

Filed: February 11, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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., HUAWEI DEVICE (HONG KONG) CO. LTD.
Petitioner

v.

CYWEE GROUP LTD.
Patent Owner

Case IPR2019-00563
Patent No. 8,552,978

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

TABLE OF CONTENTS

I. INTRODUCTION	1
II. STANDARD	3
III. ARGUMENT	3
1. Joinder Would Prejudice Patent Owner	3
2. Joinder Would Impact The Trial Schedule	6
a. Joinder Would Introduce New Claim Construction Issues	7
b. Joinder Would Require Additional Discovery as to RPIs	8
IV. CONCLUSION	10

TABLE OF AUTHORITIES

Cases

<i>Applications in Internet Time v. RPX Corp.</i> , 897 F.3d 1336 (Fed. Cir., July 9, 2019)	6
<i>Famy Care Ltd. v. Allergan, Inc.</i> , IPR2017-00566 (PTAB July 12, 2017).....	5
<i>Google LLC v. CyWee Group Ltd.</i> , IPR2018-01257	1
<i>Kyocera Corp. v. Softview, LLC</i> , IPR2013-00004 (PTAB Apr. 24, 2013)	3
<i>Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co. Matal</i> , 868 F.3d 1013 (Fed. Cir. 2017) (Dyk, J. and Wallach, J. concurring).....	7
<i>Proppant Express Investments LLC, et al., v. Oren Tech., LLC</i> , IPR2018-00914, Paper 21 at 5 (PTAB Nov. 8, 2018).....	7
<i>Unified Patents, Inc. v. PersonalWeb Tech., LLC, et al.</i> , IPR2014-00702, Paper 12 at 2-3 (PTAB July 24, 2014)	3, 5, 7

Statutes

35 U.S.C. § 315(c)	3
37 CFR § 42.122	3

Other Authorities

157 Cong. Rec. S1376 (daily ed. Mar. 8, 2011) (statement of Sen. Kyl).....	3, 4
--	------

I. INTRODUCTION

Huawei Device USA, Inc., et al. (“Petitioner” or “Huawei”) 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.

Huawei is one of four parties now seeking joinder with the Google IPR. The other parties are Samsung Electronics Co., Ltd. (“Samsung”); ZTE (USA), Inc. (“ZTE”); 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 2. Huawei has challenged the validity of the ’978 Patent in *CyWee Group Ltd. v Huawei Tech. Co., Inc. et al.*, Civil Action No. 2:17-cv-00495 (E.D. Tex.) (the “District Court Action”).

The District Court Action was filed on June 9, 2017. District Court Action, Complaint, Doc. 1. Huawei is nearly seven months past the deadline for which it could have filed a petition for its own IPR pursuant to 37 C.F.R. § 42.101(b). During the time since Huawei was first served with the complaint in the District Court Action, Huawei 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 4, 2019, pending the resolution of the Google IPR.. A claim construction order issued in the District Court Action on December 6, 2018. *Id.*, Claim Construction Order, Doc. 113. That claim construction favored CyWee on all terms. Huawei objected to that claim construction order, but no ruling has been issued regarding the objection. Huawei now seeks to subvert the District Court Action claim construction order by joining the Google IPR. Moreover, Huawei 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 Huawei would have been made aware of that reference. Huawei 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, Huawei’s Motion must be denied.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.