

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner,

v.

E-WATCH, INC.,  
Patent Owner.

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Case IPR2015-00412  
Patent 7,365,871 B2

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Before JAMESON LEE, GREGG I. ANDERSON, and  
MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

ORDER  
Conduct of Proceeding  
37 C.F.R. § 42.5

### Introduction

A telephone conference call was held on September 11, 2015. The participants were Judges Lee, Anderson, and Clements, counsel for respective parties (“Apple” as Petitioner and “e-Watch” as Patent Owner) in this proceeding, and counsel for respective parties in IPR2015-01366 (“ZTE” as Petitioner and “e-Watch” as Patent Owner). The subject of discussion is ZTE’s Motion for Joinder (Paper 3), filed on June 9, 2015, in IPR2015-01366, which seeks to have that proceeding, once instituted, joined with this proceeding. e-Watch did not file an opposition.

### Discussion

Counsel for e-Watch explained that so long as all substantive differences, if any, between the petition in IPR2015-01366 and the petition in this proceeding, considering the latter as base document, are disregarded after institution of trial in IPR2015-01366, and if reliance by Petitioner on its expert witness in IPR2015-01366 is withdrawn after institution of trial, e-Watch does not oppose joinder and would not need to file a Patent Owner Response in IPR2015-01366.

Counsel for Apple represented that so long as the only participation accorded ZTE is the opportunity to continue as Petitioner if Apple were to reach settlement with e-Watch, Apple does not oppose joinder. It was understood that if there will be such a joined proceeding, Apple will not be relying on ZTE’s petition or ZTE’s witness Tim A. Williams from IPR2015-01366. If that understanding is incorrect, Apple shall initiate a conference call with the Board no later than two business days after the date of this communication.

Counsel for ZTE represented (1) that if joinder is granted, it agrees to have no participation in the joined proceeding except for the opportunity to continue as petitioner in the joined proceeding, (2) that if trial is instituted in IPR2015-01366 and joinder with this proceeding is granted, it would withdraw all reliances on the declaration testimony of Tim A. Williams (Ex. 1002), and (3) that if trial is instituted and joinder with this proceeding is granted, it would withdraw all arguments from its petition in IPR2015-01366 and rely, instead, on the petition filed by Apple in this proceeding.

Counsel for ZTE further represents that although the words of ZTE's petition in IPR2015-01366 are not the same as the words of Apple's petition in this proceeding, ZTE's petition is not substantively different from Apple's petition, with regard to all grounds raised in ZTE's petition. Counsel for ZTE also represents that although the words of the declaration of Tim A. Williams relied on in ZTE's petition in IPR2015-01366 are not the same as the words in the declaration of Steven J. Sasson relied on in Apple's petition in this proceeding, the two declarations are the same in substance, with regard to all grounds asserted in the ZTE petition.

#### Conclusion

The positions of the parties with regard to the joinder issue have been presented and will be considered in the Board's rendering of a decision on ZTE's Motion for Joinder in IPR2015-01366.

IPR2015-00412  
Patent 7,365,871 B2

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