

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-HSG

14 ZTE (USA) INC.,

15 Plaintiff,

16 v.

17 AGIS SOFTWARE DEVELOPMENT LLC, et
18 al.

19 Defendants.

20 **DECLARATION OF VINCENT J. RUBINO, III**
21 **IN SUPPORT OF MOTION TO DISMISS**
22 **FIRST AMENDED COMPLAINT**

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

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

DECLARATION OF VINCENT J. RUBINO, III

I, Vincent J. Rubino, III, hereby declare as follows:

1. I am a partner at the law firm of Brown Rudnick LLP. I submit this declaration 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"). I am familiar with the facts set forth herein.

2. I previously served as counsel for Advanced Ground Information Systems, Inc. ("AGIS, Inc.") in connection with *Advanced Ground Information Systems, Inc. v. Life360, Inc.*, Case No. 9:14-cv-80651-DMM (S.D. Fl. May 16, 2014, which alleged infringement of U.S. Patent Nos. 7,031,728 (the "'728 Patent"); 7,764,954 (the "'954 Patent"); 8,126,441 (the "'441 Patent"); and 7,672,681 (the "'681 Patent")). AGIS Software was not involved in that action.

3. I also serve as counsel for AGIS Software in connection with five patent infringement actions filed in the Eastern District of Texas alleging infringement of most or all of the patents at issue in this action, *i.e.*, 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"). *See AGIS Software Dev. LLC v. ZTE Corp., et al.*, Case No. 2:17-cv-517 (E.D. Tex.), Dkts. 1, 32 (as amended, alleging infringement of all five Patents-in-Suit against ZTE Corporation, ZTE (TX) and ZTE) (the "ZTE Texas Case"). *AGIS Software Dev. LLC v. Apple, Inc.*, Case No. 2:17-cv-516 (E.D. Tex.), Dkt. 32 (as amended, alleging infringement of all five Patents-in-Suit); *AGIS Software Dev. LLC v. HTC Corp.*, Case No. 2:17-cv-514 (E.D. Tex.), Dkt. 1 (alleging infringement of the '838, '251, '055 and 970 patents); *AGIS Software Dev. LLC v. Huawei Device USA Inc., et al.*, Case No. 2:17-cv-513 (E.D. Tex.), Dkts. 1, 20 (alleging infringement of the '838, '251, '055 and 970 patents); and *AGIS Software Dev. LLC v. LG Elecs., Inc.*, Case No. 2:17-cv-515 (E.D. Tex.), Dkt. 1 (alleging infringement of the '838, '251, '055 and 970 patents) (collectively, the "Texas Cases").

4. All of the Texas Cases are currently still pending in the Eastern District of Texas, except the ZTE Texas Case.

5. In connection with the Texas Cases, I and/or my colleagues took several depositions

1 of witnesses located in California. These depositions took place in California as a result of the
2 locations and convenience of the witnesses relevant to the Texas Cases, as well as the scheduling
3 parameters of those witnesses and counsel.

4 6. Aside from the depositions discussed above, I am aware of no other depositions on
5 behalf of AGIS Software that took place in California.

6 7. To obtain information potentially relevant to the Texas Cases, my office served
7 subpoenas on Google, a non-party that happens to be located in California.

8 8. Aside from the present suit, I am aware of no lawsuit that has been filed by or against
9 AGIS Software in California.

10 9. To my knowledge, AGIS Software's efforts to enforce its rights in the Patents-in-Suit
11 consist only of litigating patent infringement lawsuits filed in the Eastern District of Texas.

12 10. On October 26, 2018, my office sent ZTE's counsel e-mail correspondence
13 explaining that ZTE's initial Complaint was deficient for lack of subject matter jurisdiction as to the
14 AGIS entities that do not own the Patents-in-Suit (Advanced Ground Information Systems, Inc.
15 ("AGIS, Inc.") and AGIS Holdings, Inc. ("AGIS Holdings")), and for lack of personal jurisdiction as
16 to all three Defendants, as supported by the recent decision in *Kyocera Int'l, Inc. v. Semcon IP, Inc.*,
17 No. 3:18-CV-1575-CAB-MDD, 2018 WL 5112056, at *3 (S.D. Cal. Oct. 19, 2018) in which the
18 court granted the defendant's motion to dismiss for lack of personal jurisdiction based on
19 substantially similar facts. The e-mail attached a copy of the *Kyocera* decision. Attached as Exhibit
20 A is a true and correct copy of the referenced correspondence, attaching a copy of the *Kyocera*
21 decision.

22 11. ZTE's counsel replied on October 30, 2018 expressing its disagreement with
23 Defendants' position, and stating that it would not withdraw its complaint. Attached as Exhibit B is
24 a true and correct copy of ZTE's counsel's response.

25 12. After ZTE's counsel's refusal to dismiss its initial complaint, my office began
26 drafting a motion to dismiss ZTE's complaint pursuant to Rules 12(b)(1) and 12(b)(2) of the Federal
27 Rules of Civil Procedure, and a motion for sanctions pursuant to Rule 11.

28 13. On December 26, 2018, my office shared Defendants' portion of the joint case

1 management statement with ZTE's counsel, which explained that defendants intended to file a
2 motion to dismiss for lack of subject matter jurisdiction and lack of personal jurisdiction, as well as a
3 potential motion for sanctions based on ZTE's counsel's refusal to dismiss its baseless allegations of
4 jurisdiction.

5 14. That afternoon, the parties participated in a FRCP 26(f) discovery conference. ZTE's
6 counsel did not indicate any intent to withdraw its Complaint or file an amended complaint.

7 15. On December 31, 2018, the deadline for Defendants to respond to the initial
8 Complaint, Plaintiff filed its First Amended Complaint removing AGIS Holdings and AGIS, Inc. as
9 named defendants, but continuing to assert claims against AGIS Software. Dkt. 18.

10 I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd
11 day of January, 2019.

12
13 /s/Vincent J. Rubino, III
14 Vincent J. Rubino, III

15
16 ///