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.
Petitioner

v.

CELLSPIN SOFT, INC.
Patent Owner

_____

U.S. Patent No. 9,258,698
Inter Partes Review No. 2019-00127[1]

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**PETITIONER'S OPPOSITION TO
PATENT OWNER'S MOTION TO STRIKE**

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[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

Pursuant to the Board's December 20, 2019 Order (Paper 36), Petitioner Canon U.S.A., Inc. ("Petitioner" or "Canon") hereby respectfully submits its opposition to Patent Owner Cellspin Soft Inc. ("Patent Owner" or "Cellspin")'s motion to strike certain evidence and arguments submitted with Canon's Reply. For the reasons set forth below, Cellspin's motion to strike ("Motion" or "Mot.") should be denied in its entirety.

Canon filed its Reply on October 22, 2019. Over the next 47 days, Cellspin never requested authorization to file a motion to strike. It was only after Canon notified Cellspin that it would move to strike Cellspin's Sur-Reply for violating the Consolidated Trial Practice Guide ("Guide") that Cellspin decided to retaliate and pursue its own motion. This delay alone dooms Cellspin's Motion. The Guide states that "authorization to file a motion to strike should be requested within one week of the allegedly improper submission." Guide at 80. Here, Cellspin waited several weeks without any justification for the delay. Its Motion should be denied for this reason alone.

To the extent the Board considers the merits of Cellspin's Motion, it should be denied because the arguments and evidence submitted in Canon's Reply are directly responsive to arguments raised in Cellspin's Patent Owner Response. The rules and regulations governing *inter partes* review authorize a reply—and rebuttal

evidence—for this very purpose. 37 C.F.R. § 42.23(b) ("A reply may only respond

to arguments raised in the corresponding . . . patent owner response."); Guide at 73

("A party also may submit rebuttal evidence in support of its reply."). Here, the

arguments and evidence in Canon's Reply directly address new and improper

claim construction positions, as well as obviousness arguments based on those

claim constructions, that Cellspin raised for the first time in its Patent Owner

Response. *See* Reply (Paper 24) at 3-9. It was entirely proper for Canon to submit

the arguments and evidence in its Reply. *See Canon Inc. v. Intellectual Ventures II*

LLC, IPR2014-00631, Paper 50 (Aug. 19, 2015) at 54 ("[W]e are persuaded that

the challenged claim constructions, arguments, and evidence in Petitioner's Reply

respond to constructions or arguments, or both, raised in the Patent Owner

Response.").

II. CELLSPIN'S MOTION SHOULD BE DENIED BECAUSE CELLSPIN UNREASONABLY DELAYED IN SEEKING RELIEF

The Consolidate Trial Practice Guide prescribes procedures for motions to

strike and states as follows: "Generally, authorization to file a motion to strike

should be requested within one week of the allegedly improper submission."

Guide at 80. Here, the "allegedly improper submission" is Canon's Reply, which

Canon filed on October 22, 2019. In order to comply with the Guide, Cellspin

should have requested authorization to file its motion to strike by October 29,

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