

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZTE CORPORATION, and ZTE (USA), Inc.,
Petitioners,

v.

CELLULAR COMMUNICATIONS EQUIPMENT LLC,
Patent Owner

Case IPR2017-_____
Patent 8,457,676

**MOTION FOR JOINDER TO RELATED INSTITUTED *INTER PARTES*
REVIEW UNDER 35 U.S.C. 315(c), 37 C.F.R. §§ 42.22 AND 42.122(b)**

Mail Stop Patent Board
Patent Trial and Appeal Board
P.O. Box 1450
Alexandria, VA 22313-1450

TABLE OF CONTENTS

I. STATEMENT OF RELIEF REQUESTED 1

II. BACKGROUND AND RELATED PROCEEDINGS 2

III. STATEMENT OF MATERIAL FACTS 2

IV. LEGAL STANDARDS AND APPLICABLE RULES 4

 A. Legal Standard 4

V. ARGUMENT 5

 A. Joinder of the instant proceeding with the HTC IPR is appropriate 5

 B. Joinder should be granted as a matter of right because the present
 petition contains identical grounds to the sole ground instituted by
 the Board 7

 C. The trial schedule will complete within one year, and be only
 minimally impacted 7

 D. Proposed procedural safeguards 8

VI. CONCLUSION 9

I. STATEMENT OF RELIEF REQUESTED

ZTE Corporation and ZTE (USA), Inc. (collectively “Petitioner”) submits concurrently herewith a petition for *inter partes* review (IPR) of U.S. Patent No. 8,457,676 (“the ’676 Patent”) and respectfully requests that its petition be granted. Petitioner also respectfully moves that this proceeding be joined pursuant to 35 U.S.C. § 315(c), 37 C.F.R. §§ 42.22 and 42.122(b) with the pending IPR concerning the same patent in HTC Corporation and HTC America, Inc. v. Cellular Communications Equipment LLC, Case IPR2016-01501 (the “HTC IPR”). Petitioner’s petition for *inter partes* review is substantively identical to the HTC IPR petition, only differing in that it omits the proposed rejections by HTC that were not instituted by the PTAB.

The Motion for Joinder is timely under 37 C.F.R. §§ 42.22 and 42.122(b), because it is submitted within one month of February 13, 2017, the institution date of the HTC IPR. In accordance with the Board’s Representative Order identifying matters to be addressed in a motion for joinder (*Kyocera Corp. v. SoftView LLC*, Paper No. 15, IPR2013-00004, April 24, 2013), Petitioner submits that: (1) joinder is appropriate because it will promote efficient determination of the validity of the ’676 Patent without prejudice to HTC Corporation, HTC America, Inc. or Cellular Communications Equipment, LLC; (2) the Petition includes grounds that are substantively identical to the ground instituted in the HTC IPR; (3) joinder would

not affect the pending schedule in the HTC IPR or increase the complexity of that proceeding, thereby minimizing costs; and (4) Petitioner is willing to agree to consolidated filing with HTC to minimize burden and schedule impact.

II. BACKGROUND AND RELATED PROCEEDINGS

Cellular Communications Equipment, LLC (“CCE”) is the owner of the ’676 Patent. Starting in 2015, CCE filed four suits in district court, including suits against HTC Corporation, HTC America, Inc., ZTE Corporation, and ZTE (USA), Inc., alleging infringement of the ’676 Patent by cellular phones.

The ’676 Patent is also the subject of several IPRs: IPR2016-01501 (instituted) and IPR2016-01493 (instituted). The HTC petition for *inter partes* review was filed on July 27, 2016 and trial was instituted on February 13, 2017 (Paper No. 7, IPR 2016-01501) on one ground set forth in HTC’s petition. The Board set May 15, 2017 as the date for CCE’s response to the petition, and oral argument is currently set for November 8, 2017. *See* Paper No. 8, IPR2016-01501.

III. STATEMENT OF MATERIAL FACTS

1. CCE is the owner of the ’676 Patent.
2. On April 30, 2015, CCE filed a complaint against Petitioners for infringement of the ’676 Patent; this litigation was dismissed on February 27, 2017. On January 25, 2017, CCE filed a second complaint against Petitioners for infringement of the ’676 Patent (the “District Court Litigation”).

3. On July 27, 2016, HTC Corporation and HTC America, Inc. filed their petition for *inter partes* review of claims 1, 3, 19, 21, 33, and 34 of the '676 Patent.

4. On February 13, 2017, a decision instituting *inter partes* review of claims 1, 19, and 33 (but not claims 3, 21, or 34) was entered in the HTC IPR (Paper No. 7, IPR2016-01501) on the grounds that claims 1, 19, and 33 were unpatentable over U.S. Patent Application Publication No. 2006/0140154 to Kwak ("Kwak") under 35 U.S.C. § 103(a) and denying instituted of the other proposed grounds for rejection.

5. Oral argument is presently set for November 8, 2017. *See* Paper No. 8, IPR2016-01501.

6. Petitioners are filing a petition for *inter partes* review of claims 1, 19, and 33 of the '676 Patent with this Motion for Joinder.

7. The Petition includes a ground that is substantively the same as the sole ground instituted in the HTC IPR. The Petition and supporting evidence here is identical in all material respects to the petition and supporting evidence that was filed in the HTC IPR. The only changes to the petition are to remove grounds not instituted by the PTAB in the HTC IPR.

8. The five exhibits supporting the present petition, Exhibits 1001 to 1005, are identical to exhibits 1001 through 1005 that were filed in support of the

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.