

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZTE (USA) INC, HTC CORPORATION, AND HTC AMERICA, INC.

Petitioners

v.

EVOLVED WIRELESS, LLC

Patent Owner

Case IPR2016-00757

Patent 7,881,236

**PATENT OWNER'S PRELIMINARY RESPONSE TO
PETITIONERS' PETITION FOR INTER PARTES REVIEW OF
UNITED STATES PATENT NO. 7,881,236**

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Pursuant to 37 C.F.R. § 42.107, Patent Owner Evolved Wireless, LLC submits this Preliminary Response to the above-captioned Petition for *Inter Partes* Review of U.S. Patent No. 7,811,236 (“Pet.,” Paper 1).

I. Introduction

The Petition fails to establish a reasonable likelihood that Petitioners would prevail with respect to any claim challenged in the Petition. The failure is manifold. First, the Petition offers unreasonably broad constructions for one limitation of the independent claims of U.S. Patent No. 7,811,236 (the “’236 patent”). Second, the Petition fails to apply the reasoning it used to come up with the first limitation’s construction to a second limitation. Then, the Petition fails to show how this second limitation is rendered obvious. For this reason alone, after construing the claims, the Board should deny the Petition.

Perhaps recognizing the unreasonableness of its proposed construction, the Petition also offers a narrower construction, but the Board should deny the Petition under this construction too. This is because Petitioners’ argument that Exhibit 1002 (“the 320 reference”) fills the gap in its primary reference (“the 321 reference”) is incorrect. The 320 reference shows only a simple case in the random access procedure that is at issue, and because the reference does not consider more complex cases (cases that the ’236 patent inventors did consider), the conclusion Petitioners drew from it is unsupported.

Finally, even using Petitioners’ unreasonably broad construction, the Petition fails to demonstrate that the 321 reference teaches a claim element present in all grounds. Indeed, that reference, which allegedly discloses the two conditions

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