

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.

CASE: IPR2019-00127¹
Patent No. 9,258,698

**PATENT OWNER CELLSPIN'S RESPONSE TO CANON'S
MOTION TO STRIKE**

¹ GoPro, Inc., Garmin International, Inc. and Garmin USA, Inc. were joined as parties to this proceeding. Paper 27.

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I. Introduction.

Pending are motions to strike filed by Canon and Cellspin. Papers 38, 39. Per Cellspin's Motion, the Board should strike the improper new theories, directions, approaches, arguments and evidence in Canon's Reply and exhibits, which are not proper rebuttal and which could have presented in its prima facie case (the "Improper New Matters)" including as noted in Paper 39. As also noted at Paper 39, the Reply constitutes an unfairly prejudicial violation of 35 U.S.C. §312(a)(3), 37 C.F.R. §42.23(b), the Administrative Procedure Act ("APA") and due process, including because everything, or at least substantially everything, is Improper New Matters. Canon's prejudice complaints ring hollow. The Sur-Reply and evidence were a necessary and proper response, pursuant to Cellspin's rights to fair notice and opportunity to be heard (hereinafter a "Necessary and Proper" response), attempting to rebut Improper New Matters. Canon's Motion should be denied, including because it would be a violation of Cellspin's above rights to improperly strike Cellspin's rebuttal in and cited by its Sur-Reply, including without striking the Improper New Matters to which Cellspin Necessarily and Properly responded. Finally, to the extent Canon maintains that Cellspin's Motion should be denied as untimely, the notion that "ordinarily" leave "should" be requested within 7 days is not an absolute, Cellspin's Motion was filed prior to the deadline for excluding, and if the Board was to erroneously denied Cellspin's motion (in violation of the above rights) due to timing, then it should also deny Canon's on that basis.

II. Argument.

A. The evidence submitted with Cellspin's Sur-Reply, and the Sur-Reply, Were a Necessary and Proper Response to the Improper New Matters.

Canon's Improper New Matters are not mere responses to constructions or arguments in the Response. Ex. 2026, ¶¶11-12, which have references at Sur-Reply

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