

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

ZTE (USA) INC.,

Petitioner

v.

FUNDAMENTAL INNOVATION SYSTEMS INTERNATIONAL LLC,

Patent Owner

---

**MOTION TO ADD A REAL PARTY IN INTEREST RETROACTIVELY**

Case No. IPR2018-00111

Patent No. 8,624,550 B2

---

Before RAE LYNN P. GUEST, JO-ANNE M. KOKOSKI, and  
JON B. TORNQUIST, *Administrative Patent Judges*

**Table of Contents**

I. Introduction.....1

II. Background.....1

III. Argument .....3

    A. The Intervening Change In Law Merits Retroactive  
    Addition of ZTE (TX) As A Real Party In Interest .....3

        1. The Federal Circuit’s *AIT* Decision Changed The  
        Law.....3

        2. There Is No Prejudice To Patent Owner.....9

        3. PTAB Precedent Supports Retroactive Naming of  
        an Additional Real Party In Interest .....10

    B. If The Board Denies Retroactive Identification Of ZTE  
    (TX), Then The Trial Should Be Terminated .....12

IV. Conclusion .....13

## Table of Authorities

### Cases

<i>Applications in Internet Time, LLC v. RPX Corporation</i> , 897 F.3d 1336 (Fed. Cir. 2018) .....	passim
<i>Aruze Gaming Macau, Ltd. v. MGT Gaming, Inc.</i> , IPR2014-01288, Paper 13 (P.T.A.B. Feb. 20, 2015).....	3, 6
<i>Dep't of Justice v. IRIS Corp. Berhad</i> , IPR2016-00497, Paper 7 (P.T.A.B. Jul. 25, 2016) .....	5
<i>Elekta, Inc. v. Varian Med. Sys., Inc.</i> , \ IPR2015-01401, Paper 19 (P.T.A.B. Dec. 31, 2015) .....	13, 14, 15
<i>GEA Process Eng'g. Inc. v. Steuben Foods, Inc.</i> , IPR2014-00041, Paper 140 (P.T.A.B. Feb. 11, 2015).....	4
<i>Gillig v. Nike, Inc.</i> , 602 F.3d 1354 (Fed. Cir. 2010).....	6
<i>In re Micron Tech., Inc.</i> , 875 F.3d 1091 (Fed. Cir. 2017).....	15, 16
<i>LG Display Co., Ltd. v. Innovative Display Techs. LLC</i> , IPR2014-01362, Paper 12 (P.T.A.B. Mar. 2, 2015) .....	6
<i>Lumentum Holdings, Inc. v. Capella Photonics, Inc.</i> , IPR2015-00739, Paper 38 (P.T.A.B. Mar. 4, 2016) .....	13
<i>Mobile Tech., Inc. v. Sennco Solutions, Inc.</i> , IPR2017-02199 (P.T.A.B. Apr. 10, 2018).....	7
<i>Puzhen Life USA, LLC v. Esip Series 2, LLC</i> , IPR2017-02197 (P.T.A.B. Apr. 11, 2018).....	7
<i>Taylor v. Sturgell</i> , 553 U.S. 880 (2008).....	5
<i>TRW Auto. U.S. LLC v. Magna Elecs. Inc.</i> , IPR2014-01351, Paper 7 (P.T.A.B. Feb. 10, 2015).....	6
<i>Wi-Fi One, LLC v. Broadcom Corp.</i> , 887 F.3d 1329 (Fed. Cir. 2018).....	8
<i>Zerto, Inc. v. EMC Corp.</i> , IPR2014-01254, Paper 32 (P.T.A.B. Feb 12, 2015).....	5
<i>Zoll Lifecor Corp. v. Philips Elec.N. Am. Corp.</i> , IPR2013-00606, Paper 13 (P.T.A.B. Mar. 20, 2014) .....	4

IPR2018-00111  
Motion To Add Real Party In Interest Retroactively

**Statutes**

35 U.S.C. §312(a)(2).....12

**Rules**

37 C.F.R. § 42.1 .....15  
37 C.F.R. § 42.72 ..... 16, 17

**Other Authorities**

Patent and Trademark Office Patent Trial Practice Guide, 77 Fed.  
Reg. 48756, 48,759 (Aug. 14, 2012).....4, 6  
Practice Guide for Proposed Trial Rules, 77 Fed. Reg. 6868, 6870  
(Feb. 9, 2012) .....4  
Revision of Patent Term Adjustment Provisions Relating to Appellate  
Review, Fed. Reg. 49,354, 49,356 (Aug. 16, 2012) .....12

## **I. Introduction**

Petitioner ZTE (USA) Inc. (“Petitioner”) respectfully requests leave to add ZTE (TX) Inc. (“ZTE (TX)”) as a real party in interest retroactively based on the intervening change in the law presented in *Applications in Internet Time, LLC v. RPX Corporation*, 897 F.3d 1336 (Fed. Cir. 2018) (“*AIT*”). See Paper 45, Order, at

1. ZTE (TX) has never funded or controlled this proceeding, and therefore Petitioner did not name ZTE (TX) as a real party in interest when the petition was filed. However, under the new and broadened standard that the Federal Circuit recently adopted in *AIT*, ZTE (TX) now arguably qualifies as a real party in interest. Given the intervening change in the law, and because any change in the filing date of the petition would be fatal to this proceeding, Petitioner respectfully requests that the Board enter the amended mandatory notice submitted herewith and maintain the original filing date of the petition in this instituted trial.

## **II. Background**

In the related district court case, Patent Owner alleges infringement of U.S. Patent No. 8,624,550 (the “550 patent”) by Petitioner and two related entities, ZTE Corporation and ZTE (TX). ZTE Corporation manufactures the accused products. Petitioner imports, offers for sale, and sells the accused products in the United States. By contrast, ZTE (TX) does not make, import, offer for sale, or sell the accused products. Nor has ZTE (TX) played any role in developing 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.