

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZTE USA, Inc.
Petitioner

v.

PARTHENON UNIFIED MEMORY ARCHITECTURE LLC
Patent Owner

INTER PARTES REVIEW OF U.S. PATENT NO. 7,777,753

Case IPR No.: IPR2016-00670

**PARTHENON UNIFIED MEMORY ARCHITECTURE LLC's
OPPOSITION TO PETITIONER'S MOTION FOR JOINDER**

Patent Owner opposes Petitioner’s Motion for Joinder Under 35 U.S.C. § 315(c), 37 C.F.R. §§ 42.22, and 42.122(b) (Paper No. 3) (“Motion for Joinder) which directly conflicts with Rule 41.122. Rule 41.122(b) expressly requires that “any request for joinder must be filed, as a motion under § 42.22, no later than one month after the institution date of any inter partes review for which joinder is requested.” (emphasis added). Here, the HTC IPR which the Petitioner seeks to join was instituted on January 6, 2016. However, the Petitioner did not file its Motion for Joinder until February 26, 2016. Therefore, Petitioner’s Motion for Joinder is untimely and should be denied.

Recognizing its failure to comply with Rule 41.122, the Petitioner asks the Board to exercise its discretion and “waive or suspend” the requirements of that rule. However, the Petitioner has provided no credible explanation or reasoning regarding why it did not comply with Rule 41.122(b). Specifically, Petitioner provides absolutely no reason as to why it could not have filed its motion for joinder within one month of the institution decision in the HTC IPRs as required by Rule 41.122(b). Instead, in asking the Board to waive the requirements of Rule 41.122 the Petitioner merely relies on the same factors it has identified as the basis for why joinder should be granted in the first place. *See* Motion for Joinder at 4-5. However, none of the listed factors explain why Petitioner failed to comply with the timeliness requirement of Rule 41.122(b). An exercise of discretion by the Board to allow the Petitioner’s untimely Motion for Joinder to go forward would open the door for any Petitioner to disregard

the requirements of Rule 41.122(b) merely by pointing to factors that may support the underlying joinder request without providing an explanation for the delay in filing the joinder request. Therefore, Petitioner has provided no reasonable basis that would justify an exercise of discretion by the Board to “waive or suspend” the requirements of Rule 41.122(b).

Accordingly, Patent Owner respectfully requests that the Board enforce the timeliness requirement of Rule 41.122(b) and deny the Petitioner’s Motion for Joinder as untimely.

Dated: March 28, 2016

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that Parthenon Unified Memory Architecture LLC's Opposition to Petitioner's Motion for Joinder was served on Monday, March 28, 2016, by electronic mail to the following:

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