



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

MAXELL LTD.,

§

Plaintiff,

§

v.

§

ZTE (USA) INC.,

§

Case No. 5:16-cv-00179-RWS

Defendants.

§

JURY TRIAL DEMANDED

§

§

§

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§

**DEFENDANT ZTE (USA), INC.'S RULE 50 MOTION FOR JUDGMENT AS A
MATTER OF LAW AND MOTION FOR NEW TRIAL PURSUANT TO FEDERAL
RULE 59**





Table of Contents

	Page
I. Introduction.....	1
II. Legal Standard Regarding JMOLs and Motions For New Trial	1
III. JMOLs	2
A. Non-Infringement	2
1. Standard of Law Regarding Non-Infringement.....	2
2. Non-Infringement of the ‘794 Patent.....	3
a. There Is No Evidence Of A Controller For Controlling Operation Of Said Function Devices Based On Said Remaining Capacity.....	3
b. There Is No Evidence Of The Controller Sending A Power Consumption Reduction Instruction To Each Function Device As Required By The Claims.....	5
c. 	9
d. Maxell’s Expert Applied A Claim Construction of “Function Device” That Is Inconsistent With The Court’s Claim Construction Order	10
3. Non-Infringement of the ’317 patent.....	11
a. Asserted Claims of the ’317 Patent are Hardware-Software Combination Apparatus Claims.....	11
b. Plaintiff Failed to Provide Any Evidence or Opinions Based on the Correct Version of AT&T Navigator Distributed with the Accused Product	12
4. Non-Infringement of the ‘493 and ‘729 Patents	15
a. ‘493 Patent, Claim 5	15
b. ‘729 Patent, Claim 1	22
5. Non-Infringement of the ‘491 and ‘695 patents (audio patents)	25
a. Maxell Failed to Offer Evidence Sufficient to Prove Infringement of Claim 8 of the ‘491 Patent.....	26
b. Maxell Failed to Offer Evidence Sufficient to Prove Infringement of Claim 1 of the ‘491 Patent.....	28



- c. Maxell Failed to Offer Evidence Sufficient to Prove Infringement of Claim 1 of the '695 Patent.....31
 - 6. Non-Infringement of the '193 Patent.....32
 - a. There is No Evidence That the Controller Controls a Gain of the Variable Amplitude Amplifier.....32
 - b. There is No Evidence That the Control Signal is Based on a Set of Bias and Gain Data Stored in Said Memory35
- B. Damages Must Be Limited for Failure to Mark under 35 U.S.C. § 287 to Begin Accruing No Earlier than the Date of the Complaint 37
 - 1. Standard of Law Regarding Marking37
 - 2. Argument38
 - a. [REDACTED].....38
 - b. [REDACTED].....39
 - c. Maxell’s Damages Must Be Reduced to Account for Its Failure to Mark, or, in the Alternative, ZTE Is Entitled to a New Trial on Damages40
- C. Willfulness 41
 - 1. Knowledge of Asserted Patents42
 - a. Legal Standard Regarding Knowledge of Asserted Patents42
 - b. Maxell’s Willfulness Claim is Limited to Negotiation Conduct.....42
 - c. Maxell Failed to Offer Evidence of Imputed Knowledge of Patents-In-Suit43
 - d. Maxell Failed to Offer Evidence of ZTE USA’s Knowledge of the Patents-In-Suit on the Specific Dates Alleged45
 - 2. Subjective Knowledge of Infringement.....48
 - a. Standard of Law Regarding Subjective Knowledge of Infringement.....48
 - b. Maxell Failed to Offer Evidence that ZTE USA Believed the Patents-In-Suit Are Valid.....49
 - c. Maxell Failed to Offer Evidence that ZTE USA Knew Its Actions Infringed Any Patent-in-Suit.....50

[REDACTED]

IV. [REDACTED]52

1. [REDACTED]53

2. JMOL is Appropriate as Against the Award of [REDACTED] in Post-Verdict Damages Because An Award of Post-Verdict Damages Based Upon an Ongoing Royalty is Entrusted to the Court, Not the Jury54

3. The Court Should Conduct Its Own Analysis to Set Royalty Rates to be Applied to ZTE’s Actual Post-Verdict Sales56

V. Invalidity Under Section 10157

1. Standard of Law Regarding Invalidity58

2. Claims 1 and 2 of the ’794 Patent Lack Patent-Eligible Subject Matter58

3. Claims 1-3 of the ’317 Patent Lack Patent-Eligible Subject Matter60

VI. Motion for New Trial63

A. ZTE Did Not Receive a Fair Trial 63

1. Introduction63

2. Background64

a. [REDACTED]64

b. The Jury’s Verdict66

3. Legal Authority67

4. Argument68

B. New Trial Should be Granted Due To Closing Misconduct 70

C. New Trial Should Be Granted Regarding Errors in Evidentiary Rulings 71

a. Use of Certain Documents and Testimony Violated FRE 40872

b. Use of Certain Documents and Testimony Violated FRE 40874

D. The Court Should Grant a New Trial as to Damages Because Maxell Offered Prejudicial Testimony and Argument Inviting the Jury to Apply the Entire Market Value Rule 75

E. A New Trial is Necessary on Damages as to the ’317 Patent Because Ms. Mulhern Based Her Royalty Calculations on a JMOL Rate 80

VII. Conclusion80



Table of Authorities

	Page(s)
<u>Cases</u>	
<i>ADC Telecommunications, Inc. v. Switchcraft, Inc.</i> , 281 Fed. Appx. 989 (Fed. Cir. 2008).....	2
<i>Aetna Cas. & Surety Co. v. Yeatts</i> , 122 F.2d 350 (4th Cir. 1941)	2
<i>Affinity Labs of Texas, LLC v. DIRECTV, LLC</i> , 838 F.3d 1253 (Fed. Cir. 2016).....	61
<i>Alice Corp. Pty. v. CLS Bank Int'l</i> , 134 S. Ct. 2347 (2014).....	58, 59
<i>Am. Sci. & Eng’g, Inc. v. Autoclear, LLC</i> , 606 F. Supp. 2d 617 (E.D. Va. 2008)	68
<i>Amado v. Microsoft Corp.</i> , 517 F.3d 1353 (Fed. Cir. 2008).....	57
<i>Arctic Cat Inc. v. Bombardier Recreational Products Inc.</i> , 876 F.3d 1350 (Fed. Cir. 2017).....	37, 38, 41, 48
<i>Arismendez v. Nightingale Home Health Care</i> , 493 F.3d 602 (5th Cir. 2007)	1
<i>Avocet Sports</i> , 2012 U.S. Dist. LEXIS 51650, 2012 WL 1030031	44
<i>Berkheimer v. HP Inc.</i> , 881 F.3d 1360 (Fed. Cir. 2018).....	62
<i>Biovail Corp. Int’l v. Andrx Pharms., Inc.</i> , 239 F.3d 1297 (Fed. Cir. 2001).....	2
<i>Carpenter Tech. Corp. v. Allegheny Techs., Inc.</i> , 2012 U.S. Dist. LEXIS 162456 (E.D. Pa. Nov. 13, 2012).....	73
<i>Cf. SynQor Inc. v. Artesyn Techs., Inc.</i> , No. 2:07-CV-497-TJW-CE, 2011 WL 3625036 (E.D. Tex. Aug. 17, 2011)	79
<i>Chicago Council of Lawyers v. Bauer</i> , 522 F.2d 242 (7th Cir. 1975)	68



Commonwealth Sci. & Indus. Research Organisation v. Cisco Sys., Inc.,
809 F.3d 1295 (Fed. Cir. 2015)..... 76

Content Guard Holdings, Inc. v. Amazon.com, Inc.,
Case Nos. 2:13-CV-1112-JRG, 2:14-CV-61-JRG, 2015 WL 11089749 (E.D.
Tex. Aug. 6, 2015) 78

Core Wireless Licensing S.A.R.L. v. Lg Elecs., Inc.,
2016 U.S. Dist. LEXIS 193616 (E.D. Tex 2016) 52

Creative Internet Advertising Corp. v. Yahoo! Inc.,
674 F. Supp. 2d 847 (E.D. Tex. 2009)..... 57

Diamond Grading Techs. v. Am. Gem Soc’y,
2016 U.S. Dist. LEXIS 105697 (E.D. Tex. 2016) (J. Schroeder)..... 42

Dorman Prods., Inc. v. Paccar, Inc.,
201 F. Supp. 3d 663 (E.D. Pa. 2016) 49

Dura Auto. Sys. of Indiana, Inc. v. CTS Corp.,
285 F.3d 609 (7th Cir. 2002) 36

E.E.O.C. v. Boh Bros. Const. Co., L.L.C.,
731 F.3d 444 (5th Cir. 2013) 1

Enfish, LLC v. Microsoft Corp.,
822 F.3d 1327 (Fed. Cir. 2016)..... 59

Erfindergemeinschaft UroPep GbR v. Eli Lilly & Co.,
No. 2:15-CV-1202-WCB, 2017 U.S. Dist. LEXIS 75517 (E.D. Tex. May 18,
2017) 52

Erfindergemeinschaft UroPep GbR v. Eli Lilly & Co.,
No. 2:15-CV-1202-WCB, 2017 WL 3034655 (E.D. Tex. July 18, 2017)..... 54, 57

Ericsson Inc. v. TCL Commc’ns Tech. Holdings, Inc.,
No. 2:15-cv-00011-RSP, 2018 WL 2149736 (E.D. Tex. May 10, 2018)..... 55

Ericsson, Inc. v. D-Link Sys., Inc.,
773 F.3d 1201 (Fed. Cir. 2014)..... 76

Exmark Mfg. Co. Inc. v. Briggs & Stratton Power Prods. Grp., L.L.C.,
879 F.3d 1332 (Fed. Cir. 2018)..... 76

Greatbatch Ltd. v. AVX Corp.,
No. 13-723-LPS, 2016 U.S. Dist. LEXIS 171939 (D. Del. Dec. 13, 2016) 49



Gustafson, Inc. v. Intersystems Indus. Prods., Inc.,
897 F.2d 508 (Fed. Cir. 1990)..... 49

Halo Elecs., Inc. v. Pulse Elecs., Inc.,
136 S. Ct. 1923 (2016)..... 42

Hirschkop v. Snead,
594 F.2d 356 (4th Cir. 1979) 68

IBM v. Groupon, Inc.,
2018 U.S. Dist. LEXIS 100333 (D. Del. June 15, 2018)..... 75

In re Bilski,
545 F.3d 943 (Fed. Cir. 2008) (en banc), *aff'd*, *Bilski v. Kappos*, 561 U.S. 593
(2010)..... 58

In re TLI Commc'ns LLC Patent Litig.,
823 F.3d 607 (Fed. Cir. 2016)..... 59

InCom Corp. v. Walt Disney Co.,
2016 U.S. Dist. LEXIS 71319 (C.D. Cal. Feb. 4, 2016)..... 44

Integra LifeSciences Corp. v. HyperBranch Med. Tech., Inc.,
2016 U.S. Dist. LEXIS 124152 (D. Del. Aug. 12, 2016)..... 45, 46

Intellectual Ventures I LLC v. Capital One Fin. Corp.,
850 F.3d 1332 (Fed. Cir. 2017)..... 62

Littlefuse, Inc. v. Pac. Eng'g Corp.,
No. 12-cv-14957, 2013 U.S. Dist. LEXIS 184067 (E.D. Mich. June 21, 2013) 73

Lucent Techs., Inc. v. Gateway, Inc.,
580 F.3d 1301 (Fed. Cir. 2009)..... 55

Mayola v. Alabama,
623 F.2d 992 (5th Cir. 1980) 68, 69

Multimedia Patent Trust v. Apple Inc.
No. 10-CV-2618-H (KSC), 2012 WL 5873711 (S.D. Cal. Nov. 20, 2012) 79

Nazomi Commc'ns, Inc. v. Nokia Corp.,
739 F.3d 1339 (Fed. Cir. 2014)..... 12, 13, 14

Optis Wireless Tech., LLC v. Huawei Techs. Co.,
2018 U.S. Dist. LEXIS 115100 (E.D. Tex. July 11, 2018)..... 50

Paradox Sec. Sys., Ltd. v. ADT Sec. Servs., Inc.,
388 Fed. Appx. 976 (Fed. Cir. 2010)..... 3



Polara Eng'g, Inc. v. Campbell Co.,
2018 U.S. App. LEXIS 18741 (Fed. Cir. 2018) 51

Princeton Dig. Image Corp. v. Harmonix Music Sys.,
2018 U.S. Dist. LEXIS 67485 (D. Del. Apr. 16, 2018)..... 43

Prism Techs. LLC v. Sprint Spectrum L.P.,
849 F.3d 1360 (Fed. Cir. 2017), *vacated in part on other grounds*, 137 S. Ct.
954 (2017)..... 55

QS Wholesale, Inc. v. World Mktg.,
2013 U.S. Dist. LEXIS 193992 (C.D. Cal. July 9, 2013)..... 72

ReefEdge Networks, LLC v. Juniper Networks, Inc.,
29 F. Supp. 3d 455 (D. Del. 2014)..... 44

Reeves v. Sanderson Plumbing Prods., Inc.,
530 U.S. 133 (2000)..... 1

Sentius Int'l v. Microsoft,
No. 5:13-cv-00825-PSG, 2015 WL 451950 (ND Cal Jan. 27, 2015)..... 80

Shows v. Jamison Bedding, Inc.,
671 F.2d 927 (5th Cir. 1982) 2

Smith v. Transworld Drilling,
773 F.2d 610 (5th Cir. 1985) 1

Software Research, Inc. v. Dynatrace LLC,
2018 U.S. Dist. LEXIS 111468 (N.D. Cal. July 3, 2018)..... 43

State Indus., Inc. v. A.O. Smith Corp.,
751 F.2d 1226 (Fed. Cir. 1986)..... 46

Uniloc USA, Inc. v. Microsoft Corp.,
632 F.3d 1292 (Fed. Cir. 2011)..... 78, 79, 80

United States v. Arledge,
553 F.3d 881 (5th Cir. 2008) 72

United States v. Chagra,
669 F.2d 241 (5th Cir. 1982) 68

United States v. Edwards,
303 F.3d 606 (5th Cir. 2002) 72

United States v. Lipscomb,
299 F.3d 303 (5th Cir. 2002) 69



Varian Medical Systems, Inc. v. Elekta AB,
2016 U.S. Dist. LEXIS 91226, 2016 WL 3748772 (D. Del. 2016)..... 44

Vehicle IP, LLC v. AT&T Mobility LLC,
227 F. Supp. 3d 319 (D. Del. 2016)..... 48

VirnetX, Inc. v. Cisco Sys., Inc.
767 F.3d 1308 (Fed. Cir. 2014)..... 76

Warner–Jenkinson Co. v. Hilton Davis Chem. Co.,
520 U.S. 17 (1997)..... 2

WBIP, LLC v. Kohler Co.,
829 F.3d 1317 (Fed. Cir. 2016)..... 42

WCM Indus., Inc. v. IPS Corp.,
721 Fed. Appx. 959 (Fed. Cir. 2016)..... 52

ZiiLabs Inc., Ltd. v. Samsung Elecs. Co.
2015 U.S. Dist. LEXIS 164031 (E.D. Tex. Dec. 8, 2015)..... 75

ZitoVault, LLC v. International Bus. Machines Corp.,
2018 WL 2971131 (N.D. Tex. Mar. 29, 2018)..... 43

Statutes and Codes

United States Code

Title 35 Section 101 58, 60

Title 35 Section 283 53, 54

Title 35 Section 287 37

Title 35 Section 287(a)..... 37

Rules and Regulations

Federal Rules of Civil Procedure

Rule 50(a)..... 1, 52

Rule 50(b) 58

Rule 52 58

Rule 59 1, 2

Rule 59(a)..... 37

Rule 59(a)(1)..... 1

Federal Rules of Evidence

Rule 403 79

Rule 408 73, 74, 75

Rule 408(b) 72, 73, 74



I. Introduction

Pursuant to Fed. R. Civ. P. 50(a) and 50(b), defendant ZTE (USA), Inc. (“ZTE” or “ZTE USA”) respectfully submits this Motion for Judgment as a Matter of Law (“JMOL”) and Motion for New Trial (“MNT”). For the reasons set forth below, ZTE requests these motions be granted.

II. Legal Standard Regarding JMOLs and Motions For New Trial

Judgment as a matter of law is appropriate when “a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue.” FED. R. CIV. P. 50(a). In evaluating motions for judgment as a matter of law, a court must “draw all reasonable inferences in the light most favorable to the verdict and cannot substitute other inferences that [the court] might regard as more reasonable.” *E.E.O.C. v. Boh Bros. Const. Co., L.L.C.*, 731 F.3d 444, 452 (5th Cir. 2013). A court may not make credibility determinations or weigh the evidence, as those are solely functions of the jury. *See id.* (citing *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150–51 (2000)). However, the Court gives “credence to evidence supporting the moving party that is uncontradicted and unimpeached if that evidence comes from disinterested witnesses.” *Arismendez v. Nightingale Home Health Care*, 493 F.3d 602, 606 (5th Cir. 2007).

“The court may, on motion, grant a new trial on all or some of the issues[.]” Fed. R. Civ. P. 59(a)(1). “Rule 59 of the Federal Rules of Civil Procedure confirms the trial court’s historic power to grant a new trial based on its appraisal of the fairness of the trial and the reliability of the jury’s verdict.” *Smith v. Transworld Drilling*, 773 F.2d 610, 612-13 (5th Cir. 1985). The trial court’s power to grant a new trial has “long been regarded as an integral part of trial by jury.” *Id.* at 613. “[I]f the trial judge is not satisfied with the verdict of a jury, he has the right—and indeed the duty—to set the verdict aside and order a new trial.” *Id.*

Examples of grounds for granting a Rule 59 motion include “if the district court finds the verdict is against the weight of the evidence, the damages awarded are excessive, the trial was unfair, or

prejudicial error was committed in its course.” *Id.* In deciding to grant a new trial, the Court “need not take the view of the evidence most favorable to the verdict winner, but may weigh the evidence.” *Shows v. Jamison Bedding, Inc.*, 671 F.2d 927, 930 (5th Cir. 1982) (“This standard, of course, is lower than that for a directed verdict or a judgment notwithstanding the verdict. A verdict can be against the ‘great weight of the evidence’, and thus justify a new trial, even if there is substantial evidence to support it.”). Courts have long recognized the power of a trial judge to set aside a verdict and “grant a new trial in any case where the ends of justice so require.” *Aetna Cas. & Surety Co. v. Yeatts*, 122 F.2d 350, 354 (4th Cir. 1941) (detailing history of Rule 59).

III. JMOLs

A. Non-Infringement

1. Standard of Law Regarding Non-Infringement

Infringement involves “comparison of the claim to the accused device, [and] requires a determination that every claim limitation or its equivalent be found in the accused device.” *ADC Telecomms., Inc. v. Switchcraft, Inc.*, 281 Fed. App’x. 989, 991 (Fed. Cir. 2008) (citing *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 29 (1997)). In an infringement analysis, the burden always remains on the patent owner. *See id.* at 992 (“As an initial matter, we need not address the merits of Switchcraft’s testing method, because it was ADC’s burden as the patentee to introduce preponderant evidence of infringement, rather than Switchcraft’s burden to present evidence of noninfringement.”) (citing *Biovail Corp. Int’l v. Andrx Pharms., Inc.*, 239 F.3d 1297, 1302 (Fed. Cir. 2001)). An expert witness’s conclusory statements that an accused device contains a claimed limitation are not enough to meet that burden. *See Paradox Sec. Sys., Ltd. v. ADT Sec. Servs., Inc.*, 388 Fed. App’x. 976, 981–82 (Fed. Cir. 2010).

[REDACTED]

2. Non-Infringement of the ‘794 Patent

Maxell Ltd. (“Maxell” or “Hitachi”) failed to produce sufficient evidence to support a jury finding of infringement. With respect to Claim 1, and Claim 2 which is dependent thereon, Maxell failed to meet its burden of proving the ZMAX 2 includes multiple limitations, as shown below. Any one of these failures justifies entry of judgment as a matter of law because no reasonable jury could have found that the ZMAX 2 infringes the ‘794 patent. Dkt. 243 at 41:1-42:4. In the alternative, Maxell’s expert, Dr. Phinney’s, conclusory infringement analysis, inconsistent with the plain and ordinary meaning of the claim language of the second limitation of claims 1 and 2, and further inconsistent with the Court’s construction of “function device,” warrants a new trial on this issue. Moreover, for all the reasons described below, Dr. Phinney’s faulty, barebones analysis contributed to the jury’s verdict, which stands against the great weight of the evidence and, in the alternative, warrants a new trial on this issue.

a. No Evidence Of A Controller For Controlling Operation Of Said Function Devices Based On Said Remaining Capacity

Claims 1 and 2 of the ‘794 patent require “a controller for controlling operation of said function devices based on said remaining capacity.” Thus, the claims require that the controller controls operation of the function devices based on said remaining capacity – not some other trigger. There is no basis on which a reasonable jury could find this requirement is met.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Dkt. 239 at 59:9-60:4; Dkt. 240 at 10:22-11:18, 11:21-12:11, 17:20-24, 18:20-19:13; Dkt. 243 at 37:2-38:1, 42:9-46:25; Dkt. 244 at 23:21-24:25, 25:14-21; [REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.*; Dkt.

240 at 15:7-17. [REDACTED]

[REDACTED]

[REDACTED]. [REDACTED]

[REDACTED] Thus, Maxell failed

to provide sufficient evidence that the ZMAX 2 in power saver mode meets this limitation.

Maxell also failed to provide sufficient evidence that this limitation is met in the accused battery saver mode. [REDACTED]

[REDACTED]; Dkt. 240 at 29:12-17; [REDACTED] However, Dr. Wolfe testified regarding tests that he performed in which WiFi was operating normally while the ZMAX 2 was in battery saver mode, that it did not work in any reduced power way in this mode, and thus the controller does not control operation of the WiFi modem based on a remaining capacity. Dkt. 243 at 47:10-52:10; Dkt. 244 at 26:22-27:18. Dr. Phinney did not provide any evidence to show that the WiFi modem works in a low power way in battery saver mode, nor did he provide results of any testing or other evidence to show that the WiFi modem works in any reduced power manner in this mode. Dr. Phinney did not provide any testimony or evidence that would rebut Dr. Wolfe's tests and testimony showing that the WiFi modem works normally while in battery saver mode.

For all the reasons described above, Maxell also failed to provide sufficient evidence that the ZMAX 2 meets the limitation requiring that power consumption reduction instructions are sent "when said capacity detector detects remaining battery capacities NA and NB" of claims 1

[REDACTED]

and 2. For example, in power saver mode, as explained above, these instructions are sent (if at all) when a user makes the choice to enter power saver mode, not when a capacity detector detects a remaining capacity NA or NB. *See* Dkt. 243 at 39:18-40:17.

b. There Is No Evidence Of The Controller Sending A Power Consumption Reduction Instruction To Each Function Device As Required By The Claims

Claims 1 and 2 of the '794 patent also require that "said controller sends a power consumption reduction instruction to each function device included in a set GA if NA is detected...and to each function device of a set GB if NB is detected." To demonstrate infringement, Maxell must have offered evidence of the controller sending a power consumption reduction instruction to each function device in sets GA and GB when the appropriate threshold (NA or NB) is reached. Maxell's expert, Dr. Phinney, agreed that the claims require sending a power consumption reduction instruction to each of the function devices. Dkt. 240 at 5:2-6:4; *see also* Dkt. 243 at 38:2-16, 39:8-17.

Dr. Phinney failed to provide sufficient evidence of a power consumption reduction instruction sent from the controller to each function device in set GA as required by the claim.

[REDACTED]

[REDACTED]

[REDACTED]; Dkt. 240 at 29:12-17; [REDACTED]

[REDACTED]. Thus, Dr. Phinney was required to show evidence of a power consumption reduction instruction to each of these function devices in order for the ZMAX 2 to infringe; he failed to do so.

[REDACTED]

[REDACTED]. [REDACTED]

[REDACTED]. [REDACTED]

[REDACTED]; Dkt. 240 at 27:24-28:15; [REDACTED]; [REDACTED]

[REDACTED]. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Dkt. 239 at 47:15-49:25; [REDACTED]

[REDACTED]. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]. [REDACTED]

[REDACTED], [REDACTED]

[REDACTED]. Dkt. 243 at 38:17-39:17; [REDACTED]

[REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. [REDACTED]; Dkt. 240 at 27:20-23; [REDACTED]

[REDACTED]; [REDACTED]. Dr. Phinney did not provide any

other evidence of an alleged power consumption reduction instruction to the WiFi modem. [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]. Dkt. 243 at 47:10-

52:10; Dkt. 244 at 39:11-40:1; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

Dr. Phinney did not identify any power consumption reduction instruction whatsoever to the Bluetooth modem, nor did he provide a single piece of evidence for such an instruction. [REDACTED]

[REDACTED]

[REDACTED].”

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]; Dkt. 240 at 28:16-29:11; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Thus, there is no basis upon which a reasonable jury

could find this limitation met.

c.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] . Dkt. 240 at 6:11-17; [REDACTED] . [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Dkt. 240 at 29:12-17; [REDACTED] ; [REDACTED] . Thus, there is

no basis upon which a reasonable jury could find this limitation met.

[REDACTED]

d. Maxell’s Expert Applied A Claim Construction of “Function Device” That Is Inconsistent With The Court’s Claim Construction Order

Dr. Phinney’s infringement theories and evidence are also inconsistent with the Court’s Claim Construction Order. In construing the term “function device,” the Court explicitly rejected Maxell’s attempt to include the structure of “common function device” in the meaning of “function device.” Dkt. 49 at 101-103. The Court stated, for example, that “[i]n conformance with the specification, these claims make clear that the “common” device is not one of the devices recited in the independent claims” and “Maxell has not shown the common function device “clearly links or associates” with the claimed independent and differing functions.” *Id.* The Court’s construction of “function device” does not include a “common function device.”

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Dkt. 240 at 29:12-17; [REDACTED]

[REDACTED]. Moreover, a display cannot be a “function device” within the meaning of the claims. In the ’794 patent, it is clear that a display is distinct and separate from any “function device,” (see, e.g., Fig. 2 (“output device 204 such as a display or speaker,” which is separate from “the function device 1 and the function device 2”)), and is not one of the corresponding structures for the term “function device,” which the Court construed as a means-plus-function

[REDACTED]

term. PX-3. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

3. Non-Infringement of the '317 patent

ZTE moves for JMOL of non-infringement on the asserted claims of the '317 patent on the ground that Maxell failed to present sufficient evidence at trial for a reasonable jury to return a verdict in favor of Maxell. Specifically, Maxell provided no evidence that the version of the AT&T Navigator distributed with the Accused Device infringes the '317 patent. Indeed, Plaintiff's expert Dr. Caloyannides did not test the same version of the AT&T Navigator that comes pre-installed on the Accused Device. Instead, Dr. Caloyannides based his entire infringement analysis solely on the functions of an updated AT&T Navigator application that are not available on the pre-installed version ZTE distributes at the time of first sale.

a. Asserted Claims of the '317 Patent are Hardware-Software Combination Apparatus Claims

Here, Independent Claim 1 recites an apparatus or hardware requiring "a device" that performs the function of "getting location information ... [and] getting a direction information" and "displays positions of said destination and said present place ... and said display changes

according to a change of said direction ... for walking navigation.” As such, the Asserted Claims involve a hardware-software combination apparatus claim.

b. Plaintiff Failed to Provide Any Evidence or Opinions Based on the Correct Version of AT&T Navigator Distributed with the Accused Product

The Federal Circuit has repeatedly emphasized that an apparatus claimed “in functional terms” is only infringed if “the product is designed in such a way as to enable the user of that [product] to utilize the function *without having to modify the product.*” *Nazomi Commc'ns, Inc. v. Nokia Corp.*, 739 F.3d 1339, 1345 (Fed. Cir. 2014) (emphasis original); *Fantasy Sports Props.*, 287 F.3d at 1118.

Additionally, when a patent deals with a hardware-software combination claim, the Federal Circuit noted that “installation of the [] software *clearly constitutes a ‘modification’* of the accused products” because installing software was equivalent to “adding new functionality not currently present.” *Nazomi*, 739 F.3d at 1345, 1346. (emphasis added). The Defendants in *Nazomi* argued that because they did not install the optional software on the accused devices, they did not infringe the asserted claims. *Id.* The Federal Circuit agreed because the software necessary to enable the accused hardware was not only inactive, but also because the software was not even present on the accused products. *Id.*

Capability alone is not enough to support a finding of infringement of a hardware-software combination claim. *See Nazomi*, 739 F.3d at 1345. Here, Maxell failed to support its infringement allegations with evidence or opinions that will allow a reasonable jury to find infringement of the '317 patent. Indeed, Maxell only provided analysis for a modified version of the Accused Device, a version that ZTE does not even provide to customers at the time of sale.

ZTE’s expert, Mr. Andrews, testified that the version of the AT&T navigator application pre-installed on the Accused Device is version 5.3.3.1, which is also the version he tested when

conducting his non-infringement analysis. Dkt. 242 at 37:23-38:5. However, Maxell's expert, Dr. Caloyannides, admitted that he only tested an updated version of the AT&T Navigator, version 5.10.6.2 when providing his infringement analysis for the '317 patent. Dkt. 232 at 100:15-23; 101:11-18.

ZTE's expert, Mr. Andrews, further dispelled any notion that the Accused Device is configured to automatically upgrade to a newer version by testifying that an update screen repeatedly appears on the Accused Device requesting whether the *user* would like to update the AT&T Navigator software. Dkt. 242 at 37:17-38:5 (emphasis added). Mr. Andrews further confirmed in his testimony that when a user elects not to upgrade the AT&T Navigator, the version on the Accused Device remains version 5.3.3.1. *Id.*

Accordingly, Dr. Caloyannides' failure to provide analysis of the correct version of the AT&T Navigator software is critical to the validity of the infringement analysis for the '317 patent. Mr. Andrews testified that the two versions of the AT&T Navigator software result in "significant differences ... [since] the [earlier] version happens to behave differently from the later version, and those differences are really critical ... for ... the claim of the '317 patent." Dkt. 242 at 41:2-42:16. To highlight that the two versions of AT&T Navigator are indeed notably different and are distinguishable from one another for purposes of the infringement analysis, Mr. Andrews recreated navigation routes using both ZTE's distributed version 5.3.3.1 and the updated version 5.10.6.2 tested by Dr. Caloyannides.

In at least one example, Mr. Andrews testified that when using AT&T Navigator version 5.3.3.1, he was not able to get the Accused Device to obtain direction information denoting an "orientation of said portable terminal," as required in the Asserted Claims. Dkt. 242 at 48:10-23. Mr. Andrews confirmed in his testimony that AT&T Navigator version 5.3.3.1 only provides a

“round dot indicator” to show the location of the user on the screen, which is merely a north-up display indicator and does not provide orientation of the portable terminal. *Id.* at 52:10-24. However, when testing AT&T Navigator version 5.10.6.2, Dr. Caloyannides admitted in his testimony that the pointer on the round dot indicator moves around following the Accused Device. *Id.* While Dr. Caloyannides argues that the pointer on the round dot indicator proves infringement by alleging that the Accused Device knows the direction information of the Accused Device, it is clear that version 5.3.3.1 does not support these features. Indeed, as explained above, Mr. Andrews confirmed in his testimony that such a feature is not provided in the pre-updated version 5.3.3.1. *Id.*

Furthermore, Dr. Caloyannides cannot deny that version 5.3.3.1 does not support the claimed features because Dr. Caloyannides never tested version 5.3.3.1 to confirm whether the two versions are indeed different. Dkt. 232 at 98:13-99:15; 102:25-103:14. Even though Mr. Andrews’ rebuttal expert report placed Dr. Caloyannides on notice of the two different versions of AT&T Navigator and even highlighted Dr. Caloyannides’ apparent mistake in testing the wrong version of the software, Dr. Caloyannides testified that he still chose not to test version 5.3.3.1. *Id.* As a result, Dr. Caloyannides did not offer any counter-testimony that version 5.3.3.1 does not infringe the Asserted Claims of the ’317 patent.

Because Maxell only provided infringement analysis for the updated version of the AT&T Navigator application, the analysis includes new functionalities not provided in the Accused Device at the time of sale. Indeed, these new functionalities are a modification of the Accused Product, which is inappropriate to prove infringement. *Nazomi*, 739 F.3d at 1345, 1346. Thus, ZTE moves for JMOL of non-infringement on the Asserted Claims of the ’317 patent.

In the alternative, Maxell's expert, Dr. Caloyannides failed to provide proper analysis relevant to the infringement of the '317 patent, and as such, warrants a new trial on this issue.

4. Non-Infringement of the '493 and '729 Patents

ZTE further moves for JMOL of no infringement of Claim 5 of the '493 Patent (PX-8) and Claim 1 of the '729 Patent (PX-9) on the ground that Maxell failed to present sufficient evidence at trial for a reasonable jury to return a verdict in favor of Maxell. The asserted claims of the '493 and '729 Patents (collectively, the "Camera Patents") are directed to a specific electronic camera and recite a particular type of image processing, subsampling technique, and video image stabilization. In other words, not every type of image processing, subsampling technique, and video image stabilization available in modern digital cameras infringes Maxell's Camera Patents. At trial, Maxell presented evidence only that ZTE's accused devices are capable of processing images, subsampling image data, and that the ZTE Axon 7 can perform video image stabilization. It did not, however, present evidence that ZTE's accused devices operate in an infringing manner under the asserted claims. There is therefore insufficient evidence to support the jury's verdict of infringement as to these patents.

a. '493 Patent, Claim 5

With respect to Claim 5 of the '493 Patent, Maxell failed to present sufficient evidence that the ZTE accused devices meet limitations 5.D., 5.E, or 5.F.

i. The ZTE Accused Devices Do Not Generate Images Through Use of Vertically Arranged Pixel Lines that Have Been Mixed or Culled to Only Include Pixel Lines Separated by Intervals of a Fixed Distance

Limitation 5.E of the '493 Patent requires that the accused devices mix or cull from vertically arranged pixel lines while the camera monitors an image in static image mode such that the pixel lines remaining are separated by a first distance. Limitation 5.F of requires that the

[REDACTED]

accused devices mix or cull pixel lines by a second distance while the camera records video. Maxell failed to present sufficient evidence through its expert, Dr. Vijay Madiseti, that the accused devices mix or cull entire pixel lines while monitoring an image or recording video such that the remaining mixed or culled pixel lines are separated by intervals of a fixed distance. The ZTE accused devices operate instead by processing images by blocks of pixels rather than culling vertically-arranged lines of pixels, thus, not practicing the claims requirement to cull pixel lines separated by fixed distances. Maxell's expert did not consider processing image data in pixel blocks as a viable option, instead assuming (incorrectly) that the pixels must be scaled by culling pixel lines at fixed distances.

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Dr. Madisetti's representations in this regard were significant, as Claim 5 requires that the "signal processing unit generates the image signals" with reference to "N number of vertically arranged pixel lines of the image sensing device, to provide N pixel lines" and further specifies that when scaling an image, "the signal processing unit generates the image signals by

[REDACTED]

using pixel lines . . . to only include pixel lines separated from one another by intervals of a first [or second] distance.” ‘493 Patent, Cl. 5. [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

Dr. Madisetti's convoluted theory is internally incoherent and contradictory to the evidence presented in the case that modern digital image sensors process image data on a pixel block – not line basis. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Dkt. 246 at 13:18-15:24.

Although styled as an apparatus claim, the specific formula for mixing and culling pixel lines to generate image signals is the animating feature of Claim 5. Yet neither Maxell nor its expert, Dr. Madisetti, pointed to a single specific instance of the ZTE accused devices mixing or culling entire pixel lines by a fixed distance. Such perfunctory conclusions cannot pass as analysis, and cannot sustain Maxell's burden to prove infringement.

ii. The ZTE Accused Devices Do Not Use All Signal Charges Accumulated in All N Number of Vertically Arranged Pixel Lines

Maxell additionally failed to present sufficient evidence for a reasonable jury to find that the ZTE accused devices “generate[] the image signals by using all signal charges accumulated



in all N number of vertically arranged pixel lines of the image sensing device . . .” as required by limitation 5.D. The claim recites “an image sensing device with a light receiving sensor having an array of pixels arranged vertically and horizontally in a grid pattern, in an N number of vertically arranged pixel lines.” ‘493 Patent, Cl. 5. The plain language of the claim does not invite an arbitrary selection for the value “N.” Rather, it is unquestionably tied to the physical dimensions of the image sensor. Thus, limitation 5.D’s requirement that the camera generate a static image “using all signal charges accumulated in all N number of vertically arranged pixel lines of the image sensing device” is not met unless *all* of the image sensor’s pixels are used to record the image. In the ZTE accused devices, they are not.

[Redacted text block containing multiple lines of blacked-out text]

[REDACTED]

[REDACTED]

[REDACTED]

In the alternative, Dr. Madisetti’s barebones analysis runs contrary to the plain and ordinary meaning of the claim language and the legal rubric relevant to a proper infringement analysis, and, as such, warrants a new trial on this issue.

b. ‘729 Patent, Claim 1

With respect to Claim 1 of the ‘729 Patent, Maxell failed to present sufficient evidence that the ZTE accused devices meet limitations 1.E and 1.F either literally or under the doctrine of equivalents.

i. The ZTE Accused Devices Do Not Form Image Signals by Using All Effective Pixels of the Image Sensing Device

Maxell failed to present sufficient evidence for a reasonable jury to find that the ZTE accused devices “during recording in the static image mode, to form image signals by using all effective pixels of the image sensing device” as required by limitation 1.E.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As for the ZTE Max Duo LTE, which is representative of all ZTE accused devices except for the Axon 7, there is no evidence indicating the ZTE accused devices meet this claim limitation for much the same reason as limitation 5.D. of the '493 Patent. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ii. The ZTE Accused Devices Do Not Perform the Video Image Stabilization Recited in Claim 1

The ZTE phones do not meet limitation 1.F because they do not change a position of the second effective set of pixels according to the amount of image-instability detected by the image-instability detector. Claim 1 of the '729 Patent claims a specific type of video image stabilization that is only infringed if the digital camera “change[s] a position of the second effective set of pixels according to the amount of image-instability detected by the image-instability detector, in order to correct the image-instability” as Limitation 1.F requires.

[REDACTED]

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[REDACTED] Even one

of plaintiff's other experts, Dr. Joshua Phinney, testified that using Android Developer tools allows the user to confirm the software running on the device. Dkt. 239 at 40:11-24 (testifying that with Android developer tools such as Logcat, "you're able to sort of see the codes on -- on the car as it's running and different things are happening."). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. Non-Infringement of the '491 and '695 patents (audio patents)

ZTE USA further moves for judgment as matter of law as to '491 and '695 (the "audio patents"). Maxell failed to provide evidence sufficient to support the finding of infringement of claims 1 and 8 of the '491 patent, and claim 1 of the '695 patent (a continuation of the '491 patent). ZTE USA further moves for a new trial on non-infringement of the '491 and '695 patents, as the jury's finding was against all weight of the evidence as presented by the cross-

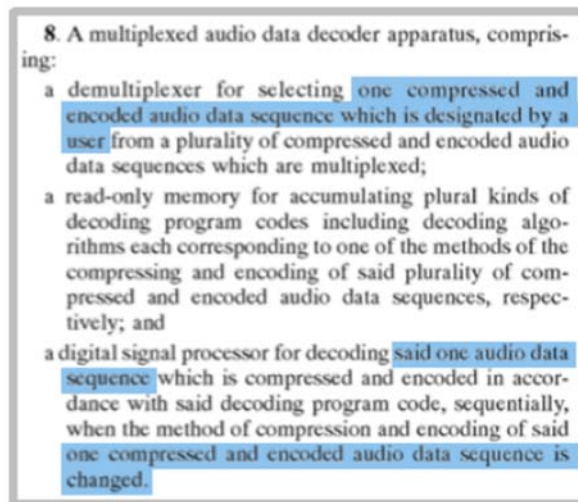
examination of Prof. Maher, *see* Dkt. 235 at 5:12-69:22; Dkt. 236 at 3:3-37:4; [REDACTED]

[REDACTED]

[REDACTED]

a. Maxell Failed to Offer Evidence Sufficient to Prove Infringement of Claim 8 of the ‘491 Patent

Regarding claim 8 of the ‘491 patent, plaintiff’s expert Prof. Maher essentially ignored the requirements of the claim, including the last sublimitation of the claim when explaining his theory as to what subject matter the claim covers, then admitted on cross examination that the accused products could not infringe under his theory of what constitutes the patent’s invention because they do not practice this sublimitation. This claim was also highlighted during the trial as shown below (and referenced in certain testimony as the “blue stuff”).”



8. A multiplexed audio data decoder apparatus, comprising:

- a demultiplexer for selecting one compressed and encoded audio data sequence which is designated by a user from a plurality of compressed and encoded audio data sequences which are multiplexed;
- a read-only memory for accumulating plural kinds of decoding program codes including decoding algorithms each corresponding to one of the methods of the compressing and encoding of said plurality of compressed and encoded audio data sequences, respectively; and
- a digital signal processor for decoding said one audio data sequence which is compressed and encoded in accordance with said decoding program code, sequentially, when the method of compression and encoding of said one compressed and encoded audio data sequence is changed.

See DX-0197-39 (The text highlighted in blue is referred to as “blue stuff”).

The last phrase requires certain actions take place “when the method of compression and encoding of said one compressed and encoded audio data sequence is changed.” [REDACTED]

[REDACTED]

[REDACTED]

Prof. Maher’s analysis of how the

[REDACTED]

accused products infringed element 8(c) during his direct examination at trial did not include any explanation as to how the accused products specifically practice this claimed limitation.

Prof. Maher's consistently repeated during his testimony that the accused products infringe claim 8 of the '491 patent simply by playing one song, or in other words, by playing one MP3 or AAC file. *See, et. al.*, Dkt. 234 at 86:21-87:6 (regarding the invention in '491 generally);

[REDACTED]

[REDACTED]

During cross-examination, Prof. Maher maintained this position. *See* Dkt. 236 at 9:22-10:23. ("Okay. So this works with just a phone with one song? A. Yes. Q. There's infringement in your view of the world? A. There's a plurality of data sequences: AF1, AF2, AF -- 13 Okay. But, you know, there's other requirements in the claim, and I know you're familiar with it. As we walk through the other requirements of the claim, is it good enough just to have one song or do we need to have two? A. It is good enough to just have one. . . .").

He directed ZTE USA's counsel through the drafting of an illustration demonstrating his theory that each audio file of a song contains thousands of "audio frames" or "audio data sequences." *See* Dkt. 235 at 45:17-46:2; Dkt. 235 at 64:18-69:10; Dkt. 236 at 4:5-24:13; *see also* Ex. F (DDX-2) (items labeled "audio frame" and "AF"). Prof. Maher testified that if a person using an accused device wanted to hear a song starting at a mid-point in the song rather than at the beginning of the song, then they could simply pick an audio data sequence that was further along in the file. *See* Dkt. 236 at 7:2-8:25; *see also* Ex. F (DDX-2) (items labeled "AF3" and circled in blue).

The problem for Maxell is that Prof. Maher admitted that the method of encoding does not ever change when an accused product is playing only one MP3 audio file (one song or one

snippet of a song, *see* Dkt. 236 at 18:9-19:9, but the claim 8(c) limitation requires that the decoding occur “when the method of encoding and compressing of said one compressed and encoded audio data sequence is changed.” Later during cross-examination, Prof. Maher confirmed that the method of encoding does not change when playing a single AAC file, either. *See* Dkt. 236 at 20:1-20:8; 23:25-24:7. He’s offered no theory were such a change would take place. As such, Maxell’s expert witness has admitted that the accused products do not meet the recited claim limitation and Maxell has offered no other evidence on point, so the jury’s finding of infringement of claim 8 cannot stand.

Later during his cross-examination, Prof. Maher confirmed that the method of encoding does not change when playing a single AAC file, either. *See* Dkt. 236 at 20:1-20:8; 23:25-24:7.

As Maxell’s expert witness has admitted that the accused products do not practice the sublimitation of Claim 8 element 8(c) (“said one compressed and encoded audio data sequence is changed”) when playing a single audio file, whether it be an MP3 or AAC file, and Maxell has offered no other evidence on point, the jury’s finding of infringement of Claim 8 cannot stand.

b. Maxell Failed to Offer Evidence Sufficient to Prove Infringement of Claim 1 of the ‘491 Patent

i. Maxell’s Expert Ignored the Similar Requirements in Claim 1 as those discussed above Regarding Claim 8

While the language of claim 1 is slightly different from the language of claim 8, both incorporate a requirement that the audio data sequence is decoded after the method of compression and encoding that sequence changes. *See* ‘491 at 11:4-17. For the same reasons that Maxell failed to offer sufficient evidence to prove Claim 8 (Maxell’s expert insisted that playing a single song is an infringing activity, then admitted that the method of encoding does not change when the accused product is playing only one MP3 or AAC file), *supra* at Section III(A)(5)(a), Maxell also failed to offer sufficient evidence to prove Claim 1.

[REDACTED]

iii.

Again, the Court’s construction of the “controller means” held that the term was a means-plus-function term, and that the corresponding structure is as follows:

Structure: a CPU that is within the audio decoder apparatus, . . . running the algorithm set forth in the flowcharts of **Figure 4 and Figure 9**

Dkt. 175 at 110 (Claim Construction Order) (emphasis added).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c. Maxell Failed to Offer Evidence Sufficient to Prove Infringement of Claim 1 of the '695 Patent

[REDACTED]

[REDACTED] Again, while the language of Claim 1 of the '695 patent is slightly different from the language of Claim 8 of the '491 patent, both incorporate a requirement that the audio data sequence is decoded after the method of compression and encoding that sequence changes. *See* '695 at 10:60-11:22. ZTE USA hereby incorporates its arguments as to why Maxell failed to offer evidence sufficient to prove infringement of claim 8 of the '491 patent herein as to why Maxell also failed to offer evidence sufficient to prove infringement of claim 1 of the '695 patent. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. Non-Infringement of the '193 Patent

ZTE further moves for JMOL regarding infringement of claim 1 of the '193 Patent (PX-4) on the ground that Maxell failed to present sufficient evidence at trial for a reasonable jury to return a verdict in favor of Maxell.

With respect to claim 1, Maxell has failed to meet its burden of proving that the accused ZTE products include a controller that “controls a gain of said variable amplitude amplifier” and that such control signal is based on “a set of bias and gain data stored in said memory.” Although Maxell’s expert, Dr. Caloyannides, asserted that these elements are present in the representative product (ZMAX 2), he failed to identify sufficient evidence to permit a reasonable factfinder to conclude that ZTE infringes the '193 patent.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

a. There is No Evidence That the Controller Controls a Gain of the Variable Amplitude Amplifier

Claim 1 of the '193 patent requires that the “controller controls a gain of said variable
Claim 1 of the '193 patent requires that the “controller controls a gain of said variable amplitude amplifier.” To demonstrate infringement, Maxell must show evidence of the controller sending a control signal to the variable amplitude amplifier to adjust its gain. There is no basis upon which

[REDACTED]

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[REDACTED]

[REDACTED]

In sum, the evidence relied upon by Dr. Caloyannides does not support his opinions on infringement and he has no other basis to support those opinions.

[REDACTED]

[REDACTED]

[REDACTED]

b. There is No Evidence That the Control Signal is Based on a Set of Bias and Gain Data Stored in Said Memory

Claim 1 of the '193 patent further requires that control signal from the controller is based on "a set of bias and gain data stored in said memory." To demonstrate infringement, in addition to showing that the controller sends a gain control signal to the VAA, Maxell must also show evidence of that the gain control signal is based on "a set of bias and gain data stored in said memory." There is no basis upon which a reasonable jury could find this requirement met either.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] However, Dr. Caloyannides admitted that he is not a software expert himself and that he deferred to different alleged software experts, Chris and Rado, to go through the code and find him “the relevant portion.” Dkt. 232 at 64:1-66:4; 70:20-71:1. No testimony was provided by Chris or Rado. Dr. Caloyannides simply accepted Chris and Rado’s expertise without independently verifying the code or sitting in front of the source code computer to review the code. Dkt. 232 at 73:15-74:5; 76:1-77:10. An expert witness cannot abdicate his responsibility to another person that does not testify at trial. An expert cannot merely vouch for the technical work of another in such a manner. *Dura Auto. Sys. of Indiana, Inc. v. CTS Corp.*, 285 F.3d 609, 613 (7th Cir. 2002).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].”

There is accordingly no proof that the ZTE devices include a controller that “controls a gain of said variable amplitude amplifier” and that such control signal is based on “a set of bias and gain data stored in said memory” as claimed and ZTE is therefore entitled to judgment as a matter of law. In the alternative, Dr. Caloyannides’s barebones analysis contributed to the jury’s verdict, which stands against the great weight of the evidence and warrants a new trial on this issue.

B. Damages Must Be Limited for Failure to Mark under 35 U.S.C. § 287 to Begin Accruing No Earlier than the Date of the Complaint

ZTE moves for judgment as a matter of law that Maxell has failed to satisfy its burden of proving its compliance with the marking statute 35 U.S.C. § 287. The evidence is clear that Maxell failed to comply with its marking obligations, such that ZTE is entitled to judgment as a matter of law that Maxell can recover no damages prior to the date ZTE received actual notice – the date of the Complaint. In the alternative, a new trial on damages under Rule 59(a).

1. Standard of Law Regarding Marking

“Pursuant to 35 U.S.C. § 287(a), a patentee who makes or sells a patented article must mark his articles or notify infringers of his patent in order to recover damages.” *Arctic Cat Inc. v. Bombardier Recreational Prods. Inc.*, 876 F.3d 1350, 1365 (Fed. Cir. 2017). Failure to mark a product has significant consequences because “[i]f a patentee who makes, sells, offers for sale, or imports his patented articles has not ‘given notice of his right’ by marking his articles pursuant to the marking statute, he is not entitled to damages before the date of actual notice.” *Id.* at 1366. This responsibility extends to the “patentee’s licensees . . . because the statute extends to ‘persons making or selling any patented article for or under [the patentee].’” *Id.*

Patentees bear the responsibility to ensure their licensees properly mark patented products and, in particular, to exercise “reasonable efforts to ensure compliance with the marking requirements” by those whom it has licensed. *Id.* For Maxell to be entitled to any damages prior to giving actual notice, the law is clear that Maxell must prove that it and its licensees complied with the marking statute and “prove the products identified do not practice the patented invention.” *Id.* at 1368. ZTE, by contrast, need only clear a “low bar” of putting the “patentee on notice that he or his authorized licensees sold specific unmarked products which the alleged infringer believes practice the patent.” *Id.*

2. Argument

ZTE has satisfied its burden of production by identifying at least the Casio G'zOne Commando 4G LTE smartphone and Nikon cameras sold under license to the patents in suit and not marked. The burden therefore shifted to Maxell to prove that it and its predecessor complied with its marking obligations, used reasonable efforts to ensure its licensees marked their products, or that the products identified by ZTE do not in fact practice the patents in suit. Maxell completely failed to prove any of these. Curiously, rather than attempt to prove the Casio G'zOne does not practice any of Maxell's asserted claims, Maxell's experts instead affirmatively emphasized the similarities of the allegedly infringing aspects of the Casio product and ZTE's accused devices.

a. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In short, the overwhelming evidence conclusively demonstrates that Maxell failed to take its marking obligation seriously and made no effort to comply with it.

b. [REDACTED]

[REDACTED]

[REDACTED]

of the irrefutable evidence that Maxell and its predecessor failed to comply with their marking obligations.

[REDACTED]

[REDACTED]

[REDACTED] Even so, ZTE does not concede that this damages figure is correct or accurately reflects the correct date for which Maxell provided notice to ZTE. As stated in ZTE's companion motion for judgment as a matter of law concerning willful infringement (*infra*, Section III.C), ZTE Corporation's knowledge of the patents cannot be imputed to ZTE (USA), Inc., and no evidence was presented at trial to demonstrate otherwise. Thus, the correct date damages began accruing for each patent in suit was the date of the Complaint filed in this case.

Moreover, events arose during trial that warrant a new trial on damages. Significantly, ZTE was precluded from offering Dr. Patrick Kennedy's testimony to rebut Ms. Mulhern's damages opinion on marking that was offered for the first time during her direct examination. Dkt. 244 at 42:7-43:8. As a result, there is a complete failure of proof as to the correct amount of damages, as no expert offered a number for what the damages amount would be if they began accruing from the date of the Complaint. Further, over ZTE's objection, the Court submitted a verdict form to the jury that failed to include a specific question on marking. Because the jury's damages award is clearly excessive, remittitur or a new trial on damages is necessary to correct it to reflect the undisputed evidence that Maxell failed to comply with its marking obligations.

C. Willfulness

ZTE USA respectfully renews its motion to grant judgment as a matter of law as to Maxell's willfulness claims. Maxell failed to present legally sufficient evidence to support a finding that ZTE USA had pre-suit knowledge of the asserted patents, or that ZTE USA actually

knew or should have known that its actions constituted an unjustifiably high risk of infringement of a valid and enforceable patent. In the alternative, ZTE USA moves for a new trial relating to willfulness, as is further explained herein.

1. Knowledge of Asserted Patents

a. Legal Standard Regarding Knowledge of Asserted Patents

A finding of willfulness requires the plaintiff to prove by a preponderance of the evidence that defendant had knowledge of the patent alleged to be infringed. *See WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1341 (Fed. Cir. 2016) (citation omitted) (“Knowledge of the patent alleged to be willfully infringed is a prerequisite to enhanced damages.”) The court considers the knowledge of the actor at the time of the challenged conduct; willfulness should not be assessed based upon facts that the defendant neither knew nor had reason to know at the time he acted. *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923, 1933 (2016); *see also Diamond Grading Techs. v. Am. Gem Soc’y*, 2016 U.S. Dist. LEXIS 105697, *5-6 (E.D. Tex. Mar. 30, 2016) (granting motion to dismiss willful infringement claim where Plaintiff asserted that knowledge of the 'RE963 Patent can be imputed to Defendants based on their alleged knowledge of the '673 Patent and allegation that “[o]ne or more claims of the '[RE]963 Patent are substantially identical to those of the '673 Patent”; “the existence of the 'RE963 Patent and the scope of the 'RE963 Patent's claims are not facts that can be ascertained merely from notice of the original '673 Patent. Plaintiff's allegation that the scope of the 'RE963 Patent's claims turned out to be similar or even identical to the '673 Patent's claims is beside the point.”)

b.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c. Maxell Failed to Offer Evidence of Imputed Knowledge of Patents-In-Suit

Knowledge of a patent by a parent corporation is not imputed to its subsidiary simply because of the parent-child corporate relationship; evidence indicating a transfer of knowledge also must be proven. *See ZitoVault, LLC v. IBM Corp.*, 2018 WL 2971131, *3 (N.D. Tex. Mar. 29, 2018) (something “more than just the bare facts of the parent/subsidiary relationship is necessary” to establish that the subsidiary has knowledge of a patent); *see also Princeton Dig. Image Corp. v. Harmonix Music Sys.*, No. 12-1461-LPS-CJB, 2018 U.S. Dist. LEXIS 67485, at *12-13 (D. Del. Apr. 16, 2018) (addressing willfulness and stating; “[i]f there are documents in Konami Japan's possession that show that Konami Japan employees had pre-suit knowledge of the patent-in-suit, that fact alone would not help Plaintiff. Plaintiff needs to show that *Konami US* had pre-suit knowledge of that patent.”); *Software Research, Inc. v. Dynatrace LLC*, No. 18-cv-00232-EMC, 2018 U.S. Dist. LEXIS 111468, at *39-40 (N.D. Cal. July 3, 2018) (“even if the Court finds that the content and context of the letters form a plausible basis for inferring Dynatrace's pre-suit knowledge, the communications between SRI and Dynatrace's predecessors-in-interest do not establish that Dynatrace knew of any of the patents-in-suit. . . . Similarly in *Varian Med. Syst., Inc. v. Elekta AB*, 2016 U.S. Dist. LEXIS 91226 at *5 (D. Del. 2016), the court found that the “[p]laintiff needs to set out more than just the bare fact of the parent/subsidiary relationship in order to make out a plausible claim that” subsidiary's knowledge can be imputed to the parent.”); *InCom Corp. v. Walt Disney Co.*, CV15-

[REDACTED]

3011 PSG (MRWx), 2016 U.S. Dist. LEXIS 71319, at *1, 3, 12 (C.D. Cal. Feb. 4, 2016) (citations omitted) (dismissing claim for willfulness because “Plaintiff also alleges that Defendants' infringement was willful because after Plaintiff wrote to TWDC . . . offering to license the patents in suit, TWDC ‘specifically acknowledged notice of [the patents in suit] by correspondence Plaintiff sent its . . . letter to TWDC, not WDPR, and it has not alleged any facts to assert that TWDC's knowledge can be imputed to WDPR. *See Avocet Sports Tech., Inc. v. Garmin Int’l., Inc.*, 2012 U.S. Dist. LEXIS 51650, 2012 WL 1030031, at *4 (N.D. Cal. Mar. 22, 2012).”); *ReefEdge Networks, LLC v. Juniper Networks, Inc.*, 29 F. Supp. 3d 455, 457-8 (D. Del. 2014) (dismissing claims of willful infringement where ReefEdge argues that Ms. McKenzie's knowledge of the patents-in-suit may be imputed to Juniper; “ReefEdge makes no specific allegations linking the knowledge Ms. McKenzie may have acquired from her work at Symantec to her work at Juniper.”).

Here, ZTE USA Inc. is the defendant in this case, not ZTE Corporation. Maxell *failed* to present any evidence whatsoever that ZTE USA had any pretrial knowledge of the patents-in-suit. There was *no* evidence that Maxell met with any person from ZTE USA, sent any letter, claim chart or other written notice to ZTE USA, or had any other form of pre-trial communications with ZTE USA at all. In fact, Maxell’s corporate representative, Mr. Nakamura, admitted Maxell had *no* communications whatsoever with ZTE USA. *See* Dkt. 234 at 18:4-19:2, 19:24-20:5.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Maxell presented *no* evidence to support imputing ZTE Corp.’s knowledge to ZTE USA. Maxell offered *no* evidence that any ZTE Corp. employee who participated in meetings with Maxell also worked for ZTE USA at the time these meetings took place (or, indeed, at any time). Maxell offered *no* evidence that any ZTE Corp. employee communicated about the fact or substance of these meetings with ZTE USA in any form or at any time. Maxell offered *no* deposition testimony of any ZTE Corp. or ZTE USA witness on these issues, nor did Maxell offer any documentary evidence of communications between ZTE Corp. and ZTE USA about the patents-in-suit.

ZTE USA anticipates that Maxell may repeat the argument it made in its response in opposition to ZTE’s motion *in limine* No. 10, in which Maxell asserted that one non-authoritative case supports its position that knowledge should be imputed from ZTE Corp. to ZTE USA. *See* Dkt. 159 at 5, *citing Integra LifeSciences Corp. v. HyperBranch Med. Tech., Inc.*, No. 15-819-LPS-CJB, 2016 U.S. Dist. LEXIS 124152, at *33 (D. Del. Aug. 12, 2016). The case is inapposite because the Integra court was persuaded by factual evidence that specific employees worked on behalf of both entities to comparison test the defendant’s specific products and monitor the defendant’s development of products. *Id.* at *32-33. Nothing remotely similar to these facts exists in this case. Maxell’s argument that ZTE Corp.’s knowledge was imputed to ZTE USA is insufficient as a matter of law because it is unsupported by evidence.

d. Maxell Failed to Offer Evidence of ZTE USA’s Knowledge of the Patents-In-Suit on the Specific Dates Alleged

Maxell agrees that it did not give any pre-suit notice of the '193 patent, '695 patent, or '491 patent to ZTE USA. *See* Dkt. 223 at Jury Instruction 7.4(B) (notice is on Nov. 18, 2016); Dkt. 1 (Complaint filed on Nov. 18, 2016). This is also the date on which the Complaint alleging infringement of these patents was filed. Because Maxell's willfulness case was restricted to facts deriving from negotiations with ZTE Corp., *supra*, and there were no such facts as to the '193 patent, '695 patent, or '491 patents, there can be no willfulness findings as to these three patents.

Regarding the '729 patent, Maxell contended that it gave notice to ZTE USA on August 5, 2014. *See* Dkt. 223 at Jury Instruction 7.4(B). Counsel for Maxell argued during a sidebar conference that the '729 patent was included in a presentation to ZTE Corp. dated August 5, 2014. *See* Dkt. 233 at 76:17-77:2, referencing PX-293 ("Mr. Culbertson: The '729 patent here is somewhere in here, I believe.") [REDACTED]

[REDACTED] However, for the purposes of establishing willfulness, notice of a patent cannot be communicated through notice of an application. *See Software Research*, 2018 U.S. Dist. LEXIS 111468, at *38-39 (holding that a patent application does not provide notice of the resulting patent for indirect or willful infringement. . . . *see also State Indus., Inc. v. A.O. Smith Corp.*, 751 F.2d 1226, 1236 (Fed. Cir. 1985) ("[f]iling an application is no guarantee any patent will issue and a very substantial percentage of applications never result in patents. What the scope of the claims in patents that do issue will be is something totally unforeseeable.")).

[REDACTED]

Regarding the '493 and '794 patents, Maxell contends that notice was given to ZTE USA on August 5, 2014. *See* Dkt. 223 (Jury Instruction 7.4(B)). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Nor may Maxell rely upon Mr. Nakamura for evidence as to what transpired during

the first meeting with ZTE Corp.; during cross-examination, it came out that he did not attend that meeting and did not have any first-hand knowledge of it. *See* Dkt. 234 at 28:23-30:12.

Maxell's entire willfulness case begins and ends with the existence of a parent/subsidiary relationship between ZTE Corp. and ZTE USA, which is insufficient as a matter of law.

2. Subjective Knowledge of Infringement

a. Standard of Law Regarding Subjective Knowledge of Infringement

In addition to defendant's knowledge of the patent, a finding of willfulness requires a plaintiff to prove that defendant "actually knew or should have known that its actions constituted an unjustifiably high risk of infringement of a valid and enforceable patent." *Arctic Cat*, 876 F.3d at 1371; *see also Vehicle IP, LLC v. AT&T Mobility LLC*, 227 F. Supp. 3d 319, 331 (D. Del. 2016) ("a party's pre-suit knowledge of a patent is not sufficient, by itself, to find 'willful misconduct' of the type that may warrant an award of enhanced damages"); *Greatbatch Ltd. v. AVX Corp.*, No. 13-723-LPS, 2016 U.S. Dist. LEXIS 171939, at *6 (D. Del. Dec. 13, 2016) ("The key inquiry in this case is whether there is evidence *in addition to AVX's pre-suit knowledge of the patents* that could show that AVX's infringement was 'egregious,' 'deliberate,' 'wanton,' or otherwise characteristic of the type of infringement that warrants the Court

exercising its discretion to impose the ‘punitive’ sanction of enhanced damages”) (emphasis in the original); *Dorman Prods., Inc. v. Paccar, Inc.*, 201 F. Supp. 3d 663, 681 (E.D. Pa. 2016) (“Halo requires more than simple awareness of the patent and awareness of infringement.”); *Gustafson, Inc. v. Intersystems Indus. Prods., Inc.*, 897 F.2d 508, 510-11 (Fed. Cir. 1990) (holding that the finding of willful infringement cannot stand because nothing of record indicated that defendants knowingly acted in disregard of plaintiff’s patent rights; “Nor is there a universal rule that to avoid willfulness one must cease manufacture of a product immediately upon learning of a patent, or upon receipt of a patentee’s charge of infringement, or upon the filing of suit. . . . a party may continue to manufacture and may present what in good faith it believes to be a legitimate defense without risk of being found on that basis alone a willful infringer. That such a defense proves unsuccessful does not establish that infringement was willful.”)

b. Maxell Failed to Offer Evidence that ZTE USA Believed the Patents-In-Suit Are Valid

The burden is on Maxell to prove ZTE USA’s subjective knowledge that its actions constituted an unjustifiably high risk of infringement of a valid and enforceable patent. Maxell did not offer any evidence that ZTE USA ever believed the asserted patents were valid and enforceable.

Again, Maxell admits that even ZTE Corp. did not even have notice of the ‘193 patent, ‘695 patent, or ‘491 patent until the date of the Complaint. *See* Dkt. 223 at Jury Instruction 7.4(B). There can be no pre-suit willfulness finding as to these patents. Maxell offered no evidence that it ever informed ZTE USA (or ZTE Corp.) that its products infringed the ‘493, ‘729, or ‘794 patents, and offered no evidence regarding whether ZTE USA believed these patents to be valid and enforceable.

[REDACTED]

It is Maxell’s burden to prove willfulness; the evidence does not support the jury’s verdict and the JMOL should be entered.

c. Maxell Failed to Offer Evidence that ZTE USA Knew Its Actions Infringed Any Patent-in-Suit

It is also Maxell’s burden to prove that ZTE USA “actually knew or should have known that its actions constituted an unjustifiably high risk of infringement.” Knowledge of a risk of infringement requires subjective knowledge that a particular product infringes, or an explanation of the specific activity that is believed to be infringing. *See Optis Wireless Tech., LLC v. Huawei Techs. Co.*, No. 2:17-cv-00123-JRG-RSP, 2018 U.S. Dist. LEXIS 115100, at *18-22 (E.D. Tex. July 11, 2018) (citations omitted) (emphasis added):

It is true that actual notice "requires the affirmative communication of a specific charge of infringement **by a specific accused product or device.**" *Amsted*, 24 F.3d at 187. . . . "Thus, the actual notice requirement of § 287(a) is satisfied when the recipient is informed of the identity of the patent **and the activity that is believed to be an infringement**, accompanied by a proposal to abate the infringement, whether by license or otherwise." *Id.*

Maxell must offer some evidence in order to meet this burden, but Maxell did not elicit any such testimony from a ZTE USA witness (or a ZTE Corp. witness). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Additional evidence, such as acting against the advice of counsel, deliberately copying a competitor’s product, monitoring the plaintiff’s products and patent applications, or similar behavior, is also required. *Cf. Polara Eng’g, Inc. v. Campbell Co.*, 2017-1974, 2018 U.S. App. LEXIS 18741 *27-28 (Fed. Cir. 2018) (“We agree with Polara that substantial evidence supports the jury's finding of willful infringement. Based on the evidence adduced at trial, the jury reasonably could have found that Campbell intentionally copied the '476 patent despite a significant known risk that its two-wire AAPS would infringe the '476 patent. It is undisputed that Campbell was aware of the '476 patent prior to developing its AAPS. Campbell's president testified that Campbell developed its AAPS to compete with Polara's Navigator-2, and that Campbell did not have a product that could compete with the Navigator-2 when Polara launched it in 2003. The jury also heard evidence that Campbell adopted a two-wire design for its AAPS despite being advised by University of Idaho counsel and its lead developer of "areas of potential conflict" and "similarities" with the '476 patent); *WCM Indus., Inc. v. IPS Corp.*, 721 Fed. App’x.

959, 971 (Fed. Cir. 2016) (upholding willfulness where president of company that acquired defendant did not conduct an investigation into how acquired company developed the product without any engineers or full-time product developers, was aware of patent lawsuit between plaintiff and acquired company at the time of the acquisition, and his employee testified that he had monitored plaintiff's products for decades and possessed literature indicating that products were marked "patent pending"); *Erfindergemeinschaft UroPep GbR v. Eli Lilly & Co.*, No. 2:15-CV-1202-WCB, 2017 U.S. Dist. LEXIS 75517, at *3 (E.D. Tex. May 18, 2017) (affirming grant of Rule 50(a) motion on issue of willful infringement; defendant's failure to respond to letter notifying it of patent and stating that sale of defendant's particular product "appears to require a license" of the patent was insufficient circumstantial evidence to support willfulness because it did not demonstrate conduct extreme enough to qualify as "egregious"); *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, No. 2:14-cv-912-JRG, 2016 U.S. Dist. LEXIS 193616 *3-4 (E.D. Tex 2016) (failed invalidity defense was belied by corporate representative's testimony that patents were novel and non-obvious; also, "[i]t is apparent to the Court that LG's decision to terminate negotiations and continue operations without a license was driven by its resistance to being the first in the industry to take a license, and not by the merits or strength of its non-infringement and invalidity defenses."). Comparing the evidence in this case to the aforementioned cases underscores the complete lack of any evidentiary support for the jury's finding of willfulness against ZTE in this case.

IV. [REDACTED]

[REDACTED]

1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. JMOL is Appropriate as Against the Award of [REDACTED] in Post-Verdict Damages Because An Award of Post-Verdict Damages Based Upon an Ongoing Royalty is Entrusted to the Court, Not the Jury

In *Erfindergemeinschaft UroPep GbR v. Eli Lilly & Co.* (“*UroPep*”), No. 2:15-CV-1202-WCB, 2017 WL 3034655, *2-4 (E.D. Tex. July 18, 2017), this Court explained that a monetary award for post-verdict sales is based on 35 U.S.C. § 283. Section 283 provides that a court “may grant [an] injunction[] in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.” *Id.* “The Federal Circuit has ‘interpreted that provision to permit a court to award “an ongoing royalty for patent infringement in lieu of an injunction” barring the infringing conduct.’” *UroPep*, 2017 WL 3034655, at *2 (quoting *Prism Techs. LLC v. Sprint Spectrum L.P.*, 849 F.3d 1360, 1377 (Fed. Cir. 2017), *vacated in part on other grounds*, 137 S. Ct. 954 (2017)).

[REDACTED]

[REDACTED] As the *Lucent Techs.* court explained, there is a fundamental distinction between a lump sum analysis and a running royalty analysis; a lump sum license conveys rights to use a patented product throughout the patent term for a single

[REDACTED]

[REDACTED]

[REDACTED] An award of post-verdict damages based upon an assumption as to sales that have not occurred may not be proportionate to the infringer's post-verdict use of the technology. ZTE further incorporates its arguments in Section IV(D)-(E), *infra*, regarding the inaccuracy of Ms. Mulhern's future damages predictions.

3. The Court Should Conduct Its Own Analysis to Set Royalty Rates to be Applied to ZTE's Actual Post-Verdict Sales

For the reasons set forth above, the Court should reduce the amount of the damages award by the [REDACTED] in post-verdict damages awarded by the jury based upon Ms. Mulhern's testimony. Because a motion for JMOL and, in the alternative, a new trial does not present the proper procedural framework for the Court to set post-verdict royalty rates, ZTE believes that it would be preferable for the Court to set a briefing schedule for a motion to be filed by Maxell with regard to setting post-verdict royalty rates. For use in the event that the Court believes that it may appropriately determine post-verdict royalty rates on this motion, ZTE provides the following brief analysis of the issue.

Under *Amado v. Microsoft Corp.*, 517 F.3d 1353, 1361-62 (Fed. Cir. 2008), post-verdict damages are to be determined by a hypothetical negotiation following the trial. *See id.* "In both *Amado* and cases following it, the courts have made it clear that the *Amado* analysis does not necessarily entail an increase in the post-verdict royalty rate over the pre-verdict rate found by the jury." *UroPep*, 2017 WL 3034655, at *20-1. "Recognizing the importance of the jury's verdict, courts have uniformly held that the starting point for the *Amado* analysis of the ongoing royalty rate is the royalty rate found by the jury for the pre-verdict infringement period." *Id.* at *22. "To the extent that the jury can be discerned to have made a decision based on the assumption that the patent was infringed and valid, and to the extent that other considerations do

not compel a departure from the jury's assessment of the proper royalty rate, the Court should defer to the jury's decision as the finder of fact. . . ." *Id.* at 22-3. "The burden is on [the patentee] to show that it is entitled to a royalty rate in excess of the rate initially determined by the jury." *Id.* (citing *Creative Internet Advert. Corp. v. Yahoo! Inc.*, 674 F. Supp. 2d 847, 855 (E.D. Tex. 2009)).

Here, the jury was instructed that it must base its damage award on the presumption that the patents were valid and infringed. *See* Dkt. 247 at 74:1-4 ("[u]nlike in a real-world negotiation, all parties to a hypothetical negotiation are presumed to believe that the patent was valid and infringed and that both parties were willing to enter into an agreement"). Similarly, Ms. Mulhern testified that her opinions "assume[d] that both parties know that the patents are valid, enforceable, and infringed." Dkt. 237 at 97:9 – 98:16. *See* Dkt. 255 at 45:12 – 46:9.

ZTE knows of no considerations that support a departure from the jury's assessment of the proper royalty rate. Accordingly, the post-verdict royalty rate to be applied to ZTE's sales would be the royalty rates opined to by Ms. Mulhern, given that the jury's award of the total amount of damages opined to by Ms. Mulhern indicates that the jury accepted the royalty rates to which she testified.

V. Invalidity Under Section 101

Pursuant to Rule 50(b), or alternatively Rule 52, ZTE moves for judgment that asserted Claims 1, 2, and 3 of the '317 Patent (PX-5) and Claims 1 and 2 of the '794 Patent (PX-3) are invalid as a matter of law for lack of patent-eligibility under 35 U.S.C. § 101. Claim 1 of the '317 Patent and Claim 1 of the '794 Patent are independent. The dependent claims add trivial limitations that rise or fall with the independent claims. ZTE previously filed a motion for summary judgment that the '317 and '794 Patents lack subject matter eligibility (Dkt. 143), which the Court denied without prejudice to renewing this motion in post-trial briefing. Sealed

Order, Dkt. 181 at 10. After hearing all of the evidence from Maxell and ZTE's expert technical witnesses, the jury returned a verdict that all asserted claims of the '317 and '794 Patents recited claim elements that were well-understood, routine, and conventional to a person of ordinary skill in the art. Jury Verdict, Dkt. 228, at 7-8. The jury's verdict conclusively resolves any remaining dispute of fact following ZTE's motion for summary judgment. ZTE is accordingly entitled to judgment that the '317 and '794 Patents lack subject matter eligibility under 35 U.S.C. § 101.

1. Standard of Law Regarding Invalidity

Section 101 limits the scope of patentable subject matter. *See In re Bilski*, 545 F.3d 943, 950-51 (Fed. Cir. 2008) (en banc), *aff'd*, *Bilski v. Kappos*, 561 U.S. 593 (2010). The Supreme Court has established a two-step process for distinguishing patents that claim laws of nature, natural phenomena and abstract ideas from those that claim patent-eligible applications of those concepts. *Alice Corp. Pty. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014). The first step is to determine whether the claims at issue are directed to one of those patent-ineligible concepts. The second step is to determine whether the elements of the claim, both individually and as an ordered combination, transform the claim into a patent-eligible application. *Id.* This second step has been described as a search for an inventive concept, i.e., "an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to more than a patent upon the [ineligible concept] itself.'" *Id.* (citations omitted).

2. Claims 1 and 2 of the '794 Patent Lack Patent-Eligible Subject Matter

The '794 Patent relates to methods for controlling power consumption in a battery-operated information processing device. '794 Patent, 1:6-11. More particularly, the '794 Patent allows priority levels to be set for individual "function" or "component" "devices" in the information processing device and prioritizes battery time or power consumption for function devices with higher priorities. '794 Patent 2:21-27, 3:57-4:12, Figures 8 and 9. The '794 Patent

[REDACTED]

turns off power to individual function devices based on the priority levels set for the function devices and the remaining battery capacity. In this manner, a lower prioritized function device can be turned off when a first battery capacity is reached, while a higher prioritized function device remains powered. '794 Patent 5:17–27.

At step one in the Alice inquiry, courts “ask whether the claims are directed to an improvement to computer functionality versus being directed to an abstract idea,” or “to a solution to a ‘technological problem.’” *See In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016).

[REDACTED]

This prioritization of tasks is a long-standing activity that took hold long before battery-powered computing devices. Moreover, nothing in the claim language is directed to improving capabilities of computer devices. For example, Claim 1 merely recites “[a]n information processing devices comprising ... two function devices ... a power supply circuit ... including a battery, and a capacity detector for detecting a remaining capacity of said battery, and a controller for controlling operation of said function devices...” ‘794 Patent, Cl. 1. The ‘794 Patent is untethered to a specific environment and thus seeks to preempt all uses of the concept of sending power consumption instructions to devices. Section 101 does not permit an inventor



to coopt an entire subject matter simply by reciting generic computer limitations –either individually or as an ordered combination.

Nor does the ‘794 Patent possess an inventive concept, as it broadly claims conventional elements to implement the abstract idea of sending data or instructions. Indeed, the Court determined that the claim term “function devices equipped with independent functions” should be construed to mean: “modem devices, audio communication devices, videotape devices, or equivalents thereof.” *Markman* Order, Dkt. 175 at 103. These structures are ordinary devices that are well-known components implemented to perform the claimed functionality of the abstract idea of “determining a battery capacity in a computer, and sending a power consumption reduction instruction to a device in the computer if the capacity is at one level, and sending a different instruction to another device if the capacity is at another level.” ZTE is accordingly entitled to judgment that the asserted claims of the ‘794 Patent lack subject matter eligibility

3. Claims 1-3 of the ‘317 Patent Lack Patent-Eligible Subject Matter

The asserted claims of the ‘317 Patent are directed to the concept of providing “walking navigation” to a portable terminal divorced from any concrete application. Moreover, the patent’s claims recite conventional, well-known limitations that fail to supply an inventive concept.



But the ‘317 Patent is very clearly directed to the abstract idea of providing location and direction based navigation to a walking user of a portable terminal. The patent does not claim to improve the mobile telephone, PDA, or “Personal Handyphone System.” In fact, the patent indicates that the claimed system is designed to operate within the generic environment of “a

portable telephone and Personal Handyphone System (PHS) (including a telephone provided only with character data communication functions) and a personal data assistance (PDA) terminal provided with portable telephone or PHS data communication functions.” ‘317 Patent at 1:10-15; 2:64-3:1 (noting that the terminal “is provided with data communication, input, and display devices *just like those of ordinary portable telephones and PHS terminals*”).

Nor does the claimed invention purport to improve location-based navigation systems, such as GPS, or devices for providing direction and orientation, such as existing gyros and compasses. Maxell’s focus on alleged improvements “the user interface while engaging in walking navigation, for example, the changing of the display based on the orientation of the device” (Dkt. 181 at 7) are aspirational and claim only a desired result. Rather, the ‘317 Patent “claims the function of [walking navigation], not a particular way of performing that function.” *See, e.g., Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1258 (Fed. Cir. 2016).

Instead, the ‘317 Patent’s asserted claims rely heavily on functional language and primarily concern sending, retrieving, inputting, and displaying data. *See, e.g.*, ‘317 Patent at cl. 1 (“*device for getting* location information;” “*device for getting* direction information;” “an input *device for inputting* . . .”). The patent’s preoccupation with providing it to a user of a portable telephone or PDA who happens to be walking simply represents the environment for which it was designed. But “[l]imiting the invention to a technological environment does ‘not make an abstract concept any less abstract under step one.’” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1367 (Fed. Cir. 2018) (quoting *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017)). Rather, there must be some evidence that the claimed advance “improves computer functionality in some way.” *Id.* There is none.

Nor is there anything inventive about the ‘317 Patent’s arrangement of elements. ■

After hearing all of the parties’ evidence, the jury returned a verdict that all asserted claims of the ‘317 Patent recited claim elements that were well-understood, routine, and conventional to a person of ordinary skill in the art. Dkt. 228, at 7-8.

The ‘317 Patent lacks an inventive concept. It recites a “portable terminal” “provided with data communication, input, and display devices *just like those of ordinary portable telephones and PHS terminals.*” ‘317 Patent at 2:64-3:1 (emphasis added). The Patent further recognized the existence of a “*conventional PDA terminal with GPS and handy GPS are systems that can be used as a single unit*” available at the time of its alleged invention. ‘317 Patent at 2:37-39 (emphasis added). Beyond that, Claim 1 describes “device[s] . . . for getting location information . . .” and “for getting a direction information . . .” both of which are entirely devoid of structural disclosure and instead rely on pure functional language. Moreover, Maxell’s focus on purported “improvements to the user interface” is belied by the generic language Claim 1 employs to describe it:

an input device for inputting a destination; and
a display,
wherein
said display displays positions of said destination and said present place, and a
relation of said direction and a direction from said present place to said
destination, and
said display changes according to a change of said direction of said portable
terminal orientation for walking navigation

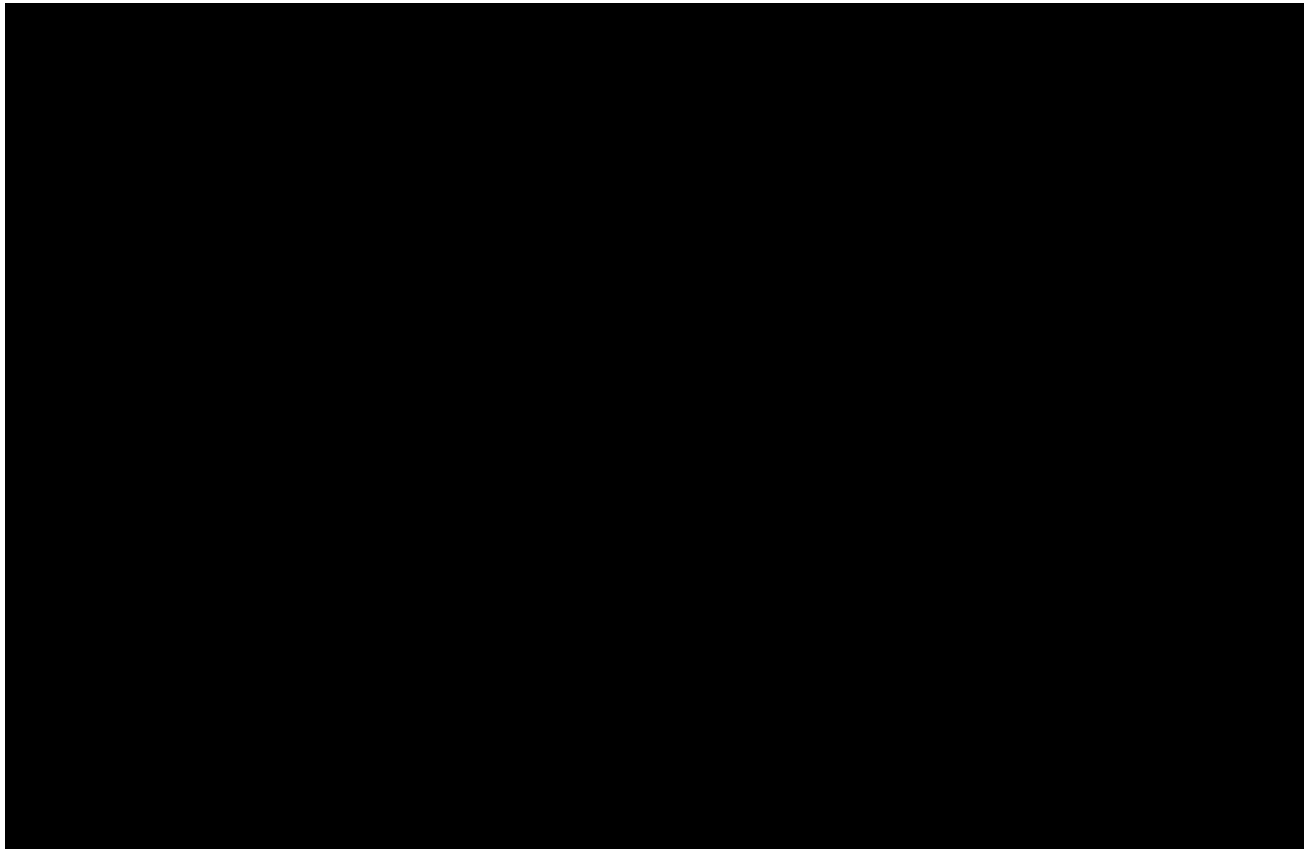
‘317 Patent, Cl. 1. As with the recited “device[s] . . . for getting location information . . .” and “for getting a direction information . . . ,” nothing in the claim limits the structure or composition of the user interface; it only claims the desired result. The ‘317 Patent thus relies on exceedingly

broad claim language in an attempt to preempt the field of providing “walking navigation” to users. The jury agreed that there is nothing unconventional about that.

VI. Motion for New Trial

A. ZTE Did Not Receive a Fair Trial

1. Introduction



██████████ And while the Court allowed ZTE to address its concerns about adverse publicity during voir dire, that was not sufficient to guarantee a fair trial in this case. As discussed herein, a party must generally demonstrate actual prejudice from one or more jurors to justify a new trial. However, the United States Supreme Court has also held there are certain cases where “prejudicial, inflammatory publicity” about a party has “so saturated the community from which [the] jury was drawn as to render it virtually impossible to obtain an impartial jury.” In these cases, “jury prejudice is presumed and there is no further duty to establish bias.”

This is one of those cases. The sheer volume of media coverage and commentary about ZTE on the eve of trial at both the national and local level made it virtually impossible for ZTE to obtain an impartial jury in this case, and therefore a new trial is warranted. Moreover, as further demonstrated herein, the vast majority of jurors on the panel indicated they do not trust foreign companies, and Maxell used materials and made prejudicial and inflammatory comments about ZTE and China that undoubtedly played to these fears and impacted the jury's verdict. Further, while ZTE is not required to demonstrate actual prejudice to warrant a new trial, the jury's verdict as to certain issues in this case, namely, infringement and damages, indicate the jury was, indeed, motivated by animus towards ZTE. As discussed further below, its findings on these issues were so against the great weight of evidence, as explained in more detail herein, there is no other reasonable explanation for the jury's verdict.

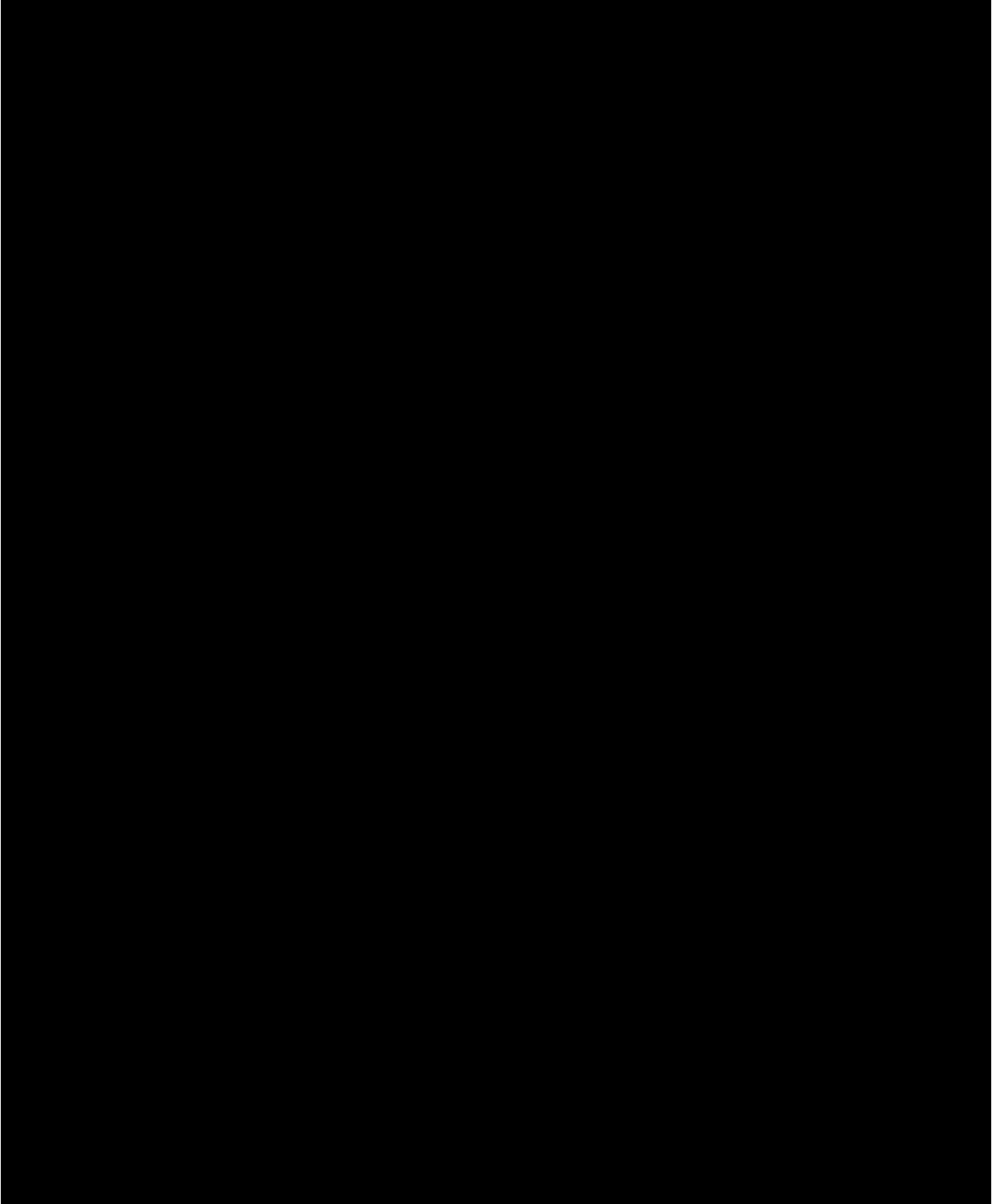
In sum, it has long been recognized that trial courts have an obligation and a duty to protect a defendant's right to a fair trial by an impartial jury. It has also long been recognized that trial courts have the power to set aside a verdict under Federal Rule 59 and grant a new trial "in any case where the ends of justice so require." Here, the only way to guarantee ZTE a fair trial on the merits with an impartial jury is to grant ZTE a new trial at a time and place sufficiently removed from the adverse pretrial publicity that rendered this trial inherently unfair.

2. Background

a. [REDACTED]

[REDACTED]

[REDACTED] As further demonstrated in the declaration of Matthew Gates, Esq. ("Gates Decl."), attached hereto, that commentary continued up to the date of voir dire in this case and throughout the trial.



[REDACTED]

Despite the concerns raised by ZTE in its Emergency Motion about adverse pretrial publicity infecting the jury pool, and despite confirmation that this information had, in fact, made it to the jury pool, Maxell used the sensitive situation surrounding ZTE to its full advantage.

[REDACTED]

This prejudicial and inflammatory image was projected to the jury for a good portion of Maxell’s opening statement. And to add insult to already highly prejudicial injury, Maxell’s counsel made repeated references to ZTE Corp., which is based in China, as the “mother ship” of ZTE USA. *See e.g.*, Dkt. 231 at 45:22 – 46:2; 53:13-17; and 58:25 – 59:3. As demonstrated above, six of the eight jurors that rendered the verdict in this case indicated they do not trust foreign companies like ZTE. Given these views, there can be no reasonable dispute that Maxell’s highly prejudicial and inflammatory slides and comments about ZTE and China prejudiced the jury against ZTE and directly influenced the verdict in this case.

b. The Jury’s Verdict

The jury returned its verdict against ZTE. While the various findings therein should be reversed for the reasons set forth as matter of law for the reasons set forth above, its findings with respect to infringement and damages in particular are so clearly against the weight of the

■

[REDACTED]

evidence as to independently warrant a new trial. *See* Sections III(A) –(B), *infra*. Moreover, given the lack of any reasonable basis supporting the jury’s verdicts on these two issues in particular, these findings indicate the jury rendered a verdict for reasons other than the evidence at issue. *Id.*

In sum, the extensive nationwide pre-trial and trial publicity related to ZTE noted above; the jurors’ knowledge of ZTE and Maxell’s prejudicial and inflammatory statements; and the jury’s ultimate findings in this case demonstrate ZTE did not receive a fair trial, and that a new one should be granted.

3. Legal Authority

The United States Supreme Court has called the right to a fair trial “the most fundamental of all freedoms.” *Estes v. Texas*, 381 U.S. 532, 540 (1965). Indeed, “[f]ew, if any, interests under the Constitution are more fundamental than the right to a fair trial by ‘impartial’ jurors, and an outcome affected by extrajudicial statements would violate that fundamental right.” *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1075 (1991). The Supreme Court has also long-recognized that pretrial publicity has the unique potential to deprive defendants of this right. *See Sheppard v. Maxwell*, 384 U.S. 333, 362-63 (1966); *Gannett v. DePasquale*, 443 U.S. 368, 378 (1979).

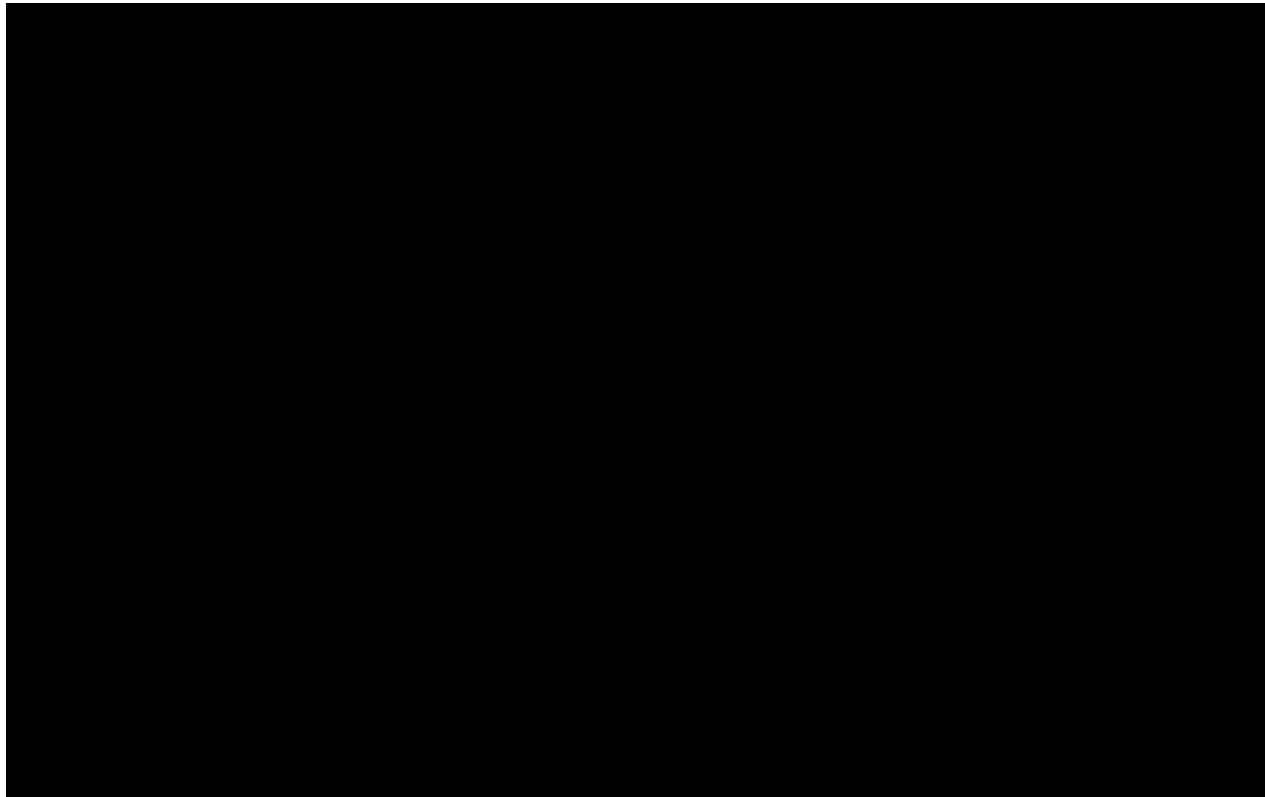
The Supreme Court’s position on adverse pretrial publicity and the obligations imposed on courts to protect against harm from such publicity is clear based on the foregoing precedent: “legal trials are not like elections, to be won through the use of the meeting hall, the radio, and the newspaper.” *Sheppard*, 384 U.S. at 350 (internal quotation omitted). Instead, defendants are entitled to an impartial jury “in the calmness and solemnity of the courtroom according to legal procedures.” *Hirschkop v. Snead*, 594 F.2d 356, 373 (4th Cir. 1979) (*quoting Cox v. Louisiana*, 379 U.S. 559, 583 (1965)); *see also Irvin v. Dowd*, 366 U.S. 717, 723 (1961) (noting that a defendant is entitled to a fair trial by an impartial jury which will render its verdict based upon

the evidence and arguments presented in court without being influenced by outside, irrelevant sources). Accordingly, the courts must take such steps that will protect their processes from prejudicial outside interferences. *Sheppard*, 384 U.S. at 363. And when it comes to adverse pretrial publicity, the Court has not only the power to do so, but the constitutional duty to minimize the effects of such publicity to safeguard the constitutional right to a fair trial. *Gannett*, 443 U.S. at 378 (emphasis added). These principles apply equally to civil and criminal proceedings. *See Am. Sci. & Eng'g, Inc. v. Autoclear, LLC*, 606 F. Supp. 2d 617, 625 (E.D. Va. 2008); *see also Hirschkop*, 594 F.2d at 373; *Chicago Council of Lawyers v. Bauer*, 522 F.2d 242, 248 (7th Cir. 1975).

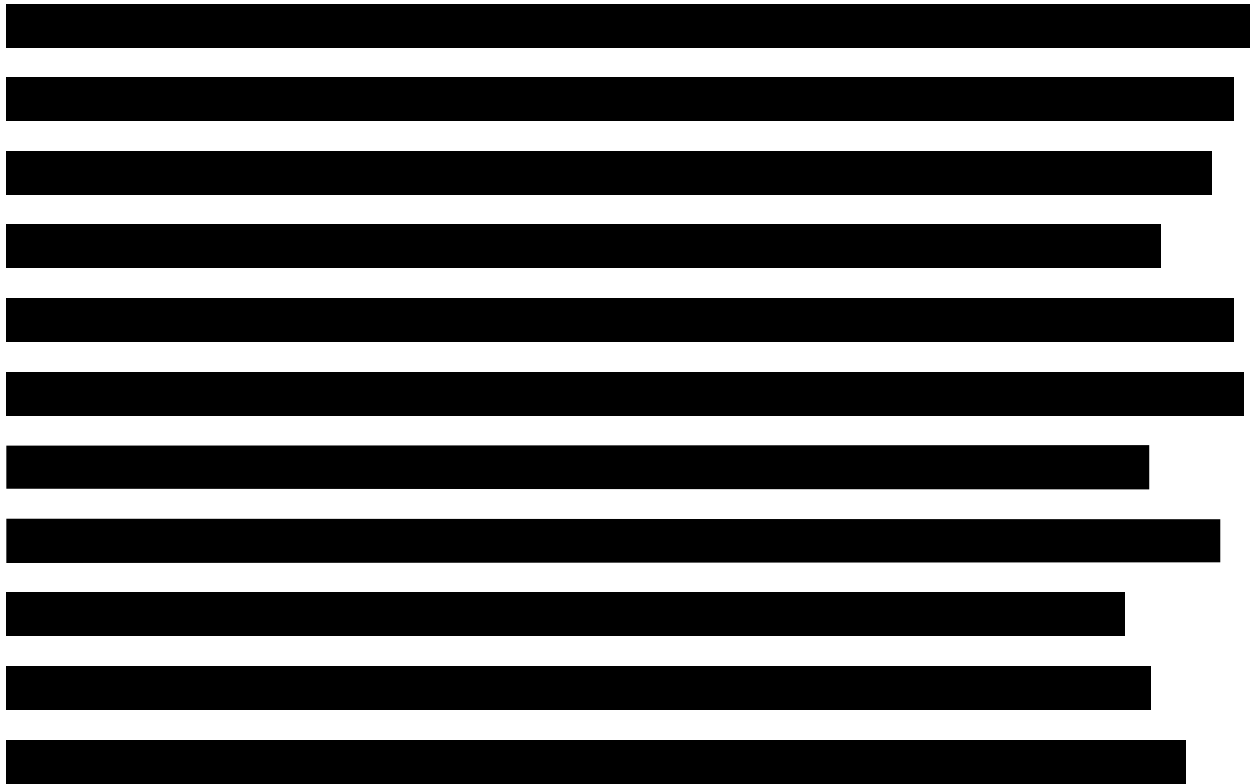
If a court denies a party's motion to continue trial because of adverse pretrial publicity, a party can obtain a new trial by demonstrating actual or presumed prejudice resulting from pretrial publicity. *United States v. Chagra*, 669 F.2d 241, 249 (5th Cir. 1982). Actual prejudice is shown by demonstrating "an actual, identifiable prejudice attributable to the publicity in question on the part of a member of the jury which decided [the] case." *Id.* (citing *Mayola v. Alabama*, 623 F.2d 992, 996 (5th Cir. 1980)). Presumed prejudice is shown by demonstrating that prejudicial, inflammatory publicity about the party "so saturated the community from which [the] jury was drawn as to render it virtually impossible to obtain an impartial jury." *Mayola*, 623 F.2d at 996-97. In these circumstances, "jury prejudice is presumed and there is no further duty to establish bias." *Id.* at 997; *United States v. Lipscomb*, 299 F.3d 303, 344 (5th Cir. 2002).

4. Argument

Prejudice should be presumed when a party can demonstrate pretrial publicity was "extremely prejudicial and inflammatory" and "saturated the community." There can be no reasonable dispute that ZTE has met this standard in this case.



Here, the voir dire process was not sufficient to protect ZTE's right to a fair trial. ■



[REDACTED]

[REDACTED]

[REDACTED] Moreover, Maxell's slides regarding China addressed above and its commentary about ZTE Corp. as the "mother ship" of ZTE USA only served to inflame an already suspect jury pool. ZTE is entitled to a new trial for this reason alone.

Finally, the jury's verdict with respect to infringement and damages in particular should remove any doubt about prejudice against ZTE. As explained above, the jury found infringement on several of the patents despite the fact that Maxell's experts conceded there was no infringement. *See* Section III(A), *infra*. With respect to damages, ZTE demonstrated that Maxell failed to mark, and therefore in the event the jury did find infringement and assess damages, it must choose the much lower damages number proffered by Maxell's own expert. Despite this clear evidence, the jury picked the much higher number anyway. *See* Section III(B), *infra*. These findings clearly indicate the jury was considering factors that had nothing to do with the evidence when it reached its verdict against ZTE. For each of the foregoing reasons, ZTE respectfully requests the Court grant ZTE a new trial.

B. New Trial Should be Granted Due To Closing Misconduct

During rebuttal closing, Counsel for Maxell repeatedly argued that ZTE USA's infringement was willful without having offered any evidence to support such arguments during trial. ZTE never stated that Mr. Lam would testify, and no one offered evidence that Mr. Lam works anywhere other than ZTE USA. In fact, while cross-examining ZTE's technical expert, Maxell counsel tried to introduce irrelevant documents relating to Mr. Lam, and was specifically instructed by the judge not to publish the documents to the jury. *See* Dkt. 242 at 108:8-20. Yet Maxell counsel invited jurors to speculate and guess that there was something nefarious about



Mr. Lam's employment, and to consider this when answering questions about willfulness on the verdict form:

I heard the explanation about why Mr. Lam didn't testify. . . . And I think you have to ask yourself, why didn't he? **And I'll give you a hint. I think the answer lies in the willfulness question that you're going to be asked. If they're not going to be straight with you about something as basic as who Mr. Lam is and who he works for and have him tell the story, how do you trust anything they say?** That should put a question in your mind about every single thing they said during this trial.

Dkt. 247 at 131:11-132:2 (Maxell closing) (emphasis added).

In another example, Maxell's counsel argued-- despite its failure to present any evidence of any person at ZTE Corp. sharing information with ZTE USA, or of any person working for both ZTE Corp. and ZTE USA-- as follows:

When Mr. Nakamura, the folks from Hitachi, the folks from Maxell, when they put ZTE Corporation on notice about these patents and they said, we've -- we've got this portfolio, we think you're infringing these patents, we want to talk about some representative patents, we want to talk about some representative products, they're talking about United States patents, which, obviously, relate to United States sales, which, obviously, implicates USA. **Do you think the company, the mother ship that's calling the shots, didn't share that information with anybody? You don't think there's people wearing two hats within that organization? Think about that.**

Dkt. 247 at 133:7-133:18 (Maxell closing) (emphasis added).

These misleading arguments may have been persuasive, but they rely upon speculation rather than evidence, and cannot support a jury's finding of willfulness. *Isbell v. DM Records, Inc.*, 774 F.3d 859, 872-73 (5th Cir. 2014).

C. New Trial Should Be Granted Regarding Errors in Evidentiary Rulings

In the alternative to a JMOL, ZTE USA requests a new trial due to unfairness and prejudicial error that occurred when Maxell was permitted to use documents and testimony relating to the settlement negotiations between Hitachi Maxell and ZTE Corp. over ZTE USA's objections grounded in Federal Rule of Evidence 408 ("FRE 408") and a Non-Disclosure Agreement ("NDA") between ZTE Corp. and Maxell in order to prove its claim of willful

[REDACTED]

infringement. Information relayed during the settlement negotiations formed the basis of Maxell's willfulness case, which otherwise would have failed. Moreover, by using this information, Maxell irrevocably poisoned the jury against ZTE USA. *See United States v. Edwards*, 303 F.3d 606, 639 (5th Cir. 2002) ("spillover" claims require a showing that (1) the evidence would have been inadmissible but for the invalid claim; and (2) the evidence was prejudicial); *see also United States v. Arledge*, 553 F.3d 881, 896 (5th Cir. 2008). ZTE USA's JMOL on willfulness is incorporated herein.

a. Use of Certain Documents and Testimony Violated FRE 408

Maxell's use of certain trial exhibits to prove willfulness violated Federal Rule of Evidence 408. Federal Rule of Evidence 408 unequivocally bars introduction of evidence of . . . "conduct or a statement made during compromise negotiations about the claim" if intended "to prove . . . the validity . . . of a disputed claim . . ." Fed. R. Evid. 408. Where FRE 408 exceptions have been allowed relating to evidence of willfulness, those exceptions have been for the purpose of allowing for a *defense* against claims of willfulness. *See QS Wholesale, Inc. v. World Mktg.*, No. SA CV 12-0451-DOC (RNBx), 2013 U.S. Dist. LEXIS 193992, at *22-23 (C.D. Cal. July 9, 2013) ("Quiksilver argues that it seeks to introduce the letter pursuant to Rule 408(b), *not* for the purpose of establishing the validity or amount of a claim, but in order to defend against a claim of willfulness, or to show the reasonable amount of attorney's fees at issue. . . . To the extent that Quiksilver "seeks to introduce evidence of the parties' negotiations for the limited purpose of defending against willfulness, Rule 408(b) does not preclude it from doing so."); *Carpenter Tech. Corp. v. Allegheny Techs., Inc.*, No. 08-2907, 2012 U.S. Dist. LEXIS 162456, at *3-6 (E.D. Pa. Nov. 13, 2012) ("Carpenter alternatively contends that even if the parties' negotiations are inadmissible for the purpose of establishing a reasonable royalty,

they are still admissible under Rule 408(b) for the limited purpose of defending against ATI's charge of willful infringement. . . .To the extent Carpenter seeks to introduce evidence of the parties' negotiations for the limited purpose of defending against willfulness, Rule 408(b) does not preclude it from doing so and neither will I.”). *Contrast Littlefuse, Inc. v. Pac. Eng'g Corp.*, No. 12-cv-14957, 2013 U.S. Dist. LEXIS 184067, at *11-12 (E.D. Mich. June 21, 2013) (“While plaintiff asserts that notice of PEC America's infringement should be imputed from the parties' settlement negotiations, this argument runs contrary to established precedents barring the mention of compromise materials at the pleadings stage when they are proffered to demonstrate liability. *See Fed. R. Evid. 408.*”)

ZTE USA surmises that this is likely because the exceptions listed in FRE 408(b) include “*negating* a contention of undue delay,” and defending against claims of willfulness is a similar stance to negating a contention.

[REDACTED]

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b. [REDACTED]

[REDACTED]

reasonable royalty award ‘must be based on the incremental value that the patented invention adds to the end product.’” *Exmark Mfg. Co. Inc. v. Briggs & Stratton Power Prods. Grp., L.L.C.*, 879 F.3d 1332, 1348 (Fed. Cir. 2018) (quoting *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1226 (Fed. Cir. 2014)). Thus, “the patent owner must apportion or separate the damages between the patented improvement and the conventional components of the multicomponent product.” *Id.* (citing *Commonwealth Sci. & Indus. Research Organisation v. Cisco Sys., Inc.*, 809 F.3d 1295, 1301 (Fed. Cir. 2015), and *VirnetX, Inc. v. Cisco Sys., Inc.*, 767 F.3d 1308, 1329 (Fed. Cir. 2014), as “requiring apportionment between patented and unpatented features of a multicomponent product”). Such apportionment “ensures that [the patentee] is compensated for the patented improvement . . . rather than the entire [product].” *Id.* In short, “[t]he essential requirement is that the ultimate reasonable royalty award must be based on the incremental value that the patented invention adds to the end product.” *Id.* (quoting *VirnetX, Inc.*, 767 F.3d at 1329)). Thus, the Court correctly instructed the jury. Dkt. 247 at 80:23 – 81:2.

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[REDACTED]

In *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1318-21 (Fed. Cir. 2011), the Federal Circuit affirmed the grant of a conditional new trial on damages based upon the plaintiff's introduction of evidence like the evidence and argument relied upon by Maxell. In that case, the plaintiff's expert performed a "check" to determine the reasonableness of his royalty figure by stating the figure as a percentage of Microsoft's approximate total revenue of \$19.28 billion for the accused product. *See id.* at 1318. The Federal Circuit held that the plaintiff's "use of the \$19 billion 'check' was improper under the entire market value rule." *Id.* at 1319. The

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Federal Circuit agreed with the district court that “[t]he \$19 billion cat was never put back into the bag even by Microsoft’s cross-examination of [the expert] and re-direct of [Microsoft’s damages expert], and in spite of a final instruction that the jury may not award damages based on Microsoft’s entire revenue from all the accused products in the case.” *Id.* at 1320. “The disclosure that a company has made \$19 billion dollars in revenue from an infringing product cannot help but skew the damages horizon for the jury, regardless of the contribution of the patented component to this revenue.” *Id.* Thus, the Federal Circuit rejected the plaintiff’s argument that “the use of the \$19 billion figure was only as a check, and the jury must be presumed to have followed the jury instruction and not based its damages calculation on the entire market value rule.” *Id.* at 1320. “. . . This argument attempts to gloss over the purpose of the check as lending legitimacy to the reasonableness of [the expert’s] \$565 million damages calculation.” *Id.* See *Content Guard Holdings, Inc. v. Amazon.com, Inc.*, Case Nos. 2:13-CV-1112-JRG, 2:14-CV-61-JRG, 2015 WL 11089749, *5 (E.D. Tex. Aug. 6, 2015) (precluding the plaintiff’s experts “from testifying about the entire amount of profit earned by any of the Defendants, or the entire amount of revenue or profit earned by the total sales of Defendants’ products”) (quoting *Uniloc USA, Inc.*, 632 F.3d at 1319, for the proposition that ““the use of the entire market value of [the accused products] . . . was irrelevant and tainted the jury’s damages award”). Cf. *SynQor Inc. v. Artesyn Techs., Inc.*, No. 2:07-CV-497-TJW-CE, 2011 WL 3625036, *28-29 (E.D. Tex. Aug. 17, 2011) (denying motion for new trial based on argument that the plaintiff improperly relied on the entire market value rule to justify the reasonableness of the proposed damages award because the plaintiff “made no effort to characterize its damages request as a small percentage of the total revenues generated by the infringing products, which is

[REDACTED]

the essence of the misapplication of the [entire market value rule] that led to the result in *Uniloc*”
).

Thus, in *Multimedia Patent Trust v. Apple Inc.*, No. 10-CV-2618-H (KSC), 2012 WL 5873711, *4-6 (S.D. Cal. Nov. 20, 2012), the court excluded a damages expert’s testimony that: (1) his \$1.50 per unit royalty would be approximately 0.25% of Apple’s accused product revenue; and (2) “at a 1% royalty rate the average per unit amount for Apple’s accused products would be \$6.00 based on their average selling price of \$600. . . .” *Id.* at *5 (citing *Uniloc*, 632 F.3d at 1321). The court found that “the entire market value rule is applicable to these statements” because the expert “relie[d] on the total revenues of the accused products to support his royalty rate.” *Id.* The court further found that the expert’s testimony should be excluded under Fed. R. Evid. 403 because its probative value was substantially outweighed by the danger of unfair prejudice, given that the expert’s ultimate conclusion was based upon a reasonable royalty rate per product and that it was thus “unnecessary for [the expert] to state his royalty rate as a percentage of Defendants’ revenue or state what a 1% royalty of Defendants’ accused products would be.” *Id.* at *6 (citing *Uniloc*, 632 F.3d at 1320, for the proposition that “[u]nder these circumstances, any discussion of the Defendants’ total revenue carries a substantial danger of unfair prejudice to the Defendant[s]”).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

As in *Uniloc USA*, Maxell’s introduction of evidence and argument concerning ZTE’s total revenues – from sale of not only the accused products but of all smartphones – “cannot help but skew the damages horizon for the jury.” *Uniloc USA, Inc.*, 632 F.3d at 1320. Accordingly, the Court should order a new trial, before a jury that has not been tainted by exposure to inflammatory evidence and argument that leads it to view the maximalist damages theory espoused by Maxell as a reasonable compromise.

E. A New Trial is Necessary on Damages as to the ‘317 Patent Because Ms. Mulhern Based Her Royalty Calculations on a JMOL Rate

[REDACTED]

[REDACTED]

[REDACTED] *In Sentius Int’l v. Microsoft*, No. 5:13-cv-00825-PSG, 2015 WL 451950, *5-6 (ND Cal Jan. 27, 2015), the court excluded on *Daubert* grounds an expert opinion that relied upon a JMOL royalty rate because JMOLs “are made in a different context than the situation in which parties face in a hypothetical negotiation.” *Id.* at *6.

F. A New Trial For Noninfringement of Each Patent-In-Suit

ZTE USA further moves for a new trial on non-infringement of the following patents, as the jury’s finding was against all weight of the evidence as presented by the cross-examination of Maxell’s experts and by ZTE USA’s expert witnesses, as described *infra*.

VII. Conclusion

For the foregoing reasons, ZTE is entitled to the judgments as a matters of law and new trial requested.



DATED: August 3, 2018

Respectfully submitted,

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Counsel for Defendant ZTE (USA), Inc.

[REDACTED]

CERTIFICATE OF SERVICE

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

/s/ Sara J. O'Connell _____

Sara J. O'Connell

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

The undersigned certifies that the foregoing document is authorized to be filed under seal pursuant to the Protective Order entered in this case.

/s/ Sara J. O'Connell _____

Sara J. O'Connell

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel has complied with the meet and confer requirement of Local Rule CV-7(h), and the motion is opposed.

The personal conference required by this rule was conducted on August 3, 2018, via telephone. No agreement could be reached because the parties appear to fundamentally disagree as to the validity of these motions. Discussions have conclusively ended in an impasse, leaving an open issue for the court to resolve.

/s/ Sara J. O'Connell _____

Sara J. O'Connell

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6. The document attached as Exhibit F is a true and correct copy of Maher Cross Examination Demonstrative, DDX-2.

7. The document attached as Exhibit G is a true and correct copy of Figure 1 of the '491 Patent.

8. [REDACTED]

9. [REDACTED].

10. The document attached as Exhibit J is a true and correct copy of Defendant ZTE (USA), Inc.'s Notice Of Intention to Take Rule 30(b)(6) Deposition of Plaintiff Hitachi Maxell. Ltd., Topic 13.

11. [REDACTED].

12. [REDACTED]

13. [REDACTED]

14. [REDACTED]

15. [REDACTED]

I declare under penalty of perjury that the foregoing facts are true and correct to the best of my knowledge.

Executed on August 3, 2018, at San Diego, California.

/s/ Sara J. O'Connell

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SARA J. O'CONNELL
Counsel for Defendant ZTE (USA), Inc.

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CERTIFICATE OF SERVICE

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

I hereby certify that on August 3, 2018, a true and correct copy of the foregoing was served on Plaintiff's counsel via electronic mail.

/s/ Sara J. O'Connell
Sara J. O'Connell

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

The undersigned certifies that the foregoing document is authorized to be filed under seal pursuant to the Protective Order entered in this case.

/s/ Sara J. O'Connell
Sara J. O'Connell

EXHIBIT A

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EXHIBIT B

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EXHIBIT C

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EXHIBIT D

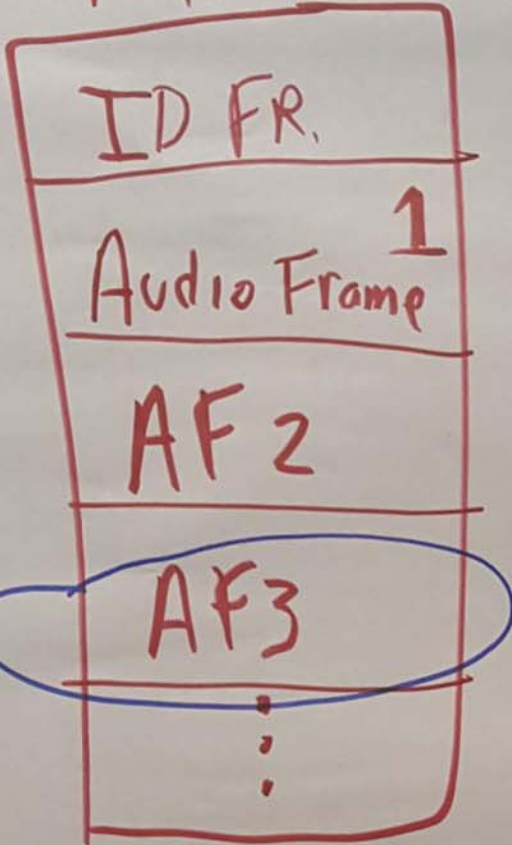
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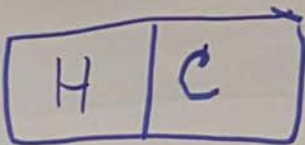
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EXHIBIT F

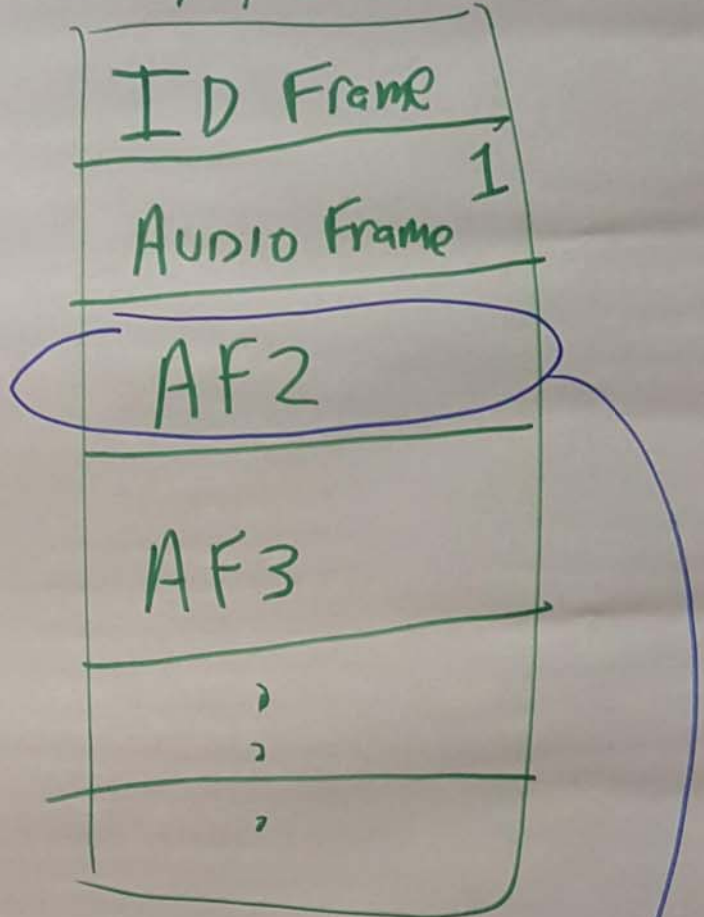
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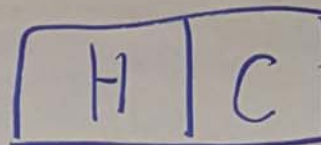
AM. the B.



AC3



Star Sp. Bon



DDX-2

EXHIBIT G

FIG. 1

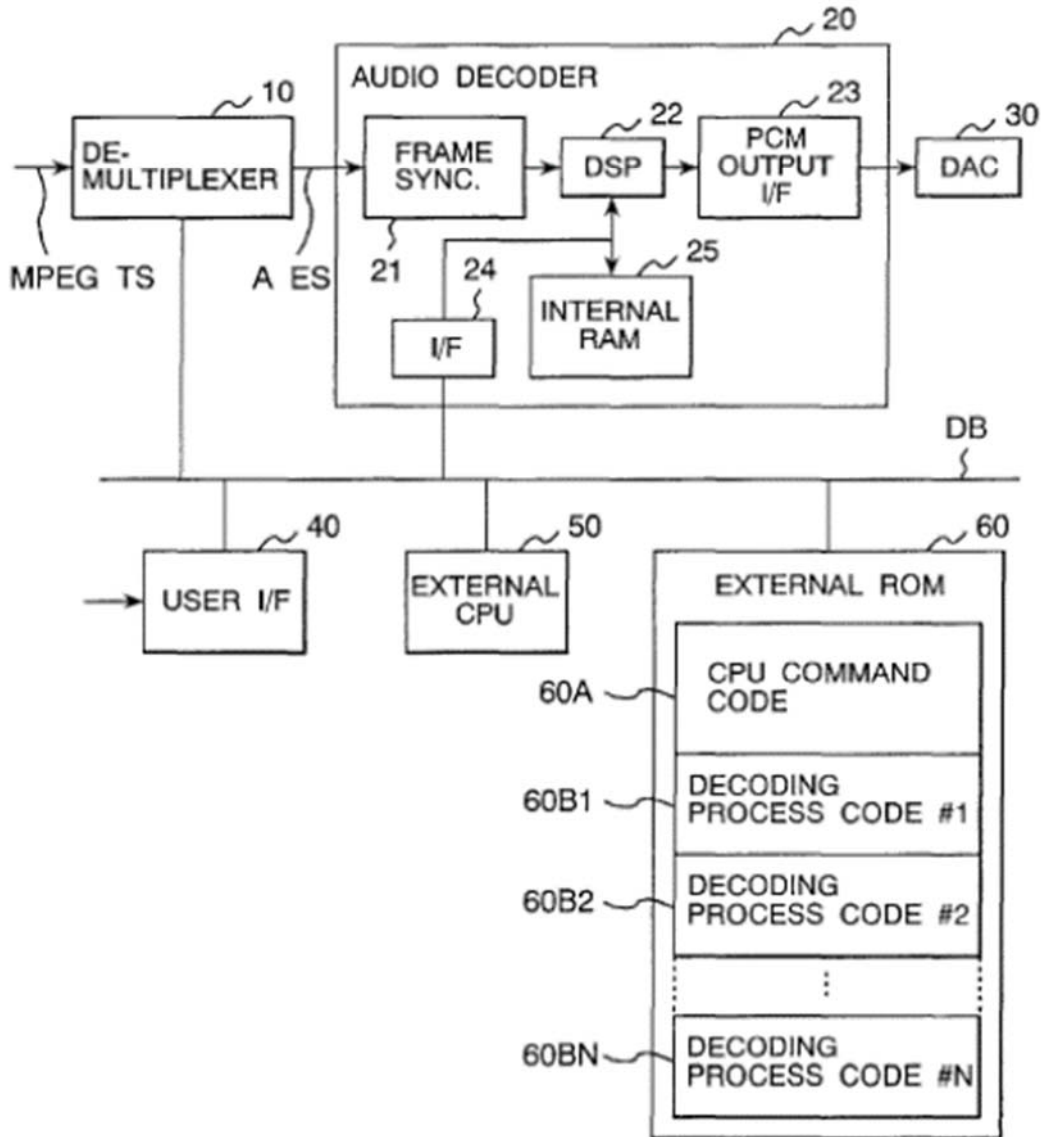


Fig. 1 of the '491 Patent

EXHIBIT H

Redacted in its Entirety

EXHIBIT I

Redacted in its Entirety

EXHIBIT J

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

HITACHI MAXELL, LTD.,

Plaintiff,

v.

HUAWEI DEVICE USA INC. and HUAWEI
DEVICE CO., LTD.,

Defendants.

Case No. 5:16-cv-00178-RWS

LEAD CASE

JURY TRIAL DEMANDED

HITACHI MAXELL, LTD.,

Plaintiff,

v.

ZTE CORPORATION and ZTE USA INC.,

Defendants.

Case No. 5:16-cv-00179-RWS

JURY TRIAL DEMANDED

**DEFENDANT ZTE (USA), INC.'S NOTICE OF INTENTION TO TAKE RULE 30(B)(6)
DEPOSITION OF PLAINTIFF HITACHI MAXELL, LTD**

PLEASE TAKE NOTICE that, pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, Defendant ZTE (USA), Inc. ("Defendant" or "ZTE") will take the deposition of Plaintiff Hitachi Maxell, Ltd. ("Plaintiff" or "Hitachi") on December 5, 2017 at the law offices of PILLSBURY WINTHROP SHAW PITTMAN LLP, 501 West Broadway, Suite 1100, San Diego, California 92101 or at such other date, time, or place as may be agreed upon by the parties, before a court reporter, notary public, or other person authorized by law to administer oaths. Plaintiff is directed to designate one or more officers, directors, managing agents, or other persons to testify on its behalf who have knowledge of the topics set forth in Exhibit A. The oral

EXHIBIT	<u>2</u>
WIT:	<u>NAKAMURA</u>
DATE:	<u>12/15/17</u>
REPORTER:	J. HARMONSON

Pacific Corp. v. United States Plywood Corp., 318 F.Supp. 1116 (S.D.N.Y. 1970),
modified and aff'd, 446 F.2d 295 (2d Cir. 1971).

9. Any efforts to comply with 35 U.S.C. § 287 regarding any products sold in the United States that practice the Asserted Patents, whether through license terms or otherwise, including but not limited to the facts and circumstances concerning all alleged marking of products with any patent number of the Asserted Patents and any efforts to enforce such marking on products sold by Hitachi's licensees, including but not limited to an identification of all products that have been marked with the number of any of the Asserted Patents.
10. Hitachi's decision to pursue or not pursue litigation against ZTE or any third parties, including all facts and circumstances leading up to that decision, including the reason(s) why Hitachi did not bring suit against ZTE for alleged infringement of the Asserted Patents before 2016.
11. All facts and circumstances relating to Hitachi's efforts to license the Asserted Patents.
12. All facts and circumstances relating to the priority dates that Hitachi contends apply to the Asserted Patents.
13. All facts and circumstances related to Hitachi's allegation that ZTE willfully infringes the Asserted Patents.
14. The Accused Products, including when You first learned of those products and/or services and when You first considered whether ZTE might allegedly infringe the Asserted Patents.
15. Hitachi's knowledge of royalties paid for licenses of other patents comparable to any of the Asserted Patents.
16. The design, research and development, operation, testing, specifications, or function of any Hitachi product or service incorporating or embodying the claimed subject matter of the Asserted Patents.
17. The identity and roles of each Person who participated in the design or development of any Hitachi products or services allegedly covered by the Asserted Patents that have been made, sold, used, or imported by Hitachi, including the involvement of non-Hitachi affiliated Persons.
18. Test results, alleged advantages, specifications, and underlying data of any products or services covered by the Asserted Patents sold, used, or imported by Hitachi.
19. The preparation, filing, and prosecution of the Asserted Patents, including statements made by applicants or their counsel in such prosecution, and the meaning and reasons for same.

EXHIBIT K

Redacted in its Entirety

EXHIBIT L

Redacted in its Entirety

EXHIBIT M

Redacted in its Entirety

EXHIBIT N

Redacted in its Entirety

EXHIBIT O

Redacted in its Entirety

ATTACHMENT

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

HITACHI MAXELL, LTD.,

Plaintiff,

v.

ZTE CORPORATION and ZTE (USA) INC.,

Defendants.

CIVIL ACTION NO. 5:16-cv-179-RWS

JURY TRIAL DEMANDED

**DECLARATION OF MATTHEW K. GATES IN SUPPORT OF ZTE (USA), INC.'S
EMERGENCY MOTION TO CONTINUE TRIAL DATE**

1) I, Matthew K. Gates, hereby submit this Declaration In Support of Defendant ZTE (USA), Inc.'s Emergency Motion to Continue Trial Date. I have actual knowledge of the statements made herein, and could and would testify to said facts if called to do so.

2) I am an attorney with the law firm of Pillsbury Winthrop Shaw Pittman, LLP, located at 401 Congress Avenue, Suite 1700, Austin, Texas 78701. I am a member of the State Bar of Texas in good standing. I respectfully submit this affirmation in support of ZTE's Emergency Motion to Continue Trial Date:

Exhibit 1: A true and correct copy of the United States Department of Commerce, Bureau of Industry and Security's Order Activating Suspended Denial Order Relating to Zhongxing Telecommunications Equipment Corporation and ZTE Kangxun Telecommunications Ltd., issued on April 15, 2018, available at https://www.commerce.gov/sites/commerce.gov/files/zte_denial_order.pdf;

Exhibit 2: A true and correct copy of a Twitter search of tweets by President Donald J. Trump compiled on May 30, 2018, available at <https://twitter.com/search?l=&q=%22zte%22%20from%3ArealDonaldTrump&src=typd>.

Exhibit 3: A true and correct copy of the NBC News article, *Congress sounds bipartisan alarm as Trump deals on ZTE*, available at

<https://www.nbcnews.com/politics/congress/congress-sounds-bipartisan-alarm-trump-deals-zte-n877601.1>]

- Exhibit 4: A true and correct copy of the CBS News article, *Trump administration reaches deal to save China's ZTE*, available at <https://www.cbsnews.com/news/trump-administration-reaches-deal-to-save-chinas-zte-today/>.
- Exhibit 5: A true and correct copy of the Washington Post article, *Trump says he'll spare Chinese telecom firm ZTE from collapse, defying lawmakers*, available at https://www.washingtonpost.com/business/economy/congress-threatens-to-block-deal-between-white-house-china-to-save-telecom-giant-zte/2018/05/25/1db326ba-604a-11e8-9ee3-49d6d4814c4c_story.html?utm_term=.6330556b7028.
- Exhibit 6: A true and correct copy of the New York Times article, *Trump Administration Plans to Revive ZTE, Prompting Backlash*, available at <https://www.nytimes.com/2018/05/25/us/politics/trump-trade-zte.html?smprod=nytcore-ipad&smid=nytcore-ipad-share>.
- Exhibit 7: A true and correct copy of a Twitter search results of tweets by Senator Marco Rubio (@marcorubio) compiled on May 30, 2018, available at <https://twitter.com/search?l=&q=%22zte%22%20from%3Amarcorubio&src=typd>
- Exhibit 8: A true and correct copy of the CNN article, *Trump administration has briefed Congress on tentative deal with China's ZTE*, available at <https://www.cnn.com/2018/05/25/politics/trump-administration-deal-with-congress/index.html?iid=EL>.
- Exhibit 9: A true and correct copy of the Fortune article, *Trump Proposed a Deal to Let ZTE Stay in Business. Now Congress May Try to Ban Chinese Telecom Firms From the U.S.*, available at <http://fortune.com/2018/05/28/trump-zte-china-telecom-ban-marco-rubio/>.
- Exhibit 10: A true and correct copy of the CNN article, *Companies become bargaining chips in US-China trade turmoil*, available at <http://money.cnn.com/2018/05/27/news/economy/us-china-trade-zte-qualcomm/index.html?iid=EL>.
- Exhibit 11: A true and correct copy of an official statement from the office of House Minority Leader Nancy Pelosi, available at <https://www.democraticleader.gov/newsroom/52518-5/>.

Exhibit 12: A true and correct copy of a Twitter search of tweets by Senator Chris Van Hollen (@ChrisVanHollen) available at <https://twitter.com/search?q=%22zte%22%20from%3Achrisvanhollen&src=typd>.

Exhibit 13: A true and correct copy of the Washington Post article, *The Finance 202: Trump risks repeating Bush controversy with ZTE deal*, available at https://www.washingtonpost.com/news/powerpost/paloma/the-finance-202/2018/05/29/the-finance-202-trump-risks-repeating-bush-controversy-with-zte-deal/5b0c4a141b326b492dd07ebf/?noredirect=on&utm_term=.b7f763c40f19.

Exhibit 14: A true and correct copy of a Twitter search of tweets by Senator Mark Warner (@MarkWarner), available at <https://twitter.com/search?q=%22zte%22%20from%3Amarkwarner&src=typd>.

Exhibit 15: A true and correct copy of the Twitter account webpages of President Donald J. Trump, Senator Marco Rubio, Senator Chuck Schumer, House member Nancy Pelosi, Senator Chris Van Hollen, Senator Mark Warner, and Senator Lindsey Graham, available at:

- <https://twitter.com/realdonaldtrump>
- <https://twitter.com/marcorubio>
- <https://twitter.com/SenSchumer>
- <https://twitter.com/nancypelosi>
- <https://twitter.com/ChrisVanHollen>
- <https://twitter.com/MarkWarner>
- <https://twitter.com/LindseyGrahamSC>

Exhibit 16: A true and correct copy of the CNN article, *ZTE will suffer lasting damage even if Trump lifts ban*, available at <http://money.cnn.com/2018/05/29/technology/zte-china-trump-what-next/index.html>.

Exhibit 17: A true and correct copy of the USA Today article, *President Trump pledges to help ZTE, Chinese maker of budget-friendly phones, after ban*, available at <https://www.usatoday.com/story/news/politics/2018/05/13/trump-pledges-help-chinese-phone-maker-zte/605901002/>.

Exhibit 18: A true and correct copy of the CNBC article, *Republican Sen. Marco Rubio warns: Trump's reversal on China's ZTE is a national security risk*, available at <https://www.cnbc.com/2018/05/14/marco-rubio-slams-trump-reversal-on-chinese-company-zte.html>.

- Exhibit 19: A true and correct copy of the Reuters article, *Trump's comments on China's ZTE draw security concerns*, available at <https://www.reuters.com/article/usa-china-zte/trumps-comments-on-chinas-zte-draw-security-concerns-idUSL2N1SL0KY>.
- Exhibit 20: A true and correct copy of the article, *After ZTE reversal, Democrats accuse Trump of jeopardizing national security*, available at https://www.washingtonpost.com/news/business/wp/2018/05/15/after-zte-reversal-democrats-accuse-trump-of-jeopardizing-national-security/?utm_term=.79167fdcbf56.
- Exhibit 21: A true and correct copy of the Daily Beast article, *Stephen Colbert Calls Out Trump for 'Taking Bribes' From China*, available at <https://www.thedailybeast.com/stephen-colbert-calls-out-trump-for-taking-bribes-from-china>.
- Exhibit 22: A true and correct copy of the New York Times article, *Stephen Colbert Sees an Ulterior Motive in Trump's Support of ZTE*, available at <https://www.nytimes.com/2018/05/16/arts/television/stephen-colbert-trump-china-zte.html>.
- Exhibit 23: A true and correct copy of the Washington Post article, *Rubio, in challenge to Trump, suggests Congress will act against ZTE*, available at https://www.washingtonpost.com/powerpost/rubio-in-challenge-to-trump-suggests-congress-will-act-against-zte/2018/05/27/5bff13e8-61cb-11e8-a768-ed043e33f1dc_story.html?utm_term=.ffe35ee0adab.
- Exhibit 24: A true and correct copy of the New York Times article, *Ivanka Trump Wins China Trademarks, Then Her Father Vows to Save ZTE*, available at <https://www.nytimes.com/2018/05/28/business/ivanka-trump-china-trademarks.html>.
- Exhibit 25: A true and correct copy of the Washington Post article, *Trump's fluid approach to national and economic security is leaving his allies baffled*, available at https://www.washingtonpost.com/business/economy/trumps-fluid-approach-to-national-and-economic-security-is-leaving-his-allies-baffled/2018/05/28/b08c5908-5f95-11e8-9ee3-49d6d4814c4c_story.html?utm_term=.c8a9de1aa8ae.
- Exhibit 26: A true and correct copy of the Reuters article, *U.S. and China clash over 'technology transfer' at WTO*, available at <https://www.reuters.com/article/us-usa-trade-china/u-s-and-china-clash-over-technology-transfer-at-wto-idUSKCN1IT11G>.

- Exhibit 27: A true and correct copy of the Wall Street Journal article, *Are Huawei and ZTE a Real Cybersecurity Threat?*, available at <https://www.wsj.com/articles/are-huawei-and-zte-a-real-cybersecurity-threat-1527611521>.
- Exhibit 28: A true and correct copy of the Wall Street Journal article, *Corruption Currents Ivanka Trump Receives Trademarks Days Before ZTE move*, available at <https://blogs.wsj.com/riskandcompliance/2018/05/29/corruption-currents-ivanka-trump-receives-trademarks-days-before-zte-move/>.
- Exhibit 29: A true and correct copy of the Washington Post article, *Ivanka Trump's China trademarks don't look or smell good*, available at https://www.washingtonpost.com/opinions/ivanka-trumps-china-trademarks-dont-look-or-smell-good/2018/05/29/92df4c74-6384-11e8-99d2-0d678ec08c2f_story.html?utm_term=.3b9741427975.
- Exhibit 30: A true and correct copy of the CNET article, *Sen. Mark Warner says Trump's ZTE deal is a mistake*, available at <https://www.cnet.com/news/sen-mark-warner-said-trumps-zte-deal-is-a-mistake/>.
- Exhibit 31: A true and correct copy of the Texarkana Gazette article, *Trump's trade agenda runs into reality of global geopolitics*, available at <http://www.texarkanagazette.com/news/national/story/2018/may/29/trumps-trade-agenda-runs-reality-global-geopolitics/728228/>.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed: June 1, 2018

/s/ Matthew K. Gates
Matthew K. Gates
Pillsbury Winthrop Shaw Pittman LLP
401 Congress Avenue, Suite 1700
Austin, Texas 78701
Telephone: (512) 580-9632
Facsimile (512) 580-9601
matt.gates@pillsburylaw.com

Attorney for ZTE (USA), Inc.

Exhibit 1

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:

Zhongxing Telecommunications Equipment
Corporation
ZTE Plaza, Keji Road South
Hi-Tech Industrial Park
Nanshan District, Shenzhen
China

ZTE Kangxun Telecommunications Ltd.
2/3 Floor, Suite A, Zte Communication Mansion
Keji (S) Road
Hi-New Shenzhen, 518057
China

Respondent

ORDER ACTIVATING SUSPENDED DENIAL ORDER RELATING TO
ZHONGXING TELECOMMUNICATIONS EQUIPMENT CORPORATION AND
ZTE KANGXUN TELECOMMUNICATIONS LTD.

Background

On March 23, 2017, I signed an Order approving the terms of the Settlement Agreement entered into in early March 2017, between the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) and Zhongxing Telecommunications Equipment Corporation, of Shenzhen, China (“ZTE Corporation”) and ZTE Kangxun Telecommunications Ltd. of Hi-New Shenzhen, China (“ZTE Kangxun”) (collectively, “ZTE”), hereinafter the “March 23, 2017 Order.” Under the terms of the settlement, ZTE agreed to a record-high combined civil and criminal penalty of \$1.19 billion, after engaging in a multi-year conspiracy to violate the U.S. trade embargo against Iran to obtain contracts to supply, build, operate, and maintain telecommunications networks in Iran using U.S.-origin equipment, and also illegally shipping telecommunications

ZTE Corporation and ZTE Kangxun
Order Activating Denial Order
Page 2 of 14

equipment to North Korea in violation of the Export Administration Regulations (15 C.F.R. Parts 730-774 (2017)) (“EAR” or the “Regulations”). ZTE also admitted to engaging in an elaborate scheme to hide the unlicensed transactions from the U.S. Government, by deleting, destroying, removing, or sanitizing materials and information.

Under the terms of the Settlement Agreement and the March 23, 2017 Order, BIS imposed against ZTE a civil penalty totaling \$661,000,000, with \$300,000,000 of that amount suspended for a probationary period of seven years from the date of the Order.¹ This suspension was subject to several probationary conditions stated in the Settlement Agreement and March 23, 2017 Order, including that ZTE commit no other violation of the Export Administration Act of 1979, as amended (50 U.S.C. §§ 4601-4623 (Supp. III 2015)), the Regulations, or the March 23, 2017 Order. The March 23, 2017 Order also imposed, as agreed to by ZTE, a seven-year denial of ZTE’s export privileges under the EAR that was suspended subject to the same probationary conditions. The March 23, 2017 Order, like the Settlement Agreement, provided that should ZTE fail to comply with any of the probationary conditions, the \$300 million suspended portion of the civil penalty could immediately become due and owing in full, as well as that BIS could modify or revoke the suspension of the denial order and activate a denial order of up to seven years.

The Settlement Agreement and March 23, 2017 Order require that during the probationary period, ZTE is to, among other things, complete and submit six audit reports

¹ In addition to the BIS-ZTE settlement, ZTE Corporation entered into a plea agreement with the Justice Department’s National Security Division and the U.S. Attorney’s Office for the Northern District of Texas, and entered into a settlement agreement with the Treasury Department’s Office of Foreign Assets Control. The civil penalties (including the \$661 million civil penalty imposed by BIS) and the criminal fine and forfeiture totaled, when combined, approximately \$1.19 billion.

ZTE Corporation and ZTE Kangxun
Order Activating Denial Order
Page 3 of 14

regarding ZTE's compliance with U.S. export control laws. The Settlement Agreement and March 23, 2017 Order also include a broad cooperation provision during the period of the suspended denial order. This cooperation provision specifically requires that ZTE make truthful disclosures of any requested factual information. The Settlement Agreement and March 23, 2017 Order thus, by their terms, essentially incorporate the prohibition set forth in Section 764.2(g) of the EAR against making any false or misleading representation or statement to BIS during, inter alia, the course of an investigation or other action subject to the EAR.

On February 2, 2018, acting pursuant to the Settlement Agreement and March 23, 2017 Order, BIS requested, among other things, that ZTE provide a status report on all individuals named or otherwise identified in two letters sent by ZTE, through its outside counsel, to the U.S. Government, dated November 30, 2016, and July 20, 2017, respectively. The status report was to include, among other things, current title, position, responsibilities, and pay and bonus information from March 7, 2017 to the present. The first of those two letters, dated November 30, 2016, was sent during BIS's investigation of the violations alleged in the Proposed Charging Letter and referenced in the Settlement Agreement and March 23, 2017 Order. In that letter, ZTE described "self-initiated" employee disciplinary actions it asserted that it had taken to date and additional actions that the company said it would take in the near future because they were "necessary to achieve the Company's goals of disciplining those involved and sending a strong message to ZTE employees about the Company's commitment to compliance." The letter focused on ZTE's asserted commitment to compliance, including from the highest levels of management.

The July 20, 2017 letter, sent on ZTE's behalf during the March 23, 2017 Order's seven-year probationary period, also asserted ZTE's commitment to compliance and

ZTE Corporation and ZTE Kangxun
Order Activating Denial Order
Page 4 of 14

claimed that the disciplinary actions taken had sent a very strong message to ZTE employees. The letter was sent “to confirm that the measures detailed by ZTE with respect to discipline have been implemented” against nine named ZTE employees identified during the U.S. Government’s investigation. The employee disciplinary actions—actions that ZTE told the U.S. Government that it had already taken—were in ZTE’s words a showing of ZTE’s “overall approach to discipline and commitment to compliance,” which the company described as “significant and sufficient to prevent past misconduct from occurring again at ZTE.” Nearly all of the employees named in the July 20, 2017 letter had been specifically identified to ZTE by the U.S. Government as individuals that U.S. law enforcement agents wanted to interview during the investigation, either because they were signatories on an internal ZTE memorandum discussing how to evade U.S. export controls, were identified on that memorandum as a “project core member” of that evasion scheme, and/or had met with ZTE’s then-CEO to discuss means to continue evading U.S. law. Three were members of the “Contract Data Induction Team” involved in extensive efforts to destroy and conceal evidence described in more detail below and in the PCL.

In sum, through those two letters, ZTE informed the U.S. Government that the company had taken or would take action against 39 employees and officials that ZTE identified as having a role in the violations that led to the criminal plea agreement and the settlement agreements with BIS and the U.S. Department of the Treasury’s Office of Foreign Assets Control. In fact, and as ZTE now admits, the letters of reprimand described in the November 30, 2016 letter were never issued until approximately a month after BIS’s February 2, 2018 request for information, and all but one of the pertinent individuals identified in the November 30, 2016 or July 20, 2017 letters received his or

ZTE Corporation and ZTE Kangxun
Order Activating Denial Order
Page 5 of 14

her 2016 bonus.² These false statements were not corrected by ZTE even in part until March 2018, more than 15 months from ZTE's November 30, 2016 letter, approximately a year from the Settlement Agreement (which ZTE executed on March 2, 2017) and the March 23, 2017 Order, and nearly eight months from the July 20, 2017 letter. During a conference call on March 6, 2018, ZTE indicated, via outside counsel, that it had made false statements in the November 30, 2016 and the July 20, 2017 letters. As discussed below, ZTE's first detailed notification occurred on March 16, 2018.

Proposed Activation of Suspended Sanctions and ZTE's Response

On March 13, 2018, pursuant to Section 766.17(c) of the Regulations, BIS notified ZTE of a proposed activation of the sanctions conditionally-suspended under the Settlement Agreement and the March 23, 2017 Order, based on ZTE's false statements in its letters dated November 30, 2016 and July 20, 2017, respectively. The notice letter to ZTE also gave the company an opportunity to respond, which it did on March 16, 2018.

I have reviewed in detail ZTE's response. In its letter, ZTE confirmed the false statements and, as discussed further *infra*, posed certain questions in rhetorical fashion. ZTE then proceeded to summarize its response upon "discovering" the failure to implement the stated employee disciplinary actions prior to March 2018, including its decision to notify BIS of the failures. The company also described the asserted remedial steps it had taken to date, including the issuance in March 2018, of the letters of

² Some of the disciplinary actions ZTE discussed in its November 30, 2016 letter relate to employees who resigned from ZTE well before the date of that letter, including some even as far back as 2012 and 2013. ZTE asserted that such employees left the company by "mutual understanding." Including these employees allowed ZTE to inflate the number of employees listed as subject to disciplinary action, and the material provided by ZTE to date does not establish that they were, in fact, subject to such action. The false statements discussed as violations in this order do not include, however, ZTE's statements relating to the circumstances under which these employees left the company. Nor do the false statements at issue relate to an employee referenced in the July 20, 2017 letter, concerning whom ZTE did not clearly state that disciplinary action had been taken. This order also does not relate to any issues relating to the termination of four officials addressed as part of the criminal plea agreement.

ZTE Corporation and ZTE Kangxun
Order Activating Denial Order
Page 6 of 14

reprimand that were to have been sent in 2016-2017. ZTE additionally asserted that, for current employees whose 2016 bonus should have been reduced (by 30% to 50%), it would deduct the corresponding amount from their 2017 annual bonuses “to the extent permitted under Chinese law.” ZTE also said it will pursue recovery from (certain) former employees of bonus payments for 2016 that the company had informed the U.S. Government would be reduced, but, contrary to those statements, were paid in full. Finally, ZTE reiterated what it described as the company’s serious commitment to export control compliance and summarized its plan to continue its internal investigation of the matter.

ZTE’s Pattern of Deception, False Statements, and Repeated Violations of U.S. Law

In issuing the March 13, 2018 notice letter to ZTE, and in considering ZTE’s response, I have taken into account the course of ZTE’s dealings with the U.S. Government during BIS’s multi-year investigation, which demonstrate a pattern of deception, false statements, and repeated violations. I note the multiple false and misleading statements made to the U.S. Government during its investigation of ZTE’s violations of the Regulations, and the behavior and actions of ZTE since then. ZTE’s July 20, 2017 letter is brimming with false statements in violation of § 764.2(g) of the Regulations, and is the latest in a pattern of the company making untruthful statements to the U.S. Government and only admitting to its culpability when compelled by circumstances to do so. That pattern can be seen in the November 30, 2016 letter, which falsely documented steps the company said it was taking and had taken, as well as in the 96 admitted evasion violations described in the PCL, which detailed the company’s efforts to destroy evidence of its continued export control violations.

In agreeing to the Settlement Agreement and the imposition of the March 23, 2017 Order, ZTE admitted committing 380 violations of the Regulations as those

ZTE Corporation and ZTE Kangxun
Order Activating Denial Order
Page 7 of 14

violations were alleged in BIS's PCL. The PCL detailed an extensive conspiracy, including as laid out in a 2011 company memorandum drafted by ZTE Corporation's Legal Department and ratified by its then-CEO, to evade U.S. export control laws and facilitate unlicensed exports to Iran. During the conspiracy, ZTE leadership and staff employed multiple strategies in an attempt to conceal or obscure the true nature and extent of the company's role in the transactions and thereby facilitate its evasion of U.S. export controls, of which ZTE had detailed knowledge. As a result of the conspiracy, ZTE was able to obtain hundreds of millions of dollars in contracts with and sales from Iranian entities to ship routers, microprocessors, and servers controlled under the Regulations for national security, encryption, regional security, and/or anti-terrorism reasons to Iran.

ZTE Cover-Up Activity

Of the 380 alleged and admitted violations, ZTE committed 96 evasion violations relating to its actions to obstruct and delay the U.S. Government's investigation.³ These violations included making knowingly false and misleading representations and statements to BIS special agents and other federal law enforcement agents and agency official during a series of meetings between August 26, 2014, and at least January 8, 2016, including that the company had previously stopped shipments to Iran as of March 2012, and that it was no longer violating U.S. export control laws. In doing so, ZTE acted through outside counsel, who were unaware that the representations and statements that ZTE had given to counsel for communication to the U.S. Government were false and

³ These 96 admitted violations are discussed in fuller detail in the Proposed Charging Letter attached to and incorporated by reference in the Settlement Agreement. In the Settlement Agreement, ZTE admitted each of the allegations and violations contained in the Proposed Charging Letter.

ZTE Corporation and ZTE Kangxun
Order Activating Denial Order
Page 8 of 14

misleading. ZTE failed to correct those representations and statements, which were continuing in effect, until beginning to do so (via outside counsel) on April 6, 2016.

ZTE also engaged in an elaborate scheme to prevent disclosure to the U.S. Government, and, in fact, to affirmatively mislead the Government, by deleting and concealing documents and information from the outside counsel and forensic accounting firm that ZTE had retained with regard to the investigation. Between January and March 2016, ZTE went so far as to form and operate a “Contract Data Induction Team” made up of ZTE employees tasked with destroying, removing, and sanitizing all materials concerning transactions or other activities relating to ZTE’s Iran business that post-dated March 2012. ZTE required each of the team members to sign a non-disclosure agreement covering the ZTE transactions and activities the team was directed to hide from the U.S. Government, subject to a penalty of 1 million RMB (or approximately \$150,000) payable to ZTE if it determined that a disclosure occurred.

Determination to Activate the Suspended Denial Order

It was with this backdrop in mind, as more fully alleged in the PCL, that the Settlement Agreement and the March 23, 2017 Order mandate that ZTE truthfully disclose, upon request, all factual information (not subject to certain privileges, which are inapplicable here), and that led BIS to make its February 2, 2018 request for information relating to the employee disciplinary actions stated in the November 30, 2016 and July 20, 2017 letters.

BIS has determined that the company’s admission, in response to inquiries from BIS, that it made false statements to the U.S. Government during the probationary period under the Settlement Agreement and March 23, 2017 Order indicate that ZTE still cannot

ZTE Corporation and ZTE Kangxun
Order Activating Denial Order
Page 9 of 14

be relied upon to make truthful statements, even in the course of dealings with U.S. law enforcement agencies, and even with the prospect of the imposition of a \$300 million penalty and/or a seven-year denial order. The provision of false statements to the U.S. Government, despite repeated protestations from the company that it has engaged in a sustained effort to turn the page on past misdeeds, is indicative of a company incapable of being, or unwilling to be, a reliable and trustworthy recipient of U.S.-origin goods, software, and technology. BIS is left to conclude that if the \$892 million monetary penalty paid pursuant to the March 23, 2017 Order, criminal plea agreement, and settlement agreement with the Department of the Treasury did not induce ZTE to ensure it was engaging with the U.S. Government truthfully, an additional monetary penalty of up to roughly a third that amount (\$300 million) is unlikely to lead to the company's reform.

The false statements ZTE made in the July 20, 2017 letter violate Section 764.2(g) of the Regulations and the terms of the Settlement Agreement and the March 23, 2017 Order, and thus violate the conditions of ZTE's probation under the Agreement and the Order. The false statements in the November 30, 2016 letter, made during the investigation, are pertinent and material in at least two ways.⁴ First, they are evidence that ZTE's false statements to the U.S. Government did not cease in April 2016, as are the additional false statements ZTE made in its July 20, 2017 letter. Second, under Section 764.2(g) of the Regulations, all representations, statements, and certifications to BIS or any other relevant agency made, inter alia, in the course of an investigation or

⁴ They are also possibly material in another way, as the pertinent 2016 bonus payments may not have been made until after the Settlement Agreement had been executed or after it had been approved via the March 23, 2017 Order. The November 30, 2016 letter indicated that 2016 bonus figures would be "announced in March 2017."

ZTE Corporation and ZTE Kangxun
Order Activating Denial Order
Page 10 of 14

other action subject to the Regulations are deemed to be continuing in effect.

Notification must be provided to BIS and any other relevant agency, in writing, of any change of any material fact or stated intention previously represented, stated, or certified. Such written notification is to be provided “immediately upon receipt of any information that would lead a reasonably prudent person to know that a change of material fact or intention has occurred or may occur in the future.” 15 C.F.R. § 764.2(g)(2) (2014-2017).⁵ Thus, with regard to the probationary conditions at issue here, ZTE failed to comply even partially with this continuing duty to correct by written notification, from the date of the March 23, 2017 Order until March 8, 2018.⁶

I note that in its response to BIS’s notice of proposed activation of suspended sanctions and in making its case for leniency, ZTE acknowledged that it had submitted false statements, but argued that it would have been irrational for ZTE to knowingly or intentionally mislead the U.S. Government in light of the seriousness of the suspended sanctions. The heart of its argument is the question, posed by the company in rhetorical fashion, asking “why would ZTEC risk paying another \$300 million suspended fine and placement on the denied parties list, which would effectively destroy the Company, to avoid sending out employee letters of reprimand and deducting portions of employee bonuses?” ZTE argued that BIS should not act until the company completed an internal investigation so that ZTE could answer such questions.

⁵ Under the Regulations, “[k]nowledge of a circumstance (the term may be a variant, such as ‘know,’ ‘reason to know,’ or ‘reason to believe’) includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person’s willful avoidance of facts.” See 15 C.F.R. § 772.1 (parenthetical in original).

⁶ As discussed *supra* and in the March 13, 2018 notice letter, ZTE did provide some notice by telephone on March 6, 2018.

ZTE Corporation and ZTE Kangxun
Order Activating Denial Order
Page 11 of 14

ZTE has posed such questions not because additional investigation could render its false statements true, but in the hope of postponing action by the U.S. Government and ultimately avoiding or minimizing the consequences of its additional violations. Similarly, additional time to continue its investigation is unnecessary and irrelevant to the issue of whether the company violated the provision against giving false statements to BIS under Section 764.2(g) of the Regulations, and in violation of the Settlement Agreement and March 23, 2017 Order. The reasons that ZTE violated the EAR are red herrings to BIS's concern that the company has repeatedly made false statements to the U.S. Government—as the company has now repeatedly admitted. As recently as March 21, 2018, in a certification to the U.S. Government signed by ZTE Corporation's Senior Vice President, Chief Legal Officer and Acting Chief Compliance Officer, ZTE admitted that it “had not executed in full certain employee disciplinary measures that it had previously described in a letter to the U.S. government dated November 30, 2016, and there are inaccuracies in certain statements in the letter dated July 20, 2017.” Giving ZTE additional time to complete its internal investigation will not erase the company's most recent—in a series—of false statements to the U.S. Government.

Furthermore, ZTE's suggestion that it could or would not have made such a poor or irrational cost-benefit calculation, or otherwise assumed the risks involved, simply ignores the fact that throughout the U.S. Government's investigation ZTE has acted in ways that BIS would consider illogical and unwise. ZTE committed repeated violations of the Regulations and U.S. export control laws *while knowing and accepting* the most significant of liability risks, both before and after it knew it was under investigation. ZTE then raised the risks and stakes even further *while under investigation* by repeatedly lying to BIS and other U.S. law enforcement agencies and engaging in a cover-up scheme to destroy, remove, or sanitize evidence. The bottom line is that the proffered

ZTE Corporation and ZTE Kangxun
Order Activating Denial Order
Page 12 of 14

irrationality of the unlawful conduct does not excuse or minimize it; nor does the conduct stand alone, being part of an unacceptable pattern of false and misleading statements and related actions, as discussed above. Moreover, until BIS asked for all of the underlying documentation of the steps that ZTE said it had already taken, some of the most culpable employees faced no consequences—ZTE paid their bonuses and paid them in full and the employees went without reprimand. This is the message ZTE sent from the top.

Based on the totality of circumstances here, I have determined within my discretion that it is appropriate to activate the suspended denial order in full and to suspend the export privileges of ZTE for a period of seven years, until March 13, 2025.⁷

IT IS THEREFORE ORDERED:

FIRST, from the date of this Order until March 13, 2025, ZTE Corporation, with a last known address of ZTE Plaza, Keji Road South, Hi-Tech Industrial Park, Nanshan District, Shenzhen, China, and ZTE Kangxun, with a last known address of 2/3 Floor, Suite A, Zte Communication Mansion, Keji (S) Road, Hi-New Shenzhen, 518057 China, and when acting for or on their behalf, their successors, assigns, directors, officers, employees, representatives, or agents (hereinafter each a "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, license exception, or export control document;

⁷ This date is seven years from the date of BIS's March 13, 2018 Notice of Proposed Activation of Suspended Sanctions and Opportunity to Respond in this matter.

- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or
- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

SECOND, no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States;

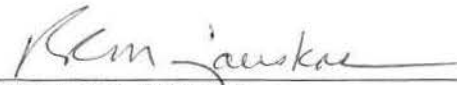
ZTE Corporation and ZTE Kangxun
Order Activating Denial Order
Page 14 of 14

- D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

THIRD, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

FOURTH, that this Order shall be served on ZTE, and shall be published in the *Federal Register*.

This Order is effective immediately.


Richard R. Majauskas
Acting Assistant Secretary of Commerce
for Export Enforcement

Issued this 15th day of April 2018.

Exhibit 2

"zte" from:realDonaldTrump

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Donald J. Trump @realDonaldTrump · May 25

Senator Schumer and Obama Administration let phone company **ZTE** flourish with no security checks. I closed it down then let it reopen with high level security guarantees, change of management and board, must purchase U.S. parts and pay a \$1.3 Billion fine. Dems do nothing...

16K 25K 93K



Donald J. Trump @realDonaldTrump · May 13

President Xi of China, and I, are working together to give massive Chinese phone company, **ZTE**, a way to get back into business, fast. Too many jobs in China lost. Commerce Department has been instructed to get it done!

30K 17K 84K



Donald J. Trump @realDonaldTrump · May 16

The Washington Post and CNN have typically written false stories about our trade negotiations with China. Nothing has happened with **ZTE** except as it pertains to the larger trade deal. Our country has been losing hundreds of billions of dollars a year with China...

9.6K 13K 59K

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Donald J. Trump @realDonaldTrump · May 14

ZTE, the large Chinese phone company, buys a big percentage of individual parts from U.S. companies. This is also reflective of the larger trade deal we are negotiating with China and my personal relationship with President Xi.

13K 13K 63K



Donald J. Trump @realDonaldTrump · May 25

Senator Schumer and Obama Administration let phone company **ZTE** flourish with no security checks. I closed it down then let it reopen with high level security guarantees, change of management and board, must purchase U.S. parts and pay a \$1.3 Billion fine. Dems do nothing...

16K 25K 93K



Exhibit 3



Congress sounds bipartisan alarm as Trump deals on ZTE

□

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Trump Effect

Congress sounds bipartisan alarm as Trump deals on ZTE

Members of both parties say the Chinese telecom giant poses a national security threat.
by Leigh Ann Caldwell / May.25.2018 / 9:00 PM ET / Updated May.26.2018 / 2:17 AM ET



The ZTE logo is seen on a building in Beijing on May 2, 2018. Wang Zhao / AFP - Getty Images file

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WASHINGTON — As the Trump administration reached a deal Friday to reduce sanctions on the Chinese telecom giant ZTE, Congress has shown rare unity in working to prevent the president from giving in to the foreign-backed company in a way that would compromise national security.

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And more backlash is expected from Congress to the apparent deal, which would require ZTE to pay a fine, install U.S. compliance officers and force the company to change board members, according to a person familiar with the deal and first reported by the [New York Times](#).

Once those three requirements are completed, the company would then be able to once again access the U.S. market. Senior officials at the Commerce Department have informed Congress of the agreement, the source confirms.

The deal represents what members of both parties have been warning against — giving ZTE the ability to once again do business in the U.S.

"If the administration goes through with this reported deal, President Trump would be helping make China great again. Simply a fine and changing board members would not protect America's economic or national security, and would be a huge victory for President Xi, and a dramatic retreat by President Trump," Senate Minority Leader Chuck Schumer said in a statement.



Donald J. Trump
@realDonaldTrump

Senator Schumer and Obama Administration let phone company ZTE flourish with no security checks. I closed it down then let it reopen with high level security guarantees, change of management and board, must purchase U.S. parts and pay a \$1.3 Billion fine. Dems do nothing....

6:07 PM - May 25, 2018

93.1K 40.3K people are talking about this



Donald J. Trump
@realDonaldTrump

...but complain and obstruct. They made only bad deals (Iran) and their so-called Trade Deals are the laughing stock of the world!

6:13 PM - May 25, 2018

64.9K 26.3K people are talking about this

And Sen. Marco Rubio, R-Fla., a member of the Intelligence Committee, said this "crushes U.S. companies."

"It is a great deal for ... #ZTE & #China," [Rubio tweeted](#).

A flurry of dire warnings began on Capitol Hill after President Donald Trump [tweeted in support of ZTE](#) last week. Both Republicans and Democrats sounded the alarm and backed legislation to put guardrails around the president. Earlier this week, some Republicans even called for an emergency meeting with top administration officials.

"ZTE: Bad, bad," said Sen. Lindsey Graham, R-S.C.

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The telecom company is considered by the intelligence community to be a mechanism for espionage by, in part, selling phones in the U.S. that can be tracked and enabled to steal intellectual property.

The U.S. [slapped sanctions on ZTE in 2016](#), prohibiting the company from doing business in the U.S. for seven years, when it violated U.S. sanctions against Iran and North Korea. The Commerce Department placed additional sanctions on the company after it failed to follow through with its reorganization plan and lied to the U.S. government about it.

Trump first raised concerns on Capitol Hill when he [tweeted](#) that he's looking for a way for ZTE to "get back into business, fast" as his administration negotiates a larger trade deal, adding that the Commerce Department has been "instructed to get it done."

Trump earlier this week floated the idea of a \$1.3 billion fine with the promise that ZTE will reorganize its board in exchange for ZTE being allowed to sell its phones in the U.S.

"And very, very strict security rules," Trump added on Tuesday. "And I also envision they will have to buy a big percentage of their equipment and parts from American companies."

He appears to be following through with that idea to the dismay of Congress who is acting in near unison on the issue.

Lawmakers say it's a massive mistake for Trump to allow ZTE to become a bargaining chip with the Chinese on trade and that the company represents a national security threat that should be kept far away from any negotiations.

"We all know that China is involved in stealing our intellectual property. There is no better way to do it than through ZTE, and we're going to let them be here, and slap them on the wrist with a fine? That's a dereliction of our duty here in the Congress, and it's the president's duty to protect us," Schumer said on the Senate floor this week.

And Rubio has spent the week raising alarm bells over the issue. In a 25-minute tirade on the Senate floor, he said, "we don't need a short term trade deal" if ZTE is involved.

"That's a short term deal and it might be a good headline, and you can claim that you won but, in the end it won't do anything to change this. And in fact it leaves us worse off," Rubio said.

Sending the administration a strong message, both chambers of Congress advanced amendments blocking executive actions that would help ZTE.

The House this week passed a measure in its defense authorization bill that would ban government agencies from purchasing ZTE equipment and it would prevent the Defense Department from using contractors that have business with the company. A similar measure passed through an appropriations subcommittee last week unanimously.

And added to the Senate defense authorization bill is an amendment by Sen. Chris Van Hollen, D-Md., that would prevent the government from relaxing sanctions on ZTE for at least one year.



U.S. Treasury Secretary Steven Mnuchin testifies before the Senate Appropriations Committee's Financial Services and General Government Subcommittee in the Dirksen Senate Office Building on Capitol Hill May 22, 2018 in Washington, DC. Chip Somodevilla / Getty Images

Testifying on the Hill Wednesday, Mnuchin insisted that the administration understands the national security risks posed by ZTE.

"I can assure you that whatever the Commerce Department decides, the intel community has been part of the briefings and we will make sure that we will enforce national security issues," Mnuchin said.

But lawmakers still had doubts. Concerned Republican senators — Rubio, Intelligence Committee Chairman Richard Burr, Foreign Relations Committee Chair Bob Corker and Sen. John Cornyn, R-Texas — summoned Commerce Secretary Wilber Ross and Treasury Secretary Steve Mnuchin to Capitol Hill for a classified briefing on the issue.

During the meeting, Mnuchin and Ross told the senators they are developing an "enforcement" plan.

Cornyn said that while he still has concerns about ZTE, he was more confident that after the meeting and that any fine or actions imposed on ZTE isn't part of the trade deal.

"They made it clear that this was not trading national security for economic reasons. This was purely an enforcement action for Chinese violation of sanctions," Cornyn said.

But if this agreement moves forward, it does exactly what Cornyn said he opposes: relieving ZTE of repercussions for being a bad actor.

And Rubio wasn't satisfied.

"I remain in the same position which is: ZTE violated the law. They lied and they covered it up. They did it again. We should take strong enforcement actions," he said. "I think Congress is going to do what they need to do. This is a national security issue."

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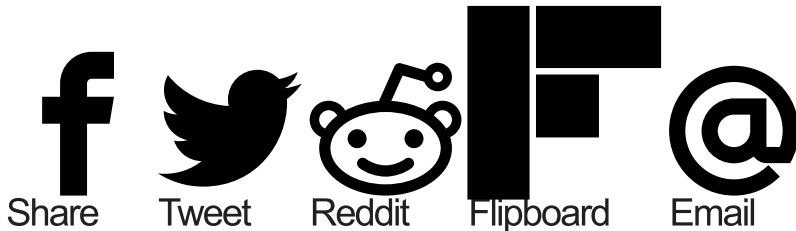
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Exhibit 4

Trump administration reaches deal to save China's ZTE



The Trump administration has told Congress that it's reached a deal allowing Chinese telecommunications giant ZTE Corp. to stay in business on Friday. A resolution of the **ZTE case** could clear the way for the United States to make progress in its high-stakes trade talks with China.

The White House confirmed the action to CBS News. "This is a law enforcement action being handled by Commerce," said Deputy Press Secretary Lindsay Walters, referring to the Commerce Department. "We are making sure ZTE is held accountable for violating U.S. sanctions, pays a big price, and that we are protecting our security infrastructure and U.S. jobs."

Under the agreement, ZTE would oust its management team, hire American compliance officers and pay a fine. The fine would come on top of the roughly \$1 billion ZTE has already paid for selling equipment to North Korea and Iran in violation of U.S. sanctions.

In return, the Commerce Department would lift a seven-year ban on ZTE's purchase of components from U.S. companies. The Chinese company depends on these components to make its products, and the ban, imposed earlier this month, threatened to put ZTE out of business.

On Capitol Hill, one senior congressional source said leaders have not yet received formal notification.

Lawmakers have warned the administration not to go easy on a company that brazenly violated U.S. sanctions against two rogue nations that were pursuing nuclear weapons production.

"If the administration goes through with this reported deal, President Trump would be helping make China great again," said Democratic Sen. Chuck Schumer of New York. "Both parties in Congress should come together to stop this deal in its tracks," he added

"ZTE presents a national security threat to the United States — and nothing in this reported deal addresses that fundamental fact," said Democratic Sen. Chris Van Hollen of Maryland. "If

President Trump won't put our security before Chinese jobs, Congress will act on a bipartisan basis to stop him."

Republican Sen. Marco Rubio of Florida tweeted: "It is a great deal ... for #ZTE & China ... Many hoped this time would be different." Congress, Rubio noted, "will need to act."

Trump responded to his critics late Friday, saying Democrats had done nothing to rein in ZTE. "I closed it down then let it reopen with high level security guarantees, change of management and board, must purchase U.S. parts and pay a \$1.3 Billion fine," he tweeted.

The Commerce Department last month blocked China's ZTE from importing American components for seven years, having concluded that ZTE deceived U.S. regulators after it settled charges last year of violating sanctions against Iran and North Korea. The ban amounted to a virtual death sentence for ZTE, which relies on U.S. parts, and it also hurt ZTE's U.S. suppliers.

On the eve of broad trade talks last week with a Chinese trade envoy, Trump waded into the ZTE case: He tweeted that he was working with President Xi Jinping to put ZTE "back in business, fast" and save tens of thousands of Chinese jobs.

Last
month, the
Commerce

Department blocked China's ZTE from importing American components for seven years, having concluded that ZTE deceived U.S. regulators after it settled charges last year of violating sanctions against Iran and North Korea. The ban amounted to a virtual death sentence for ZTE, which relies on U.S. parts, and it also hurt ZTE's U.S. suppliers.

On the eve of broad trade talks last week with a Chinese trade envoy, Trump **waded into the ZTE case**: He tweeted that he was working with President Xi Jinping to put ZTE "back in business, fast" and save tens of thousands of Chinese jobs.

He later tweeted that the ZTE talks were "part of a larger trade deal" being **negotiated with China**.

Word of a reported ZTE agreement comes nearly a week after the U.S. and China suspended plans to impose tariffs on as much as \$200 billion of each other's goods. In doing so, the two nations pulled back from the brink of a trade war over Chinese demands that U.S. companies hand over some of their technology as the price of doing business in China.

Commerce Secretary Wilbur Ross is scheduled to travel to Beijing on June 2 for further discussions over China's aggressive push to challenge U.S. technological dominance. Resolving the ZTE case — a company that employs more than 70,000 Chinese — could make the talks go more smoothly.

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Exhibit 5

The Washington Post

Business

Trump says he'll spare Chinese telecom firm ZTE from collapse, defying lawmakers

by [Damian Paletta](#) May 25 [✉Email the author](#)

President Trump said late Friday he had allowed embattled Chinese telecommunications giant ZTE Corp. to remain open despite fierce bipartisan opposition on Capitol Hill, defying lawmakers who have warned that the huge technology company should be severely punished for breaking U.S. law.

Trump said on Twitter he was allowing it to “reopen with high level security guarantees, change of management and board,” a requirement that it must purchase U.S. parts, and a \$1.3 billion fine.

Sensing such a move, top Democrats and at least one Republican on Friday said the White House's decision was tantamount to a bailout of a large Chinese company with little benefit for the United States.

The requirement that ZTE purchase U.S. parts could draw criticism on Capitol Hill, as the company relies on U.S. parts to make its products. In fact, it was the Commerce Department's April penalty that banned ZTE from buying U.S. parts that effectively put it on the brink of closure.

The Obama administration and Trump administration have repeatedly punished ZTE for violating sanctions laws by selling products to Iran and North Korea and then lying to federal investigators.

After Commerce Secretary Wilbur Ross imposed the April penalty, Chinese leader Xi Jinping personally appealed to Trump to intervene and allow the company to continue operating, something Trump said he would do as a personal favor.

Trump has tried to pitch his intervention to help ZTE as a move that could help broker unrelated concessions from China on a broader trade agreement. This has drawn loud opposition from Republicans and Democrats on Capitol Hill, who have said ZTE poses a national security risk to the U.S. because its technology could be used to spy on Americans.

It could not be immediately learned whether the U.S. was getting anything in return. Ross is traveling to China next week for negotiations on a range of trade matters and the precise details regarding ZTE will likely be discussed.

In his Twitter messages, Trump blamed Democrats and the Obama administration for allowing ZTE to stay in business before he took office. But the Obama administration took multiple steps to punish the company in the lead up to Trump's presidency, cracking down on ZTE through the Commerce Department and Justice Department.

Sen. Marco Rubio (R-Fla.) has led the GOP charge pushing against President Trump's effort to release ZTE from strict prohibitions, and he criticized the administration again on Friday.

“Yes they have a deal in mind. It is a great deal ... for #ZTE & China,” [Rubio wrote on Twitter](#). “#China crushes U.S. companies with no mercy & they use these telecomm companies to spy & steal from us. Many hoped this time would be different. Now congress will need to act.”

It's unusual for a White House to advance a foreign policy decision that has virtually no congressional support, and so far few lawmakers have said helping ZTE is a good idea.

To block such a deal, Congress would probably need to pass a law with a veto-proof majority that prohibits the Commerce Department from rolling back penalties. Passing such a law could be difficult, but lawmakers could also pressure the administration by threatening to block any votes on Trump nominees or even unrelated trade agreements until they are satisfied.

The Senate's pending National Defense Authorization Act contains a provision that would make it hard for the White House to roll back restrictions on ZTE without congressional approval. The White House could be forced to fight to have this provision stripped out if they want to consummate their deal with the Chinese.

“ZTE presents a national security threat to the United States – and nothing in this reported deal addresses that fundamental fact,” said Sen. Chris Van Hollen (D-Md.), the provision’s author. “If President Trump won’t put our security before Chinese jobs, Congress will act on a bipartisan basis to stop him.”

U.S. intelligence officials think ZTE poses a U.S. security threat because its products could be used for spying or cyberattacks. Earlier in May, the Pentagon ordered bases to stop selling phones made by ZTE and Huawei, another Chinese company.

And a number of Democrats and Republicans have said products from ZTE, which is partly owned by the Chinese government, could also be used to collect information on U.S. companies and steal intellectual property.

“If the administration goes through with this reported deal, President Trump would be helping make China great again,” Senate Minority Leader Charles E. Schumer (N.Y.) said Friday. “Simply a fine and changing board members would not protect America’s economic or national security, and would be a huge victory for President Xi, and a dramatic retreat by President Trump. Both parties in Congress should come together to stop this deal in its tracks.”

Some Chinese officials have said they would not follow through on other parts of the trade talks until U.S. officials reach an agreement to free ZTE. Trump has said helping ZTE would actually help American companies as well, as it would allow them to continue selling their products overseas.

Trump has advanced an adversarial trade agenda with numerous U.S. allies so far this year, threatening many of them with tariffs if they don’t take steps to allow more U.S. companies to freely sell goods overseas.


This has led to showdowns with Japan, Turkey, Mexico, Canada and members of the European Union. Trump has delivered many of his trade threats in a way that allows him to sidestep congressional intervention, a key element of his strategy because many Republicans oppose the protectionist policies he wants to impose.

His treatment of ZTE has been different, though, as he has used the prospect of helping the company as a carrot to lure Chinese leaders into broader discussions about trade. Trump wants Chinese officials to change their rules in a way that would allow more U.S. exports into China, though he hasn’t defined how this would work.

Many lawmakers support boosting exports to China, but numerous Democrats and Republicans have opposed including help for ZTE as part of any package.

“We urge you not to compromise lawful U.S. enforcement actions against serial and premeditated violators of U.S. law, such as ZTE,” numerous lawmakers, including Sen. John Cornyn (R-Tex.), wrote to top White House officials this week. “This is particularly critical when the violators are state-owned and -influenced, part and parcel of China’s policies and practices designed to strengthen its own national security innovation base, and essential tools of efforts to spread China’s influence in other countries that pose national security threats to the United States.”

 **3812 Comments**

Damian Paletta is White House economic policy reporter for The Washington Post. Before joining The Post, he covered the White House for the Wall Street Journal.  Follow @damianpaletta




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Exhibit 6

The New York Times

Trump Administration Plans to Revive ZTE, Prompting Backlash

By Ana Swanson

May 25, 2018

WASHINGTON — The Trump administration told lawmakers it had reached a deal that would keep the Chinese telecom firm ZTE alive, a person familiar with the matter said, a move that could clear the way for further trade talks with China but provoke anger in Congress.

Under the agreement brokered by the Commerce Department, ZTE would pay a substantial fine, hire American compliance officers to be placed at the firm and make changes to its current management team.

In return, the Commerce Department would lift a so-called denial order that is preventing the company from buying American products, the person said.

President Trump confirmed the news late Friday evening on Twitter, as he criticized Senator Chuck Schumer of New York, the Democratic leader, and the previous administration for their dealings with the company.

“Senator Schumer and Obama Administration let phone company ZTE flourish with no security checks,” he wrote. “I closed it down then let it reopen with high level security guarantees, change of management and board, must purchase U.S. parts and pay a \$1.3 Billion fine.”

“Dems do nothing but complain and obstruct,” he added. “They made only bad deals (Iran) and their so-called Trade Deals are the laughing stock of the world!”

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The deal would allow ZTE to once again begin doing business with American companies, including Qualcomm, the chip maker based in San Diego that is a primary ZTE supplier. The Chinese company was recently banned from buying American technology components for seven years as punishment for violating United States sanctions against Iran and North Korea, a penalty that industry analysts say threatened to put the company out of business within weeks.

[Read more about ZTE.]

The collapse of ZTE would be an embarrassing outcome for China, and the company's fate has become a hurdle in trade negotiations between the two countries. President Trump directed the Commerce Department to re-examine ZTE's penalty based on a personal request from President Xi Jinping of China, setting off a fierce pushback from some of Mr. Trump's national security advisers, as well as lawmakers from both parties.

Mr. Trump, however, has appeared unmoved by those concerns and has been pushing to reach some type of trade resolution with China, which has so far proved elusive. The administration has been seeking to cut a deal on ZTE in exchange for trade concessions from China, including purchases of American agriculture and energy products, people familiar with the discussions said. Wilbur Ross, the commerce secretary, is scheduled to travel to China on June 2 to begin another round of the talks with top Chinese officials.

Such an agreement is likely to face fierce resistance on Capitol Hill. Top lawmakers, including Mr. Schumer and Senator Marco Rubio, Republican of Florida, have urged the administration not to bend on ZTE, which they consider a law enforcement and national security issue.

"ZTE presents a national security threat to the United States — and nothing in this reported deal addresses that fundamental fact," Senator Chris Van Hollen, a Maryland Democrat, said in a statement. "If President Trump won't put our security before Chinese jobs, Congress will act on a bipartisan basis to stop him."

Lawmakers, including Mr. Van Hollen, have rolled out a variety of measures aimed at clipping the administration's authority to ease penalties on ZTE and have publicly criticized the administration's consideration of a deal.

On Thursday, the House passed a bill that would prevent the administration from easing restrictions on ZTE, and on Tuesday, the Senate Banking Committee approved a similar amendment that would prevent the president from modifying penalties on Chinese telecom companies that had violated American law in the past year. A group of 27 bipartisan senators also sent administration officials a letter last week warning them not to “compromise lawful U.S. enforcement actions against serial and premeditated violators of U.S. law, such as ZTE.”

“Yes they have a deal in mind,” Mr. Rubio said in a tweet on Friday. “It is a great deal... for #ZTE & China.”

“Now congress will need to act,” he added.

The telecom company’s fate has consumed top administration officials, who have tried to defuse lawmakers’ concerns about a deal while responding to Mr. Trump’s entreaties to “get it done.” On Wednesday afternoon, Mr. Ross and Steven Mnuchin, the secretary of treasury, traveled to Capitol Hill to brief a group of Senate Republicans, including Mr. Rubio, John Cornyn of Texas and Bob Corker of Tennessee, on their plans for ZTE. Mr. Ross and Mr. Mnuchin sought to assure the lawmakers that they were planning on harsh penalties for ZTE, and appealed to Republicans to dampen their public criticism so a deal could be reached, a person briefed on the discussions said.

“If the administration goes through with this reported deal, President Trump would be helping make China great again,” Mr. Schumer said in a statement Friday. “Simply a fine and changing board members would not protect America’s economic or national security, and would be a huge victory for President Xi, and a dramatic retreat by President Trump.”

Defense officials have also been concerned about the Chinese telecom firm and its products, which they believe may be vulnerable to Chinese espionage or disruption. In early May, a spokesman for the Department of Defense said the Pentagon was stopping the sale of phones made by ZTE and a Chinese competitor, Huawei, in stores on American military bases around the world because of security concerns.

The Chinese telecommunications firm has been on the brink of shutting down, following penalties imposed by the Commerce Department in April that severed important links in its supply chain.

ZTE agreed to a \$1.19 billion fine and other penalties in March 2017, after it was found to have violated American sanctions by selling products with American-made parts to Iran and North Korea. In April, the Commerce Department said it had found that ZTE had also made false statements relating to disciplining senior officials, and announced a seven-year ban on the company's purchases of American products.

That ban has crippled the Chinese firm and threatened to put tens of thousands of Chinese employees of the company out of work. The Chinese government had made clear that lifting ZTE's penalty would be a condition for continuing with trade talks, and that if the penalty was not lifted, American companies operating in China might face further retaliation, people briefed on the discussions said.

Trump administration officials have said repeatedly in the last week that ZTE is a law enforcement issue, and that it is being considered independently from trade negotiations with China. But trade experts say that the administration's actions and the president's own statements indicate that ZTE's fate has become inextricably linked to Mr. Trump's goal of reaching a trade deal with China.

On Thursday, Mr. Ross said that the administration was considering installing a compliance team inside ZTE. "We're developing a matrix of things and while we haven't come quite to a final decision yet, we think there may very well be an alternative that will be quite punitive to them, but really modify behavior," Mr. Ross said on CNBC.

Follow Ana Swanson on Twitter: @AnaSwanson. Get politics and Washington news updates via [Facebook](#), [Twitter](#) and the [Morning Briefing](#) newsletter.

A version of this article appears in print on May 25, 2018, on Page A9 of the New York edition with the headline: Trump Plans to Help ZTE, Stirring Anger in Congress

Exhibit 7

"zte" from:marcorubio

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Nasuhi Güngör

6,361 Tweets



Marco Rubio @marcorubio · May 25

Yes they have a deal in mind. It is a great deal... for #ZTE & China. #China crushes U.S. companies with no mercy & they use these telecomm companies to spy & steal from us. Many hoped this time would be different. Now congress will need to act.



Trump Administration Tells Congress It Has a Deal to Revive ZTE

The move would allow stalled trade negotiations with China to move forward, but is also likely to provoke an intense backlash on Capitol Hill.

nytimes.com

419 518 1.1K



Marco Rubio @marcorubio · May 22

If this is true, then administration has surrendered to #China on #ZTE Making changes to their board & a fine won't stop them from spying & stealing from us. But this is too important to be over. We will begin working on veto-proof congressional action



U.S., China Agree on Outline to Settle ZTE Controversy

The U.S. and China have agreed on the broad outline of a deal that would save imperiled Chinese telecom giant ZTE, as the two sides move closer ...

wsj.com

740 770 1.0K

Marco Rubio @marcorubio · May 29

"zte" from:marcorubio

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Marco Rubio @marcorubio · May 26

For administration this is about right penalty for #ZTE violating sanctions. For me its about #China stealing tech & IP to catch up to & surpass us. They are not going to stop until they face significant consequences. Such as ZTE going out of business



Trump Team Seeks Truce with Congress Over ZTE

The Trump administration is scrambling on Capitol Hill to keep lawmakers from undermining trade talks next week with China by blocking a deal to roll

wsj.com

312 341 950



Marco Rubio @marcorubio · May 28

Mistake to view #ZTE or any other issue that touches on #China in a vacuum. They are executing on a comprehensive plan to achieve world domination. Use trade,commerce,debt,military,immigration,technology, science & propaganda as tools. We need to wake up!



China's strategy for world domination: debt traps

China is building infrastructure for developing countries in Asia and Africa, but it comes at a cost.

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459 622 1.3K



Marco Rubio @marcorubio · May 27

"zte" from:marcorubio

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Marco Rubio @marcorubio · May 15

#China intends to dominate the key industries of the 21st Century not through out innovating us, but by stealing our intellectual property & exploiting our open economy while keeping their own closed. Why are we helping them achieve this by making a terrible deal on ZTE?

1.3K 1.3K 4.0K



Marco Rubio @marcorubio · May 22

Being a tool for espionage & theft of U.S. intellectual property is bad enough. But #ZTE was sanctioned because it blatantly broke previous agreement with U.S. & violated sanctions against #Iran & #NorthKorea. But we trust them with a new agreement? wsj.com/articles/u-s-c...

172 300 615



Marco Rubio @marcorubio · May 24

Not credible to claim that @CommerceGov needs to change punishment on #ZTE because they didn't intend to put them out of business. Everyone knew what cutting them off from buying U.S. semi-conductors would do. So what is reason to change penalty now?



Trump Administration Tries to Reassure Key Senators About ZTE Enf...

The Trump administration is trying to reassure Senate Republicans it won't go light on sanctions enforcement against Chinese firm ZTE.

rollcall.com

113 123 301



Marco Rubio @marcorubio · May 14

Problem with ZTE isn't jobs & trade, it's national security & espionage. Any telecomm firm in #China can be forced to act as tool of Chinese espionage without any court order or any other review process. We are crazy to allow them to operate in U.S. without tighter restrictions

Donald J. Trump @realDonaldTrump

President Xi of China and I are working together to give massive Chinese

"zte" from:marcorubio

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Marco Rubio @marcorubio · May 15

Clearly President Xi personally intervenered for #ZTE but replacing sanctions with fine of \$300/\$400 million is not a good deal. We have leverage to bring fairness back to relationship with #China whose other tech firms Tsinghua,Huawei,BBK,Yiomi & Lenovo rely on U.S. chips as well

376 416 1.1K



Marco Rubio @marcorubio · May 22

Here is #ZTE timeline: Violated U.S. sanction laws & got caught lying & covering up. Paid \$1billion fine & agreed to discipline employees. But then lied again & instead of discipline gave those employees bonuses. Now we are offering same deal of fine & employee discipline?

515 727 1.7K



Marco Rubio @marcorubio · May 23

Those in the administration pushing for deal with #ZTE have access to same classified info we do about the national security danger posed by #ZTE & #China telecomm. I don't understand how they can push for a deal that lets them keep operating in U.S. [wsj.com/articles/congr...](https://www.wsj.com/articles/congr...)

171 237 447



Marco Rubio @marcorubio · May 23

Earlier today I spoke about how we should not confuse broader #China trade issue with #ZTE issue. Trade relationship with China needs structural change. But #ZTE poses a dangerous threat to U.S. national security. This issue is not a game. Watch Here:

150 281 635



Marco Rubio @marcorubio · May 23

Yet another example of #China trying to bully American companies. These guys play hard ball. Do not feel bad for #ZTE or any Chinese company going out of business. They have put plenty of American companies out of business by stealing from them.





"zte" from:marcorubio

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Marco Rubio @marcorubio · May 23

A \$1.3billion fine & forcing them to buy more semi-conductors is how administration plans to punish **ZTE**? \$1.3 billion is nothing for company backed by **#China** govt. And buying more semi-conductors isn't a punishment, it is a reward. **#DoNotCave**



Congressional Opposition Mounts Over White House Approach to C...

Lawmakers are moving to thwart Trump administration efforts to ease restrictions on Chinese telecom giant ZTE and other sensitive technology...

wsj.com

196 363 829



Marco Rubio @marcorubio · May 22

Sadly **#China** is out-negotiating the administration & winning the trade talks right now. They have avoided tariffs & got a **#ZTE** deal without giving up anything meaningful in return by using N.Korea talks & agriculture issues as leverage. This is **#NotWinning**



In Trade War With U.S., China Gets the Upper Hand

Among all the trade fights that President Donald Trump has picked, his hand against China is the strongest. Yet Beijing, incredibly, appears to be winning.

wsj.com

1.3K 1.1K 2.2K

"zte" from:marcorubio

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Look Inside This Chinese Smartphone and See It's Made in America

A look inside ZTE's Axon 3 smartphone reveals how much the telecom giant depends on U.S. technology: 60% of the electronic components come f...

wsj.com

179 381 854



Marco Rubio @marcorubio · May 16

#ZTE issue should have nothing to do with broader trade talks. What is the point of cancelling Iran deal if we aren't going to sanction those like ZTE who help Iran avoid sanctions? Plus ZTE helps #China spy on America & steal our intellectual property.



Trump links ZTE rescue to larger trade talks with China, contradictin...

The secretary of commerce walked back his comments after the president's tweets.

washingtonpost.com

352 506 1.3K



Marco Rubio @marcorubio · May 15

About to get out negotiated by #China again. Apparently "deal" is we lift sanctions imposed on ZTE for helping Iran & N.Korea & they can resume spying & stealing our intellectual property. In return China removes tariffs on U.S. farmers who did no wrong

"zte" from:marcorubio

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U.S., China Discussing Deal on ZTE, Agricultural Tariffs

The U.S. and China are closing in on a deal that would give telecom firm ZTE a reprieve from potentially crippling U.S. sanctions in exchange for Be...

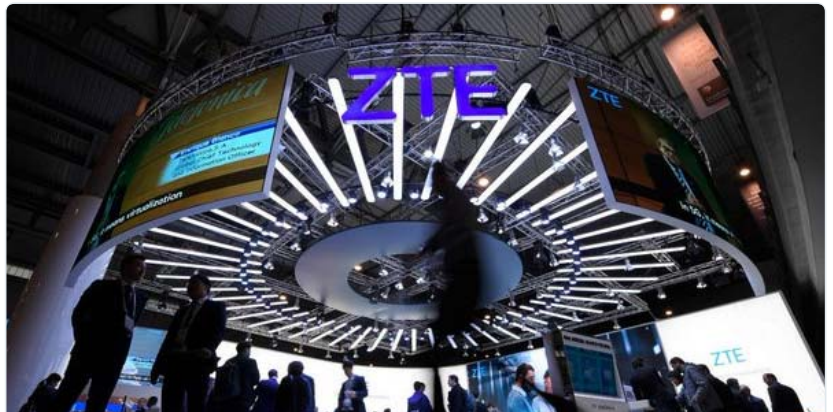
wsj.com

605 586 1.3K



Marco Rubio @marcorubio · Apr 21

The problem with ZTE & Huawei is that if #China intelligence services demand that they allow them to use their cellular network in U.S. for espionage or access denial they have no choice but to comply. This is a dangerous national security threat to U.S.



American Hustle: ZTE's Surprise U.S. Success, Now Under Threat

In the five years since ZTE was branded a national-security threat by U.S. lawmakers, the Chinese telecom giant has quietly been building its own A...

wsj.com

178 391 854



Back to top 1

Exhibit 8

Trump administration has briefed Congress on tentative deal with China's ZTE

By [Phil Mattingly](#), CNN

Updated 7:52 PM ET, Fri May 25, 2018



Analyst: I still think we're headed toward trade war



White House announces tariffs on US allies



New tariffs could increase price of beer

(CNN)The Commerce Department informed lawmakers on Friday of the outlines of a tentative deal that could save sanctioned telecommunications company ZTE, a key priority for Chinese President Xi Jinping, according to two people familiar with the matter.

A completed deal is considered a key piece of the ongoing trade negotiations with China. However, news of the deal was met with public backlash from members of both parties on Friday.

The people cautioned that the potential deal was presented as not final -- meaning things could change, particularly as bipartisan congressional blowback intensifies. But it would include a significant fine, north of \$1 billion, and require the company, which is barred from buying US products due to sanctions violations, to install a new compliance regime and make management changes.

If those changes are made, the Commerce Department's "denial order," which led the company to say it had halted "major operating activities," would be lifted, the people said.

President Donald Trump, in a tweet criticizing former President Barack Obama and Senate Minority Leader Chuck Schumer on Friday evening, wrote of the deal, "I closed (ZTE) down then let it reopen with high level security guarantees, change of management and board, must purchase U.S. parts and pay a \$1.3 Billion fine."

The outlines were among the options presented to skeptical Republican senators during a closed-door briefing led by Treasury Secretary Steve Mnuchin and Commerce Secretary Wilbur Ross on Wednesday, another source said.



Trump tempers expectations for possible US-China trade deal

The administration's push to reach an agreement on ZTE has been a major piece of its trade negotiations with China, which are expected to pick up in earnest when Ross heads to China June 2 through June 4. Xi, the Chinese leader, has personally brought the company up to President Trump multiple times, Trump has told reporters over the past week. Trump, noting the company buys parts

for its products from the U.S., has been willing to consider relief as part of those broader trade talks.

But Republicans and Democrats have voiced increasingly sharp concern over including the company, which lawmakers say presents a national security risk, in trade negotiations and have already started to move on action to tie the hands of the Trump administration.

"It is a great deal... for #ZTE & China," Sen. Marco Rubio posted on Twitter Friday. "#China crushes U.S. companies with no mercy & they use these telecomm companies to spy & steal from us. Many hoped this time would be different. Now congress will need to act."

Schumer said the proposed deal "would be helping make China great again" and called on lawmakers to do something to "stop this deal in its tracks."

The House on Thursday passed a defense measure that would bar government agencies from using ZTE technology and ban the Pentagon from working with any contractors that work with the company. The Senate version of the defense measure, the annual defense policy bill, was approved in committee on Thursday and includes a different ZTE-related amendment that restricts the ability of the Trump administration to lift the penalties on ZTE without Congressional notification and tacit approval.

The Senate will bring that bill to the floor after the Memorial Day recess.

"ZTE presents a national security threat to the United States — and nothing in this reported deal addresses that fundamental fact," Sen. Chris Van Hollen, a Maryland Democrat who authored the amendment on ZTE, said in a statement. "If President Trump won't put our security before Chinese jobs, Congress will act on a bipartisan basis to stop him."

The House and Senate have also started to move separate measures that would overhaul the Committee on Foreign Investment in the United States (CFIUS) that include similar curbs on lifting penalties on ZTE.

Exhibit 9

FORTUNE

Trump Proposed a Deal to Let ZTE Stay in Business. Now Congress May Try to Ban Chinese Telecom Firms From the U.S.

By BLOOMBERG May 28, 2018

A potential bill to prohibit ZTE Corp. ([ZTCOY, -15.37%](#)) and other Chinese telecommunications companies from operating in the U.S. would garner supermajority support in Congress, Republican Senator Marco Rubio said.

Rubio was responding to [Trump's proposal to allow the networking gear and smartphone maker to remain in business](#) after paying a \$1.3 billion fine, changing its management and board, and providing "high-level security guarantees." [The president has suggested the deal is a favor to Chinese President Xi Jinping](#) as the two nations hold talks to prevent a trade war. But a bill like the one the senator's proposing threatens to derail any agreement struck with Beijing.

"Most members of Congress have come to understand the threat China poses," Rubio said on CBS's *Face the Nation* on Sunday when asked whether President Donald Trump would sign such a measure. "There's a growing commitment in Congress to do something about what China is trying to do to the United States. And this is a good place to start."

The Florida senator, who criticized the deal in a May 25 tweet and appeared on two Sunday political shows, said he expects Congress would pursue a measure to block ZTE and companies such as Huawei Technologies Co. from operating in the U.S. He said their equipment could be used to help China spy on the U.S. and steal corporate secrets.

"None of these companies should be operating in this country," Rubio said. "None of them. They are used for espionage."



Marco Rubio
@marcorubio

Yes they have a deal in mind. It is a great deal... for #ZTE & China. #China crushes U.S. companies with no mercy & they use these telecomm companies to spy & steal from us. Many hoped this time would be different. Now congress will need to act. [nytimes.com/2018/05/25/us/...](https://www.nytimes.com/2018/05/25/us/...)

11:39 AM - May 25, 2018

Shares in ZTE's suppliers gyrated in Asia on Monday. Hong Kong-listed MOBI Development Co., which gets an estimated 46% of its revenue from the Chinese company, was down as much as 5.3% at one point before bouncing back. In mainland China, Eoptolink Technology Inc. — which gets more than 30% of its sales from ZTE — and Zhong Fu Tong Group Co. were up more than 1%. ZTE's own stock has been suspended from trade in Shenzhen and Hong Kong since April.

'Used for Espionage'

Shenzhen, China-based ZTE depends on U.S. components, such as chips from [Qualcomm \(QCOM, +0.27%\)](#), to build its smartphones and networking gear. The ban, for breaching terms of a settlement over sanction-breaking sales to Iran, [has all but mothballed China's second-largest telecoms gear maker](#) and become entangled in a trade dispute between the world's two largest economies.

Rubio said he spoke with Trump on Friday night, and thinks that while the administration wants to punish ZTE for breaking U.S. sanctions, he sees a broader effort to stop the Chinese from stealing intellectual property and forcing U.S. companies to transfer their technology to do business in China.

"Putting it out of business, a company like ZTE, is the kind of significant consequence that China would respond to, to understand that we're serious," Rubio said on ABC's *This Week*.

The Senate on May 24 released a defense policy bill containing a provision requiring Trump, before making any ZTE deal, to certify with Congress that the company hasn't violated U.S. law for the past year and is cooperating with U.S. investigations.

"If President Trump won't put our security before Chinese jobs, Congress will act on a bipartisan basis to stop him," said Maryland Democratic Senator Chris Van Hollen, author of the Senate provision.

Separately, a measure easily passed the House that would ban government agencies from using technology made by ZTE and prohibit the Defense Department from renewing contracts with vendors that work with the Chinese company.

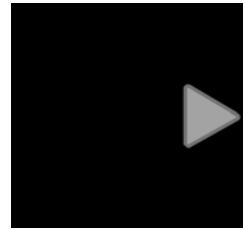
The measure also would apply to several other Chinese companies, including Hytera Communications Corp., Hangzhou Hikvision Digital Technology Co. and Zhejiang Dahua Technology Co.

Exhibit 10

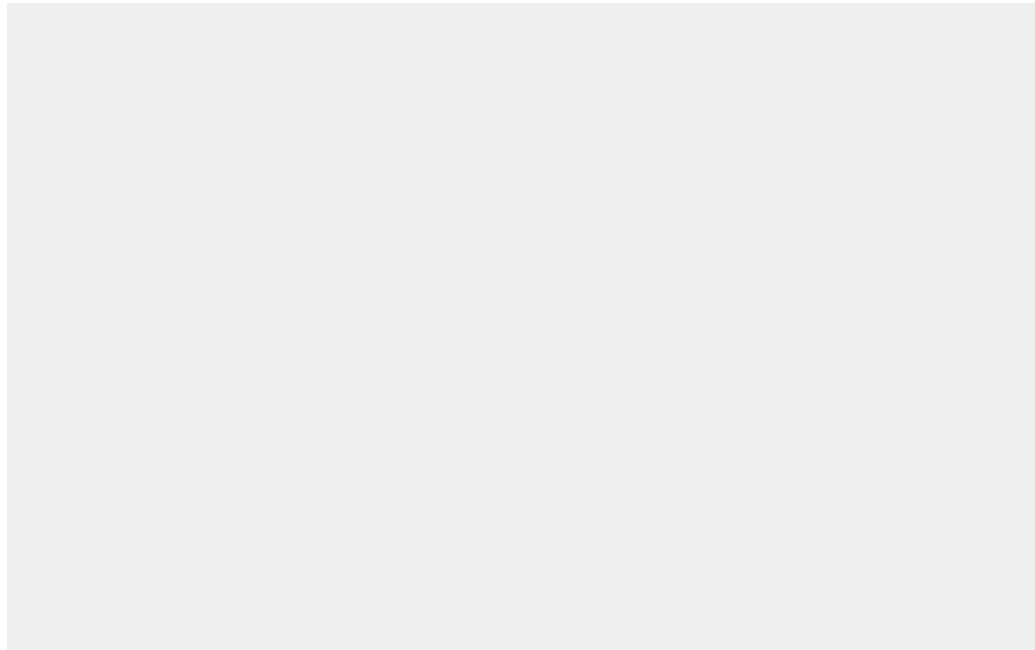
Companies become bargaining chips in US China trade turmoil

by [Julia Horowitz](#) @juliakhorowitz

May 27, 2018: 10:13 PM ET



This is what a trade war lo



As Washington and Beijing try to resolve their trade disputes, several big companies are caught in the middle.

One is Qualcomm ([QCOM](#)), an American chipmaker whose \$44 billion purchase of NXP Semiconductors ([NXPI](#)), a Dutch company, has been waiting for Chinese regulators' approval.

Far more controversial is the case of ZTE ([ZTCOF](#)), the Chinese phone and telecom equipment maker that was [crippled by a US export ban](#) issued last month in punishment for what the US said were violations of its sanctions against North Korea and Iran.

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Easing penalties on ZTE is a key priority for Chinese President Xi Jinping, and Trump has indicated he's willing to yield in order to move ahead with further trade

discussions.

But members of Congress from both parties, many increasingly wary of China's trade practices, believe such leniency would be a mistake. A growing number of senators have drawn a red line on ZTE, and have been vocal in recent days about their opposition to restoring the company.

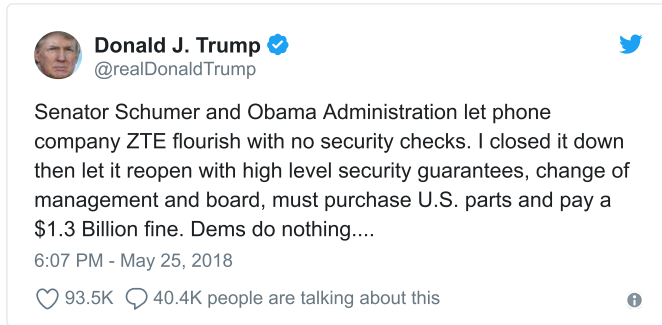
[Related: Trump administration has briefed Congress on tentative deal with ZTE](#)

"The only thing China is going to respond to is consequential actions over a sustained period of time, and putting a company like ZTE out of business is the kind of consequential action that ...

China will finally see that we are taking this stuff seriously," Senator Marco Rubio, a Republican, said Sunday on CBS' "Face the Nation."

On Friday, the Commerce Department [informed lawmakers about the outlines of a tentative deal](#) that could save ZTE.

Trump, in a Friday evening tweet, wrote of the deal, "I closed (ZTE) down then let it reopen with high level security guarantees, change of management and board, must purchase U.S. parts and pay a \$1.3 Billion fine."



The blowback from Capitol Hill was immediate and severe, raising questions about whether Trump will follow through.

"ZTE presents a national security threat to the United States—and nothing in your reported deal addresses that fundamental fact. If you won't put our security before Chinese jobs, Congress will act on a bipartisan basis to stop you," Senator Chris Van Hollen, a Democrat, tweeted Saturday.

Next round of trade talks

The political situation in Washington complicates trade talks between the world's two largest economies, which are still in progress.

A week ago, China and the United States [agreed to put threats of tens of billions of dollars in tariffs on hold](#). The countries said China would "significantly increase" purchases of US goods and services to reduce their trade imbalance, a top Trump administration demand.

But many details still need to be worked out. China has not put a dollar amount on its commitment to boost purchases, and analysts have said it would be tough for Beijing to make a big difference to the trade imbalance.

Commerce Secretary Wilbur Ross is scheduled to go to China on June 2 through June 4 to continue discussions, according to the Chinese Foreign Ministry.

Even more challenging are US demands that China stop forcing American companies to hand over intellectual property and halt efforts to subsidize high-tech industries. Experts are [skeptical](#) that Beijing will agree to make changes in those areas.

Qualcomm-NXP deal

China, meanwhile, has power over Qualcomm's purchase of NXP. Chinese regulatory approval is still needed for the acquisition to go through.

Beijing's reluctance to green-light the deal has coincided with the trade tensions between the two countries, although authorities insist the delay is over antitrust concerns.

[Related: Analysis: China is playing the long game against Trump](#)

[Media reports](#) over the weekend indicated there could be some movement from regulators this week, though nothing has been finalized yet.

The odds of approval look better since China endorsed [the sale](#) of Toshiba's (TOSYY) prized chip unit to a group of investors led by the private equity firm Bain Capital. Previously, there were questions about whether China would hold up that \$18 billion deal to gain leverage over the United States during trade negotiations.

North Korea wild card

Meantime, a potential summit between Trump and North Korean leader Kim Jong Un looms large.

The meeting, which was initially scheduled for June 12 in Singapore, was abruptly canceled Thursday by Trump, who cited "tremendous anger and open hostility" in North Korea's most recent statement. But two days later, he [revived hopes](#) that the summit may go ahead.

Trump had [previously indicated](#) that he's willing to make moves on trade with China that could secure the country's support on North Korea.

"When I'm thinking about trade — you know, I read you folks and you say, 'Well, why does he' — there's a much bigger picture that I have in mind," Trump said earlier last week. "I'm also thinking about what they're doing to help us with peace with North Korea. That's a very important element. So we'll see how it all works out."

-- CNN's *Phil Mattingly* and *Jeremy Diamond* contributed to this report.

CNNMoney (New York)
First published May 27, 2018: 10:13 PM ET

Exhibit 11



□ PRESS RELEASES □ 05.25.18

Pelosi Statement on Trump Administration's ZTE Deal

San Francisco – Democratic Leader Nancy Pelosi issued this statement on reports that the Trump Administration will announce an agreement to save the Chinese company ZTE:

“The President’s ZTE deal is a staggering betrayal of the American people. Although Trump pledged to fight for hard-working Americans, he is now using U.S. government resources to enrich a foreign company – right after the Chinese government reportedly agreed to funnel half a billion dollars into one of his family’s resorts.

“It is also beyond comprehension that the President is helping out ZTE, a Chinese company that U.S. intelligence agencies have designated a national cybersecurity risk. Further, ZTE has violated U.S. sanctions by selling technology to North Korea and Iran.

“The American people deserve better than a President who is eager to sell out the American people and our national security for his personal enrichment. Democrats are offering A Better Deal, with Better Jobs, Better Wages and A Better future for all.”

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Exhibit 12

"zte" from:ChrisVanHollen

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Chris Van Hollen @ChrisVanHollen · May 22

Good news: My amendment to stop President Trump from unilaterally exempting **ZTE** from penalties for their repeated violations of our laws passed the Banking Committee on a bipartisan basis. Glad the Senate is putting America's national security first, not jobs in China.

64 576 1.6K



Chris Van Hollen @ChrisVanHollen · May 26

Mr. President, this is false. **ZTE** presents a national security threat to the United States—and nothing in your reported deal addresses that fundamental fact. If you won't put our security before Chinese jobs, Congress will act on a bipartisan basis to stop you.

Donald J. Trump @realDonaldTrump

Senator Schumer and Obama Administration let phone company ZTE flourish with no security checks. I closed it down then let it reopen with high level security guarantees, change of management and board, must purchase U.S. parts and pay a \$1.3 Billion fine. Dems do nothing....

136 842 1.8K



Chris Van Hollen @ChrisVanHollen · May 24

More news: My amendment on **ZTE** has been added to the NDAA, which passed in Committee last night. This bipartisan piece of legislation will ensure that Trump can't let **ZTE**, a serial violator of US laws, off the hook. Now we need to pass this in full Senate!

Chris Van Hollen @ChrisVanHollen

Good news: My amendment to stop President Trump from unilaterally exempting ZTE from penalties for their repeated violations of our laws passed the Banking Committee on a bipartisan basis. Glad the Senate is putting America's national security first, not jobs in China.

16 109 298



Chris Van Hollen @ChrisVanHollen · May 23

As I told Kelly on @CNBCClosingBell, we must stop the President from compromising our national security in order to help the **ZTE**, which has repeatedly violated our laws and lied about it. That why my amendment passed yesterday with a strong bipartisan vote of 23 to 2.





"zte" from:ChrisVanHollen

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Exhibit 13

The Washington Post

PowerPost

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PowerPost Analysis

The Finance 202: Trump risks repeating Bush controversy with ZTE deal

By [Tory Newmyer](#) May 29 [Email the author](#)

THE TICKER

President Trump has no love for his most recent Republican predecessor. But **in pushing to let Chinese telecom giant ZTE off the hook for violating U.S. sanctions, he's flirting with repeating a fiasco that engulfed George W. Bush at a similar moment in his presidency.**

Trump on Friday announced he is letting ZTE "reopen" in exchange for a fine and some governance changes as his administration prepares for trade talks with Beijing later this week. The move is drawing intense criticism from both parties on Capitol Hill — and some especially focused pushback from Senate Minority Leader Chuck Schumer (D-N.Y.):

And here he was earlier this month, when Trump first proposed offering the company relief:

Schumer has run this play before, helping elevate a story about an obscure foreign company into a first-order national security concern, generating bipartisan protest against a Republican president in the process.

Back in 2006, Democrats mired in the minority in both chambers of Congress were looking for issues they could weaponize against a beleaguered President Bush. Schumer, then chair of the Senate Democrats' campaign arm, found one that February in an otherwise obscure story mostly relegated to the business pages: A London-based company that managed ports around the world agreed to a sale to another firm called **Dubai Ports World**, based in the United Arab Emirates.

The sale proposed to hand control over several major U.S. ports to a company owned by a Middle Eastern state with ties to the Sept. 11, 2001, terrorists. After the Associated Press reframed the story as a potential national security concern, Schumer seized on it. He called for a review by the Department of Homeland Security, held a news conference with 9/11 families, and then another as the issue picked up steam, this time with House and Senate Republicans. Senate Majority Leader Bill Frist (R-Tenn.) said he planned to introduce legislation blocking the deal — a pledge that drew a preemptive veto threat from his own party's president.

“The president was digging in against top members of his own party. The hardening positions on both sides made it hard to find a face-saving compromise,” the [Wall Street Journal](#) wrote in a 2006 post-mortem on the episode. **Public sentiment turned sharply against the administration's support for the deal.** “In an attempt to halt the tide, the White House released details of unusual arrangements to which DP World had agreed. The ports operator would allow U.S. anti-terror officials to examine company records without a subpoena and check the background of any of its employees.”

In the face of unyielding, bipartisan opposition from the Hill, the White House strategy unraveled, as did the deal. **And Bush's national security credentials — then still a relative strength — took a hit with voters.**

The Trump administration moved last week to avoid a similar fate by facing down the mounting bipartisan resistance to its ZTE deal. Commerce Secretary Wilbur Ross and Treasury Secretary Steven Mnuchin trooped to the Capitol to assure a handful of top GOP senators “that ZTE was being treated as a national-security issue and as such was being discussed on a separate track from

trade negotiations,” [The Wall Street Journal’s Kate O’Keeffe, Bob Davis and Lingling Wei report](#). The appeal appears to have achieved its intended effect with Sens. John Cornyn (R-Tex.) and Tom Cotton (R-Fla.).

But **Sen. Marco Rubio (R-Fla.)** — who also attended and has been the most outspoken Congressional Republican against the Trump administration’s trade moves — said Sunday that Congress would take steps to block the ZTE deal. **“In an appearance on CBS News’s ‘Face the Nation,’ Rubio (R-Fla.) said there is ‘a growing commitment in Congress to do something about what China is trying to do to the United States’ and that ‘one of the things that Congress will do is . . . not even allow Chinese telecom companies to operate in the United States,’”** [The Washington Post’s Karoun Demirjian reports](#).

Trump late Friday blamed Democrats for failing to take action against ZTE in the first place and then criticizing his administration’s response:

Yet Rubio suggested Congressional resistance will be both wide and deep for a future measure to hamstring Trump’s ZTE push that it would overcome a presidential veto. “I believe it’ll have a super-majority,” Rubio said. “I think most members of Congress have come to understand the threat China poses.”

There's little evidence so far of the sort of popular backlash that drove the congressional response to the Dubai Ports World deal.

But lawmakers are already moving to tie the administration's hands. The House [passed a measure last week](#) that would ban federal agencies from buying equipment from ZTE, and the Senate's pending defense authorization bill includes a provision barring the administration from relaxing penalties on the company for at least a year. Sen. Chris Van Hollen (D-Md.), who wrote that provision, [said](#), **“If President Trump won’t put our security before Chinese jobs, Congress will act on a bipartisan basis to stop him.”**

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MARKET MOVERS

— **Italian bond meltdown.** [WSJ's Riva Gold](#): "Political worries about Italy and Spain gripped markets Tuesday, triggering sharp falls in stocks, a drop in the euro and big moves in bond markets... Italian President Sergio Mattarella decided Sunday to block the formation of a euroskeptic government, reviving longstanding worries about the broader stability of the eurozone and a political crisis in a country with €2.3 trillion (\$2.681 trillion) in debt. On Monday, as the two antiestablishment parties protested his decision, Mr. Mattarella picked an International Monetary Fund veteran, Carlo Cottarelli, as prime minister-designate... There were also concerns about Spain, where the parliament is set to vote Friday whether to oust Prime Minister Mariano Rajoy and replace his center-right government with one led by the center-left Socialist Party."

— **U.S. investors come home.** [WSJ's Asjlynn Loder](#): "Investors are coming home to U.S. stocks as economic worries overseas upend bets on a wave of synchronized global growth. Global stock funds have underperformed U.S. shares recently as concerns spread about the health of emerging markets, geopolitical tensions in Asia and the pace of European growth... Some analysts said investors were reckoning with signals that the much-anticipated world-wide economic liftoff hasn't yet occurred, highlighting the vulnerabilities built into the long post-financial crisis expansion. That comes as a rising dollar and strong domestic corporate earnings have wrong-footed wagers that growth in Europe and Asia would outpace the slow U.S. expansion."

— **Confidence stalls.** [WSJ's Sharon Nunn](#): "U.S. households became less confident about the economy in May, continuing to ease from a 14-year high seen earlier this year. The University of Michigan on Friday said its consumer sentiment index was 98.0 in May, down slightly from an initial 98.8 reading for the month. Economists

surveyed by The Wall Street Journal had expected a final reading of 98.8 for May, unchanged from April. This follows a 14-year high reading of 101.4 seen in March."

— **Powell warns Trump, obliquely.** [Politico's Victoria Guida](#): "Federal Reserve Chairman Jerome Powell on Friday issued his sternest warning yet that politicians should not interfere with interest-rate policy, in what appeared to be a precautionary message to... Trump. In a speech in Sweden, Powell indirectly referred to a previous Fed chairman, Arthur Burns, who was pressured by President Richard Nixon in the lead-up to the 1972 presidential election to keep interest rates low. That episode eventually contributed to a rapid rise in prices, requiring one of Burns' successors, Paul Volcker, to raise interest rates as high as 20 percent to combat inflation."

NY Fed pick criticized. [WSJ's Michael Derby](#): "The likely elevation of San Francisco Fed President John Williams to lead the New York Fed has sparked a degree of public criticism rarely seen in the relatively obscure world of regional central bank chiefs. The news disappointed observers who have pressed the Federal Reserve to diversify its leadership ranks, long dominated by white, male economists. Some lamented what they saw as a selection process that needs more public scrutiny and input. Others question Mr. Williams's economic views."

Market bull warns 2019 could turn ugly as inflation grows

Blackstone's Joseph Zidle sees stocks getting their groove back this year, but his forecast comes with a caveat.

CNBC

TRUMP TRACKER

TRADE FLY-AROUND:

— **Trump baffles allies.** [The Post's David Lynch and Damian Paletta](#): "Trump is merging his national security and trade goals in a blur of tactical improvisation that risks alienating U.S. allies and opening American businesses to costly retaliation, according to several Republican lawmakers, business executives and former U.S. officials. The president last week initiated a Commerce Department investigation

that could lead to [tariffs of up to 25 percent on foreign cars](#), arguing that a flood of imports had eroded the nation's manufacturing base and threatened the nation's security. The potential auto tariffs — which would hit Mexico, Canada, Japan and Germany hardest — are the latest sign of the president's fluid approach to national and economic security that has left allies and adversaries baffled over U.S. intentions, according to foreign diplomats."

... **As Ivanka nabs Chinese trademarks.** [NYT's Sui-Lee Wee](#): "China this month awarded Ivanka Trump seven new trademarks across a broad collection of businesses, including books, housewares and cushions. At around the same time... Trump vowed to find a way to prevent a major Chinese telecommunications company from going bust... Coincidence? Well, probably. Still, the remarkable timing is raising familiar questions about the Trump family's businesses and its patriarch's status as commander in chief. Even as Mr. Trump contends with Beijing on issues like security and trade, his family and the company that bears his name are trying to make money off their brand in China's flush and potentially promising market."

— **NAFTA push resumes.** [Bloomberg's Josh Wingrove and Eric Martin](#): "Canada's foreign minister is headed to Washington as the clock ticks down to reach a deal on updating the North American Free Trade Agreement that could pass Congress this year and skirt metals tariffs. Chrystia Freeland will hold Nafta meetings in the U.S. capital on Tuesday and Wednesday... She didn't release a detailed itinerary, but is scheduled to meet Tuesday morning with U.S. Trade Representative Robert Lighthizer... Time is running out. The U.S. has exempted Canada and Mexico so far from tariffs on steel and aluminum, but tied that to Nafta talks. Those exemptions are set to expire Friday morning, at the end of what the White House has called a 'final' extension."

— **Kudlow worries auto tariffs could cost jobs.** [Axios's Jonathan Swan](#): "Two of Trump's top economic advisers, including Larry Kudlow, fear that one of the proposals closest to his heart — automobile tariffs — would kill American jobs. And his lawyers aren't sure the national security argument underpinning the idea is solid. Meanwhile, U.S. allies and free traders have been freaking out over a Trump request

to use a 'national security' law — the same one he used to impose massive steel and aluminum tariffs — to put new tariffs of as much as 25% on automobile imports."

EU to press Trump team on tariffs. [WSJ's Emre Peker](#): "The European Union's top trade official will meet U.S. counterparts in Paris on Wednesday, according to EU officials, in a last-ditch effort to secure waivers from steel and aluminum tariffs and to engage Washington on efforts to tackle China's market-distorting policies. European Trade Commissioner Cecilia Malmstrom will press... Ross for exemptions just ahead of a Friday deadline, when... Trump's temporary waivers to the 28-member bloc expire. Ms. Malmstrom will also meet with... Lighthizer on Wednesday to discuss the global trade agenda, and the two officials will join their Japanese counterpart, Hiroshige Seko, Thursday to advance a joint push targeting unfair practices."

MONEY ON THE HILL

— **Emboldened Dems back bigger government.** [The Post's Dave Weigel and Jeff Stein](#): "Democrats have spent years working to counter Republican attacks on them as big-spending liberals, from passage of the last balanced budget during the Bill Clinton years to Barack Obama's insistence that the Affordable Care Act pay for itself. But now that Republicans have blown up the deficit with a \$1.5 trillion tax cut and other high-cost policies, many Democrats feel freed. In recent months, Democratic lawmakers and candidates have endorsed plans allowing anyone to buy in to Medicare, to make college effectively debt-free, to replace the payday loan industry with small government banks and to provide a 'job guarantee' that would spend to put people to work."

POCKET CHANGE

— **Banks embrace coal again.** [NYT's Emily Flitter](#): "Starting three years ago, the largest American banks vowed to cut back on lending to the coal industry... But the banks, it turns out, never actually promised to walk away from coal completely. And now, with coal companies enjoying a small resurgence under the Trump administration, banks are again embracing the industry... Five of the country's

biggest banks are lending tens or hundreds of millions of dollars to coal companies again, in one case eclipsing what they lent in 2014, before the industry entered a nose dive."

— **Race to a trillion.** The FT [just launched a feature](#) tracking the scramble among a handful of companies to cross the trillion-dollar valuation mark: "Leading tech companies have enjoyed surges in market capitalisation, as revenues and profits have powered ahead and investors showed an insatiable appetite for their shares. Apple is closest to becoming the first listed company to achieve a \$1tn valuation, but Amazon, Alphabet and Microsoft are not far behind."

Wonkblog

[America has a massive truck driver shortage. Here's why few want an \\$80,000 job.](#)

America has a shortage of 51,000 truck drivers. The job pays a middle-class wage, yet few people want it. Six drivers explain why.

Heather Long

Wonkblog

[The alarming statistics that show the U.S. economy isn't as good as it seems](#)

Forty percent of American adults don't have enough savings to cover a \$400 emergency expense.

Heather Long

THE REGULATORS

— **Mulvaney is having a blast.** [Bloomberg's Devin Leonard and Elizabeth Dexheimer](#): "Six months into his tenure, Mulvaney is doing everything he can to transform the CFPB from a regulatory crown jewel of liberals into one that he says follows the law, at least according to his interpretation. Along with reshuffling its initials, he's reviewing its enforcement, supervisory, and rule-making functions. He's frozen data collection in the name of security, dropped enforcement cases, and

directed staff to slash next year's budget. He also wants to curb the agency's independence by giving Congress—rather than the Federal Reserve—control of its spending, and replace the powerful director position he fills with a five-person commission. The ultimate goal, he says, is to move the CFPB beyond the realm of partisan bickering and turn it into what he calls one of the “gold-standard” regulators, like the U.S. Securities and Exchange Commission.”

CFPB's Mulvaney plots HMDA rollback, but it may not matter

Lenders would have a lighter data-reporting burden, but they may end up deciding to collect the data anyway.

American Banker

DAYBOOK

Coming Up

- Federal Reserve Board of Governors holds its [meeting](#) on **Wednesday**.
- The Peterson Institute for International Economics holds an [event](#) on “What we can do to make open economics inclusive” on **Wednesday**.
- The American Enterprise Institute holds a [conversation](#) with former Federal Reserve chairman Ben S. Bernanke on **June 7**.

THE FUNNIES

From The Post's Tom Toles:

BULL SESSION

Rep. Thomas Garrett (R-Va.) is the latest Republican to leave Congress. Here's what you need to know:

The ‘scandals’ and progress of the Russia probe:

Watch President Trump's full Memorial Day speech:

 **2 Comments**


Covering financial services and economic policy for the Washington Post  Follow @ToryNewmyer

Exhibit 14

"zte" from:MarkWarner

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7,217 Tweets

Sarah Sanders

65K Tweets

Kim Kardashian

95.6K Tweets

Citi Field

3,531 Tweets

Audálio Dantas



Mark Warner @MarkWarner · May 26

This would be a big mistake. President Trump should listen to the advice of his intelligence leaders, who have unanimously said that ZTE poses a national security threat to the United States.



Trump administration reaches deal to save China's ZTE

Sanctions that the U.S. imposed a month ago threatened to put the mobile phone maker out of business

cbsnews.com

546 2.4K 4.3K



Mark Warner @MarkWarner · May 15

Amen. If ZTE is a security threat, then it is a security threat and needs to be dealt with as such — not as a bargaining chip in trade negotiations.

Marco Rubio @marcorubio

#China intends to dominate the key industries of the 21st Century not through out innovating us, but by stealing our intellectual property & exploiting our open economy while keeping their own closed. Why are we helping them achieve this by making a terrible deal on ZTE?

273 982 3.0K



"zte" from:MarkWarner

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Exhibit 15

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@realDonaldTrump

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Official account of Senator Chuck
Schumer - New York's Senator
RT#endorsement



Tweets **7,474** Following **325** Followers **1.6M** Likes **10** Moments **7**

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Nancy Pelosi
@NancyPelosi

Democratic Leader, focused on strengthening America's middle class and creating jobs; mother, grandmother, dark chocolate connoisseur.

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Chris Van Hollen

@ChrisVanHollen

U.S. Senator for Maryland

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Mark
@MarkWarner

Serving Virginia in the US Senate. Vice Chairman, Intel Committee. Dad, Husband, Budget Wonk. Previous: Serial entrepreneur, business guy, 69th Governor of Va

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Tweets **7,848** Following **2,195** Followers **289K** Likes **71**

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Lindsey Graham

@LindseyGrahamSC

The official Twitter feed for United States Senator Lindsey Graham.

South Carolina
Joined December 2011
Born on July 09

Exhibit 16

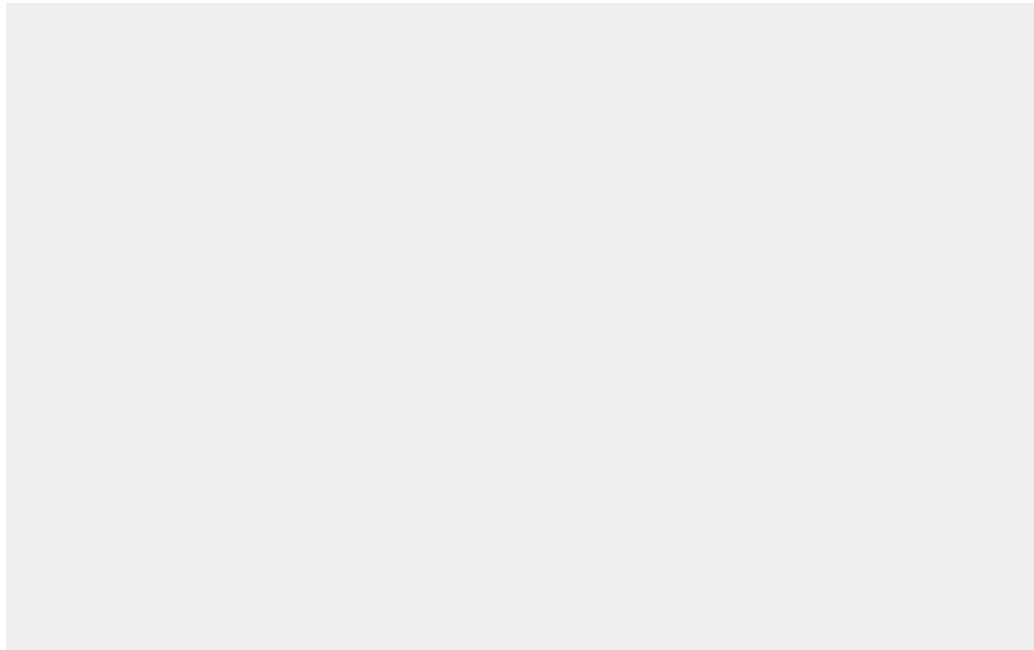
ZTE will suffer lasting damage even if Trump lifts ban

by Sherisse Pham and Daniel Shane @CNNTech

May 29, 2018: 7:47 AM ET



Trump to help Chinese phone ban



China's ZTE will struggle to recover from a ban on buying US components even if the Trump administration throws the tech company a controversial lifeline.

ZTE ([ZTCOF](#)), which makes smartphones and telecommunications equipment, has been in crisis since the US Commerce Department [banned it](#) from buying crucial parts from American companies six weeks ago. The department said [ZTE had failed to honor a deal](#) under which it admitted to violating sanctions on Iran and North Korea.

The Trump administration has [a tentative deal](#) to get it back into business by lifting the ban and imposing other punishments instead. But a backlash from members of Congress has added uncertainty to the outcome.

Whatever happens next, experts say ZTE is facing a long list of problems, including billions in lost revenue, strained relationships with major customers and a tarnished brand.

[Related: Companies become bargaining chips in US-China trade turmoil](#)

ZTE, which employs around 75,000 people, relies on US tech for its products, sourcing chips from companies like Qualcomm ([QCOM](#)) and Intel ([INTC](#)). The ban brought its factories to [a standstill](#). Shareholders, meanwhile, have been stuck in limbo, with the company's Hong Kong-listed stock suspended since the ban took effect.

Wary customers

Even if the ban is replaced with a big fine and an overhaul of ZTE's management, the company is likely to suffer lasting damage from the crisis.

Charlie Dai, an analyst at research firm Forrester, estimates the disruption will have wiped out between 10% and 20% of the revenue ZTE was expected to earn in the current financial year. The company had revenue of about 109 billion yuan (\$17 billion) last year.



A ZTE building in Beijing.

ZTE didn't respond to a request for comment on the financial impact of the ban. In its last earnings report in late April it said it was "still unable to complete a comprehensive and accurate assessment or forecast."

Its repeated tussles with the US government could hurt its main business of selling equipment like wireless base stations and fiber optic cables to telecom operators around the world.

"ZTE may have more difficulty in securing new, overseas carrier customers over the next 12 months, since customer confidence is now lower," Edison Lee, a telecom analyst at investment bank Jefferies, wrote in a research note this month.

[Related: ZTE is thrust center stage in the US-China trade fight](#)

Its big rivals in Europe -- Ericsson ([ERIC](#)) and Nokia ([NOK](#)) -- could benefit.

Analysts at Swiss bank UBS ([UBS](#)) said that some of ZTE's international customers may buy more from Ericsson and Nokia even if the ban on the Chinese company is withdrawn.

ZTE could be forced to cut its prices in an attempt to attract new business, the UBS analysts predicted in a note published this month.

The company has a lot of customers in emerging markets in Asia, Latin America and Africa. The ban has already forced some of them to scramble for alternatives.

MTN (MTNOF), a major operator in Africa, said earlier this month that it was looking at contingency plans "given our exposure to ZTE in our networks."



Damaged reputation

ZTE also makes smartphones, a business that accounts for about a third of its annual revenue. Its top market for smartphones is the United States, where it's the fourth biggest seller.

Some analysts say the company could have trouble repairing its reputation.

Mo Jia, a Shanghai-based analyst at research firm Canalys, said ZTE's brand image with consumers and the carriers that sell its phones is now "damaged."

Some big operators -- MTN and Australia's Telstra (TLSYY) -- have already stopped selling ZTE smartphones because of the supply problems.

"It will take time for ZTE to regain or repair its partnerships," Jia said.

[Related: China's biggest tech companies have reason to be worried](#)

The company's devices were slammed earlier this year by US intelligence agencies. Top officials from the FBI, CIA and NSA testified before Congress in February that ZTE and Huawei, another Chinese smartphone maker, pose a security threat to American customers.

Both companies have repeatedly rejected such claims, but they've faced other public setbacks, including the Pentagon recently telling stores on US military bases to stop selling their phones.

Analysts expect that kind of pressure to continue even if the Commerce Department lifts the ban on supplying parts to ZTE.

"ZTE's smartphone business will face challenges, especially in the United States, where ZTE and Huawei remain under fire from other branches of the government," said Avi Greengart, a New York-based analyst at research firm Global Data.

ZTE has stronger ties with US carriers than Huawei. But Greengart predicts ZTE may lose business to other makers of affordable handsets like Alcatel and LG.

CNNMoney (Hong Kong)
First published May 29, 2018: 7:47 AM ET

The ZTE drama: A time

- MARCH 8, 2016**
The US accuses ZTE of scheming to dodge sanctions on Iran and imposes restrictions on the company's US suppliers.
- MARCH 7, 2017**
ZTE agrees to pay a \$1.2 billion fine to the US government for violating sanctions on Iran and Korea.
- APRIL 16, 2018**
The US government blocks American firms from selling parts or providing services to ZTE until 2025, saying the company violated the 2017 agreement.
- APRIL 20, 2018**
ZTE says the US ban is "extremely unfair" and also hurts many American companies.
- MAY 4, 2018**
Chinese officials say they raise concerns about ZTE during talks with the United States in Beijing.
- MAY 9, 2018**
ZTE announces it has halted "routinely operating activities" as a result of the ban.
- MAY 13, 2018**
President Trump says on Twitter he's working to give ZTE "a way to get back into business, fast."
- MAY 19, 2018**
China and the United States announce progress in trade talks. ZTE is not mentioned.

Source: CNN reporting

Exhibit 17

President Trump pledges to help ZTE, Chinese maker of budget-friendly phones, after ban

Michael Collins, USA TODAY Published 1:51 p.m. ET May 13, 2018 | Updated 3:38 p.m. ET May 13, 2018

The U.S. Justice Department says the Chinese firm ZTE Corp. has agreed to plead guilty and pay the United States \$892 million for violating sanctions against Iran. (March 7) AP



(Photo: ZTE)

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WASHINGTON — President Trump said Sunday that he and Chinese President Xi Jinping are working to put the troubled Chinese telecom manufacturer ZTE back in business.

“President Xi of China, and I, are working together to give massive Chinese phone company, ZTE, a way to get back into business, fast,” Trump said in a message on Twitter. “Too many jobs in China lost. Commerce Department has been instructed to get it done!”

Trump, who has taken a hardline stance on trade with China, said in a follow-up tweet a few hours later that China and the U.S. are working well together on trade, “but past negotiations have been so one sided in favor of China, for so many years, that it is hard for them to make a deal that benefits both countries.”

“But be cool, it will all work out!” he wrote.

ZTE, maker of Android phones popular with budget-minded consumers, said Wednesday that it would cease “major operating activities,” raising questions not only about its survival, but the impact on U.S. consumers who have previously bought or were thinking of buying ZTE phones.

The announcement followed a decision last month by the U.S. Commerce Department, which banned American companies from exporting products to the Shenzhen, China-based telecom firm for seven years.

The U.S. government accused ZTE of violating a [March 2017 settlement](#) in which the firm pleaded guilty and agreed to pay \$1.19 billion for illegally shipping telecommunications equipment to Iran and North Korea.

Separately, lawmakers in the U.S. have placed ZTE and even larger Chinese telecom companies in the cross hairs over their reputed ties to the Chinese intelligence and military establishment.

ZTE warned that the ban would “severely impact the survival and development of ZTE” and cause damages to all its partners, including many U.S. companies.

More: [ZTE phones, budget-priced Androids favored by seniors, are going away](#)

More: [Spy games: Is buying a Chinese smartphone risky?](#)



Donald J. Trump
@realDonaldTrump



President Xi of China, and I, are working together to give massive Chinese phone company, ZTE, a way to get back into business, fast. Too many jobs in China lost. Commerce Department has been instructed to get it done!

10:01 AM - May 13, 2018

84.2K 47.1K people are talking about this



Donald J. Trump
@realDonaldTrump



China and the United States are working well together on trade, but past negotiations have been so one sided in favor of China, for so many years, that it is hard for them to make a deal that benefits both countries. But be cool, it will all work out!

2:22 PM - May 13, 2018

101K 31.1K people are talking about this



Exhibit 18

Republican Sen. Marco Rubio warns: Trump's reversal on China's ZTE is a national security risk



- Sen. Marco Rubio questions President Trump's effort to help Chinese company ZTE.
- The Florida Republican warns the move could hurt U.S. national security.
- Trump's reversal comes after he pledged to punish China for alleged trade abuses and intellectual property theft.

Jacob Pramuk | @jacobpramuk

Published 9:36 AM ET Mon, 14 May 2018 Updated 4:26 PM ET Mon, 14 May 2018

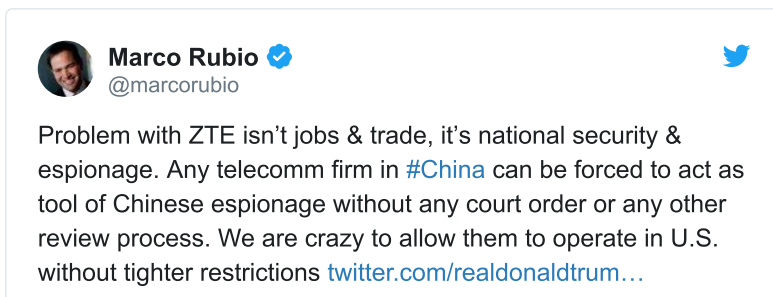


Sen. [Marco Rubio](#) on Monday criticized President [Donald Trump](#)'s pledge to help [Chinese](#) technology company [ZTE](#), saying he hopes the president is not "backing down" from his hawkish stance on China.

The Florida Republican's criticism marks the first backlash to the president's effort from a notable lawmaker within his own party. Trump's reversal on ZTE, which he announced in a tweet Sunday, comes amid a high-stakes trade dispute between the world's two largest economies.

In a tweet Monday morning, Rubio argued that the "problem with ZTE isn't jobs & trade, it's national security & espionage." He said telecom companies "can be forced to act as a tool of Chinese espionage."

"We are crazy to allow them to operate in U.S. without tighter restrictions," the Senate Intelligence Committee member wrote.



4:46 AM - May 14, 2018

15.9K 8,272 people are talking about this



Last month, the Trump administration barred U.S. companies from selling to ZTE, a telecommunications company, for seven years. The ban came in response to the firm shipping American goods to Iran and North Korea. It effectively crippled ZTE.

On Sunday, Trump said he and Chinese President [Xi Jinping](#) "are working together" to give ZTE "a way to get back into business, fast." "Too many jobs" were lost in China, the president added. He said he instructed the Commerce Department to "get it done."

 **Donald J. Trump** 
@realDonaldTrump



President Xi of China, and I, are working together to give massive Chinese phone company, ZTE, a way to get back into business, fast. Too many jobs in China lost. Commerce Department has been instructed to get it done!

10:01 AM - May 13, 2018

84.2K 47.1K people are talking about this



In a subsequent tweet Monday afternoon, Trump made a vague reference to the ZTE action being "reflective of the larger trade deal we are negotiating with China and my personal relationship with President Xi." It is unclear what exactly the president meant.

 **Donald J. Trump** 
@realDonaldTrump



ZTE, the large Chinese phone company, buys a big percentage of individual parts from U.S. companies. This is also reflective of the larger trade deal we are negotiating with China and my personal relationship with President Xi.

3:06 PM - May 14, 2018

63.1K 25.8K people are talking about this



Trump's tweet appeared to muddle comments made by his administration earlier in the day. On Monday, Commerce Secretary Wilbur Ross called ZTE an enforcement issue separate from trade policy. White House spokesman Raj Shah told reporters that Ross' comments reflect the U.S. government's view.

Shah said "this is part of a very complex relationship between the United States and China that involves economic issues, national security issues, and the like." He called it "an issue of high concern for China that's been raised with the U.S. government and with our administration at various levels."

Trump's shift on ZTE appears to be a concession as Chinese Vice Premier Liu He gets set to travel to Washington this week for trade talks. The U.S. and China have threatened one another with tariffs that could damage the American agricultural industry. Trump has repeatedly pledged to punish Beijing for alleged trade abuses and theft of U.S. intellectual property by Chinese companies.

In a separate tweet Monday morning, Rubio wrote that "I hope this isn't the beginning of backing down to China."

The U.S. and China are discussing a potential deal to relieve pressure on ZTE in exchange for Beijing pulling back tariffs on billions of dollars in agricultural products, Reuters and The Wall Street Journal reported.

Trump's pledge to help ZTE already sparked criticism on the Democratic side of Congress. In a statement Monday, Senate Minority Leader [Chuck Schumer](#) said Trump is "backing off" his tough actions against China and argued his policy would "make China great again."

House Intelligence Committee ranking member Rep. Adam Schiff, D-Calif., said Sunday that Trump "should care more about our national security than Chinese jobs."



WATCH: This trade deal may be what Trump needs to take on China



Jacob Pramuk
Staff Reporter

Exhibit 19

MARKET NEWS

MAY 14, 2018 / 9:39 AM / 17 DAYS AGO

Trump's comments on China's ZTE draw security concerns

Reuters Staff



WASHINGTON, May 14 (Reuters) - President Donald Trump's pledge to help China's ZTE Corp "get back into business, fast" and save Chinese jobs after a U.S. ban crippled the technology company drew condemnation from some lawmakers on Monday over trade and security concerns.

"I hope this isn't the beginning of backing down to China," Republican U.S. Senator Marco Rubio said on Twitter, saying Chinese competition had "ruined" many U.S. companies.

"(The) problem with ZTE isn't jobs & trade, it's national security & espionage. Any telecomm firm in #China can be forced to act as tool of Chinese espionage without any court order or any other review process," Rubio, a former Trump rival, said. "We are crazy to allow them to operate in U.S. without tighter restrictions."

Trump's reversal on Sunday came as high-level trade talks were to resume this week between the world's two largest economies.

Washington's tough stance on Chinese trade practices have put the countries on course for a possible trade war.

"Too many jobs in China lost. Commerce Department has been instructed to get it done!" Trump wrote on Twitter, saying he and Chinese President Xi Jinping were working together on a solution for ZTE, China's second-largest maker of telecommunications equipment.

The White House said later that U.S. officials were in contact with Beijing about ZTE and that Trump expected Commerce Secretary Wilbur Ross to make an independent decision.

In April, the Commerce Department banned U.S. companies from selling to ZTE for seven years after it illegally shipped U.S. goods to Iran and North Korea.

ZTE, whose shares remain suspended, has not commented on Trump's statement.

Sources briefed on the matter said Beijing had demanded the ZTE issue be resolved as a prerequisite for broader trade negotiations.

Chinese Foreign Ministry spokesman Lu Kang on Monday said China "greatly appreciates the positive U.S. position on the ZTE issue" and that Chinese Vice Premier Liu would visit Washington from Tuesday to Saturday.

U.S. concessions over ZTE could also smooth the way for U.S. chipmaker Qualcomm Inc's \$44 billion takeover of NXP Semiconductors, which has been delayed by a lengthy antitrust review by China's Ministry of Commerce.

Top Senate Democrat Chuck Schumer said on Monday that Trump was trading a crackdown on intellectual property theft for selling goods in the short run.

"One of the few areas where the president and I agreed, and I was vocally supportive, was his approach towards China. But even here he is backing off, and his policy is now designed to achieve one goal: make China great again," he said in a statement.

Democratic U.S. Senator Ron Wyden echoed Schumer's comments.

“Unilateral concessions before an upcoming trade negotiation. This may be the art of the deal for China but it's a big loser for American workers, companies, and national security,” he said.

Reporting by Valerie Volcovici and Karen Freifield, Steve Holland, David Lawder, Chris Sanders and David Morgan in Washington; Michael Martina, Sue-Lin Wong and Matthew Miller in Beijing; and John Ruwitch in Shanghai; Editing by Peter Cooney, Philip McClellan and Martin Howell

Our Standards: The Thomson Reuters Trust Principles.

Exhibit 20

Business

After ZTE reversal, Democrats accuse Trump of jeopardizing national security

By **Damian Paletta** Email the author

May 15



President Trump meets with Senate Majority Leader Mitch McConnell, center, and Senate Minority Leader Charles E. Schumer on Dec. 7. (Jabin Botsford/The Washington Post)

Top Senate Democrats on Tuesday slammed President Trump's decision to rescue the giant Chinese technology firm ZTE, saying relief for a company that violated U.S. law and then lied about its behavior should not be offered as a concession during trade talks.

Senate Minority Leader Charles E. Schumer (D-N.Y.), along with Sens. Ron Wyden (D-Ore.) and Sherrod Brown (D-Ohio), wrote in a letter to Trump that easing U.S. penalties on ZTE would "call into grave doubt whether this

Administration will put American jobs and national security first.”

The Obama and Trump administrations had previously sought to punish ZTE, a huge company that makes phones and other products, for selling items to countries in violation of U.S. sanctions. A number of lawmakers from both parties have also warned that ZTE’s close ties to the Chinese government could make it a cybersecurity threat against the United States.

[*\[Trump’s ZTE tweet sows confusion before trade talks with China\]*](#)

The company was found to have also lied about selling phones to Iran and North Korea. Trump’s Justice and Commerce departments enacted stiff penalties, which most thought could put the company out of business because it would be blocked from acquiring U.S. parts.

Some senior Chinese officials were enraged and have urged Trump to reverse decisions made by Commerce Secretary Wilbur Ross and others. Trump on Sunday, in a Twitter post that shocked many of his advisers, said he had intervened to help ZTE and protect Chinese jobs.

U.S. officials are now discussing a package of changes that would relax penalties on ZTE in exchange for China easing tariffs on U.S. agricultural products, though talks remain very fluid. Negotiations are continuing this week in Washington as China’s vice premier, Liu He, is visiting with senior White House officials.

Democrats and some Republicans have accused Trump of grasping for any leverage he might be able to find in the trade talks with China.

“America’s national security must not be used as a bargaining chip in trade negotiations,” the Democratic senators wrote. “Offering to trade American sanctions enforcement to promote jobs in China is plainly a bad deal for American workers and for the security of all Americans. Bargaining away law enforcement power over bad actors such as ZTE undermines the historically sharp distinction between sanctions and export control enforcement and routine trade decisions made by the U.S.”

The U.S. government had previously fined ZTE \$1.2 billion, and the Commerce Department last month slapped it with a “denial of export privileges,” a move that could have effectively put it out of business because it meant U.S. companies could not sell any products to ZTE.

“ZTE misled the Department of Commerce. Instead of reprimanding ZTE staff and senior management, ZTE rewarded them. This egregious behavior cannot be ignored,” Ross said last month.

Trump is working to force Beijing to allow more U.S. imports into China, and he has threatened to impose tariffs on steel and aluminum if major concessions aren’t made. In their letter on Tuesday, the Senate Democrats told Trump he shouldn’t start out by cutting the Chinese government breaks related to ZTE.

“America’s policies toward China should put American workers, farmers and businesses first, not China’s,” they wrote in the letter.

On Monday, one day after Trump said in a Twitter post that he had instructed Ross to help the company, Ross said he was evaluating ZTE’s penalties but that his decision would

not be linked to any trade discussions. Trump seemed to overrule that a few hours later in another Twitter post.



Trump met with Republican senators Tuesday during a closed-door lunch. ZTE was not discussed, several senators said.

Erica Werner contributed to this report.

75 Comments

Damian Paletta is White House economic policy reporter for The Washington Post. Before joining The Post, he covered the White House for the Wall Street Journal. Follow @damianpaletta

Exhibit 21

EMOLUMENTS?

Stephen Colbert Calls Out Trump for ‘Taking Bribes’ From China

MARLOW STERN

05.16.18 12:35 AM ET



SCOTT KOWALCHYK/CBS

This week, President Trump sent out a tweet that left many in the intelligence community—and beyond—scratching their heads:



The president’s desire to ease U.S. sanctions against ZTE seemed strange given not only his consistent anti-China rhetoric (and “*Make America Great Again*” motto), but also how, just

last month, the Trump administration banned the Chinese telecom giant after “accusing it of violating a deal in which it agreed to pay \$1.2 billion for evading U.S. sanctions on North Korea and Iran,” reported CNN.

If that weren’t enough, during a Senate Intelligence hearing in February, six top U.S. intelligence chiefs—including the heads of the CIA, FBI, and NSA—spoke out against ZTE, with FBI Director Christopher Wray testifying, “We’re deeply concerned about the risks of allowing any company or entity that is beholden to foreign governments that don’t share our values to gain positions of power inside our telecommunications networks.” He added, “That provides the capacity to exert pressure or control over our telecommunications infrastructure. It provides the capacity to maliciously modify or steal information. And it provides the capacity to conduct undetected espionage.”

So, before welcoming Deadpool onto the program on Tuesday, *The Late Show* host Stephen Colbert addressed Trump’s curious about-face.



“I don’t understand why President Trump cares about leaks, because these days he’s not even trying to hide his dirt anymore,” offered Colbert, before reading Trump’s ZTE tweet.

“What? Jobs in China? That’s the exact opposite of everything he has ever said! What’s next, short ties?” added Colbert. “But now it all makes sense, because Trump tweeted out that announcement a mere 72 hours after the Chinese government agreed to put a half a billion dollars into an Indonesian project that would personally enrich... any guesses? Donald Trump.”

Yes, AFP broke the news that Trump sent that ZTE-deal tweet just 72 hours after “the developer of a theme park resort outside of Jakarta had signed a deal to receive as much as

\$500 million in Chinese government loans, as well as another \$500 million from Chinese banks... Trump’s family business, the Trump Organization, has a deal to license the Trump name to the resort, which includes a golf course and hotels.” Trump, for his part, has claimed to support the easing of sanctions against ZTE because the company outsources many of its parts from America.

RELATED IN ENTERTAINMENT

[Colbert Furious Trump Pulled Out of Iran Nuclear Deal](#)



[Deadpool Crashes ‘Colbert,’ Roasts Trump Over Pee Tape](#)



[Colbert: Trump Went ‘Full Middle-School Girl’ on His Doctor](#)



“He’s not even trying to be subtle,” said Colbert, before imitating the president. “*Meet me outside the parking garage in broad daylight, I’ll be the one shouting, I’m taking bribes over here!* It is shocking. It turns out the Trump Organization is getting money from the developer of a theme park resort outside of Jakarta who has a deal to license the Trump name to the resort. Why would you want Trump’s name on your theme park? Is the theme ‘bankruptcy?’”

He continued: “I gotta say, a Trump theme park does open a lot of ride possibilities, including: Splash Mattress, Big Stormy Mountin’ Railroad, The Hall of President, and Mr. Pence’s Mild Ride.”

Marlow Stern		

Got a tip? Send it to The Daily Beast [here](#).

Exhibit 22

BEST OF LATE NIGHT

Stephen Colbert Sees an Ulterior Motive in Trump's Support of ZTE



Stephen Colbert got a visit from Ryan Reynolds, suited up as Deadpool, who delivered some of the night's best political jokes. CBS

By **Giovanni Russonello**

May 16, 2018



Welcome to Best of Late Night, a rundown of the previous night's highlights that lets you sleep — and lets us get paid to watch comedy. If you're interested in hearing from The Times regularly about great TV, [sign up for our Watching newsletter](#) and get recommendations straight to your inbox.

'He's Not Even Trying to Be Subtle'

Stephen Colbert is taking President Trump to task over his support of a Chinese telecom, ZTE. As new information trickles in, Colbert has said that he's starting to get even more suspicious.

On Monday, he [went after](#) Trump for saying in a tweet that he would work with the Chinese government to help ZTE — a reversal that has [puzzled policy experts](#). Colbert returned to the topic on Tuesday

with new information: It turns out Trump’s tweet arrived just three days after the Chinese government agreed to invest half a billion dollars in a project involving a Trump-branded resort.

“He’s not even trying to be subtle! [Impersonating Trump] ‘Meet me outside the parking garage in broad daylight. I’ll be the one shouting, ‘I’m taking bribes over here!’” — *STEPHEN COLBERT*

Colbert joked that he couldn’t see why the resort — which also includes a theme park — would want to associate itself with Trump anyway.

“Why would you want Trump’s name on your theme park? Is your theme ‘bankruptcy?’” — *STEPHEN COLBERT*

Video by The Late Show With Stephen Colbert

Ryan Reynolds crashed Colbert’s monologue halfway through, decked out in the regalia of Deadpool, the superhero he plays in the new film “Deadpool 2.” He read off some of the night’s funniest political punchlines.

“The administration is still dealing with the fallout from Trump announcing that the U.S. will be pulling out of the Iran deal. It’s

Exhibit 23

PowerPost

Rubio, in challenge to Trump, suggests Congress will act against ZTE



Sen. Marco Rubio (R-Fla.) talks to reporters at the U.S. Capitol on May 22, 2018. (Chip Somodevilla/Getty Images)

By [Karoun Demirjian](#) [Email the author](#)

May 27

In a direct challenge to President Trump, Sen. Marco Rubio suggested Sunday that Congress would take steps to prevent the Chinese tech firm ZTE from being able to operate in the United States.

Trump had announced last week that he would allow the telecom giant to "reopen," in a stunning reversal after the United States had imposed [crippling penalties](#) on the company for sanctions violations.

In an appearance on CBS News's "Face the Nation," Rubio (R-Fla.) said there is "a growing commitment in Congress to

do something about what China is trying to do to the United States” and that “one of the things that Congress will do is . . . not even allow Chinese telecom companies to operate in the United States.”

“None of these companies should be operating in this country,” he said, also naming the Chinese telecom firm Huawei. “None of them.”

[Trump says he'll spare telecom firm ZTE from collapse, defying lawmakers]

Rubio has been a leader of the congressional charge against Trump's plans to ease the restrictions on ZTE that were imposed after it broke U.S. sanctions by selling products to Iran and North Korea. As part of a deal reached last week with ZTE, the firm would be required to buy American-made parts and pay a \$1.3 billion fine.

But lawmakers like Rubio remain unconvinced that the terms will do anything to keep China from using companies like ZTE to target U.S. national and corporate security.

“They are used for espionage . . . whether it's routers or anything else, they embed stuff in there that could be used to spy against us, not just for national security,” Rubio said. “To do it through a business deal, they steal it from you.”

[How Trump's ZTE deal could undercut his foreign policy]

The senator did not go into specifics about what kind of legislative measure Congress might pursue to block the president. The annual defense authorization bills being considered in Congress already contain a prohibition on the federal government using Huawei and ZTE products. Rubio has also proposed legislation that would do the same, as well

as ban sales of intellectual property and “national security sensitive technology” to China.

But on Sunday, the senator seemed to suggest that Congress should go even further. He guessed that there would be ample support among lawmakers to overcome any potential veto from the president.

“I believe it’ll have a supermajority,” Rubio said. “I think most members of Congress have come to understand the threat China poses.”

[Read more at PowerPost](#)

858 Comments

Karoun Demirjian is a congressional reporter covering national security, including defense, foreign policy, intelligence and matters concerning the judiciary. She was previously a correspondent based in The Post's bureau in Moscow.
Follow @karoun

Exhibit 24

The New York Times

Ivanka Trump Wins China Trademarks, Then Her Father Vows to Save ZTE

By Sui-Lee Wee

May 28, 2018

BEIJING — China this month awarded Ivanka Trump seven new trademarks across a broad collection of businesses, including books, housewares and cushions.

At around the same time, President Trump vowed to find a way to prevent a major Chinese telecommunications company from going bust, even though the company has a history of violating American limits on doing business with countries like Iran and North Korea.

Coincidence? Well, probably.

Still, the remarkable timing is raising familiar questions about the Trump family's businesses and its patriarch's status as commander in chief. Even as Mr. Trump contends with Beijing on issues like security and trade, his family and the company that bears his name are trying to make money off their brand in China's flush and potentially promising market.

The most recent slew of trademarks appear to have been granted along the same timeline as Ms. Trump's previous requests, experts said. But more broadly, they said, Ms. Trump's growing portfolio of trademarks in China and the family's business interests there raises questions about whether Chinese officials are giving the Trump family extra consideration that they otherwise might not get.

These critics say the foreign governments that do business with Ms. Trump know they are dealing with the president's daughter — a person who also works in the White House.

“Some countries will no doubt see this as a way to curry favor with President Trump,” wrote Fred Wertheimer, president of Democracy 21, and Norman Eisen, chairman of Citizens for Responsibility and Ethics in Washington, two nonprofit watchdog groups. Mr. Eisen's group reported on the trademarks on Saturday.

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“Other countries may see the business requests made by his daughter’s company as requests they cannot refuse.”

Ms. Trump’s representatives have said that there is nothing improper about Ms. Trump’s trademarks and that they prevent individuals from profiting off her name.

Abigail Klem, president of the Ivanka Trump brand, said in a statement on Monday that the brand’s protection of trademarks was “in the normal course of business,” especially in countries where trademark infringement was rampant.

“We have recently seen a surge in trademark filings by unrelated third parties trying to capitalize on the name,” Ms. Klem said, “and it is our responsibility to diligently protect our trademark.”

Chinese trademark officials didn’t respond to a request for comment on Monday.

Mr. Trump said in a surprise announcement on May 13 that he was working with China’s president, Xi Jinping, to save jobs at the Chinese telecommunications company, ZTE. The company was left paralyzed after American officials forbade companies in the United States from selling their chips, software and other goods to ZTE for violating trade controls. Mr. Trump’s announcement was widely seen as a potential peace offering to Beijing as the United States and China threatened each other with tariffs on hundreds of billions of dollars worth of trade.

Just before and after that announcement, Ms. Trump won some long-sought trademarks covering her name in China.

Six days before the ZTE announcement, China said it approved five of Ms. Trump’s trademarks, according to data from China’s trademark office. Then, on May 21, China awarded Ms. Trump two more trademarks in snacks, spices and bleaching preparations. In total, Ms. Trump now has 34 trademarks in China that would allow her to capitalize on her brand in the world’s second-largest economy.

Experts said the timing appeared to be a coincidence, given how quickly Ms. Trump won her previous trademark requests from the Chinese authorities, though they differed on whether she appeared to receive special treatment.

Ms. Trump applied for six of the trademarks in March 2017. She applied for the seventh even earlier, in May 2016. China’s trademark office usually takes up to 18 months to approve trademarks, said Charles Feng, head of the intellectual property division at the law firm East & Concord Partners.

“From application to registration, this is very fast,” he said.

Laura Young, a trademark lawyer at Wang & Wang, said she did not see anything unusual about the timing. She pointed out that under Chinese law, the trademark office should complete its examination of a filing within nine months, and that some of her clients get decisions within a year.

Still, Ms. Trump's fame is likely to have helped her with the trademark approval process in China, according to Ms. Young. The president's daughter has a large following in China, where she is lauded by many for her appearance and wealth. Videos of Ms. Trump's daughter, Arabella, singing Chinese songs have gone viral.

"When a person is famous, and the examiners say: 'Oh, I've heard of this person,' it can be decided more quickly than if the examiner is not sure and has to consult others or go to a committee," Ms. Young said.

Mr. Trump himself has more than 100 trademarks in China. Several United States senators have criticized these trademarks, warning it could be a breach of the United States Constitution and that foreign governments could use Mr. Trump's trademarks to influence foreign policy decisions. Mr. Trump has said he has handed over control of his business to his two adult sons. The Trump Organization has said it has been actively enforcing its intellectual property rights in China for more than a decade to protect its brand from infringers.

China's infamous "trademark squatters" — people who register the names of famous brands and people and "squat" on them in the hopes that they can cash in on it — have flocked to the Trump brand. According to Mr. Feng, there are more than 10 Ivanka trademarks registered by parties not related to Ms. Trump.

Some of these include a company in the southern city of Foshan, which has registered "Yiwanka," the Chinese translation of Ivanka, for sanitary pads and tampons. The Nanjing Good Daughter Wine Company, an alcohol maker, has registered Ivanka Trump in English and Chinese.

The trademarks are not the only Trump-related deal that took place around the time of Mr. Trump's pledge to save ZTE.

On May 15, an Indonesian company called MNC Group, which is partnering with the Trump Organization to build a six-star hotel and golf course in Indonesia, said it had struck a deal with an arm of the Metallurgical Corporation of China, a state-owned construction company, to build a theme park next door to the planned Trump properties. MNC has said that the hotel and the theme park are separate projects within the same development.

Elsie Chen contributed research.

A version of this article appears in print on May 28, 2018, on Page B3 of the New York edition with the headline: Doing Business With the First Family

Exhibit 25

Trump's fluid approach to national and economic security is leaving his allies baffled



A ZTE office in Beijing, seen May 8. President Trump on Friday announced on Twitter that he was allowing ZTE to “reopen” in return for management changes, payment of a \$1.3 billion fine and a promise to buy American parts. (Ng Han Guan/Associated Press)

By **David J. Lynch** and **Damian Paletta** [Email the author](#)

May 28

President Trump is merging his national security and trade goals in a blur of tactical improvisation that risks alienating U.S. allies and opening American businesses to costly retaliation, according to several Republican lawmakers, business executives and former U.S. officials.

The president last week initiated a Commerce Department investigation that could lead to [tariffs of up to 25 percent on foreign cars](#), arguing that a flood of imports had eroded the

nation's manufacturing base and threatened the nation's security.

The potential auto tariffs — which would hit Mexico, Canada, Japan and Germany hardest — are the latest sign of the president's fluid approach to national and economic security that has left allies and adversaries baffled over U.S. intentions, according to foreign diplomats.

The proposal has irritated close allies such as Germany and Britain while inviting demands for similar protection from an ever-expanding list of U.S. industries.

The president holds an expansive view of national security, describing imported products like steel or passenger sedans as worrisome threats to the United States. Yet he also engages in freewheeling bargaining that treats vital strategic considerations as the equivalent of commercial factors, leaving negotiating partners unsure of his true priorities.

“Past presidents generally tried to keep national security issues in one lane and trade policy in another lane,” said Peter Harrell, a former official in the State Department's bureau of economic and business affairs. “Trump is just [more willing to make trade-offs](#) between the two.”

Germany Foreign Minister Heiko Maas criticized U.S. threats of new tariffs on the auto industry May 29, saying, "German cars make American roads more secure."(Reuters)

The auto tariffs are the second time in less than three months that the president has cited national security as a justification for protectionism. [Yet his recent call for leniency for ZTE](#), a Chinese telecom company crippled by its punishment for violating U.S. sanctions on Iran and North Korea, showed that he would bend on a genuine security threat, analysts said.

Chinese leaders had demanded an easing of ZTE's punishment in return for progress in trade talks that are scheduled to continue June 2 in Beijing with the arrival of Commerce Secretary Wilbur Ross.

On Friday, Trump [announced on Twitter](#) that he was allowing ZTE to "reopen" in return for management changes, payment of a \$1.3 billion fine and a promise to buy American parts. The reversal on U.S. policy toward a company that had equipped two avowed U.S. enemies prompted bipartisan opposition in Congress.

"The striking feature of Trump's use of national security is the inconsistent and haphazard use of the term, so as to render it meaningless," said George Magnus, an associate at Oxford University's China Center. "... What I see is Trump using national security as a blanket to obfuscate simple trade protectionism."

Given Trump's dealmaker persona, many analysts saw the proposed auto tariffs as a bargaining chip in talks aimed at a new North American trade deal. Higher import levies on

foreign cars could push Mexico to accept U.S. proposals to require more auto content from American factories, they said.

But the experience from an earlier round of tariffs on steel and aluminum has dulled the threat. The metals tariffs were also billed as an essential measure to cope with a national security threat, only for Trump days later to grant waivers affecting almost two-thirds of imported steel.

The autos proposal reflected Trump's "America First" philosophy, which cheers his supporters with promises to reclaim lost manufacturing jobs and represents a sharp break from the party's Reaganite orthodoxy on trade.

Administration officials contend that a flood of auto imports has crushed the U.S. manufacturing sector, leaving the United States unable to produce material needed for national defense.

"National security is broadly defined to include the economy, to include the impact on employment, to include a very big variety of things," Ross told CNBC on Thursday. "Economic security is military security. And without economic security, you can't have military security."

Ross said the low 2.5 percent tariff on automobiles entering the United States is a primary reason so many foreign cars are imported.

Trump's attempt to stretch a 1962 trade law — which permits higher tariffs when imports "threaten to impair the national security" — to cover routine sales of foreign-made cars drew strong opposition from within his own party.

“Raising taxes on Americans who choose to buy imported cars or trucks is a bad idea. Doing it under the false pretense of national security — Section 232 — is an even worse idea, as it invites retaliation and weakens our credibility on actual trade disputes,” said Sen. Patrick J. Toomey (R-Pa.).

Sen. Bob Corker of Tennessee, the Republican chairman of the Senate Foreign Relations Committee, called the proposal “dangerous and destabilizing” and said it should be withdrawn.

Republican allies in the business community also objected. “This isn’t about national security,” said Thomas Donohue, president of the U.S. Chamber of Commerce. “The administration has already signaled its true objective is to leverage this tariff threat in trade negotiations with Mexico, Canada, Japan, the European Union and South Korea.”

The opposition may have little practical effect, because Trump doesn’t need congressional approval. The authority to impose tariffs in the name of national security without congressional interference has made these Section 232 reviews a favorite tool for the Trump administration.

Even if the tariffs are challenged in court or at the World Trade Organization, that process can take months or years, providing ample short-term leverage to seek unrelated concessions from trading partners including the European Union, Mexico and Japan.

The autos proposal highlights two noteworthy aspects of Trump’s attempt to use national security concerns as a trade war weapon. He is threatening to hurt close U.S. allies as much, if not more so, as countries such as China. The United States imports roughly 98 percent of its cars from the countries Donohue cited.

The aggressive approach to trade risks alienating potential partners the United States will need in confronting Iran or North Korea. “In the process of damaging our economy, they’re alienating all our allies,” said Phil Levy, a former White House economist under George W. Bush.

Plus, if the United States uses national security as a rationale for protectionism, other countries are sure to follow suit. In 1975, Sweden cited a national security exemption under global trading rules to justify its imposition of limits on footwear imports, which it said posed “a critical threat” to defense planning.

The auto tariffs would mark a dramatic escalation in Trump’s war-against-all on trade. The United States last year imported \$335 billion in automobiles and auto parts, 11 times the value of total steel imports, according to the Commerce Department.

“This widens the trade war tenfold. It’s a major mistake,” said Rufus Yerxa, president of the National Foreign Trade Council, an association of multinational corporations.

Trump’s latest tariff bid would promote “retaliation against American-made products that will undermine manufacturing and jeopardize the jobs of manufacturing workers in the United States,” said Jay Timmons, chief executive of the National Association of Manufacturers.

“While US trading partners have been fairly measured in responding to the steel and aluminum tariffs, they will have no choice but to exhaust every option in opposing tariffs on autos,” John Veroneau, a trade official in the George W. Bush administration, wrote in an email. “Also, unlike steel and aluminum tariffs which hit US consumers indirectly, tariffs on cars will be right there on the window sticker.”

From the outset of his presidency, Trump's dealmaker mentality has been especially visible in his dealings with China. In April 2017, the president offered to go easy on China in trade talks in return for diplomatic help with North Korea, a striking contrast to his repeated campaign promises to put the needs of American workers first.

"I explained to the President of China that a trade deal with the U.S. will be far better for them if they solve the North Korean problem!" Trump tweeted.

Likewise, Trump's decision to direct the Commerce Department to review its order banning ZTE from buying U.S.-made parts for seven years, after the company violated the terms of its settlement of U.S. charges, [sparked an uprising among fellow Republicans](#) outraged at what they saw as cavalier treatment of a national security danger.

In 2017, ZTE pleaded guilty to charges related to illegally trading with Iran and North Korea and obstructing justice, was fined \$1.2 billion, and promised to punish several executives.

On Sunday, following Trump's announcement that he was softening ZTE's penalty, Sen. Marco Rubio (R-Fla.) predicted that Congress would pass by a veto-proof majority legislation prohibiting any Chinese telecom company from operating in the United States.

"It's not just ZTE. It's Huawei, all of them depend on the U.S. semiconductors," Rubio said on "Face the Nation" on CBS. "None of these companies should be operating in this country. None of them."

Dan DiMicco, former chief executive of the steel company Nucor and a former trade adviser to Trump during the 2016

campaign, said the Section 232 automotive review is one of several that the White House is planning in the coming months. Others, he said, are likely to include imports of semiconductors and technology related to artificial intelligence.

“The overall strategy is not going to happen overnight,” said DiMicco. “It’s being implemented. That’s what you see. You see all these moving parts because we have that many moving parts to deal with.”

3199 Comments

David J. Lynch is a staff writer on the financial desk who joined The Washington Post in November 2017 after working for the Financial Times, Bloomberg News and USA Today.

Follow @davidjlynch

Damian Paletta is White House economic policy reporter for The Washington Post. Before joining The Post, he covered the White House for the Wall Street Journal. Follow @damianpaletta

Exhibit 26

BUSINESS NEWS

MAY 28, 2018 / 6:42 AM / 2 DAYS AGO

U.S. and China clash over 'technology transfer' at WTO

Tom Miles



GENEVA (Reuters) - Chinese and U.S. envoys sparred at the World Trade Organization on Monday over U.S. President Donald Trump's claims that China steals American ideas, the subject of two lawsuits and a White House plan to slap huge punitive tariffs on Chinese goods.



FILE PHOTO: U.S. President Donald Trump and China's President Xi Jinping shake hands after making joint statements at the Great Hall of the People in Beijing, China, November 9, 2017. REUTERS/Damir Sagolj/File Photo

U.S. Ambassador Dennis Shea said “forced technology transfer” was often an unwritten rule for companies trying to access China’s

burgeoning marketplace, especially if they were partnering with a state-owned or state-directed Chinese firm.

China's licensing and administrative rules forced foreign firms to share technology if they wanted to do business, while government officials could exploit vague investment rules to impose technology transfer requirements, he said.

"This is not the rule of law. In fact, it is China's laws themselves that enable this coercion," Shea told the WTO's dispute settlement body, according to a copy of his remarks provided to Reuters.

"Fundamentally, China has made the decision to engage in a systematic, state-directed, and non-market pursuit of other (WTO) members' cutting-edge technology in service of China's industrial policy."

It was a lose-lose proposition for foreign investors, he said, and not just Americans. All countries would see their competitiveness eroded if China's policies were left unchecked.

China flatly rejected the criticism, which has spawned WTO disputes from both sides and a \$50 billion tariff threat from Trump.

"There is no forced technology transfer in China," China's Ambassador Zhang Xiangchen told the meeting, adding that the U.S. argument involved a "presumption of guilt".

"But the fact is, nothing in these regulatory measures requires technology transfer from foreign companies."

The U.S. Trade Representative's office had failed to produce a single piece of evidence, and some of its claims were "pure speculation", he

said, adding that the USTR saw Chinese M&A activity as a Chinese government conspiracy.

“DILIGENCE AND ENTREPRENEURSHIP”

Technology transfer was a normal commercial activity that benefited the United States most of all, he said, while Chinese innovation was driven by “the diligence and entrepreneurship of the Chinese people, investment in education and research, and efforts to improve the protection of intellectual property.”

Legal experts say Washington needs WTO backing to implement its tariffs as far as they relate to WTO rules, while China has rejected the tariff plan wholesale and resorted to WTO action to stop it.

Under WTO rules, if disputes are not settled amicably after 60 days, the complainant can ask for a panel of experts to adjudicate, escalating the dispute and triggering a legal case that takes years to settle.

The United States, which launched its complaint on March 23, could have used the dispute meeting on Monday to take that step. China could do so at next month’s meeting.

But since the dispute erupted, U.S.-China trade policy has been the subject of high-level bilateral talks.

Last week Trump tweeted cryptically that “our trade deal with China is moving along nicely” but said it probably needed a “different structure”.

Reporting by Tom Miles; Editing by Gareth Jones and Tom Brown

Our Standards: [The Thomson Reuters Trust Principles.](#)

Exhibit 27

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<https://www.wsj.com/articles/are-huawei-and-zte-a-real-cybersecurity-threat-1527611521>

JOURNAL REPORTS: LEADERSHIP

Are Huawei and ZTE a Real Cybersecurity Threat?

Cybersecurity experts say the U.S. has some reason to worry



A manufacturer could easily disable telecom equipment that it made, but using the equipment to spy would be difficult.

ILLUSTRATION: JOHN WEBER FOR THE WALL STREET JOURNAL

By *Stu Woo*

Updated May 29, 2018 10:40 p.m. ET

The U.S. government’s remarkable campaign against Huawei Technologies Co. and ZTE Corp. , which has involved a series of actions aimed at limiting the Chinese manufacturers’ business in the U.S. and elsewhere, is rooted in a cybersecurity fear.

Huawei and ZTE are the world’s No. 1 and No. 4 makers of telecommunications equipment, such as the cellular-tower electronics that wireless carriers need. Washington worries that the Chinese government could order the companies to tap the products they make to spy, disable communications or launch other cyberattacks. Among other steps, the Trump administration has banned U.S. suppliers from selling components to ZTE, a move that could shut down the company, though U.S. and Chinese officials are negotiating a reprieve for ZTE.

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MORE IN CYBERSECURITY

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- The Paper Ballot Makes a Comeback

Huawei and ZTE say the concerns about them are unfounded. But is the threat real?

Telecommunications cybersecurity experts say yes—with caveats. A manufacturer could easily disable telecom equipment that it made, but using the equipment to spy would be difficult. And any incursion would be quickly detected and would work only once.

How systems work

To better understand the risks, and their limitations, first consider how mobile-phone calls work. Suppose someone in Seattle uses a cellphone to call someone in Miami. After the

caller dials, the phone connects to a nearby cellular tower. That tower is connected to wires, which are connected to a giant network of wires across America that zap the call to a cellular tower near the person in Miami. Then the tower will beam the call to that person's phone.

Huawei and ZTE, along with Finland's Nokia Corp. [NOK 0.17%▲](#) and Sweden's Ericsson [ERIC 0.69%▲](#) AB, are four major manufacturers of cellular-tower equipment. Typically, antennas on the tower are connected by wires to electronics in a shed at the tower's base. Those electronics are basically computers with complex software that zap a call (or Google search or whatever people do on their mobile phones that use the internet) to the correct destination.

Not only do the electronics run on software with possibly millions of lines of code, but it is frequently updated by the manufacturer remotely, experts say. That makes it nearly impossible for a wireless carrier or a government to detect whether there is a "back door" that could allow the manufacturer to remotely switch off a tower's electronics, or send data to somewhere it shouldn't go.

"When you're dealing with millions of lines of code, there's always going to be a vulnerability," says Darien Huss, a researcher at Sunnyvale, Calif.-based cybersecurity firm Proofpoint Inc. "A piece of code could look legitimate, but it could be a back door. There are a lot of ways to hide it."

Inserting a back door that would allow a manufacturer to remotely shut off cellular-tower electronics, or all the related equipment, would be easy—and potentially devastating. Studies show it takes about five days to recover from an infrastructure cyberattack, says Simon Church, a general manager at Denver-based cybersecurity firm Optiv Security Inc. and a former security executive at Vodafone Group PLC, the British-based wireless carrier.

"The doomsday scenario is turning off network communications," Mr. Church says. "You turn off traffic lights—that's five days. You turn off the subway system—that's five days."

It would be much more difficult for a telecom-equipment manufacturer to spy. Most wireless carriers use sophisticated software that can automatically detect anomalous behavior, such as equipment that sends data to unexpected places. In addition, some organizations, such as the U.S. military, heavily encrypt their communications, so anyone who intercepts that data might find it indecipherable anyway.

Insider needed

"Getting data would be nearly impossible without a cooperating insider," says David Mihelcic, a former Defense Department cybersecurity expert who is now federal chief technology and strategy officer for Juniper Networks Inc., which is based in Sunnyvale, Calif., and competes with Huawei and ZTE in the telecom-equipment market.

Given the sophisticated monitoring systems that wireless carriers and internet providers use, any cyberattack from a manufacturer that involves shutting down electronics or spying would be quickly detected, Mr. Mihelcic says. A wireless carrier could then patch the software on the equipment, to remove the back door. "Those are one-time weapons, and there would be political fallout, and maybe military fallout," he says.

In addition to telecom equipment, Washington also fears that Huawei and ZTE, which are also major smartphone manufacturers, could spy using those devices. That was the rationale behind the Pentagon ordering retail stores on military bases to stop selling Huawei and ZTE phones to troops who wanted to use them as personal phones. U.S. military leaders worried that smartphone manufacturers could, for example, track soldiers and decipher base operations, or see when soldiers attend off-base gatherings, according to people familiar with the matter.

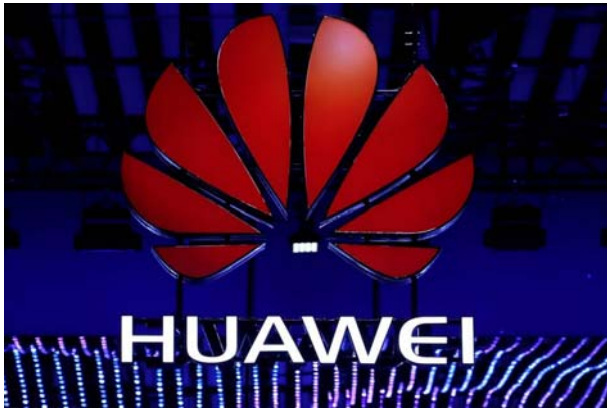


PHOTO: YVES HERMAN/REUTERS

Tapping into a smartphone is easier than infiltrating telecom equipment, which is in a secured and closed environment, experts say. Smartphone manufacturers own and frequently update the core software on their devices. “Could they have the capability that’s tapping into a call or recording a call?” says Kevin Riley, chief technology officer of Ribbon Communications Inc., a telecommunications-focused cybersecurity firm based in

Westford, Mass. “Absolutely. They own that software.”

Evading detection

While a wireless carrier could easily detect whether a smartphone manufacturer is tapping every call and sending data to somewhere it shouldn’t go, it would be much harder to detect if the manufacturer only occasionally tapped a call, Mr. Riley says.

The other cybersecurity threat that mobile phones present is their manufacturer could turn them into weapons that could cripple a cellular network.

As Mr. Riley says, “You can weaponize a handset and turn it into a bot that generates a lot of traffic, so the cellular-tower equipment becomes massively congested.”

Mr. Woo is a reporter for The Wall Street Journal in London. He can be reached at stu.woo@wsj.com.

Appeared in the May 30, 2018, print edition as ‘Are Huawei and ZTE a Real Threat?’

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- College Rankings
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Exhibit 28

THE WALL STREET JOURNAL.

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<https://blogs.wsj.com/riskandcompliance/2018/05/29/corruption-currents-ivanka-trump-receives-trademarks-days-before-zte-move/>

RISK & COMPLIANCE JOURNAL.

Corruption Currents: Ivanka Trump Receives Trademarks Days Before ZTE Move

By *Samuel Rubinfeld*

May 29, 2018 2:37 pm ET

White House senior adviser Ivanka Trump, right, attends the opening ceremony of the new U.S. embassy in Jerusalem on May 14. PHOTO: ILIA YEFIMOVICH/ZUMA PRESS

A daily roundup of corruption news from across the Web. We also provide a daily roundup of important risk & compliance stories via our daily newsletter, The Morning Risk Report, which readers can sign up for here. Follow us on Twitter at @WSJRisk.

Bribery:

Spanish opposition parties are moving to hold a no-confidence vote against the premier following a bribery scandal. (Politico, euronews, DW, AFP)

A former president of a Chinese insurer was imprisoned for taking bribes. (Reuters, Xinhua)

Israel's government is debating a bill curbing the ability of prosecutors to appeal court rulings; it received swift opposition from minority parties. (TOI, Hamodia)

A Korean judge is set to rule on whether the former president can avoid attending his bribery trial unless he is due to testify. (KT, KH)

European firms are cracking down on bribery. (Economist)

Myanmar's upper house passed anti-bribery reforms. (Irawaddy)

A key witness in the FIFA corruption scandal has died. (ITG, Reuters)

A prison guard accused of taking bribes from a Turkish businessman pleaded not guilty. (AP)

Local cases: The founder of a hedge fund pleaded guilty in a bribery case involving a New York City corrections union chief. India suspended a ministry official for allegedly taking bribes in exchange for offering visas to Pakistani immigrants. The article contained no comment from the man. A former Maryland liquor board member was sentenced to prison for bribery. Judicial bribery continues to be a problem in Kenya. (Forward, Newsday, NYDN, Express, WP, Nation)

Cybercrime:

A hacker who carried out attacks on a string of companies before selling customers' data on the dark web was sent to prison for more than 10 years. (Guardian)

Complaints were filed against a number of tech companies for GDPR violations within hours of the law coming into force. Canadian firms are only learning now that they must comply. (BBC, WP, BBC, CBC)

U.S. tech companies under proposed legislation would be forced to disclose if they allowed foreign countries to examine the inner workings of their software. (Reuters)

About \$1.2 billion in cryptocurrency has been stolen since 2017, according to a cybercrime group. (Reuters)

Money Laundering:

Criminal funds were used to establish a Maltese bank, according to court filings in the U.S. in a sanctions-violations case involving the bank's former chairman. Separately, a Maltese lawmaker wrote to Dubai regulators asking for a probe into a local company. (ToM, FT, ToM)

Canadian regulators are looking at ways to lighten the regulatory load for smaller firms. (GM)

Indian authorities are set to seize assets from a jewelry magnate whom they charged with money laundering linked to a bank fraud. (PTI, BQ, PTI)

Latvian regulators fined a bank for money-laundering compliance failures. The bank agreed to beef up its compliance program. (Reuters, RB, LSM)

Are the Crown Dependencies next up in the U.K. money-laundering crackdown? How did the U.K. become a repository for dirty Russian money? (JEP, II, JEP, Guardian)

A Nigerian judge ended the defense portion of a money-laundering trial. Defendants in another case got bail. (Nation, Independent)

The U.S. gold company at the center of a gold racket was sentenced. (MH)

A rabbi pleaded not guilty and was ordered held as he faces charges of laundering \$1 million bound for the school he founded for special-needs students. (APP)

PEPWatch: The husband of an Albanian prosecutor was allegedly involved in a money-laundering scheme. The article didn't contain a response from the man. (Exit)

Sanctions:

President Donald Trump's move to help ZTE Corp. came days after China approved trademarks for his daughter's business. The U.S. had reached a deal to keep ZTE in business, the White House said late last week. Over the weekend, lawmakers reiterated their intention to block any agreement. (AP, ThinkProgress, Politico, NYT, Reuters, WSJ, WP, Splinter)

The U.S. exit from the Iran deal will affect global oil production, according to Rosneft. Tehran wants Europe to speed up its efforts to save the nuclear deal. Meanwhile, India won't comply with U.S. sanctions on Iran. (Axios, Reuters, Reuters, NPR, Reuters, AM)

U.S. lawmakers approved sanctions on Myanmar. (Irawaddy)

Hezbollah wants Lebanon to reject recent rounds of U.S. sanctions. (AP)

Whistleblowers:

Calls to Morocco's new anti-graft hotline led to a second arrest. (MWN)

General Anti-Corruption:

Malaysian police seized millions in cash from the former premier as they questioned him again in a corruption probe. He has denied wrongdoing. Police also spoke to a whistleblower. (Reuters, Bloomberg, OCCRP, NST, AP, Reuters)

South Africa's president launched a corruption probe into graft in local governments. (Xinhua, enca, TL, BL)

The U.S. special counsel's probe continues amid reports about who will flip on whom. A federal judge refused to toss charges filed by the special counsel against Paul Manafort. (NY, Reuters, Haaretz, Politico, AP, RFE/RL, Reuters)

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Exhibit 29

Ivanka Trump's China trademarks don't look or smell good



Ivanka Trump. (Saul Loeb/AFP/Getty Images)



By **Kathleen Parker** Opinion writer [Email the author](#)
May 29

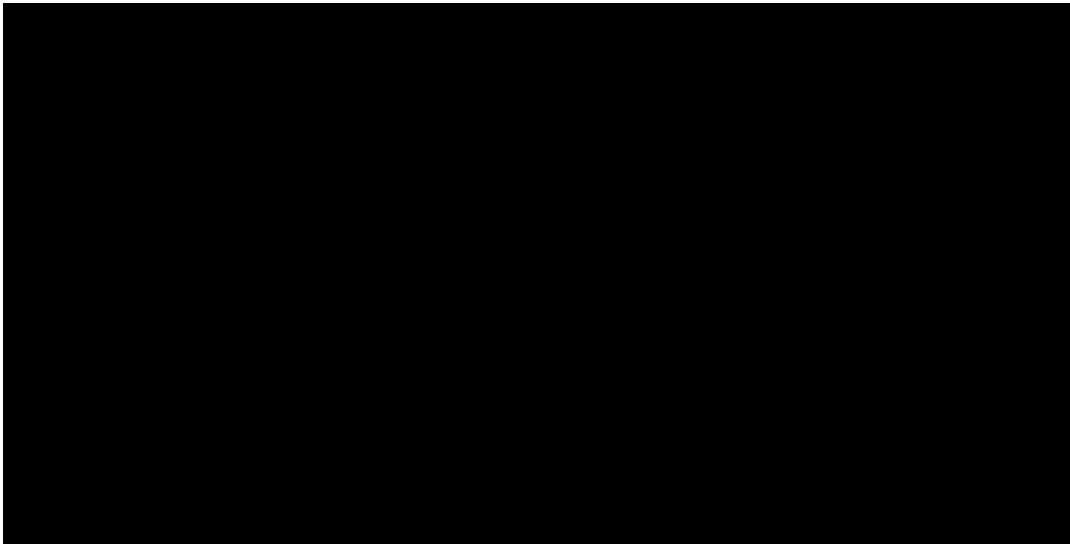
Of course, I'm jealous of [Ivanka Trump](#) — because any criticism of another woman has to be jealousy, according to the letters I shall receive. In the following order, I want her wardrobe, hair, makeup, private transportation and height (5-foot-11) — and all of her [trademarks in China](#).

Confession accomplished, let's move on to [emoluments](#), as in the constitutional clause forbidding gifts, titles and what-have-you from foreign nations to officeholders and appointees within the executive and legislative branches of government.

President Trump's elder daughter, Ivanka, who happens to be his close adviser on economic empowerment and entrepreneurship, among other things, also has secured [13 new trademarks](#) in China — right about [the same time](#) her father discovered a fresh passion for China's economic well-being.

That's right, "Make China Great Again," no American president has ever said. But recently, Trump apparently was knocked off his golf cart on the path to the ninth hole and had a revelation: He must [save ZTE!](#)

ZTE, as you may know, is a gargantuan Chinese telecommunications equipment and systems company that, heretofore, had been considered ground zero for [crimes](#) against the United States. It has sold products to Iran and North Korea in defiance of U.S. sanctions law.



President Trump tweeted on May 13 that he has asked the Commerce Department to help Chinese technology company ZTE Corp 'get back into business, fast.' (Reuters)

You see the dots: tariff tensions with China, the off-again-on-again [summit](#) with North Korea's Kim Jong Un. It's

complicated, if you're not in the art-of-the-deal business. If you are, this is all part of a Trumpian vision for which he began laying the groundwork in April 2017.

You'll recall with appropriate layers of gauziness Trump's most-pleasant [dinner](#) with Chinese President Xi Jinping at Mar-a-Lago. The two [ate dessert](#) while Syria burned, thanks to [Tomahawk strikes](#) Trump had just ordered. It must be a special sort of something for a man like Trump to savor what he later called the "most beautiful piece of chocolate cake that you've ever seen" and privately relish the knowledge that your missiles are delivering a fiery hell upon a cruel enemy.

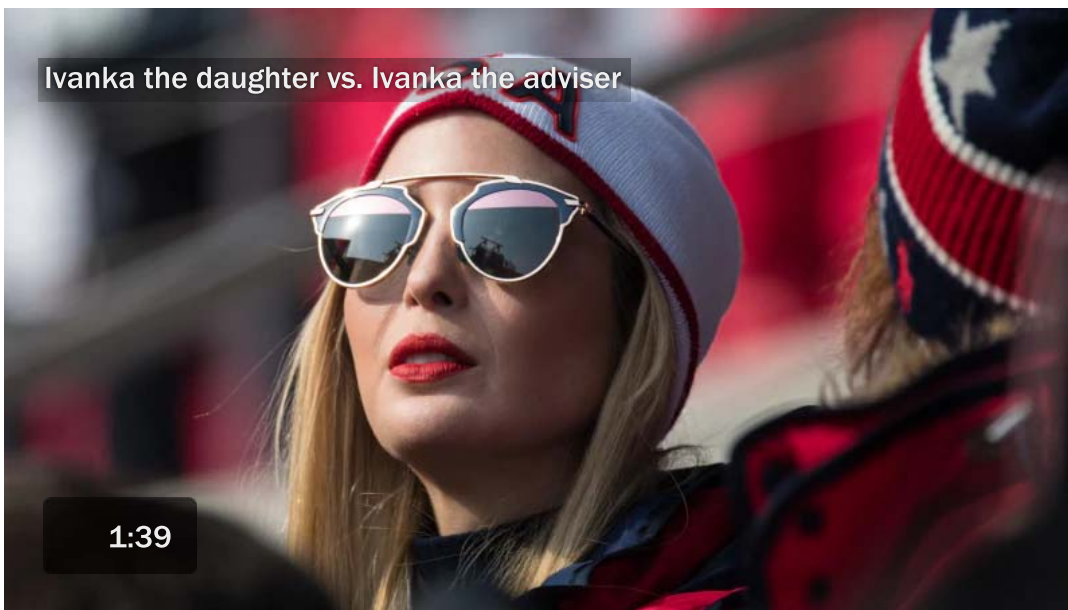
Although Xi gamely said he understood Trump's decision to bomb Syria given Bashar al-Assad's gassing of children, one wonders what he later thought about being placed on the stage of Trump's strange little theater.

To be clear, Ivanka Trump [no longer manages](#) her company, which she placed in a family-run trust while she serves in the White House. But she still enjoys profits, and "Ivanka Trump" is expanding during what amounts to a worldwide advertising campaign — at taxpayer expense.

Delayed gratification, hardship though it may be for a Trump, seems hardly a defensible exemption from the emoluments clause, which [reads](#): "No Person holding any Office of Profit or Trust under them [the United States], shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State." An emolument is defined by Merriam-Webster as "the returns arising from office or employment usually in the form of compensation or perquisites."

This seems clear enough. Congress is having none of it. Both Republicans and Democrats have expressed varying degrees of outrage, notably Sens. Mark R. Warner (D-Va.) and Marco Rubio (R-Fla.). But others, who represent the unshakable Republican base, would give Ivanka a fiefdom, if that would make her and her daddy happy. Indeed, Ivanka's company has acquired or has [trademarks pending](#) in Saudi Arabia, Mexico, India, Israel, Turkey and the Philippines.

Whatever is going on, it doesn't look or smell good. Either you're the president's daughter, confidante and adviser — or you're a businesswoman building an international brand. You can't — and shouldn't — be both at the same time.



Ivanka Trump is in the unique position of being both the president's daughter and an official White House adviser. Here's how she's handled it so far.

(Patrick Martin/The Washington Post)

Few in Washington ever doubted Trump's run for president was a joyride to buff his brand and image. When he won, shocking everyone and himself, Trump must have seen his bloodline's branding future. Even he must have been surprised, however, at how easily his people accepted the

oligarchy he was creating. As brands go, the United States of Trump wasn't bad. Not bad at all.

Read more from [Kathleen Parker's archive](#), [follow her on Twitter](#) or [find her on Facebook](#).

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[Molly Roberts: Give up the act, Ivanka](#)

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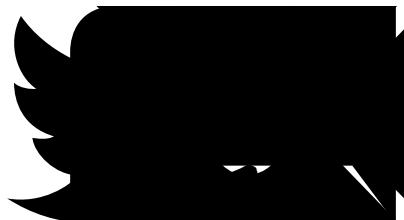
Kathleen Parker writes a twice-weekly column on politics and culture. She received the Pulitzer Prize for Commentary in 2010. Follow @kathleenparker

Exhibit 30

Sen. Mark Warner says Trump's ZTE deal is a mistake

The top Democrat on the Senate intelligence committee says ZTE and other Chinese tech companies "pose a national security risk."

BY MARGUERITE REARDON, RICHARD NIEVAMAY 30, 2018 10:53 AM PDT



Senator Mark Warner of Virginia warns that Chinese tech companies like ZTE should not be trusted.

Pete Marovich / Getty Images

Sen. Mark Warner of Virginia said President Donald Trump should keep Chinese telecom gear maker ZTE out of negotiations on trade with the Chinese government.

Speaking at the Recode's Code Conference on Wednesday, the top Democrat on the Senate's intelligence committee criticized the Trump administration's tentative deal to ease sanctions with the Chinese tech company.

"If we have all the Obama administration people, and the Trump administration people, saying ZTE and Huawei pose a national security risk, we ought to listen to them," he said.

Warner added that Trump should not use the situation with ZTE as a bargaining chip to negotiate trade with the Chinese government.

Six weeks ago, the US Commerce Department banned ZTE, the fourth-largest smartphone maker in the US, from buying crucial parts from American companies after it was determined that the company violated terms of a 2017 deal in which it admitted it had violated sanctions on Iran and North Korea. The ban forced ZTE to shut down its "major operating activities."

But earlier this month, Trump made ZTE a critical part of a broader discussions regarding an impending trade war between China and the US, the two largest economies in the world. Trump said in a surprise tweet that he wanted to help ZTE find "a way to get back into business, fast."

Last week, the Trump administration reportedly struck a tentative deal with the company by imposing alternative punishments. But several members of Congress, including Warner, have pushed back.

Warner has said allowing ZTE to skirt sanctions without consequence is dangerous to national security. During the Code Conference, he said that Chinese tech companies, such as Alibaba and ZTE "are deeply penetrated by the Chinese government," and that US officials should heed warnings from the intelligence community when dealing with them.

Warner is not alone in his wariness of lifting sanctions on the company. Last week, the House Appropriations Committee unanimously approved an amendment to a bill that would uphold sanctions against ZTE, rejecting Trump's defense of the embattled Chinese phone maker.

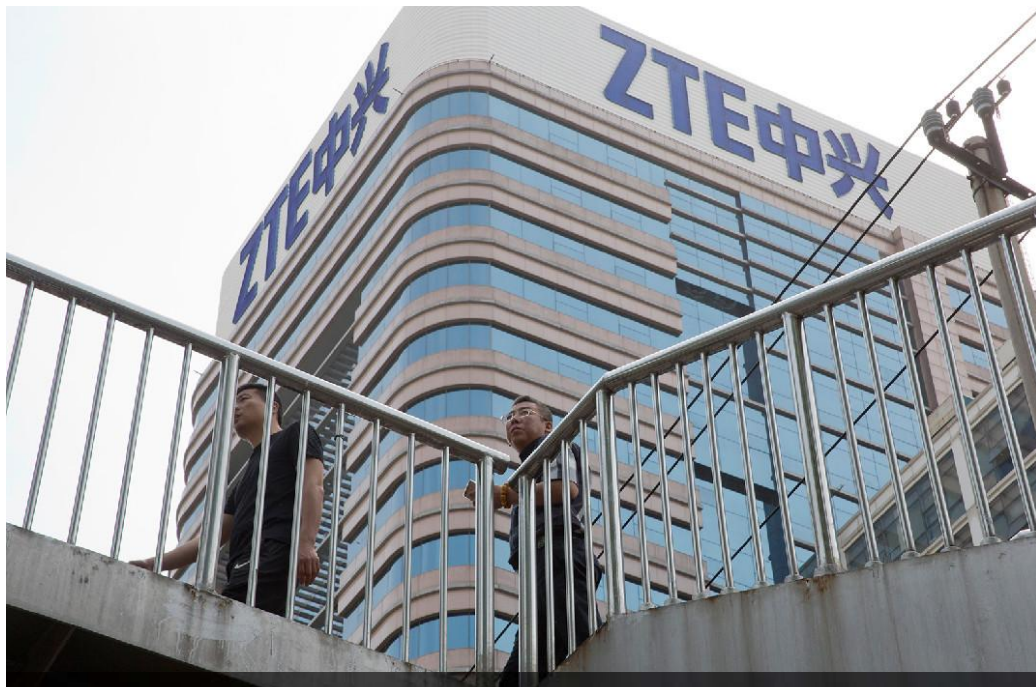
Tech Enabled: CNET chronicles tech's role in providing new kinds of accessibility.

Blockchain Decoded: CNET looks at the tech powering bitcoin -- and soon, too, a myriad of services that will change your life.

Exhibit 31

Trump's trade agenda runs into reality of global geopolitics

May 29th, 2018 | by Associated Press | in National News | Read Time: 2 mins. |



In this May 8, 2018, file photo, Chinese men pass by a ZTE building in Beijing, China. President Donald Trump's hard-line views on trade, a staple of his message long before he entered politics, are beginning to collide with the cold realities of global geopolitics. Trade talks on China and the North American Free Trade Agreement have hit stumbling blocks, posing a challenge for a president who vowed to make trade deals more equitable for the United States during his 2016 campaign and famously tweeted that trade wars are "easy to win." (AP Photo/Ng Han Guan, File)

WASHINGTON—President Donald Trump's hard-line views on trade, a staple of his message long before he entered politics, are beginning to collide with the cold realities of global geopolitics. Trade talks on China and the North American Free Trade Agreement have hit stumbling blocks, posing a challenge for a president who vowed to make trade deals more equitable for the United States during his 2016 campaign and who famously tweeted that trade wars are "easy to win." Trump's trade agenda—at least lately—has not been so easy.

After threatening China with \$150 billion in tariffs, Trump's administration has suspended plans to impose the tariffs for now and the president tweeted Wednesday that a "different structure" would be needed in the trade talks involving the world's two largest economies.

The president has bemoaned the massive U.S. trade deficit with China—\$337 billion last year—as evidence that Beijing has been complicit in abusive trading practices and outsmarted his predecessors. Pointing to a pause in the trade dispute, the administration pointed to China's plans to

"significantly increase" its purchases of U.S. goods and services and make "meaningful increases" in U.S. exports of agriculture and energy products. Financial markets, wary of a calamitous trade war, were relieved. But Beijing did not agree to any specific dollar amounts, despite the Trump administration's push to lower the U.S. trade deficit by at least \$200 billion. And doubts remain about whether China will address allegations the Chinese engage in cybertheft of trade secrets, force U.S. companies to transfer some of their technology in exchange for market access or back away from its China 2025 plan to dominate emerging technologies.

"Chinese r laughing at us again. They have never delivered on 1 promise in the past. Appeasement is the devils friend," tweeted Dan DiMicco, a former Nucor steel chairman and trade adviser to Trump's campaign and transition team, last Monday.

Separately, on Friday, the U.S. reached a deal on ZTE Corp. that will allow the Chinese telecommunications giant to remain in business. Under the deal, ZTE will oust its management team, hire American compliance offers and pay a fine—on top of the \$1 billion it's already paid for selling equipment to North Korea and Iran in violation of U.S. sanctions. In return, the U.S. Commerce Department will lift a seven-year ban on ZTE buying components from U.S. companies. The ban, imposed this month, threatened to put ZTE out of business. Trump said earlier that a resolution would help U.S. firms that supply ZTE with components, but members of Congress, including several Republicans, warned that the U.S. is being too lenient on a company that has violated U.S. sanctions.

"ZTE presents a national security threat to the United States—and nothing in this reported deal addresses that fundamental fact," said Sen. Chris Van Hollen, a Maryland Democrat. "If President Trump won't put our security before Chinese jobs, Congress will act on a bipartisan basis to stop him."

Trump's team, meanwhile, has hit an impasse with Canada and Mexico on negotiations over NAFTA. The president has sought to overhaul NAFTA as a way of returning automobile production to the U.S. and reduce America's trade deficit with Mexico.