

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.

Case IPR2018-00111
Patent No. 8,624,550

**PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO ADD
A REAL PARTY IN INTEREST RETROACTIVELY AND IN THE
ALTERNATIVE TO TERMINATE THE PROCEEDING**

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<i>Fasteners for Retail, Inc. v. RTC Indus., Inc.</i> , IPR2018-00741, Paper 32 (PTAB, Nov. 15, 2018).....	4, 14
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<i>Mexichem Amanco Holdings S.A. de C.V., v. Honeywell Int’l, Inc.</i> , IPR2015-01309, Paper 25 (PTAB Apr. 7, 2016)	10, 14
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EXHIBIT LIST

Ex. 2001	Declaration of Kenneth Fernald, Ph.D. in Support of Fundamental Innovation Systems International LLC's Patent Owner Preliminary Response
Ex. 2002	Declaration of Mr. Steven Rogers in Support of Fundamental Innovation Systems International LLC's Patent Owner Preliminary Response
Ex. 2003	Jan Axelson, <i>USB Complete</i> (1999), excerpt
Ex. 2004	U.S. Patent No. 5,884,086 ("Amoni")
Ex. 2005	Deposition Transcript of John Garney (Nov. 20, 2017) in <i>Fundamental Innovation Sys. Int'l LLC v. Samsung Electronics Co.</i> (E.D. Tex.), excerpt
Ex. 2006	Jan Axelson, <i>USB Complete</i> (2d ed. 2001), excerpt
Ex. 2007	Sheasby PHV Declaration
Ex. 2008	Fundamental-Samsung Settlement Agreement (Confidential)
Ex. 2009	2018-07-02 Hearing Transcript
Ex. 2010	Deposition Transcript of John Garney (Nov. 20, 2017) in <i>Fundamental Innovation Sys. Int'l LLC v. Samsung Electronics Co.</i> (E.D. Tex.), full transcript
Ex. 2011	Declaration of Kenneth Fernald, Ph.D. in Support of Fundamental Innovation Systems International LLC's Patent Owner Response
Ex. 2012	Declaration of Mr. Steven Rogers in Support of Fundamental Innovation Systems International LLC's Patent Owner Response
Ex. 2013	Deposition Transcript of Mr. James T. Geier in IPR2018-00111 (July 30, 2018)
Ex. 2014	ZTE (TX) Inc.'s corporate disclosure statement in <i>Fractus, S.A. v. ZTE Corp. et al.</i> , Civ. No. 2:17-cv-00561-JRG (Sept. 25, 2017, E.D. Tex.)
Ex. 2015	ZTE (USA) and ZTE (TX) Inc.'s corporate disclosure statement in <i>Saint Lawrence Communications LLC v. ZTE</i>

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