

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

CELLULAR COMMUNICATIONS EQUIPMENT LLC,

Patent Owner

Case IPR2017-01508
U.S. Patent No. 8,385,966

PETITIONERS' REPLY TO PATENT OWNER'S RESPONSE

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Under 37 C.F.R. § 42.23, Petitioners HTC Corp., HTC America, Inc., ZTE Corp., and ZTE (USA), Inc. Reply to Patent Owner Cellular Communications Equipment LLC's Response (Paper 11). With this Reply and their Petition, Petitioners requests cancellation of claims 1-17 of U.S. Patent No. 8,385,966.

I. Introduction

Petitioners' expert testimony in this proceeding is effectively unrebutted. CCE filed a declaration, but—in contravention of the Patent Office's Rules, Trial Practice Guide, and a Board decision—CCE does not cite to, explain, or otherwise rely on that declaration at any point in its Response. Thus, that declaration is not at issue here, and the Board should exclude or give no weight to that exhibit.

The dispute between the parties is therefore limited to two issues supported only by CCE's attorney argument. First, CCE contends the asserted grounds do not disclose computing initial transmit power using full pathloss because Qualcomm purportedly does not disclose that δ equals one. But Petitioners demonstrated that Qualcomm's Equation 4 uses full pathloss because it depends on a preamble power that the '966 patent concedes requires using full pathloss, regardless of δ 's value. Moreover, nothing in CCE's cited evidence—Qualcomm, Exhibit 2004, or Dr. Akl's testimony—demonstrates that δ 's role is to modify pathloss. Thus, δ is *not required* to equal one for Qualcomm to disclose full pathloss.

Second, CCE contends the asserted grounds do not disclose the power control adjustment state limitations primarily because TS 36.213 requires setting $f(0)=0$, which one must recognize as deficient to be motivated to look to Qualcomm for a solution, and because Qualcomm cannot disclose initializing power control adjustment states without disclosing them expressly and the claimed initialization cannot be derived from admitted prior art. But TS 36.213 does *not* require $f(0)=0$, it only provides that as an example, and Petitioners' asserted combination *starts with Qualcomm* and shows why one would be motivated to combine that teaching with TS 36.213 for efficiency and compliance with standards. The claimed initialization of the power control adjustment states can be shown either in Qualcomm (despite not expressly using those terms) or based on what an ordinarily skilled artisan would derive from known values in the admitted prior art equations. Thus, one would make the asserted combination, and that combination teaches the power control adjustment state limitations.

For these reasons and those below, CCE fails to distinguish the claims of the '966 patent over the instituted grounds. Accordingly, claims 1-17 of the '966 patent should be cancelled as obvious in view of the instituted grounds.

II. CCE's declaration should be given no weight

The Board should give no weight to CCE's declaration. CCE filed a declaration of Dr. Jabbari as Exhibit 2013. But other than to identify it in the

updated list of exhibits, *see* Paper 11 at vii, CCE does not cite to, explain, or otherwise rely on that declaration at any point in its Response, *see generally id.* at 11. Thus, that declaration is not at issue in the proceeding.

Moreover, the Rules and the Office Patent Trial Guide prohibit offering evidence without explanation or citation. "A patent owner response is filed as an opposition," 37 C.F.R. § 42.120, and "[o]ppositions and replies must comply with the content requirements of motions," 37 C.F.R. § 42.23. The content requirements of motions (and thus, of a Patent Owner Response) require that each be filed "as a separate paper and ***must include***: . . . A full statement of the reasons for the relief requested, ***including a detailed explanation of the significance of the evidence*** including material facts, and the governing law, rules, and precedent." 37 C.F.R. § 42.22(a)(1).¹ The Office Patent Trial Practice Guide similarly provides that "[t]he [Patent Owner] response . . . should include any affidavits or additional factual evidence sought to be relied upon ***and explain the relevance of such evidence.***" Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012). With respect to Exhibit 2013, CCE did not meet these requirements. Thus, consistent with these requirements, the Board should exclude or give no weight to that Exhibit. *See* 37 C.F.R. § 42.104 (b)(5) ("The Board may exclude or give no

¹ All emphases herein are added unless otherwise noted.

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