

EXHIBIT A

From: Lambrianakos, Peter
Sent: Friday, October 26, 2018 5:26 PM
To: Lavenue, Lionel; Rubino, Vincent J.
Cc: Schulz, Bradford; AGIS-Lit
Subject: RE: AGIS Software Development, LLC v ZTE Corporation
Attachments: Kyocera-Semcon Dismissal.pdf

Lionel,

Please see the attached decision dismissing a case in the Southern District of California for lack of personal jurisdiction. The complaint filed by ZTE against the AGIS entities suffers from the same deficiencies, as well as a lack of case or controversy as to the AGIS defendants which do not own the patents. Accordingly, we request that ZTE immediately dismiss its complaint. If it refuses to do so and AGIS is forced to file a motion to dismiss, we will seek fees and costs from ZTE.

Regards,

Peter

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Peter Lambrianakos

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From: Lavenue, Lionel [mailto:lionel.lavenue@finnegan.com]
Sent: Tuesday, October 16, 2018 2:02 PM
To: Rubino, Vincent J.
Cc: Schulz, Bradford; AGIS-Lit
Subject: RE: AGIS Software Development, LLC v ZTE Corporation

Vincent -

Please advise whether you will accept service of the new Complaint on the AGIS entities in the NDCA.

Regards,

Lionel

REDACTED NOT RELEVANT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KYOCERA INTERNATIONAL, INC.,
Plaintiff,
v.
SEMCON IP, INC.,
Defendant.

Case No.: 3:18-CV-1575-CAB-MDD

**ORDER GRANTING MOTION TO
DISMISS FOR LACK OF
PERSONAL JURISDICTION**

[Doc. Nos. 12, 15]

Defendant Semcon IP, Inc. (“Semcon”) moves to dismiss the complaint of Plaintiff Kyocera International, Inc. (“Kyocera”) for lack of personal jurisdiction and based on the first to file rule. The motion has been fully briefed, and the Court deems it suitable for submission without oral argument, so Semcon’s request for oral argument is **DENIED**. As discussed below, because Semcon is not subject to personal jurisdiction in California for Kyocera’s claims for declaratory relief of non-infringement of Semcon’s patents, Semcon’s motion to dismiss is **GRANTED**.

I. Background

The Court is dismissing this lawsuit for lack of personal jurisdiction over Semcon, so only allegations and evidence relevant to that issue are included here. Kyocera seeks declaratory relief of non-infringement of four patents held by Semcon: U.S. Patent Nos.

1 7,100,061; 7,596,708; 8,566,627; and 8,806,247 (collectively, the “Patents”). Semcon is a
2 Texas corporation with its principal place of business in Texas. With its motion, Semcon
3 includes a declaration from Semcon’s chief executive officer and sole employee stating
4 that: (a) he resides in New York; (b) Semcon is not registered to do business in California;
5 (c) Semcon does not have a registered agent for service of process in California; (d)
6 Semcon does not have offices, employees, equipment, bank accounts or other assets in
7 California; (e) Semcon does not manufacture products, sell products, or solicit business in
8 California; (f) Semcon has never filed a lawsuit in California; and (g) Semcon’s only efforts
9 to enforce its rights under the Patents consist of lawsuits Semcon filed in the Eastern
10 District of Texas. [Doc. No. 12-2.]

11 Kyocera does not dispute any of these facts in its opposition. Nevertheless,
12 Kyocera’s complaint alleges that the Court has personal jurisdiction over Semcon for three
13 reasons:

- 14 1. Because Semcon has sought to enforce the Patents against at least two companies
15 that maintain their principal places of business in California [Doc. No. 1 at ¶ 7];
- 16 2. Because Semcon has sought to enforce the Patents against at least three foreign
17 companies whose subsidiaries have principal places of business in California
18 [*Id.*]; and,
- 19 3. Because Semcon retained the services of a process server with a place of business
20 in California to serve a complaint in another lawsuit concerning the Patents on a
21 Taiwanese entity. [*Id.* at ¶ 8.]

22 In addition, in its opposition to the instant motion, Kyocera appears to contend that
23 Semcon’s appearances at two mediations before a Texas-based mediator concerning two
24 infringement lawsuits Semcon filed in the Eastern District of Texas make Semcon subject
25 to personal jurisdiction in this lawsuit because the mediations physically occurred in
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1 California. [Doc. No. 13 at 7-8.]¹ Kyocera does not dispute, however, Semcon’s argument
2 in its motion that Semcon did not purposefully select California as the forum for these
3 mediations. [Doc. No. 12 at 22-23.]

4 II. Legal Standards

5 “Because the issue of personal jurisdiction in a declaratory action for patent
6 invalidity and non-infringement is intimately related to patent law, personal jurisdiction . .
7 . is governed by the law of this circuit.”). *Silent Drive, Inc. v. Strong Indus., Inc.*, 326 F.3d
8 1194, 1201 (Fed. Cir. 2003). Under Federal Circuit law, “[p]ersonal jurisdiction over an
9 out-of-state defendant is appropriate if the relevant state’s long-arm statute permits the
10 assertion of jurisdiction without violating federal due process.” *Nuance Comms., Inc. v.*
11 *Abby Software House*, 626 F.3d 1222, 1230 (Fed. Cir. 2010) (quoting *3D Sys., Inc. v.*
12 *Aarotech Labs, Inc.*, 160 F.3d 1373, 1376-77 (Fed. Cir. 1998)). “Under California’s long-
13 arm statute, California state courts may exercise personal jurisdiction ‘on any basis not
14 inconsistent with the Constitution of this state or of the United States.’” *Daimler AG v.*
15 *Bauman*, 571 U.S. 117, 125 (2014) (quoting Cal. Civ. Proc. Code Ann. § 410.10 (West
16 2004)). Thus, “the jurisdictional analyses under state law and federal due process are the
17 same.” *Nuance Comms.*, 626 F.3d at 1230 (citing *Schwarzenegger v. Fred Martin Motor*
18 *Co.*, 374 F.3d 797, 800-801 (9th Cir. 2004)).

19 Under the Due Process Clause of the Fourteenth Amendment, to exercise personal
20 jurisdiction over an out-of-state defendant, the defendant must have “certain minimum
21 contacts with [the State] such that the maintenance of the suit does not offend traditional
22 notions of fair play and substantial justice.” *Goodyear Dunlop Tires Operations, S.A. v.*
23 *Brown*, 564 U.S. 915, 923 (2011) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316
24 (1945) (internal quotation marks and citation omitted)). This minimum contacts
25 jurisdiction may be either “general or all-purpose jurisdiction,” or “specific or case-linked
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28 ¹ Citation to page numbers of ECF documents is to the ECF watermark page number at the top of the page.

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