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1 UNITED STATES PATENT AND TRADEMARK OFFICE  
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD  
3  
4 ZTE (USA), INC., )  
5 ) No. IPR2018-01451  
6 Petitioner, ) IPR2018-01455  
7 ) IPR2018-01456  
8 vs. ) IPR2018-01457  
9 ) IPR2018-01461  
10 FRACTUS, S.A., ) IPR2018-01462  
11 Patent Owner. ) IPR2018-01463  
12  
13 TRANSCRIPT OF PROCEEDINGS had at the  
14 conference call of the above-entitled matter, held  
15 at 20 North Clark Street, 5th Floor, Chicago,  
16 Illinois, on the 9th day of April, A.D. 2019,  
17 commencing at 2:30 p.m.  
18  
19 BEFORE:  
20 MR. PATRICK M. BOUCHER,  
21 MR. KEVIN C. TROCK,  
22 MR. JOHN A. HUDALLA,  
23 MS. AVELYN M. ROSS,  
24 Judges.

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1 PRESENT:  
2  
3 BRINKS GILSON & LIONE,  
(NBC Tower,  
4 455 North Cityfront Plaza Drive, Suite 3600,  
Chicago, Illinois 60611,  
5 1-312-222-8123), by:  
MR. JAMES R. SOBIERAJ,  
6 jsobieraj@brinksgilson.com, and  
MR. DAVID P. LINDNER,  
7 dlindner@brinksgilson.com,  
appeared telephonically on behalf  
8 of Petitioner;  
9 EDELL, SHAPIRO & FINNAN, LLC,  
(9801 Washingtonian Boulevard, Suite 750,  
10 Gaithersburg, Maryland 20878,  
1-301-424-3640), by:  
11 MR. JASON SHAPIRO,  
js@usiplaw.com,  
12 MR. PATRICK J. FINNAN,  
pjf@usiplaw.com, and  
13 MR. MARK DEBOY,  
mjd@usiplaw.com,  
14 appeared telephonically on behalf of  
Patent Owner.  
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23 REPORTED BY: KRISTIN C. BRAJKOVICH, CSR  
24 License No. 84-3810.

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1 (WHEREUPON, discussion was had off  
2 the record.)  
3 JUDGE BOUCHER: I would like to caution  
4 everyone who is speaking to please introduce  
5 yourself before you speak just so the court  
6 reporter does not need to interrupt the  
7 conversation that we have and can make a clean  
8 record.  
9 Mr. Sobieraj, because you arranged for  
10 the court reporter, we would ask that once we are  
11 done with this, if you could file that as an  
12 exhibit in each of the proceedings. I don't know  
13 that there's going to be a particular urgency for  
14 it to be done quickly. Maybe we can see after we  
15 talk a little bit through the issues.  
16 So, Mr. Shapiro, I think you are the one  
17 who arranged or at least initiated the request that  
18 we are here to discuss. Maybe you can begin and  
19 lay the groundwork for what it is that you are  
20 requesting, please.  
21 MR. SHAPIRO: Thank you, your Honor. The  
22 patent owner is requesting a reply in each of the  
23 proceedings to address the issues that were noted  
24 in our e-mail to the Board.

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1 First, patent owner would like an  
2 opportunity to address the many new arguments that  
3 were raised by petitioner in the rehearing  
4 requests. Almost all of the 325(d) and 314(a)  
5 arguments in the rehearing requests are new. It's  
6 patent owner's position that these arguments could  
7 have and, indeed, should have been raised in the  
8 petitions, and if they -- if they had been raised  
9 in the petitions, then patent owner could have  
10 addressed them in the patent owner preliminary  
11 responses. For this reason alone, we believe  
12 there's good cause for a reply in these  
13 proceedings.  
14 Additionally, we also disagree with the  
15 allegations in the rehearing requests, that the  
16 Board overlooked significant facts in denying the  
17 petitions. So patent owner would also like an  
18 opportunity to show how and where the allegedly  
19 overlooked facts were addressed by the Board in the  
20 institution decision.  
21 Finally, as noted in the e-mail, there  
22 were some issues with certain case law cited by and  
23 relied on by the petitioner in the rehearing  
24 requests, and patent owner would also like an



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1 opportunity to address these issues with the case  
2 law in a reply.  
3 Again, patent owner believes that  
4 there's good cause for a reply in these cases  
5 because it would have been able to address these  
6 issues in the patent owner preliminary responses if  
7 they had been timely raised in the petitions.  
8 And, in addition, patent owner believes  
9 that additional briefing would assist the Board in  
10 rendering its decision on the petitioner's requests  
11 for rehearing. If a reply is granted, patent owner  
12 believes that five pages would be enough for each  
13 proceeding, and given that there are seven  
14 proceedings, believes that ten days from today's  
15 call would be an appropriate deadline for patent  
16 owner to submit its replies.  
17 JUDGE BOUCHER: Okay. This is Judge Boucher.  
18 One question I have is, it seems fairly clear that  
19 the statement in the decisions denying institution,  
20 that the petitioner had not requested an  
21 opportunity to file a reply to the preliminary  
22 response was incorrect.  
23 And if we had, in fact, at that time  
24 granted the petitioner the opportunity to file a

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1 reply, it seems to me that you would have been left  
2 in the position where you would not have any  
3 additional response, which is kind of what you are  
4 asking for now. I'm just wondering if you could  
5 address that concern.  
6 MR. SHAPIRO: Right. If the petitioner had  
7 been granted a reply to the patent owner  
8 preliminary response, I fully anticipate that we  
9 would have requested a surreply to address any of  
10 the new arguments that would have been presented in  
11 the reply. Indeed, since the petitioner did not  
12 address any of the informative decisions on 325(d)  
13 or 314 in its petitions, virtually anything that  
14 they filed as a reply would have been new  
15 arguments, so we believe that there would have been  
16 very good cause for us to seek a surreply in those  
17 circumstances.  
18 JUDGE BOUCHER: Okay. Let me turn to the  
19 petitioner now. I'm sorry. I did not quite hear  
20 your name. Is it Silver?  
21 MR. SOBIERAJ: Yes. It doesn't sound like  
22 it's spelled. Sober is one word and the name Ray.  
23 If you put them together, it's Sobieraj. That is  
24 how my parents tried to anglicize our Eastern

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1 European name.  
2 JUDGE BOUCHER: So it's Sobieraj. Okay. If  
3 you could go ahead then, Mr. Sobieraj, and let us  
4 know what your position is. I guess one of the  
5 concerns that I have is with what Mr. Shapiro  
6 raised, which is the extent to which the arguments  
7 in your rehearing requests are new arguments that  
8 were not made in the petition.  
9 MR. SOBIERAJ: Okay. Thank you. This is Jim  
10 Sobieraj for the petitioners.  
11 Our petition did explain how no claims  
12 were allowed over grounds that we presented in the  
13 petition in any prior PTO proceedings. I don't  
14 think that we could reasonably anticipate arguments  
15 in the patent owner's preliminary response that  
16 were misleading or relied on incorrect legal  
17 premises. I don't think that it's reasonable to  
18 expect someone -- for that to occur.  
19 So, for example, I don't think that we  
20 could reasonably anticipate that the patent owner  
21 would mischaracterize the file history to suggest  
22 to the panel that the challenged claims in the  
23 ex parte reexamination were allowed over the  
24 Misra II reference based on the single band radio

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1 limitation, when, in fact, that was not the case.  
2 The examiner rejected their argument  
3 there. The examiner only allowed those claims  
4 because of the criminal limitation that required  
5 the perimeter of the multi-level structure to have  
6 a different number of sides in each of the  
7 geometric elements. I think that because -- the  
8 way that the response was written, it led the Board  
9 to accept that in a couple of places, particularly  
10 in the '431 and the '432 decisions. But the Board  
11 went to the portion of the response to the office  
12 action and actually reversed the arguments that  
13 were made to the patent office.  
14 The patent owner only distinguished  
15 Misra II based on the preliminary limitation. Then  
16 in the next sentence, it distinguished two  
17 different references, Yanagisawa and Johnson, based  
18 on the single band limitation, and I think the --  
19 you know, I think we could anticipate certainly  
20 that the patent owner would make it sound like the  
21 reference -- MISRA reference was distinguished  
22 based on the single band limitation, when it's not  
23 what we said.  
24 Nor do I think that we could really



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1 anticipate the Board would rely on what the patent  
2 owner said in the decision that actually reversed  
3 the reasons that the patent owner set forth for  
4 distinguishing the claims and that the examiner  
5 relied on.  
6 I also don't think that we could  
7 reasonably anticipate, for example, the '069 patent  
8 with IPR, that the examiner would know about  
9 grounds in certain inter partes reexam and ex parte  
10 reexamination on other patents where the examiner  
11 was not involved in those prior proceedings. And  
12 those prior inter partes reexams and ex parte  
13 reexams were not included even in the 200- to  
14 300-page IDS that was submitted in the '069  
15 prosecution, for example, and several other patents  
16 as well.  
17 Nor do I think we could really  
18 anticipate that the Board would then rely in its  
19 decision on those non-cited inter partes exams and  
20 ex parte exams to infer, we think incorrectly, that  
21 the examiner knew about those earlier proceedings  
22 and earlier arguments.  
23 JUDGE BOUCHER: Okay.  
24 MR. SOBIERAJ: So those are the reasons. I

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1 could go on, but I think I gave you a few examples.  
2 JUDGE BOUCHER: Yeah. That is what I was  
3 going to say. I think we have a sense of the  
4 flavor of what your arguments are.  
5 My question is, what do you think is the  
6 correct procedure for us to follow right now? Is  
7 that simply to deny the request for an opposition  
8 by the patent owner and decide the rehearing  
9 requests based on the record as it exists?  
10 MR. SOBIERAJ: I think there's two reasonable  
11 options here for moving forward. One is to deny  
12 the request because -- so, for example, with  
13 respect to the things that we could have or should  
14 have known, we don't think so. Besides, I think  
15 what is even more important is, I'm sure the Board  
16 wants to reach the correct decision here, and it  
17 should rule on the request for rehearing on whether  
18 we correctly pointed out whether there were things  
19 that were overlooked.  
20 With respect to the other items,  
21 items 2, 3, 4, and 5 in their e-mail, I think these  
22 are things -- the records are before the Board, and  
23 I think the Board can decide. I think there's good  
24 grounds to deny their request.

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1 On the other hand, as we said in our  
2 e-mail, it's not like we are afraid of their  
3 argument, but if they get to provide a response, we  
4 would like to file a reply brief of also five  
5 pages. We were not allowed to file a reply brief  
6 the last time. The Board cited that in its  
7 decision. We felt that turned out to be  
8 prejudicial to our client, and if they are going to  
9 file a response, then our client feels they should  
10 have an opportunity to file a reply.  
11 JUDGE BOUCHER: It doesn't sound like you have  
12 any particular opposition to that procedure though,  
13 where we would authorize the patent owner to file  
14 an opposition and then authorize you to file a  
15 reply of the same length?  
16 MR. SOBIERAJ: That's correct.  
17 JUDGE BOUCHER: Do you have anything to add,  
18 Mr. Shapiro?  
19 MR. SHAPIRO: The only thing that I would add  
20 is, we disagree with the comments that Mr. Sobieraj  
21 made about whether or not the arguments in the  
22 patent owner preliminary response could have been  
23 anticipated. There was not any -- in the  
24 petitions, there was not any discussion of the

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1 Becton Dickinson factors, so it's a bit  
2 disingenuous to say that the reason that this was  
3 not -- that it could not be anticipated is because  
4 of some detail in the patent owner preliminary  
5 response.  
6 But getting to the matter at hand on  
7 whether or not we have any kind of objection to the  
8 petitioner being given a surreply, if we are given  
9 a reply, again, I think we would object because it  
10 just provides them with an additional opportunity  
11 to supplement their petition, in which these issues  
12 should have been raised and would have allowed us  
13 to reply in our patent owner response. We don't  
14 think it's necessary they be given a surreply, but  
15 if a surreply is granted to the petitioner, we  
16 think it should be limited to addressing any  
17 unforeseeable issues or alleged mistakes that are  
18 raised in our reply.  
19 JUDGE BOUCHER: Okay. The petitioner does  
20 have the burden with respect to the rehearing  
21 requests, so I guess I don't -- I don't fully agree  
22 with your statement that it would be inappropriate  
23 for the petitioner have the last word on this.  
24 Could you just address that?



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1 MR. SHAPIRO: Again, I really don't have much  
2 more to say about that other than we feel that  
3 these issues should have been raised in the  
4 petition. If they were, this could have been dealt  
5 with much more efficiently, and we think that -- we  
6 understand they filed a request for rehearing and  
7 they have raised a whole bunch of new issues, but  
8 it seems patently unfair for them to have  
9 additional opportunities for them to supplement the  
10 briefing on issues that were not raised in the  
11 petition.

12 JUDGE BOUCHER: Mr. Sobieraj, I'll give you  
13 the last word on this. Is there anything  
14 additional that you would like to say before I  
15 consult with the panel? I guess I just want to --  
16 well, why don't you go ahead. I do have a couple  
17 things to say after that, but why don't you just  
18 give us your final thoughts, please.

19 MR. SOBIERAJ: Based on the way this has  
20 unfolded, we think that we should have the  
21 opportunity to file a reply. As you mentioned,  
22 this is really -- the reply is for the request for  
23 rehearing, where we have the burden. We filed the  
24 opening request. They are asking for a response.

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1 We would like to have an opportunity to reply.  
2 With only five pages, we don't really  
3 have space to rehash issues. We really do need to  
4 focus on key points that maybe we really have  
5 addressed before.

6 JUDGE BOUCHER: Okay. And Mr. Shapiro had  
7 suggested ten days for filing. If we did authorize  
8 a reply to an opposition, would ten days work for  
9 you also?

10 MR. SOBIERAJ: Yes.

11 JUDGE BOUCHER: Mr. Shapiro, when you say "ten  
12 days," do you mean a week and a half, or do you  
13 mean two weeks?

14 MR. SHAPIRO: I meant ten days from the call,  
15 which would be Friday, so the 19th.

16 JUDGE BOUCHER: I guess I was asking whether  
17 you meant calendar days or business days?

18 MR. SHAPIRO: If you give us business days,  
19 that's fine.

20 MR. SOBIERAJ: We would rather business days,  
21 your Honor.

22 JUDGE BOUCHER: Okay. So I think we are not  
23 going to convey a decision on this on the phone  
24 right now, in part because we do have different

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1 panels on the different cases, and so I think we  
2 would like to confer after the call and see what we  
3 think the appropriate action is and then issue an  
4 order. It should not take very long, probably  
5 within a day or two, indicating what our decision  
6 is and how we would like to proceed.

7 With that understanding, is there  
8 anything else that you would like to raise while we  
9 are on the phone, Mr. Shapiro?

10 MR. SHAPIRO: No, your Honor.

11 JUDGE BOUCHER: Mr. Sobieraj, anything else?

12 MR. SOBIERAJ: No, your Honor.

13 JUDGE BOUCHER: Okay. With respect to the  
14 transcript of the call, I still don't see anything  
15 in particular that we will need to see sort of  
16 immediately before we make a decision, so I don't  
17 see any particular urgency in trying to get an  
18 expedited transcript or anything. But we would  
19 like to make the transcript to be made of record in  
20 the proceedings in due course, so whenever that is  
21 available, if you could make sure to file it as an  
22 exhibit and in all seven proceedings, please.

23 MR. SOBIERAJ: Okay. We will do that, your  
24 Honor.

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1 JUDGE BOUCHER: With that, I think that is it,  
2 so this call is adjourned. Thank you.

3 MR. SOBIERAJ: Thank you.

4 MR. SHAPIRO: Thank you.

5 (WHICH WERE ALL THE PROCEEDINGS HAD  
6 IN THE ABOVE-ENTITLED CAUSE ON THIS  
7 DATE.)

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1 STATE OF ILLINOIS )  
2 ) SS:  
3 COUNTY OF C O O K )  
4 I, KRISTIN C. BRAJKOVICH, a Certified  
5 Shorthand Reporter of the State of Illinois, do  
6 hereby certify that I reported in shorthand the  
7 proceedings had at the conference call aforesaid,  
8 and that the foregoing is a true, complete and  
9 correct transcript of the proceedings of said  
10 conference call as appears from my stenographic  
11 notes so taken and transcribed under my personal  
12 direction.  
13 IN WITNESS WHEREOF, I do hereunto set my  
14 hand at Chicago, Illinois, this 23rd day of  
15 April, 2019.  
16  
17 *Kristin C. Brajkovich*  
18 Certified Shorthand Reporter  
19  
20  
21 C.S.R. Certificate No. 84-3810.  
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