

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
ZTE CORPORATION and ZTE (USA) INC.,
Petitioners,

v.

E-WATCH, INC.,
Patent Owner.

Case IPR2015-00412
Case IPR2015-01366¹
Patent 7,365,871 B2

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

¹ IPR2015-01366 has been joined with IPR2015-00412. There are two petitioners.

On October 5, 2015, a telephone conference was held. The participants were Judges Lee, Clements, and Anderson, and respective counsel for the parties. The two Petitioners were represented by separate counsel. Counsel for Patent Owner requested the conference call to discuss two issues. The first relates to its desire to file a motion for entry of the default protective order. Counsel for Patent Owner indicated that with respect to this item, Petitioners does not oppose. We suggested that the parties together file a Joint Request for Entry of the Default Protective Order, because the order benefits all parties. Counsel for Petitioners did not offer an objection.

Counsel for Patent Owner explained that during a deposition of Patent Owner's witness on September 28, 2015, counsel for Apple Inc. asked the witness numerous questions outside of the scope of the Patent Owner's Response, and that as many as 25 pages of the deposition transcript relate to questions about the witness's own consulting business, and the business of the wife of the witness. Patent Owner would like to have all of the testimony in that regard excluded. Counsel for Apple Inc. represented, during the conference call, that those questions are directed to potential bias on the part of Patent Owner's witness, Dr. Jose Melendez, with respect to prior adverse dealings with Apple Inc.

We urged the parties to stipulate to certain facts, to obviate the need for Petitioners to rely on any of the deposition testimony subject to dispute. We explained to Patent Owner that Petitioners are entitled to some latitude with respect to the subject of potential bias with respect to Dr. Melendez, for example, if Dr. Melendez has taken numerous positions against Apple Inc.,

in his consulting business, or if Dr. Melendez's wife owns a patent holding company that has filed suit against Apple Inc. in the past.

The parties were urged to agree to a set of stipulated facts that would obviate any actual need on the part of Petitioners to rely on the testimony at issue. If no such agreement can be reached, the parties are authorized to contact the Board again in another conference call. However, a suitable stipulation as outlined above may obviate any need for Petitioners to rely on the testimony at issue.

It is

ORDERED that the parties are authorized to file a Joint Motion for Entry of Default Protective Order, and that a copy of the default protective order should be filed as an exhibit, upon filing of the joint motion;

FURTHER ORDERED that if the parties can reach agreement on the pertinent stipulation to obviate the need of Petitioners to rely on that part of Dr. Melendez's testimony relating to his consulting business and the business of his wife, to establish alleged bias, the parties are authorized to file the deposition transcript of Dr. Melendez, in a form not including the questions and answers directed to those topics; and

FURTHER ORDERED that the parties are authorized to stipulate to a different Due Date 6 that does not extend beyond Due Date 7.

IPR2015-00412 and IPR2015-01366
Patent 7,365,871 B2

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