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Paper 10
Date: October 15, 2015

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 IPR2015-01366[1]
Patent 7,365,871 B2

Before JAMESON LEE and GREGG I. ANDERSON,
*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.

Introduction

On October 14, 2015, a telephone conference was held. The participants were Judges Lee and Anderson, Blair Silver, counsel for Apple, Inc. ("Apple"), and Gregory Donahue, counsel for e-Watch, Inc. ("e-Watch"). Having been given notice of the conference, Petitioner ZTE Corporation and ZTE (USA) Inc. did not attend. This was a follow-up call subsequent to a first conference call held on October 5, 2015, to discuss e-Watch's assertion that Apple went beyond the proper scope of cross-examination of e-Watch's expert witness, Dr. Melendez. At the conclusion of that first call, we directed the parties to attempt to solve their dispute by stipulating to certain facts to obviate the need to submit to the Board a 25-page portion of the transcript of Dr. Melendez's cross-examination testimony. In that first call, we also explained that Petitioner is entitled to some leeway in exploring potential bias of Dr. Melendez against Apple. In this follow-up call, counsel for e-Watch stated that e-Watch no longer contests that Apple went beyond the proper scope of cross-examination of Dr. Melendez.

Nevertheless, another issue remains on the table. Some of the material in the transcript of the cross-examination of Dr. Melendez, according to e-Watch, constitutes confidential business information, and e-Watch desires to file a motion to seal. Counsel for both Apple and e-Watch explained that despite multiple attempts to stipulate to certain facts, as they had been instructed by the Board to do, they were unable to reach complete agreement, and the 25-page portion of the transcript still need to be submitted, with a very small portion thereof, less than one page, redacted.

Counsel for Apple and e-Watch explained that they could not agree on a set of stipulated facts to obviate the submission of the transcript portion at issue because each has a different understanding of the meaning of Dr. Melendez's statements.

## Discussion

Information that already is in the public domain should not be the subject of a motion to seal. Although counsel for Apple questioned whether all of the material e-Watch seeks to seal are not already in the public domain, he indicated that Apple will not oppose e-Watch's motion to seal. Also, prior authorization to file a motion to seal is not necessary, if the motion accompanies filing of material sought to be sealed.

## Order

It is

ORDERED that in e-Watch's motion to seal, e-Watch should indicate whether any of the material it seeks to have sealed already is in the public domain, and if so, which material; and

FURTHER ORDERED that attention of the parties is directed to Papers 37, 38, and 40 of IPR2014-00736, with regard to the filing of a motion to seal.

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