

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AXIS COMMUNICATIONS AB,. CANON INC.,
and CANON U.S.A., INC.,
Petitioner,

v.

AVIGILON FORTRESS CORPORATION,
Patent Owner.

Cases IPR2019-00235
Patent 7,868,912 B2

Before GEORGIANNA W. BRADEN, KIMBERLY McGRAW, and
JESSICA C. KAISER, *Administrative Patent Judges.*

McGRAW, *Administrative Patent Judge.*

ORDER
Conduct of the Proceedings
37 C.F.R. § 42.5

On March 21, 2019, a conference call was held between counsel for the parties and Judges Braden, McGraw, and Kaiser, to discuss Petitioner's request (1) for authorization to file a reply to Patent Owner's Preliminary Response and (2) to file a motion pursuant to 37 C.F.R. § 42.104(c) to correct Exhibit 1007.

Petitioner's Request for Authorization to file a Reply

Petitioner requests authorization to file a reply brief to Patent Owner's Preliminary Response to address Patent Owner's assertion that a reference (i.e., Kellogg) is not a printed publication. Petitioner asserts that Kellogg has been asserted as a printed publication in other *inter partes* proceedings involving Patent Owner, and Patent Owner had not objected previously to Kellogg's status as a printed publication. Patent Owner opposes Petitioner's request for a reply brief and states good cause does not exist for Petitioner to file a reply brief.

Having considered Petitioner's and Patent Owner's contentions, we determine good cause exists supporting Petitioner's request for a reply to Patent Owner's Preliminary Response to address Patent Owner's assertion that Kellogg is not a printed publication. Given that whether a reference qualifies as a printed publication is a threshold issue, allowing the parties to brief this issue early promotes efficiencies for the parties and the Board. Petitioner's reply is limited to no more than five pages and is due by April 1, 2019. Patent Owner may file a sur-reply, due by April 8, 2019. The sur-reply is also limited to no more than five pages.

*Petitioner's Request for Authorization to file a Motion under
37 C.F.R. § 104(c) to correct Exhibit 1007*

Petitioner requests authorization to file a motion under 37 C.F.R. § 104(c) to correct statements in the Declaration of Ms. Emily Florio (Exhibit 1007) that allegedly occurred due to a clerical mistake. Petitioner asserts that there are multiple “Flinchbaugh” references and that, although the Florio declaration contains statements relating to the wrong Flinchbaugh reference, the correct Flinchbaugh reference was attached as an exhibit to the declaration. Patent Owner responds that the errors in the declaration are not clerical errors that may be corrected under § 104(c).

We authorize Petitioner to file a motion to correct Exhibit 1007 under 37 C.F.R. § 104(c). Whether the errors are the type that may corrected under § 104(c) will be determined following receipt of Petitioner’s motion and Patent Owner’s opposition to the motion. Petitioner’s motion is due by April 1, 2018 and is limited to five pages. Patent Owner’s opposition to Petitioner’s motion is due by April 8, 2019 and is also limited to five pages.

ORDER

Accordingly, it is:

ORDERED that Petitioner's request for leave to file a reply is
granted;

FURTHER ORDERED that Patent Owner's request to file a sur-reply
is *granted*;

FURTHER ORDERED that the reply shall be filed by April 1, 2019,
the sur-reply shall be filed by April 8, 2019, and neither the reply nor the
sur-reply shall exceed five (5) pages;

FURTHER ORDERED that Petitioner's request to file a motion
pursuant to 37 C.F.R. § 104(c) to correct clerical mistakes in Exhibit 1007 is
granted;

FURTHER ORDERED that Petitioner's motion shall be filed by April
1, 2019 and shall not exceed five (5) pages; and

FURTHER ORDERED that Patent Owner's opposition to Petitioner's
motion shall be filed by April 8, 2019 and shall not exceed five (5) pages.

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