

Filed: February 11, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZTE (USA), INC.
Petitioner

v.

CYWEE GROUP LTD.
Patent Owner

Case IPR2019-00525
Patent No. 8,552,978

**OPPOSITION TO PETITIONER'S MOTION FOR JOINDER TO
INTER PARTES REVIEW IPR2018-01257**

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I. INTRODUCTION

ZTE (USA), Inc. (“Petitioner” or “ZTE”) has filed a petition against CyWee Group Ltd. (“CyWee” or “Patent Owner”) for *inter partes* review of U.S. Patent No. 8,552,978 (the “’978 Patent”) concurrently with a Motion for Joinder (the “Motion”) with *Google LLC v. CyWee Group Ltd.*, IPR2018-01257 (the “Google IPR”). The Google IPR was instituted on December 11, 2018, challenging claims 10 and 12 of the ’978 Patent.

ZTE is one of four parties now seeking joinder with the Google IPR. The other parties are Samsung Electronics Co., Ltd. (“Samsung”); Huawei Device USA, Inc., et al. (“Huawei”); and LG Electronics Inc. (“LG”). All of these parties are also parties to infringement actions before various district courts involving the ’978 Patent. Petition, Paper 1 at 5-6. ZTE has challenged the validity of the ’978 Patent in *CyWee Group Ltd. v ZTE Corp. et al.*, Civil Action No. 3:17-cv-02130 (S.D. Cal.) (the “District Court Action”).

The District Court Action was filed on October 17, 2017. District Court Action, Complaint, Doc. 1. ZTE is nearly three months past the deadline for which it could have filed a petition for a new IPR pursuant to 37 C.F.R. § 42.101(b). During the time since ZTE was first served with the complaint in the District Court Action, ZTE has not indicated any interest in challenging the validity of the ’978

Patent by IPR, opting instead to pursue an invalidity defense in the District Court Action. The District Court Action has progressed considerably, but was stayed on January 15, 2019, pending the resolution of the Google IPR. A claim construction hearing was held on November 19, 2018. Moreover, ZTE never identified U.S. Patent App. Pub. 2004/0095317 to Zhang (“Zhang”) in its invalidity contentions in the District Court Action. These contentions were filed *after* the Google IPR, when ZTE would have been made aware of that reference. ZTE should not be permitted, through joinder, to now rely on a prior art reference it decided was irrelevant in the first instance.

Allowing joinder here will severely prejudice the Patent Owner; will introduce new issues requiring additional discovery; will impact the schedule of this proceeding and related proceedings; and will waste the time, effort, and resources of the Board, the parties, and the federal district courts. Accordingly, ZTE’s Motion must be denied.

II. STANDARD

The Board’s decision to grant joinder is discretionary. *Unified Patents, Inc. v. PersonalWeb Tech., LLC, et al.*, IPR2014-00702, Paper 12 at 2-3 (PTAB July 24, 2014); 35 U.S.C. § 315(c); 37 CFR § 42.122. This discretionary determination is made on a case-by-case basis, taking into account the particular facts of each case, substantive and procedural issues, and other considerations. *Unified Patents,*

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