

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY CORPORATION,

Petitioner

v.

OPTIMUM IMAGING TECHNOLOGIES LLC,

Patent Owner

Case IPR2024-00923

Patent No. 10,873,685

PATENT OWNER'S MOTION TO TERMINATE

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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<u>PATENT OWNER'S LIST OF EXHIBITS</u>	
EX. 2001	Excerpt for E.D. Tex from U.S. District Courts–Combined Civil and Criminal Federal Court Management Statistics, p. 35 (June 30, 2024), accessed at https://www.uscourts.gov/statistics-reports/federal-court-management-statistics-june-2024 on August 9, 2024
EX. 2002	Global Dossier Patent Family for U.S. Pub. No. 20050280877 (Watanabe), accessed at https://globaldossier.uspto.gov/result/publication/US/20050280877/118382 on August 9, 2024
EX. 2003	Extract from the Register of European Patents for EP1608140 (Watanabe foreign counterpart), accessed at https://register.epo.org/application?number=EP05253548&Ing=en&tab=doclist on August 13, 2024
EX. 2004	Translation of Japanese Patent Application No. 2004-233872, submitted during prosecution of EP1608140 on June 1, 2006 (“EPO Translation”)
EX. 2005	Written submission in preparation to/during oral proceedings, submitted during prosecution of EP1608140 on April 5, 2011
EX. 2006	Skolnick, David, et al., “Why Use DSP? Digital Signal Processing 101 – An introductory course in DSP system design: Part 1”, Analog Dialogue, vol. 31, no. 1, pp. 3-6 (1997), accessed at https://www.analog.com/media/en/analog-dialogue/volume-31/number-1/articles/volume31-number1.pdf on August 20, 2024
EX. 2007	Harris, Tom, “How Camcorders Work - The CCD”, Internet Archive (Nov. 24, 2005), accessed at https://web.archive.org/web/20051124054808/ https://electronics.howstuffworks.com/camcorder2.htm on August 17, 2024
EX. 2008	Wilson, Tracy, et al., “How Digital Cameras Work”, Internet Archive (Nov. 25, 2005), accessed at

	https://web.archive.org/web/20051125112635/http://electronics.howstuffworks.com/digital-camera.htm on August 17, 2024
EX. 2009	Wilson, Tracy, et al., “How Digital Cameras Work - More on Capturing Color”, Internet Archive (Nov. 25, 2005), accessed at https://web.archive.org/web/20051125115620/http://electronics.howstuffworks.com/digital-camera5.htm on August 17, 2024
EX. 2010	Wilson, Tracy, et al., “How Digital Cameras Work - A Filmless Camera”, Internet Archive (Nov. 25, 2005), accessed at https://web.archive.org/web/20051125115507/http://electronics.howstuffworks.com/digital-camera2.htm on August 17, 2024
EX. 2011	U.S. Patent No. 7,612,805 (“the ’805 Patent”)
EX. 2012	U.S. Patent No. 8,451,339 (“the ’339 Patent”)
EX. 2013	Patent Owner’s Proposed Schedule in Parallel Litigation
EX. 2014	Order Governing Proceedings, No. 4:23-cv-928, Dkt. 24 (E.D. Tex. July 23, 2024)
EX. 2015	RESERVED
EX. 2016	RESERVED
EX. 2017	Laub Expert Declaration on U.S. Patent No. 7,612,805, originally submitted in IPR2024-00924 as EX. 1003
EX. 2018	Laub Expert Declaration on U.S. Patent No. 8,451,339, original submitted in IPR2024-00925 as EX. 1003
EX. 2019	U.S. Patent No. 8,849,964 (“Ralston”), originally submitted in IPR2024-00924 as EX. 1081

EX. 2020	Laub Deposition Transcript regarding IPR2024-00923, IPR2024-00924, and IPR2024-00925, dated February 5, 2025
EX. 2021	Printout of Website titled “Digital Photo Professional” accessed at https://en.canon-cna.com/support/consumer_products/software/digital-photo-professional.html?softwareid=tcn:257-1328049&os=all on February 24, 2025
EX. 2022	Printout of Website titled “Canon EOS Rebel T6s First Impressions Review” accessed at https://www.reviewed.com/cameras/content/canon-eos-rebel-t6s-first-impressions-review on February 24, 2025
EX. 2023	Printout of Website titled “Canon T6s Review” accessed at https://www.imaging-resource.com/PRODS/canon-t6s/canon-t6sA.HTM on February 24, 2025
EX. 2024	Printout of Website titled “Canon EOS Rebel T6s Review” accessed at https://www.pcmag.com/reviews/canon-eos-rebel-t6s on February 24, 2025
EX. 2025	Printout of Website titled “Canon T6s (EOS 760D)” accessed at https://www.kenrockwell.com/canon/t6s.htm on February 24, 2025
EX. 2026	Printout of Website titled “EOS Rebel T6s” subtitled “Overview” accessed at https://www.cla.canon.com/cla/en/support/consumer/cameras/eos_cameras/eos_rebel_t6s# on February 24, 2025
EX. 2027	Printout of Website titled “EOS Rebel T6s” subtitled “Specifications” accessed at https://www.cla.canon.com/cla/en/support/consumer/cameras/eos_cameras/eos_rebel_t6s#specificationsTab on February 24, 2025
EX. 2028	Canon EOS Rebel T6s Instruction Manual accessed at https://gdlp01.c-wss.com/gds/4/0300018244/04/eos-rebel_t6s-760d-im4-en.pdf on February 24, 2025

EX. 2029	Printout of Website titled “Canon DIGIC 6 Processor and New 18Mp APS-C CMOS Sensor Arrives” accessed at https://thenewcamera.com/canon-digic-6-processor-and-new-18mp-aps-c-cmos-sensor-arrives/ on February 24, 2025
EX. 2030	Printout of Website titled “Canon EOS 80D Review” accessed at https://photographic-central.blogspot.com/2017/10/canon-eos-80d-review.html#google_vignette on February 24, 2025
EX. 2031	Printout of Website titled “More About the EOS 80D (Part 2) – Technology” accessed at https://snapshot.canon-asia.com/article/eng/more-about-the-eos-80d-part-2-technology on February 24, 2025
EX. 2032	Printout of Website titled “First Impressions Review: Using the Canon PowerShot G16” accessed at https://www.dpreview.com/reviews/first-impressions-review-using-the-canon-powershot-g16#:~:text=The%20DIGIC%206%20processor%20delivers,to%20a%20lot%20of%20people on February 24, 2025
EX. 2033	Printout of Website titled “EOS Rebel T6s” subtitled “Features” accessed at https://www.cla.canon.com/cla/en/support/consumer/cameras/eos_cameras/eos_rebel_t6s#featuresTab on February 24, 2025
EX. 2034	Printout of Website titled “Technology Used in Digital SLR Cameras” accessed at https://global.canon/en/technology/support14.html#:~:text=When%20light%20enters%20the%20camera,data%20based%20on%20the%20signal on February 24, 2025
EX. 2035	Printout of Website titled “5 Things Made Possible with DIGIC Image Processor” accessed at https://snapshot.canon-asia.com/article/eng/5-things-made-possible-with-digic-image-processor on February 24, 2025
EX. 2036	Printout of Website titled “Settings Configured in [Camera Settings]” accessed at https://cam.start.canon/en/S003/manual/html/UG-02_CameraSetting_0020.html on February 24, 2025

EX. 2037	Printout of Website titled “2019 camera market share: Canon 45.4%, Sony 20.2%, Nikon 18.6%, Fuji 4.7%, Panasonic 4.7%” accessed at https://nikonrumors.com/2020/08/14/2019-camera-market-share-canon-45-4-sony-20-2-nikon-18-6-fuji-4-7-panasonic-4-7.aspx/ on February 24, 2025
EX. 2038	Printout of Website titled “Digital Camera Market Share 2020: Only Canon, Sony and Fujifilm Grow” accessed at https://www.fujirumors.com/digital-camera-market-share-2020-only-canon-sony-and-fujifilm-grow/ on February 24, 2025
EX. 2039	Printout of Website titled “The latest digital camera global market share (2021)” accessed at https://nikonrumors.com/2022/11/22/the-latest-digital-camera-global-market-share-2021.aspx/ on February 24, 2025
EX. 2040	Printout of Website titled “Digital Camera Market Share 2022: Canon Dominates Ahead of Sony and Nikon, Fujifilm 4 th ” accessed at https://www.fujirumors.com/digital-camera-market-share-2022-canon-dominates-ahead-of-sony-and-nikon-fujifilm-4th/ on February 24, 2025
EX. 2041	Printout of Website titled “How Canon and Sony Market Shares Display a Troubling Trend” accessed at https://www.thephoblographer.com/2024/09/23/canon-and-sony-market-shares-display-a-troubling-trend/ on February 24, 2025
EX. 2042	Printout of Website titled “Trendspotting: Canon, followed by the rest (digital camera market share 2024)” accessed at https://www.starkinsider.com/2024/09/trendspotting-canon-followed-by-the-rest-digital-camera-market-share-2024.html on February 24, 2025
EX. 2043	Canon Litigation Document – HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY
EX. 2044	Declaration of Dr. Omid Kia – HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY

EX. 2045	CV of Dr. Omid Kia
EX. 2046	Joint Protective Order
EX. 2047	Redlined version of the Joint Protective Order (compared to Default Protective Order)
EX. 2048	Executed Acknowledgements
EX. 2049	Modified Scheduling Order, <i>Optimum Imaging Technologies LLC v. Sony Corp.</i> , No. 4:23-cv-00928-ALM, Dkt. 52 (E.D. Tex. Oct. 11, 2024)
EX. 2050	Order granting Joint Motion to Modify Scheduling Order, <i>Optimum Imaging Technologies LLC v. Sony Corp.</i> , No. 4:23-cv-00928-ALM, Dkt. 67 (E.D. Tex. Feb. 14, 2025)
EX. 2051	Mediator's Report, <i>Optimum Imaging Technologies LLC v. Olympus Corporation, et al.</i> , No. 4:23-cv-00924-ALM, Dkt. 71 (E.D. Tex. March 10, 2025)
EX. 2052	Docket Report, <i>Optimum Imaging Technologies LLC v. Olympus Corporation, et al.</i> , No. 4:23-cv-00924-ALM, accessed March 14, 2025

I. INTRODUCTION

With authorization from the Board (Paper 24), Patent Owner (“PO”) respectfully submits this motion to request the Board terminate IPR2024-00923 without rendering a final written decision (“FWD”). 37 C.F.R. § 42.72.

As discussed herein, termination is appropriate at least because this proceeding is still at an early stage and under current USPTO policy, this proceeding should not have been instituted in view of parallel district court litigation(s). Continuing this proceeding would not be an efficient use of resources.

II. BACKGROUND

On 10/18/2023, PO filed the complaint in *Optimum Imaging Technologies LLC v. Sony Corp.*, No. 4:23-cv-00928 (E.D. Tex)(“Sony Litigation”).¹

On 5/20/2024, the instant petition against the ‘685 Patent was filed. Paper 2. On 8/29/2024, the Preliminary Response was filed. Paper 7. On 9/4/2024, Petitioner emailed a *Sotera*-style stipulation to PO. EX. 1077. On 11/18/2024, the Board instituted trial in this IPR. Paper 11. On 2/26/2025, the Patent Owner Response was filed. Papers 18, 19.

¹ PO filed five other complaints against different defendants, totaling six pending district court litigations before Judge Mazzant involving related Patent Nos. 7,612,805, 8,451,339, 10,877,266, and/or 10,873,685. *See generally* Paper 22.

On 2/28/2025, the USPTO rescinded the June 21, 2022, memorandum entitled “Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation” (“*Fintiv* Memo”). On 2/29/2025, PO requested authorization to file this motion. EX. 3001. On 3/11/2025, the Board granted PO’s request for authorization. Paper 24.

III. THE BOARD SHOULD TERMINATE THIS IPR IN VIEW OF THE SONY LITIGATION

In the Institution Decision, the Board stated: “we deny Patent Owner’s request for discretionary denial under § 314(a) in view of Petitioner’s *Sotera* stipulation.” Paper 11 at 8. PO respectfully submits that the change in USPTO policy, specifically the rescindment of the *Fintiv* Memo, justifies reconsideration of the *Fintiv* factors which show that continuing this proceeding would not be an efficient use of resources and as such, termination is appropriate under the circumstances.²

A. GOOD CAUSE EXISTS FOR ADMITTING EXS. 2049-2052

This motion is supported by EXS. 2049-2052 and there is good cause for admitting these exhibits at least because each of these exhibits is highly relevant to the Board’s analysis of the *Fintiv* factors, as discussed in detail below. Admitting

² *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 5–6 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv*”).

these exhibits furthers the policy objectives of *Fintiv*. Denying entry of these exhibits would prejudice PO because PO will have to expend resources for a trial that should not have been instituted.

B. THE *FINTIV* FACTORS FAVOR DENIAL

1. Factor 1 favors denial or is neutral

At the time of institution, no motion to stay had been filed.

Petitioner filed an opposed motion to stay the Sony Litigation on 2/25/2025, before rescindment of the *Fintiv* memo, and briefing has not yet concluded. The outcome of that motion is speculative. Also, there is no evidence that Judge Mazzant would stay the Sony Litigation, post-institution of this IPR. According to DocketNavigator, Judge Mazzant has only ever granted one opposed motion to stay, post-institution, where the plaintiff/patent owner itself filed the motion regarding its own infringement action. *OnPoint Systems, LLC v. Protect Animals With Satellites, LLC*, No. 4:20-cv-657- ALM, Dkt. 115 (E.D. Tex. July 12, 2022). Therefore, even post-institution, a stay is highly unlikely. Accordingly, factor 1 favors denial or is at minimum, neutral.

2. Factor 2 favors denial

At the time of institution, the final pretrial conference was set for 10/29/2025. EX. 2049. Now, the final pretrial conference is set for 11/6/2025. EX. 2051; *see also* EX. 2052. This conference will still occur **before** the FWD would

be expected in this IPR on 11/18/2025.³ Accordingly, factor 2 favors denial.

3. Factor 3 favors denial

By November 2025, the parties will have completed essentially all the work associated with trial. Based on the current schedule, this work includes claim construction briefing with a claim construction hearing set for 3/27/2025, fact discovery which closes 4/18/2025, expert discovery which closes on 6/27/2025; and dispositive motions due 7/11/2025. EX. 2050. All of this work will be completed before oral argument in this IPR, tentatively scheduled for 8/19/2025.

Fact discovery including depositions of foreign witnesses is itself a significant investment by all parties at least because of the required international travel to the embassy in Japan and special deposition visas which only authorize entry for a limited time-period. PO has already acquired the special visas and Petitioner's witnesses are currently scheduled to be deposed in Japan beginning 3/24/2025.⁴ PO has also already invested substantial resources in deposition preparation, document translation, and source code review as part of fact discovery.

³ According to DocketNavigator, Judge Mazzant's final pretrial conference typically occurs 1-3 weeks before Trial Day 1. *See, e.g.*, Mazzant Case Nos. 4:20-cv-886, 4:08-cv-451, 4:18-cv-cv-469, 4:18-cv-474, 4:15-cv-766. Thus, Trial Day 1 is expected to occur around the same time as a FWD in this IPR.

⁴ Petitioner refused to produce its Japan-based witnesses in the United States.

Additionally, all pretrial submissions are due by 10/17/2025 in preparation for the final pretrial conference on 11/6/2025. EX. 2050. Therefore, trial preparation will be completed in October 2025, before a FWD in this IPR.

Petitioner did not act promptly in filing the petition – over seven months elapsed between the filing of the complaint and the filing of the petition in this IPR. As noted above, the complaint in the Sony Litigation was filed on 10/18/2023. Sony has not yet admitted when it actually became aware of the complaint. The complaint was provided to the Texas Secretary of State for service on 10/30/2023. With authorization from the district court, PO also proceeded with service through the Hague Convention on 1/19/2024, which was completed for Petitioner on 5/13/2024. PO believes that Petitioner was aware of the filed complaint long before Hague service was complete. For example, Petitioner's EX. 1047 shows a translator's signature executed on 2/15/2024.⁵ Petitioner therefore was necessarily aware of the complaint at least by February 2024. Petitioner improperly attempts to use Hague service as both a sword and shield against PO.

Petitioner recycled prior art and arguments from the prior Canon

⁵ Many other exhibits show signatures executed on 2/22/2024. *E.g.*, EXS. 1006, 1007, 1008, 1044, 1051, 1052, 1066.

IPRs⁶. Grounds 1-7 in this IPR are based on primary reference Watanabe (EX. 1005) which was also at issue in the Canon IPRs. Petitioner also relies on the same expert, Mr. Laub, as in the Canon IPRs. Petitioner also relies on many other references from the Canon IPRs, including for example, Kishida (EX. 1007), Kita (EX. 1008), Russ (EX. 1054) and Niikawa (EX. 1063). All references and arguments from the Canon IPRs were considered during prosecution of the ‘685 Patent. EX. 1001 at code (56).

Moreover, Ground 8 in this IPR is based on primary reference Takane (EX. 1009) which was known to Petitioner long before the petition was filed in this IPR. Takane is cited by US10628926 which issued 4/21/2020 and US11004474 which issued 5/11/2021, both of which are assigned to Sony Corporation. Therefore, Petitioner was aware of Takane at least by 2021.

In view of the foregoing, Petitioner could have filed the petition long before May 2024. There is no evidence regarding when/how Petitioner conducted a prior art search with reasonable diligence and/or became aware of the prior art relied on in this IPR. Petitioner cannot otherwise explain how its actions show “promptness”

⁶ IPR2020-01321 of Patent No. 7,612,805 and IPR2020-01322 of Patent No.

8,451,339 (collectively, “Canon IPRs”). The Canon IPRs were denied institution under *Fintiv*. EX. 1031 at 11; EX. 1033 at 11.

over the course of the elapsed seven months. Accordingly, factor 3 favors denial.

4. Factor 4 favors denial or is neutral

Petitioner challenges claims 1-19 and 22-30 of the ‘685 Patent in this IPR.

At the time of institution, PO asserted claims 1-30 of the ‘685 Patent in the Sony Litigation. Following a court ordered reduction of asserted claims on 1/21/2025, PO now asserts claims 1, 2, 4, 6, 14, and 20 of the ‘685 Patent in the Sony Litigation. Notably, asserted claim 20 is not challenged in this IPR and will necessarily be evaluated by the district court. PO also submits that it would not be efficient to continue this IPR because the district court will resolve validity of enough overlapping claims to resolve key issues in the petition. *Fintiv* at 13.⁷

Though Petitioner filed a *Sotera*-style stipulation⁸, this only moderately influences the analysis under the circumstances. As discussed below, Petitioner’s stipulation does not mitigate duplicative efforts.

At the time of institution, Petitioner relied on the same references and

⁷ For example, the additional limitations of claims 7 and 15 are similar to claim 2, the additional limitations of claims 8 and 16 are similar to claim 4, etc.

⁸ PO notes that Petitioner’s stipulation is not clearly worded (*e.g.*, if all four IPRs are instituted, then Petitioner will not pursue invalidity based on patents/publications in the Sony Litigation). *See* EX. 1077.

grounds at issue in this IPR in its district court invalidity contentions. Petitioner also relied on system art in its district court invalidity contentions and so, even with the stipulation in effect, Petitioner may pursue invalidity of the ‘685 Patent based on system art in the Sony Litigation.⁹ As discussed above, a post-institution stay of the Sony Litigation is highly unlikely. Conducting parallel proceedings on patents/publications in IPR and systems in district court is not efficient. Petitioner should not be given multiple bites at the invalidity apple.

Even after institution, Petitioner has maintained its invalidity positions based on patents/publications despite the stipulation.¹⁰ On 2/27/2025, Petitioner served its preliminary election of prior art against the ‘685 Patent, listing 5 systems and 7 patents/publications, including Watanabe, Kishida, Kita, and Russ discussed above.¹¹ Therefore, Petitioner’s invalidity positions based on patents/publications

⁹ Petitioner did not stipulate that, if this IPR were to be instituted, Petitioner would not pursue any invalidity challenges as to the ‘685 Patent in the Sony Litigation.

¹⁰ PO understands that Petitioner’s stipulation as to the ‘685 Patent is currently in effect because this IPR was instituted. EX. 1077.

¹¹ PO notes that each defendant’s preliminary election was different. Some defendants also assert primary reference Takane in their respective district court litigations, *e.g.*, Nos. 4:23-cv-922 and -923.

will be evaluated in district court at least up until trial. This does not serve the fairness or efficiency policy objectives of *Fintiv*.

Accordingly, factor 4 favors denial or is at minimum, neutral.

5. *Factor 5 favors denial*

The same parties are involved in this IPR and the Sony Litigation.

Accordingly, factor 5 favors denial.

6. *Factor 6 favors denial*

In the Institution Decision, the Board only evaluated claims 1, 2, and 29 under Ground 1. Paper 11 at 28-30. The Board preliminarily agreed with PO that Petitioner did not meet its burden with respect to claim 29. Paper 11 at 30.

Ultimately, conducting this trial and evaluating 28 claims over eight grounds is extremely burdensome for the parties and the Board.

As initially explained in the Preliminary Response, the merits of the petition are weak¹² and the proposed modifications/combinations are replete with hindsight bias. *See, e.g.*, Paper 7 at 43-50 (discussing Ground 2) and 62-65 (discussing

¹² Petitioner did not even list Takane in its preliminary election of prior art in the Sony Litigation. Petitioner effectively concedes the merits of Ground 8 are weak.

Ground 7). Petitioner cannot meet its burden in this IPR.¹³

All Grounds are based on obviousness, not anticipation. There is strong evidence of secondary considerations in view of the prior Canon Litigation and there is additional evidence now in view of the recent settlement on 3/8/2025 in the Olympus Litigation. *See, e.g.*, Paper 18 at 78-79; EX. 2051.

Accordingly, factor 6 favors denial.

7. On balance, the factors favor denial

None of the *Fintiv* factors favor grant and instead, each of the six *Fintiv* factors favors denial or is at minimum, neutral. Therefore, under current USPTO policy, this IPR should be terminated. Additionally, if this IPR is terminated, PO will allow Petitioner to withdraw its stipulation as to the ‘685 Patent so that Petitioner may pursue invalidity of the ‘685 Patent in the Sony Litigation.

IV. CONCLUSION

For at least the reasons discussed herein, Patent Owner respectfully requests the Board terminate IPR2024-00923.

¹³ As further explained in the Patent Owner Response, Petitioner’s own expert directly contradicted the allegations in the petition and the preliminary findings by the Board. *See, e.g.*, Paper 18 at 25-28 (discussing “integrated circuit”).

Respectfully submitted,

Date: March 14, 2025

By: /s/ Thomas M. Dunham

Thomas M. Dunham

Reg. No. 39,965

Cherian LLP

1901 L Street NW, Suite 700

Washington, D.C. 20036

(202) 838-1567

ATTORNEY FOR PATENT OWNER,
OPTIMUM IMAGING TECHNOLOGIES
LLC

CERTIFICATE OF COMPLIANCE

This Motion is within the 10-page limit authorized by the Board. Paper 24.

This Motion complies with the general format requirements under 37 C.F.R. §
42.6(a).

Respectfully submitted,

Date: March 14, 2025

By: /s/ Thomas M. Dunham
Thomas M. Dunham
Reg. No. 39,965

Cherian LLP
1901 L Street NW, Suite 700
Washington, D.C. 20036
(202) 838-1567

ATTORNEY FOR PATENT OWNER,
OPTIMUM IMAGING TECHNOLOGIES
LLC

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies the PATENT OWNER'S MOTION TO TERMINATE and all exhibits thereto were served on the undersigned date via email, as authorized by Petitioner, at the following email addresses:

SMcKeown-PTAB@WolfGreenfield.com

AWichman-PTAB@WolfGreenfield.com

RPritzker-PTAB@WolfGreenfield.com

Respectfully submitted,

Date: March 14, 2025

By: /s/ Thomas M. Dunham

Thomas M. Dunham

Reg. No. 39,965

Cherian LLP

1901 L Street NW, Suite 700

Washington, D.C. 20036

(202) 838-1567

ATTORNEY FOR PATENT OWNER,
OPTIMUM IMAGING TECHNOLOGIES
LLC