

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

<b>PARTHENON UNIFIED MEMORY ARCHITECTURE LLC,</b>	§	
	§	
<b>Plaintiff,</b>	§	<b>Civil Action No. 2:15-cv-00225</b>
	§	
<b>v.</b>	§	<b>PATENT CASE</b>
	§	
<b>ZTE CORPORATION ET AL.</b>	§	<b>JURY TRIAL DEMANDED</b>
	§	
<b>Defendants.</b>	§	

**ANSWER AND COUNTERCLAIMS OF ZTE (USA) INC. AND ZTE (TX) INC.  
TO PARTHENON UNIFIED MEMORY ARCHITECTURE LLC'S  
COMPLAINT FOR PATENT INFRINGEMENT**

To the extent any response is required to the unnumbered preamble of plaintiff's Complaint for Patent Infringement: Denied.

**THE PARTIES**

1. Denied, because ZTE (USA) Inc. and ZTE (TX) Inc. (collectively "ZTE") are without knowledge or information sufficient to form a belief as to the truth of the averments.
2. Denied, except that ZTE Corporation is a corporation organized and existing under the laws of the People's Republic of China, having a principal place of business at ZTE Plaza, Keji Road South, Hi-Tech Industrial Park, Nanshan District, Shenzhen, Guangdong Province, People's Republic of China 518057.
3. Denied, except that ZTE (USA) Inc. is a corporation organized and existing under the laws of New Jersey, having a principal place of business at 2425 North Central Expressway, Suite 600, Richardson, Texas 75080.
4. Denied, except that ZTE (TX) Inc. is a corporation organized and existing under the laws of Texas, having a principal place of business at 2500 Dallas Parkway, Plano, Texas 75093.

**JURISDICTION AND VENUE**

5. Denied, except that for purposes of this Civil Action No. 2:15-cv-00225, ZTE does not object to the exercise of jurisdiction by this Court.

6. Denied, except that for purposes of this Civil Action No. 2:15-cv-00225, ZTE does not object to the propriety (as opposed to the convenience) of venue in this District and Division.

**COUNT I: INFRINGEMENT OF U.S. PATENT NO. 5,812,789**

7. Denied.

8. Denied.

9. Denied.

10. Denied.

**COUNT II: INFRINGEMENT OF U.S. PATENT NO. 5,960,464**

11. Denied.

12. Denied.

13. Denied.

14. Denied.

**COUNT III: INFRINGEMENT OF U.S. PATENT NO. 6,058,459**

15. Denied.

16. Denied.

17. Denied.

18. Denied.

**COUNT IV: INFRINGEMENT OF U.S. PATENT NO. 6,427,194**

19. Denied.

20. Denied.

21. Denied.

22. Denied.

**COUNT V: INFRINGEMENT OF U.S. PATENT NO. 7,321,368**

- 23. Denied.
- 24. Denied.
- 25. Denied.
- 26. Denied.

**COUNT VI: INFRINGEMENT OF U.S. PATENT NO. 7,542,045**

- 27. Denied.
- 28. Denied.
- 29. Denied.
- 30. Denied.

**COUNT VII: INFRINGEMENT OF U.S. PATENT NO. 7,777,753**

- 31. Denied.
- 32. Denied.
- 33. Denied.
- 34. Denied.

**COUNT VIII: INFRINGEMENT OF U.S. PATENT NO. 8,054,315**

- 35. Denied.
- 36. Denied.
- 37. Denied.
- 38. Denied.

**COUNT IX: INFRINGEMENT OF U.S. PATENT NO. 8,681,164**

- 39. Denied.
- 40. Denied.
- 41. Denied.
- 42. Denied.

**JURY DEMAND**

43. To the extent any response is required: Denied, except that ZTE below demands a trial by jury on all issues so triable.

**PRAYER FOR RELIEF**

To the extent any response is required to any paragraph of plaintiff's Prayer for Relief, including without limitation its unnumbered paragraph and the paragraphs it has labeled a-e: Denied.

44. To the extent ZTE has not already addressed elsewhere any averments of Plaintiff's Original Complaint for Patent Infringement: Denied.

**DEFENSES**

45. Pursuant to Federal Rule of Civil Procedure 8(b) and (c), without assuming any burden that it would not otherwise bear, without reducing or removing plaintiff's burdens of proof on its affirmative claims against ZTE, reserving its right to assert additional defenses, and affirmatively solely to the extent deemed necessary by the Court to maintain any or all of the following defenses, ZTE asserts the following defenses to plaintiff's Complaint for Patent Infringement:

**FIRST DEFENSE**

46. ZTE does not and has not infringed any valid and enforceable claim of U.S. Patent Nos. 5,812,789; 5,960,464; 6,058,459; 6,427,194; 7,321,368; 7,542,045; 7,777,753; 8,054,315; or 8,681,164 (collectively, the "patents-in-suit") literally, under the doctrine of equivalents, directly, indirectly, contributorily, by way of inducement, and/or via any other mechanism of liability.

**SECOND DEFENSE**

47. Each of the claims of the patents-in-suit is invalid and/or unenforceable for failure to comply with one or more of the conditions of patentability set forth in Title 35 of the United States Code, including without limitation, for example, Sections 101, 102, 103, and 112.

**THIRD DEFENSE**

48. Plaintiff's claims for patent infringement are precluded in whole or in part (i) to the extent that any allegedly infringing products or components thereof are supplied, directly or indirectly, to ZTE by (or by ZTE to) any entity or entities having express or implied licenses to the patents-in-suit and/or (ii) under the doctrine of patent exhaustion.

**FOURTH DEFENSE**

49. Plaintiff is barred in whole or in part under principles of equity, including without limitation, laches, prosecution laches, waiver, estoppel, and/or unclean hands.

**FIFTH DEFENSE**

50. Any claim by Plaintiff for damages is limited under 35 U.S.C. §§ 286 or 287. Plaintiff is barred under 35 U.S.C. § 287 from recovering damages prior to the date of the filing of the Complaint. Plaintiff is barred by 35 U.S.C. § 288 from recovering costs associated with its action.

**SIXTH DEFENSE**

51. Plaintiff has failed to provide adequate evidence of ownership of the patents-in-suit.

**SEVENTH DEFENSE**

52. Plaintiff lacks standing to bring suit for alleged infringement of the patents-in-suit.

**EIGHTH DEFENSE**

53. Plaintiff is not entitled to injunctive relief under any theory, at least because: (1) plaintiff has not suffered nor will it suffer irreparable harm because of ZTE's conduct; (2) any harm to plaintiff would be outweighed by the harm to ZTE if an injunction were entered; (3) plaintiff has an adequate remedy at law even if it were to prevail in this action; and (4) the public interest would not be served by an injunction in favor of plaintiff.

**NINTH DEFENSE**

54. Plaintiff has failed to state a claim upon which relief can be granted.

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