

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IRON OAK TECHNOLOGIES, LLC,

Plaintiff,

v.

ZTE (USA) INC.,

Defendant.

CASE NO. 3:17-cv-3112

JURY

SECOND AMENDED COMPLAINT

For its amended complaint against defendant ZTE (USA) Inc., plaintiff Iron Oak Technologies, LLC (“Iron Oak”) alleges:

PARTIES

1. Plaintiff Iron Oak is a limited liability company organized under the laws of the State of Texas and has its principal place of business at 3605 Scranton Drive, Richland Hills, Texas, 76118. Iron Oak is a technology development company wholly owned by prolific inventors William (Bill) C. Kennedy III of Dallas and Kenneth R. Westerlage of Ft. Worth. Mr. Kennedy and/or Mr. Westerlage are named inventors on each of the 22 patents owned by Iron Oak.

2. Defendant ZTE (USA) Inc. is a New Jersey corporation with a principal place of business at 33 Wood Avenue South, 7th Floor, Iselin, NJ 08830. ZTE (USA) Inc. is registered to do business in Texas and may be served with process through its designated agent, Incorp Services, Inc., 815 Brazos, Suite 500, Richardson, Texas 78701.

NATURE OF ACTION, JURISDICTION AND VENUE

3. This is an action for patent infringement under the Patent Act, 35 U.S.C. § 1 et seq.

4. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (Federal Question) and § 1338 (Patent, Trademark and Unfair Competition).

5. Venue is proper in this district against defendant ZTE (USA) Inc. under 28 U.S.C. § 1391(c)(2) and 1400(b) at least because defendant ZTE (USA) Inc. has committed acts of infringement in this district and has a regular and established place of business in this district at 2425 N. Central Expy, Suite 800, Richardson, TX 75080.

FACTS COMMON TO ALL COUNTS

6. Iron Oak is the owner through assignment of U.S. Patent No. 5,699,275 issued December 16, 1997 (“the ‘275 Patent”), which is valid and enforceable. The ‘275 Patent is directed to a system and method for remote patching of operating code located in a mobile unit. A true and correct copy of the ‘275 patent is attached as Exhibit A.

7. Iron Oak is the owner through assignment of U.S. Patent No. 5,966,658 issued October 12, 1999 (the ‘658 Patent”), which is valid and enforceable. The ‘658 Patent is directed to the automated selection of a communication path. A true and correct copy of the ‘658 patent is attached as Exhibit B.

COUNT I

Infringement of the '275 Patent

8. The allegations in the preceding paragraphs of this Complaint are hereby restated and incorporated by reference.

9. Defendant has committed acts of patent infringement of the '275 Patent by making, using, selling, offering to sell, and importing products and systems, including but not limited to the products and systems described in Exhibit F ("accused products"), for at least the reasons described therein.

10. At all relevant times, Plaintiff has complied with any applicable obligations required by 35 U.S.C. § 287.

11. Iron Oak has been damaged as a result of Defendant's infringing conduct. Defendants, thus, are liable to Iron Oak in an amount that adequately compensates it for which, by law, cannot be less than a reasonable royalty, together with interest and costs, including lost profits, as affixed by this Court under 35 U.S.C. § 284.

COUNT II

Infringement of the '658 Patent

12. The allegations in the preceding paragraphs of this Complaint are hereby restated and incorporated by reference.

13. Defendant has committed acts of patent infringement of the '658 Patent by making, using, selling, offering to sell, and importing products and systems, including but not limited to the products and systems described in Exhibit F ("accused products"), for at least the reasons described therein.

14. At all relevant times, Plaintiff has complied with any applicable obligations required by 35 U.S.C. § 287.

15. Iron Oak has been damaged as a result of Defendant's infringing conduct. Defendant, thus, is liable to Iron Oak in an amount that adequately compensates it for, which, by law, cannot be less than a reasonable royalty, together with interest and costs, including lost profits, as affixed by this Court under 35 U.S.C. § 284.

PRAYER

WHEREFORE, Iron Oak requests judgment against Defendant as follows:

1. An award of damages, increased as deemed appropriate by the court, under 35 U.S.C. § 284;
2. An award of attorneys' fees under 35 U.S.C. § 285;
3. An award of prejudgment interest and costs of the action; and
4. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

March 15, 2018

Respectfully submitted,

/s/ Albert Deaver...

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CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system.

/s/ Al Deaver