

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

**WIRELESS PROTOCOL INNOVATIONS,
INC.,**

Plaintiff,

v.

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

Defendants.

Case No. 6:15-cv-00919

PATENT CASE

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Wireless Protocol Innovations, Inc. (“Plaintiff”) files this Complaint against Defendants ZTE Corporation, ZTE (USA) Inc. and ZTE Solutions, Inc. (“Defendants” or “ZTE”) for infringement of United States Patent Nos. 6,381,211 (the “211 patent”), 8,274,991 (the “991 patent”), 8,565,256 (the “256 patent”) and 9,125,051 (the “051 patent”).

THE PARTIES

PLAINTIFF

1. Wireless Protocol Innovations, Inc. is a Texas company with its principal place of business at 505 East Travis Street, Suite 203, Marshall, Texas 75670.

DEFENDANTS

2. On information and belief, ZTE Corporation is a corporation organized and existing under the laws of the People’s Republic of China with its principal place of business at No. 55, Hi-Tech Road South, Shenzhen, Guangdong Province, The People’s Republic of China 518057. On information and belief, ZTE Corporation may be served with process through its

registered agent, ZTE Plaza, Keji Road South, Hi-Tech Industrial Park, Nanshan District, Shenzhen, Guangdong Province, The People's Republic of China 518057. On information and belief, this Court has personal jurisdiction over ZTE Corporation because ZTE Corporation has committed, and continues to commit, acts of infringement in the State of Texas, has conducted business in the State of Texas, and/or has engaged in continuous and systematic activities in the State of Texas.

3. On information and belief, ZTE (USA) Inc. is a New Jersey corporation with its principal place of business located at 2425 North Central Expressway, Suite 323, Richardson, Texas 75080. On information and belief, ZTE (USA) Inc. may be served with process through its registered agent, ZTE (USA) Inc., 55 Madison Ave., Suite 302, Morristown, NJ 07960. On information and belief, this Court has personal jurisdiction over ZTE (USA) Inc. because ZTE (USA) Inc. has committed, and continues to commit, acts of infringement in the State of Texas, has conducted business in the State of Texas, and/or has engaged in continuous and systematic activities in the State of Texas.

4. On information and belief, Defendant ZTE Solutions, Inc. is a Delaware corporation with its principal place of business in Richardson, Texas. On information and belief, ZTE Solutions, Inc. may be served with process through its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. On information and belief, this Court has personal jurisdiction over ZTE Solutions, Inc. because ZTE Solutions, Inc. has committed, and continues to commit, acts of infringement in the State of Texas, has conducted business in the State of Texas, and/or has engaged in continuous and systematic activities in the State of Texas.

5. Defendants ZTE Corporation, ZTE (USA) Inc., and ZTE Solutions, Inc. are collectively referred to as “Defendants” or “ZTE.”

JURISDICTION AND VENUE

6. This is an action for patent infringement under Title 35 of the United States Code. Plaintiff is seeking injunctive relief as well as damages.

7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States’ patent statutes, 35 U.S.C. § 101 *et seq.*

8. Venue is proper under 28 U.S.C. §§ 1391(c) and 1400(b) because Defendants have committed acts of infringement in this district and/or are deemed to reside in this district.

9. This Court has personal jurisdiction over Defendants and venue is proper in this district because Defendants have committed, and continue to commit, acts of infringement in the state of Texas, including in this district, have conducted business in the state of Texas, including in this district, and/or have engaged in continuous and systematic activities in the state of Texas, including in this district.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 6,381,211)

10. Plaintiff incorporates paragraphs 1 through 9 herein by reference.

11. Plaintiff is the owner and assignee of the ’211 patent, entitled “Processing Data Transmitted and Received Over a Wireless Link Connecting a Central Terminal and a Subscriber Terminal of a Wireless Telecommunications System,” with ownership of all substantial rights in the ’211 patent, including the right to exclude others and to enforce, sue and recover damages for past and future infringement. A true and correct copy of the ’211 patent is attached as Exhibit A.

12. The '211 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

13. Plaintiff has been damaged as a result of ZTE's infringing conduct described in this Count. ZTE is thus liable to Plaintiff in an amount that adequately compensates it for their 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.

Direct Infringement

14. On information and belief, ZTE has and continues to directly infringe one or more claims of the '211 patent in this judicial district and/or elsewhere in Texas and the United States, including at least claim 107, by, among other things, making, using, offering for sale, selling and/or importing infringing wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, by practicing infringing methods by way of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, and/or by directing or controlling the performance of infringing methods, including by customers and/or end-users of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro. ZTE is thereby liable for infringement of the '211 patent pursuant to 35 U.S.C. § 271.

Indirect Infringement – Inducement

15. Based on the information presently available to Plaintiff, absent discovery, and in addition or in the alternative to direct infringement, Plaintiff contends that ZTE has and continues to indirectly infringe one or more claims of the '211 patent, including at least claim 107, by inducing others, including customers and/or end-users of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, to make, use, sell, offer

for sale, and/or import wireless communication devices and/or to practice infringing methods in violation of one or more claims of the '211 patent, including at least claim 107.

16. ZTE Corporation has been on notice of the re-examined '211 patent since at least as early as on or about May 26, 2015, or before, but has continued since that time to cause others to directly infringe the '211 patent as alleged herein. Defendants ZTE (USA) Inc. and ZTE Solutions, Inc. have been on notice of the '211 patent since at least service of this action, or before, but have continued since that time to cause others to directly infringe the '211 patent as alleged herein. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

17. On information and belief, since ZTE has been on notice of the '211 patent, ZTE has knowingly induced infringement of the '211 patent, including at least claim 107 of the '211 patent, and possessed specific intent to encourage others' infringement.

18. On information and belief, since ZTE has been on notice of the '211 patent, ZTE knew or should have known that its actions would induce actual infringement of the '211 patent, including at least claim 107 of the '211 patent, by customers and/or end-users of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro.

19. For example, since ZTE has been on notice of the '211 patent, ZTE has purposefully and voluntarily made available wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, with the expectation that they would be utilized by customers and/or end-users in the United States in a way that infringes at least claim 107 of the '211 patent.

20. Since ZTE has been on notice of the '211 patent, ZTE has also instructed and/or encouraged customers and/or end-users of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, to utilize such devices in a way that results in the infringement of at least claim 107 of the '211 patent and has provided support to such customers and/or end-users.

21. ZTE has not produced or relied upon an opinion of counsel suggesting that the '211 patent is invalid or is not infringed by ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

22. ZTE has not produced any evidence as to any investigation, design around or that any remedial action was taken with respect to the '211 patent. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

COUNT II

(INFRINGEMENT OF U.S. PATENT NO. 8,274,991)

23. Plaintiff incorporates paragraphs 1 through 9 herein by reference.

24. Plaintiff is the owner and assignee of the '991 patent, entitled "Protocol for Allocating Upstream Slots Over a Link in a Point-to-Multipoint Communication System," with ownership of all substantial rights in the '991 patent, including the right to exclude others and to enforce, sue and recover damages for past and future infringement. A true and correct copy of the '991 patent is attached as Exhibit B.

25. The '991 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

26. Plaintiff has been damaged as a result of ZTE's infringing conduct described in this Court. ZTE is thus liable to Plaintiff in an amount that adequately compensates it for their 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.

Direct Infringement

27. On information and belief, ZTE has and continues to directly infringe one or more claims of the '991 patent in this judicial district and/or elsewhere in Texas and the United States, including at least claim 1, by, among other things, making, using, offering for sale, selling and/or importing infringing wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, by practicing infringing methods by way of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, and/or by directing or controlling the performance of infringing methods, including by customers and/or end-users of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro. ZTE is thereby liable for infringement of the '991 patent pursuant to 35 U.S.C. § 271.

Indirect Infringement – Inducement

28. Based on the information presently available to Plaintiff, absent discovery, and in addition or in the alternative to direct infringement, Plaintiff contends that ZTE has and continues to indirectly infringe one or more claims of the '991 patent, including at least claim 1, by inducing others, including customers and/or end-users of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, to make, use, sell, offer

for sale, and/or import wireless communication devices and/or to practice infringing methods in violation of one or more claims of the '991 patent, including at least claim 1.

29. On information and belief, Defendant ZTE Corporation has been on notice of the '991 patent since at least on or about July 23, 2014, or before, but has continued since that time to cause others to directly infringe the '991 patent as alleged herein. Defendants ZTE (USA) Inc. and ZTE Solutions, Inc. have been on notice of the '991 patent since at least service of this action, or before, but have continued since that time to cause others to directly infringe the '991 patent as alleged herein. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

30. On information and belief, since ZTE has been on notice of the '991 patent, ZTE has knowingly induced infringement of the '991 patent, including at least claim 1 of the '991 patent, and possessed specific intent to encourage others' infringement.

31. On information and belief, since ZTE has been on notice of the '991 patent, ZTE knew or should have known that its actions would induce actual infringement of the '991 patent, including at least claim 1 of the '991 patent, by customers and/or end-users of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro.

32. For example, since ZTE has been on notice of the '991 patent, ZTE has purposefully and voluntarily made available wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, with the expectation that they would be utilized by customers and/or end-users in the United States in a way that infringes at least claim 1 of the '991 patent and provides support to such customers and/or end-users.

33. Since ZTE has been on notice of the '991 patent, ZTE has also instructed and/or encouraged customers and/or end-users of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, to utilize such devices in a way that results in the infringement of at least claim 1 of the '991 patent and has provided support to such customers and/or end-users.

34. ZTE has not produced or relied upon an opinion of counsel suggesting that the '991 patent is invalid or is not infringed by ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

35. ZTE has not produced any evidence as to any investigation, design around or that any remedial action was taken with respect to the '991 patent. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

COUNT III

(INFRINGEMENT OF U.S. PATENT NO. 8,565,256)

36. Plaintiff incorporates paragraphs 1 through 9 herein by reference.

37. Plaintiff is the owner and assignee of the '256 patent, entitled "Protocol for Allocating Upstream Slots Over a Link in a Point-to-Multipoint Communication System," with ownership of all substantial rights in the '256 patent, including the right to exclude others and to enforce, sue and recover damages for past and future infringement. A true and correct copy of the '256 patent is attached as Exhibit C.

38. The '256 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

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

Direct Infringement

40. On information and belief, ZTE has and continues to directly infringe one or more claims of the '256 patent in this judicial district and/or elsewhere in Texas and the United States, including at least claim 1, by, among other things, making, using, offering for sale, selling and/or importing infringing wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, by practicing infringing methods by way of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, and/or by directing or controlling the performance of infringing methods, including by customers and/or end-users of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro. ZTE is thereby liable for infringement of the '256 patent pursuant to 35 U.S.C. § 271.

Indirect Infringement – Inducement

41. Based on the information presently available to Plaintiff, absent discovery, and in addition or in the alternative to direct infringement, Plaintiff contends that ZTE has and continues to indirectly infringe one or more claims of the '256 patent, including at least claim 1, by inducing others, including customers and/or end-users of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, to make, use, sell, offer

for sale, and/or import wireless communication devices and/or to practice infringing methods in violation of one or more claims of the '256 patent, including at least claim 1.

42. On information and belief, Defendants ZTE Corporation and ZTE (USA) Inc. have been on notice of the '256 patent since at least as early as on or about February 14, 2014, or before, but have continued since that time to cause others to directly infringe the '256 patent as alleged herein. Defendant ZTE Solutions, Inc. has been on notice of the '256 patent since at least service of this action, or before, but has continued since that time to cause others to directly infringe the '256 patent as alleged herein. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

43. On information and belief, since ZTE has been on notice of the '256 patent, ZTE has knowingly induced infringement of the '256 patent, including at least claim 1 of the '256 patent, and possessed specific intent to encourage others' infringement.

44. On information and belief, since ZTE has been on notice of the '256 patent, ZTE knew or should have known that its actions would induce actual infringement of the '256 patent, including at least claim 1 of the '256 patent, by customers and/or end-users of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro.

45. For example, since ZTE has been on notice of the '256 patent, ZTE has purposefully and voluntarily made available wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, with the expectation that they would be utilized by customers and/or end-users in the United States in a way that infringes at least claim 1 of the '256 patent.

46. Since ZTE has been on notice of the '256 patent, ZTE has also instructed and/or encouraged customers and/or end-users of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, to utilize such devices in a way that results in the infringement of at least claim 1 of the '256 patent and has provided support to such customers and/or end-users.

47. ZTE has not produced or relied upon an opinion of counsel suggesting that the '256 patent is invalid or is not infringed by ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

48. ZTE has not produced any evidence as to any investigation, design around or that any remedial action was taken with respect to the '256 patent. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

COUNT IV

(INFRINGEMENT OF U.S. PATENT NO. 9,125,051)

49. Plaintiff incorporates paragraphs 1 through 9 herein by reference.

50. Plaintiff is the owner and assignee of the '051 patent, entitled "Protocol for Allocating Upstream Slots Over a Link in a Point-to-Multipoint Communication System," with ownership of all substantial rights in the '051 patent, including the right to exclude others and to enforce, sue and recover damages for past and future infringement. A true and correct copy of the '051 patent is attached as Exhibit D.

51. The '051 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

52. Plaintiff has been damaged as a result of ZTE's infringing conduct described in this Count. ZTE is thus liable to Plaintiff in an amount that adequately compensates it for their 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.

Direct Infringement

53. On information and belief, ZTE has and continues to directly infringe one or more claims of the '051 patent in this judicial district and/or elsewhere in Texas and the United States, including at least claim 21, by, among other things, making, using, offering for sale, selling and/or importing infringing wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, by practicing infringing methods by way of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, and/or by directing or controlling the performance of infringing methods, including by customers and/or end-users of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro. ZTE is thereby liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

Indirect Infringement – Inducement

54. Based on the information presently available to Plaintiff, absent discovery, and in addition or in the alternative to direct infringement, Plaintiff contends that ZTE has and continues to indirectly infringe one or more claims of the '051 patent, including at least claim 21, by inducing others, including customers and/or end-users of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, to make, use, sell, offer

for sale, and/or import wireless communication devices and/or to practice infringing methods in violation of one or more claims of the '051 patent, including at least claim 21.

55. ZTE has been on notice of the '051 patent since at least service of this action, or before, but has continued since that time to cause others to directly infringe the '051 patent as alleged herein. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

56. On information and belief, since ZTE has been on notice of the '051 patent, ZTE has knowingly induced infringement of the '051 patent, including at least claim 21 of the '051 patent, and possessed specific intent to encourage others' infringement.

57. On information and belief, since ZTE has been on notice of the '051 patent, ZTE knew or should have known that its actions would induce actual infringement of the '051 patent, including at least claim 21 of the '051 patent, by customers and/or end-users of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro.

58. For example, since ZTE has been on notice of the '051 patent, ZTE has purposefully and voluntarily made available wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, with the expectation that they would be utilized by customers and/or end-users in the United States in a way that infringes at least claim 21 of the '051 patent.

59. Since ZTE has been on notice of the '051 patent, ZTE has also instructed and/or encouraged customers and/or end-users of ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro, to utilize such devices in a way that results in

the infringement of at least claim 21 of the '051 patent and has provided support to such customers and/or end-users.

60. ZTE has not produced or relied upon an opinion of counsel suggesting that the '051 patent is invalid or is not infringed by ZTE's wireless communication devices, including but not limited to the Nubia Z5S Mini and Axon Pro. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

61. ZTE has not produced any evidence as to any investigation, design around or that any remedial action was taken with respect to the '051 patent. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

ADDITIONAL ALLEGATIONS

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

63. Defendants' actions complained of herein will continue unless Defendants are enjoined by this Court.

64. Plaintiff has complied with 35 U.S.C. § 287.

65. Defendants' actions complained of herein are causing irreparable harm and monetary damage to Plaintiff and will continue to do so unless and until Defendants are enjoined and restrained by this Court.

JURY DEMAND

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

PRAYER FOR RELIEF

Plaintiff requests that this Court find in its favor and against Defendants, and that this Court grant Plaintiff the following relief:

- a. Enter judgment for Plaintiff on this Complaint;
- b. Enter judgment that one or more claims of the '211, '991, '256, and '051 patents have been infringed, either directly or indirectly by Defendants;
- c. Enter judgment that Defendants account for and pay to Plaintiff all damages to and costs incurred by Plaintiff because of Defendants' infringing activities and other conduct complained of herein;
- d. Award Plaintiff damages resulting from Defendants' infringement in accordance with 35 U.S.C. § 284;
- e. Enter a permanent injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation with them, from infringing or inducing infringement of the '211, '991, '256, and '051 patents, or, in the alternative, judgment that Defendants account for and pay to Plaintiff a reasonable royalty and an ongoing post-judgment royalty because of Defendants' past, present and future infringing activities and other conduct complained of herein;
- f. That Plaintiff be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;
- g. Find the case to be exceptional under the provisions of 35 U.S.C. § 285;

h. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

DATED: October 23, 2015

Respectfully submitted,

THE SIMON LAW FIRM, P.C.

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