

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

QoS IP, LLC
Plaintiff

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v.

CIVIL ACTION NO. 6:15-cv-00895

ZTE (USA), Inc.
Defendant

PLAINTIFF’S ORIGINAL COMPLAINT AND JURY DEMAND

Plaintiff QoS IP, LLC (“QoS”) files this Original Complaint against ZTE (USA), Inc., (“Defendant” or “ZTE”) for infringement of U.S. Patent No. 7,385,982 (the “’982 Patent”).

THE PARTIES

1. Plaintiff QoS is a Texas limited liability company with its headquarters and principal place of business at 1400 Preston Road, Suite 475, Plano, Texas 75093.

2. Defendant ZTE (USA), Inc., is a New Jersey corporation with its principal place of business located at 2425 N. Central Expressway, Richardson, TX, 75080, and may be served through its registered agent, Jing Li, 2425 North Central Expressway, Suite 323, Richardson, TX, 75080.

JURISDICTION AND VENUE

3. QoS brings this action for patent infringement under the United States Patent Act, namely 35 U.S.C. §§ 271, 281, and 284-285, among other laws. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). Defendant does business in this judicial district, has committed acts of infringement in this judicial district, has purposely transacted business in this judicial district involving the

accused products and/or, has regular and established places of business in this judicial district.

5. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long-Arm Statute, due at least to its substantial business in this State and judicial district, including at least part of its infringing activities and regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods sold and services provided to Texas residents.

COUNT I
(INFRINGEMENT OF U.S. PATENT NO. 7,385,982)

6. QoS incorporates paragraphs 1 through 5 herein by reference.

7. QoS is the owner, by assignment, of U.S. Patent No. 7,385,982 (the "'982 Patent"), titled "SYSTEMS AND METHODS FOR PROVIDING QUALITY OF SERVICE (QOS) IN AN ENVIRONMENT THAT DOES NOT SUPPORT QOS FEATURES."

8. A true and correct copy of the '982 Patent is attached as Exhibit A.

9. As the owner of the '982 Patent, QoS holds all substantial rights in and under the '982 Patent, including the right to grant sublicenses, exclude others, and to enforce, sue, and recover damages for past and future infringement.

10. The United States Patent Office granted the '982 Patent on June 10, 2008.

11. The '982 Patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

12. ZTE is practicing one or more claims of the '982 Patent, including at least claims 1 and 13, by making, using, offering for sale, selling and/or importing products that include systems and perform methods of providing quality of service based upon non-QoS information.

13. ZTE has no consent or authorization to practice the '982 Patent.

14. ZTE makes, uses, sells, offers to sell, and/or imports at least the following

products: ZXR10 5960-32DL, ZXR10 5960-64DL, ZXR10 5960-64NL, ZXR10 5960-52TM, and ZXR10 5960-52TM-L (hereinafter, “ZXR10 5960 Products”).

15. The ZTE ZXR10 5960 Products have multiple input and output ports for data ingress and egress.

16. The ZTE ZXR10 5960 Products examine received packet information including source and/or destination address information in order to apply QoS policies.

17. The ZTE ZXR10 5960 Products employ priority based flow control and Enhanced Transmission Selection to improve performance.

18. The ZTE ZXR10 5960 Products assign QoS policy to voice equipment based upon source and/or destination MAC address to ensure voice traffic enjoys high priority.

19. The ZXR10 5960 Products communicate with peer network devices using Data Center Bridging eXchange (DCBX) to ensure low latency and zero packet loss.

20. The ZXR10 5960 Products classify and queue data for transmission based upon policies applied according to source and/or destination address.

21. ZTE directly infringes at least claim 1 and 13 by making, using, importing, selling, and/or offering for sale the ZXR10 5960 Products.

22. QoS has been harmed as a result of ZTE’s infringing conduct. ZTE is liable to QoS in an amount that adequately compensates it for their infringement, which compensation cannot be less than a reasonable royalty together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

NOTICE OF REQUIREMENT OF LITIGATION HOLD

23. ZTE is hereby notified it is legally obligated to locate, preserve, and maintain all records, notes, drawings, documents, data, communications, materials, electronic recordings, audio/video/photographic recordings, and digital files, including edited and unedited or “raw”

source material, and other information and tangible things that ZTE knows, or reasonably should know, may be relevant to actual or potential claims, counterclaims, defenses, and/or damages by any party or potential party in this lawsuit, whether created or residing in hard copy form or in the form of electronically stored information (hereafter collectively referred to as “Potential Evidence”).

24. As used above, the phrase “electronically stored information” includes without limitation: computer files (and file fragments), e-mail (both sent and received, whether internally or externally), information concerning e-mail (including but not limited to logs of e-mail history and usage, header information, and deleted but recoverable e-mails), text files (including drafts, revisions, and active or deleted word processing documents), instant messages, audio recordings and files, video footage and files, audio files, photographic footage and files, spreadsheets, databases, calendars, telephone logs, contact manager information, internet usage files, and all other information created, received, or maintained on any and all electronic and/or digital forms, sources and media, including, without limitation, any and all hard disks, removable media, peripheral computer or electronic storage devices, laptop computers, mobile phones, personal data assistant devices, Blackberry devices, iPhones, video cameras and still cameras, and any and all other locations where electronic data is stored. These sources may also include any personal electronic, digital, and storage devices of any and all of Defendant’s agents, resellers, or employees if Defendant’s electronically stored information resides there.

25. Defendant is hereby further notified and forewarned that any alteration, destruction, negligent loss, or unavailability, by act or omission, of any Potential Evidence may result in damages or a legal presumption by the Court and/or jury that the Potential Evidence is not favorable to Defendant’s claims and/or defenses. To avoid such a result, Defendant’s

preservation duties include, but are not limited to, the requirement that Defendant immediately notify its agents and employees to halt and/or supervise the auto-delete functions of Defendant's electronic systems and refrain from deleting Potential Evidence, either manually or through a policy of periodic deletion.

JURY DEMAND

26. QoS hereby demands a trial by jury on all claims, issues and damages so triable.

PRAYER FOR RELIEF

QoS prays for the following relief:

- a. That Defendant be summoned to appear and answer;
- b. That the Court enter an order declaring that Defendant has infringed the '982 Patent;
- c. That this is an exceptional case under 35 U.S.C. § 285;
- d. That the Court grant QoS judgment against Defendant for all actual, consequential, special, punitive, exemplary, increased, and/or statutory damages, including treble damages pursuant to 35 U.S.C. 284 including, if necessary, an accounting of all damages; pre and post-judgment interest as allowed by law; and reasonable attorney's fees, costs, and expenses incurred in this action; and
- e. That QoS be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: October 9, 2015

Respectfully submitted,

TAYLOR DUNHAM AND RODRIGUEZ LLP
301 Congress Ave., Suite 1050
Austin, Texas 78701
512.473.2257 Telephone
512.478.4409 Facsimile

By: _____


Cabrach J. Connor
State Bar No. 24036390
Email: cconnor@taylordunham.com

David E. Dunham
State Bar No. 06227700
Email: ddunham@taylordunham.com
Jennifer Tatum Lee
Texas Bar No. 24046950
Email: jtatum@taylordunham.com
Sergio R. Davila
Texas Bar No. 24079795
Email: sdavila@taylordunham.com