

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

ZTE (USA) Inc.,

Plaintiff,

v.

WSOU INVESTMENTS, LLC d/b/a
BRAZOS LICENSING AND
DEVELOPMENT

Defendant.

CASE NO. _____

(Former Case Nos. 6:20-cv-487-ADA through -
497-ADA) (W.D. Tex.)

JURY TRIAL DEMANDED

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff ZTE (USA) Inc. (“ZTE”), of Richardson, Texas, hereby respectfully files this Complaint (“Complaint”) against Defendant Plaintiff WSOU Investments, LLC d/b/a Brazos Licensing and Development (“WSOU”), seeking declaratory judgment of non-infringement as to the following eleven United States patents, including (1) U.S. Patent. No. 8,451,839, (2) U.S. Patent. No. 7,489,929, (3) U.S. Patent. No. 7,487,240, (4) U.S. Patent. No. 8,179,960, (5) U.S. Patent. No. 8,730,905, (6) U.S. Patent. No. 8,147,071, (7) U.S. Patent. No. 9,294,060, (8) U.S. Patent. No. 9,185,036, (9) U.S. Patent. No. 9,258,232, (10) U.S. Patent. No. 7,742,534, and (11) U.S. Patent. No. 7,203,505 (collectively, the “Patents-in-Suit”).¹

¹ These Patents-in-Suit were formerly asserted against ZTE in Case Nos. 6:20-cv-487 through -497 (W.D. Tex.) (dismissed due to lack of venue over ZTE, but pending as to another co-defendant), and these Patents-in-Suit were also formerly asserted against ZTE in Case Nos. 6:20-cv-00211; -216; -224; -228; -229; -231; -238; -240; -242; -254; and -254. (W.D. Tex.) (voluntarily dismissed for all defendants). Specific citations reference to the docket for WDTX Case No. -00487.

ZTE hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action arising under the patent laws of the United States, 35 U.S.C. § 1 et. seq. and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, seeking a declaratory judgment of: (i) non-infringement of the Patents-in-Suit; (ii) and for such other relief as the Court deems just and proper. Additionally, ZTE further reserves the right to assert invalidity as an affirmative defense if WSOU asserts infringement.

THE PARTIES

2. Plaintiff ZTE (USA) Inc. is a corporation organized and existing under the laws of the state of New Jersey, with its principal place of business at 2425 N. Central Expressway, Suite 600, Richardson, Texas 75080.

3. Upon information and belief, Defendant WSOU Investments, LLC d/b/a Brazos Licensing and Development is a limited liability corporation organized and existing under the laws of Delaware, with its principal place of business at 605 Austin Ave, Ste 6, Waco, TX 76701.

JURISDICTION AND VENUE

4. This Court has exclusive subject matter jurisdiction over this action pursuant to federal question jurisdiction, 28 U.S.C. §§ 1331 and 1338(a) and (b) and 1367, the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the Patent Laws of the United States, 35 U.S.C. § 1 et seq.

5. An actual and justiciable controversy exists between ZTE and WSOU as to the alleged infringement of the claims of the Patents-in-Suit.

6. This Court has subject matter jurisdiction over this action based on a real and immediate controversy between ZTE and WSOU regarding whether various ZTE's

telecommunication and media devices infringe the Patents-in-Suit, which WSOU purports to own, whether WSOU is barred from asserting infringement of those patents. As described in more detail below, this controversy arises out of WSOU's infringement assertions and demands over ZTE's products. *See* case nos. 6:20-cv-487 through -497 (W.D. Tex.) (dismissed for lack of venue as to ZTE but still pending for another co-defendant), and case nos. 6:20-cv-00245 through -0255 (W.D. Tex.) (voluntarily dismissed for all defendants); *see also* Exs. 1-11 (copies of the respective patents).

7. On information and belief, WSOU is subject to this Court's specific and/or general personal jurisdiction, pursuant to due process and/or the Texas Long Arm Statute, due at least to (1) WSOU's activities purposefully directed at residents of this forum, (2) the claims arise out of or relate to the WSOU's activities with this forum, and (3) the assertion of personal jurisdiction is reasonable and fair. Additionally, WSOU's principal place of business is located within the state of Texas.

8. WSOU asserted one or more of the Patents-in-Suit against ZTE. *See* case nos. 6:20-cv-487 through -497 (W.D. Tex.) (still pending for another co-defendant), and case nos. 6:20-cv-00245 through -0255 (W.D. Tex.) (voluntarily dismissed for all defendants). Additionally, ZTE is a company with its principal place of business in this forum. And WSOU conducted meaningful enforcement activities in Texas. WSOU retained counsel in Texas, traveled in Texas, and deposed witnesses in Texas.

9. All cases asserted against ZTE have been dismissed, *see* case no. -487, Dkt. 105, but the threat of litigation remains as ZTE was dismissed *without* prejudice.

10. WSOU asserted one or more patents of the Patents-in-Suit against ZTE's sister company ZTE (TX) Inc. which have likewise been dismissed without prejudice; and WSOU

asserted one or more patents of the Patents-in-Suit against ZTE's parent company ZTE Corporation, wherein one set of cases remain pending. *See* case nos. 6:20-cv-487 through -497 (W.D. Tex.) (still pending for co-defendant), and case nos. 6:20-cv-00245 through -0255 (W.D. Tex.) (voluntarily dismissed for all defendants). Additionally, ZTE (TX) Inc. is a Texas company.

11. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1400 because this is the district in which a substantial part of the events and allegations giving rise to the claims occurred, or a substantial part of property that is subject to this action is situated. WSOU's principal place of business is located within the state of Texas, and upon information and belief, WSOU regularly engages in business within this judicial district. As stated herein, WSOU further engaged in litigation enforcement activities directed at and against ZTE, a resident of this judicial district. *See* paragraphs 4 through 10.

FACTUAL BACKGROUND

The Patents-in-Suit

12. On its face, first, U.S. Patent No. 8,451,839 ("the '839 patent") is entitled, "Method and Apparatus for Managing Route Information and Forwarding Data in Access Devices," and on its face, indicates an issue date of May 28, 2013. A copy of the '839 patent is attached as Ex. 1.

13. On its face, second, U.S. Patent No. 7,489,929 ("the '929 patent") is entitled, "Hard Handoff Procedure for Dedicated and High Speed Shared Channels," and on its face, indicates an issue date of February 10, 2009. A copy of the '929 patent is attached as Ex. 2.

14. On its face, third, U.S. Patent No. 7,487,240 ("the '240 patent") is entitled, "Centralized Internet Protocol/Multi-Protocol Label Switching Connectivity Verification in a Communications Network Management Context," and on its face, indicates an issue date of February 3, 2009. A copy of the '240 patent is attached as Ex. 3.

15. On its face, fourth, U.S. Patent No. 8,179,960 (“the ’960 patent”) is entitled, “Method and Apparatus for Performing Video Coding and Decoding with Use of Virtual Reference Data,” and on its face, indicates an issue date of May 15, 2012. A copy of the ’960 patent is attached as Ex. 4.

16. On its face, fifth, U.S. Patent No. 8,730,905 (“the ’905 patent”) is entitled, “Transmission Resource Reservation Scheme,” and on its face, indicates an issue date of May 20, 2014. A copy of the ’905 patent is attached as Ex. 5.

17. On its face, sixth, U.S. Patent No. 8,147,071 (“the ’071 patent”) is entitled, “Processor for an Apparatus, an Apparatus and Associated Methods,” and on its face, indicates an issue date of April 3, 2012. A copy of the ’071 patent is attached as Ex. 6.

18. On its face, seventh, U.S. Patent No. 9,294,060 (“the ’060 patent”) is entitled, “Bandwidth Extender,” and on its face, indicates an issue date of March 22, 2016. A copy of the ’060 patent is attached as Ex. 7.

19. On its face, eighth, U.S. Patent No. 9,185,036 (“the ’036 patent”) is entitled, “Method and Apparatus for Flow Control of Data in a Network,” and on its face, indicates an issue date of November 10, 2015. A copy of the ’036 patent is attached as Ex. 8.

20. On its face, ninth, U.S. Patent No. 9,258,232 (“the ’232 patent”) is entitled, “Ingress Traffic Flow Control in Data Communications Systems,” and on its face, indicates an issue date of February 9, 2016. A copy of the ’232 patent is attached as Ex. 9.

21. On its face, tenth, U.S. Patent No. 7,742,534 (“the ’534 patent”) is entitled, “Method for Transmitting User Data in a Multi-Carrier Radio Communication System, and Corresponding Receiver,” and on its face, indicates an issue date of June 22, 2010. A copy of the ’534 patent is attached as Ex. 10.

22. On its face, eleventh, U.S. Patent No. 7,203,505 (“the ’505 patent”) is entitled, “Message Transfer From a Source Device Via a Mobile Terminal Device to a Third Device,” and on its face, indicates an issue date of April 10, 2007. A copy of the ’505 patent is attached as Ex. 11.

23. WSOU alleges to have direct or indirect ownership interest in the Patents-in-Suit.

WSOU’s Allegations

24. First, the Amended Complaint for the ’the 839 patent, case no. -487 (Dkt. 38), alleges ZTE infringement at paragraphs 23 through 40. A copy of this Amended Complaint is attached as Ex. 12.

25. Second, the Amended Complaint for the ’929 patent, case no. -488 (Dkt. 36), alleges ZTE infringement at paragraphs 23 through 58. A copy of this Amended Complaint is attached as Ex. 13.

26. Third, the Amended Complaint for the ’240 patent, case no. -489 (Dkt. 37), alleges ZTE infringement at paragraphs 23 through 56. A copy of this Amended Complaint is attached as Ex. 14.

27. Fourth, the Amended Complaint for the ’960 patent, case no. -490 (Dkt. 34), alleges ZTE infringement at paragraphs 23 through 49. A copy of this Amended Complaint is attached as Ex. 15.

28. Fifth, the Amended Complaint for the ’905 patent, case no. -491 (Dkt. 36), alleges ZTE infringement at paragraphs 23 through 41. A copy of this Amended Complaint is attached as Ex. 16.

29. Sixth, the Amended Complaint for the '071 patent, case no. -492 (Dkt. 36), alleges ZTE infringement at paragraphs 23 through 38. A copy of this Amended Complaint is attached as Ex. 17.

30. Seventh, the Amended Complaint for the '060 patent, case no. -493 (Dkt. 35), alleges ZTE infringement at paragraphs 23 through 42. A copy of this Amended Complaint is attached as Ex. 18.

31. Eighth, the Amended Complaint for the '036 patent, case no. -494 (Dkt. 36), alleges ZTE infringement at paragraphs 23 through 39. A copy of this Amended Complaint is attached as Ex. 19.

32. Ninth, the Amended Complaint for the '232 patent, case no. -495 (Dkt. 36), alleges ZTE infringement at paragraphs 23 through 44. A copy of this Amended Complaint is attached as Ex. 20.

33. Tenth, the Amended Complaint for the '534 patent, case no. -496 (Dkt. 36), alleges ZTE infringement at paragraphs 23 through 49. A copy of this Amended Complaint is attached as Ex. 21.

34. Eleventh, the Amended Complaint for the '505 patent, case no. -497 (Dkt. 36), alleges ZTE infringement at paragraphs 23 through 47. A copy of this Amended Complaint is attached as Ex. 22.

Proceedings and Related Litigation

35. Through March 23-31, 2020, WSOU asserted the eleven Patents-in-Suit against ZTE, as well as other ZTE entities, in eleven patent-individualized complaints in the Western District of Texas (the "Original Actions"). *See* case nos. 6:20-cv-00211; -216; -224; -228; -229; -

231; -238; -240; -242; -254; and -254. The Original Actions were voluntarily dismissed for all ZTE entities on June 3, 2020.

36. Then, later, on June 3, 2020, WSOU again asserted the same eleven Patents-in-Suit against ZTE, as well as other ZTE entities, in another set of eleven patent-individualized complaints in the Western District of Texas (the “Second Actions”)². *See* case nos. 6:20-cv-00487 through -00497. On August 6, 2021, the Second Actions were dismissed without prejudice for ZTE and sister ZTE (TX), Inc., due to misvenue in the WDTX; however, the Second Actions remain pending for parent ZTE Corporation. *See* case no. -487, Dkt. 105. As to the pending cases, ZTE Corporation filed a Motion for Reconsideration, Dkt. 107, which was denied, Dkt. 116, but the WDTX court there stated:

“The propriety of [ZTE Corporation’s] motions aside, the Court does recognize the possibility that WSOU will pursue parallel litigations against ZTE USA in another district, and therefore raises a possible judicial efficiency concern. However, to the Court’s knowledge, WSOU has yet to file such a suit. And while ZTE USA may be ‘likely to file a declaratory judgment action in a proper forum,’ ZTE USA has yet to bring such an action. Thus, to the extent there is a judicial efficiency concern here, that concern remains hypothetical.”

COUNT ONE
(Declaratory Judgment of Non-Infringement of U.S. Patent No. 8,451,839)

37. ZTE incorporates by reference the allegations in paragraphs 1 through 36 above as fully set forth herein.

² Collectively, the Original and Second Actions are referenced as the “Former Actions” for ZTE.

38. An actual and justiciable controversy exists between ZTE and WSOU concerning the non-infringement of the '839 patent.

39. ZTE's products, including at least the Accused Devices in the Former Actions, have not infringed, and do not infringe, directly or indirectly, any valid and enforceable claim of the '839 patent, either literally or under the doctrine of equivalents.

40. ZTE is entitled to a judgment from this Court that ZTE has not infringed, and does not infringe, any valid and enforceable claim of the '839 patent.

COUNT TWO
(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,489,929)

41. ZTE incorporates by reference the allegations in paragraphs 1 through 40 above as fully set forth herein.

42. An actual and justiciable controversy exists between ZTE and WSOU concerning the non-infringement of the '929 patent.

43. ZTE's products, including at least the Accused Devices in the Former Actions, have not infringed, and do not infringe, directly or indirectly, any valid and enforceable claim of the '929 patent, either literally or under the doctrine of equivalents.

44. ZTE is entitled to a judgment from this Court that ZTE has not infringed, and does not infringe, any valid and enforceable claim of the '929 patent.

COUNT THREE
(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,487,240)

45. ZTE incorporates by reference the allegations in paragraphs 1 through 44 above as fully set forth herein.

46. An actual and justiciable controversy exists between ZTE and WSOU concerning the non-infringement of the '240 patent.

47. ZTE's products, including at least the Accused Devices in the Former Actions, have not infringed, and do not infringe, directly or indirectly, any valid and enforceable claim of the '240 patent, either literally or under the doctrine of equivalents.

48. ZTE is entitled to a judgment from this Court that ZTE has not infringed, and does not infringe, any valid and enforceable claim of the '240 patent.

COUNT FOUR
(Declaratory Judgment of Non-Infringement of U.S. Patent No. 8,179,960)

49. ZTE incorporates by reference the allegations in paragraphs 1 through 48 above as fully set forth herein.

50. An actual and justiciable controversy exists between ZTE and WSOU concerning the non-infringement of the '960 patent.

51. ZTE's products, including at least the Accused Devices in the Former Actions, have not infringed, and do not infringe, directly or indirectly, any valid and enforceable claim of the '960 patent, either literally or under the doctrine of equivalents.

52. ZTE is entitled to a judgment from this Court that ZTE has not infringed, and does not infringe, any valid and enforceable claim of the '960 patent.

COUNT FIVE
(Declaratory Judgment of Non-Infringement of U.S. Patent No. 8,730,905)

53. ZTE incorporates by reference the allegations in paragraphs 1 through 52 above as fully set forth herein.

54. An actual and justiciable controversy exists between ZTE and WSOU concerning the non-infringement of the '905 patent.

55. ZTE's products, including at least the Accused Devices in the Former Actions, have not infringed, and do not infringe, directly or indirectly, any valid and enforceable claim of the '905 patent, either literally or under the doctrine of equivalents.

56. ZTE is entitled to a judgment from this Court that ZTE has not infringed, and does not infringe, any valid and enforceable claim of the '905 patent.

COUNT SIX
(Declaratory Judgment of Non-Infringement of U.S. Patent No. 8,147,071)

57. ZTE incorporates by reference the allegations in paragraphs 1 through 56 above as fully set forth herein.

58. An actual and justiciable controversy exists between ZTE and WSOU concerning the non-infringement of the '071 patent.

59. ZTE's products, including at least the Accused Devices in the Former Actions, have not infringed, and do not infringe, directly or indirectly, any valid and enforceable claim of the '071 patent, either literally or under the doctrine of equivalents.

60. ZTE is entitled to a judgment from this Court that ZTE has not infringed, and does not infringe, any valid and enforceable claim of the '071 patent.

COUNT SEVEN
(Declaratory Judgment of Non-Infringement of U.S. Patent No. 9,294,060)

61. ZTE incorporates by reference the allegations in paragraphs 1 through 60 above as fully set forth herein.

62. An actual and justiciable controversy exists between ZTE and WSOU concerning the non-infringement of the '060 patent.

63. ZTE's products, including at least the Accused Devices in the Former Actions, have not infringed, and do not infringe, directly or indirectly, any valid and enforceable claim of the '060 patent, either literally or under the doctrine of equivalents.

64. ZTE is entitled to a judgment from this Court that ZTE has not infringed, and does not infringe, any valid and enforceable claim of the '060 patent.

COUNT EIGHT
(Declaratory Judgment of Non-Infringement of U.S. Patent No. 9,185,036)

65. ZTE incorporates by reference the allegations in paragraphs 1 through 64 above as fully set forth herein.

66. An actual and justiciable controversy exists between ZTE and WSOU concerning the non-infringement of the '036 patent.

67. ZTE's products, including at least the Accused Devices in the Former Actions, have not infringed, and do not infringe, directly or indirectly, any valid and enforceable claim of the '036 patent, either literally or under the doctrine of equivalents.

68. ZTE is entitled to a judgment from this Court that ZTE has not infringed, and does not infringe, any valid and enforceable claim of the '036 patent.

COUNT NINE
(Declaratory Judgment of Non-Infringement of U.S. Patent No. 9,258,232)

69. ZTE incorporates by reference the allegations in paragraphs 1 through 68 above as fully set forth herein.

70. An actual and justiciable controversy exists between ZTE and WSOU concerning the non-infringement of the '232 patent.

71. ZTE's products, including at least the Accused Devices in the Former Actions, have not infringed, and do not infringe, directly or indirectly, any valid and enforceable claim of the '232 patent, either literally or under the doctrine of equivalents.

72. ZTE is entitled to a judgment from this Court that ZTE has not infringed, and does not infringe, any valid and enforceable claim of the '232 patent.

COUNT TEN

(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,742,534)

73. ZTE incorporates by reference the allegations in paragraphs 1 through 72 above as fully set forth herein.

74. An actual and justiciable controversy exists between ZTE and WSOU concerning the non-infringement of the '534 patent.

75. ZTE's products, including at least the Accused Devices in the Former Actions, have not infringed, and do not infringe, directly or indirectly, any valid and enforceable claim of the '534 patent, either literally or under the doctrine of equivalents.

76. ZTE is entitled to a judgment from this Court that ZTE has not infringed, and does not infringe, any valid and enforceable claim of the '534 patent.

COUNT ELEVEN

(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,203,505)

77. ZTE incorporates by reference the allegations in paragraphs 1 through 76 above as fully set forth herein.

78. An actual and justiciable controversy exists between ZTE and WSOU concerning the non-infringement of the '505 patent.

79. ZTE's products, including at least the Accused Devices in the Former Actions, have not infringed, and do not infringe, directly or indirectly, any valid and enforceable claim of the '505 patent, either literally or under the doctrine of equivalents.

80. ZTE is entitled to a judgment from this Court that ZTE has not infringed, and does not infringe, any valid and enforceable claim of the '505 patent.

PRAYER FOR RELIEF

WHEREFORE, ZTE prays for the following judgment and relief:

(A) A declaration that ZTE has not infringed, and does not infringe, either directly or indirectly, any valid and enforceable claim of the Patents-in-Suit, either literally or under the doctrine of equivalents;

(B) A declaration that WSOU is barred from asserting infringement against ZTE with respect to the Patents-in-Suit due to inequitable conduct by WSOU.

(C) An order declaring that ZTE is the prevailing party and that this case is an exceptional case under 35 U.S.C. § 285, and awarding ZTE its costs, expenses, and reasonable attorneys' fees under 35 U.S.C. § 285 and all other applicable statutes, rules and common law, including this Court's inherent authority; and

(D) Any other equitable and/or legal relief that this Court may deem just and proper.

DEMAND FOR JURY TRIAL

In accordance with Federal Rule of Civil Procedure 38(b), ZTE demands a trial by jury on all issues so triable.

DATED: September 7, 2021

Respectfully submitted,

/s/Lionel M. Lavenue

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