

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

**PROXIMITY SENSORS OF TEXAS,
LLC,**

Plaintiff,

v.

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

Defendants.

Case No. 17-cv-574-JRG-JDL

PATENT CASE

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Proximity Sensors of Texas, LLC (“PST” or “Plaintiff”) files this First Amended Complaint against ZTE Corporation and ZTE (USA) Inc. (collectively, “Defendants”) for infringement of U.S. Patent No. 7,050,043 (“the ’043 patent,” “the patent-in-suit,” or “the asserted patent”).

THE PARTIES

1. PST is a Texas limited liability company with its principal place of business located at 5068 W. Plano Parkway, Suite 300, Plano, Texas 75093.

2. ZTE Corporation is a corporation organized and existing under the laws of the People’s Republic of China with its principal place of business in ZTE Plaza, Keji Road South, Hi-Tech Industrial Park, Nanshan District, Shenzhen, Guangdong Province, P.R. China 518057. This Defendant does business in the State of Texas and in the Eastern District of Texas. This Defendant may be served with process at its principal place of business at ZTE Plaza, Keji Road South, Hi-Tech Industrial Park, Nanshan District, Shenzhen, Guangdong Province, P.R. China 518057.

3. ZTE (USA) Inc. (“ZTE USA”) is a New Jersey corporation with its principal place of business in Richardson, Texas. This Defendant does business in the State of Texas and in the Eastern District of Texas. This Defendant has a regular and established place of business in the Eastern District of Texas. This Defendant may be served with process through its agent, Jing Li, 2425 N. Central Expressway, Suite 323, Richardson, Texas 75090-2791.

JURISDICTION AND VENUE

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

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §1400(b). Defendants have committed acts of infringement in this judicial district, have purposely transacted business involving the accused products in this judicial district, and have regular and established places of business in this district.

6. Defendants are 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 their substantial business in this State and judicial district, including: (A) at least part of their infringing activities alleged herein; and (B) regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods sold and services provided to Texas residents.

7. ZTE USA has a regular and established place of business in this District. *American GNC Corp. v. ZTE Corp.*, Case No. 4:17-cv-00620-ALM-KPJ, Order (Dkt. 91)¹ (hereinafter “Order”).

¹ All docket citations herein are to the docket in *American GNC Corp. v. ZTE Corp.*, Case No. 4:17-cv-00620-ALM-KPJ unless otherwise noted.

8. ZTE USA has a dedicated call center in Plano, Texas (“ZTE Call Center”). *Id.* at p. 2; Report and Recommendation, pp. 6-7 (Dkt. 77) (hereinafter “R&R”).

9. On information and belief, the ZTE Call Center has 60 plus dedicated ZTE representatives. *Id.* at p. 6; Hearing Transcript at 26:21-22 (Dkt. 70).

10. ZTE USA has a physical place from which it actually engages in business in this District. R&R, pp. 6-7; Order.

11. ZTE USA established the ZTE Call Center with a third-party, iQor, in Plano, Texas, in early 2016. R&R, p. 6; *see also* Dkts. 49 at 3-4 and 49-1.

12. The objective of the ZTE Call Center is to build brand loyalty with exceptional customer experience. R&R, p. 6; *see also* Dkt. 70, Hearing Transcript at 17:8-14.

13. ZTE USA employees visit the ZTE Call Center regularly to work with the iQor representatives. R&R, p. 6; *see also* Dkt. 70, Hearing Transcript at 17:14-18.

14. On information and belief, ZTE USA has at least two full-time employees (supervisors) on site at the ZTE Call Center. R&R, p. 6; *see also* Dkt. 49, at 5; Dkt. 70, Hearing Transcript at 27:15-18.

15. ZTE USA’s customer-facing website seamlessly integrates with customer support by iQor such that customers are unaware whether they are being assisted by an iQor employee or a ZTE employee. R&R, p. 6; Dkt. 49, at 4; Dkt. 70, Hearing Transcript at 28:9-20.

16. On information and belief, callers to the call center seek assistance with, and iQor representatives provide advice about, ZTE USA products. R&R, p. 7; Dkt. 70, Hearing Transcript at 16:14-18.

17. ZTE USA products, including products accused of infringement in this lawsuit, are sold in this District.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 7,050,043)

18. PST incorporates paragraph 1 through 17 herein by reference.

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

20. PST is the owner of the '043 patent, entitled "Optical Apparatus," with all substantial rights to the '043 patent, including the exclusive right to enforce, sue, and recover damages for past and future infringement. A copy of the '043 patent is attached as Exhibit 1.

21. The '043 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

22. The '043 patent was subject to Reexamination Request No. 90/011,093, filed on July 14, 2010.

23. As a result of Reexamination Request No. 90/011,093, the United States Patent and Trademark Office issued Ex Parte Reexamination Certificate (8445th) on August 2, 2011.

24. Independent claims 1 and 7 of the '043 patent were amended in reexamination, and determined to be patentable in amended form as stated in Ex Parte Reexamination Certificate (8445th).

25. Independent Claim 1 of the '043 patent recites (as shown in Ex Parte Reexamination Certificate (8445th)):

An optical apparatus for use on an object surface, comprising:
an IC package structure, having a first compartment and a second compartment, wherein the first compartment has a first opening and the second compartment has a second opening, and wherein at least one of said first opening and said second opening is a partial opening partially uncovering said corresponding first compartment or second compartment at a side thereof;

a light emitting device bonded in the first compartment, wherein light emitted from the light emitting device passes through the first opening and is reflected by the object surface; and
an optical sensor bonded in the second compartment, and receiving the light reflected through the second opening from the object surface.

26. Original claims 2-6 and 8-12 of the '043 patent were determined to be patentable as a part of Reexamination Request No. 90/011,093 and Ex Parte Reexamination Certificate (8445th).

(Direct Infringement)

27. Defendants have, and continue to, directly infringe one or more claims of the '043 patent in this judicial district and elsewhere in the United States, including at least claims 1 and 5, by, among other things, making, using, selling, offering to sell, and/or selling within, and/or importing into, the United States smartphones incorporating a proximity sensor (“the ZTE Accused Devices”), including but not limited to the ZTE Avid Plus, Citrine, Grand X 3, Maven 2, Sonata 3, ZMax 2, Avid Trio, Blade X Max, Grand X 4, Imperial Max, Max Duo, Max XL, ZMax Pro, Grand X Max 2, Axon 7, Groove, Engage, Grand X, Grand X Max, and ZMax phones.

28. On information and belief, each of the ZTE Accused Devices incorporates at least one of the following proximity sensors (or sensors of similar design): LiteON ltr 559 / ltr55x, Rohm rpr0521, and/or AMS tmd2771 / tmd277x. The proximity sensor in each ZTE Accused Device is an optical apparatus for use on an object surface that comprises an IC package structure having a first compartment and a second compartment, where the first compartment has a first opening and the second compartment has a second opening, and wherein at least one of said first opening and said second opening is a partial opening partially uncovering said corresponding first compartment or second compartment at a side thereof. The proximity sensor in each ZTE Accused Device includes a light emitting device (e.g., an LED) bonded in the first compartment and an

optical sensor bonded in the second compartment, and is configured so that light emitted from the light emitting device through the first opening, when reflected off an object surface, is received through the second opening by the optical sensor.

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

(Indirect Infringement)

30. PST also contends that Defendants have and continue to indirectly infringe the '043 patent by inducing end users of ZTE Accused Devices to infringe at least claims 1 and 5 through their use of ZTE Accused Devices.

31. Defendants have had knowledge of the '043 patent since at least service of the original complaint in this matter.

32. Despite having knowledge of the '043 patent, Defendants have specifically intended and continue to specifically intend for persons who acquire and use ZTE Accused Devices to use such devices in a manner that causes use of the proximity sensor(s) therein and, thus, direct infringement of the '043 patent, including at least claims 1 and 5.

33. More specifically, despite having knowledge of the '043 patent, Defendants have provided, and continue to provide, source code and instructional materials, such as user guides, owner manuals, and similar online resources (available via http://www.zteusa.com/support_page, for instance) that specifically cause, teach, and encourage customers and other end users to use the ZTE Accused Devices in a way that results in use of the proximity sensor(s) therein. This is evidenced, for example, when Defendants encourages and instruct customers and other end users in the use and operation of the ZTE Accused Devices to make phone calls, which (upon information and belief) causes the device to use the proximity sensor to determine whether the

phone has been placed near a user's ear. By providing such instruction, Defendants know (and have known) that their actions have, and continue to, actively induce infringement.

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

JURY DEMAND

PST requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

PST asks that the Court find in its favor and against Defendants and that the Court grant PST the following relief:

- a. Judgment that one or more claims of the '043 patent have been infringed directly or indirectly either literally and/or under the doctrine of equivalents by Defendants;
- b. Judgment that Defendants account for and pay to Plaintiff all damages and costs incurred by Plaintiff because of Defendants' infringing activities and other conduct complained of herein;
- c. Judgment that Defendants account for and pay to Plaintiff a reasonable, ongoing, post-judgment royalty because of Defendants' infringing activities and other conduct complained of herein;
- d. That PST be granted pre-judgment and post judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein; and
- e. That PST be granted such other and further relief as the Court may deem just and proper under the circumstances.

DATED: November 21, 2017

PROXIMITY SENSORS OF TEXAS LLC

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CERTIFICATE OF SERVICE

I hereby certify that on the November 21, 2017 I caused the foregoing document to be served on counsel of record via the Court's CM/ECF system.

/s/ Ryan Griffin
Ryan Griffin