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Subject: Precedential Opinion Panel Review Request - IPR2019-00235

Dear Precedential Opinion Panel,

Pursuant to PTAB Standard Operating Procedure 2 (Revision 10), I write on behalf of Petitioner Canon Inc. (“Canon”) to recommend Precedential Opinion Panel (“POP”) review of the Board’s decision not to institute inter partes review in IPR2019-00235 (Paper No. 19), depending on the content of the POP’s forthcoming ruling in *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039.

As explained in Canon’s motion for rehearing, which is being filed concurrent with this request, Canon believes that the POP’s decision in *Hulu* is likely to set a standard explaining whether evidence on the face of a publication establishes that the reference qualifies as a “printed publication” at the institution stage. However, the particular facial indicia at issue in *Hulu* relate to those on the face of a book, such as a copyright notice or ISBN number. In contrast, the publication that is the subject of Canon’s motion for reconsideration, *Flinchbaugh I*, is part of a different kind of reference – the Proceedings of the Joint 10th Annual Government-Industry Security Technology Symposium & Exhibition, which occurred on June 20-23, 1994 in Williamsburg, Virginia – that contains different kinds of indicia of publication, such as the date of the event, the attendees, and a stamp showing the publication’s receipt and indexing by a library.

As the POP recognized in *Hulu*, there is conflicting non-precedential law regarding what is sufficient evidence of publication at the institution stage, and there is a need for guidance on the issue. But there is a chance that the forthcoming *Hulu* opinion may only provide guidance with respect to the reference at issue in that case, a textbook. However, the need for guidance may be even greater with respect to references relating to academic and industry events, and such references are more commonly used to argue for the invalidity of a patent than textbooks are.

Accordingly, based on my professional judgment, I believe this case requires an answer to one of more precedent-setting questions of exceptional importance, including the following, to the extent that it is not resolved by the *Hulu* POP decision:

1. Whether the facial indicia of publication on the proceedings of a well-attended annual event is sufficient evidence of the date of a publication’s public availability for purposes of institution of inter partes review, where the patent owner does not submit any evidence to the contrary.

/s/ Joseph A. Calvaruso
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IPR2019-00235

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