

Paper No. 2  
Date: June 9, 2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ZTE CORPORATION AND ZTE (USA) INC.,  
Petitioners,

v.

E-WATCH, INC.,  
Patent Owner.

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Case IPR2015-\_\_\_\_\_  
Patent 7,365,871 B2

**MOTION FOR JOINDER TO RELATED INSTITUTED INTER PARTES  
REVIEW UNDER 35 U.S.C. 315(c) AND 37 C.F.R. § 42.122(b)**

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## **I. STATEMENT OF RELIEF REQUESTED**

ZTE Corporation and ZTE (USA), Inc., (“ZTE” or “Petitioner”) submits concurrently herewith a petition for *inter partes* review (IPR) of U.S. Patent No. 7,365,871 B2 (the “’871 Patent”) and respectfully requests that its petition be granted. ZTE also respectfully moves that this proceeding be joined pursuant to 35 U.S.C. § 315(c), 37 C.F.R. §§ 42.22 and 42.122(b) with the pending IPR concerning the same patent in Apple Inc. v. e-Watch, Inc., Case IPR2015-00412 (the “Apple IPR”). ZTE’s petition for *inter partes* review is substantively identical to the Apple IPR petition, except that ZTE’s petition contains only the specific bases upon which *inter partes* review was instituted in the Apple IPR, omitting the additional asserted bases in Apple’s petition that were rejected by the Board.

This Motion for Joinder is timely under 37 C.F.R. §§ 42.22 and 42.122(b), because it is submitted within one month of May 11, 2015, the institution date of the Apple IPR.

## **II. BACKGROUND AND RELATED PROCEEDINGS**

e-Watch, Inc. is the owner of the ’871 Patent. Starting in 2013, e-Watch filed eleven suits in district court, including suits against ZTE Corporation, ZTE (USA) Inc., ZTE Solutions, Inc. and Apple Inc., alleging infringement of the ’871 Patent by camera phones that operate over cellular networks. e-Watch filed its complaint alleging infringement of the ’871 Patent by ZTE Corporation, ZTE

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(USA) Inc. and ZTE Solutions, Inc. on December 10, 2013.

In addition to the district court litigation, the '871 Patent has been the subject of several IPRs: IPR2014-00439 (terminated), IPR2014-00987 (instituted), IPR2015-00402 (pending), IPR2015-00404 (pending), IPR2015-00406 (pending), IPR2015-00411 (not instituted), IPR2015-00412 (instituted), IPR2015-00413 (not instituted), IPR2015-00541 (instituted), and IPR 2015-00610 (pending). The Apple petition for *inter partes* review was filed on December 11, 2014 and trial was instituted on May 11, 2015 (Paper No. 12, IPR 2015-00412) on the sole ground in Apple's petition. The Board set July 13, 2015 as the date for e-Watch's response to the petition, and oral argument is currently set for December 18, 2015. See Paper Nos. 13 & 15, IPR 2015-00412.

### **III. LEGAL STANDARDS AND APPLICABLE RULES**

#### **A. Legal Standard**

The Leahy-Smith America Invents Act (AIA) permits joinder of inter partes review proceedings. The statutory provision governing joinder of inter partes review proceedings is 35 U.S.C. § 315(c), which reads as follows:

(c) JOINDER.--If the Director institutes an inter partes review, the Director, in his or her discretion, may join as a party to that inter partes review any person who properly files a petition under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an inter partes review under section 314.

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Normally, a petition for *inter partes* review filed more than one year after the petition (or the petition's real party-in-interest or privy) is served with a complaint alleging infringement of the patent is barred. *See* 35 U.S.C. § 315(b); 37 C.F.R. § 42.101(b). The one-year time bar, however, does not apply to a request for joinder. *See* 35 U.S.C. § 315(b)(final sentence); 37 C.F.R. § 42.122(b).

In exercising its discretion to grant joinder, the Board considers the impact of substantive and procedural issues on the proceedings, as well as other considerations, while being “mindful that patent trial regulations, including the rules for joinder, must be construed to secure the just, speedy, and inexpensive resolution of every proceeding.” *See Dell, Inc. v. Network-1 Security Solutions, Inc.*, Case IPR2013-00385, Paper No. 17 (July 29, 2013) (“Dell Joinder Order”) at 3. The Board should consider “the policy preference for joining a party that does not present new issues that might complicate or delay an existing proceeding.” *Id.* at 10. Under this framework, joinder of the instant case with the Apple IPR is appropriate.

The Dell Joinder Order states that “[a] motion for joinder should: (1) set forth the reasons why joinder is appropriate; (2) identify any new grounds of unpatentability asserted in the petition; (3) explain what impact (if any) joinder would have on the trial schedule for the existing review; and (4) address specifically how briefing and discovery may be simplified.” *Id.* at 4. Each of these issues is ad-

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