

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

**FASTVDO LLC,**

**Plaintiff,**

**v.**

**ZTE CORPORATION ET AL.,**

**Defendants.**

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**Civil Action No. 2:15-cv-00926**

**JURY TRIAL DEMANDED**

**ANSWER AND COUNTERCLAIMS OF ZTE (USA) INC. TO  
PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT**

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

**BACKGROUND**

1. To the extent any response is required: Denied, because ZTE (USA) Inc. ("ZTE") is without knowledge or information sufficient to form a belief as to the truth of the averments.
2. To the extent any response is required: Denied, because ZTE is without knowledge or information sufficient to form a belief as to the truth of the averments.
3. To the extent any response is required: Denied, because ZTE is without knowledge or information sufficient to form a belief as to the truth of the averments.
4. To the extent any response is required: Denied, because ZTE is without knowledge or information sufficient to form a belief as to the truth of the averments.

**THE PARTIES**

5. Denied, because ZTE is without knowledge or information sufficient to form a belief as to the truth of the averments.

6. Denied, except that ZTE Corporation is a corporation organized and existing under the laws of the People's Republic of China with a principal place of business at ZTE Plaza, Keji Road South, Hi-Tech Industrial Park, Nanshan District, Shenzhen, Guangdong Province, P.R. China 518057.

7. Denied, except that ZTE (USA) Inc. is a subsidiary of ZTE Corporation, and is a New Jersey corporation with its principal place of business at 2425 North Central Expressway, Suite 600, Richardson, Texas 75080.

### **JURISDICTION AND VENUE**

8. To the extent any response is required: Denied, except that plaintiff has alleged an action arising under certain provisions of Title 35 of the United States Code.

9. Denied, except that for purposes of this Civil Action No. 2:15-cv-00926, ZTE does not object to the exercise of jurisdiction by this Court.

10. Denied.

11. Denied.

### **COUNT I**

#### **INFRINGEMENT OF U.S. PATENT NO. 5,850,482**

12. To the extent any response is required: ZTE reavers and incorporates by reference its unnumbered preamble and Paragraphs 1-11.

13. Denied, because ZTE is without knowledge or information sufficient to form a belief as to the truth of the averments.

14. To the extent any response is required: Denied, because ZTE is without knowledge or information sufficient to form a belief as to the truth of the averments.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

**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.

**DEMAND FOR JURY TRIAL**

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

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

**DEFENSES**

20. 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**

21. ZTE does not and has not infringed any valid and enforceable claim of U.S. Patent No. 5,850,482 (the "patent-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**

22. Each of the claims of the patent-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**

23. 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**

24. 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**

25. 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**

26. Plaintiff has failed to provide adequate evidence of ownership of the patent-in-suit.

#### **SEVENTH DEFENSE**

27. Plaintiff lacks standing to bring suit for alleged infringement of the patent-in-suit.

#### **EIGHTH DEFENSE**

28. 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**

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

#### **TENTH DEFENSE**

30. This is an exceptional case under 35 U.S.C. 285, entitling ZTE to an award of its costs, expenses, and reasonable attorney fees in this action.

#### **RESERVATION OF RIGHTS**

31. ZTE reserves any and all rights to amend its answer, including its currently pled defenses, and/or to add additional defenses, as any basis for doing so becomes apparent.

### **ZTE'S COUNTERCLAIMS**

Counterclaim Plaintiff ZTE (USA) Inc. ("ZTE"), as and for its counterclaims against counterclaim defendant FastVDO LLC, states as follows:

### **NATURE OF ACTION**

1. This is a Declaratory Judgment action for a declaration of non-infringement and invalidity of the U.S. Patent asserted against ZTE by counterclaim defendant in its Complaint for Patent Infringement (its "complaint"); U.S. Patent No. 5,850,482.

### **PARTIES**

2. ZTE is a New Jersey corporation with its principal place of business at 2425 North Central Expressway, Suite 600, Richardson, Texas 75080.

3. On information and belief, as averred in its complaint, counterclaim defendant is a Florida limited liability company with its principal place of business in Melbourne, Florida.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over the counterclaims under 28 U.S.C. §§ 2201 and 2202 as a declaratory judgment action; and, as averred in the complaint, under 28 U.S.C. §§ 1331 and 1338 as an action arising under the Patent Laws, Title 35 of the United States Code.

5. By filing its complaint in this District, counterclaim defendant has affirmatively sought and consented to the personal jurisdiction of this Court for purposes of ZTE's counterclaims, and the Court does have personal jurisdiction over the counterclaim defendant.

6. If and to the extent venue is (or would have been) proper over any of the claims in the complaint, venue over all counterclaims must be proper in this District under 28 U.S.C. §§ 1391 and 1400. Furthermore, by maintaining its complaint, counterclaim defendant has waived any objection it might have or make to venue over ZTE's counterclaims.

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