

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

FRACTUS, S.A.

Plaintiff,

v.

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

Defendants.

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Civil Action No. 2:17-CV-00561

JURY TRIAL DEMANDED

FRACTUS' FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Fractus, S.A. (“Fractus” or “Plaintiff”) hereby submits this Complaint for patent infringement against Defendant ZTE (USA), Inc. (“Defendant,” “ZTE,” or “ZTE (USA)”)¹.

THE PARTIES

1. Fractus, S.A. is a foreign corporation duly organized and existing under the laws of Spain with its principal place of business in Barcelona, Spain.

2. Fractus is the owner by assignment of all right, title, and interest in U.S. Patent Nos. 7,394,432 (the “432 patent”), 7,397,431 (the “431 patent”), 8,941,541 (the “541 patent”), 8,976,069 (the “069 patent”), 9,054,421 (the “421 patent”), 9,240,632 (the “632 patent”), and 9,362,617 (the “617 patent”) (collectively the “Patents-in-Suit”).

3. Fractus is informed and believes, and on that basis alleges, that Defendant ZTE (USA), Inc. is a wholly-owned subsidiary of ZTE Corp., and is a corporation organized and

¹ Fractus agreed to dismiss ZTE Corporation (the Chinese parent corporation) and ZTE (TX), Inc. pursuant to an Agreement between the parties. That Agreement remains in effect.

existing under the laws of the State of New Jersey, having a principal place of business at 2425 North Central Expressway, Suite 800, Richardson, Texas 75080. ZTE (USA), Inc. may be served through its agent Incorp Services, Inc., 815 Brazos, Suite 500, Richardson, Texas 78701. Fractus is informed and believes, and on that basis alleges, that ZTE (USA), Inc., operates as ZTE Corp.'s general agent within Texas and "is the conduit through which ZTE Corp. sells its commercial telecommunications equipment in the United States." *NTCH-WA, Inc. v. ZTE Corp.*, No. 12-CV-3110-TOR, 2013 U.S. Dist. LEXIS 191196, at *6-7 (E.D. Wash. Jan. 14, 2013).

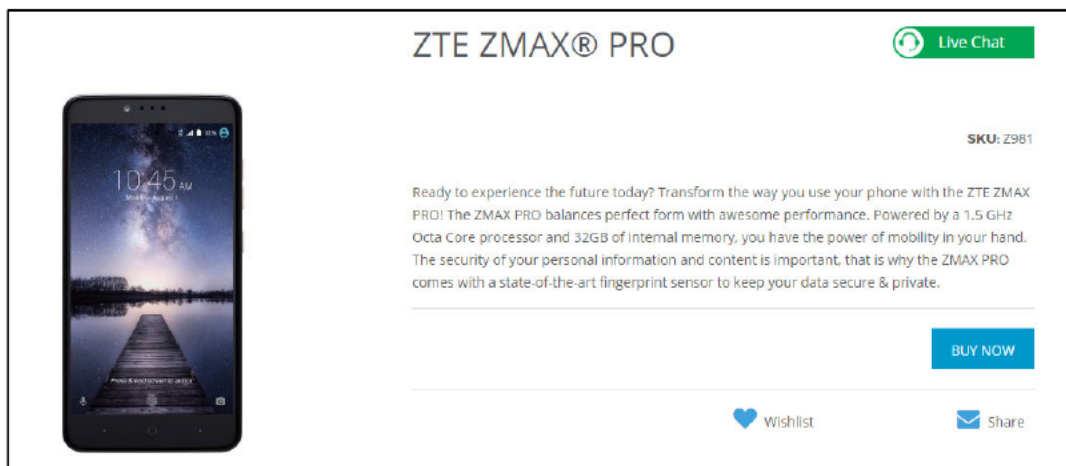
JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1, et seq. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367.

5. This Court has personal jurisdiction over Defendant. Fractus is informed and believes, and on that basis alleges, that Defendant conducts business and has committed acts of patent infringement and/or has induced acts of patent infringement by others in this judicial district, the State of Texas, and elsewhere in the United States. Defendant maintains substantial, systematic, and continuous contacts with the State of Texas, and/or Defendant has purposefully directed infringing activities at residents of the State of Texas, and this litigation results from those infringing activities. Defendant regularly imports, sells (either directly or indirectly), markets, and supports its products and services within this district. Defendant is subject to this Court's specific and/or general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial and pervasive business in this State and judicial district, including: (i) at least part of its infringing activities alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods sold and services provided to Texas residents.

6. Venue is proper for Defendant in this federal district pursuant to 28 U.S.C. § 1400(b) and *Brunette Mach. Works, Ltd. v. Kockum Indus., Inc.*, 406 U.S. 706 (1972). There is no clearly more convenient venue.

7. Venue is proper in this district because ZTE (USA) has committed acts of infringement and has a regular and established place of business in the district. Fractus is informed and believes, and on that basis alleges, that ZTE (USA) manufactures, sells, offers to sell, and/or imports Infringing Products within this judicial district, and/or induced acts of patent infringement by others within this judicial district. For example, on information and belief, ZTE (USA) sells mobile phones exclusively through its retailers, such as Target, Walmart, and carriers such as MetroPCS and AT&T. For example, clicking through the “Buy Now” link for one of the phones advertised on ZTE (USA)’s website leads directly to a MetroPCS online storefront. *See, e.g.*, <https://www.zteusa.com/zte-zmax-pro-mpcs>, shown below. The MetroPCS storefront allows consumers to look up one of the MetroPCS locations in the Marshall, Texas, and Longview, Texas, areas where they can purchase ZTE’s Infringing Products.

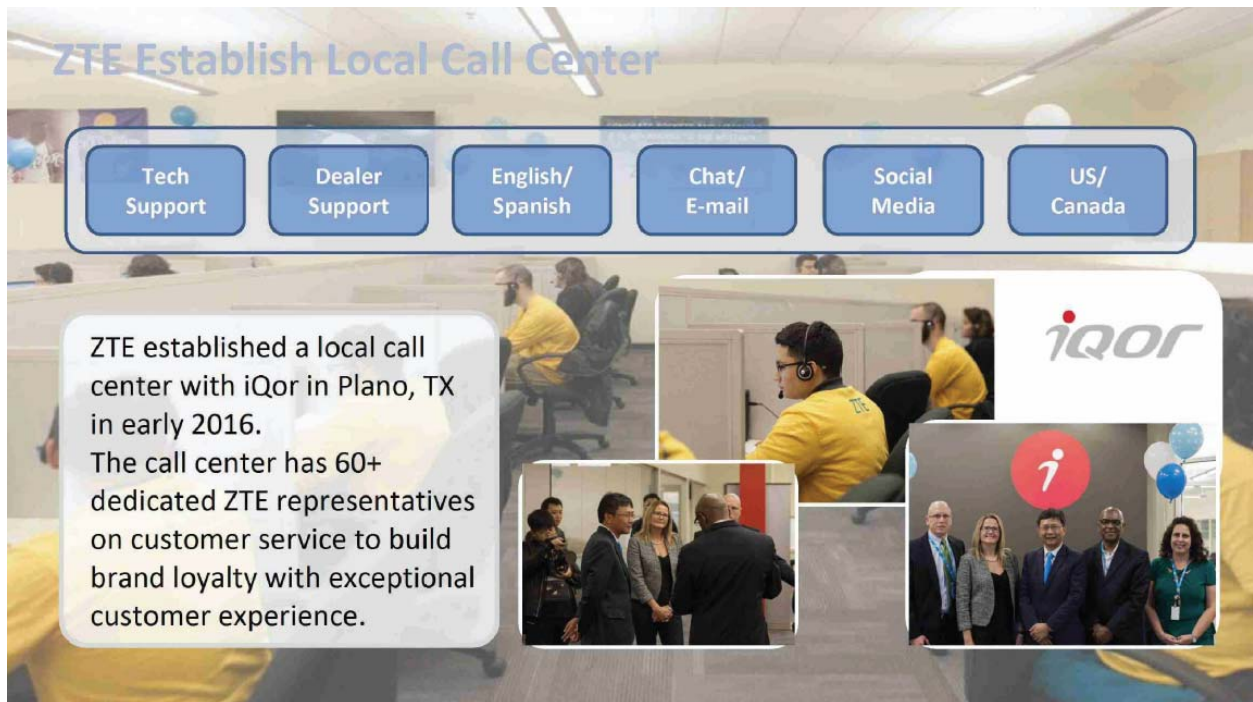


The screenshot displays the MetroPCS Store Locator interface. At the top, navigation links for SHOP, SUPPORT, and PAYMENT are visible. The search criteria are set to 'marshall, tx' with a 25-mile radius. The results list three authorized dealers, each with their address, phone number, and distance. A map on the right shows the geographic distribution of these stores in the Longview, Texas area.

Store Number	Address	City, State, ZIP	Phone Number	Distance
1	222 E End Blvd S	Marshall, TX 75670	903 934-9698	2 mi
2	1209 E Marshall Ave	Longview, TX 75801	903 234-9585	21 mi
3	302 S Moberly Ave	Longview, TX 75802	903 232-7118	22 mi

8. ZTE (USA) maintains a regular and established place of business in the Eastern District of Texas, in addition to its headquarters in Richardson, TX. In early 2016, ZTE (USA) established a call center at 6865 Windcrest Drive, Plano, TX 75024, within the Eastern District. The call center is a regular and established facility. A ZTE document announced that “ZTE Establish [sic] Local Call Center.” According to this ZTE document, the Plano call center has

“60+ dedicated ZTE representatives on customer service to build brand loyalty with exceptional customer experience.” That document also includes a photograph of the Plano call center employees wearing ZTE clothing while answering calls to promote ZTE’s local presence in the Eastern District of Texas. *See* ZTE-FRCT0000544 (below). The document demonstrates ZTE’s belief that it “established” a facility in Plano, which is within the Eastern District of Texas.



9. On information and belief, ZTE contracts with iQor, who owns or leases the Plano Call Center. iQor hires employees to work at the facility. On information and belief, other ZTE employees and representatives visit and work at the Plano call center on a full-time or part-time basis, supervising and training the ZTE call center representatives. Any customer in the United States who calls ZTE Customer Service is directed to the Plano call center or a second call center overseas. To the outside world, the Plano call center is a ZTE call center.

10. A ZTE customer who engages in on-line communications or calls the call center would understand he or she is communicating with a ZTE representative. In addition to the Plano

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