

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZTE (USA) Inc., HTC Corporation, HTC America, Inc.,
Samsung Electronics Co., Ltd., and
Samsung Electronics America, Inc.,

Petitioner,

v.

Evolved Wireless LLC,

Patent Owner.

Case IPR2016-00757¹
Patent 7,881,236 B2

Before WILLIAM V. SAINDON, PETER P. CHEN, and
TERRENCE W. McMILLIN, *Administrative Patent Judges*.

PETITIONER'S OBJECTIONS UNDER 37 C.F.R. § 42.64(b)(1) TO
PATENT OWNER'S EXHIBITS 2004, 2006, and 2009

¹ IPR2016-01345 has been consolidated with this proceeding.

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner objects to the admissibility of Patent Owner's exhibits 2004, 2006, and 2009 as follows.

EXHIBIT 2004
(Transcript of Deposition of Dr. Paul S. Min)

Under FED. R. EVID. 401 and 402, Petitioner objects to the admissibility of the following portions of Exhibit 2004: 104:19-106:6, 107:20-108:22, 109:11-13, 137:24-139:18, 141:4-148:3. In these portions of the transcript, Patent Owner's counsel questioned Dr. Paul Min on Min Exhibit 8 to Dr. Min's deposition. Patent Owner did not file Exhibit 8 with the Board. Therefore, the objected-to portions of Exhibit 2004 are not relevant to any issue in this proceeding.²

EXHIBIT 2006
(Declaration of Dr. Todor Cooklev)

Under FED. R. EVID. 702, Petitioner objects to the admissibility of paragraphs 35, 93-99, and 108-117 of Exhibit 2006. These paragraphs contain conclusory opinions that are inadmissible under Federal Circuit precedent. In addition, these paragraphs are not based upon sufficient facts or data, are not the product of reliable principles and methods, and are not applied reliably to the facts of this *inter partes* review. These opinions are also inadmissible to the extent they apply a claim

² Filing Exhibit 8 will not cure this objection because Exhibit 8 is itself inadmissible. As required under 37 C.F.R. § 42.64(a), Petitioner's counsel timely objected to the admissibility of Min Exhibit 8. *See* Ex. 2004 at 139:19-140:10; 150:10-16. Patent Owner's counsel did not provide evidence to cure the objection during the deposition.

interpretation that is inconsistent with any of the Board's claim constructions.

In addition, under FED. R. EVID. 401 and 402, Petitioner objects to the admissibility of paragraphs 17 and 18 of Exhibit 2006. Paragraphs 17 and 18 contain opinions on inapplicable legal standards. Therefore, these opinions are irrelevant.

EXHIBIT 2009
(Petition Filed in IPR2016-01228)

Petitioner objects to the admissibility of Exhibit 2009 under FED. R. EVID. 401 and 402. This exhibit is a petition for *inter partes* review filed by companies that are not parties to the present proceeding. Therefore, this exhibit is not relevant to any issue in this proceeding.

Petitioner also objects to the admissibility of Exhibit 2009 under FED. R. EVID. 802. This exhibit incorporates or conveys inadmissible hearsay that is offered to prove the truth of matters allegedly asserted therein. For example, Patent Owner states, “‘Only when’ seems indistinguishable from ‘only if’ (and indeed in Apple’s IPR2016-01228 Petition, Apple uses the phrase ‘only when’ when discussing a narrower construction).” Paper 22 at 25 (citing Ex. 2009 at 22).

April 3, 2017

Respectfully submitted,

/Charles M. McMahon /
Charles M. McMahon (Reg. 44,926)
MCDERMOTT WILL & EMERY LLP

Attorney for Petitioner

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Patent 7,881,236 B2

CERTIFICATE OF SERVICE

I certify that I sent a copy of the foregoing PETITIONER'S OBJECTIONS UNDER 37 C.F.R. § 42.64(B)(1) TO PATENT OWNER'S EXHIBITS 2004, 2006, and 2009 on April 3, 2017 by electronic mail to the attorneys of record for the Patent Owner at the following e-mail addresses:

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rschultz@robinskaplan.com

/Hersh H. Mehta/

Hersh H. Mehta (Reg. 62,336)