

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ZTE (USA) Inc.

Plaintiff,

v.

Wildcat Licensing LLC,
Jeffrey W. Salmon, and
Sockeye Licensing TX LLC,

Defendants.

Civil Action No. 1:15-cv-09589

Judge:

Magistrate Judge:

JURY TRIAL DEMANDED

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, ZTE (USA) Inc. (“ZTE”), hereby alleges for its Complaint for Declaratory Judgment against Defendants, Wildcat Licensing LLC, Jeffrey W. Salmon, and Sockeye Licensing TX LLC (“Defendants”), as follows.

I. NATURE OF THE ACTION

1. This is an action for declaratory judgment that ZTE does not infringe any valid claim of United States Patent No. 8,135,342 (“the ’342 Patent”) or U.S. Patent No. 8,879,987 (“the ’987 Patent”) (collectively, the “Asserted Patents”).

2. A true and correct copy of the ’342 Patent is attached as Exhibit A.

3. A true and correct copy of the ’987 Patent is attached as Exhibit B.

II. THE PARTIES

4. Plaintiff ZTE (USA) Inc. is a corporation organized under the laws of New Jersey with its principal place of business at 2425 N. Central Expressway, Suite 323, Richardson, Texas 75080.

5. Upon information and belief, Defendant Wildcat Licensing LLC (“Wildcat”) is a limited liability company formed under the laws of the State of Illinois. Wildcat can be served

with process through its registered agent for service of process in Illinois, Jeffrey W. Salmon, 320 Wilmette Avenue, Glenview, Illinois 60025.

6. A true and correct copy of the Certificate of Good Standing and LLC File Detail Report from the Illinois Secretary of State's website for Wildcat is attached as Exhibit C. Wildcat's LLC File Detail Report from the Illinois Secretary of State's website shows Jeffrey W. Salmon as its agent and manager, with its principal office at 320 Wilmette Avenue, Glenview, Illinois 60025.

7. Upon information and belief, Defendant Jeffrey W. Salmon is a resident of Illinois, with an address of 320 Wilmette Avenue, Glenview, Illinois 60025, and can be served at that address.

8. Upon information and belief, Sockeye Licensing TX LLC ("Sockeye") is a limited liability company formed under the laws of the State of Texas. Sockeye has a mailing address of 320 Wilmette Ave., Glenview, IL 60025-3372, and can be served with process through its registered agent for service of process in Texas, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or alternatively through its sole manager and member, Jeffrey W. Salmon. (*See* Exhibit G.)

9. A true and correct copy of the Certificate of Formation for Sockeye is attached as Exhibit D. The Certificate of Formation for Sockeye lists Defendant Jeffrey W. Salmon ("Salmon") as its sole manager and member, with an address of 320 Wilmette Avenue, Glenview, Illinois 60025.

III. JURISDICTION AND VENUE

10. This action is based on the patent laws of the United States, Title 35 of the United States Code, § 1 *et seq.*, with a specific remedy sought under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202.

11. An actual, substantial, and continuing justiciable controversy exists between ZTE and Defendants that requires a declaration of rights by this Court. As set forth in the paragraphs herein, an actual controversy exists between ZTE and the Defendants with respect to the infringement and scope of the '342 and '987 Patents.

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

13. This Court has personal jurisdiction over Wildcat because Wildcat is an Illinois limited liability company, and conducts business from this district.

14. This Court has personal jurisdiction over Salmon because he is an Illinois resident.

15. This Court has personal jurisdiction over Sockeye because, as discussed below, Sockeye has forfeited its right to transact business in Texas, Sockeye's sole member and manager, Jeffrey W. Salmon, is therefore personally liable for Sockeye's debts and liabilities, and Salmon conducts business and directs litigation of the Asserted patents from this district. This Court also has personal jurisdiction over Sockeye because, on information and belief, Sockeye is merely a corporate fiction and Salmon's alter ego.

16. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400.

IV. FACTUAL BACKGROUND

17. On December 13, 2012, Defendant Wildcat was formed as an Illinois limited liability company, naming Defendant Salmon as its registered agent and sole manager.

18. On May 12, 2014, Defendant Sockeye was formed as a Texas limited liability company, naming Defendant Salmon as its sole manager.

19. Upon information and belief, pursuant to Texas Tax Code § 171.202, Sockeye failed to file its annual report and pay any franchise taxes due by May 15, 2015 as required by the Comptroller of the State of Texas. Upon information and belief, Sockeye did not respond within forty-five days from the mailing of the notice of forfeiture sent by the Comptroller on or about May 22, 2015.

20. Pursuant to Texas Tax Code § 171.2515, the Comptroller of the State of Texas shall forfeit the right of a taxable entity, such as Sockeye, to transact business in Texas, in accordance with the procedures for forfeiture set forth in Texas tax Code § 171.251 *et seq.* Upon information and belief, the Comptroller forfeited Sockeye's right to transact business in the State of Texas, and to sue or defend in any court in the State of Texas, on or about July 6, 2015. Attached as Exhibit G is a true and correct copy of a screen print of Sockeye's Franchise Tax Account Status, showing it is in forfeiture.

21. Upon information and belief, because Sockeye forfeited its privileges to transact business and sue and defend itself in the courts of the State of Texas, by failing to file its annual report with the Comptroller and further by failing to pay its franchise tax liability, its management, Defendant Salmon, is now personally liable for the debts and liabilities of Sockeye.

22. On July 24, 2015, an assignment agreement purporting to assign all the rights, title and interest in and to the '342 and '987 Patents was executed by Zamboola LLC as assignor

and Wildcat as assignee. This assignment agreement, attached as Exhibit E, was recorded by the U.S. Patent and Trademark Office on July 27, 2015 at Reel 036188, Frame 0599.

23. On August 19, 2015, an assignment agreement purporting to assign all the rights, title and interest in and to the '342 and '987 Patents was executed by Wildcat as assignor and Sockeye as assignee. This assignment agreement, attached as Exhibit F, was recorded by the U.S. Patent and Trademark Office on October 1, 2015 at Reel 036703, Frame 0022.

24. Upon information and belief, Sockeye's right to transact business in Texas was forfeited at the time that Wildcat attempted to assign its interest in the '342 and '987 Patents to Sockeye, rendering the purported assignment of the '342 and '987 Patents to Sockeye null and void. Accordingly, all right, title and interest in and to the '342 and '987 Patents is owned by Wildcat.

25. On October 5, 2015, Sockeye filed an action against ZTE for patent infringement of the '342 and '987 Patents in Case No. 2:15-cv-01600 in the Eastern District of Texas. In its Complaint, Sockeye accused the ZTE SPRO Smart Projector product of infringement.

26. Upon information and belief, Sockeye's right to transact business, and to sue and defend suits in the courts of the State of Texas, was forfeited in accordance with Texas law at the time it sued ZTE for patent infringement in the Eastern District of Texas on October 5, 2015. (*See* Exhibit G.) Therefore, Sockeye did not have capacity to file an action against ZTE in the Eastern District of Texas.

COUNT 1
NON-INFRINGEMENT OF U.S. PATENT 8,135,342

27. ZTE incorporates by reference the allegations contained in paragraphs 1 through 26 of this Complaint as though fully set forth herein.

28. Defendants have alleged that ZTE directly and indirectly infringes one or more claims of the '342 Patent and that ZTE's customers directly infringe the '342 Patent through operation of the accused ZTE products.

29. ZTE asserts that ZTE and ZTE's customers have not and do not directly or indirectly infringe any claim of the '342 Patent, either literally or under the doctrine of equivalents.

30. Therefore, there exists a substantial controversy between ZTE and Defendants, the parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that neither ZTE nor its customers have directly or indirectly infringed any claim of the '342 Patent.

31. An actual and justiciable controversy exists regarding the alleged infringement of the '342 Patent by ZTE and its customers. ZTE accordingly requests a judicial determination of its rights, duties, and obligations with regard to the '342 Patent.

COUNT II
NON-INFRINGEMENT OF U.S. PATENT 8,879,987

32. ZTE incorporates by reference the allegations contained in paragraphs 1 through 26 of this Complaint as though fully set forth herein.

33. Defendants have alleged that ZTE directly and indirectly infringes one or more claims of the '987 Patent and that ZTE's customers directly infringe the '987 Patent through operation of the accused ZTE products.

34. ZTE asserts that ZTE and ZTE's customers have not and do not directly or indirectly infringe any claim of the '987 Patent, either literally or under the doctrine of equivalents.

35. Therefore, there exists a substantial controversy between ZTE and Defendants, the parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that neither ZTE nor its customers have directly or indirectly infringed any claim of the '987 Patent.

36. An actual and justiciable controversy exists regarding the alleged infringement of the '987 Patent by ZTE and its customers. ZTE accordingly requests a judicial determination of its rights, duties, and obligations with regard to the '987 Patent.

PRAYER FOR RELIEF

WHEREFORE, ZTE prays for a declaratory judgment against Defendants as follows:

A. A declaration that neither ZTE nor ZTE's customers directly or indirectly infringe any claim of the '342 Patent;

B. A declaration that neither ZTE nor ZTE's customers directly or indirectly infringe any claim of the '987 Patent;

C. A declaration that ZTE's case against Defendants is an exceptional case within the meaning of 35 U.S.C. § 285, entitling ZTE to an award of its reasonable attorneys' fees, expenses and costs incurred in this action; and

D. Such other and further relief, in law or in equity, as the Court deems just.

JURY TRIAL DEMANDED

ZTE demands a trial by jury as to all issues and causes of action so triable herein,
pursuant to Federal Rule of Civil Procedure 38.

Dated: October 27, 2015

Respectfully submitted,

By: /s/ David H. Bluestone

David H. Bluestone
Charles M. McMahon (appearance
forthcoming)
Hersh H. Mehta
MCDERMOTT WILL & EMERY
227 West Monroe Street
Chicago, IL 60606-5096
dbluestone@mwe.com
cmcmahon@mwe.com
hmehta@mwe.com
T: (312) 372-2000
F: (312) 984-7700

Jay H. Reiziss (request for *pro hac*
admission forthcoming)
MCDERMOTT WILL & EMERY
500 North Capitol Street, N.W.
Washington, DC 20001
jreiziss@mwe.com
T: (202) 756-8000
F: (202) 756-8087

**Attorneys for Plaintiff
ZTE (USA) Inc.**