UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZTE (USA) Inc.,
HTC Corporation, and
HTC America, Inc.,

Petitioner,

V.

Evolved Wireless LLC,

Patent Owner

Case IPR2016-00758
Patent 8,218,481

PATENT OWNER'S PRELIMINARY RESPONSE TO PETITIONERS' PETITION FOR INTER PARTES REVIEW OF UNITED STATES PATENT NO. 8,218,481

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TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 3

A. The 8,218,481 Patent 3

B. Overview of Petition for *Inter Partes* Review 7

III. CLAIM CONSTRUCTION 8

IV. Petitioners fail to establish a reasonable likelihood of success as to any challenged claim 9

A. Legal Standard 9

B. The Petition Fails on Its Face to Establish a Prima Facie Case of Anticipation or Obviousness 11

1. The Petition fails to identify any disclosure in the Prior Art References for a required element present in every challenged claim 11

a. The Petition fails to identify a consecutive sequence within one frame 12

b. Petitioners' expert fails to identify a consecutive sequence within one frame 13

2. The Petition fails to identify any disclosure in the Prior Art References for an element required by dependent claims 4 and 11 14

3. The Petition fails to establish a motivation to combine or a reasonable expectation of success 16

V. CONCLUSION 18

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TABLE OF AUTHORITIES

Page(s)

Cases

CFMT, Inc. v. Yieldup Intern. Corp.,
349 F.3d 1333 (Fed. Cir. 2003) 10

In re Cyclobenzaprine Hydrochloride Extended—Release Capsule Patent Litig.,
676 F.3d 1063 (Fed. Cir. 2012) 10

Kinetic Concepts, Inc. v. Smith & Nephew, Inc.,
688 F.3d 1342 (Fed. Cir. 2012) 10, 16

KSR International Co. v. Teleflex Inc. et al,
550 U.S. 398 (2007)....................17, 18

Mitsubishi Plastics, Inc. v. Celgard, LLC,
Case No. IPR2014-00524, Paper 27 (Nov. 21, 2014) 9

Procter & Gamble Co. v. Teva Pharm. USA, Inc.,
566 F.3d 989 (Fed. Cir. 2009) 10

Sanofi-Synthelabo, Inc. v. Apotex, Inc.,
550 Fed. 1075 (Fed. Cir. 2008)....................10

Wowza Media Sys., LLC v. Adobe Sys., Inc.,
Case IPR2013-00054, Paper 16 (July 13, 2013) 17

Statutes

35 U.S.C. § 314(a) 10

35 U.S.C. § 371 3

Other Authorities

37 C.F.R. § 42.20(c)....................9

37 C.F.R. § 42.107 1

37 C.F.R. § 42.108(c)....................9

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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. 8,218,481 ("Pet.," Paper 1).

I. INTRODUCTION

The Petition should be denied because it fails to establish a reasonable likelihood that Petitioners would prevail with respect to any claim challenged in the Petition. Specifically, the Petition fails to show a reasonable likelihood that each element of the asserted claims is present in the prior art and, for those Grounds which rely on alleged obviousness, the Petition fails to establish either a motivation to combine or a reasonable expectation of success.[1]

The Petition fails on its face to set forth a prima facie invalidity case with respect to each and every challenged claim. In particular, the Petition asserts that the Broadest Reasonable Interpretation of the term "a consecutive sequence," which appears in both independent claims and therefore must be met to set forth a prima facie case of anticipation or obviousness with respect to every challenged claim, is "limited to a consecutive sequence *within one frame*." (Pet. at 22

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[1] Patent Owner's argument in this Preliminary Patent Owner Response is that Petitioners have failed to show that each and every element of the challenged claims is present or suggested in the Prior Art References and have failed to show a motivation to combine or reasonable expectation of success required for obviousness. Should the Board institute *inter partes* review, Patent Owner reserves the right to raise additional arguments in its formal response.

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(emphasis in original).) Petitioners affirmatively took upon themselves the burden of establishing that this limitation, as construed, is present in the Prior Art References.

After setting forth this construction on pages 21-23, however, the word "frame" never again appears in the Petition. Indeed, Petitioners never applied their construction to the Prior Art References and therefore did not establish that the Prior Art References disclose a "consecutive sequence *within one frame*." Petitioners failed to meet their burden by failing to demonstrate that the claim element "consecutive sequence" is disclosed in the references. Thus, a trial should not be instituted.

The Petition similarly fails to set forth a prima facie invalidity case for dependent claims 4 and 11. Those claims include the limitation "wherein a value of said applied cyclic shift is determined as an integer multiple of a predetermined shift unit." (Ex. 1001 at 18:49-51, 19:13-15.) The Petition alleges that the Prior Art References disclose "a predetermined shift unit." (Pet. at 33-34.) The Petition fails, however, to identify any alleged "integer multiple." (*See id.* at 33-34, 35-36.) Having once again failed to identify any disclosure in the Prior Art References for a required claim element, the Petition fails on its face to demonstrate a reasonable likelihood that Petitioners will prevail on dependent claims 4 and 11.

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