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12 ZTE (USA) Inc.

13  
14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16

17 ZTE (USA) INC.,  
18 Plaintiff,  
19 v.  
20 AGIS SOFTWARE DEVELOPMENT LLC,  
AGIS HOLDINGS, INC., and ADVANCED  
21 GROUND INFORMATION SYSTEMS, INC.,  
22 Defendants.

CASE NO. 18-cv-06185  
(Former Case No. 2:17-cv-00517-JRG) (E.D.  
Tex.)  
**PLAINTIFF’S COMPLAINT FOR  
DECLARATORY JUDGMENT**  
**JURY TRIAL DEMANDED**

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1 Plaintiff ZTE (USA) Inc. (“ZTE”), for its Complaint against Defendants AGIS Software  
2 Development LLC, AGIS Holdings, Inc. and Advanced Ground Information Systems, Inc.  
3 (collectively “AGIS”) seeking declaratory judgment of non-infringement, invalidity, and/or  
4 unenforceability as to U.S. Patent Nos. 8,213,970; 9,408,055; 9,445,251; 9,467,838; and 9,749,829  
5 (collectively, the “Patents-in-Suit”), hereby alleges as follows:

6 **NATURE OF ACTION**

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

12 **THE PARTIES**

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

16 3. Upon information and belief, Defendant AGIS Software Development LLC is a  
17 limited liability company organized and existing under the laws of the State of Texas, and maintains  
18 its principal place of business at 100 W. Houston Street, Marshall, Texas 75670. Upon information  
19 and belief, AGIS Software Development LLC is wholly owned by AGIS Holdings, Inc.

20 4. Upon information and belief, Defendant AGIS Holdings, Inc. is organized and  
21 existing under the laws of the State of Florida, and maintains its principal place of business at 92  
22 Lighthouse Drive, Jupiter, Florida 33469.

23 5. Upon information and belief, Defendant Advanced Ground Information Systems, Inc.  
24 is organized and existing under the laws of the State of Florida, and maintains its principal place of  
25 business at 92 Lighthouse Drive, Jupiter, Florida 33469.

26 **JURISDICTION AND VENUE**

27 6. This Court has exclusive subject matter jurisdiction over this action pursuant to

28 Federal question jurisdiction, 28 U.S.C. §§ 1331 and 1332(c); the Declaratory Judgment Act, 28

1 U.S.C. §§ 2201-2202, and the Patent Laws of the United States, 35 U.S.C. § 1 et seq.

2 7. An actual and justiciable controversy exists between ZTE and AGIS as to the alleged  
3 infringement, validity, and enforceability of the claims of the Patents-in-Suit.

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

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

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

24 11. On information and belief, AGIS asserted one or more patents related to the Patent-  
25 in-Suit against Life360, Inc. in *Advanced Ground Information Systems, Inc. v. Life360, Inc.*, case no.  
26 9:14-cv-80651-DMM (S.D. Fla.). Additionally, on information and belief, Life360 Inc. is a  
27 California incorporated company and AGIS conducted meaningful enforcement activities in

28 California. On information and belief, AGIS retained counsel in California, traveled there, and

1   deposed witnesses there.

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

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

19           14.     On information and belief, on June 21, 2017, AGIS filed the original Complaint (Dkt.  
20   No. 1 in 2:17-cv-00517) in the Former Case in the Eastern District of Texas, asserting four patents  
21   against ZTE (TX), Inc. and ZTE Corporation. On September 26, 2017, ZTE (TX) filed a Motion to  
22   Dismiss AGIS's original Complaint for (1) failure to state a claim and (2) improper venue under 28  
23   U.S.C. § 1400, or in the alternative, to transfer under §1404. Dkt. No. 28. Rather than responding to  
24   ZTE (TX)'s motion, AGIS took advantage of Federal Rule of Civil Procedure 15(a)(1)(B) and  
25   amended its Complaint, without leave of Court, on October 17, 2017 (the "Amended Complaint").  
26   Dkt. No. 32. In the Amended Complaint, which allowed AGIS to avoid responding to ZTE (TX)'s  
27   motion, AGIS added new legal theories of infringement, including a fifth patent, and added theories

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

19           16.     On information and belief, AGIS circumvented the Eastern District of Texas's  
20 transfer order (Dkt. No. 85) to the Northern District of California by filing a Notice of Voluntary  
21 Dismissal without Prejudice (Dkt. No. 86).

22           17.     On information and belief, in four actions against Android device manufactures HTC  
23 Corporation (2:17-cv-00514), Huawei Device USA Inc. et al. (2:17-cv-00513), LG Electronics, Inc.  
24 (2:17-cv-00515), and ZTE (USA), Inc. et al. (2:17-cv-00517), all in the Eastern District of Texas,  
25 AGIS asserted infringement contentions relying nearly exclusively on Android and Google  
26 application functionalities. Additionally, AGIS served several subpoenas on Google in the Northern  
27 District of California seeking information and proprietary information relating to Google Maps, Find

28 My Device and Device Manager. *See* Ex. F.

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