

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

HITACHI MAXELL, LTD.,

Plaintiff,

v.

ZTE CORP. and ZTE USA INC.,

Defendants.

Civil Action No. _____

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Hitachi Maxell, Ltd. (“Hitachi Maxell”), by and through its undersigned counsel, files this complaint under 35 U.S.C. § 271 for Patent Infringement against Defendants ZTE Corporation and ZTE USA Inc. (collectively, “Defendants”) and further alleges as follows, upon actual knowledge with respect to itself and its own acts, and upon information and belief as to all other matters.

OVERVIEW

1. This is an action for patent infringement brought by Hitachi Maxell. Founded in 1961 as Maxell Electric Industrial Co., Ltd., Hitachi Maxell is a leading global manufacturer of information storage media products, including magnetic tapes, optical discs, and battery products such as lithium ion rechargeable micro batteries and alkaline dry batteries, and the company has over 50 years experience of producing industry-leading recordable media and energy products for both the consumer and the professional markets.

2. Hitachi Maxell has built an international reputation for excellence and reliability, for pioneering the power supplies and digital recording for today's mobile and multi-media devices, and leading the electronics industry in the fields of storage media and batteries.

3. Since being one of the first companies to develop alkaline batteries and Blu Ray camcorder discs, Hitachi Maxell has always assured its customers of industry-leading product innovation and is one of the world's foremost suppliers of memory, power, audio, and visual goods.

4. In 2010, Hitachi Maxell became a subsidiary of Hitachi, Ltd. As set forth below, Hitachi, Ltd. assigned intellectual property, including the patents in this case, to Hitachi Consumer Electronics Co., Ltd., then Hitachi Consumer Electronics Co., Ltd. assigned its intellectual property, including the patents in this case, to Hitachi Maxell. This was an effort to align its intellectual property with the licensing, business development, and research and development efforts of Hitachi Maxell, including in the mobile and mobile-media device market (Hitachi, Ltd., Hitachi Consumer Electronics Co., Ltd., and Hitachi Maxell are referred to herein collectively as "Hitachi"). Hitachi Maxell continues to sell products in the mobile device market including wireless charging solutions, wireless flash drives, multimedia players, storage devices, and headphones. Hitachi Maxell also maintains intellectual property related to televisions, tablets, digital cameras, and mobile phones. As a mobile technology developer and industry leader, and due to its historical and continuous investment in research and development, Hitachi Maxell owns a portfolio of patents related to such technologies and actively enforces its patents through licensing and/or litigation. Hitachi Maxell is forced to bring this action against Defendants as a result of Defendants' knowing and ongoing infringement of Hitachi Maxell's patents.

5. As further detailed below, beginning in June 2013, Hitachi had numerous meetings and interactions with Defendants, providing Defendants' representatives with detailed information regarding Hitachi Maxell's patents, the technology that Hitachi had developed, and Defendants' ongoing use of this patented technology. Through this process, Defendants' representatives requested and Hitachi provided detailed explanations of its patents and allegations. For more than three years, Hitachi answered multiple inquiries from Defendants, believing that a business transaction between the parties would be mutually beneficial. Defendants elected, however, not to enter into an agreement with Hitachi and/or license Hitachi Maxell's patents. Instead, Defendants continued, and continue today, to make, use, sell, and offer for sale Hitachi Maxell's patented technology without license.

PARTIES

6. Plaintiff Hitachi Maxell, Ltd. is a Japanese corporation with a registered place of business at 1-1-88, Ushitora, Ibaraki-City, Osaka 567-8567 Japan.

7. On information and belief, Defendant ZTE Corporation is a Chinese corporation with a principal place of business located at ZTE Plaza, Keji Road South, Hi-tech Industrial Park Nansha, Shenzhen, Guangdong, 518057, China.

8. On information and belief, Defendant ZTE USA Inc. is a New Jersey corporation with a principal place of business located at 2425 N. Central Expy, Ste 323, Richardson, Texas 75080.

9. On information and belief, Defendant ZTE USA Inc. is in the business of providing information and communications technology solutions. Specifically, ZTE USA Inc. provides wireless telecommunications equipment, including smart phones, tablets, and mobile phones.

NATURE OF THE ACTION, JURISDICTION, AND VENUE

10. Hitachi Maxell brings this action for patent infringement under the patent laws of the United States, 35 U.S.C. § 271 *et seq.*

11. This Court has subject matter jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the action arises under the patent laws of the United States.

12. The Court has personal jurisdiction over the Defendants because (1) Hitachi Maxell's claims arise in whole or in part from Defendants' conduct in Texas; (2) ZTE USA Inc. is organized under the laws of Texas, and maintains its principal place of business in this jurisdiction; and (3) Defendants are subject to personal jurisdiction under the provisions of the Texas Long Arm Statute, TX CIV PRAC. & REM CODE §17.041 *et seq.*, by virtue of the fact that, upon information and belief, Defendants have availed themselves of the privilege of conducting and soliciting business within this State, including engaging in at least some of the infringing acts alleged herein through the sales and marketing of infringing products in this State. The allegations and claims set forth in this action arise out of Defendants' infringing activities in this State, as well as by others acting as Defendants' agents and/or representatives, such that it would be reasonable for this Court to exercise jurisdiction consistent with the principles underlying the U.S. Constitution, and would not offend traditional notions of fair play and substantial justice.

13. Upon further information and belief, Defendants have also established minimum contacts with this District and regularly transact and do business within this District, including advertising, promoting and selling products over the internet, through intermediaries, representatives and/or agents located within this District, that infringe Hitachi Maxell's patents,

which products are then sold, packaged and shipped directly to citizens residing within this State and this District. Upon further information and belief, Defendants have purposefully directed activities at citizens of this State and located within this District.

14. On information and belief, Defendants have purposefully and voluntarily placed their products into the stream of commerce with the expectation that they will be purchased and used by customers located in the State of Texas and the Eastern District of Texas. On information and belief, Defendants' customers in the Eastern District of Texas have purchased and used and continue to purchase and use Defendants' products.

15. Venue in the Eastern District of Texas is proper pursuant to 28 U.S.C. §§ 1391(b)(2) and 1400 because a substantial part of the events giving rise to the claims in this action occurred in this District and Defendants' agent resides or may be found in this District.

COUNT 1 - INFRINGEMENT OF U.S. PATENT NO. 5,396,443

16. Hitachi Maxell incorporates paragraphs 1-15 above by reference.

17. U.S. Patent No. 5,396,443 (the "'443 Patent," attached hereto at Exhibit 1) duly issued on March 7, 1995, and is entitled *Information Processing Apparatus Including Arrangements for Activation to and Deactivation from a Power-Saving State*.

18. Hitachi Maxell is the owner by assignment of the '443 Patent and possesses all rights of recovery under the '443 Patent, including the exclusive right to recover for past infringement.

19. On June 10, 2013, Hitachi contacted Mr. Shi Lirong, the then President of ZTE Corporation, to engage in discussions regarding the potential licensing of Hitachi's patents, including the '443 Patent. Hitachi provided Defendants with claim charts that mapped the claim

elements to Defendants' products. Specifically, at least one of the claim charts provided compared the '443 Patent claims to the ZTE Fury product.

20. Defendants have directly infringed one or more claims of the '443 Patent in this judicial district and elsewhere in Texas, including at least claims 1-5 and 22 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling their telecommunications technology, including by way of example a product known as the ZTE Reef.

21. The Reef is an information processing apparatus with a CPU enclosed in a housing. The Reef includes a processor programmed to automatically adjust the screen to save the phone's battery life. The Reef includes sensing means such as a proximity sensor for detecting when a user associated medium approaches a part of the housing. It further includes a touchscreen that can detect when a user-associated medium, such as a user's finger, approaches the screen. The point at which the approach occurs is identified using sensors that sense minor changes in electrical current generated by, for example, changes in electrostatic capacity.

22. The Reef is observed to transition from a power-saving state to a non-power-saving state when the touchscreen detects the approach of a user-associated medium. Further, the Reef is observed to transition from a non-power-saving state to a power-saving state when the user-associated medium is distant from the device for a set period of time.

23. The foregoing features and capabilities of the Reef, and Defendants' description and/or demonstration thereof, including in user manuals and advertising, reflect Defendants' direct infringement by satisfying every element of at least claims 1-5 and 22 of the '443 Patent, under 35 U.S.C. § 271(a).

24. On information and belief, Defendants further infringe the '443 Patent through additional products utilizing the same or reasonably similar functionalities as described above with respect to the Reef (collectively, "the '443 Accused Products"). The '443 Accused Products include, by way of examples, ZTE N-series phones (Reef N810, Anthem 4G N910, Engage LT N8000, Director N850L, Flash N9500, Fury N850, Imperial N9101, Nubia Z5 N501, Render N859, Supreme N8910, Vital N860, Warp N860, Warp Sequent N861, Force N9100); ZTE V-series phones (Concord V768, Engage V8000, Grand S V988, Optik V55); ZTE X-series phones (Groove X501, Score X500, Score M X500M); ZTE Z-series phones (Z990, Z998, Majesty Z796C, Merit Z990G, Overture Z995, Savvy Z750C, Whirl Z660c); ZTE Chorus; ZTE Open; and ZTE Prelude. These additional products each include all necessary hardware and operating systems and work as described above with respect to the ZTE Reef. Hitachi Maxell reserves the right to discover and pursue any additional infringing devices that incorporate infringing functionalities. For the avoidance of doubt, the '443 Accused Products are identified to describe the Defendants' infringement and in no way limit the discovery and infringement allegations against Defendants concerning other devices that incorporate the same or reasonably similar functionalities.

25. Defendants have indirectly infringed at least claims 1-5 and 22 of the '443 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the use, offering for sale, selling, or importation of at least the '443 Accused Products. Defendants' customers who purchase devices and components thereof and operate such devices and components in accordance with Defendants' instructions directly infringe one or more claims of the '443 Patent in violation of 35 U.S.C § 271. Defendants instruct their customers through at least user guides, such as those for the ZTE Reef located at the following webpage:

<https://www.zteusa.com/virginmobile-reef>. Defendants are thereby liable for infringement of the '443 Patent pursuant to 35 U.S.C § 271(b).

26. Defendants have indirectly infringed at least claims 1-5 and 22 of the '443 Patent, by, among other things, contributing to the direct infringement of others, including customers of the '443 Accused Products, by making, offering to sell, or selling in the United States, or importing a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in infringement of the '443 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

27. For example, the '443 Accused Products include power saving control software. This is a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process. Furthermore, such component is a material part of the invention and upon information and belief is not a staple article or commodity of commerce suitable for substantial non-infringing use. Thus, Defendants are liable for infringement of the '443 Patent pursuant to 35 U.S.C § 271(c).

28. Defendants have been on notice of the '443 Patent since at least the invitation for negotiations sent by Hitachi on June 10, 2013, and, at the latest, the service of this complaint. By the time of trial, Defendants will thus have known and intended (since receiving such notice) that their continued actions would actively induce and contribute to actual infringement of at least claims 1-5 and 22 of the '443 Patent.

29. Defendants undertook and continue their infringing actions despite an objectively high likelihood that such activities infringed the '443 Patent, which has been duly issued by the USPTO, and is presumed valid. For example, since at least June 10, 2013, Defendants have been

aware of an objectively high likelihood that their actions constituted and continue to constitute infringement of the '443 Patent, and that the '443 Patent is valid. On information and belief, Defendants could not reasonably, subjectively believe that their actions do not constitute infringement of the '443 Patent, nor could they reasonably, subjectively believe that the patent is invalid. Despite that knowledge and subjective belief, and the objectively high likelihood that their actions constitute infringement, Defendants have continued their infringing activities. As such, Defendants willfully infringe the '443 Patent.

30. Hitachi Maxell has been damaged by Defendants' infringement of the '443 Patent.

COUNT 2 – INFRINGEMENT OF U.S. PATENT NO. 6,748,317

31. Hitachi Maxell incorporates paragraphs 1-30 above by reference.

32. U.S. Patent No. 6,748,317 (the "'317 Patent," attached hereto at Exhibit 2) duly issued on June 8, 2004, and is entitled *Portable Terminal with the Function of Walking Navigation*.

33. Hitachi Maxell is the owner by assignment of the '317 Patent and possesses all rights of recovery under the '317 Patent, including the exclusive right to recover for past and future infringement.

34. On June 10, 2013, Hitachi contacted Mr. Shi Lirong, the then President of ZTE Corporation, to engage in discussions regarding the potential licensing of Hitachi's patents. Hitachi provided Defendants with claim charts that mapped the claim elements to Defendants' products. Specifically, at least one of the claim charts provided compared the '317 Patent claims to the ZTE Fury product.

35. Defendants have directly infringed one or more claims of the '317 Patent in this judicial district and elsewhere in Texas, including at least claims 1-3, 6-8, 10, 15-17, and 20 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling their telecommunications technology, including by way of example a product known as the ZTE Quartz.

36. The Quartz includes a screen for displaying information, and at least a GPS for location information. The Quartz is provided with pre-installed software that allows users to access location information, including the present location of the device and orientation of the device, using GPS information, cellular network information, Wi-Fi network information, or some combination thereof.

37. The software, in combination with the electronic components of the Quartz device, allows the user to input a destination and display the present place, the destination, and directions between the two locations denoted by lines (including starting and ending points) superimposed on a map which includes roads and points of interest, or by displaying the directional information in the form of a written list. Further, the display calculates the distance between the present place and destination and provides numerical distance data that updates according to a change of the direction and orientation of the device for walking navigation.

38. The Quartz is further provided with pre-installed software that allows users to access location information of other user devices, using GPS information, cellular network information, Wi-Fi network information, or some combination thereof.

39. The foregoing features and capabilities of the Quartz, and Defendants' description and/or demonstration thereof, including in user manuals and advertising, reflect Defendants'

direct infringement by satisfying every element of at least claims 1-3, 6-8, 10, 15-17, and 20 of the '317 Patent, under 35 U.S.C. § 271(a).

40. On information and belief, Defendants further infringe the '317 Patent through additional products utilizing the same or reasonably similar functionalities as described above with respect to the Quartz (collectively, "the '317 Accused Products"). The '317 Accused Products include, by way of examples, ZTE N-series phones (e.g. Reef N810, Anthem 4G N910, Engage LT N8000, Director N850L, Flash N9500, Fury N850, Imperial N9101, Nubia Z5 N501, Render N859, Supreme N8910, Vital N9810, Warp N860, Warp Elite Z9518, Force N9100, ZTE Speed N9130, ZTE Prestige N9132, ZTE Warp Sync N9515, Grand S Pro N9835); ZTE V-series phones (e.g. Concord V768, Engage V8000, Grand S V988, Optik V55, Nova 4 V8000); ZTE X-series phones (e.g. Groove X501, Score X500, Score M X500M); ZTE Z-series phones (e.g. Z990, Z998, Majesty Z796C, Overture Z995, Savvy Z750C, Whirl Z660c, Unico LTE Z930L, Z667, Paragon Z753G, Concord II Z730, Zephyr Z752C, Rapido LTE Z932L, Quartz Z797C, Citrine LTE Z716BL, Max Duo LTE Z963VL-Z962BL, Atrium Z793C, Grand X3 Z959, Grand X Max Z787, Grand X Max 2 Z988, ZTE Avid Plus Z828, Obsidian Z820, Sonata Z740G, Sonata 2 Z755, Maven Z812, Zmax Z790); ZTE Chorus; ZTE Open; ZTE Fanfare, ZTE Lever LTE, ZTE Trek 2 (6461A), ZTE Compel, ZTE Midnight Pro LTE (001-1), ZTE Boost Max and Boost Max+(9521ABB), ZTE Overture 2, ZTE Warp 7, ZTE ZMAX PRO (001), ZTE Nubia series (e.g. N1, Z11, Z11 max, Z11 mini, Prague, Z9, Z9 max, Z9 mini), ZTE Axon series (e.g. Axon A1, Axon 7, Axon Max, Axon Pro), ZTE Maven 2 (6349A), ZTE Imperial II, ZTE Zinger, and ZTE Prelude. These additional products each include all necessary hardware and operating systems and work as described above with respect to the ZTE Quartz. Hitachi Maxell reserves the right to discover and pursue any additional infringing devices that incorporate infringing

functionalities. For the avoidance of doubt, the '317 Accused Products are identified to describe the Defendants' infringement and in no way limit the discovery and infringement allegations against Defendants concerning other devices that incorporate the same or reasonably similar functionalities.

41. Defendants have indirectly infringed and continue to indirectly infringe at least claims 1-3, 6-8, 10, 15-17, and 20 of the '317 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the use, offering for sale, selling, or importation of at least the '317 Accused Products. Defendants' customers who purchase devices and components thereof and operate such devices and components in accordance with Defendants' instructions directly infringe one or more claims of the '317 Patent in violation of 35 U.S.C § 271. Defendants instruct their customers through at least user guides, such as the Quartz manual located at the following website: https://www.zteusa.com/media/wysiwyg/zte-quartz/ZTE_Quartz_User_Manual_English_-_PDF_-_2.13MB_.pdf. Defendants are thereby liable for infringement of the '317 Patent pursuant to 35 U.S.C § 271(b).

42. Defendants have indirectly infringed and continue to indirectly infringe at least claims 1-3, 6-8, 10, 15-17, and 20 of the '317 Patent, by among other things, contributing to the direct infringement of others, including customers of the '317 Accused Products by making, offering to sell, or selling, in the United States, or importing a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in infringement of the '317 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

43. For example, the '317 Accused Products include direction information between a present place and destination inputted by the user. This is a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process. Furthermore, such component is a material part of the invention and upon information and belief is not a staple article or commodity of commerce suitable for substantial non-infringing use. Thus, Defendants are liable for infringement of the '317 Patent pursuant to 35 U.S.C § 271(c).

44. Defendants have been on notice of the '317 Patent since at least the invitation for negotiations sent by Hitachi on June 10, 2013, and, at the latest, the service of this complaint. By the time of trial, Defendants will thus have known and intended (since receiving such notice), that their continued actions would actively induce and contribute to actual infringement of at least claims 1-3, 6-8, 10, 15-17, and 20 of the '317 Patent.

45. Defendants undertook and continue their infringing actions despite an objectively high likelihood that such activities infringed the '317 Patent, which has been duly issued by the USPTO, and is presumed valid. For example, since at least June 10, 2013, Defendants have been aware of an objectively high likelihood that their actions constituted and continue to constitute infringement of the '317 Patent, and that the '317 Patent is valid. On information and belief, Defendants could not reasonably, subjectively believe that their actions do not constitute infringement of the '317 Patent, nor could they reasonably, subjectively believe that the patent is invalid. Despite that knowledge and subjective belief, and the objectively high likelihood that their actions constitute infringement, Defendants have continued their infringing activities. As such, Defendants willfully infringe the '317 Patent.

46. Hitachi Maxell has been damaged by Defendants' infringement of the '317 Patent.

COUNT 3 – INFRINGEMENT OF U.S. PATENT NO. 8,339,493

47. Hitachi Maxell incorporate paragraphs 1-46 above by reference.

48. U.S. Patent No. 8,339,493 (the “’493 Patent,” attached hereto at Exhibit 3) duly issued on December 25, 2012, and is entitled *Electric Camera*.

49. Hitachi Maxell is the owner by assignment of the ’493 Patent and possesses all rights of recovery under the ’493 Patent, including the exclusive right to recover for past and future infringement.

50. On June 10, 2013, Hitachi contacted Mr. Shi Lirong, the then President of ZTE Corporation, to engage in discussions regarding the potential licensing of Hitachi’s patents, including the ’493 Patent. Specifically, Hitachi provided Defendants with a list of Hitachi Patents that Defendants were infringing dated June 3, 2013, which included the ’493 Patent.

51. Defendants have directly infringed one or more claims of the ’493 Patent in this judicial district and elsewhere in Texas, including at least claims 5-6 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling their telecommunications technology, including the by way of example a product known as the ZTE Axon 7.

52. The Axon 7 includes front and rear-facing cameras, each of which incorporates a light-receiving sensor or imaging sensor with an array of pixels arranged vertically and horizontally in a grid pattern. The Axon 7 can record an image in a static mode, for example recording photographs and snapshots in photo camera modes, and in a moving video mode, for example recording a video clip in video camera mode.

53. The Axon 7 further includes a processor that processes signals from the cameras and sensors to generate image signals for displaying on the Axon 7’s display, where the

generated image can be manipulated in accordance with a select pixel arrangement and/or image stabilization correction factor using a portion of the pixel lines available in the imaging sensors of the cameras.

54. The foregoing features and capabilities of the Axon 7, and Defendants' description and/or demonstration thereof, including in user manuals and advertising, reflect Defendants' direct infringement by satisfying every element of at least claims 5-6 of the '493 Patent, under 35 U.S.C. § 271(a).

55. On information and belief, Defendants further infringe the '493 Patent additional products utilizing the same or reasonably similar functionalities as described above with respect to the Axon 7 (collectively, "the '493 Accused Products"). The '493 Accused Products include, by way of examples, ZTE Z-series phones (e.g. Max Duo LTE Z963VL-Z962BL, Grand X Max 2 Z988), ZTE Warp 7, Warp Elite Z9518, ZTE Nubia series (e.g. Z7, Z11, Z11 max, Z11 mini, Z9, Z9 max, Z9 mini, X6), and ZTE Axon series (e.g. Axon A1, Axon 7, Axon Max, Axon Pro). These additional products each include all necessary hardware and operating systems and work as described above with respect to the ZTE Axon 7. Hitachi Maxell reserves the right to discover and pursue any additional infringing devices that incorporate infringing functionalities. For the avoidance of doubt, the '493 Accused Products are identified to describe the Defendants' infringement and in no way limit the discovery and infringement allegations against Defendants concerning other devices that incorporate the same or reasonably similar functionalities.

56. Defendants have indirectly infringed and continue to indirectly infringe at least claims 5-6 of the '493 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the use, offering for sale, selling, or importation of at least the '493 Accused Products. Defendants' customers who purchase devices and components

thereof and operate such devices and components in accordance with Defendants' instructions directly infringe one or more claims of the '493 Patent in violation of 35 U.S.C § 271. Defendants instruct their customers through at least user guides, such as the Axon manual located at the following website: https://www.zteusa.com/media/wysiwyg/ZTE_AXON_User_Manual.pdf. Defendants are thereby liable for infringement of the '493 Patent pursuant to 35 U.S.C § 271(b).

57. Defendants have indirectly infringed and continue to indirectly infringe at least claims 5-6 of the '493 Patent, by among other things, contributing to the direct infringement of others, including customers of the '493 Accused Products by making, offering to sell, or selling in the United States, or importing a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in infringement of the '493 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

58. For example, the '493 Accused Products include sensors in front and rear-facing cameras with an array of pixels arranged vertically and horizontally in a grid pattern. These are components of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process. Furthermore, such components are material parts of the invention and upon information and belief are not a staple article or commodity of commerce suitable for substantial non-infringing use. Thus, Defendants are liable for infringement of the '493 Patent pursuant to 35 U.S.C § 271(c).

59. Defendants have been on notice of the '493 Patent since at least the invitation for negotiations sent by Hitachi on June 10, 2013, and, at the latest, the service of this complaint.

By the time of trial, Defendants will thus have known and intended (since receiving such notice), that their continued actions would actively induce and contribute to actual infringement of at least claims 5-6 of the '493 Patent.

60. Defendants undertook and continue their infringing actions despite an objectively high likelihood that such activities infringed the '493 Patent, which has been duly issued by the USPTO, and is presumed valid. For example, since at least June 10, 2013, Defendants have been aware of an objectively high likelihood that their actions constituted and continue to constitute infringement of the '493 Patent, and that the '493 Patent is valid. On information and belief, Defendants could not reasonably, subjectively believe that their actions do not constitute infringement of the '493 Patent, nor could they reasonably, subjectively believe that the patent is invalid. Despite that knowledge and subjective belief, and the objectively high likelihood that their actions constitute infringement, Defendants have continued their infringing activities. As such, Defendants willfully infringe the '493 Patent.

61. Hitachi Maxell has been damaged by Defendants' infringement of the '493 Patent.

COUNT 4 – INFRINGEMENT OF U.S. PATENT NO. 8,736,729

62. Hitachi Maxell incorporate paragraphs 1-61 above by reference.

63. U.S. Patent No. 8,736,729 (the "'729 Patent," attached hereto at Exhibit 4) duly issued on May 27, 2014, and is entitled *Electric Camera*.

64. Hitachi Maxell is the owner by assignment of the '729 Patent and possesses all rights of recovery under the '729 Patent, including the exclusive right to recover for past and future infringement.

65. On June 10, 2013, Hitachi contacted Mr. Shi Lirong, the then President of ZTE Corporation, to engage in discussions regarding the potential licensing of Hitachi's patents, including the '729 Patent. Specifically, Hitachi provided Defendants with a list of Hitachi Patents that Defendants were infringing dated June 3, 2013, which included the '729 Patent.

66. Defendants have directly infringed one or more claims of the '729 Patent in this judicial district and elsewhere in Texas, including at least claim 1 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling their telecommunications technology, including by way of example the Axon 7.

67. The Axon 7 includes front and rear-facing cameras, each of which incorporates a light-receiving sensor or imaging sensor with an array of pixels arranged vertically and horizontally in a grid pattern. The Axon 7 can record an image in a static mode, for example recording photographs and snapshots in photo camera modes, and in a moving video mode, for example recording a video clip in video camera mode.

68. The Axon 7 further includes a processor that processes signals from the cameras and sensors to generate image signals for displaying on the Axon 7's display, where the generated image can be manipulated in accordance with a select pixel arrangement, viewing angle, and/or image stabilization correction factor using a portion of the pixel lines available in the imaging sensors of the cameras.

69. The foregoing features and capabilities of the Axon 7, and Defendants' description and/or demonstration thereof, including in user manuals and advertising, reflect Defendants' direct infringement by satisfying every element of at least claim 1 of the '729 Patent, under 35 U.S.C. § 271(a).

70. On information and belief, Defendants further infringe the '729 Patent through additional products utilizing the same or reasonably similar functionalities as described above with respect to the Axon 7 (collectively, "the '729 Accused Products"). The '729 Accused Products include, by way of examples, ZTE Z-series phones (e.g. Max Duo LTE Z963VL-Z962BL, Grand X Max 2 Z988), ZTE Warp 7, Warp Elite Z9518, ZTE Nubia series (e.g. Z7, Z11, Z11 max, Z11 mini, Z9, Z9 max, Z9 mini, X6), and ZTE Axon series (e.g. Axon A1, Axon 7, Axon Max, Axon Pro). These additional products each include all necessary hardware and operating systems and work as described above with respect to the ZTE Axon 7. Hitachi Maxell reserves the right to discover and pursue any additional infringing devices that incorporate infringing functionalities. For the avoidance of doubt, the '729 Accused Products are identified to describe the Defendants' infringement and in no way limit the discovery and infringement allegations against Defendants concerning other devices that incorporate the same or reasonably similar functionalities.

71. Defendants have indirectly infringed and continue to indirectly infringe at least claim 1 of the '729 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the use, offering for sale, selling, or importation of at least the '729 Accused Products. Defendants' customers who purchase devices and components thereof and operate such devices and components in accordance with Defendants' instructions directly infringe one or more claims of the '729 Patent in violation of 35 U.S.C § 271. Defendants instruct their customers through at least user guides, such as the Axon manual located at the following website: https://www.zteusa.com/media/wysiwyg/ZTE_AXON_User_Manual.pdf. Defendants are thereby liable for infringement of the '729 Patent pursuant to 35 U.S.C § 271(b).

72. Defendants have indirectly infringed and continue to indirectly infringe at least claim 1 of the '729 Patent, by, among other things, contributing to the direct infringement of others, including customers of the '729 Accused Products by making, offering to sell, or selling, in the United States, or importing a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in infringement of the '729 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

73. For example, the '729 Accused Products include sensors in front and rear-facing cameras with an array of pixels arranged vertically and horizontally in a grid pattern. These are components of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process. Furthermore, such components are material parts of the invention and upon information and belief are not a staple article or commodity of commerce suitable for substantial non-infringing use. Thus, Defendants are liable for infringement of the '729 Patent pursuant to 35 U.S.C § 271(c).

74. Defendants have been on notice of the '729 Patent since at least the invitation for negotiations sent by Hitachi on June 10, 2013, and, at the latest, the service of this complaint. By the time of trial, Defendants will thus have known and intended (since receiving such notice), that their continued actions would actively induce and contribute to actual infringement of at least claim 1 of the '729 Patent.

75. Defendants undertook and continue their infringing actions despite an objectively high likelihood that such activities infringed the '729 Patent, which has been duly issued by the USPTO, and is presumed valid. For example, since at least June 10, 2013, Defendants have been

aware of an objectively high likelihood that their actions constituted and continue to constitute infringement of the '729 Patent, and that the '729 Patent is valid. On information and belief, Defendants could not reasonably, subjectively believe that their actions do not constitute infringement of the '729 Patent, nor could they reasonably, subjectively believe that the patent is invalid. Despite that knowledge and subjective belief, and the objectively high likelihood that their actions constitute infringement, Defendants have continued their infringing activities. As such, Defendants willfully infringe the '729 Patent.

76. Hitachi Maxell has been damaged by Defendants' infringement of the '729 Patent.

COUNT 5 – INFRINGEMENT OF U.S. PATENT NO. 6,408,193

77. Hitachi Maxell incorporate paragraphs 1-76 above by reference.

78. U.S. Patent No. 6,408,193 (the "'193 Patent," attached hereto at Exhibit 5) duly issued on June 18, 2002, and is entitled *Cellular Telephone*.

79. Hitachi Maxell is the owner by assignment of the '193 Patent and possesses all rights of recovery under the '193 Patent, including the exclusive right to recover for past and future infringement.

80. Defendants have directly infringed one or more claims of the '193 Patent in this judicial district and elsewhere in Texas, including at least claims 1-7 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling their telecommunications technology, including by way of example the ZTE ZMAX 2.

81. The ZMAX 2 is a mobile device capable of operation in numerous networks, including CDMA.

82. The ZMAX 2 includes at least one antenna for receiving first communication signals (*e.g.*, data signals transmitted on a downlink channel) and a transmitting power control signal (*e.g.*, TPC transmitted on a downlink channel). It also transmits a second communication signal (*e.g.*, data on an uplink channel) to the cell-site station via the antenna.

83. The ZMAX 2 is observed to operate in FDD (Frequency Division Duplex), and incorporates a duplexer to allow full-duplex operation while sending and receiving at respective uplink and downlink frequencies on the same antenna or antennae and configured to convert communication signals to data, including voice signals.

84. The ZMAX 2 includes a receiver, *e.g.* a modem, connected to the antenna. The receiver includes an encoder/decoder and microphone and earpiece, and is configured to derive and output power control signal from the transmitting power control signal sent from the cell-site station. A controller is connected to the receiver and transmitter in the ZMAX 2, which controls the amplitude of the transmission.

85. The foregoing features and capabilities of the ZMAX 2, and Defendants' description and/or demonstration thereof, including in user manuals and advertising, reflect Defendants' direct infringement by satisfying every element of at least claims 1-7 of the '193 Patent, under 35 U.S.C. § 271(a).

86. On information and belief, Defendants further infringe the '193 Patent additional products utilizing the same or reasonably similar functionalities as described above with respect to the ZMAX 2 (collectively, "the '193 Accused Products"). The '193 Accused Products include, by way of examples, ZTE N-series phones (*e.g.* Reef N810, Anthem 4G N910, Engage LT N8000, Director N850L, Flash N9500, Fury N850, Imperial N9101, Nubia Z5 N501, Render N859, Supreme N8910, Vital N9810, Warp N860, Force N9100, ZTE Speed N9130, ZTE

Prestige N9132, ZTE Warp Sync N9515, Grand S Pro N9835); ZTE V-series phones (e.g. Concord V768, Engage V8000, Grand S V988, Optik V55, Nova 4 V8000); ZTE X-series phones (e.g. Groove X501, Score X500, Score M X500M); ZTE Z-series phones (e.g. Z990, Z998, Majesty Z796C, Overture Z995, Savvy Z750C, Whirl Z660c, Unico LTE Z930L, Z667, Paragon Z753G, Concord II Z730, Zephyr Z752C, Rapido LTE Z932L, Quartz Z797C, Max Duo LTE Z963VL-Z962BL, Atrium Z793C, Grand X3 Z959, Grand X Max Z787, Grand X Max 2 Z988, ZTE Avid Plus Z828, Obsidian Z820, Sonata Z740G, Sonata 2 Z755, Maven Z812, Zmax Z790, Merit Z990G, Z223); ZTE Chorus; ZTE Fanfare; ZTE Lever LTE; ZTE Trek 2 (6461A); ZTE Compel; ZTE Midnight Pro LTE (001-1); ZTE Overture 2; ZTE Warp 7; Warp Elite Z9518; ZTE ZMAX PRO (001); ZTE Nubia series (e.g. Z5, N1, Z11, Z11 max, Z11 mini, Prague, Z9, Z9 max, Z9 mini); ZTE Axon series (e.g. Axon A1, Axon 7, Axon Max, Axon Pro); ZTE Maven 2 (6349A); ZTE Imperial II; ZTE Zinger; and ZTE Prelude. These additional products each include all necessary hardware and operating systems and work as described above with respect to the ZTE ZMAX 2. Hitachi Maxell reserves the right to discover and pursue any additional infringing devices that incorporate infringing functionalities. For the avoidance of doubt, the '193 Accused Products are identified to describe the Defendants' infringement and in no way limit the discovery and infringement allegations against Defendants concerning other devices that incorporate the same or reasonably similar functionalities.

87. Defendants have indirectly infringed and continue to indirectly infringe at least claims 1-7 of the '193 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the use, offering for sale, selling, or importation of at least the '193 Accused Products. Defendants' customers who purchase devices and components thereof and operate such devices and components in accordance with Defendants' instructions

directly infringe one or more claims of the '193 Patent in violation of 35 U.S.C § 271. Defendants instruct their customers through at least user guides, such as the ZMAX 2 manual located at the following website: https://www.zteusa.com/media/wysiwyg/zte-zmax2-att/ZTE_ZMAX_2_User_Guide_English_-_PDF_-_18.1MB_.pdf. Defendants are thereby liable for infringement of the '193 Patent pursuant to 35 U.S.C § 271(b).

88. Defendants have indirectly infringed and continue to indirectly infringe at least claims 1-7 of the '193 Patent, by, among other things, contributing to the direct infringement of others, including customers of the '193 Accused Products by making, offering to sell, or selling, in the United States, or importing a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in infringement of the '193 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

89. For example, the '193 Accused Products incorporate a duplexer to allow full-duplex operation while sending and receiving at respective uplink and downlink frequencies on the same antenna or antennae. These are components of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process. Furthermore, such components are material parts of the invention and upon information and belief are not a staple article or commodity of commerce suitable for substantial non-infringing use. Thus, Defendants are liable for infringement of the '193 Patent pursuant to 35 U.S.C. § 271(c).

90. Defendants will have been on notice of the '193 Patent since at least the service of this complaint. By the time of trial, Defendants will thus have known and intended (since

receiving such notice), that their continued actions would actively induce and contribute to actual infringement of at least claims 1-7 of the '193 Patent.

91. Defendants undertook and continue their infringing actions despite an objectively high likelihood that such activities infringed the '193 Patent, which has been duly issued by the USPTO, and is presumed valid. For example, since at least the service of this complaint, Defendants have been aware of an objectively high likelihood that their actions constituted and continue to constitute infringement of the '193 Patent, and that the '193 Patent is valid. On information and belief, Defendants could not reasonably, subjectively believe that their actions do not constitute infringement of the '193 Patent, nor could they reasonably, subjectively believe that the patent is invalid. Despite that knowledge and subjective belief, and the objectively high likelihood that their actions constitute infringement, Defendants have continued their infringing activities. As such, Defendants willfully infringe the '193 Patent.

92. Hitachi Maxell has been damaged by Defendants' infringement of the '193 Patent.

COUNT 6 - INFRINGEMENT OF U.S. PATENT NO. 6,329,794

93. Hitachi Maxell incorporates paragraphs 1-92 above by reference.

94. U.S. Patent No. 6,329,794 (the "'794 Patent," attached hereto at Exhibit 6) duly issued on December 11, 2011, and is entitled *Information Processing Device and Method for Controlling Power Consumption Thereof*.

95. Hitachi Maxell is the owner by assignment of the '794 Patent and possesses all rights of recovery under the '794 Patent, including the exclusive right to recover for past and future infringement.

96. On June 10, 2013, Hitachi contacted Mr. Shi Lirong, the then President of ZTE Corporation, to engage in discussions regarding the potential licensing of Hitachi's patents, including the '794 Patent. Specifically, Hitachi provided Defendants with a list of Hitachi Patents that Defendants were infringing dated June 3, 2013, which included the '794 Patent.

97. Defendants have directly infringed one or more claims of the '794 Patent in this judicial district and elsewhere in Texas, including at least claims 1, 2, 3, 5, 6, and 9-12 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling their telecommunications technology, including by way of example the product known as the Axon Pro.

98. The Axon Pro is an information processing device that incorporates multiple component devices performing different functions, with each component having a corresponding power supplied by a battery. For example, the Axon Pro includes a display with a display power supply.

99. The Axon Pro incorporates a processor or co-processor programmed with software, in combination with the electronic components of the Axon Pro device, to monitor the battery capacity of the battery as components of the device consume the power supplied from the battery. Under an operating condition when the battery is at a first reference level, a processor or co-processor of the Axon Pro is programmed to optimize power consumption, including shutting off or reducing the power consumption of components or applications that have a lower usage priority as predefined by the software or selected by the user, where different components are shut down (or restarted when needed) based on defined battery capacity and usage priority. The foregoing features and capabilities of the Axon Pro, and Defendants' description and/or demonstration thereof, including in user manuals and advertising, reflect Defendants' direct

infringement by satisfying every element of at least claims 1, 2, 3, 5, 6, and 9-12 of the '794 Patent, under 35 U.S.C. § 271(a).

100. On information and belief, Defendants further infringe the '794 Patent through additional products utilizing the same or reasonably similar functionalities as described above with respect to the Axon Pro (collectively, "the '794 Accused Products"). The '794 Accused Products include, by way of examples, ZTE Axon series phones (e.g. Axon and Axon Pro) and ZMAX series phones (e.g. ZMAX Pro). These additional products each include all necessary hardware and operating systems and work as described above with respect to the Axon Pro. Hitachi Maxell reserves the right to discover and pursue any additional infringing devices that incorporate infringing functionalities. For the avoidance of doubt, the '794 Accused Products are identified to describe the Defendants' infringement and in no way limit the discovery and infringement allegations against Defendants concerning other devices that incorporate the same or reasonably similar functionalities.

101. Defendants have indirectly infringed and continue to indirectly infringe at least claims 1, 2, 3, 5, 6, and 9-12 of the '794 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the use, offering for sale, selling, or importation of at least the '794 Accused Products. Defendants' customers who purchase devices and components thereof and operate such devices and components in accordance with Defendants' instructions directly infringe one or more claims of the '794 Patent in violation of 35 U.S.C. § 271. Defendants instruct their customers through at least user guides, such as the Axon Pro manual located at the following website:
<https://d28dq596ebml6z.cloudfront.net/media/wysiwyg/axon->

pro/Axon_Pro_by_ZTE_User_Manual_English_-_PDF_-_6.28MB_.pdf. Defendants are thereby liable for infringement of the '794 Patent pursuant to 35 U.S.C. § 271(b).

102. Defendants have indirectly infringed and continue to indirectly infringe at least claims 1, 2, 3, 5, 6, 9, 10, 11, and 12 of the '794 Patent, by, among other things, contributing to the direct infringement of others, including customers of the '794 Accused Products, by making, offering to sell, or selling, in the United States, or importing a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in infringement of the '794 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

103. For example, the ZTE AXON includes a power saving mode and battery. These are components of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process. Furthermore, such components are material parts of the invention and upon information and belief are not a staple article or commodity of commerce suitable for substantial non-infringing use. Thus, Defendants are liable for infringement of the '794 Patent pursuant to 35 U.S.C. § 271(c).

104. Defendants have been on notice of the '794 Patent since at least the invitation for negotiations sent by Hitachi on June 10, 2013, and, at the latest, the service of this complaint. By the time of trial, Defendants will thus have known and intended (since receiving such notice), that their continued actions would actively induce and contribute to actual infringement of at least claims 1, 2, 3, 5, 6, 9, 10, 11, and 12 of the '794 Patent.

105. Defendants undertook and continue their infringing actions despite an objectively high likelihood that such activities infringed the '794 Patent, which has been duly issued by the

USPTO, and is presumed valid. For example, since at least June 10, 2013, Defendants have been aware of an objectively high likelihood that their actions constituted and continue to constitute infringement of the '794 Patent, and that the '794 Patent is valid. On information and belief, Defendants could not reasonably, subjectively believe that their actions do not constitute infringement of the '794 Patent, nor could they reasonably, subjectively believe that the patent is invalid. Despite that knowledge and subjective belief, and the objectively high likelihood that their actions constitute infringement, Defendants have continued their infringing activities. As such, Defendants willfully infringe the '794 Patent.

106. Hitachi Maxell has been damaged by Defendants' infringement of the '794 Patent.

COUNT 7 – INFRINGEMENT OF U.S. PATENT NO. 6,816,491

107. Hitachi Maxell incorporates paragraphs 1-106 above by reference.

108. U.S. Patent No. 6,816,491 (the "'491 Patent," attached hereto at Exhibit 7) duly issued on November 9, 2004, and is entitled *Multiplexed Audio Data Decoding Apparatus and Receiver Apparatus*.

109. Hitachi Maxell is the owner by assignment of the '491 Patent and possesses all rights of recovery under the '491 Patent, including the exclusive right to recover for past and future infringement.

110. Defendants have directly infringed one or more claims of the '491 Patent in this judicial district and elsewhere in Texas, including at least claims 1-2 and 7-9 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling their telecommunications technology, including by way of example the Axon Pro.

111. The Axon Pro is observed receiving encoded data, *e.g.* multimedia and/or audio-video files, which are compressed, encoded, in multiple formats, and containing multiplexed audio data sequences.

112. The Axon Pro includes a processor programmed to demultiplex the audio data sequence from the multimedia or audio-video files selected by the user, and decode the encoded data using information included in the audio data sequence. The information in the audio data sequence provides instructions on the type of encoding and compression associated with the corresponding multiplexed audio data sequence, such that processor and/or CPU will retrieve and read the appropriate decoding algorithm from memory and decode the corresponding audio data sequence. When a different decoding algorithm is required, the processor and/or CPU will then retrieve a different decoding algorithm for decoding.

113. The foregoing features and capabilities of the Axon Pro, and Defendants' description and/or demonstration thereof, including in user manuals and advertising, reflect Defendants' direct infringement by satisfying every element of at least claims 1-2 and 7-9 of the '491 Patent, under 35 U.S.C. § 271(a).

114. On information and belief, Defendants further infringe the '491 Patent through additional products utilizing the same or reasonably similar functionalities as described above with respect to the Axon Pro (collectively, "the '491 Accused Products"). The '491 Accused Products include, by way of examples, ZTE N-series phones (*e.g.* Anthem 4G N910, Engage LT N8000, Director N850L, Flash N9500, Fury N850, Imperial N9101, Nubia Z5 N501, Supreme N8910, Vital N9810, Force N9100, ZTE Prestige N9132, Grand S Pro N9835, Source N9511); ZTE V-series phones (*e.g.* Engage V8000, Grand S V988, Optik V55, Nova 4 V8000); ZTE X-series phones (*e.g.* Groove X501); ZTE Z-series phones (*e.g.* Z990, Overture Z995, Unico LTE

Z930L, Paragon Z753G, Zephyr Z752C, Rapido LTE Z932L, Max Duo LTE Z963VL-Z962BL, Grand X3 Z959, Grand X Max Z787, Grand X Max 2 Z988, ZTE Avid Plus Z828, Obsidian Z820, Sonata Z740G, Sonata 2 Z755, Citrine LTE Z716BL, Maven Z812, Z223, Solar Z795g); ZTE Chorus; ZTE Lever LTE; ZTE Compel; ZTE Midnight Pro LTE (001-1); ZTE Overture 2; ZTE ZMAX PRO (001); ZTE Nubia series (e.g. Z5, N1, Z11, Z11 max, Z11 mini, Prague, Z9, Z9 max, Z9 mini); ZTE Axon series (e.g. Axon A1, Axon 7, Axon Max, Axon Pro); ZTE Boost Max and Boost Max+(9521ABB); ZTE Maven 2 (6349A); ZTE Warp 7; Warp Elite Z9518; ZTE Warp Sync n9515; and ZTE Imperial II. These additional products each include all necessary hardware and operating systems and work as described above with respect to the Axon Pro. Hitachi Maxell reserves the right to discover and pursue any additional infringing devices that incorporate infringing functionalities. For the avoidance of doubt, the '491 Accused Products are identified to describe the Defendants' infringement and in no way limit the discovery and infringement allegations against Defendants concerning other devices that incorporate the same or reasonably similar functionalities.

115. Defendants have indirectly infringed and continue to indirectly infringe at least claims 1-2 and 7-9 of the '491 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the use, offering for sale, selling, or importation of at least the '491 Accused Products. Defendants' customers who purchase devices and components thereof and operate such devices and components in accordance with Defendants' instructions directly infringe one or more claims of the '491 Patent in violation of 35 U.S.C § 271. Defendants instruct their customers through at least user guides, such as the Axon Pro manual located at the following website: <https://d28dq596ebml6z.cloudfront.net/media/wysiwyg/axon->

pro/Axon_Pro_by_ZTE_User_Manual_English_-_PDF_-_6.28MB_.pdf. Defendants are thereby liable for infringement of the '491 Patent pursuant to 35 U.S.C. § 271(b).

116. Defendants have indirectly infringed and continue to indirectly infringe at least claims 1-2 and 7-9 of the '491 Patent, by, among other things, contributing to the direct infringement of others, including customers of the '491 Accused Products by making, offering to sell, or selling, in the United States, or importing a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in infringement of the '491 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

117. For example, the '491 Accused Products include a decoder that supports multiplexed audio/video packets in the form of at least H.264 and H.265. These are components of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process. Furthermore, such components are material parts of the invention and upon information and belief are not a staple article or commodity of commerce suitable for substantial non-infringing use. Thus, Defendants are liable for infringement of the '491 Patent pursuant to 35 U.S.C § 271(c).

118. Defendants will have been on notice of the '491 Patent since at least the service of this complaint. By the time of trial, Defendants will thus have known and intended (since receiving such notice), that their continued actions would actively induce and contribute to actual infringement of at least claims 1-2 and 7-9 of the '491 Patent.

119. Defendants undertook and continue their infringing actions despite an objectively high likelihood that such activities infringed the '491 Patent, which has been duly issued by the

USPTO, and is presumed valid. For example, since at least the service of this complaint, Defendants have been aware of an objectively high likelihood that their actions constituted and continue to constitute infringement of the '491 Patent, and that the '491 Patent is valid. On information and belief, Defendants could not reasonably, subjectively believe that their actions do not constitute infringement of the '491 Patent, nor could they reasonably, subjectively believe that the patent is invalid. Despite that knowledge and subjective belief, and the objectively high likelihood that their actions constitute infringement, Defendants have continued their infringing activities. As such, Defendants willfully infringe the '491 Patent.

120. Hitachi Maxell has been damaged by Defendants' infringement of the '491 Patent.

COUNT 8 – INFRINGEMENT OF U.S. PATENT NO. 8,098,695

121. Hitachi Maxell incorporates paragraphs 1-120 above by reference.

122. U.S. Patent No. 8,098,695 (the "'695 Patent," attached hereto at Exhibit 8) duly issued on January 17, 2012, and is entitled *Multiplexed Audio Data Decoding Apparatus and Receiver Apparatus*.

123. Hitachi Maxell is the owner by assignment of the '695 Patent and possesses all rights of recovery under the '695 Patent, including the exclusive right to recover for past and future infringement.

124. Defendants have directly infringed one or more claims of the '695 Patent in this judicial district and elsewhere in Texas, including at least claims 1 and 4 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling their telecommunications technology, including by way of example the Axon Pro.

125. The Axon Pro includes an audio decoder that receives groups of multimedia data packets *e.g.* audio-video data packets, which are compressed, encoded, in multiple formats, and containing multiplexed audio data sequences.

126. The Axon Pro includes a processor programmed to demultiplex the audio data sequence from the multimedia or audio-video files selected by the user, and decode the encoded data using information included in the audio data sequence. The information in the audio data sequence provides instructions on the type of encoding and compression associated with the corresponding multiplexed audio data sequence, such that processor and/or CPU will retrieve and read the appropriate decoding algorithm from memory and decode the corresponding audio data sequence. When a different decoding algorithm is required, the processor and/or CPU will then retrieve a different decoding algorithm for decoding.

127. The foregoing features and capabilities of the Axon Pro, and Defendants' description and/or demonstration thereof, including in user manuals and advertising, reflect Defendants' direct infringement by satisfying every element of at least claims 1 and 4 of the '695 Patent, under 35 U.S.C. § 271(a).

128. On information and belief, Defendants further infringe the '695 Patent through additional products utilizing the same or reasonably similar functionalities as described above with respect to the Axon Pro (collectively, "the '695 Accused Products"). The '695 Accused Products include, by way of examples, ZTE N-series phones (*e.g.* Anthem 4G N910, Engage LT N8000, Director N850L, Flash N9500, Fury N850, Imperial N9101, Nubia Z5 N501, Supreme N8910, Vital N9810, Force N9100, ZTE Prestige N9132, Grand S Pro N9835, Source N9511); ZTE V-series phones (*e.g.* Engage V8000, Grand S V988, Optik V55, Nova 4 V8000); ZTE X-series phones (*e.g.* Groove X501); ZTE Z-series phones (*e.g.* Z990, Overture Z995, Unico LTE

Z930L, Paragon Z753G, Zephyr Z752C, Rapido LTE Z932L, Max Duo LTE Z963VL-Z962BL, Grand X3 Z959, Grand X Max Z787, Grand X Max 2 Z988, ZTE Avid Plus Z828, Obsidian Z820, Sonata Z740G, Sonata 2 Z755, Citrine LTE Z716BL, Maven Z812, Z223, Solar Z795g); ZTE Chorus; ZTE Lever LTE; ZTE Compel; ZTE Midnight Pro LTE (001-1); ZTE Overture 2; ZTE ZMAX PRO (001); ZTE Nubia series (e.g. Z5, N1, Z11, Z11 max, Z11 mini, Prague, Z9, Z9 max, Z9 mini); ZTE Axon series (e.g. Axon A1, Axon 7, Axon Max, Axon Pro); ZTE Boost Max and Boost Max+(9521ABB); ZTE Maven 2 (6349A); ZTE Warp 7; Warp Elite Z9518; ZTE Warp Sync n9515; and ZTE Imperial II. These additional products each include all necessary hardware and operating systems and work as described above with respect to the Axon Pro. Hitachi Maxell reserves the right to discover and pursue any additional infringing devices that incorporate infringing functionalities. For the avoidance of doubt, the '695 Accused Products are identified to describe the Defendants' infringement and in no way limit the discovery and infringement allegations against Defendants concerning other devices that incorporate the same or reasonably similar functionalities.

129. Defendants have indirectly infringed and continue to indirectly infringe at least claims 1 and 4 of the '695 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the use, offering for sale, selling, or importation of at least the '695 Accused Products. Defendants' customers who purchase devices and components thereof and operate such devices and components in accordance with Defendants' instructions directly infringe one or more claims of the '695 Patent in violation of 35 U.S.C § 271. Defendants instruct their customers through at least user guides, such as the Axon Pro manual located at the following website: <https://d28dq596ebml6z.cloudfront.net/media/wysiwyg/axon->

pro/Axon_Pro_by_ZTE_User_Manual_English_-_PDF_-_6.28MB_.pdf. Defendants are thereby liable for infringement of the '695 Patent pursuant to 35 U.S.C. § 271(b).

130. Defendants have indirectly infringed and continue to indirectly infringe at least claims 1 and 4 of the '695 Patent, by, among other things, contributing to the direct infringement of others, including customers of the '695 Accused Products by making, offering to sell, or selling, in the United States, or importing a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in infringement of the '695 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

131. For example, the '695 Accused Products include a demultiplexer for extracting audio information in video clips selected by the user. These are components of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patented process. Furthermore, such components are material parts of the invention and upon information and belief are not a staple article or commodity of commerce suitable for substantial non-infringing use. Thus, Defendants are liable for infringement of the '695 Patent pursuant to 35 U.S.C § 271(c).

132. Defendants will have been on notice of the '695 Patent since at least the service of this complaint. By the time of trial, Defendants will thus have known and intended (since receiving such notice), that their continued actions would actively induce and contribute to actual infringement of at least claims 1 and 4 of the '695 Patent.

133. Defendants undertook and continue their infringing actions despite an objectively high likelihood that such activities infringed the '695 Patent, which has been duly issued by the

USPTO, and is presumed valid. For example, since at least the service of this complaint, Defendants have been aware of an objectively high likelihood that their actions constituted and continue to constitute infringement of the '695 Patent, and that the '695 Patent is valid. On information and belief, Defendants could not reasonably, subjectively believe that their actions do not constitute infringement of the '695 Patent, nor could they reasonably, subjectively believe that the patent is invalid. Despite that knowledge and subjective belief, and the objectively high likelihood that their actions constitute infringement, Defendants have continued their infringing activities. As such, Defendants willfully infringe the '695 Patent.

134. Hitachi Maxell has been damaged by Defendants' infringement of the '695 Patent.

PRAYER FOR RELIEF

WHEREFORE, Hitachi Maxell prays for relief as follows:

135. A judgment declaring that Defendants have infringed and are infringing one or more claims of the '443, '317, '493, '729, '193, '794, '491, and '695 Patents;

136. A judgment awarding Hitachi Maxell compensatory damages as a result of Defendants' infringement of one or more claims of the '443, '317, '493, '729, '193, '794, '491, and '695 Patents, together with interest and costs, consistent with lost profits and in no event less than a reasonable royalty;

137. A judgment awarding Hitachi Maxell treble damages and pre-judgment interest under 35 U.S.C. § 284 as a result of Defendants' willful and deliberate infringement of one or more claims of the '443, '317, '493, '729, '193, '794, '491, and '695 Patents;

138. A judgment declaring that this case is exceptional and awarding Hitachi Maxell its expenses, costs, and attorneys' fees in accordance with 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the Federal Rules of Civil Procedure;

139. A grant of preliminary and permanent injunctions enjoining Defendants from further acts of infringement of one or more claims of the '443, '317, '493, '729, '193, '794, '491, and '695 Patents; and

140. Such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Hitachi Maxell hereby demands a trial by jury.

Dated: November 18, 2016

By: /s/ Geoffrey Culbertson

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