

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CANFIELD SCIENTIFIC, INC.,
Petitioner,

v.

MELANOSCAN, LLC,
Patent Owner.

Case IPR: 2017-02125
Patent No. 7,359,748

DECLARATION OF ERIC PEPPER

Canfield Scientific, Inc. - Exhibit 1027 Canfield Scientific, Inc. v. Melanoscan, LLC IPR2017-02125

I, Eric Pepper, declare as follows:

1. I am the Director of Publications for SPIE, the International Society for Optics and Photonics. I have served in this role since 1994. In this role, one of my responsibilities is to ensure that SPIE maintains accurate and complete records of its regularly conducted activities in connection with documents that it publishes. I have personal knowledge of the following and, if called, could testify competently thereto.

2. SPIE is an international society advancing an interdisciplinary approach to the science and application of light. One of SPIE's regularly conducted activities is to organize conferences for individuals and organizations with a research or commercial interest in optics, photonics, optoelectronics, and imaging technologies. In conducting that activity, SPIE obtains written materials from presenters at each conference and publishes and distributes those materials.

3. In 1997, SPIE published the paper *Body Measurement System using White Light Projected Patterns for Made-to-Measure Apparel* authored by Jeffrey D. Hurley, Michelle H. Demers, Richard C. Wulpern, and John R. Grindon ("the Hurley paper"). A true and correct copy of the Hurley paper as published is attached hereto as Exhibit 1028.

4. The Hurley paper was published in connection with the Optical Scanning Systems: Design and Applications technical conference ("the

Conference”), held July 30-31, 1997, in San Diego, California. The Conference was part of a larger multi-conference symposium called Optical Science, Engineering, and Instrumentation 1997 (“the Event”), held in San Diego, California, July 27-31, 1997. The Hurley paper was published as part of a compilation of papers designated as SPIE Volume 3131. A true and correct copy of the front cover and copyright page for Volume 3131, which contains a copy of the Hurley paper bound within it, is attached hereto as Exhibit 1029. The attendees of the conference were individuals with a research or commercial interest in the optics, photonics, optoelectronics, and imaging technologies, some of whom presented their research information to their peers at the conference in the form of oral or poster presentations.

5. SPIE’s records indicate that a shipment of 225 bound hardcopies of Volume 3131 were received from its printer at SPIE’s U.S. warehouse on July 1, 1997, in advance of the July 27 Event. Exhibit 1030 is a true and correct copy of a Book Receiving Report prepared by an SPIE employee which documents the receipt of these copies at SPIE’s warehouse on that date. Copies of Volume 3131 were thereafter packed and shipped to the Event in San Diego per SPIE’s standard practice with respect to Proceedings of SPIE. Exhibit 1030 is a record prepared in the ordinary course of SPIE’s regularly conducted business, created at the time that

the SPIE warehouse receives a shipment of printed materials by an individual with knowledge of the facts set forth in that record.

6. Per SPIE's standard practice, copies of Volume 3131, including the Hurley paper, were distributed to attendees of the San Diego conference who pre-ordered this volume as part of their conference registration. In addition, per SPIE's standard practice, copies of Volume 3131 were also available for purchase at the conference registration desk by attendees of the Event who had not pre-ordered. Copies of Volume 3131 were both distributed at, and available for purchase at, the Event registration desk beginning on July 27, 1997.

7. Physical printed copies of the Hurley article as included in Volume 3131 or as a single printed article were further available for purchase directly from SPIE beginning July 27, 1997. Copies ordered directly from SPIE were shipped from our warehouse in Bellingham, Washington. Orders were typically received by mail, phone, and fax. In addition, as of July 27, 1997, numerous U.S. and international libraries had standing orders for all SPIE proceedings. In fulfillment of these orders, copies of Volume 3131 were shipped out to major research libraries having standing orders on that date or within a reasonable time thereafter, in accordance with SPIE's standard practice. Volume 3131 would have been accessible to researchers through those libraries. In addition, beginning July 27, 1997, SPIE would have fulfilled pending and subsequent orders for Volume 3131

that were received from individuals and institutions who may have become aware of its availability via SPIE's standard promotional catalogs and flyers, primarily distributed via postal mail at that time, as well as through the SPIE website.

8. Beginning on July 27, 1997, copies of articles contained in Volume 3131, including the Hurley paper, could also be ordered via commercial document delivery providers or obtained through interlibrary loan from libraries who received Volume 3131. SPIE did not limit or restrict the distribution of Volume 3131 or the articles contained within it.

9. In signing this declaration, I understand that the declaration will be filed as evidence in a contested case before the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office. I acknowledge that I may be subject to cross examination in the case and that cross examination will take place within the United States. If cross examination is required of me, I will appear for cross examination within the United States during the time allotted for cross examination.

Case No. IPR2017-02125
DECLARATION OF ERIC PEPPER

All statements made herein are true to the best of my knowledge and all statements made on information and belief are believed to be true. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on April 26, 2018

A handwritten signature in black ink, appearing to read 'Eric Pepper', with a long horizontal flourish extending to the right.

Eric Pepper

Materials Reviewed

Exhibit No.	Description
1028	Jeffrey D. Hurly, Michelle H. Demers, Richard C. Wulpern, John R. Grindon, "Body Measurement System Using White Light Projected Patterns for Made-to-Measure Apparel," SPIE Vol. 3131, July 27, 1997, 212-223 ("Hurley")
1029	Cover and copyright page of SPIE Vol. 3131
1030	Book Receiving Report for Vol. 3131