

1 John E Gartman (SBN 152300)
2 GARTMAN LAW GROUP, P.C.
3 490 Pine Needles Drive
4 Del Mar, CA 92014
5 Telephone: 858-746-9092

6 Edward R. Nelson, III (*Pro Hac Vice to be submitted*)
7 TX Bar No. 00797142
8 John Murphy (*Pro Hac Vice to be submitted*)
9 TX Bar No. 24056024

10 Jon Rastegar
11 TX Bar No. 24064043 (*Pro Hac Vice to be submitted*)
12 NELSON BUMGARDNER, P.C.
13 3131 West 7th Street, Suite 300
14 Fort Worth, Texas 76107
15 Telephone: 817.377.9111

16 Timothy E. Grochocinski (*Pro Hac Vice to be submitted*)
17 IL Bar No. 6295055
18 MO Bar No. 59607
19 Joseph P. Oldaker (*Pro Hac Vice to be submitted*)

20 IL Bar No. 6295319
21 NELSON BUMGARDNER, P.C.
22 15020 S. Ravinia Avenue, Suite 29
23 Orland Park, IL 60462
24 Telephone: 708.675.1975

25 Attorneys for Plaintiff
26 NOVA INTELLECTUAL SOLUTIONS, LLC
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

NOVA INTELLECTUAL SOLUTIONS, LLC, a Texas limited liability company,

Plaintiff,

v.

ZTE CORP., a China corporation, and ZTE (USA), Inc., a New Jersey corporation,

Defendant.

Case No.3:15-cv-00911 JLS NLS

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Jury Trial Demanded

Plaintiff Nova Intellectual Solutions, LLC files this complaint against ZTE Corp. and ZTE (USA), Inc. (collectively “Defendants”) for infringement of U.S. Patent No. 7,944,901 (“the ’901 patent”) and U.S. Patent No. 8,208,517 (“the ’517 patent”) (collectively “Asserted Patents”).

THE PARTIES

1. Nova Intellectual Solutions, LLC (“NIS” or “Plaintiff”) is a Texas limited liability company with its principal place of business at 8616 Turtle Creek Boulevard, Suite 521, Dallas, Texas 75225. NIS is the owner by assignment of U.S. Patent No. 7,944,901 (“the ’901 patent”) and U.S. Patent No. 8,208,517 (“the ’517 patent”) (collectively “Asserted Patents”).

2. ZTE Corp. (“ZTE”) is a China corporation with its principal place of business at ZTE Plaza, Keji Road South, Hi-tech Industrial Park, Nanshan District, Shenzhen, Guangdong, China 51807. ZTE is a provider of telecommunications equipment and network solutions.

3. ZTE conducts business in the United States through its wholly-owned U.S. entity ZTE (USA), Inc. (“ZTE USA”).

4. Upon information and belief, ZTE USA conducts research and

1 development activities, with respect to the infringing products, at its facilities in the
2 Southern District of California at 10105 Pacific Heights Boulevard, Suite 250, San
3 Diego, California 92121

4 **JURISDICTION AND VENUE**

5 5. NIS brings this action for patent infringement under the patent laws of the
6 United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others. This
7 Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

8 6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(d) and
9 1400(b). ZTE USA resides in this District. ZTE is an alien that conducts business
10 in this District through its wholly-owned subsidiary ZTE USA. A substantial part
11 of the infringing conduct giving rise to this Complaint has occurred in this District.
12 The patents at issue in this Complaint were formerly owned by, and formerly
13 assigned to, Novatel Wireless, which is headquartered in this District.

14 7. Each Defendant is subject to this Court's specific and general personal
15 jurisdiction pursuant to due process and/or the California Long Arm Statute, due at
16 least to its substantial business in this State and judicial district, including: (A) at
17 least part of its infringing activities alleged herein; and (B) regularly doing or
18 soliciting business, engaging in other persistent conduct, and/or deriving
19 substantial revenue from goods sold and services provided to California residents.

20 **COUNT I**

21 **(Patent Infringement - U.S. Patent No. 7,944,901)**

22 8. NIS incorporates paragraphs 1 through 7 herein by reference.

23 9. This cause of action arises under the patent laws of the United States, and in
24 particular, 35 U.S.C. §§ 271, *et seq.*

25 10. NIS is the owner of the '901 patent, entitled "Systems and Methods for
26 Automatic Connection with a Wireless Network," with ownership of all substantial
27 rights in the '901 patent, including the right to exclude others and to enforce, sue, and
28

1 recover damages for past and future infringement. A true and correct copy of the '901
2 patent is attached as Exhibit A.

3 11. The '901 patent is valid, enforceable and was duly issued in full compliance
4 with Title 35 of the United States Code.

5 **DIRECT INFRINGEMENT (35 U.S.C. § 271(a))**

6 12. Defendants have directly infringed, and continue to directly infringe, one or
7 more claims of the '901 patent in this judicial district and elsewhere in California and
8 the United States.

9 13. Defendants have infringed the '901 patent, by using, selling, and/or offering
10 to sell, within the United States, and/or by importing into the United States, products,
11 including, but not limited to, mobile data hot spots and data modems, which embody
12 and/or practice at least claim 15 of the '901 patent by using a wide area network
13 configured to provide wireless communication between a wireless device and a
14 wireless network hub in violation of 35 U.S.C. § 271 (the "'901 Accused Products").
15 The '901 Accused Products include, but are not limited to, the Unite, Sonic 2.0
16 Mobile Hotspot, Unite II, 4G Hotspot Z64, 4G LTE Router with Voice, Velocity, 4G
17 LTE Hotspot Z915, Pocket WiFi, and LivePro.

18 14. Defendants are liable for these direct infringements pursuant to 35 U.S.C. §
19 271.

20 **INDIRECT INFRINGEMENT (35 U.S.C. § 271(b))**

21 15. Defendants have indirectly infringed, and continue to indirectly infringe,
22 one or more claims of the '901 patent by inducing direct infringement by distributors
23 and the end users of the '901 Accused Products.

24 16. Defendants have had knowledge of the '901 patent and the infringing nature
25 of their activities since at least April 2012, when Defendants were served with the
26 Second Amended Complaint in *Novatel Wireless, Inc., et al. v. ZTE Corp., et al.*, Case
27 No. 3:10-cv-02530, in the United States District Court for the Southern District of
28

1 California. Despite this knowledge, Defendants have specifically intended for their
2 distributors and/or end users to acquire and use the '901 Accused Products in a way
3 that infringes the claims of the '901 patent. Defendants knew or should have known
4 that their actions were inducing infringement.

5 17. For example, on information and belief, Defendants provide product user
6 manuals to its distributors, such as T-Mobile, that T-Mobile then makes available to
7 end users from its website. These manuals induce direct infringement.

8 18. Furthermore, Defendants have not implemented a design around or
9 otherwise taken any remedial action with respect to the '901 patent. In accordance
10 with FED. R. CIV. P. 11(b)(3), NIS will likely have additional evidentiary support after
11 a reasonable opportunity for discovery on this issue.

12 **INDIRECT INFRINGEMENT (35 U.S.C. § 271(c))**

13 19. Defendants have indirectly infringed, and continue to indirectly infringe,
14 one or more claims of the '901 patent by contributing to the direct infringement by
15 users who use the '901 Accused Products.

16 20. Defendants have had knowledge of the '901 patent and the infringing nature
17 of their activities since at least April 2012, when Defendants were served with the
18 Second Amended Complaint in *Novatel Wireless, Inc., et al. v. ZTE Corp., et al.*, Case
19 No. 3:10-cv-02530, in the United States District Court for the Southern District of
20 California. Despite this knowledge, Defendants have knowingly sold and continue to
21 offer for sale the Accused Products even though such devices have no substantial
22 noninfringing use. Such devices infringe the '901 patent, including at least claim 15.

23 21. NIS has been damaged as a result of Defendants' infringing conduct
24 described in this Count. Defendants are, thus, liable to NIS in an amount that
25 adequately compensates NIS for their infringements, which, by law, cannot be less
26 than a reasonable royalty, together with interest and costs as fixed by this Court under
27 35 U.S.C. § 284.

28

1 **COUNT II**

2 **(Patent Infringement - U.S. Patent No. 8,208,517)**

3 22. NIS incorporates paragraphs 1 through 21 herein by reference.

4 23. This cause of action arises under the patent laws of the United States, and in
5 particular, 35 U.S.C. §§ 271, *et seq.*

6 24. NIS is the owner of the '517 patent, entitled "Systems and Methods For A
7 Multi-Mode Wireless Modem," with ownership of all substantial rights in the '517
8 patent, including the right to exclude others and to enforce, sue, and recover damages
9 for past and future infringement. A true and correct copy of the '517 patent is
10 attached as Exhibit B.

11 25. The '517 patent is valid, enforceable and was duly issued in full compliance
12 with Title 35 of the United States Code.

13 **DIRECT INFRINGEMENT (35 U.S.C. § 271(a))**

14 26. Defendants have directly infringed, and continue to directly infringe, one or
15 more claims of the '517 patent in this judicial district and elsewhere in California and
16 the United States.

17 27. Defendants have infringed the '517 patent, by using, selling, and/or offering
18 to sell, within the United States, and/or by importing into the United States, products,
19 including, but not limited to, mobile data hot spots and data modems, which embody
20 and/or practice at least claim 1 of the '517 patent by providing a wireless gateway
21 device which allows multiple wireless devices to access the internet through a wireless
22 communication system in violation of 35 U.S.C. § 271 (the "'517 Accused Products").
23 The Accused Products include, but are not limited to, the Unite, Sonic 2.0 Mobile
24 Hotspot, Unite II, 4G Hotspot Z64, 4G LTE Router with Voice, Velocity, 4G LTE
25 Hotspot Z915, Pocket WiFi, LivePro, Optik 2, Imperial II, Speed, ZMax, Warp Sync,
26 Compel, Nubia 5S Mini LTE, Nubia 5, Grand X, Grand S, Grand S Pro, Max, Engage
27 MT, Radiant, Source, Z998, Imperial, Avail 2, and Render.

1 28. Defendants are liable for these direct infringements pursuant to 35 U.S.C. §
2 271.

3 **INDIRECT INFRINGEMENT (35 U.S.C. § 271(b))**

4 29. Defendants have indirectly infringed, and continue to indirectly infringe,
5 one or more claims of the '517 patent by inducing direct infringement by distributors
6 and the end users of the '517 Accused Products.

7 30. Defendants have had knowledge of the '517 patent and the infringing nature
8 of their activities since at least December 2012, when Defendants were served with
9 the Original Complaint in *Novatel Wireless, Inc., et al. v. ZTE Corp., et al.*, Case No.
10 3:12-cv-02576, in the United States District Court for the Southern District of
11 California. Despite this knowledge, Defendants have specifically intended for their
12 distributors and/or end users to acquire and use the '517 Accused Products in a way
13 that infringes the claims of the '517 patent. Defendants knew or should have known
14 that their actions were inducing infringement.

15 31. For example, on information and belief, Defendants provide product user
16 manuals to its distributors, such as T-Mobile, that T-Mobile then makes available to
17 end users from its website. These manuals induce direct infringement.

18 32. Furthermore, Defendants have not implemented a design around or
19 otherwise taken any remedial action with respect to the '517 patent. In accordance
20 with FED. R. CIV. P. 11(b)(3), NIS will likely have additional evidentiary support after
21 a reasonable opportunity for discovery on this issue.

22 **INDIRECT INFRINGEMENT (35 U.S.C. § 271(c))**

23 33. Defendants have indirectly infringed, and continue to indirectly infringe,
24 one or more claims of the '517 patent by contributing to the direct infringement by
25 users who use the '517 Accused Products.

26 34. Defendants have had knowledge of the '517 patent and the infringing nature
27 of their activities since at least December 2012, when Defendants were served with
28

1 the Original Complaint in *Novatel Wireless, Inc., et al. v. ZTE Corp., et al.*, Case No.
2 3:12-cv-02576, in the United States District Court for the Southern District of
3 California. Despite this knowledge, Defendants have knowingly sold and continue to
4 offer for sale the '517 Accused Products even though such devices have no substantial
5 noninfringing use. Such devices infringe the '517 patent, including at least claim 1

6 35. NIS has been damaged as a result of Defendants' infringing conduct
7 described in this Count. Defendants are, thus, liable to NIS in an amount that
8 adequately compensates NIS for their infringements, which, by law, cannot be less
9 than a reasonable royalty, together with interest and costs as fixed by this Court under
10 35 U.S.C. § 284.

11 **COUNT III**

12 **(Willful Infringement)**

13 36. NIS incorporates paragraphs 1 through 35 herein by reference.

14 37. Upon information and belief, Defendants first offered the Unite, Sonic 2.0
15 Mobile Hotspot, Unite II, 4G Hotspot Z64, 4G LTE Router with Voice, Velocity, 4G
16 LTE Hotspot Z915, Pocket WiFi, and LivePro for sale sometime after April 2012.
17 Prior to this date, Defendants had knowledge of the '901 patent and the infringing
18 nature of their activities. Thus, since the release of the Unite, Sonic 2.0 Mobile
19 Hotspot, Unite II, 4G Hotspot Z64, 4G LTE Router with Voice, Velocity, 4G LTE
20 Hotspot Z915, Pocket WiFi, and LivePro, Defendants' infringement of the '901 patent
21 has been willful.

22 38. Upon information and belief, Defendants first offered the Unite, Sonic 2.0
23 Mobile Hotspot, Unite II, 4G Hotspot Z64, 4G LTE Router with Voice, Velocity, 4G
24 LTE Hotspot Z915, Pocket WiFi, LivePro, Optik 2, Imperial II, Speed, ZMax, Warp
25 Sync, Compel, Nubia 5S Mini LTE, Nubia 5, Grand X, Grand S, Grand S Pro, Max,
26 Engage MT, Radiant, Source, Z998, Imperial, Avail 2, and Render for sale sometime
27 after December 2012. Prior to this date, Defendants had knowledge of the '517 patent
28

1 and the infringing nature of their activities. Thus, since the release of the Unite, Sonic
2 2.0 Mobile Hotspot, Unite II, 4G Hotspot Z64, 4G LTE Router with Voice, Velocity,
3 4G LTE Hotspot Z915, Pocket WiFi, LivePro, Optik 2, Imperial II, Speed, ZMax,
4 Warp Sync, Compel, Nubia 5S Mini LTE, Nubia 5, Grand X, Grand S, Grand S Pro,
5 Max, Engage MT, Radiant, Source, Z998, Imperial, Avail 2, and Render, Defendants'
6 infringement of the '517 patent has been willful.

7 **WHEREFORE**, Plaintiffs request that the Court:

8 NIS asks that the Court find in its favor and against Defendants, and that the
9 Court grant NIS the following relief:

- 10 a. Judgment that one or more claims of the '901 patent and/or the '517
11 patent have been infringed, either literally and/or under the doctrine of
12 equivalents, by one or more Defendants;
- 13 b. Judgment that one or more claims of the '901 patent and/or the '517
14 patent have been willfully infringed, either literally and/or under the
15 doctrine of equivalents, by one or more Defendants;
- 16 c. Judgment that Defendants account for and pay to NIS all damages and
17 costs incurred by NIS because of Defendants' infringing activities and
18 other conduct complained of herein;
- 19 d. Judgment that Defendants account for and pay to NIS a reasonable, on-
20 going, post judgment royalty because of Defendants' infringing activities
21 and other conduct complained of herein;
- 22 e. That NIS be granted pre judgment and post judgment interest on the
23 damages caused by Defendants' infringing activities and other conduct
24 complained of herein; and
- 25 f. That NIS be granted such other and further relief as the Court may deem
26 just and proper under the circumstances
- 27
- 28

1
2 Dated: April 28, 2015

GARTMAN LAW GROUP, P.C.

3
4 By: /s/ John E. Gartman

John E. Gartman

5 *Attorney for Plaintiff Nova Intellectual*
6 *Solutions, LLC*

7 **REQUEST FOR TRIAL BY JURY**

8 Plaintiffs claim trial by jury on all issues so triable.
9

10
11 Dated: April 28, 2015

GARTMAN LAW GROUP, P.C.

12
13 By: /s/ John E. Gartman

John E. Gartman

14 *Attorney for Plaintiff Nova Intellectual*
15 *Solutions, LLC*
16
17
18
19
20
21
22
23
24
25
26
27
28