

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

INTERDIGITAL COMMUNICATIONS,
INC., a Delaware corporation,
INTERDIGITAL TECHNOLOGY
CORPORATION, a Delaware corporation,
IPR LICENSING, INC., a Delaware
corporation, and INTERDIGITAL
HOLDINGS, INC., a Delaware corporation,

Plaintiffs and Counterclaim
Defendants,

v.

ZTE CORPORATION and ZTE (USA) INC.,

Defendants and
Counterclaim Plaintiffs.

C.A. No.: 13-009-RGA

**OPENING BRIEF IN SUPPORT OF ZTE'S RENEWED MOTION FOR JUDGMENT AS
A MATTER OF LAW THAT THE ASSERTED PATENT CLAIMS ARE NOT
INFRINGED AND, IN THE ALTERNATIVE, FOR A NEW TRIAL**

OF COUNSEL:

Ralph J. Gabric
Charles M. McMahon
Mircea A. Tipescu
Brian A. Jones
Hersh H. Mehta
Brinks Gilson & Lione
455 North Cityfront Plaza Drive
Chicago, IL 60611
(312) 321-4200

Jay H. Reiziss
Brinks Gilson & Lione
1775 Pennsylvania Ave NW #900
Washington, DC 20006
(202) 296-8700

Kelly E. Farnan (#4395)
Farnan@rlf.com
Travis S. Hunter (#5350)
Hunter@rlf.com
Richards, Layton & Finger, P.A.
920 N. King Street
Wilmington, DE 19801
302-651-7700

*Counsel for Defendants
ZTE Corporation and ZTE (USA) Inc.*

Dated: November 26, 2014

RLF1 11200135v.1

**IPR Licensing, Inc.
Exhibit 2018**

TABLE OF CONTENTS

I. INTRODUCTION	1
II. LEGAL STANDARDS	2
III. JMOL OF NON-INFRINGEMENT IS WARRANTED UNDER RULE 50	3
A. The 966 and 847 “Same Code” Patents	3
1. The “same code” requirement	3
2. The “synchronize to a/the pilot signal” requirement	5
B. The 244 “Logical Connection” Patent	7
1. The “available for use” requirement	7
2. The “logical connection” requirement	10
IV. A NEW TRIAL IS WARRANTED UNDER RULE 59	13
A. Irreconcilable Verdicts on the 966 and 847 “Same Code” Patents	13
B. Irreconcilable Verdicts on the 244 “Logical Connection” Patent	15
C. Absent Entry of JMOL of Non-Infringement, a New Trial Is Warranted After the Court Clarifies the Meaning of “Logical Connection”	17
D. InterDigital’s Improper and Prejudicial Use of Licensing Evidence	17
E. InterDigital’s Improper, Misleading, and Prejudicial Closing Arguments	19
V. CONCLUSION	20

TABLE OF AUTHORITIES

CASES

Advanced Fiber Techs. (AFT) Trust v. J & L Fiber Servs., Inc.,
674 F.3d 1365 (Fed. Cir. 2012) 12

Allied Chem. Corp. v. Daiflon, Inc.,
449 U.S. 33 (1980) 3

Fineman v. Armstrong World Indus., Inc.,
980 F.2d 171 (3rd Cir. 1992)..... 20

In re Fulton,
391 F.3d 1195 (Fed. Cir. 2004) 15

L-3 Commc’ns Corp. v. Sony Corp.,
2014 WL 4674815 (D. Del. Sept. 12, 2014)..... 2

LaserDynamics, Inc. v. Quanta Computer, Inc.,
694 F.3d 51 (Fed. Cir. 2012) 7, 9

LG Elecs. USA, Inc. v. Whirlpool Corp.,
798 F. Supp. 2d 541 (D. Del. 2011) 2, 3

Lind v. Schenley Indus., Inc.,
278 F.2d 79 (3d Cir. 1960) 2

Lucent Techs., Inc. v. Extreme Networks, Inc.,
231 F.R.D. 453 (D. Del. 2005) 20

MobileMedia Ideas, LLC v. Apple Inc.,
966 F. Supp. 2d 439 (D. Del. 2013) 6, 9, 18

O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co., Ltd.,
521 F.3d 1351 (Fed. Cir. 2008) 17

On-Line Techs., Inc. v. Bodenseewerk Perkin-Elmer GmbH,
386 F.3d 1133 (Fed. Cir. 2004) 12

Pannu v. Iolab Corp.,
155 F.3d 1344 (Fed. Cir. 1998) 2

Perkin-Elmer Corp. v. ComputerVision Corp.,
732 F.3d 888 (Fed. Cir. 1984) 2

Ryan Operations G.P. v. Santiam-Midwest Lumber Co.,
81 F.3d 355 (3d Cir. 1996) 10

Solomon Techs., Inc. v. Toyota Motor Corp.,
No. 5-cv-1702, 2010 WL 715243 (M.D. Fla. Jan. 26, 2010) 10

Star Scientific, Inc. v. RJ Reynolds Tobacco Co.,
655 F.3d 1364 (Fed. Cir. 2011) 6

Texas Instruments, Inc. v. Cypress Semiconductor Corp.,
90 F.3d 1558 (Fed. Cir. 1996) 6

Trustees in Bankr. of N. Am. Rubber Thread Co. v. United States,
593 F.3d 1346 (Fed. Cir. 2010) 10

Williamson v. Consol. Rail Corp.,
926 F.2d 1344 (3d Cir. 1991) 2, 3

STATUTES

FED. R. CIV. P. 50(A)(1) 2

FED. R. CIV. P. 59(A)(1) 2

I. INTRODUCTION

InterDigital's infringement case was riddled with inconsistencies and conflicting admissions that undermine the verdict as a matter of law. The record lacks substantial evidence of infringement, and no reasonable juror could have found in InterDigital's favor.

For example, on U.S. Patent Nos. 7,190,966 and 7,286,847 (the "same code" patents), InterDigital's experts took conflicting positions. To distinguish the prior art, Dr. Haas testified that two different portions of a *theoretical* sequence of chips can never be retrospectively combined to form the claimed "same code," but Dr. Jackson did exactly that to show infringement. Even ignoring other flaws in Dr. Jackson's testimony, this inconsistency alone requires judgment as a matter of law ("JMOL") of non-infringement on the "same code" patents.

As to U.S. Patent No. 8,380,244 (the "logical connection" patent), Dr. Cooklev repeatedly contradicted InterDigital's infringement theory. The 244 patent claims require cellular physical channels to be *available* for a phone to select for use while the phone is using WiFi, but Dr. Cooklev admitted that ZTE's phones *release* those channels. He also admitted that the PDP context in ZTE's phones does not meet his own definition of the required "logical connection." These admissions fundamentally undermine InterDigital's infringement case, and the Court should grant JMOL of non-infringement on the "logical connection" patent.

In the alternative, the Court should grant a new trial. ZTE's phones operate like the prior art, so the jury's verdicts of infringement and validity are irreconcilable. If ZTE's phones use a "same code," then so did the prior art. If ZTE's phones maintain a "logical connection," then so did the prior art. The inconsistent infringement and validity verdicts are against the weight of the evidence, and allowing them to stand would be erroneous. Indeed, to even reach infringement on the 244 patent, the jury was forced to resolve a legal dispute about the meaning of "logical connection," which independently warrants a new trial on this patent.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.