

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 MOTION TO STRIKE AND,
ALTERNATIVELY, EXCLUDE IMPROPER REPLY AND REPLY
EVIDENCE ASSERTED BY PETITIONER CANON**

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 and Relief Requested.

The Board should strike the improper new theories, directions, approaches, arguments and evidence in Canon's Reply and its exhibits noted in Section III, 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"), including pursuant to 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). Canon's Reply constitutes a clear, egregious and unfairly prejudicial violation, for at least the reason that everything, or at minimum substantially everything of substance or consequence, constitutes Improper New Matters.

This egregious violation severely prejudices Cellspin at this advanced stage of this proceeding. Failure to strike, or, alternatively, exclude, would also violate the APA and its guarantees of due process, including fair notice and the opportunity to respond and be fairly heard. Admission of these Improper New Matters would

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