

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Panasonic Corporation and Panasonic Corporation of North America
Petitioners,

v.

Cellspin Soft, Inc.
Patent Owner.

CASE: IPR2019-00131¹
Patent No. 9,258,698

**PATENT OWNER CELLSPIN'S MOTION TO STRIKE AND,
ALTERNATIVELY, EXCLUDE IMPROPER REPLY AND REPLY
EVIDENCE ASSERTED BY PETITIONER PANASONIC**

¹ GoPro, Inc., Garmin International, Inc. and Garmin USA, Inc. were joined as parties to this proceeding. Paper 29.

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
I. Introduction and Relief Requested.....	1
II. Procedural History	4
III. Argument Including Basis for Relief Under §42.23(b) and Due Process.....	4
A. Panasonic’s new Reply theory concerning paired wireless connections being obvious, including in view of Bluetooth, should be stricken or, alternatively, excluded.	4
B. Panasonic’s new Reply theory concerning multiple modules performing the claimed functions rendering obvious a single client application performing the claimed functions should be stricken or, alternatively, excluded.	5
C. Panasonic’s new Reply theories and directions concerning Mashita’s PIN being the same thing as, or interchangeable with, a BT passkey, about an “automatic” paired connection resulting from PIN entry, and/or about nothing more being required than Mashita’s PIN to accomplish BT pairing, should be stricken or, alternatively, excluded.	7
D. Panasonic’s new Reply theories and directions concerning Mashita’s description allegedly matching descriptions of “pairing” in the BT and/or that the BT spec. indicates Mashita’s PIN would result in a paired connection, should be stricken or excluded.	8
E. Panasonic’s new Reply matters concerning BT pairing being an “authentication process” that is the same and/or similar to Mashita’s PIN method should be stricken or, alternatively, excluded.....	11
F. The new Reply matters concerning Mashita’s PIN exchange comprising pairing per BT spec., Mashita’s PIN as a PIN per the BT spec., BT spec. documents supporting the Mashita PIN resulting in pairing and/or link key; Mashita’s PIN being sufficient for BT pairing, and/or Mashita’s PIN being used for BT link key, should be stricken or alternatively excluded.....	12
G. Panasonic’s new Reply matters concerning combining Mashita’s BT connection with the disclosure of the BT Spec. meeting “cryptographic authentication” because the BT Spec. includes cryptographic algorithms should be stricken or, alternatively, excluded.....	12
H. Panasonic’s new Reply matters concerning cryptographic authentication being inherent in Bluetooth, and/or Mashita allegedly disclosing this because it allegedly discloses BT pairing, should be stricken or excluded.	13
I. Panasonic’s new Reply theory and direction that Mashita “could be read to disclose” Limitation J should be stricken or, alternatively, excluded.....	13

J. Panasonic’s new “catch-all” obviousness theory in the Strawn Reply Declaration should be stricken, or alternatively, excluded. 14

K. Panasonic’s new reply theories and directions attempting to rely upon the alleged GUI of the Sony Z520a and/or N73 for GUI being met and/or attempting to bolster the alleged Onishi GUI by analogizing it to the Sony Z520a and/or N73, should be stricken, or alternatively, excluded. 15

IV. Conclusion 15

TABLE OF AUTHORITIES

Cases:

<i>Genzyme v. Biomarin Pharm.</i> , 825 F.3d 1360 (Fed. Cir. 2016)	1,2
<i>Intelligent Bio-Sys. v. Illumina Cambridge</i> , 821 F.3d 1359 (Fed. Cir. 2016).....	1
<i>In re NuVasive</i> , 841 F.3d 966 (Fed. Cir. 2016).....	1
<i>Belden v. Berk-Tek</i> , 805 F.3d 1064 (Fed. Cir. 2015)	1
<i>Apple v. e-Watch</i> , IPR2015-00412 (Paper 50, p. 44) (PTAB May 6, 2016).....	1
<i>Abbott Labs. v. Cordis</i> , 710 F.3d 1318 (Fed. Cir. 2013)	2
<i>Yeda Res. v. Mylan</i> , 906 F.3d 1031 (Fed. Cir. 2018).....	2
<i>Dell v. Acceleron</i> , 818 F.3d 1293 (Fed. Cir. 2016).....	2
<i>N. Am. Coal v. Miller</i> , 870 F.2d 948 (3d Cir. 1989).....	2

Constitution and Statutes:

37 C.F.R. §42.23(b)	Passim
5 U.S.C. §§ 554(b)-(c), 556(d), 557(c)	1
U.S. Constitution, Due Process Clause	Passim

I. Introduction and Relief Requested.

The Board should strike the improper new theories, directions, approaches, arguments and evidence in Panasonic's Reply and its exhibits noted in Section III, which are not proper rebuttal and which Panasonic 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). Panasonic's Reply constitutes a clear, egregious and unfairly prejudicial violation, including because everything, or at minimum substantially everything of substance or consequence, is 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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