

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

E-WATCH, INC.,  
Patent Owner.

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Case IPR2015-00412  
Case IPR2015-01366<sup>1</sup>  
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*.

DECISION  
Motion for Stay of Proceeding  
Request for Authorizing Motion to Chief Administrative Patent Judge  
*37 C.F.R. § 42.20*

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<sup>1</sup> IPR2015-01366 has been joined with IPR2015-00412. There are two petitioners.

A conference call was held on April 11, 2016. The participants were respective counsel of the parties and Judges Lee, Anderson, and Clements. The purpose of the conference was twofold. Patent Owner requests (1) permission by this panel for Patent Owner to file a motion for a stay of proceeding for 6-7 weeks beyond the current statutory due date of a final written decision on May 11, 2016, to await a decision by the United States Supreme Court in *Cuozzo Speed Technologies, LLC v. Lee*, No. 15-446 (S. Ct. 2016), which is expected by the end of June, 2016, and (2) authorization by the panel for Patent Owner to file a motion to the Chief Administrative Patent Judge to request a 6-7 week extension of the one-year time period to complete trial under 37 C.F.R. § 42.100(c).

We instructed Patent Owner to make its Motion for Stay, directed to the Board, verbally in the conference call, and gave Patent Owner as much time as it needed to present its reasoning. We further noted that whether we would authorize a motion, directed to the Chief Administrative Patent Judge, depends on whether Patent Owner is successful in persuading us to stay the proceeding beyond the current due date of a final written decision. A motion directed to the Chief Administrative Patent Judge to extend the one-year period within which to complete trial is not meaningful unless the panel is persuaded to grant a stay of proceeding to beyond that one-year period.

According to Patent Owner, the Supreme Court in *Cuozzo* may change the standard of claim construction before the Board in *inter partes* reviews, and Patent Owner objects to the Board's applying the rule of broadest reasonable interpretation ("BRI") in this proceeding, if the Supreme Court were to determine that BRI should not apply in *inter partes* reviews.

We heard arguments from Patent Owner. Petitioners opposed both requests. We denied Patent Owner's motion for a stay of proceeding, as well as Patent Owner's request for authorization to file a motion for the Chief Administrative Patent Judge to extend the one-year period within which to complete trial. The decisions were made primarily on the basis that the situation is not unique to Patent Owner and that Patent Owner still has other potential recourse to have the case remanded back to the Board from our reviewing court, if Petitioner prevails and Patent Owner appeals our final written decision, in light of any decision by the Supreme Court that the rule of broadest reasonable construction should not be applied. The decisions also were made on the basis that Patent Owner has not articulated any difference in the reading of the claims onto the prior art even if BRI were not applied.

Patent Owner indicated that a fully developed opinion for our decisions is not necessary, so long as we make of record Patent Owner's objection to the application of BRI if the Supreme Court determines that BRI should not be applied in *inter partes* reviews. It is so noted.

It is

ORDERED that Patent Owner's (1) motion for the panel to stay this proceeding for 6-7 weeks beyond the current statutory due date of a final written decision on May 11, 2016, to await a decision by the Supreme Court in *Cuozzo Speed Technologies, LLC v. Lee*, No. 15-446 (S. Ct. 2016), which is expected by the end of June, 2016, and (2) request for authorization by the panel for Petitioner to file a motion to the Chief Administrative Patent Judge for a 6-7 week extension of the one-year period within which to complete trial under 37 C.F.R. § 42.100(c), are both *denied*.

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

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