

1 SARAH G. HARTMAN (Bar No. 281751)
2 shartman@brownrudnick.com
3 BROWN RUDNICK LLP
4 Seven Times Square
5 New York, NY 10036
6 Telephone: (212) 209-4800
7 Facsimile: (212) 209-4801

8 Attorneys for Defendant
9 AGIS SOFTWARE DEVELOPMENT LLC

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 Case No. 18-cv-06185

14 ZTE (USA) INC.,

15 Plaintiff,

16 v.

17 AGIS SOFTWARE DEVELOPMENT LLC, et
18 al.,

19 Defendants.

**DECLARATION OF MALCOLM K. BEYER,
JR. IN SUPPORT OF MOTION TO DISMISS
FIRST AMENDED COMPLAINT**

Amended Complaint Filed: 31-DEC-2018
Deadline to Respond: 22-JAN-2019

Hearing Date: April 25, 2019
Time: 2:00 p.m. PST

DECLARATION OF MALCOLM K. BEYER, JR.

I, Malcolm K. Beyer, Jr., do hereby declare as follows:

1. I submit this declaration based on my personal knowledge and in support of Defendant AGIS Software Development LLC's ("AGIS Software" or "Defendant") Motion to Dismiss the First Amended Complaint filed by ZTE (USA) Inc. ("ZTE").

2. I am the Chief Executive Officer of Defendant AGIS Software.

3. I am also the first-named inventor on U.S. Patent Nos. 8,213,970 (the "'970 Patent"); 9,408,055 (the "'055 Patent"); 9,445,251 (the "'251 Patent"); 9,467,838 (the "'838 Patent"); and 9,749,829 (the "'829 Patent") (collectively, the "Patents-in-Suit") issued by the U.S. Patent and Trademark Office.

4. I live in Jupiter, Florida with my wife Margaret Beyer. We have lived in Jupiter, Florida for over three decades.

5. In 2004, I founded Advanced Ground Information Systems, Inc. ("AGIS, Inc.").

6. In 2013, AGIS, Inc. began a corporate restructuring plan for business growth purposes. By 2017, AGIS, Inc.'s board of directors approved the restructuring plan which resulted in the formation of a parent corporation, AGIS Holdings, Inc. ("AGIS Holdings"). AGIS Holdings consists of two subsidiaries, AGIS, Inc. and AGIS Software Development LLC ("AGIS Software").

7. AGIS Software is the sole and exclusive owner of all right, title and interest in and to each of the Patents-in-Suit.

8. AGIS Software is a limited liability company organized under Texas law.

9. AGIS Software maintains an office and its principal place of business at 100 W. Houston Street, Marshall, Texas 75670.

10. AGIS Software is not registered to do business in California.

11. AGIS Software does not have a registered agent for service of process in California.

12. AGIS Software does not have offices, employees, equipment, bank accounts or other assets in California.

13. AGIS Software is not subject to and has never paid taxes in California.

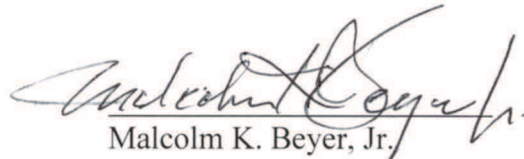
14. AGIS Software does not manufacture products in California.

- 1 15. AGIS Software has never made any sales in California.
- 2 16. AGIS Software does not solicit or engage in business in California.
- 3 17. AGIS Software has not signed any contracts in California.
- 4 18. AGIS Software does not recruit employees in California.
- 5 19. AGIS Software does not own, lease or rent any property in California.
- 6 20. AGIS Software did not retain counsel located in California in connection with
- 7 enforcement actions involving the Patents-in-Suit.

8 21. AGIS Software has never filed a lawsuit in California. With the exception of the
9 instant action, AGIS Software has never been sued in California.

10 22. AGIS Software’s efforts to enforce its rights in the Patents-in-Suit consist only of
11 litigating patent infringement lawsuits filed in the Eastern District of Texas.

12 I declare under penalty of perjury that the foregoing is true and correct. Executed this 20th
13 day of January, 2019.

14 
15 Malcolm K. Beyer, Jr.

16
17
18
19
20
21
22
23
24
25
26
27
28