

Filed on behalf of Cellular Communications Equipment LLC

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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 IPR2017-01079
U.S. Patent No. 8,457,676

PATENT OWNER'S PRELIMINARY RESPONSE

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I. INTRODUCTION

Patent Owner Cellular Communications Equipment LLC (“CCE” or “Patent Owner”) hereby files this Preliminary Response (“Preliminary Response”) to the Petition (Paper 1) (the “Petition”) for *Inter Partes* Review of U.S. Patent No. 8,457,676 (Ex. 1001) (the “’676 Patent”) in IPR2017-01079 filed by ZTE Corporation and ZTE (USA), Inc. (collectively, “ZTE” or “Petitioners”).

The Petitioners’ challenge to the ’676 Patent claims should be rejected because (1) the Petition is time-barred under 35 U.S.C. § 315(b) and (2) the Petition is cumulative of a prior office proceeding under 35 U.S.C. § 325(d).

This Preliminary Response is timely under 35 U.S.C. § 313 and 37 C.F.R. §§ 1.7, 42.107(b), as it is filed on the next business day following three months from the April 10, 2017 mailing date of the Notice of Filing Date Accorded to Petition and Time for Filing Patent Owner Preliminary Response. Paper 6. For purposes of this Preliminary Response, Patent Owner has limited its identification of deficiencies in the Petition and does not intend to waive any arguments not addressed in this Preliminary Response.

II. BACKGROUND

A. Status of Related Litigation

The ’676 patent is currently subject to the following district court litigations:

- *Cellular Communications Equipment LLC v. AT&T Inc., et al.*, 2:15-

cv-00576 (E.D. Tex.) (all claims and issues pertaining to the '676 patent are currently stayed pending a decision in IPR2016-1493);

- *Cellular Commc'ns Equipment LLC v. Sprint Corp. et al.*, 2:15-cv-00579 (E.D. Tex.) (all claims and issues pertaining to the '676 patent are currently stayed pending a decision in IPR2016-1493);
- *Cellular Commc'ns Equipment LLC v. T-Mobile USA, Inc. et al.*, 2:15-cv-00580 (E.D. Tex.) (all claims and issues pertaining to the '676 patent are currently stayed pending a decision in IPR2016-1493);
- *Cellular Commc'ns Equipment LLC v. Verizon Commc'ns, Inc. et al.*, 2:15-cv-00581 (E.D. Tex.) (all claims and issues pertaining to the '676 patent are currently stayed pending a decision in IPR2016-1493);
- *Cellular Commc'ns Equipment LLC v. HTC Corporation, et al.*, 2:17-cv-00078 (E.D. Tex.), filed January 25, 2017; and
- *Cellular Commc'ns Equipment LLC v. ZTE Corporation, et al.*, 2:17-cv-00079 (E.D. Tex.), filed January 25, 2017.

CCE filed its first complaint alleging infringement of the '676 patent against ZTE, among other parties, on April 30, 2015. *Cellular Commc'ns Equipment LLC v. AT&T Inc., et al.*, 2:15-cv-00576, Dkt. No. 1 (E.D. Tex. April 30, 2015). *See Ex. 2001.* ZTE (USA) Inc. was served with the amended complaint on July 28, 2015 and also entered an appearance in the litigation on August 11, 2015. *See Ex. 2002.*

B. Status of Related IPRs

The '676 patent is currently the subject of two other pending IPR proceedings: (1) the IPR2016-01501 (the "HTC IPR") to which Petitioners seek joinder and (2) IPR2016-01493, filed by Apple Inc. (the "Apple IPR"). On February 13, 2017, a decision instituting *inter partes* review of claims 1, 19, and 33 (but denying institution on claims 3, 21, or 34) was entered in the HTC IPR (Paper 7, IPR2016-01501) based on one ground of obviousness involving U.S. Patent Application Publication No. 2006/0140154 to Kwak ("Kwak"). Also on February 13, 2017, a decision instituting *inter partes* review of claims 1, 3, 19, and 21 was entered in the Apple IPR (Paper 7, IPR2016-01493) based on obviousness grounds involving U.S. Patent Application Publication No. 2004/0223455 to Fong ("Fong"), R2-052744, "Filtering For UE Power Headroom Measurement," 3GPP RAN WG2 #49 Meeting, Seoul, Korea, November 2, 2005 ("Ericsson"), and U.S. Patent No. 6,445,917 to Bark ("Bark").

III. ARGUMENTS AND AUTHORITIES

A. The Petition should be denied because it was not timely filed, thus institution is barred by 35 U.S.C. § 315(b).

By statute, the Petition was not timely filed and it may not be instituted for trial. Congress set forth the one-year statutory time-bar for IPR petitions as follows in § 315(b):

An *inter partes* review may not be instituted if the petition requesting

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