

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZTE (USA), INC. and
SAMSUNG ELECTRONICS CO., LTD.,
Petitioners

v.

BELL NORTHERN RESEARCH, LLC,
Patent Owner

Case No. IPR2020-01365
Patent No. 7,039,435

**PETITIONER SAMSUNG'S REQUEST FOR EXTENSION OF TIME FOR
REPLY TO PATENT OWNER'S RESPONSE**

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I. Introduction

Pursuant to the Board's July 31, 2020 email, Petitioner Samsung Electronics Co., Ltd., ("Samsung") respectfully submits this request for authorization to file a reply, with an extended due date, to Bell Northern Research LLC's ("BNR's" or "Patent Owner's") Patent Owner's Response (Paper No. 18). Samsung was joined as a party to this proceeding on the eve of original Petitioner ZTE's deadline for filing a Petitioner Reply (i.e., Due Date 2). But ZTE settled with BNR and failed to file a Petitioner Reply. The unfortunate coinciding of Samsung's joinder and ZTE's cessation of participation in this IPR constitutes good cause to extend Due Date 2 to permit Samsung to file a Reply. Extending Due Date 2 will not prejudice BNR in any way, is in the interests of justice, and will not require extending the one-year deadline for issuing a final decision in this IPR.

II. The Timeline of Relevant Events

The timeline of the relevant events giving rise to this unusual situation is set forth below. The Board instituted the instant proceeding on February 11, 2020 (Paper No. 13). On March 10, 2020, Samsung sought joinder to the present proceeding. *Samsung Elecs. Co., Ltd. v. Bell Northern Research, LLC*, IPR2020-00697, Paper Nos. 1 (March 10, 2020), 4 (March 10, 2020). When Samsung moved to join, it was not time-barred under § 315(b).

On July 22, 2020, Samsung sent an email to the Board noting the possibility

that ZTE might not file a Petitioner's Reply on or before July 28, 2020 (Due Date 2) in light of an impending settlement, and requested guidance from the Board on how to proceed in light of the changed circumstances.

On July 27, 2020, the eve of the due date for ZTE's Petitioner Reply, the Board instituted IPR2020-00697 and joined Samsung to the present IPR. IPR2020-00697, Paper 10.

On July 28, 2020, Samsung sent an email to the Board confirming ZTE's decision to forego a Reply and ceasing any further participation in the proceeding. Samsung therefore requested an extension of Due Date 2 so that Samsung can prepare and file a Petitioner Reply.

On July 30, 2020, ZTE requested authorization to file a motion to terminate ZTE in this proceeding in light of a settlement agreement between ZTE and BNR.

III. There is Good Cause for Extending Due Date 2

Given that Samsung was joined in this proceeding on the eve of ZTE's Reply deadline (*supra* Section II) and ZTE failed to file a Reply because of a settlement with BNR, there is good cause for extending Due Date 2 in order to enable Samsung to file a Petitioner's Reply. Samsung timely filed its joinder motion and diligently followed up with the Board multiple times to seek relief in light of circumstances that Samsung (unlike BNR) could not control—namely, the timing of the settlement and cessation of participation by ZTE.

Barring Samsung from filing a Reply would severely prejudice Samsung because BNR's Patent Owner's Response would be unrebutted and Samsung is potentially subject to estoppel under § 315(e)(2) in the district court action that BNR brought against Samsung. Moreover, now that Samsung has stepped into ZTE's shoes, the absence of a Reply hinders Samsung's ability to present its case at oral argument. Conversely, the requested extension will not prejudice BNR. Indeed, Samsung agrees that an extension of Due Date 2 should result in a similar extension of BNR's sur-reply deadline (Due Date 3) and any following deadlines. Thus, from BNR's perspective, nothing procedurally changes except the identity of the adverse party and the dates for the parties' remaining papers.

Extending Due Date 2 is also in the interests of justice. The Board has already found a reasonable likelihood that the challenged claims of the '435 patent are unpatentable. Allowing BNR's Response to go unrebutted merely due to the timing of BNR's agreement to settle would leave the Board with an incomplete record for purposes of the final decision. *See, e.g., Pacific Market International, LLC v. Ignite USA, LLC*, IPR2014-00561, Paper No. 40 at 5 (May 12, 2015) (accepting a late Petitioner Reply in the "interests of justice" because "doing so enables both parties to present the most complete set of argument and evidence in the record, while avoiding undue prejudice to either party."). It would also defeat the adversarial process at the heart of AIA trials. *See Hunting Titan, Inc. v.*

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