

# EXHIBIT C

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

AGIS SOFTWARE DEVELOPMENT, LLC,	§	
	§	
Plaintiff,	§	Case No. 2:17-cv-514-JRG
	§	(LEAD CASE)
v.	§	
	§	<b>JURY TRIAL DEMANDED</b>
HTC CORPORATION,	§	
	§	
Defendant.	§	
	§	

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

**DEFENDANTS ZTE (USA), INC. AND ZTE (TX), INC.’S  
FIRST AMENDED INITIAL AND ADDITIONAL DISCLOSURES**

Pursuant to the Court’s Discovery Order (Dkt. 38) and Rule 26(a)(1) of the Federal Rules of Civil Procedure, Defendants, ZTE (USA), Inc. and ZTE (TX), Inc.,<sup>1</sup> (collectively “ZTE”), by and through their undersigned counsel, hereby provide to Plaintiff AGIS Software Development, LLC (“AGIS”) the following First Amended Initial and Additional Disclosures.

**QUALIFICATIONS**

<sup>1</sup> Defendant ZTE Corporation has not yet been served or appeared in this matter; thus, these Disclosures are on behalf of ZTE (USA), Inc. and ZTE (TX), Inc. only.

These disclosures are based on information reasonably, presently available to ZTE and do not include information that may be used solely for impeachment purposes. Discovery in this action is ongoing and ZTE has not completed its investigation into facts which may further support its defenses to the charge of infringement of U.S. Patent Nos. 8,213,970 (the '970 patent"); 9,408,055 ("the '055 patent"); 9,445,251 ("the '251 patent"); 9,467,838 ("the '838 patent"); and 9,749,829 ("the '829 patent") (collectively the "patents-in-suit") by Plaintiff. ZTE accordingly reserves the right to supplement these disclosures, and present witnesses, documents and evidence in addition to the information that is disclosed and identified herein based on additional information obtained through formal discovery or other means. In addition, ZTE recognizes its obligation under FED. R. CIV. P. 26(e)(1)(A) to supplement these Initial Disclosures under certain circumstances, and will do so in a timely manner if ZTE learns that in some material respect these Initial Disclosures are incomplete or incorrect (except to the extent that other disclosures made by ZTE in this lawsuit adequately provide such information) or as otherwise appropriate.

The individuals who are identified in these Initial Disclosures may possess information or knowledge protected by one or more privileges and protections. The documents identified in these Initial Disclosures may include documents protected from discovery by the attorney-client privilege, the work product doctrine, the "common interest" or "joint defense" doctrine or other applicable legal privileges and protections. By identifying documents and listing individuals, ZTE does not waive the right to assert any applicable privilege or protection at an appropriate time. ZTE makes these disclosures based on its current knowledge and without waiver of attorney-client privilege, work product, common interest privilege, or any other privilege. ZTE may object to the production of documents and things from the categories identified or the

obtaining of testimony from the witnesses identified on any applicable basis. Each of the following disclosures is made subject to the above qualifications.

**INITIAL DISCLOSURES**

**A. The Correct Names of the Parties to the Lawsuit**

The correct name of the disclosing parties are ZTE (USA) Inc. and ZTE (TX) Inc. (collectively, “ZTE”). ZTE does not know whether the other parties to this lawsuit are properly named.

**B. The Name, Address, and Telephone Number of Any Potential Parties**

ZTE is not aware of any potential parties at this time except for any parent companies or other entities listed in Plaintiff’s corporate disclosure statement or any of Plaintiff’s corporate affiliates that may (i) have or previously had any interest in any of the patents in suit or (ii) direct or coordinate operations with Plaintiff.

**C. The Legal Theories and, in General, the factual Bases of the Disclosing Party’s Claims or Defenses (the disclosing party need not marshal all evidence that may be offered at trial)**

Due to the pending Motion to Dismiss, 2:17-cv-517-JRG (Dkt. 38), ZTE has not yet answered the Amended Complaint. At the appropriate time and in the appropriate forum, ZTE will answer, and at that time, ZTE may add additional defenses.

ZTE has not and does not infringe the patents-in-suit, either directly or indirectly, literally or under the doctrine of equivalents.

The asserted claims of the patents-in-suit are invalid because they fail to comply with one or more provisions of 35 U.S.C. §§ 101, 102, 103, or 112; and/or the prohibition on double patenting.

The asserted claims are barred and the patents are unenforceable, generally and against ZTE specifically, in whole or in part, due to the doctrines of laches, waiver, unclean hands, estoppel, and acquiescence.

ZTE believes that AGIS's claims for relief are barred, in whole or in part, by claim construction estoppel.

ZTE believes that AGIS's claims for relief are barred, in whole or in part, by the doctrine of prosecution history estoppel.

ZTE believes that AGIS is not entitled to a finding of willful infringement because AGIS cannot demonstrate that infringement occurred. Furthermore, even if AGIS were able to demonstrate that infringement had occurred, AGIS would still not be entitled to a finding of willful infringement. In particular, AGIS will not be able to show that ZTE acted despite an objectively high likelihood that any actions constituted infringement of any valid claim of the patents-in-suit. Furthermore, AGIS will not be able to show that ZTE knew or should have known of such a risk.

The asserted claims are barred or otherwise limited based upon exhaustion, the first sale doctrine, implied license, and restrictions on double recovery.

The asserted claims are barred for failure to state a claim upon which relief may be granted.

Plaintiff is barred in whole or in part from recovering damages under 35 U.S.C. § 287 because it and/or its licensees have not consistently marked products that allegedly practice the patents-in-suit.

Plaintiff is not entitled to injunctive relief because any alleged injury to Plaintiff is not immediate or irreparable and Plaintiff has an adequate remedy at law for any claims it can prove.

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