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20 Attorneys for Plaintiff
21 ZTE (USA) Inc.

22 UNITED STATES DISTRICT COURT
23 NORTHERN DISTRICT OF CALIFORNIA
24 OAKLAND DIVISION

25 ZTE (USA) INC.,
26
27 Plaintiff,
28
29 v.
30
31 AGIS SOFTWARE DEVELOPMENT LLC,
32
33 Defendant.

Case No. 4:18-cv-06185-HSG
(Former Case No. 2:17-cv-00517-JRG)
(E.D. Tex.)

**PLAINTIFF'S SECOND AMENDED
COMPLAINT FOR DECLARTORY
JUDGMENT**

1 Plaintiff ZTE (USA) Inc. (“ZTE”), files this Second Amended Complaint against Defendant
2 AGIS Software Development LLC (“AGIS”) seeking declaratory judgment of non-infringement,
3 and/or unenforceability as to U.S. Patent Nos. 8,213,970; 9,408,055; 9,445,251; 9,467,838; and
4 9,749,829 (collectively, the “Patents-in-Suit”). Additionally, ZTE hereby incorporates by reference
5 the Complaint filed against Defendant AGIS on October 9, 2018 and the First Amended Complaint
6 filed against Defendant AGIS on December 31, 2018. ZTE hereby alleges as follows:

7 **NATURE OF ACTION**

8 1. This is an action arising under the patent laws of the United States, 35 U.S.C. § 1 et.
9 seq. and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, seeking a declaratory judgment of:
10 (i) non-infringement of the Patents-in-Suit; (ii) unenforceability of certain of the Patents-in-Suit due
11 to inequitable conduct; and for such other relief as the Court deems just and proper. Additionally,
12 ZTE further reserves the right to assert invalidity as an affirmative defense if AGIS asserts
13 infringement.

14 **THE PARTIES**

15 2. Plaintiff ZTE (USA) Inc. is a corporation organized and existing under the laws of the
16 state of New Jersey, with its principal place of business at 2425 N. Central Expressway, Suite 600,
17 Richardson, Texas 75080 with an office located at 1900 McCarthy Blvd, Milpitas, California 95035.

18 3. Upon information and belief, Defendant AGIS Software Development LLC is a
19 limited liability company organized and existing under the laws of the State of Texas, and maintains
20 its principal place of business at 100 W. Houston Street, Marshall, Texas 75670. Upon information
21 and belief, AGIS Software Development LLC is wholly owned by AGIS Holdings, Inc. Upon
22 information and belief, AGIS Holdings, Inc. is organized and existing under the laws of the State of
23 Florida, and maintains its principal place of business at 92 Lighthouse Drive, Jupiter, Florida 33469.
24 Upon information and belief, Advanced Ground Information Systems, Inc. is organized and existing
25 under the laws of the State of Florida, and maintains its principal place of business at 92 Lighthouse
26 Drive, Jupiter, Florida 33469.

27 **JURISDICTION AND VENUE**

1 federal question jurisdiction, 28 U.S.C. §§ 1331 and 1338(a), the Declaratory Judgment Act, 28
2 U.S.C. §§ 2201-2202, and the Patent Laws of the United States, 35 U.S.C. § 1 et seq.

3 5. An actual and justiciable controversy exists between ZTE and AGIS as to the alleged
4 infringement and enforceability of the claims of the Patents-in-Suit.

5 6. This Court has subject matter jurisdiction over this action based on a real and
6 immediate controversy between ZTE and AGIS regarding whether various ZTE's mobile devices
7 infringe the Patents-in-Suit, which AGIS purports to own, whether those AGIS patents are
8 unenforceable, and whether AGIS is barred from asserting infringement of those patents. As
9 described in more detail below, this controversy arises out of AGIS's infringement assertions
10 demands over ZTE's products allegedly "pre-configured or adapted with map-based communication
11 applications and/or features such as Google Maps, Android Device Manager, Find My Device,
12 Google Messages, Android Messenger, Google Hangouts, Google Plus, and Google Latitude among
13 other relevant applications and/or features." *See* Case No. 2:17-cv-00517-JRG (Dkt. No. 32) (E.D.
14 Tex.); *see also* Dkt. No. 1-1 through 1-5 (Exs. A-E to Complaint (Infringement Contentions)).

15 7. On information and belief, AGIS is subject to this Court's specific and/or general
16 personal jurisdiction, pursuant to due process and/or the California Long Arm Statute, due at least to
17 (1) AGIS's activities purposefully directed at residents of this forum, (2) the claims arise out of or
18 relate to the AGIS's activities with this forum, and (3) the assertion of personal jurisdiction is
19 reasonable and fair.

20 8. On information and belief, AGIS asserted one or more of the Patents-in-Suit against
21 Apple Inc. in *AGIS Software Development LLC v. Apple, Inc.*, Case No. 2:17-cv-00516-JRG (E.D.
22 Tex.). Additionally, on information and belief, Apple Inc. is a California incorporated company and
23 AGIS conducted meaningful enforcement activities in California. On information and belief, AGIS
24 retained counsel in California, traveled there, and deposed witnesses there.

25 9. On information and belief, AGIS asserted one or more patents related to the Patents-
26 in-Suit against Life360, Inc. in *Advanced Ground Information Systems, Inc. v. Life360, Inc.*, Case
27 No. 9:14-cv-80651-DMM (S.D. Fla.). Additionally, on information and belief, Life360 Inc. is a

28 California incorporated company and AGIS conducted meaningful enforcement activities in

1 California. On information and belief, AGIS retained counsel in California, traveled there, and
2 deposited witnesses there.

3 10. On information and belief, AGIS asserted one or more patents against ZTE (USA),
4 Inc. and ZTE (USA), Inc.'s sister company ZTE (TX) Inc. in *AGIS Software Development LLC v.*
5 *ZTE Corp. et al.*, Case No. 2:17-cv-00517-JRG (E.D. Tex.) (the "Former Case"). Additionally, ZTE
6 (TX) Inc.'s primary place of business is in California and AGIS conducted meaningful enforcement
7 activities in California. For example, AGIS retained counsel in California, traveled there, and
8 deposited witnesses there including at least a 30(b)(6) deposition of ZTE (USA), Inc. in Redwood
9 Shores, California.

10 11. On information and belief, twenty days before bringing an action against ZTE TX
11 Inc. in the Eastern District of Texas, AGIS Holdings, Inc. formed and incorporated Defendant AGIS
12 Software Development LLC in Texas. Of note, only two months prior, the sister company of AGIS
13 Software Development LLC, Advanced Ground Information Systems, Inc., was litigating in the
14 Southern District of Florida with patents from the same family as the Patents-in-Suit. Once the
15 Florida matter was resolved, in a loss (with non-infringement and attorneys' fees awarded against
16 AGIS for almost \$750,000 due to litigating "an exceptionally weak case"), AGIS then sought a new
17 district. *See Advanced Ground Information Systems, Inc. v. Life360, Inc.* Case No. 14-cv-80651
18 (Dkt. No. 200) (S.D. Fla.) ("While I stop short of finding of bad faith, . . . these claims seemed
19 designed to extract settlement not based upon the merits of the claim but on the high cost of
20 litigation.").

21 12. On information and belief, on June 21, 2017, AGIS filed the original Complaint (Dkt.
22 No. 1 in 2:17-cv-00517) in the Former Case in the Eastern District of Texas, asserting four patents
23 against ZTE (TX), Inc. and ZTE Corporation. On September 26, 2017, ZTE (TX) filed a Motion to
24 Dismiss AGIS's original Complaint for (1) failure to state a claim and (2) improper venue under 28
25 U.S.C. § 1400, or in the alternative, to transfer under § 1404. Case No. 2:17-cv-00517-JRG, Dkt. No.
26 28 (E.D. Tex.). Rather than responding to ZTE (TX) Inc.'s motion, AGIS took advantage of Federal
27 Rule of Civil Procedure 15(a)(1)(B) and amended its Complaint, without leave of Court, on October

28 17, 2017 (the "Amended Complaint"). Case No. 2:17-cv-00517-JRG, Dkt. No. 23 (E.D. Tex.). In the

1 Amended Complaint, which allowed AGIS to avoid responding to ZTE (TX) Inc.'s motion, AGIS
2 added new legal theories of infringement, including a fifth patent, and added theories against the
3 newly-added ZTE defendant, ZTE (USA), Inc.

4 13. On information and belief, on November 21, 2017, ZTE moved to dismiss AGIS's
5 Amended Complaint under § 1400, or in the alternative, to transfer for convenience to the Northern
6 District of California under § 1404. *See* Case No. 2:17-cv-00517-JRG, Dkt. No. 38 (E.D. Tex.). In
7 response, not only did AGIS contest that venue was proper for ZTE (USA), Inc., but AGIS also
8 dismissed the relevance, location, and convenience of non-party Google in the Northern District of
9 California. Case No. 2:17-cv-00517-JRG, Dkt. No. 46 at 2, 24 (E.D. Tex.). AGIS eventually
10 admitted Google's importance in these matters when they subpoenaed Google, indicating that
11 Google possesses relevant documents in the Northern District of California. *See* Case No. 2:17-cv-
12 00517-JRG, Dkt. No. 85 at 7 (E.D. Tex.). On September 28, 2018, the Eastern District of Texas
13 court found that "AGIS [] failed to meet its burden" and found that venue is improper as to ZTE
14 (USA), Inc. in the Eastern District of Texas. *Id.* at 5-7. Rather than dismissing this case under
15 § 1400, the Eastern District of Texas transferred the Former Case to the Northern District of
16 California under § 1406. *Id.* The court specifically found that "[a] transfer, rather than dismissal, is
17 also appropriate where the plaintiff is certain to 'almost immediately' refile the action in the proper
18 venue and, as here, 'discovery has already begun' and the Parties have 'already invested a
19 considerable amount of time and money' in the case." *Id.* at 7. Additionally, in transferring to the
20 Northern District of California and not another district, the court noted (A) that AGIS never
21 proposed an alternative district to which this case should be transferred; and (B) that "transfer to the
22 Northern District of California serves the interests of justice." *Id.* (citing AGIS's service of
23 subpoenas on Google in the Northern District of California).

24 14. On information and belief, AGIS circumvented the Eastern District of Texas's
25 transfer order (Case No. 2:17-cv-00517-JRG, Dkt. No. 85 (E.D. Tex.)) to the Northern District of
26 California by filing a Notice of Voluntary Dismissal without Prejudice (Case No. 2:17-cv-00517-
27 JRG, Dkt. No. 86 (E.D. Tex.)).

28 15. On information and belief, in four motions against Android device manufacturer HTC

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