

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

AGIS SOFTWARE DEVELOPMENT, LLC

Plaintiff,

v.

HTC CORPORATION,

Defendant.

CASE NO. 2:17-cv-514-JRG
(LEAD CASE)

JURY TRIAL DEMANDED

AGIS SOFTWARE DEVELOPMENT, LLC

Plaintiff,

v.

ZTE CORPORATION, ZTE (USA), INC. AND
ZTE (TX), INC.,

Defendants.

CASE NO. 2:17-cv-517-JRG
(CONSOLIDATED CASE)

JURY TRIAL DEMANDED

PROTECTIVE ORDER

WHEREAS, Plaintiff, AGIS Software Development LLC, and Defendants HTC CORPORATION, ZTE CORPORATION, ZTE (USA), INC. and ZTE (TX), INC., hereafter referred to as “the Parties,”¹ believe that certain information that is or will be encompassed by discovery demands by the Parties involves the production or disclosure of trade secrets, confidential business information, or other proprietary information;

¹ “Parties” shall also include any other parties that are added to this Action and served with process in accordance with the Federal Rules of Civil Procedure.

WHEREAS, the Parties seek a protective order limiting disclosure thereof in accordance with Federal Rule of Civil Procedure 26(c):

THEREFORE, it is hereby stipulated among the Parties and ORDERED that:

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information or material (“Protected Material”). Protected Material shall be designated by the Party producing it by affixing a legend or stamp on such document, information or material as follows: “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” or “RESTRICTED CONFIDENTIAL SOURCE CODE.” The words “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” or “RESTRICTED CONFIDENTIAL SOURCE CODE” shall be placed clearly on each page of the Protected Material (except deposition and hearing transcripts) for which such protection is sought. For deposition and hearing transcripts, the word “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” or “RESTRICTED CONFIDENTIAL SOURCE CODE” shall be placed on the cover page of the transcript (if not already present on the cover page of the transcript when received from the court reporter) by each attorney receiving a copy of the transcript after that attorney receives notice of the designation of some or all of that transcript as “CONFIDENTIAL”, “RESTRICTED – ATTORNEYS’ EYES ONLY” or “RESTRICTED CONFIDENTIAL SOURCE CODE.” All Protected Material not reduced to documentary, tangible or physical form or which cannot be conveniently

designated as set forth herein shall be designated by the producing Party by informing the receiving Party of the designation in writing. Any documents (including physical objects) made available for inspection by counsel for the receiving Party prior to producing copies of selected items shall initially be considered, as a whole, to constitute Protected Material (unless otherwise designated at the time of inspection) and shall be subject to this Order. Thereafter, the producing Party shall have a reasonable time to review and designate the appropriate documents or things as “CONFIDENTIAL”, “RESTRICTED -- ATTORNEYS’ EYES ONLY”, or “RESTRICTED CONFIDENTIAL SOURCE CODE” prior to furnishing copies to the receiving Party.

2. Any document produced under Patent Rules 2-2, 3-2, and/or 3-4 before issuance of this Order with the designation “Confidential” or “Confidential-Outside Attorneys’ Eyes Only” shall receive the same treatment as if designated “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” under this Order, unless and until such document is redesignated to have a different classification under this Order.
3. With respect to documents, information or material designated “CONFIDENTIAL, “RESTRICTED – ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE” (“DESIGNATED MATERIAL”),² subject to the provisions herein and unless otherwise stated, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Federal Rules of Civil Procedure; (b) all pretrial, hearing or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pretrial pleadings, exhibits to

² The term DESIGNATED MATERIAL is used throughout this Protective Order to refer to the class of materials designated as “CONFIDENTIAL,” “RESTRICTED - ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE,” both individually and collectively.

pleadings and other court filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests and complete or partial summaries prepared from any DESIGNATED MATERIALS, as well as testimony or presentations by Parties or their counsel in Court that might reveal Protected Material shall also be considered DESIGNATED MATERIAL and treated as such under this Order.

4. A designation of Protected Material (*i.e.*, “CONFIDENTIAL,” “RESTRICTED - ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE”) may be made at any time. Inadvertent or unintentional production of documents, information or material that has not been designated as DESIGNATED MATERIAL shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Any party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request destruction of that Protected Material by notifying the recipient(s), as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure, and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Materials and any documents, information or material derived from or based thereon.
5. The following information is not Protected Material: (a) any information that is or, after its disclosure to a receiving Party, becomes part of the public domain as a result of publication not involving a violation of this Order or other obligation to maintain the confidentiality of such information; (b) any information that the receiving Party can show was already publicly known prior to the disclosure; and (c) any information that the receiving Party can show by written records was received by it from a source who

obtained the information lawfully and under no obligation of confidentiality to the producing Party.

6. “CONFIDENTIAL” documents, information and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the designating party, upon order of the Court, or as set forth in paragraph 12 herein:

- (a) outside counsel of record in this Action for the Parties;
- (b) employees of such counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action, such as attorneys, paralegals, legal translators, legal secretaries, legal clerks and shorthand reporters;
- (c) up to two in-house counsel (“in-house counsel” includes attorneys or members of the legal staff or the intellectual property department of a Party or of a Party’s parents, subsidiaries, or commonly controlled companies) for the Parties who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action;
- (d) up to and including two (2) designated representatives of each of the Parties, as well as their immediate staff, to the extent reasonably necessary for the litigation of this Action, provided that, before access is given, the representative has completed the Undertaking attached as Appendix A hereto and the same is served upon the producing Party at least seven (7) days before access to the DESIGNATED MATERIAL is to be given to that representative. If the producing Party objects to the disclosure within seven (7) days of service of the Undertaking, the Parties shall promptly meet and confer in good faith to resolve any such objection within seven (7) days following the objection. If the Parties are unable to resolve any objection, the objecting Party may file a motion with the Court within ten (10) days of the notice, or within such other time as the Parties may agree, seeking a protective order with respect to the proposed disclosure. If relief is not sought from the Court within that time, the objection shall be deemed withdrawn. If relief is sought in a timely fashion, DESIGNATED MATERIALS may not be disclosed to the representative in question until the Court resolves the objection. Either party may in good faith request the other party’s consent to designate one or more additional representatives, the other party shall not unreasonably withhold such consent, and the requesting party may seek leave of Court to designate such additional representative(s) if the requesting party believes the other party has unreasonably withheld such consent;
- (e) outside consultants, technical advisors or experts (*i.e.*, not existing employees or affiliates of a Party or an affiliate of a Party), and their necessary support personnel, retained for the purpose of this litigation, provided that: (1) such consultants, technical advisors or experts are not presently employed by the

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