

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

AVIGILON FORTRESS CORPORATION,
Patent Owner.

Case IPR2019-00311
Patent 7,923,923 B2 & C1

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

McGRAW, *Administrative Patent Judge*.

ORDER

Granting Motion to Submit Supplemental Information
37 C.F.R. § 42.5
37 C.F.R. § 42.123

I. INTRODUCTION

Canon Inc., Canon U.S.A., Inc., and Axis Communications AB (“Petitioner”) filed an authorized motion requesting the Board admit the declaration of Katherine Zimmerman (the “Zimmerman Declaration”), provisionally filed as Exhibit 1054, as supplemental information pursuant to 37 C.F.R. § 42.123(b). (Paper 28, “Mot.”). Patent Owner does not oppose the motion. For the reasons stated below we grant Petitioner’s motion.

Analysis

Pursuant to 37 C.F.R. § 42.123(b), a motion to submit supplemental information filed more than one month after the trial is instituted must show why the supplemental information reasonably could not have been obtained earlier, and that consideration of the supplemental information would be in the interests of justice.

Petitioner contends the Zimmerman declaration and its associated exhibits provide the “personal knowledge” of an MIT librarian that Patent Owner argues is required to establish the printed publication status of an asserted reference in this proceeding (i.e., *Kellogg*), provide specifics of the shelving and indexing practice at the MIT libraries, and further buttress the prior art status of *Kellogg*. Mot. 4 (citing Paper 27 (“PO Resp.”), 47–56). Petitioner argues this information reasonably could not have been obtained earlier because MIT would not provide this information voluntarily and that Board authorization to issue a subpoena was required in order to obtain the declaration. *Id.* at 5. Petitioner further asserts consideration of the supplemental information is in the interest of justice because the information addresses Patent Owner’s contention that Petitioner must provide detailed evidence and testimony from someone with direct personal knowledge, such

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as an MIT librarian. *Id.* at 6 (citing Paper 24 (“Order Granting Motions to Compel Testimony and/or Documents”), 4). Petitioner further asserts Patent Owner will not be prejudiced by the filing of this information. *Id.* at 6–7.

Given the above representations, we are persuaded Petitioner has made a sufficient showing that the requirements of 37 C.F.R. § 42.123(b) are satisfied. For these reasons, and because the Motion is unopposed, Petitioner’s Motion to Submit Supplemental Information is granted.

ORDER

Accordingly, it is hereby:

ORDERED that Patent Owner’s Motion to File Supplemental Information is *granted*; and

FURTHER ORDERED Exhibit 1054 is admitted into the record.

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