

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

AGIS SOFTWARE DEVELOPMENT, LLC

Plaintiff,

v.

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

Defendants.

CASE NO. 2:17-cv-00517-JRG

JURY TRIAL DEMANDED

**DECLARATION OF MALCOLM K. BEYER, JR. IN OPPOSITION
TO DEFENDANTS ZTE (TX), INC.'S AND ZTE (USA), INC.'S MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT FOR IMPROPER VENUE OR
IN THE ALTERNATIVE TO TRANSFER**

I, Malcolm K. Beyer, Jr., being duly sworn, hereby state as follows:

1. I am the Chief Executive Officer ("CEO") of Plaintiff AGIS Software Development LLC ("AGIS"). I am also the first-named inventor on U.S. Patent Nos. 8,213,970; 9,408,055; 9,445,251; 9,467,838; and 9,749,829 (the "Patents-in-suit") issued by the U.S. Patent and Trademark Office. I submit this declaration based on my personal knowledge and in support of AGIS's opposition to Defendants ZTE (TX), Inc.'s and ZTE (USA), Inc.'s motion to dismiss Plaintiff's Amended Complaint for improper venue or in the alternative to transfer.

Background

2. I graduated from the U.S. Naval Academy in 1962 and was commissioned as a Second Lieutenant in the U.S. Marine Corps. I later attended the U.S. Navy's programming school and was the lead programmer for the first automated Marine Corps Tactical Operations Center Link-11 Navy Interface. After leaving active service, I worked at a number of well-known technology companies, including System Development Corporation (considered the

world's first computer software company) and Litton Industries. I then started several businesses which provided technology and engineering solutions supporting defense and military customers.

3. In 1987, I co-founded Advanced Programming Concepts, Inc. ("APC"), a Texas corporation based in Austin, Texas. APC operated primarily out of its main office in Austin, Texas. APC specialized in designing, building, and supporting systems for enabling integration and sharing time-critical information across dissimilar military and defense applications. At APC, I was the majority shareholder and Chairman until we sold the business to Ultra Electronics in July 1999.

4. On June 30, 2004, I founded Advanced Ground Information Systems, Inc. ("AGIS Inc."), a Florida corporation. AGIS Inc.'s main office is located at 92 Lighthouse Drive, Jupiter, Florida. AGIS Inc. also maintains offices in Lenexa, Kansas and Austin, Texas. AGIS Inc. employs approximately 15 people.

5. I live and work in Jupiter, Florida. All but one of AGIS Inc. employees live and work from Florida, Kansas, and Texas. As described below, that employee works from Redmond, Washington, and I have confirmed that he is willing and able to travel to this District if called to testify.

6. None of AGIS Inc.'s employees live or work in the Northern District of California.

7. In 2013, AGIS Inc. began a corporate restructuring plan for business growth purposes. By 2017, AGIS Inc.'s board of directors approved the restructuring plan which resulted in the formation of a parent corporation, AGIS Holdings, Inc. ("AGIS Holdings"), a Florida corporation. AGIS Holdings consists of two subsidiaries, AGIS Inc. and AGIS, a limited liability company organized under Texas law. AGIS was established in Texas because of my

previous successful business operations in Texas and because of my longstanding personal connections to Texas, which I describe in more detail below.

8. AGIS holds assignment to each of the Patents-in-suit and licenses its patent portfolio, including the Patents-in-suit to AGIS Inc. The two entities, AGIS and AGIS Inc. work closely with one another.

AGIS's Witnesses and Other Sources of Proof are in or Closer to This District Than to the Northern District of California

9. AGIS maintains an office and its principal place of business at 100 W. Houston Street, Marshall, Texas 75670. The current term of lease for the AGIS's Marshall office runs from June 1, 2017. AGIS's books and records are maintained at this location. AGIS Inc. also conducts business and maintains documents and records at AGIS's Marshall office.

10. In addition to AGIS's office in this District, AGIS Inc. maintains offices in Austin, Texas and Lenexa, Kansas. At the Kansas office, AGIS Inc. has several employees who are routinely involved in developing, testing, and supporting the LifeRing and ASSIST solutions. AGIS Inc. also maintains an office in Jupiter, Florida, which employs several software developers.

11. AGIS and AGIS Inc. have no offices, employees, or other presence in or connection to the Northern District of California.

12. For over 13 years, AGIS Inc.'s primary business has revolved around offering the "LifeRing" solution which includes client-based applications and a server-based solutions for, generally, enabling smartphone, tablet, and PC users to easily and rapidly establish secure ad hoc digital networks. LifeRing 5.0 and its predecessor versions have been offered and sold to military, defense, and first-responder customers, as well as private industry customers. In addition to LifeRing, AGIS Inc. offers the "ASSIST" solution which is an emergency broadcast

and response system connecting employees to a company command center and a network of responders through personal smartphones.

13. The research, development, design, testing, manufacture, marketing, contract procurement, and sales activities for the LifeRing and ASSIST solutions has occurred in Florida, Kansas, and Texas. AGIS Inc.'s documents and other business related records are at these locations which are each substantially closer to the Eastern District of Texas than to the Northern District of California.

14. The Eastern District of Texas is a far more convenient forum for this action than the Northern District of California for individuals working for or affiliated with AGIS.

15. For example, since 2010, Eric Armstrong has worked as a programmer and software developer for AGIS Inc. Mr. Armstrong lives and works in Allen, Texas, a city within Collin County and within the Eastern District of Texas. Prior to moving to Allen, Mr. Armstrong worked from AGIS Inc. offices in Kansas and Missouri. Until approximately 2014, Mr. Armstrong was an employee of AGIS Inc. at which point he chose to convert his working relationship to that of consultant.

16. Mr. Armstrong is expected to be a key witness for AGIS in this action. He played, and continues to play, a crucial role in developing software for AGIS Inc. Mr. Armstrong possesses knowledge about AGIS's technology and the inventions covered by the Patents-in-suit that will be relevant to this action. Mr. Armstrong is responsible for developing a substantial portion of the software included in the LifeRing and ASSIST solutions. Mr. Armstrong is also responsible for designing and developing client-side and server-side software for the LifeRing and ASSIST solutions. Mr. Armstrong works under the direct control and

supervision of AGIS Inc. employee Sandel Blackwell, and works with other AGIS Inc. employees such as Rebecca Clark on software development and quality assurance.

17. Another key witness for AGIS is expected to be David Sietsema. Mr. Sietsema has been employed by AGIS Inc. since October, 2005. He works at AGIS Inc.'s Austin, Texas office. Mr. Sietsema's responsibilities include ensuring compliance with policies and procedures related to government contracts, as well as monitoring and overseeing licensing activities including those of AGIS Inc. and its related entities including AGIS. Mr. Sietsema is also responsible for ensuring compliance with special rules and contractual clauses with respect to intellectual property and patent rights, ensuring maintenance of intellectual property and patent rights, e.g., during the federal procurement process, and evaluating any potential licensing issues such as government use rights or march-in rights.

18. Sandel Blackwell, President and Director at AGIS Inc. and AGIS, works from AGIS Inc.'s Lenexa, Kansas office, as well as from its office in Jupiter, Florida. Mr. Blackwell is responsible for managing the development of the software included in the LifeRing and ASSIST solutions. Mr. Blackwell maintains regular communication with AGIS Inc.'s programmers and software developers in Florida, Kansas, and Texas. Mr. Blackwell manages Mr. Armstrong and regularly communicates with Mr. Armstrong in this District. Mr. Blackwell has strong personal ties to Texas and routinely travels to Texas. I have confirmed with Mr. Blackwell that for at least these reasons, as well as his proximity to Texas from Kansas or Florida, this District is more convenient for him than the Northern District of California when he will be called as a witness.

19. The Eastern District of Texas is a more convenient forum than the Northern District of California for other AGIS witnesses. Rebecca Clark is employed by AGIS Inc. and

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