

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZTE (USA), INC.

Petitioner,

v.

CYWEE GROUP LTD.

Patent Owner.

IPR2019-00525

Patent No. 8,552,978

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

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I. INTRODUCTION

ZTE's request for joinder is entirely appropriate and consistent with the Board's well-settled joinder practice. ZTE has filed a copy-cat petition to join the already-instituted *inter partes* review IPR2018-01257 ("Google IPR") against the *same* patent claims on the *same* unpatentability grounds using the *same* expert declaration. ZTE also has explicitly agreed to an "understudy" role.

CyWee's opposition lacks merit. First, CyWee's alleged prejudice is speculation that borders on paranoia. Second, joinder will not impact the trial schedule because ZTE's petition raises no new issues, and ZTE will act as an understudy, unless and until Google drops out. Also, ZTE's joinder will not raise new claim construction issues because ZTE's petition adopts the claim construction positions in Google's petition, and the claim construction standard applicable to the Google proceeding (BRI) continues to apply even if Google departs and ZTE takes over. Finally, CyWee's purported need for discovery regarding real parties-in-interest ("RPI") is based on pure conjecture. It also is irrelevant to joinder because if CyWee has a plausible basis to take RPI discovery, it could do so now in the Google IPR. In short, CyWee offers no reasonable basis for denying joinder.

II. JOINDER WOULD NOT PREJUDICE PATENT OWNER

The Board has held that a patent owner is not prejudiced merely by a joinder. *E.g., Duodecad IT Services v. WAG Acquisition, LLC*, IPR2017-00785, Paper 12, at

7 (Apr. 13, 2017) (“Patent Owner’s arguments [regarding prejudice] are unpersuasive. Patent Owner will not be prejudiced. It is already defending the [underlying petitioner’s] IPR and there will be no schedule change or separate filings by Petitioner in the [underlying petitioner’s] IPR.”); *see also Friendfinder Networks Inc., v. WAG Acquisition, LLC*, IPR2017-00784, Paper 12, at 6 (Mar. 31, 2017).

In this case, ZTE unequivocally committed to proceed in the Google IPR as an “understudy” (Motion at 1, 7, 8), ensuring that CyWee will not be prejudiced by ZTE’s joinder. CyWee does not allege that ZTE’s detailed limitations on its role are insufficient and does not propose additional conditions to minimize CyWee’s alleged prejudice. Rather, CyWee merely states that it is “unfathomable” that ZTE will honor its commitments. (Opp. at 4-5.)

CyWee’s skepticism rests on unsupported and misplaced conspiracy theories. There is no evidence that ZTE, Google and others are “working together” as CyWee speculates. And even if that conspiracy theory was plausible, they could “work together” even if no one filed a joinder motion. More importantly, CyWee faces no prejudice from ZTE’s joinder because ZTE will act as an understudy or as Google’s replacement: it is one or the other, not both Google and ZTE that CyWee faces as the Petitioner.

CyWee overstates that it faces a “deluge” of joinder petitions, which should be denied so the Board is not “overwhelmed.” The four petitioners seeking to join

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