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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

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12 SPH AMERICA, LLC,
13 Plaintiff,
14 vs.
15 ZTE (USA), INC.,
16 Defendant.
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Case No. 3:13-cv-02326-CAB-NLS

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

Jury Trial Demanded

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1 This is an action for patent infringement arising under the Patent Laws of the
2 United States of America, 35 U.S.C. § 1 *et seq.* in which Plaintiff SPH America,
3 LLC (“SPH” or “Plaintiff”) makes the following allegations against Defendant
4 ZTE (USA), Inc. (“ZTE” or “Defendant”).

5 **I. PARTIES**

6 1. Plaintiff SPH America, LLC is a Virginia limited liability company
7 having a principal place of business at 8133 Leesburg Pike, Suite 310, Vienna,
8 Virginia 22182.

9 2. On information and belief, Defendant ZTE (USA), Inc. is a New
10 Jersey corporation with its principal place of business at 33 Wood Avenue South,
11 Iselin, New Jersey 08830.

12 **II. JURISDICTION AND VENUE**

13 3. This action arises under the patent laws of the United States, Title 35
14 of the United States Code. This Court has original subject matter jurisdiction
15 pursuant to 28 U.S.C. §§ 1331 and 1338(a).

16 4. On information and belief, Defendant is subject to this Court's specific
17 and general personal jurisdiction pursuant to due process and/or the California
18 Long Arm Statute, due to having availed itself of the rights and benefits of
19 California by engaging in activities, including: (i) conducting substantial business
20 in this forum; and (ii) engaging in other persistent courses of conduct, and/or
21 deriving substantial revenue from goods and services provided to individuals in
22 California and in this Judicial District.

23 5. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c)
24 and 1400(b). On information and belief, Defendant has engaged in activities
25 including: transacting business in this district and purposefully directing its
26 business activities, including the sale of infringing goods, to this district.

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COUNT I

INFRINGEMENT OF U.S. PATENT NO. RE 40,385

6. Plaintiff SPH realleges and incorporates by reference paragraphs 1-5 above, as if fully set forth herein.

7. Plaintiff SPH is the exclusive licensee of United States Patent No. RE 40,385 (“the ‘385 patent”) titled “Orthogonal Complex Spreading Method For Multichannel And Apparatus Thereof.” The ‘385 patent was duly and legally issued by the United States Patent and Trademark Office on June 17, 2008. SPH is the exclusive licensee, possessing all substantial rights, to the ‘385 patent pursuant to a license from the Electronics and Telecommunications Research Institute, a South Korean non-profit research organization, the owner of the ‘385 patent.

8. On information and belief, ZTE makes and sells mobile handsets for use on a wireless network.

9. On information and belief, ZTE has infringed and continues to infringe the ‘385 patent by, among other things, making, using, offering for sale, and/or selling unlicensed systems, and products and/or services related thereto, covered by one or more claims of the ‘385 patent. Such unlicensed products include, by way of example and without limitation, the Avid 4G, the Anthem 4G, the Fury, the Sprint Vital, the Boost Force, and the Warp Sequent mobile devices, all of which are covered by one or more claims of the ‘385 patent, including but not limited to claim 31. By making, using, offering for sale, and/or selling such systems, and products and/or services related thereto, covered by one or more claims of the ‘385 patent, ZTE has injured SPH and is liable to SPH for infringement of the ‘385 patent pursuant to 35 U.S.C. § 271.

10. ZTE was placed on notice of its infringement of the ‘385 Patent no later than approximately July 2009 as a result of a complaint filed by SPH alleging infringement of the ‘385 patent by ZTE. Though that action was subsequently

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1 dismissed without prejudice as to ZTE, it placed ZTE on notice of its infringing
2 activities.

3 11. On information and belief, ZTE has also infringed the '385 patent by
4 inducing others, including users of its wireless handsets, to infringe one or more
5 claims of the '385 patent in violation of 35 U.S.C. § 271(b).

6 12. On information and belief, ZTE takes active steps to induce its
7 customers to infringe the '385 patent by taking affirmative steps to encourage and
8 facilitate direct infringement by others with knowledge of that infringement, such
9 as, upon information and belief, by importing, offering for sale, and/or selling
10 products and/or services that when used as intended infringe the '385 patent. For
11 example, and without limitation, on information and belief, ZTE advertises that
12 customers can utilize mobile devices to communicate using its network services for
13 3G communications enabled pursuant to CDMA2000 technology or WCDMA
14 technology. Since at least the time of prior complaint in July 2009, ZTE has had
15 actual knowledge of the '385 patent and that the use of products and services by its
16 customers constituted direct infringement of the '385 patent. Despite this
17 knowledge, ZTE has continued to offer its infringing products, to facilitate and
18 encourage infringing use of its products, and to encourage its customers to use its
19 products and services in a manner that infringes the '385 patent.

20 13. On information and belief, ZTE has also infringed the '385 patent by
21 contributing to the infringement of others, including users of its handsets, to
22 infringe one or more claims of the '385 patent in violation of 35 U.S.C. § 271(c).

23 14. On information and belief, ZTE sells devices that are a component of
24 the patented invention of the '385 patent or an apparatus for use in practicing a
25 patented process of the '385 patent and they are especially made or especially
26 adapted for use in infringement of the '385 patent. In particular, the mobile
27 handsets sold and offered for sale by ZTE are apparatus for use in practicing one or
28 more claimed processes of the '385 patent and are especially made or especially

1 adapted for use in practicing one or more claimed processes of the '385 patent,
2 including through use in communications using CDMA2000 technology or
3 WCDMA technology. ZTE sold these devices despite its knowledge that they
4 were especially made or especially adapted for use in infringement of the '385
5 patent. ZTE was put on notice of the infringing nature of these goods since at least
6 the time of SPH's prior complaint in July 2009.

7 15. ZTE undertook its actions of, *inter alia*, making, using, offering for
8 sale, and/or selling unlicensed systems, and products and/or services related thereto
9 despite an objectively high likelihood that such activities infringed the '385 patent,
10 which has been duly issued by the United States Patent and Trademark Office, and
11 is presumed valid. Since at least the time of the 2009 complaint, ZTE has been
12 aware of an objectively high likelihood that its actions constituted, and continue to
13 constitute, infringement of the '385 patent and that the '385 patent is valid.
14 Despite that knowledge, on information and belief, ZTE has continued its
15 infringing activities. As such, ZTE willfully infringed the '385 patent.

16 16. As a result of ZTE's infringement of the '385 patent, Plaintiff SPH
17 has suffered monetary damages and is entitled to a money judgment in an amount
18 adequate to compensate for ZTE's infringement, but in no event less than a
19 reasonable royalty for the use made of the invention by ZTE, enhancement of
20 damages due to ZTE's willful infringement, and interest and costs as fixed by the
21 Court.

22 COUNT II

23 INFRINGEMENT OF U.S. PATENT NO. RE 40,253

24 17. Plaintiff SPH realleges and incorporates by reference paragraphs 1-16
25 above, as if fully set forth herein.

26 18. Plaintiff SPH is the exclusive licensee of United States Patent No. RE
27 40,253 ("the '253 patent") titled "Apparatus For Making A Random Access To the
28 Reverse Common Channel Of A Base Station In CDMA And Method Therefor."

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