

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC, ZTE (USA), INC.,
SAMSUNG ELECTRONICS CO., LTD.,
LG ELECTRONICS INC., HUAWEI DEVICE USA, INC.,
HUAWEI DEVICE CO. LTD., HUAWEI TECHNOLOGIES CO. LTD.,
HUAWEI DEVICE (DONGGUAN) CO. LTD.,
HUAWEI INVESTMENT & HOLDING CO. LTD.,
HUAWEI TECH. INVESTMENT CO. LTD., and
HUAWEI DEVICE (HONG KONG) CO. LTD.,
Petitioner,

v.

CYWEE GROUP LTD,
Patent Owner.

Case IPR2018-01257 (Patent 8,552,978 B2)
Case IPR2018-01258 (Patent 8,441,438 B2)

Before PATRICK M. BOUCHER, KAMRAN JIVANI, and
CHRISTOPHER L. OGDEN, *Administrative Patent Judges*.

BOUCHER, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. §§ 42.5, 42.53

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IPR2018-01258 (Patent 8,441,438 B2)

A conference call was held among the parties and the panel on August 19, 2019. At issue in these proceedings is whether all real parties in interest were properly identified as required by 35 U.S.C. § 312(a)(2) and whether the proceedings are barred under 35 U.S.C. § 315(b). *See* Papers 40 (Patent Owner Motion to Terminate), 52 (redacted version of Petitioner Opposition).¹ With the consent of lead petitioner, Google, Mr. Devkar, counsel for LG, spoke on behalf of the petitioners.

Two aspects of the history of these proceedings are relevant to the current dispute. First, we previously denied Patent Owner’s Motions for Additional Discovery related to the real-party-in-interest issues. Paper 30. In particular, we stated that our “principal concern” with Patent Owner’s proposed additional discovery was the “understandability of instructions and degree of burden to answer.” *Id.* at 8. Second, we previously denied a request by LG for “authorization to file a short response, i.e., no more than three pages, to Patent Owner’s Motions to terminate, in order to address what LG contends is a mischaracterization of statements made by LG in its joinder petitions.” Paper 45, 3. In doing so, we “determined that the appropriate course of action is to allow [lead petitioner] Google to determine how it wishes to oppose Patent Owner’s Motions, including whether to offer argument or evidence that Patent Owner’s Motions include mischaracterizations.” *Id.*

With its Oppositions to the Motions to Terminate, Google submitted a Declaration by Collin W. Park, which includes explanation of the controversial statements made in LG’s joinder petitions. Ex. 1038. Patent

¹ Citations are to IPR2018-01257. Similar papers have been filed in IPR2018-01258.

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Owner seeks to depose Mr. Park as routine discovery. 37 C.F.R.

§ 42.51(b)(1). LG has offered to make Mr. Park available for deposition for two hours, rather than the default time of seven hours set forth in our regulations. *See* 35 C.F.R. § 42.53(c)(2). According to LG, Mr. Park’s Declaration addresses a narrow issue that does not warrant seven hours of cross-examination. LG further speculates that Patent Owner seeks the longer deposition time to evade our denial of its prior Motion for Additional Discovery by examining Mr. Park on issues outside the scope of his Declaration. Patent Owner counters with its own speculation that, with a truncated time period, Mr. Park may attempt to diminish the value of the cross-examination through “witness mischief” such as stalling, dissembling, or being unresponsive, effectively trying to run out the clock.

LG requests instructions to limit the time and scope of cross-examination. With respect to time, we decline to truncate the time afforded by our regulations. We previously cautioned the petitioners that, should Google choose to submit evidence with its Oppositions, such evidence “is subject to the routine-discovery provisions of 37 C.F.R. § 42.51(b)(1).” Paper 45, 3. Mr. Park is not a legally unsophisticated witness. Indeed, he is an experienced patent attorney, a partner at a large and well-known law firm, and lead counsel for LG in these proceedings. With such a sophisticated witness, we agree with Patent Owner that sufficient safeguards exist to prevent harassment of the witness through the ability to object and seek relief from the Board.

With respect to scope, our regulations specifically provide that “[f]or cross-examination testimony, the scope of the examination is limited to the scope of the direct testimony.” 37 C.F.R. § 42.53(d)(5)(D)(ii). In

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addressing this requirement on the call, the parties agreed that the scope of the direct testimony encompasses the “subject matter of the Declaration,” but disagree on how to characterize that subject matter. We find Patent Owner’s proposal that the scope of the direct testimony set forth in the Declaration is “whether LG is a real party in interest” to be too broad. At the same time, LG’s implication that the scope is limited merely to clarifying the controversial statements in the joinder petitions is too narrow. We note, for example, that Mr. Park additionally attests that “[n]o other party financed or controlled in any way the preparation and filing of the LGE 559 and 560 Petitions.” Ex. 1038 ¶ 6. Patent Owner is entitled, as routine discovery, to test such statements through cross-examination. The appropriate scope of cross-examination is defined by the direct testimony. That is, a question posed to Mr. Park is properly within scope if it has sufficient underlying basis in a statement made by Mr. Park in his Declaration.

Accordingly, it is

ORDERED that LG’s request to limit the time of cross-examination of Mr. Park to less than the time provided in our regulations is *denied*.

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For Petitioner:

Matthew A. Smith
Andrew S. Baluch
SMITH BALUCH LLP
smith@smithbaluch.com
baluch@smithbaluch.com

James Sobieraj
Jon Beaupre
Yeuzhong Feng
Andres Shoffstall
BRINKS GILSON & LIONE
jsobieraj@brinksgilson.com
jbeaupre@brinksgilson.com
yfen@brinksgilson.com
ashoffstall@brinksgilson.com

Naveen Modi
Chetan Bansal
PAUL HASTINGS LLP
naveenmodi@paulhastings.com
chetanbansal@paulhastings.com

Collin Park
Andrew Devkar
Jeremy Peterson
Adam Brooke
MORGAN LEWIS & BOCKIUS LLP
Collin.park@morganlewis.com
Andrew.devkar@morganlewis.com
jpeterson@morganlewis.com
adam.brooke@morganlewis.com

Kristopher Reed
Benjamin Kleinman
Norris Booth
KILPATRICK TOWNSEND
kreed@kilpatricktownsend.com

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