

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

CELLULAR COMMUNICATIONS
EQUIPMENT LLC,

Plaintiff,

v.

ZTE (USA) INC.,

Defendant.

CIVIL ACTION NO. 6:16-cv-476

JURY TRIAL DEMANDED

PLAINTIFF'S SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Cellular Communications Equipment LLC files this Second Amended Complaint against ZTE (USA) Inc. ("ZTE" or "Defendant") for infringement of U.S. Patent No. 8,055,820 ("the '820 patent"), U.S. Patent No. 8,385,966 ("the '966 patent"), and U.S. Patent No. 9,037,129 ("the '129 patent").

THE PARTIES

1. Cellular Communications Equipment LLC ("CCE") is a Texas limited liability company with its principal place of business in Plano, Texas.

2. ZTE (USA) Inc. 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 may be served with process through its agent, Jing Li, 2425 N. Central Expressway, Suite 323, Richardson, Texas 75090-2791.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), and 1367.

5. Defendant has consented to venue in this judicial district for purposes of this matter.

6. On information and belief, 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: (A) at least part of its 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.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 8,055,820)

7. CCE incorporates paragraphs 1 through 6 herein by reference.

8. CCE is the assignee of the '820 patent, entitled "Apparatus, System, and Method for Designating a Buffer Status Reporting Format Based on Detected Pre-Selected Buffer Conditions," with ownership of all substantial rights in the '820 patent, including the right to exclude others and to enforce, sue and recover damages for past and future infringements. A true and correct copy of the '820 patent is attached as Exhibit A.

9. The '820 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

10. Defendant has and continues to directly and/or indirectly infringe (by inducing infringement) one or more claims of the '820 patent in this judicial district and elsewhere in Texas and the United States, including at least claims 1, 4, 6, 9, 10, 12, 17, 20, 21, and 24, by,

among other things, making, using, offering for sale, selling and/or importing ZTE mobile devices, including, for example: the ZTE Imperial Max, ZTE Midnight PRO LTE, ZTE Fanfare 2, Blade V8 PRO, ZTE Grand X Max 2, Grand X 4, ZTE Max Duo LTE , ZTE Overture 2, ZTE Maven 2, ZTE AXON 7, ZTE AXON 7 Mini, ZTE Sonata 3, ZTE Grand X3, ZTE AVID 828, ZTE ZMAX Pro, AT&T Trek 2, ZTE Citrine LTE, ZTE Zpad Tablet, ZTE Tempo, ZTE Warp 7), ZTE Avid Trio, ZTE 998, ZTE Overture, ZTE Anthem 4G, ZTE Avid 4G, ZTE T-Mobile Sonic 2.0 Mobile Hotspot, ZTE Jetpack 4G LTE Mobile Hotspot 890L, ZTE Force, ZTE Flash, ZTE Boost Max, ZTE Warp 4G, ZTE Vital, ZTE Imperial, ZTE Source, ZTE Supreme, AT&T Home Base, Compel, Grand S Pro, Nubia 5S Mini LTE, Sprint LivePro, Zmax, ZTE Warp Sync, ZTE 4G LTE Router with Voice aka MF275U, ZTE Unite III, ZTE Axon, ZTE ZMAX 2, ZTE Warp Elite, ZTE Mobley, ZTE Max +, ZTE Obsidian, ZTE Maven, ZTE Grand X Max Plus, ZTE AT&T Velocity, ZTE Speed aka ZTE N9130, ZTE Imperial II, ZTE Pocket Wi-Fi, ZTE Unite 2, ZTE Unite, ZTE Source aka ZTE N9511, ZTE Rapido LTE, ZTE Grand Memo II LTE, ZTE MF253, ZTE Avid Plus, ZTE Prestige, and ZTE T-Mobile 4G LTE Hotspot. These devices are collectively referred to as the “’820 ZTE Devices.”

11. Defendant directly infringes the apparatus claims of the ’820 patent by making, offering to sell, selling, and/or importing the ’820 ZTE Devices. Defendant also directly infringes the ’820 patent by making, using, selling, offering to sell, and/or importing the ’820 ZTE Devices to practice the claimed methods. Defendant is thereby liable for direct infringement.

12. Specifically, each of the ’820 ZTE Devices monitor the usage of a plurality of buffers, detect certain pre-selected conditions (e.g., detecting whether there is data in buffers for one, or more than one, radio bearer group), designate buffer status reporting formats, and

communicate buffer status reports as claimed in claims 1, 4, 6, 9, 10, 12, 17, 20, 21, and 24 of the '820 patent.

13. Additionally, Defendant is liable for indirect infringement of the '820 patent because it induces the direct infringement of the patent by its customers and other end users who use the '820 ZTE Devices to practice the claimed methods.

14. At a minimum, Defendant has known of the '820 patent as of service of the original complaint in Civil Action No. 6:13-cv-511 filed in this District on June 25, 2013. Defendant is, however, a 3rd Generation Partnership Project (or "3GPP") member organization, or is affiliated with a 3GPP member organization. 3GPP solicits identification of standard essential patents, and, through 3GPP, Defendant received actual notice of the declared essential patents at issue here. The '820 patent is one such patent, and Defendant has known of the patent application that issued as the '820 patent at least as early as June 2009, when it was disclosed to 3GPP via the European Telecommunications Standards Institute ("ETSI," an organizational member of 3GPP).

15. Despite having knowledge of the '820 patent, Defendant has and continues to specifically intend for persons who acquire and use such devices, including Defendant's customers, to use such devices in a manner that infringes the '820 patent, including at least claims 1, 4, 6, 9, and 10. This is evident when Defendant encourages and instructs customers and other end users in the use and operation of the '820 ZTE Devices.

16. For example, despite having knowledge of the '820 patent, Defendant has provided, and continues to provide, instructional materials, such as user guides, owner manuals, and similar online resources (available via http://www.zteusa.com/support_page, for instance) that specifically teach the customers and other end users to use the '820 ZTE Devices in an

infringing manner. Defendant also provides instructions in the form of executable source code, which causes customers and other end users to use the '820 ZTE Devices in an infringing manner. By providing such instructions, Defendant knows (and has known), or should know (and should have known), that its actions have, and continue to, actively induce infringement.

17. CCE has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is, thus, liable to CCE in an amount that adequately compensates it for its 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.

COUNT II

(INFRINGEMENT OF U.S. PATENT NO. 8,385,966)

18. CCE incorporates paragraphs 1 through 6 herein by reference.

19. CCE is the assignee of the '966 patent, entitled "Method, Apparatus, and Computer Program for Power Control Related to Random Access Procedures" with ownership of all substantial rights in the '966 patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringements. A true and correct copy of the '966 patent is attached as Exhibit B.

20. The '966 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

21. Defendant has and continues to directly infringe one or more claims of the '966 patent in this judicial district and elsewhere in Texas and the United States, including at least claims 1-7, 9, and 10-16, by, among other things, making, using, offering for sale, selling and/or importing ZTE mobile devices, including, for example: the ZTE Imperial Max, ZTE Midnight PRO LTE, ZTE Fanfare 2, Blade V8 PRO, ZTE Grand X Max 2, Grand X 4, ZTE Max Duo LTE

, ZTE Overture 2, ZTE Maven 2, ZTE AXON 7, ZTE AXON 7 Mini, ZTE Sonata 3, ZTE Grand X3, ZTE AVID 828, ZTE ZMAX Pro, AT&T Trek 2, ZTE Citrine LTE, ZTE Zpad Tablet, ZTE Tempo, ZTE Warp 7), ZTE Avid Trio, ZTE 998, ZTE Overture, ZTE Anthem 4G, ZTE Avid 4G, ZTE T-Mobile Sonic 2.0 Mobile Hotspot, ZTE Jetpack 4G LTE Mobile Hotspot 890L, ZTE Force, ZTE Flash, ZTE Boost Max, ZTE Warp 4G, ZTE Vital, ZTE Imperial, ZTE Source, ZTE Supreme, AT&T Home Base, Compel, Grand S Pro, Nubia 5S Mini LTE, Sprint LivePro, Zmax, ZTE Warp Sync, ZTE 4G LTE Router with Voice aka MF275U, ZTE Unite III, ZTE Axon, ZTE ZMAX 2, ZTE Warp Elite, ZTE Mobley, ZTE Max +, ZTE Obsidian, ZTE Maven, ZTE Grand X Max Plus, ZTE AT&T Velocity, ZTE Speed aka ZTE N9130, ZTE Imperial II, ZTE Pocket Wi-Fi, ZTE Unite 2, ZTE Unite, ZTE Source aka ZTE N9511, ZTE Rapido LTE, ZTE Grand Memo II LTE, ZTE MF253, ZTE Avid Plus, ZTE Prestige, and ZTE T-Mobile 4G LTE Hotspot. These devices are collectively referred to as the “’966 ZTE Devices.”

22. Defendant directly infringes the apparatus claims of the ’966 patent by making, using, testing, offering to sell, selling, and/or importing the ’966 ZTE Devices. Defendant also directly infringes the ’966 patent by making, using, testing, selling, offering for sale, and/or importing the ’966 ZTE Devices to practice the claimed methods. Defendant is thereby liable for direct infringement.

23. Specifically, each of the ’966 ZTE Devices initialize a first power control adjustment state for an uplink control channel and a second power control adjustment state for an uplink shared channel, compute an initial transmit power for the uplink shared channel using full path loss compensation, and send a message on the uplink shared channel at the initial transmit power, as recited in claims 1-7, 9, and 10-16 of the ’966 patent. *See, e.g.*, 3GPP TS 36.213 regarding uplink power control and non-synchronized physical random access procedure.

24. Additionally, Defendant is liable for indirect infringement of the '966 patent because it induces the direct infringement of the patent by its customers (including, but not limited to, cellular network providers and/or their subscribers) and other end users who use the '966 ZTE Devices to practice the claimed methods.

25. Defendant has had knowledge of the '966 patent at least as early as service of Plaintiff's original complaint in this action. *See, e.g., Patent Harbor, LLC v. Dreamworks Animation SKG, Inc.*, No. 6:11-cv-229, 2012 U.S. Dist. LEXIS 114199, at *17 (E.D. Tex. Jul. 27, 2012). Defendant is, however, a 3rd Generation Partnership Project (or "3GPP") member organization, or is affiliated with a 3GPP member organization. 3GPP solicits identification of standard essential patents, and, through 3GPP, Defendant received actual notice of the declared essential patents at issue here. The '966 patent is one such patent, and Defendant has known of the patent application that issued as the '966 patent at least as early as June 2011, when it was disclosed to 3GPP via ETSI.

26. Despite having knowledge of the '966 patent, Defendant has and continues to specifically intend for persons who acquire and use such devices, including Defendant's customers, to use such devices in a manner that infringes the '966 patent, including at least claims 1-7. This is evident when Defendant encourages and instructs customers and other end users in the use and operation of the '966 ZTE Devices.

27. For example, despite having knowledge of the '966 patent, Defendant has provided, and continues to provide, instructional materials, such as user guides, owner manuals, and similar online resources (available via http://www.zteusa.com/support_page, for instance) that specifically teach the customers and other end users to use the '966 ZTE Devices in an infringing manner. Defendant also provides instructions in the form of executable source code,

which causes customers and other end users to use the '966 ZTE Devices in an infringing manner. By providing such instructions, Defendant knows (and has known), or should know (and should have known), that its actions have, and continue to, actively induce infringement.

28. CCE has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is, thus, liable to CCE in an amount that adequately compensates it for its 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.

COUNT III

(INFRINGEMENT OF U.S. PATENT NO. 9,037,129)

29. CCE incorporates paragraphs 1 through 6 herein by reference.

30. CCE is the assignee of the '129 patent, entitled "Method, Network and Device for Information Provision by Using Paging and Cell Broadcast Services," with ownership of all substantial rights in the '129 patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringements. A true and correct copy of the '129 patent is attached as Exhibit C.

31. The '129 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

32. Defendant has and continues to directly and/or indirectly infringe (by inducing infringement) one or more claims of the '129 patent in this judicial district and elsewhere in Texas and the United States, including at least claims 1, 2, 4, 7, 8, and 10 without the consent or authorization of CCE, by or through its making, having made, offering for sale, selling, importing, testing, and/or use of ZTE mobile devices, including, for example: the ZTE Imperial Max, ZTE Midnight PRO LTE, ZTE Fanfare 2, Blade V8 PRO, ZTE Grand X Max 2, Grand X

4, ZTE Max Duo LTE , ZTE Overture 2, ZTE Maven 2, ZTE AXON 7, ZTE AXON 7 Mini, ZTE Sonata 3, ZTE Grand X3, ZTE AVID 828, ZTE ZMAX Pro, AT&T Trek 2, ZTE Citrine LTE, ZTE Tempo, ZTE Warp 7), ZTE Avid Trio, ZTE 998, ZTE Overture, ZTE Avid 4G, ZTE Force, ZTE Flash, ZTE Boost Max, ZTE Warp 4G, ZTE Vital, ZTE Imperial, ZTE Source, ZTE Supreme, Compel, Grand S Pro, Zmax, ZTE Warp Sync, ZTE Axon, ZTE ZMAX 2, ZTE Warp Elite, ZTE Max +, ZTE Obsidian, ZTE Maven, ZTE Grand X Max Plus, ZTE Speed aka ZTE N9130, ZTE Imperial II, ZTE Source aka ZTE N9511, ZTE Rapido LTE, ZTE Grand Memo II LTE, ZTE Avid Plus, and ZTE Prestige. These devices are collectively referred to as the “’129 ZTE Devices.”

33. Defendant directly infringes the apparatus claims of the ’129 patent by making, using, testing, offering to sell, selling, and/or importing the ’129 ZTE Devices. Defendant also directly infringes the ’129 patent by making, using, selling, offering for sale, and/or importing the ’129 ZTE Devices to practice the claimed methods. Defendant is thereby liable for direct infringement.

34. Specifically, each of the ’129 ZTE Devices store at least two specific identifiers common to a plurality of terminals supporting an emergency warning, check whether a paging message received from a base station includes at least one specific identifier of the at least specific identifiers, switch to a broadcast mode for receiving broadcast content on a broadcast channel if the received paging message includes the at least one specific identifier, and establish at least one of a physical channel and a logical channel if the received paging message includes a temporary mobile subscriber identity allocated to the terminal, as recited in claims 1, 2, 4, 7, 8, and 10 of the ’129 patent. *See, e.g.*, public warning systems disclosed in 3GPP TS 22.268 and

portions of 3GPP TS 36.331 and 3GPP TS 23.041 which provide protocol specification and cell broadcast service implementation details.

35. Additionally, Defendant is liable for indirect infringement of the '129 patent because it induces the direct infringement of the patent by its customers (including, but not limited to, cellular network providers and/or their subscribers) and other end users who use the '129 ZTE Devices to practice the claimed methods.

36. Defendant has had knowledge of the '129 patent at least as early as service of Plaintiff's original complaint in this action. *See, e.g., Patent Harbor, LLC v. Dreamworks Animation SKG, Inc.*, No. 6:11-cv-229, 2012 U.S. Dist. LEXIS 114199, at *17 (E.D. Tex. Jul. 27, 2012).

37. Despite having knowledge of the '129 patent, Defendant has and continues to specifically intend for persons who acquire and use such devices, including Defendant's customers, to use such devices in a manner that infringes the '129 patent, including at least claims 1, 2, and 4. This is evident when Defendant encourages and instructs customers and other end users in the use and operation of the '129 ZTE Devices.

38. For example, despite having knowledge of the '129 patent, Defendant has provided, and continues to provide, instructional materials, such as user guides, owner manuals, and similar online resources (available via http://www.zteusa.com/support_page, for instance) that specifically teach the customers and other end users to use the '129 ZTE Devices in an infringing manner. Defendant also provides instructions in the form of executable source code, which causes customers and other end users to use the '129 ZTE Devices in an infringing manner. By providing such instructions, Defendant knows (and has known), or should know (and should have known), that its actions have, and continue to, actively induce infringement.

39. CCE has been damaged as a result of Defendant's infringing conduct described in this Court. Defendant is, thus, liable to CCE in an amount that adequately compensates it for its 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.

WILLFULNESS

40. Despite having knowledge of the asserted patents, and knowledge that it is directly and/or indirectly infringing claims of the asserted patents, Defendant has nevertheless continued its infringing conduct in an egregious manner. This includes, but is not limited to: (i) its willful blindness, including its refusal to investigate whether the accused products infringe the asserted claims of the '820, '966 and '129 patents; and (ii) its active participation as petitioner in the failed *Inter Partes* Review of the asserted claims of the '820 patent filed in July 2014, which failure should have further educated Defendant as to the unreasonableness of its invalidity defenses.

41. For at least these reasons, Defendant's infringing activities have been, and continue to be, willful, wanton and deliberate in disregard of CCE's rights, justifying an enhanced damages award under 35 U.S.C. § 284.

JURY DEMAND

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

PRAYER FOR RELIEF

CCE requests that the Court find in its favor and against Defendant, and that the Court grant CCE the following relief:

- a. Judgment that one or more claims of the '820, '966, and '129 patents have been infringed, either literally and/or under the doctrine of equivalents, by Defendant and/or by others whose infringements have been induced by Defendant;
- b. Judgment that Defendant account for and pay to CCE all damages to and costs incurred by CCE because of Defendant's infringing activities and other conduct complained of herein;
- c. Judgment that Defendant account for and pay to CCE a reasonable, ongoing, post-judgment royalty because of Defendant's infringing activities and other conduct complained of herein;
- d. That Defendant's infringements relative one or more of the '820, '966, and '129 patents be found willful from the time that Defendant became aware of the infringing nature of its products, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- e. That CCE be granted pre-judgment and post-judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein; and
- f. That CCE be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: **March 9, 2018**

Respectfully submitted,

/s/ Edward R. Nelson III

Edward R. Nelson III

ed@nbafirm.com

Texas State Bar No. 00797142

Ryan P. Griffin

ryan@nbafirm.com

Texas State Bar No. 24053687

Thomas C. Cecil

tom@nbafirm.com

Texas State Bar No. 24069489

NELSON BUMGARDNER ALBRITTON P.C.

3131 West 7th Street, Suite 300

Fort Worth, Texas 76107

Phone: (817) 377-9111

Jeffrey R. Bragalone
Texas Bar No. 02855775
Terry A. Saad
Texas Bar No. 24066015
Jonathan H. Rastegar
Texas Bar No. 24064043
BRAGALONE CONROY PC
2200 Ross Avenue
Suite 4500W
Dallas, TX 75201
Tel: (214) 785-6670
jbragalone@bcpc-law.com
tsaad@bcpc-law.com
jrastegar@bcpc-law.com

Bradley W. Caldwell
Texas Bar No. 24040630
Email: bcaldwell@caldwellcc.com
John Austin Curry
Texas Bar No. 24059636
Email: acurry@caldwellcc.com
CALDWELL CASSADY & CURRY
2101 Cedar Springs Road, Suite 1000
Dallas, TX 75201
Telephone: (214) 888-4848

J. Wesley Hill
Texas State Bar No. 24032294
Claire Abernathy Henry
Texas State Bar No. 24053063
WARD, SMITH, & HILL PLLC
1507 Bill Owens Parkway
Longview, Texas 75604
(903) 757-6400
(903) 757-2323 (fax)
wh@wsfirm.com
claire@wsfirm.com

**ATTORNEYS FOR
CELLULAR COMMUNICATIONS
EQUIPMENT LLC**

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served on all parties of record on March 9, 2018, via the Court's CM/ECF system.

/s/ Edward R. Nelson III