

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CANON U.S.A., INC., GOPRO, INC.,  
GARMIN INTERNATIONAL, INC., AND GARMIN USA, INC.,

Petitioners,

v.

CELLSPIN SOFT, INC.,

Patent Owner.

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IPR2019-00127

Patent 9,258,698 B2

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PATENT OWNER'S AMENDED NOTICE OF APPEAL

On June 25, 2020, Patent Owner Cellspin Soft, Inc. (“Cellspin”) filed its Notice of Appeal (Paper 52) of the Patent Trial and Appeal Board’s (“the Board”) April 28, 2020, Final Written Decision (“FWD”) concerning U.S. Patent No. 9,258,698 (“the ’698 Patent”).

On November 22, 2021, the USPTO, under Andrew Hirshfeld, Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (“the Commissioner”), issued an Order denying Cellspin’s request for review of the FWD (“the Order”).

Under 35 U.S.C. §§ 141, 142, and 319, and 37 C.F.R. § 90.2(a), Cellspin amends its June 25, 2020, Notice of Appeal to include its appeal of the Order and the FWD. A copy of the November 22, 2021, Order is attached as Exhibit 1. A copy of the Board’s April 28, 2020, FWD is attached as Exhibit 2.

Under 37 C.F.R. § 90.2(a)(3)(ii), Cellspin notifies the Board and the Commissioner that, with the U.S. Court of Appeal for the Federal Circuit’s leave for supplemental briefing, the additional issues on appeal in Appeal No. 20-1947 include, but are not limited to, whether the Order denying review violates the Federal Vacancies Reform Act, the Appointments Clause, the separation of powers, the deadlines imposed under 35 U.S.C. § 316(a)(11), the Administrative Procedures Act,

and the Supreme Court's mandate in *United States v. Arthrex, Inc.*, 141 S. Ct. 1970 (2021).

A copy of this Amended Notice of Appeal is being filed electronically with the Board via PTAB E2E and with the Clerk's Office for the CAFC.

Dated: December 6, 2021

Respectfully submitted,

/Peter J. Corcoran III/

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## CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2021, a copy of the foregoing document was served by email on all counsel of record in this case through the PTAB's E2E filing system and all counsel of record on appeal through the Federal Circuit's CM/ECF system, including the following attorneys of record for the Petitioner in this case:

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# EXHIBIT 1

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