

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CANON, INC.

Petitioner,

v.

CELLSPIN SOFT, INC.

Patent Owner.

CASE: IPR2019-00127¹

Patent No. 9,258,698

**PATENT OWNER CELLSPIN'S OBJECTIONS TO PETITIONER'S
DEMONSTRATIVE EXHIBITS**

I. Introduction.

Petitioner Canon's proposed demonstrative slides, like Canon's Reply and its Exhibits, are rife with improper new theories, directions, approaches, arguments and evidence which are not proper rebuttal and which Canon could, and should, have presented in its prima facie case in its Petition (collectively the "Improper New Matters"). Such Improper New Matters violate 37 C.F.R. §42.23(b), the Administrative Procedure Act ("APA") and due process. *See Genzyme v. Biomarin Pharm.*, 825 F.3d 1360, 1365-66 (Fed. Cir. 2016); *Intelligent Bio-Sys. v. Illumina Cambridge*, 821 F.3d 1359, 1369-70 (Fed. Cir. 2016); *In re NuVasive*, 841 F.3d 966, 973 (Fed. Cir. 2016); *Belden v. Berk-Tek*, 805 F.3d 1064, 1078, 1081 (Fed. Cir. 2015); *Apple v. e-Watch*, IPR2015-00412 (Paper 50, p. 44) (PTAB May 6, 2016); *See Consolidated Guide*, pp. 73 & 80-81. *See also* 5 U.S.C. §§ 554(b)-(c), 556(d), 557(c); *Abbott Labs. v. Cordis*, 710 F.3d 1318, 1328 (Fed. Cir. 2013). *See also* Cellspin's January 3, 2020 Motion to Strike ("MTS") and Cellspin's January 10, 2020 Response to Canon's Motion to Strike (Paper 40). Canon's original theory in its Petition for "paired wireless connection" limitation being met was that Hiroishi's Bluetooth ("BT") wireless connection was paired because it allows two-way communication. Paper 1 (Pet.), p. 23. The PTAB should strike, or alternatively, exclude, Canon's improper demonstratives, which were submitted as a whole, in their entirety. *See CBS Interactive v. Helferich Patent Licensing*, IPR2013-00033,

Paper 118 (Oct. 23, 2013). Alternatively, the PTAB should strike, or alternatively, exclude, the individual slides specifically noted below. It should be noted that all matters sought to be excluded as demonstratives herein are not specifically included in Cellspin's MTS, and thus it would be improper to defer ruling on these objections until the MTS is ruled upon, unless the MTS will be ruled upon prior to the upcoming oral hearing.

II. Objections and Argument.

A. Objections to Slides 14-17

Cellspin objects to Petitioners slides 14-17 because the this purported "State of the Art" constitutes Improper New Matters, namely the evidence in each is from the BT Basic Imaging Profile ("BIP"), Ex. 2023. This purported "State of the Art" was not relied upon or cited in Canon's Petition, nor was it even cited in Canon's Reply for being indicative of the state of the art. See, e.g., CBS Interactive, IPR2013-00033, Paper 118 at 4 (Oct. 23, 2013) (burden on party presenting the slide to be able to point to a sentence or paragraph in a paper of record for support). Rather, these slide titles for "State of the Art" are a subterfuge for Canon to provide evidence supporting its Improper New theory/argument/position/ assertion that "paired wireless connections" are allegedly obvious, which was improperly asserted for the first time in Canon's Reply. See MTS, §III.A. Canon's original theory in its Petition for "paired wireless connection" limitation being met was that Hiroishi's Bluetooth

(“BT”) wireless connection was paired because it allows two-way communication. Paper 1 (Pet.), p. 23. Here Canon relied upon the original Madisetti Dec. Ex. 1003, ¶¶ 97-100. Canon had no obviousness theory with regard to paired connections. Paper 1, p. 23; Ex. 1003, ¶¶ 97-100. *See* MTS, §III.A.

Canon’s Reply, in reliance upon the improper Madisetti Reply Dec. at Ex. 1043, improperly relies in multiple places upon a new theory of obviousness to pair, including that a POSITA would have been motivated to pair the Hiroishi and/or Hollstrom wireless connections for various reasons, including encouragement, design choice, expectedness, routineness and/or due to predictable results. *E.g.*, Reply (Paper 36), p. 2, pp. 9-10; Ex. 1043 ¶¶ 9-13. *See* MTS, §III.A

Canon’s new obviousness theory further relies upon Improper New Matters from the BIP. Reply, pp. 11-13; Ex. 1043 ¶ 12. *See* MTS, §III.A. Slides 14-17 all feature the BIP. They each note that Canon referenced the BIP at p. 11 of its Reply Brief, which is part of Canon’s Improper New Matters concerning alleged obviousness of “paired wireless connection.”

Here and throughout its demonstrative slides, Canon’s, being aware of Cellspin’s pending Motion to Strike, has used minimalistic titles, or here, downright misleading titles, for its slides seeks to mask its purpose for offering the evidence contained therein, but the only purpose for Canon possibly offering them is necessarily to advance the foregoing Improper New Matters.

B. Objections to Slides 63-69

Cellspin objects to Slides 63-69 including because the purported evidence therein for “Establishing a paired wireless connection ... cryptographically authenticating” constitutes Improper New Matters. These slides do not provide any purported evidence for an asserted prior art device establishing a paired wireless connection” or for an asserted device cryptographically authenticating. Rather, the title references to “Establishing a paired wireless connection ... cryptographically authenticating” are a subterfuge for Canon to instead provide evidence supporting its Improper New theory/argument/position/ assertion that “paired wireless connections” are allegedly obvious, which was improperly asserted for the first time in Canon’s Reply. *See* MTS, §III.A.

Cellspin further objects to Slide 63 because the cited text from the Madisetti Deposition at Ex. 1042 is an improper attempt by Canon and Dr. Madisetti to assert Improper New Matters, namely their new obviousness theory for “paired wireless connection” slipped in during Dr. Madisetti’s deposition, when Dr. Madisetti was supposed to be testifying about the opinions in his Declaration at Ex. 1003, not new opinions that he had formed after his Declaration and after Canon’s Petition. *See* Cellspin’s MTS, §III.A. Dr. Madisetti’s testimony about obviousness was obviously pre-planned to be improperly interjected by Dr. Madisetti at the first opportunity, as it was not even responsive to the question posed, which was “That's an example of

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