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 IPR2016-00757ⁱ Patent 7,881,236 B2

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

PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE TO PETITIONER'S PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 7,881,236 B2

ⁱ IPR2016-01345 has been consolidated with this proceeding.



Table of Contents

I.	Intro	Introduction		
II.	The First "Transmitting" Feature			
	A. Petitioner need not show the prior art satisfies the first			
		"transmitting" feature to establish invalidity.	2	
	В.	Patent Owner incorrectly restricts the first "transmitting" feature	3	
		1. Expressio unius does not restrict "if" to "only if."	3	
		2. Patent Owner's matrices do not restrict "if" to "only if."	5	
		3. Extrinsic evidence does not restrict "if" to "only if."	6	
		4. The child patent's prosecution does not restrict "if" to		
		"only if."	8	
		5. Patent Owner's inoperability argument fails.	8	
	C.	Petitioner established the 321 reference taught the first		
		"transmitting" feature even under Patent Owner's restrictive "only		
		if" interpretation.		
III.	The First "Determining" Feature			
	Α.	Patent Owner incorrectly restricts the first "determining" feature	. 14	
	B.	Petitioner established that the 321 reference taught the first		
		"determining" feature given its plain language and with Patent		
		Owner's restrictions	. 15	
	C.	Patent Owner's contrary assertions fail.		
IV.	The Second "Transmitting" Feature			
	Α.	Petitioner need not show the prior art satisfies the second		
		"transmitting" feature to establish invalidity.	. 21	
	В.	Petitioner provided unrebutted evidence that the 321 reference		
		taught the second "transmitting" feature.	. 21	
	C.	Patent Owner incorrectly restricts the second "transmitting"		
		feature and mischaracterizes Dr. Min's testimony.	. 22	



Table of Authorities

Bumble Bee Foods, LLC v. Kowalski, IPR2014-00224, Paper 18 (PTAB Jun. 5, 2014)	. 6
Chevron USA Inc. v. Echazabal, 536 U.S. 77 (2002)	. 4
Despoir, Inc. v. Nike USA, Inc., 2005 WL 659199 (N.D. Ill. Feb. 9, 2005)	. 4
Ex parte Gibbings, Appeal No. 2015-004458 (PTAB Dec. 8, 2016)2, 9, 2	21
Ex parte Schulhauser, Appeal No. 2013-007847 (PTAB Apr. 28, 2016)	. 2
FedEx Corp. v. Katz Tech. Licensing, L.P., CBM2015-00053, Paper 9 (PTAB Jun. 29, 2015)	. 6
Hewlett-Packard Co. v. Mustek Sys., Inc., 340 F.3d 1314 (Fed. Cir. 2003)2	26
IBM Corp. v. IV II LLC, IPR2015-01323, Paper 38 (PTAB Sept. 27, 2016)	. 7
Intervet Am., Inc. v. Kee-Vet Labs., Inc., 887 F.2d 1050 (Fed. Cir. 1989)	. 4
Omega Eng'g, Inc. v. Raytek Corp., 334 F.3d 1314 (Fed. Cir. 2003)	. 8
<i>Philips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005) (en banc)	. 7
Shenyang Yuanda Aluminum Industry Eng'g v. United States, 776 F.3d 1351 (Fed. Cir. 2015)	. 4
Southwall Tech., Inc., v. Cardinal IG Co., 54 F.3d 1570 (Fed. Cir. 1995)	. 6
Unwired Planet, LLC v. Google Inc., 841 F.3d 995 (Fed. Cir. 2016)2	26



Table of Abbreviations

Abbreviation	Paper/Exhibit No.	Description
Cooklev	Exhibit 2006	Declaration of Todor Cooklev, Ph.D.
ID	Paper 11	Decision Instituting Inter Partes Review
Min	Exhibit 2004	Deposition of Paul S. Min, Ph.D.
Petition	Paper 3	Petition for <i>Inter Partes</i> Review of U.S. Patent No. 7,881,236
Response	Paper 22	Patent Owner's Response to Petitioners' Petition for <i>Inter Partes</i> Review of United States Patent No. 7,881,236



Statement of Material Facts

Patent Owner did not submit a statement of material facts in its Patent Owner's Response. Therefore, this reply need not provide a response pursuant to 37 C.F.R. § 42.23(a), and no facts are admitted.



DOCKET

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

