

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZTE (USA) INC.,
Petitioner,

v.

FUNDAMENTAL INNOVATION SYSTEMS INTERNATIONAL LLC,
Patent Owner.

Case IPR2018-01076
U.S. Patent 7,893,655 B2

Before LYNNE E. PETTIGREW, JO-ANNE M. KOKOSKI, and
PAUL J. KORNICZKY, *Administrative Patent Judges*.

KORNICZKY, *Administrative Patent Judge*.

ORDER
Denying Motion for Joinder
35 U.S.C. § 315(c); 37 C.F.R. § 42.122(b)

Petitioner ZTE (USA), Inc. filed a motion to join (Paper 4, “Mot.”) this proceeding with *Huawei Device Co., Ltd. et al. v. Fundamental Innovation Systems International LLC*, IPR2018-000479. See 35 U.S.C. § 315(c); 37 C.F.R. 42.122(b). Because IPR2018-00479 has been terminated, and because a trial was not instituted in the instant proceeding, Petitioner’s motion is denied.

DISCUSSION

The statutory provision governing joinder of *inter partes* review proceedings is 35 U.S.C. § 315(c), which reads as follows:

(c) JOINDER. If the Director institutes an inter partes review, the Director, in his or her discretion, may join as a party to that inter partes review any person who properly files a petition under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an inter partes review under section 314.

As is apparent from the statute, joinder is possible only if an *inter partes* review is instituted.

Petitioner seeks joinder with IPR2018-00479. Mot. 1. On September 26, 2018, the Board granted the joint request of the parties in IPR2018-00479 to terminate that proceeding. IPR2018-00479, Paper 14. Thus, there is no pending proceeding for Petitioner to join. In addition, because the present Petition has been denied (*see* Paper 14), the joinder statute’s prerequisite of an instituted review has not been met. Petitioner’s request for joinder is, therefore, denied.

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ORDER

For the reasons discussed above, it is ORDERED that Petitioner's motion to join is denied.

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