

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 & C1

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

McGRAW, *Administrative Patent Judge*.

DECISION

Denying Motion to Correct the Florio Declaration
37 C.F.R. §§ 42.5(b), 42.104(c)

Denying Institution of *Inter Partes* Review
35 U.S.C. § 314(a), 37 C.F.R. § 42.108

I. INTRODUCTION

Axis Communications AB, Canon Inc., and Canon U.S.A., Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of all claims (i.e., claims 1–4 and 6–36)¹ of U.S. Patent No. 7,868,912 B2 & C1 (Ex. 1001, “the ’912 patent”). *See* 35 U.S.C. § 311. Patent Owner, Avigilon Fortress Corporation (“Patent Owner”) filed a Preliminary Response. Paper 9 (“PO Resp.”). In response to Patent Owner’s Preliminary Response, Petitioner filed a Reply to Patent Owner’s Preliminary Response (Paper 14, “Reply”) addressing Patent Owner’s argument that an asserted reference (i.e., Kellogg) is not a printed publication, to which Patent Owner filed a Sur-Reply to Petition for *Inter Partes* Review (Paper 18, “Sur-Reply”). Petitioner also filed a Motion to Correct the Florio Declaration under 37 C.F.R. § 42.104(c) (Paper 15, “Mot.”) to correct errors relating to the public availability of an asserted reference (i.e., Flinchbaugh I), to which Patent Owner filed an opposition (Paper 17, “Opp.”).

Under 35 U.S.C. § 314(b), an *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Based upon the current record, we deny Petitioner’s Motion to Correct the Florio Declaration and determine Petitioner has not established a reasonable likelihood that it would prevail with respect to at least one of the claims challenged in the Petition.

¹ Claim 5 was canceled during reexamination. Ex. 1001, Reexamination Certificate, 1:19.

Therefore, we deny institution of an *inter partes* review as to all challenged claims of the '912 patent.

A. Related Proceedings

Concurrent with the instant Petition, Petitioner filed another petition for *inter partes* review of the '912 patent as well as two separate petitions for *inter partes* review of related U.S. Patent No. 7,932,923. *See* Pet. 69; *Canon Inc. et al. v. Avigilon Fortress Corp.*, Case IPR2019-00236 (PTAB Nov. 11, 2018) (Paper 1); *Canon Inc. et al. v. Avigilon Fortress Corp.*, Case IPR2019-00311 (PTAB Nov. 11, 2018) (Paper 1); *Canon Inc. et al. v. Avigilon Fortress Corp.*, Case PR2019-00314 (PTAB Nov. 11, 2018) (Paper 1). Additionally, we instituted two *inter partes* review proceedings of related U.S. Patent No. 8,564,661. *See* Pet. 69; *Canon Inc. et al. v. Avigilon Fortress Corp.*, Case IPR2018-00138 (PTAB June 1, 2018) (Paper 8); *Canon Inc. et al. v. Avigilon Fortress Corp.*, Case IPR2018-00140 (PTAB June 1, 2018) (Paper 8).

B. The '912 Patent (Ex. 1001)

According to the '912 patent, titled “Video Surveillance System Employing Video Primitives,” an object of the invention is to reduce the amount of video surveillance data so that analysis of the video surveillance data can be conducted. Ex. 1001, [54], 2:42–44. The “system extracts video primitives [from video data], extracts event occurrences from the video primitives using event discriminators,” and can “undertake a response, such as an alarm, based on the extracted event occurrences.” *Id.* at [57]. Video primitives include object descriptors that are observable attributes of an

object in a video feed, such as the size, shape, position, speed, color, and texture of the object. *Id.* at 13:34–36.

C. Claims

Petitioner challenges all claims (i.e., claims 1–4, 6–36) of the '912 patent. Claims 1, 6, 9, 12, 18, 23–28, and 31–33 are independent. Claim 1 is reproduced below.

1. A video system comprising:

a first processor which analyzes a video to determine attributes of objects detected in the video, the first processor being in communication with a first communications link to transfer the determined attributes over the communications link; and

a second processor, separate from the first processor, in communication with the first communications link to receive the determined attributes transferred from the first processor over the first communications link, which determines a first event that is not one of the determined attributes by analyzing a combination of the received determined attributes and which provides, in response to a determination of the first event, at least one of an alert to a user, information for a report, and an instruction for taking an action,

wherein the first processor determines attributes independent of a selection of the first event by the second processor, and

wherein the second processor determines the first event without reprocessing the video analyzed by the first processor.

D. Asserted Grounds of Unpatentability

Petitioner argues the challenged claims are unpatentable based upon the following grounds:

References	Basis	Challenged Claims
Kellogg ² and Flinchbaugh I ³	§ 103 ⁴	1–4, 6–36
Kellogg, Flinchbaugh I, and Brill ⁵	§ 103	1–4, 6–36

II. ANALYSIS

A. Petitioner’s Motion to Correct the Florio Declaration

We first consider Petitioner’s Motion to Correct the Florio Declaration under 37 C.F.R. § 42.104(c). In its Motion, Petitioner moves to replace the Declaration of Emily R. Florio (Ex. 1007, “Original Florio Declaration”) with a corrected declaration (Exhibit 1043, “Corrected Florio Declaration”) without changing the Petition filing date. Mot. 6. The Original Florio Declaration was submitted with the Petition to support Petitioner’s argument that Flinchbaugh I was published by at least 1995 and is therefore prior art to the challenged claims. Pet. 3 (citing Ex. 1007 ¶¶ 27–

² Christopher James Kellogg, *Visual Memory*, Department of Electrical Engineering and Computer Science, Massachusetts Institute of Technology, May 1993. (Ex. 1003, “Kellogg”).

³ Flinchbaugh et al., *Autonomous Scene Monitoring System*, Proceedings of the Joint 10th Annual Government-Industry Security Technology Symposium & Exhibition, June 20–23, 1994, pp. 205–209. (Ex. 1005, “Flinchbaugh I”).

⁴ The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), amended 35 U.S.C. §§ 102 and 103. Because the ’912 has an effective filing date before September 16, 2012, the effective date of the applicable AIA amendments, we refer to the pre-AIA versions of §§ 102 and 103.

⁵ Frank Brill et al., *Event Recognition and Reliability Improvements for the Autonomous Video Surveillance System*, Proceedings of a Workshop held in Monterey California, Nov. 20–23, 1998 pp. 267–283. (Ex. 1004, “Brill”).

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