

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Canon Inc., Canon U.S.A., Inc., and Axis Communications AB,

Petitioners,

v.

Avigilon Fortress Corporation,

Patent Owner.

Case No. IPR2019-00311

U.S. Patent No. 7,932,923

**PATENT OWNER'S SUR-REPLY TO PETITION FOR *INTER PARTES*
REVIEW**

PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description
2001	Declaration of Michael W. De Vries in Support of Unopposed Motion to Appear Pro Hac Vice on Behalf of Patent Owner Avigilon Fortress Corporation.
2002	Declaration of Adam R. Alper in Support of Unopposed Motion to Appear Pro Hac Vice on Behalf of Patent Owner Avigilon Fortress Corporation.
2003	Declaration of Akshay S. Deoras in Support of Unopposed Motion to Appear Pro Hac Vice on Behalf of Patent Owner Avigilon Fortress Corporation.
2004	37 C.F.R. § 1.132 Declaration of Kenneth A. Zeger (excerpt of U.S. Patent No. 7,868,912 Reexamination).
2005	Thomas Olson & Frank Brill, <i>Moving Object Detection & Event Recognition Algorithms for Smart Cameras</i> , 1 PROC. 1997 IMAGE UNDERSTANDING WORKSHOP 159-175 (1997).
2006	Jonathan D. Courtney, <i>Automatic Video Indexing Via Object Motion Analysis</i> , 30(4) PATTERN RECOGNITION 607-625 (1997).
2007	U.S. Patent No. 6,628,835 to Brill et al.
2008	Young Francis Day, et al, <i>Spatio-Temporal Modeling of Video Data for On-Line Object-Oriented Query Processing</i> , Proceedings of the International Conference on Multimedia Computing and Systems, 98-105 (1995).
2009	Second Supplemental Amendment, U.S. Patent No. 7,932,923 (Feb. 4, 2011).
2010	IPR2018-00138; IPR2018-00140, Ex. 2009 (Grindon Dep. Transcript Aug. 15, 2018).
2011	Declaration of Jennifer A. Babbitt.

Exhibit No.	Description
2012	SearchWorks Catalog Entry for Thomas Olson & Frank Brill, <i>Moving Object Detection & Event Recognition Algorithms for Smart Cameras</i> , 1 PROC. 1997 IMAGE UNDERSTANDING WORKSHOP 159-175 (1997).
2013	Scanned Cover and Front Matter of Jonathan D. Courtney, <i>Automatic Video Indexing Via Object Motion Analysis</i> , 30(4) PATTERN RECOGNITION 607-625 (1997).
2014	MARC Standards Wikipedia Search.
2015	Declaration of Jennifer A. Babbitt for Sur-Reply.

Petitioners' Reply fails to demonstrate that *Kellogg* and *Brill* are printed publications. Avigilon respectfully requests the Board deny institution.

I. PETITIONERS' 37 C.F.R. § 42.108(C) ARGUMENT IS INCORRECT

Petitioners' contention that it need only show a "genuine issue of fact" to suffice for institution is incorrect. It is Petitioners' burden to demonstrate that "there is a reasonable likelihood that at least one of the claims challenged in the petition is unpatentable." 37 C.F.R. § 42.108(c). It is also Petitioners' burden to demonstrate that its references are printed publications. *ServiceNow, Inc. v. Hewlett-Packard Co.*, IPR2015-00707, Paper 12 at 19-20 (Aug. 26, 2015). The language in § 42.108(c) on which Petitioners rely is inapplicable here because that language relates only to "*testimonial* evidence presented *in a patent owner preliminary response.*" See, e.g., *Fluidmaster, Inc. v. Danco, Inc.*, IPR2017-00770, Paper 17 at 9 (Oct. 4, 2017) (original emphasis). Patent Owner presented no such testimonial evidence here. Petitioners' attempt to distinguish *Acceleration Bay* also fails. That case discussed the standard for proving public availability, and did not condition its analysis on whether evidence was analyzed before or after institution.

II. PRINTED PUBLICATION STATUS IS A SUBSTANTIVE ISSUE PROPERLY RAISED IN A PRELIMINARY RESPONSE

Petitioners are incorrect that Patent Owner's arguments concern the "admissibility" of the Florio declaration. Reply at 1. Patent Owner puts forth

substantive arguments related to the sufficiency of Ms. Florio's testimony, which is properly addressed in a preliminary response. Indeed, the Board has denied institution when a petitioner failed to provide sufficient evidence supporting a reference's printed publication status. *See e.g., Fluidmaster*, IPR2017-00770, Paper 13 at 24; *ServiceNow*, IPR2015-00707, Paper 12 at 19-20. Further, Petitioners' argument that Patent Owner's counsel supported a petition in a different IPR with a law firm librarian fails at least because the declarant there testified to her *personal knowledge* of the cataloging practices at the relevant libraries. *See Cisco Sys., Inc. v. Chrimar Sys., Inc.*, IPR2019-00401, Ex. 1024 ¶¶ 6-7. Lastly, Avigilon is not precluded from disputing the sufficiency of the Florio declaration because the issue was not litigated or adjudicated in IPR2018-00138, which also concerns a different patent. Paper 9 at 28-29.

III. THE FLORIO DECLARATION IS INSUFFICIENT EVIDENCE

Petitioners have not met their burden at least because Ms. Florio lacks personal knowledge of the practices at the relevant libraries and the MARC system, or at least has not explained such knowledge or the inconsistencies in her declaration.

First, as previously explained in the Preliminary Response, Ms. Florio is explicit as to her lack of personal knowledge, qualifying her testimony with hedge words such as "would have been," "relatively nominal amount of time," and "at least before," which the Board has previously found insufficient to support a petitioner's

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