

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 IPR2018-00425
Patent 7,893,655 B2

Record of Oral Hearing
Held: April 11, 2019

Before LYNNE E. PETTIGREW, JO-ANNE M. KOKOSKI, and
PAUL J. KORNICZY, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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ON BEHALF OF THE PATENT OWNER:

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The above-entitled matter came on for hearing on Thursday, April 11, 2019 commencing at 1:30 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

PROCEEDINGS

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2 JUDGE PETTIGREW: Good afternoon. This is a hearing for IPR
3 2018-00425, ZTE USA Inc., v. Fundamental Innovation Systems
4 International, LLC. Judges Kokoski and Korniczky are participating
5 remotely. Because they can't see the slides displayed in the room, please
6 identify particular slide numbers as you move through your demonstratives.
7 We also remind the parties that demonstratives are not evidence but instead
8 are aids to assist the panel in understanding the arguments presented at the
9 hearing today.

10 We are aware of Petitioner's pending motion to strike portions
11 of certain cross-examination testimony as well as Patent Owner's opposition
12 and Petitioner's Reply. We're also aware of Petitioner's objections to some
13 of Patent Owner's demonstratives that included reference to that testimony.
14 At this time, we will reserve ruling on the motion and the objections. We'll
15 allow discussion of the testimony here today but ultimately we will not
16 consider it in our final written decision if we determine the scope of cross-
17 examination was improper.

18 Each side has 60 minutes to argue. As set forth in our Hearing
19 Order Petitioner will begin by presenting its case. Patent Owner then will
20 have the opportunity to respond. Petitioner, you may reserve rebuttal time
21 not to exceed 30 minutes and Patent Owner may reserve surrebuttal time not
22 to exceed ten minutes. Counsel, when you begin your argument please
23 identify yourself and the party you represent for the record and also indicate
24 how much time you would like to reserve for rebuttal or surrebuttal.
25 Petitioner, you may begin when ready.

1 MR. MCMAHON: Good afternoon Judge Pettigrew, Judge
2 Kokoski, Judge Korniczky. May it please the Board, I would like to reserve
3 30 minutes for rebuttal please. My name is Charles McMahon from
4 McDermott Will & Emery on behalf of the Petitioners ZTE USA. With me
5 is Jiaxiao Zhang, also from McDermott Will & Emery and representing
6 Petitioner.

7 I note the Board's comments on the Motion to Strike and I won't
8 address it any further unless there are questions except just to point out that
9 there are -- one of the arguments that has come up, and I'll come back to this
10 when we reach that point in the substantive discussion, is that Petitioners are
11 trying to run away from certain testimony and that's what the purpose of the
12 Motion to Strike. That couldn't be further from the truth. The testimony I
13 think that was given throughout that deposition is consistent with our case
14 and has been consistent with our case since the Petition stage. We embrace
15 that testimony and frankly, if it had been a few questions here or there, we
16 probably would have let it go. I have not seen a scope violation of this
17 magnitude and we felt the need to enforce the rules and seek the Motion to
18 Strike, so that's the basis behind that.

19 Turning to the substance. Essentially, and Judge Pettigrew I'm
20 sorry, my computer was not getting along with the projector so I'm not going
21 to have the slides on the wall but I will refer to them. I'll be --

22 JUDGE PETTIGREW: That's all right. I have a copy of the
23 slides.

24 MR. MCMAHON: -- I'll be using them only sparingly. The
25 patent in this case, the 655 patent, essentially comes down to combining
26 three concepts. One of the concepts is that you have a device and you want

1 to be able to charge the battery in that device while also supplying current to
2 the electronic system of the device and do so in a way that never starves the
3 electronic system of the power it needs to operate and so you regulate
4 through the use of a switch, or restrict as the patent says, the current that
5 goes to the battery charging so that it doesn't interfere with the operation of
6 the device, but to the extent current is available you provide that current to
7 the battery.

8 The second concept was to do that on a dynamic basis so for a
9 variety of reasons, the amount of current or voltage that the electronic
10 system requires may change over time and so the ability to adapt and adjust
11 the amount of current going to the battery depending on what the system
12 needs to operate at that particular time was the second concept.

13 The third concept was to use switch mode circuitry to power the
14 device and to charge the battery, largely because of its efficiency which was
15 well know. All three of those concepts were very well known in the art.
16 They are presented in the prior art that we have asserted in our grounds and
17 as Mr. Geier has testified they were also well known concepts in the art
18 more generally, particularly the idea of switch mode circuitry being more
19 efficient.

20 So the Veselic prior art reference, and when I use the word
21 Veselic I will refer to the prior art Veselic. When I refer to the challenged
22 patent I'll say 655 patent just to avoid any confusion there. The Veselic
23 prior art reference described the first and central concept that is presented in
24 the 655 patent which is that you use a switch to control the current that goes
25 to the battery charging versus the current that goes to the electronic system
26 and to do that to restrict when necessary current that goes to charging the

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