

December 1, 2021

Via CM/ECF

Clerk of Court

U.S. Court of Appeals for the Federal Circuit

717 Madison Place, NW

Washington, DC 20439

Subj: Citation of Supplemental Authorities, Fed. R. App. Proc. 28(j), Cellspin Soft, Inc. v. Canon U.S.A., Inc., et al., No. 2020-1947

To this Honorable Court:

Under Federal Rule of Appellate Procedure 28(j), Appellant Cellspin Soft, Inc., files this Citation of Supplemental Authorities. On November 22, 2021, the USPTO issued an Order denying Cellspin's request for Director review of the Final Written Decision ("FWD") in this case. (Dkt. 74). The Order is invalid. This Court should vacate or reverse it for at least the following reasons.

First, unlike issued patents, the Director did not sign the Order, nor does it indicate who decided it. *See United States v. Arthrex, Inc.*, 141 S. Ct. 1970, 1985 (2021) ("Only an officer properly appointed to a principal office may issue a final decision binding the Executive Branch in the proceeding before us."); *id.* at 1986 ("Decisions by APJs must be subject to review by the Director."); *id.* at 1987 ("The Director accordingly may review final PTAB decisions and, upon review, may issue decisions himself on behalf of the Board.").

Second, if Mr. Hirshfeld decided the Order, it is invalid because he is not a principal officer. At the time of the Order, Mr. Hirshfeld was the Commissioner of Patents. The President did not appoint him to that position with the advice and consent of the Senate. *See supra Arthrex* citations. And the President did not direct him to serve as acting Director. 5 U.S.C. § 3345.

Third, the Order does not provide sufficient explanation for the denial, sufficient information to infer that the denial is self-explanatory, or an indication that the FWD is affirmed, affirmed-in-part, or reversed-in-part. 5 U.S.C. § 555(e) ("Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.").

Fourth, the USPTO's rules and procedures for the Director rehearing process underlying the Order are invalid. The USPTO did not follow proper notice and approval procedures, including publishing the rules and procedures in the Federal Register. 5 U.S.C. §§ 552(a)(1), 553.

The Order therefore is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id.* § 706(2)(A); *Arthrex*, 141 S. Ct. at 1981-82.

Dated: December 1, 2021

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Respectfully submitted,

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**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 20-1947
Short Case Caption Cellspin Soft, Inc. v. Canon USA, Inc., et al.
Filing Party/Entity Cellspin Soft, Inc.

Instructions: Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box.** Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 12/01/2021

Signature: /s/ Peter J. Corcoran III

Name: Peter J. Corcoran III

<p>1. Represented Entities. Fed. Cir. R. 47.4(a)(1).</p>	<p>2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).</p>	<p>3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).</p>
<p>Provide the full names of all entities represented by undersigned counsel in this case.</p>	<p>Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.</p> <p><input checked="" type="checkbox"/> None/Not Applicable</p>	<p>Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.</p> <p><input checked="" type="checkbox"/> None/Not Applicable</p>
<p>Cellspin Soft, Inc.</p>		

Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

None/Not Applicable Additional pages attached

René A. Vazquez, Reg. No. 38,647 GARTEISER HONEA, PLLC		
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5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

None/Not Applicable Additional pages attached

Cellspin Soft, Inc. v. Panasonic Corporation, et. al. 20-1948		

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

None/Not Applicable Additional pages attached

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Case Number: 20-1947

Short Case Caption: Cellspin Soft, Inc. v. Canon U.S.A., Inc., et al.

Instructions: When computing a word, line, or page count, you may exclude any items listed as exempted under Fed. R. App. P. 5(c), Fed. R. App. P. 21(d), Fed. R. App. P. 27(d)(2), Fed. R. App. P. 32(f), or Fed. Cir. R. 32(b)(2).

The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because it meets one of the following:

- the filing has been prepared using a proportionally-spaced typeface and includes 349 words.
- the filing has been prepared using a monospaced typeface and includes _____ lines of text.
- the filing contains _____ pages / _____ words / _____ lines of text, which does not exceed the maximum authorized by this court's order (ECF No. _____).

Date: 12/01/2021

Signature: /s/ Peter J. Corcoran III

Name: Peter J. Corcoran III