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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 IPR2019-00314
Patent 7,923,923 B2 & C1

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

McGRAW, *Administrative Patent Judge*.

# DECISION
Granting Institution of *Inter Partes* Review
*35 U.S.C. § 314*
*37 C.F.R. § 42.108*

# I. INTRODUCTION

Canon Inc., Canon U.S.A., Inc., and Axis Communications AB ("Petitioner") filed a Petition (Paper 1, "Pet.") requesting an *inter partes* review of all claims (i.e., claims 1–41) of U.S. Patent No. 7,932,923 B2 & C1 (Ex. 1001, "the '923 patent"). *See* 35 U.S.C. § 311. Avigilon Fortress Corporation ("Patent Owner") filed a Preliminary Response. (Paper 9, "Prelim. Resp."). Petitioner filed an authorized Reply to respond to Patent Owner's arguments that Dimitrova and Brill are not printed publications (Paper 11, "Reply") to which Patent Owner filed an authorized Sur-Reply (Paper 12, "Sur-Reply").

Applying the standard set forth in 35 U.S.C. § 314(a), which authorizes institution of an *inter partes* review when "the information presented in the petition . . . and any response . . . 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," we institute an *inter partes* review of claims 1–41 of the '923 patent.

Our factual findings and conclusions at this stage of the proceeding, including claim construction, are preliminary and are based on the evidentiary record developed thus far. This is not a final decision as to patentability of claims for which *inter partes* review is instituted. Any final decision will be based on the full record as developed during trial.

## *A. Related Proceedings*

Concurrent with the instant Petition, Petitioner filed another petition for *inter partes* review of the '923 patent. *Canon Inc. et al. v. Avigilon Fortress Corp.*, Case IPR2019-00311 (PTAB Nov. 12, 2018) (Paper 1).

We issued final written decisions in two cases filed by Petitioner involving related U.S. Patent No. 8,564,661 B2 ("the '661 patent").[1] *Axis Communications AB et al. v. Avigilon Fortress Corp.*, Case IPR2018-00138 (PTAB May 30, 2019) (Paper 25); *Axis Communications AB et al. v. Avigilon Fortress Corp.*, Case IPR2018-00140 (PTAB May 30, 2019) (Paper 25). In both of these proceedings, we determined that Petitioner had shown by a preponderance of the evidence that each of the challenged claims of the '661 patent are unpatentable. We also recently denied institution of *inter partes* review of the related '912 patent. *Canon Inc. et al. v. Avigilon Fortress Corp.*, Case IPR2019-00235 (PTAB June 4, 2019) (Paper 19) (stating Petitioner did not show asserted reference qualified as a prior art printed publication); *Canon Inc. et al. v. Avigilon Fortress Corp.*, Case IPR2019-00236 (PTAB June 4, 2019) (Paper 12) (exercising discretion under 35 U.S.C. § 325(d) to decline institution).

The '923 patent was subject to *ex parte* reexamination, during which the United States Patent and Trademark Office (the "USPTO") determined that claims 1–41 were patentable as amended. *See* Ex. 1001, Reexamination Certificate 1:29–32.

### *B. The '923 Patent (Ex. 1001)*

The '923 patent, titled "Video Surveillance System Employing Video Primitives," is generally directed to methods, devices, and computer-readable storage media for video surveillance. *See* Ex. 1001, [54], [57], Reexamination Certificate 1:29–4:28. In one embodiment, the disclosed

[1] Petitioner states the '923 patent, the '661 patent, and U.S. Patent No. 7,868,912 B2 ("the '912 patent") are related as each claim priority to U.S. Application No. 09/694,712. Pet. 8.

video surveillance system operates by (1) obtaining source video, (2) extracting "video primitives" from the video, (3) archiving the video primitives, (4) extracting "event occurrences" from the video primitives using "event discriminators," and (5) undertaking a response, as appropriate. Ex. 1001, Fig. 4, 4:30–31, 11:63–65. "Video primitive" refers to an "observable attribute" of an object viewed in a video feed, such as the size, shape, position, speed, color, and texture of the object. *Id*. at 7:6–12. The '923 patent explains that event discriminators are used to filter the video primitives to determine if any event occurrences occurred. *Id*. at 10:66–11:1. For example, an event discriminator can look for a "wrong way" event as defined by a person traveling the "wrong way" into an area between 9:00 a.m. and 5:00 p.m. *Id*. at 11:1–4. The event discriminator checks the video primitives and determines if any video primitives exist which have the following properties: a timestamp between 9:00 a.m. and 5:00 p.m., a classification of "person" or "group of people," a "position inside the area," and a "wrong direction of motion". *Id.* at 11:4–9.

### *C. Claims*

Petitioner challenges all claims (i.e., claims 1–41) of the '923 patent. Claims 1, 8, 9, 20, 22, 29, and 30 are independent. Claim 1 is representative and is reproduced below.

> 1. A method comprising:
>
> [a] detecting an object in a video from a single camera;
>
> [b] detecting a plurality of attributes of the object by analyzing the video from said single camera, the plurality of attributes including at least one of a physical attribute and a temporal attribute, each attribute representing a characteristic of the detected object;

> [c] selecting a new user rule after detecting the plurality of attributes; and
>
> [d1] after detecting the plurality of attributes and after selecting the new user rule, identifying an event of the object that is not one of the detected attributes of the object by applying the new user rule to the plurality of detected attributes,
>
> [d2] *wherein the applying the new user rule to the plurality of detected attributes comprises applying the new user rule to only the plurality of detected attributes;*
>
> [e] wherein the plurality of attributes that are detected are independent of which event is identified,
>
> [f] wherein the step of identifying the event of the object identifies the event without reprocessing the video, and
>
> [g] wherein the event of the object refers to the object engaged in an activity.

Ex. 1001, Reexamination Certificate, 1:34–54 (matter in brackets added for clarity; matter in italics indicates additions made to the claim during the reexamination proceeding).

*D. Asserted Ground of Unpatentability*

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

| **Reference(s)** | **Basis** | **Challenged Claims** |
|---|---|---|
| Dimitrova[2] and Brill[3] | § 103(a) | 1–41 |

[2] Nevenka Dimitrova, *Motion Recovery for Video Content Classification*, ACM Transactions on Information Systems, Vol. 13, No. 4, Oct. 1995, 408–439 (Ex. 1006, "Dimitrova").

[3] 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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