

1 Michael Liu Su (Cal. Bar No. 300590)
2 michael.liu.su@finnegan.com
3 FINNEGAN, HENDERSON, FARABOW,
4 GARRETT & DUNNER, LLP
5 3300 Hillview Avenue
6 Palo Alto, CA 94304
7 Telephone: (650) 849-6600
8 Facsimile: (650) 849-6666

9 Lionel M. Lavenue (*pro hac vice*)
10 lionel.lavenue@finnegan.com
11 Bradford C. Schulz (*pro hac vice*)
12 bradford.schulz@finnegan.com
13 FINNEGAN, HENDERSON, FARABOW,
14 GARRETT & DUNNER, LLP
15 Two Freedom Square
16 11955 Freedom Drive
17 Reston, VA 20190
18 Telephone: (571) 203-2700
19 Facsimile: (202) 408-4400

20 Attorneys for Plaintiff
21 ZTE (USA) Inc.

Sarah G. Hartman (Cal. Bar No. 281751)
shartman@brownrudnick.com
Alfred R. Fabricant (*pro hac vice*)
afabricant@brownrudnick.com
Peter Lambrianakos (*pro hac vice*)
plambrianakos@brownrudnick.com
Vincent J. Rubino, III (*pro hac vice*)
vrubino@brownrudnick.com
Brown Rudnick LLP
7 Times Square
New York, NY 10036
Telephone: (212) 209-4800
Facsimile: (212) 209-4801

Arjun Sivakumar (Cal. Bar No. 297787)
asivakumar@brownrudnick.com
Brown Rudnick LLP
2211 Michelson Drive, Seventh Floor
Irvine, California 92612
Telephone: (949) 752-7100
Facsimile: (949) 252-1514

Attorneys for Defendant AGIS
SOFTWARE DEVELOPMENT LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ZTE (USA) INC.,
Plaintiff,
v.
AGIS SOFTWARE DEVELOPMENT LLC,
Defendant.

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

**JOINT STIPULATION PROTECTIVE
ORDER FOR LITIGATION
INVOLVING PATENTS, HIGHLY
SENSITIVE CONFIDENTIAL
INFORMATION AND/OR TRADE
SECRETS**

28

1 Pursuant to Civil Local Rule 7-12 and the Court's Scheduling Order (Dkt. 63), the parties
2 hereby agree to the terms of the following proposed protective order and respectfully request that
3 the Court enter the proposed order.

4
5 Upon the stipulation of the parties, the Court ORDERS as follows:

6 1. PURPOSES AND LIMITATIONS

7 Disclosure and discovery activity in this action are likely to involve production of
8 confidential, proprietary, or private information for which special protection from public disclosure
9 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
10 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
11 Order. The parties acknowledge that this Order does not confer blanket protections on all
12 disclosures or responses to discovery and that the protection it affords from public disclosure and
13 use extends only to the limited information or items that are entitled to confidential treatment under
14 the applicable legal principles. The parties further acknowledge, as set forth in Section 13.4, below,
15 that this Stipulated Protective Order does not entitle them to file confidential information under
16 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that
17 will be applied when a party seeks permission from the court to file material under seal.

18 2. DEFINITIONS

19 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
20 information or items under this Order.

21 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
22 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
23 Civil Procedure 26(c).

24 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
25 as their support staff).

26 2.4 Designated House Counsel: House Counsel who seek access to "HIGHLY
27 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information in this matter.
28

1 2.5 Designating Party: a Party or Non-Party that designates information or items that it
2 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
4 CODE”.

5 2.6 Disclosure or Discovery Material: all items or information, regardless of the
6 medium or manner in which it is generated, stored, or maintained (including, among other things,
7 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
8 responses to discovery in this matter.

9 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
10 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
11 a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
12 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
13 of a Party’s competitor.

14 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
15 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
16 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less
17 restrictive means.

18 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
19 sensitive “Confidential Information or Items” representing computer code and associated
20 comments and revision histories, formulas, engineering specifications, or schematics that define or
21 otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure
22 of which to another Party or Non-Party would create a substantial risk of serious harm that could
23 not be avoided by
24 less restrictive means.

25 2.10 House Counsel: attorneys who are employees of a party to this action. House
26 Counsel does not include Outside Counsel of Record or any other outside counsel.

27 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
28 entity not named as a Party to this action.

1 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
2 action but are retained to represent or advise a party to this action and have appeared in this action
3 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

4 2.13 Party: any party to this action, including all of its officers, directors, employees,
5 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

6 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
7 Material in this action.

8 2.15 Professional Vendors: persons or entities that provide litigation support services
9 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
10 storing, or retrieving data in any form or medium) and their employees and subcontractors.

11 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
12 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as
13 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

14 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
15 Producing Party.

16 3. SCOPE

17 The protections conferred by this Stipulation and Order cover not only Protected Material
18 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all
19 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
20 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
21 However, the protections conferred by this Stipulation and Order do not cover the following
22 information: (a) any information that is in the public domain at the time of disclosure to a
23 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
24 result of publication not involving a violation of this Order, including
25 becoming part of the public record through trial or otherwise; and (b) any information known to the
26 Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from
27 a source who obtained the information lawfully and under no obligation of confidentiality to the
28 Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement

1 or order.

2 4. DURATION

3 Even after final disposition of this litigation, the confidentiality obligations imposed by this
4 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
5 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
6 defenses in this action, with or without prejudice; and (2) final judgment herein after the
7 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
8 including the time limits for filing any motions or applications for extension of time pursuant to
9 applicable law.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
12 Non-Party that designates information or items for protection under this Order must take care to
13 limit any such designation to specific material that qualifies under the appropriate standards. To the
14 extent it is practical to do so, the Designating Party must designate for protection only those parts
15 of material, documents, items, or oral or written communications that qualify – so that other
16 portions of the material, documents, items, or communications for which protection is not
17 warranted are not swept unjustifiably within the ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
19 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
20 encumber or retard the case development process or to impose unnecessary expenses and burdens
21 on other parties) expose the Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it designated for
23 protection do not qualify for protection at all or do not qualify for the level of protection initially
24 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
25 mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
27 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
28 Disclosure or Discovery

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