

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

SLYDE ANALYTICS LLC,

Plaintiff,

v.

ZEPP HEALTH CORPORATION,

Defendant.

Case No. 2:23-CV-00172-RWS-RSP

JURY TRIAL DEMANDED

**PLAINTIFF SLYDE ANALYTICS LLC'S SUR-REPLY IN FURTHER
OPPOSITION TO DEFENDANT ZEPP HEALTH CORPORATION'S
MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT
UNDER FED. R. CIV. P. 12(b)(7) (DKT. 27)**

TABLE OF CONTENTS

	<u>Page(s)</u>
I. ARGUMENT.....	1
II. CONCLUSION.....	4

TABLE OF AUTHORITIES

Page(s)

Cases

Arigna Tech. Ltd. v. Bayerische Motoren Werke AG,
 No. 2:21-CV-00173-JRG, 2023 WL 6606722 (E.D. Tex. Oct. 6, 2023).....2, 3

AX Wireless LLC v. Lenovo Grp. Ltd.,
 No. 2:22-CV-00280-RWS-RSP, 2023 WL 7105701 (E.D. Tex. Sept. 6, 2023)2

Halo Elecs., Inc. v. Pulse Elecs., Inc.,
 769 F.3d 1371 (Fed. Cir. 2014), *vacated and remanded*, 136 S. Ct. 1923
 (2016).....4

Litecubes, LLC v. N. Light Prods., Inc.,
 523 F.3d 1353 (Fed. Cir. 2008).....2

Semcon IP Inc. v. Kyocera Corp.,
 No. 2:18-cv-00197-JRG, Dkt. 41 (E.D. Tex. May 3, 2019)3, 4

Transocean Offshore Deepwater Drilling, Inc. v. Maersk Contractors USA, Inc.,
 617 F.3d 1296 (Fed. Cir. 2010).....4

Statutes

35 U.S.C. § 271.....2

Slyde Analytics LLC (“Slyde” or “Plaintiff”) files this sur-reply response to Defendant Zepp Health Corporation’s (“ZHC” or “Defendant”) Reply and in further opposition to the motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(7) (Dkt. 27 or the “Motion”).

I. ARGUMENT

Slyde’s position is and remains that ZHC conducts all infringing activities by selling, offering to sell, and importing the Accused Products into the United States, either directly or through intermediates, such as Anhui Huami Information Technology Co., Ltd. (“Anhui Huami”). ZHC’s identification of Anhui Huami in the Reply is merely another attempt to muddle the facts and cast blame for ZHC’s infringing acts. This does not render ZNA a necessary or indispensable party warranting dismissal of the litigation. At most, ZHC identifies another intermediary, raises factual disputes regarding the situs of its allegedly infringing sales, offers to sell, and import which are largely irrelevant to its 12(b)(7), and would fail even if the Motion were filed under 12(b)(6). The Motion should be denied.

ZHC’s identification of Anhui Huami and other foreign entities is a red herring and does not somehow render ZNA a necessary and indispensable party. In any case, ZHC fails to refute that they serve as mere intermediaries for ZHC, just as Slyde alleges. While ZHC frames Anhui Huami or Beijing Huami as separate and distinct corporate entities from ZHC, they are actually variable interest entities (VIEs) of ZHC that operate under ZHC’s direction and control.¹

¹ Indeed, while ZHC frames Anhui Huami or Beijing Huami as separate, this does not appear to be the case based on ZHC’s own statements. Ex. B. (“The Company conducts substantially all of its smart, wearable and technological devices business in the PRC through contractual arrangements with its VIEs, Anhui Huami and Beijing Huami and the VIEs’ subsidiaries. . . . The Company . . . has entered into the following contractual arrangements with Anhui Huami, Beijing Huami and their shareholders that enable the Company to (1) have power to direct the activities that most significantly affect the economic performance of the VIEs, and (2) receive the economic benefits of the VIEs that could be significant to the VIEs.”).

ZHC also wrongly argues that Slyde has not pled infringement based on any acts of ZHC that occur within the United States. A similar position was rejected in *Arigna Tech. Ltd. v. Bayerische Motoren Werke AG*, No. 2:21-CV-00173-JRG, 2023 WL 6606722, at *8 (E.D. Tex. Oct. 6, 2023). Slyde explicitly alleges that ZHC “has and continues to directly infringe [the Asserted Patents], either literally or under the doctrine of equivalents, without authority and in violation of 35 U.S.C. § 271, by making, using, offering to sell, selling, and/or importing into the United States products that satisfy each and every limitation of one or more claims of [the Asserted Patents].” Dkt. 16, ¶¶ 24, 35, 46, 57, 68, 78, 88; *see also* Resp. at 1. Slyde further pled that ZHC has “directly or through subsidiaries or intermediaries, committed and continues to commit acts of patent infringement in the State of Texas and in this Judicial District as alleged in this Complaint[]”. *See id.*, ¶ 4. ZHC’s arguments are nothing more than a factual dispute over whether it, or one of its subsidiaries, conducts acts of infringement in the United States. This Court has previously rejected such arguments, holding that similar allegations of direct infringement in the United States, including against holding companies, are sufficient to overcome a motion to dismiss. *See, e.g., AX Wireless LLC v. Lenovo Grp. Ltd.*, No. 2:22-CV-00280-RWS-RSP, 2023 WL 7105701, at *1 (E.D. Tex. Sept. 6, 2023) (holding that allegations in the complaint alleging that a purported holding company “has committed and continues to commit acts of direct infringement of the Asserted Patents by making, using[,], selling, offering to sell, and/or importing Accused Instrumentalities[]” . . . “through, or in consort with its subsidiaries, affiliates, or intermediaries” was sufficient to plausibly maintain a claim of direct infringement) (internal quotations omitted); *see also Litecubes, LLC v. N. Light Prods., Inc.*, 523 F.3d 1353, 1370 (Fed. Cir. 2008) (“[T]he ‘selling’ of an infringing article has both a physical and a conceptual dimension to it. . . . [I]t is possible to define the situs of the tort of infringement-by-sale either in real terms

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.