

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

AGIS SOFTWARE DEVELOPMENT, LLC,	§	
	§	
Plaintiff,	§	Case No. 2:17-cv-517-JRG
	§	
v.	§	
	§	
ZTE CORPORATION, ZTE (USA), INC.,	§	JURY TRIAL DEMANDED
AND ZTE (TX), INC.,	§	
	§	
Defendants.	§	
	§	
	§	
	§	

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT, LLC'S
RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff AGIS Software Development, LLC hereby responds to the Notice of Supplemental Authority (Dkt. 55) filed by the defendants ZTE Corporation, ZTE (USA), Inc. and ZTE (TX), Inc. (Collectively "ZTE") which attached two cases.

The first case, *Realtime Data LLC v. Nexenta Systems, Inc.*, 2:17-cv-07690-SJO-JCX (Dkt. No. 28, Order) (C.D. Cal. Jan. 23, 2018) ("*Realtime Data*"), held that the language of 28 U.S.C. § 1400(b) implies that a defendant resides only in the judicial district within its state of incorporation that it maintains its principal place of business. Dkt. 55-1, at 5. Aside from a passing reference to Your Honor's decision in *Diem LLC v. BigCommerce, Inc.*, No. 6:17-cv-00186, 2017 WL 3187473 (E.D. Tex. July 26, 2017) (noting the recognition of a "tension" between the definition of "inhabitant" and "resident"), the *Realtime Data* case does not change or affect the law in this district as established in *Diem*, namely that *Stonite* and its progeny command the opposite result.

The second case, *West View Research, LLC v. BMW of North America, LLC*, No. 3:16-cv-2590-JLS (Dkt. 38) (S.D. Cal. Feb. 5, 2018) ("*West View*") held that an automobile dealership

was not a “regular and established” place of business of the automobile importer for the purposes of venue. The order in the *West View* case fundamentally misinterprets Federal Circuit guidance and requires the regular and established place of business to be owned by the defendant, rather than be of the defendant. In this district, entities that are not “owned or leased by the defendant” can be regular and established places of business for venue purposes. *Intellectual Ventures II LLC v. FedEx Corp., et al.*, No. 2:16-cv-00980-JRG, 2017 WL 5630023, at *6-7 (E.D. Tex. Nov. 22, 2017) (Gilstrap, J.); *Am. GNC Corp. v. ZTE Corp.*, 2017 WL 5157700, at *1 (E.D. Tex. Nov. 7, 2017).

Dated: February 15, 2018

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**ATTORNEYS FOR PLAINTIFF, AGIS
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on February 15, 2018, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Vincent J. Rubino, III

Vincent J. Rubino, III