at Ex. 2009. Any other legal understandings are stated in the body of my declaration. I have received my understanding of legal standards, but not factual matters, from Counsel for Cellspin. Without limitation, this Declaration uses the same definition of “POSITA” as my prior Declaration, the claim construction positions set forth in this declaration are also based upon the same broadest reasonable interpretation (“BRI”) standard, and this Declaration is also written from the perspective of a POSITA at the time of the ‘698 invention in late 2007.

III. RESPONSE TO CANON’S INTRODUCTORY REMARKS

10. The introduction to Canon’s Reply contends that Cellspin has “narrowed” and “rewritten” terms. Canon complains specifically about a “paired wireless connection” providing for encrypted data exchange and including a communication link that can be disconnected and reconnected without having to repeat pairing. Canon’s complaints are unfounded. My constructions of “paired wireless connection” and the other terms noted, which is also what Cellspin has advocated, are from the BRI perspective of a POSITA, as explained in my original Declaration at Exhibit 2009.

11. The introduction to Canon’s Reply also contends that my prior Declaration “cherry picked allegedly “optional” features from the Bluetooth specification and imported them into the plain claim language.” These contentions are also unfounded. Although pairing itself is optional in the Bluetooth specification, to a POSITA, for there to be pairing, the connection must provide for encrypted data exchange and there must be a communication link that can be disconnected and reconnected without having to repeat pairing, as explained in my original Declaration. Without these minimal requirements, there can be two-way communications but pairing does not occur. As

noted in my prior Declaration, mere two-way wireless communication, for example communication between two devices simply exchanging capabilities, is not paired communications.

12. The introduction to Canon's Reply also points out that "paired" in the '698 patent is not limited to Bluetooth pairing. My prior Declaration did not assume or contend that "paired" was limited to Bluetooth pairing, and this Declaration does not either.

A. Canon's NEW theory that use of "Bluetooth" renders obvious paired connections is meritless, nor does it address the steps in the claims, for example, uploading media files over an already paired connection

13. The theory of pairing in Canon's Petition was that Hiroishi and Hollstrom disclosed two-way communications which allegedly disclosed pairing. Canon and Dr. Madisetti's new theory in Canon's Reply appears to be that use of Bluetooth renders obvious paired connections. This new theory, like Canon/Madisetti's prior theory, is incorrect. The *only* disclosure of Hiroishi and Hollstrom is that they utilize "Bluetooth," without providing any details of what specific Bluetooth options or profiles they would utilize out of the multitude of options set forth in the lengthy Bluetooth specification(s).

B. Canon and Dr. Madisetti fail to cite prior disclosure of a device in Hiroishi or Hollstrom that has performed any claimed method or a device that would be capable of the claimed functions

14. Notably, Canon and Dr. Madisetti fail to cite prior disclosure of a device in Hiroishi or Hollstrom that has performed any claimed method or a device that would be capable of the claimed functions. Further, Canon and Dr. Madisetti fail to cite prior disclosure of any device that has performed any claimed method or any device that would be capable of the claimed functions.

C. To the extent that Canon assumes that all "Bluetooth" devices are capable of performing every function described in the Bluetooth specification, that is incorrect

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