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**A Short History of Vringo's Battle with ZTE**

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## **I. The Vringo Background**

The following paper is a short history of the thirty-nine-month battle between Vringo, Inc. and ZTE Corporation. Vringo (now called FORM Holdings) was a technology company that became involved in the worldwide patent wars.<sup>1</sup> The company won a 2012 intellectual property lawsuit against Google, in which a U.S. District Court ordered Google to pay 1.36 percent of U.S. AdWords sales. Analysts estimated Vringo's judgment against Google to be worth over \$1 billion.<sup>2</sup> The Court of Appeals for the Federal Circuit overturned the District Court's ruling on appeal in August 2014 in a split 2-1 decision,<sup>3</sup> which Intellectual Asset Magazine called "the most troubling case of 2014."<sup>4</sup> Vringo also pursued worldwide litigation against ZTE Corporation in twelve countries, including the United Kingdom, Germany, Australia, Malaysia, India, Spain, Netherlands, Romania, China, Malaysia, Brazil and the United States.<sup>5</sup> The high profile nature of the intellectual property suits filed by the firm against large corporations known for anti-patent tendencies has led some commentators to refer to the firm as a patent vulture or patent troll.<sup>6</sup>

Vringo was founded in 2006 by Israeli entrepreneurs and venture capitalist Jonathan Medved and mobile software specialist David Goldfarb.<sup>7</sup> Vringo's primary products and services were video-ringtones and acting as a video-sharing platform.<sup>8</sup> After experiencing continued net losses,<sup>9</sup> on March 14, 2012 Vringo entered into a definitive agreement to merge with Innovate/Protect, an intellectual property company founded by Andrew Kennedy Lang, the former chief technology officer at Lycos, and Alexander R. Berger, a former Vice President at Hudson Bay Capital.<sup>10</sup> The merger with Innovate/Protect was completed on July 19, 2012, with Lang joining Vringo as chief technology officer, and Berger as chief operating officer.<sup>11</sup>

James Altucher, a graduate school colleague of Lang, posted an article on Tech Crunch drawing attention to the history of the patents that Vringo had acquired from Lycos.<sup>12</sup> On April 13, 2012, billionaire investor Mark Cuban, the owner of the Dallas Mavericks and "shark" investor on the television series Shark Tank, disclosed a 7.4% stake in the company.<sup>13</sup>

In 2012 David L. Cohen, formerly of Nokia, joined Vringo in early 2012 and sourced<sup>14</sup> a portfolio of primarily telecommunication infrastructure assets from Nokia for \$22 million and a

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<sup>1</sup> [https://www.sec.gov/Archives/edgar/data/1410428/000114420415069548/v425774\\_8-k.htm](https://www.sec.gov/Archives/edgar/data/1410428/000114420415069548/v425774_8-k.htm)

<sup>2</sup> <https://venturebeat.com/2014/01/29/google-ordered-to-pay-as-much-as-1-billion-to-patent-troll-vringo/>

<sup>3</sup> <http://www.cafc.uscourts.gov/sites/default/files/opinions-orders/13-1307.Opinion.8-13-2014.1.PDF>

<sup>4</sup> <http://www.iam-media.com/blog/detail.aspx?g=376067be-4130-436e-9e96-833d5b6baf75>

<sup>5</sup> <http://www.iam-media.com/blog/detail.aspx?g=fe946e60-87b7-4840-81fd-0513a847aa51>

<sup>6</sup> <https://arstechnica.com/tech-policy/2014/08/after-years-of-hype-patent-troll-vringo-demolished-on-appeal/> ;  
*but see* <https://patentlyo.com/patent/2015/01/vringo-status-irrelevant.html>

<sup>7</sup> <https://en.wikipedia.org/wiki/Vringo>

<sup>8</sup> <https://www.cnet.com/news/vringo-video-ringtones-get-it/>

<sup>9</sup> See, e.g., <http://www.prnewswire.com/news-releases/vringo-reports-2011-third-quarter-results-133831048.html>

<sup>10</sup> <https://en.wikipedia.org/wiki/Vringo>

<sup>11</sup> *Id.*

<sup>12</sup> <https://techcrunch.com/2012/03/31/why-google-might-be-going-to-0/>

<sup>13</sup> <https://blogs.wsj.com/digits/2012/04/13/heard-of-vringo-its-mark-cubans-newest-toy/>

<sup>14</sup> <https://seekingalpha.com/article/820561-vringos-mission-take-on-the-patent-bullies>

35% revenue share after a \$22 million recoupment from Nokia.<sup>15</sup> The portfolio included a significant financial penalty (in the nine-figures) if Vringo were to assert the patents against a telecommunications carrier.<sup>16</sup> Aside from this restriction and an obligation to honor Nokia's commitments to existing licensees and various standard setting organizations, Vringo was free to assert the portfolio against any unlicensed party in any manner it saw fit.<sup>17</sup> The patents came from a portfolio of infrastructure patents that remained with Nokia after the formulation of the NSN joint-venture between Nokia and Siemens.<sup>18</sup>

The portfolio included over 20 Standard Essential Patents ("SEPs") including some core handover patents<sup>19</sup> – one of which became the first infrastructure SEP found to be valid and infringed in the UK – and one of only a handful of SEPs around the world that have been fully litigated and found valid and infringed.<sup>20</sup>

In August 2012, the company raised \$31.2 million to close the purchase from Nokia<sup>21</sup> In an October 2012 common stock offering, Vringo raised an additional \$45 million and in April 2013, Vringo's shares commenced trading on the NASDAQ.<sup>22</sup>

## **II. The First Phase**

Prior to Vringo's acquisition of the portfolio, ZTE had for almost ten years, refused to obtain a global, portfolio license from Nokia – including two years of arguing over the terms of a non-disclosure agreement ("NDA").<sup>23</sup> ZTE's refusal to license created the business opportunity for Vringo. After acquiring the portfolio Vringo attempted to follow Nokia's lead and secure a license with ZTE to its portfolio.<sup>24</sup>

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<sup>15</sup> [https://www.sec.gov/Archives/edgar/data/1410428/000114420412043832/v320786\\_8k.htm](https://www.sec.gov/Archives/edgar/data/1410428/000114420412043832/v320786_8k.htm) (8-K of Vringo press release); [https://www.sec.gov/Archives/edgar/data/1410428/000114420412062505/v326455\\_ex10-1.htm](https://www.sec.gov/Archives/edgar/data/1410428/000114420412062505/v326455_ex10-1.htm) (Patent Purchase Agreement between Vringo and Nokia)

<sup>16</sup> [https://www.sec.gov/Archives/edgar/data/1410428/000114420412043832/v320786\\_8k.htm](https://www.sec.gov/Archives/edgar/data/1410428/000114420412043832/v320786_8k.htm)

<sup>17</sup> [https://www.sec.gov/Archives/edgar/data/1410428/000114420412062505/v326455\\_ex10-1.htm](https://www.sec.gov/Archives/edgar/data/1410428/000114420412062505/v326455_ex10-1.htm) (Existing Encumbrances).

<sup>18</sup> [https://www.siemens.com/press/en/pr\\_cc/2006/06\\_jun/axx20060638\\_1385458.htm](https://www.siemens.com/press/en/pr_cc/2006/06_jun/axx20060638_1385458.htm) (Release announcing creation of NSN)

<sup>19</sup>

[http://www.vringoip.com/documents/FG/vringo/ip/486786\\_Vringo\\_Standard\\_Essential\\_Patents\\_and\\_ETSI\\_Declarations.pdf](http://www.vringoip.com/documents/FG/vringo/ip/486786_Vringo_Standard_Essential_Patents_and_ETSI_Declarations.pdf) (Table listing Vringo's SEPs with supporting materials regarding declarations to relevant standard setting organizations).

<sup>20</sup> <https://www.scribd.com/document/349037075/2015-11-13-16th-Witness-Statement-of-Ari-Laakkonen-Signed> (noting that as of November 2015, EP 1,212,919 was the only cellular infrastructure patent to have been found valid and infringed in the UK).

<sup>21</sup> <http://www.businesswire.com/news/home/20120809005600/en/Vringo-Nokia-Execute-Patent-Purchase-Agreement>

<sup>22</sup> <https://en.wikipedia.org/wiki/Vringo>

<sup>23</sup> <https://www.scribd.com/document/348791248/Vringo-Response-to-ZTE-DGCOMP-Complaint> (Vringo's response to ZTE's complaint to the European Commission at ¶¶4.7 -4.17).

<sup>24</sup> Id. ¶¶4.18-4.28

In October 2012 Vringo decided to file a handful of litigations using representative patents. The ultimate goal was always a portfolio level license.<sup>25</sup> The litigations were first filed in in late 2012, and early 2013. Vringo filed two suits in the High Court in the United Kingdom asserting three SEPs each and two cases in Germany asserting a single SEP in each.<sup>26</sup> Shortly, thereafter, in April 2013, Vringo requested and received an *ex-parte* evidence preservation order (a “saisie-contrefaçon”). The order entitled Vringo’s counsel to accompany magistrates on raids all of ZTE’s facilities in France and impound relevant documentation and materials. Vringo later filed suit on two SEPs in France.<sup>27</sup>

### **III. The First Attempt at a Global Resolution**

In June 2013, at the case management conference in the UK action, Vringo asked the presiding judge, Colin Birss, to modify the traditional scheduling sequence of hearing liability before remedy. Vringo requested that the judge first try the question of an appropriate FRAND determination as to the value of the Vringo’s global portfolio. Vringo agreed to be bound as whatever rate the judge determined to be FRAND.<sup>28</sup> Further, having made such a finding, should the judge then find any Vringo UK SEP valid, and ZTE refuse to enter into a license at the predetermined rate, Vringo argued that ZTE should be enjoined.<sup>29</sup>

Notwithstanding Mr. Justice Birss’ apparent willingness to try Vringo’s idea, ZTE opposed Vringo’s request.<sup>30</sup> ZTE argued that it was entitled to refuse to be bound any global FRAND ruling by the judge. ZTE further argued that that prior to a entering a global license, let alone being subject to an injunction, all of Vringo’s SEPs needed to be found valid and/or infringed in each country where they were in force.<sup>31</sup> Mr. Justice Birss, torn between two visions of what FRAND would require in the circumstances, punted the issue, and ruled that first Vringo needed to find at least one patent valid before he would revisit the issue.<sup>32</sup> Subsequently, Mr. Justice Birss would call his dilemma the “Vringo Problem” and resolved it by reversing himself in the groundbreaking *Unwired Planet* case where he sided with one of the positions advanced by Vringo: that after a finding of infringement and validity of a patent holder’s SEP, the licensee needed to enter into a global license determined by the Court to be FRAND or be enjoined.<sup>33</sup>

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<sup>25</sup> <https://www.scribd.com/document/348792096/Vringo-Skeleton-Argument-for-CMC-UK-2013> at ¶11

<sup>26</sup> <https://www.scribd.com/document/348792096/Vringo-Skeleton-Argument-for-CMC-UK-2013> ¶9

<sup>27</sup> <https://www.scribd.com/document/348792096/Vringo-Skeleton-Argument-for-CMC-UK-2013> ¶9 Ultimately, the Court in France found the patents asserted not implemented by the standard, though it was rumored that the presiding judge was explicitly interested in deterring prospective patent trolls from filing suit in France. The case was on appeal at time of settlement.

<https://www.streetinsider.com/Corporate+News/Vringo+%28VRNG%29+Updates+on+ZTE+Litigation+in+France%2C+Netherlands/11040972.html>

<sup>28</sup> <https://www.scribd.com/document/348967387/Vringo-v-ZTE-UK-CMC-Transcript-05-06-13> p122

<sup>29</sup> <https://www.scribd.com/document/348792096/Vringo-Skeleton-Argument-for-CMC-UK-2013> Id. ¶24

<sup>30</sup> <https://www.scribd.com/document/348967387/Vringo-v-ZTE-UK-CMC-Transcript-05-06-13>

<sup>31</sup> <http://www.bailii.org/ew/cases/EWHC/Patents/2013/1591.html> ¶42

<sup>32</sup> Id. ¶¶56-58

<sup>33</sup> <http://www.bailii.org/ew/cases/EWHC/Patents/2017/711.html> ¶¶149-169

#### IV. The First Escalations

Finding its offer to have a FRAND global rate determined by a neutral third party (the High Court in the UK) rejected, Vringo filed litigations in many different jurisdictions.<sup>34</sup>

Vringo brought suit in June 2013 in Australia<sup>35</sup> (which included a bizarre episode where Oliver Hu, ZTE's then director of IP litigation rather unconvincingly tried to impersonate a local Australian ZTE representative<sup>36</sup>). Ultimately, in Australia Vringo was able to successfully join ZTE's parent entity in the litigation by establishing a *prima facie* case of infringement.<sup>37</sup> Additionally Vringo filed in 2014 what is was believed to be the first SEP litigation in Malaysia.<sup>38</sup>

In addition to new litigations, as part of this phase, Vringo embarked on a global campaign of preliminary injunctions and seizures.

In the autumn of 2013 Vringo filed two complaints for patent infringement in India (each complaint was for a single patent; only one of two patents was an SEP).<sup>39</sup> Along with its complaints Vringo requested interim relief. It secured: two preliminary injunctions (later converted to interim arrangements)<sup>40</sup>; an accounting from ZTE and its customers of sales and purchases of infringing equipment; and evidentiary raids on ZTE factories and facilities in India.<sup>41</sup> After receiving the filing in the court-mandated accounting, Vringo filing a contempt motion based on the significant discrepancies – in the high eight figures range - between ZTE's

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<sup>34</sup> For a near complete list and scorecard see <http://www.iam-media.com/Blog/Detail.aspx?g=16c03b05-cd13-46c3-9e55-eb0a57c99a57> ; [http://phx.corporate-ir.net/phoenix.zhtml?c=235370&p=irol-newsArticle\\_Print&ID=2110645](http://phx.corporate-ir.net/phoenix.zhtml?c=235370&p=irol-newsArticle_Print&ID=2110645)

<sup>35</sup> <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2015/2015fca0177>;  
<https://www.scribd.com/document/349039081/2013-06-11-Originating-Application-Stamped>;  
<https://www.scribd.com/document/349039082/2013-06-11-Particulars-of-Infringement-Stamped>;  
<https://www.scribd.com/document/349039084/2013-06-11-Statement-of-Claim-Stamped>;

<sup>36</sup> <https://www.scribd.com/document/349039083/2013-06-11-Genuine-Steps-Statement-Stamped>

<sup>37</sup> <https://jade.io/article/385148>

<sup>38</sup>

<https://www.streetinsider.com/Corporate+News/Vringo+%28VRNG%29+Updates+on+Patent+Infringement+Case+vs+ZTE+in+Malaysia/10105535.html>; <https://www.scribd.com/document/349039087/2014-06-23-Statement-of-Claim-as-Filed>

<sup>39</sup> <https://www.scribd.com/document/349019729/2013-11-07-Claim-Chart-as-Filed>;  
<https://www.scribd.com/document/349019727/2013-11-07-Vringo-vs-Xe-Dejun-Suit-and-Interim-Applications-Scanned>; <https://www.scribd.com/document/349019731/2014-01-31-Complaint-and-Supporting-Documents-Index-1-as-Filed>; <https://www.scribd.com/document/349019733/2014-01-31-Complaint-and-Supporting-Documents-Index-2-as-Filed>

<sup>40</sup> [http://ir.vringo.com/phoenix.zhtml?c=235370&p=irol-newsArticle\\_pf&ID=1922902](http://ir.vringo.com/phoenix.zhtml?c=235370&p=irol-newsArticle_pf&ID=1922902)

<sup>41</sup> [http://delhihighcourt.nic.in/dhcqrydisp\\_o.asp?pn=221627&yr=2013](http://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=221627&yr=2013) ;  
[http://delhihighcourt.nic.in/dhcqrydisp\\_o.asp?pn=23296&yr=2014](http://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=23296&yr=2014)

and ZTE's customers' (i.e., the Indian telecommunication carriers) accounting regarding the amount of infringing sales.<sup>42</sup> The contempt motion was pending at the time of settlement.

## **V. The First Final Injunction and the First Face-to-Face Meeting**

In December 2013, a month after the trial where the judge strongly implied the outcome, Vringo obtained a final injunction and an accounting against ZTE in Germany.<sup>43</sup> Of note, the Court in Mannheim court found that ZTE was an unwilling licensee.<sup>44</sup> After Vringo posted a bond to enforce the injunction, ZTE tried and failed to petition the relevant court of appeals to enjoin the lower court from letting Vringo enforce the injunction.<sup>45</sup> ZTE then filed an accounting with the court in Germany claiming that it did not sell any infringing product and arguing that therefore no injunction could be enforced. ZTE made this filing despite the trial court having found in the infringement case that ZTE's products infringed. In response to this "zero accounting" Vringo filed an additional suit and in December 2014 received an order (upon Vringo's payment of a bond) requiring the CEO of ZTE and ZTE's German subsidiary to give live testimony in a court in Germany that ZTE did not, in fact, sell any infringing product.<sup>46</sup>

In December 2013, while awaiting the anticipated injunction in Germany and after obtaining preliminary injunctions in India, Vringo was able to get ZTE to agree to meet face-to-face at its headquarters in Shenzhen, China, to discuss settlement. Vringo insisted on entering into an NDA prior to having any meetings.<sup>47</sup> ZTE quickly agreed. During the December meeting Vringo presented ZTE with its opening settlement proposal (memorialized in a printout of a PowerPoint presentation) which ZTE appeared to reject.<sup>48</sup>

## **VI. Further Injunctions and Seizures Around the World Begin to Disrupt ZTE's Business**

After the negotiations with ZTE seemingly went nowhere, Vringo continued with its campaign and secured customs seizures<sup>49</sup> and an evidentiary raid (where ZTE was fined for non-compliance) in Holland.<sup>50</sup> When ZTE contested in two preliminary injunctions (the first having been withdrawn on the eve of the hearing) the seizure by Dutch customs officials of its infrastructure equipment destined for two German telecommunications carriers, the Dutch court

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<sup>42</sup> <https://www.scribd.com/document/349019728/2014-02-03-Contempt-Petition-as-Filed>;  
<https://www.scribd.com/document/349037865/2014-08-30-Contempt-Petition-as-Filed>;  
<https://www.scribd.com/document/349037819/2014-09-27-Additional-Contempt-Affidavit>

<sup>43</sup>

[http://www.vringoip.com/documents/FG/vringo/ip/131101\\_Mannheim\\_Regional\\_Court\\_Decision\\_re\\_EP1186119\\_English\\_Translation.pdf](http://www.vringoip.com/documents/FG/vringo/ip/131101_Mannheim_Regional_Court_Decision_re_EP1186119_English_Translation.pdf) <https://www.scribd.com/document/257445438/Vringo-v-Zte-Supplemental-SDNY> ¶68-69

<sup>44</sup> *Id.*

<sup>45</sup> <https://www.scribd.com/document/257445438/Vringo-v-Zte-Supplemental-SDNY>

<sup>46</sup> [http://phx.corporate-ir.net/phoenix.zhtml?c=235370&p=irol-newsArticle\\_pf&id=2001086](http://phx.corporate-ir.net/phoenix.zhtml?c=235370&p=irol-newsArticle_pf&id=2001086)  
<https://finance.yahoo.com/news/vringo-provides-worldwide-litigation-against-140202712.html>

<sup>47</sup> <https://casetext.com/case/vringo-inc-v-zte-corp>

<sup>48</sup> <https://casetext.com/case/vringo-inc-v-zte-corp>

<sup>49</sup> <http://www.eplawpatentblog.com/eplaw/2014/11/nl-vringo-zte-frand.html>

<sup>50</sup> <https://www.scribd.com/document/349039992/2014-05-22-Evidentiary-Raid-Order-Dutch>

found that ZTE's actions in its negotiations with Vringo were not FRAND and upheld the customs seizures as being in compliance with Vringo's FRAND obligations and relevant European competition law.<sup>51</sup>

Vringo also secured customs seizures and injunctions in Romania<sup>52</sup> and raids and injunctions in Brazil.<sup>53</sup> Vringo's seizure and injunction requests in Romania and Brazil were vigorously contested.

In Romania ZTE appealed the preliminary injunction and seizure in over twelve separate appeals<sup>54</sup>. The final appeal was the first European Court of Appeal decision upholding a preliminary injunction on an SEP under the newly issued ECJ decision in Huawei v. ZTE.<sup>55</sup> During the litigations in Romania, Vringo was able to secure evidentiary raids that led to filing a case of criminal case<sup>56</sup> and a litigation demanding court fees<sup>57</sup>. In its pleadings ZTE complained that Vringo's actions in Romania prevented it from satisfying its obligations to Cosmote (the Romanian subsidiary of Deutsche Telekom) to roll out Cosmote's 4G network. In fact, ZTE claimed Vringo's actions caused it to be subject to first, 40 million Euros,<sup>58</sup> and then, 72 million Euros,<sup>59</sup> of fines payable to Cosmote. It was rumored, however, that ZTE's payments of such fees were insured by the Chinese government.

In 2014 in Brazil, Vringo secured a preliminary injunction that was upheld over the course of 13 separate appeals and became a landmark case in Brazil's highest civil court. In that case Brazil's Supreme Court upheld the right to secure a preliminary injunction against unwilling licensees of SEPs.<sup>60</sup> Additionally, in Brazil Vringo raided ZTE's facilities<sup>61</sup> and forced ZTE to

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<sup>51</sup> <http://www.eplawpatentblog.com/eplaw/2014/11/nl-vringo-zte-frand.html> Subsequently, a different court found the patent invalid (notwithstanding it having survived opposition from Qualcomm and found preliminarily valid in Germany. Vringo's appeal of the invalidity finding was pending at the time of settlement.

<https://www.streetinsider.com/Corporate+News/Vringo+%28VRNG%29+Issues+Update+on+ZTEs+Patent+Challenges+in+China%2C+the+Netherlands/11010053.html>

<sup>52</sup> <https://finance.yahoo.com/news/vringo-issues-recent-events-litigations-133203404.html>

<sup>53</sup> <https://www.scribd.com/document/349021148/2014-04-14-Complaint-and-Exhibits-as-Filed-Part-1;>

<https://www.scribd.com/document/349021146/2014-04-14-Complaint-and-Exhibits-as-Filed-Part-2;>

<https://www.scribd.com/document/349021147/2014-04-14-Complaint-and-Exhibits-as-Filed-Part-3;>

<https://www.scribd.com/document/349021145/2014-04-14-Complaint-and-Exhibits-as-Filed-Part-4;>

<https://www.scribd.com/document/349021144/2014-04-14-Complaint-and-Exhibits-as-Filed-Part-5>

<sup>54</sup>

<http://inpublic.globenewswire.com/2015/10/29/ROMANIAN+COURT+UPHOLDS+PRELIMINARY+INJUNCTION+AGAINST+ZTE+ROMANIA+IN+VIEW+OF+ECJ+HUAWEI+V+ZTE+DECISION+HUG1962302.html>

<sup>55</sup> <http://comparativepatentremedies.blogspot.com/2016/03/vringo-v-zte-romania-sep-case.html>

<https://drive.google.com/file/d/0B8xYsG-VkgXNMEJKQUFCRURueTA/view>

<sup>56</sup> <https://www.scribd.com/document/348796745/Criminal-Complaint>

<sup>57</sup> <https://www.scribd.com/document/348796444/Motion-for-Fees>

<sup>58</sup> <https://www.scribd.com/document/348795048/2015-01-08-Minutes-of-Decision-Appeal-of-Injunction-Romanian>

<sup>59</sup> <https://drive.google.com/file/d/0B8xYsG-VkgXNMEJKQUFCRURueTA/view>

<sup>60</sup> <https://drive.google.com/file/d/0B8xYsG-VkgXNZGJ3c0R5a2JSbW8/view>

<sup>61</sup> <https://www.scribd.com/document/348967418/2014-10-02-Order-Granting-Search-and-Seizure-Portuguese>

secure all infringing kit from being released into commerce and uncovered numerous accounting irregularities.<sup>62</sup>

## **VII. ZTE's Counter-Actions at the Chinese Patent Office and the EU**

In response to Vringo's concerted global campaign, ZTE sought to invalidate all of Vringo's patents in China through re-examinations, including multiple attempts to invalidate the same patents.<sup>63</sup> Vringo was able keep nineteen patents valid after over thirty-three re-examinations, which is impressive considering ZTE's ex parte communications with the relevant judges at the Chinese patent office and the statements of the Chief Judge of the Guangdong Higher Peoples Court, Qiu Yongqing, about using the law to benefit Chinese companies to detriment of foreign ones.<sup>64</sup>

In April 2014, ZTE filed a European Commission complaint against ZTE arguing that Vringo breached competition law by seeking injunctions against ZTE and through its licensing practices.<sup>65</sup> ZTE also asserted that it was a rebuttable violation of competition law for Nokia to have divested its SEPs to Vringo, an non-practicing entity.<sup>66</sup> Vringo contested this position in its filing with the European Commission and – for a second time - offered to have neutral party, this time an arbitration panel, determine the royalties owed Vringo.<sup>67</sup> ZTE rejected this proposal.

## **VIII. ZTE's Chinese Anti-Monopoly Claims**

In January 2014 ZTE also filed an anti-monopoly (AML) case in Shenzhen, China against Vringo, ultimately seeking 98.8 million Renminbi<sup>68</sup> for Vringo having decided to bring suit against ZTE and seeking injunctive relief in other countries. ZTE brought this suit notwithstanding Vringo being liable in those countries for attorneys' fees if it lost a case as well as being liable for damages if a court later determined an injunction granted against ZTE was improper.<sup>69</sup> In its defense Vringo was able to marshal numerous procedural arguments and filed a number of appeals that successfully delayed the case coming to trial prior to settlement – at which time the evidentiary hearing had not yet occurred.<sup>70</sup>

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<sup>62</sup> <https://www.scribd.com/document/348967468/2015-05-18-Expert-Report-Portuguese>

<sup>63</sup> <https://www.scribd.com/document/348967499/2015-07-15-Second-Amended-Complaint-File-Stamped> ¶¶142-44

<https://www.streetinsider.com/Corporate+News/Vringo+%28VRNG%29+Announces+Favorable+Verdicts+vs.+ZTE+in+Romania%2C+China/11065193.html>

<sup>64</sup> <https://www.scribd.com/document/348967579/A-Battle-Across-the-Pacific-Ocean>

<sup>65</sup> <https://www.scribd.com/document/348791249/ZTE-Complaint-to-European-Commission>

<sup>66</sup> Id. ¶3.3.2

<sup>67</sup> <https://www.scribd.com/document/348791248/Vringo-Response-to-ZTE-DGCOMP-Complaint> ¶¶2.17 – 2.20

<sup>68</sup> <https://www.scribd.com/document/348967683/2015-05-11-ZTE-Application-to-Amend-Damages-Claim-Chinese-pdf>

<sup>69</sup> <https://www.scribd.com/document/348967743/2014-07-28-Motion-to-Dismiss-Inc-Copy-1>

<sup>70</sup> <https://www.scribd.com/document/348967973/2015-05-25-Order-Setting-New-Trial-Dates-Chinese> ; <https://www.scribd.com/document/348968169/Vringo-Short-Form-Defense-CN-As-Filed>



In order to file its in January 2014 AML case, ZTE both discussed in its complaint and filed as an exhibit<sup>71</sup> the confidential settlement proposal Vringo made to ZTE in December 2013: a breach of the NDA.<sup>72</sup>

In June 2014, the Chinese court served the complaint on Vringo by regular post. After Vringo received the complaint in late June, in early July, Vringo filed and received a temporary restraining order and later a preliminary injunction in the Southern District of New York before Judge Kaplan preventing further disclosures of the confidential settlement materials.<sup>73</sup> During discovery it was uncovered that ZTE shared the materials subject to the NDA, at least, with a very large number of ZTE staff, its PR agencies (Edelman and Grayling<sup>74</sup>), Google, the Chinese patent office, and the NDRC.<sup>75</sup> This discovery showed that various statements that ZTE's counsel at King and Spalding made to the court in open court<sup>76</sup> were lies, and in fact, known to be lies at the time they were made. The question of relevant sanctions against ZTE's counsel were pending at the time of settlement.<sup>77</sup> The question of ZTE's counsel's behavior was raised again due to the allegedly unlawful termination of an associate, David Joffe, for allegedly reporting on his superiors for violating legal ethics rules in relation to the lies to the court.<sup>78</sup>

In January 2015 Vringo was informed that NDRC had commenced an investigation of Vringo<sup>79</sup> and Vringo's Chief Legal and IP Officer was summoned to meet with Chinese regulators.<sup>80</sup> In the two meetings that occurred with regulators the investigators reprimanded Vringo's Chief Legal and IP Officer for not be obsequious, threatened to take all of Vringo's Chinese patents by force and left him in fear of his safety. Moreover, the NDRC insisted that Vringo accept mediation by the NDRC or otherwise resolve its disputes with ZTE or face criminal sanction and extradition requests.<sup>81</sup>

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<sup>71</sup> <https://www.scribd.com/document/348968320/2014-10-02-Memorandum-of-Law-in-Support-of-Motion-on-the-Pleadings>

<sup>72</sup> <https://www.scribd.com/document/348968437/2015-04-06-Order-Partially-Granting-Plaintiffs-Motion-for-Judgment-on-the-Pleadings>

<sup>73</sup> <https://casetext.com/case/vringo-inc-v-zte-corp>

<sup>74</sup> <https://thepatentinvestor.com/2015/09/vringo-seeks-more-time-to-find-out-if-google-edelman-and-grayling-are-connected-to-alleged-zte-led-manipulation-scheme/>

<sup>75</sup> <https://www.scribd.com/document/348968686/2015-06-08-Second-Motion-for-de-Designation-and-Other-Appropriate-Relief>; <https://www.scribd.com/document/348968800/2015-11-10-Motion-to-de-Designate-Confidentiality-of-Google-Documents>; <https://www.scribd.com/document/348969018/179-5>

<sup>76</sup> <https://www.scribd.com/document/349040827/2014-07-07-Transcript-of-Temporary-Restraining-Order-Hearing>; <https://www.scribd.com/document/349040832/2014-07-24-Transcript-of-Preliminary-Injunction-Hearing>; <https://www.scribd.com/document/349040857/2015-04-08-Conference-Transcript>;

<https://www.scribd.com/document/349040888/2015-06-23-Hearing-Transcript>;

<https://www.scribd.com/document/349040895/2015-07-23-Hearing-Transcript>

<sup>77</sup> <https://www.scribd.com/document/348969125/2015-09-08-Motion-for-Sanctions>

<sup>78</sup> <https://www.scribd.com/document/348969211/joffe>

<sup>79</sup> <https://www.scribd.com/document/349023870/2015-01-12-NDRC-Letter-Chinese>

<sup>80</sup> <https://www.scribd.com/document/349023958/2015-01-21-Ndrc-Email-to-Dlc>

<sup>81</sup> <https://soundcloud.com/user-214287222/vn-20150603-092141>

<https://www.scribd.com/document/348967499/2015-07-15-Second-Amended-Complaint-File-Stamped>;  
[https://www.washingtonpost.com/world/asia\\_pacific/us-firm-alleges-chinas-government-colluded-with-local-competitor/2015/09/13/e86dc4c8-572e-11e5-9f54-1ea23f6e02f3\\_story.html?utm\\_term=.8a7f309194f9](https://www.washingtonpost.com/world/asia_pacific/us-firm-alleges-chinas-government-colluded-with-local-competitor/2015/09/13/e86dc4c8-572e-11e5-9f54-1ea23f6e02f3_story.html?utm_term=.8a7f309194f9);

## **IX. First Nokia SEP Adjudicated to be Valid and Infringed**

In November 2014 Vringo secured victory in the UK on EP919<sup>82</sup>, making it the first Nokia-originated cellular infrastructure SEP found valid and infringed.<sup>83</sup> In June 2015 a damages phase of UK case commenced where the court was to determine the terms of any license ZTE needed to enter (e.g., the scope – global, UK only, and the relevant rate)<sup>84</sup>.

## **X. ZTE Brings the Litigations to the US**

On February 5, 2015 ZTE filed requests for inter partes review of 5 of Vringo's US patents.<sup>85</sup> On Friday, February 6, 2015, ZTE agreed to meet up with Vringo at its offices in New York City to discuss further possible settlement options. On the same day of the meeting, ZTE filed a temporary restraining order and preliminary injunction in Delaware before Judge Sleet (using a different law firm than King and Spalding, Pillsbury) seeking a world-wide anti-suit injunction against Vringo despite arguing in Vringo's breach of NDA suit in SDNY that such an injunction would be improper<sup>86</sup>.

Because ZTE's counsel lied to the federal court in Delaware about the availability of Vringo's US counsel, omitted the existence of the pending case in the Southern District of New York, and lied about the facts of Vringo's Romanian injunction, Judge Sleet granted the order on that Friday.<sup>87</sup> The following week, the judge was made aware of the true facts, rescinded the order, transferred ZTE's case (grounded in anti-trust and contract) for an anti-suit injunction to

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<https://thepatentinvestor.com/2015/07/vringos-allegation-of-manipulation-by-zte-seen-more-likely-to-draw-scrutiny-from-justice-department-than-sec/>

<sup>82</sup> <http://www.bailii.org/ew/cases/EWHC/Patents/2014/3924.html>

<sup>83</sup> <https://www.scribd.com/document/349037075/2015-11-13-16th-Witness-Statement-of-Ari-Laakkonen-Signed>

<sup>84</sup> <https://www.scribd.com/document/348970425/2015-03-02-Vringo-Statement-of-Case-for-Relief-Trial-Stamped;>  
<https://www.scribd.com/document/348970461/2015-06-08-Review-Hearing-Judgment;>  
<https://www.scribd.com/document/348970503/2015-07-09-Order>

<sup>85</sup> [http://www.indiaonline.com/article/news-business-wire-consumer-electronics/zte-files-applications-to-uspto-to-re-examine-5-vringo-patents-115021600318\\_1.html](http://www.indiaonline.com/article/news-business-wire-consumer-electronics/zte-files-applications-to-uspto-to-re-examine-5-vringo-patents-115021600318_1.html) In June 11, 2015 the PTO issued its opinion denying institutions for all 5 requests: IPR2015-00701; IPR2015-00703; IPR2015-00704; IPR2015-00705; and IPR2015-00706

<sup>86</sup> <https://www.scribd.com/document/349022315/2015-02-09-Motion-to-Dissolve-TRO-and-Preliminary-Injunction;> <https://www.scribd.com/document/349022309/2015-02-09-Declaration-of-Carlos-Aboim;>  
<https://www.scribd.com/document/349022311/2015-02-09-Declaration-of-Klaus-Haft;>  
<https://www.scribd.com/document/349022310/2015-02-09-Declaration-of-Sabine-Age;>  
<https://www.scribd.com/document/349022314/2015-02-09-Declaration-of-Ari-Laakkonen;>  
<https://www.scribd.com/document/349022313/2015-02-09-Declaration-of-Bart-Van-Den-Broek;>  
<https://www.scribd.com/document/349022325/2015-02-09-Declaration-of-Dragos-Vilau;>  
<https://www.scribd.com/document/349022324/Exhibit-A;>  
<https://www.scribd.com/document/349022357/Exhibit-C;> <https://www.scribd.com/document/349022358/2015-02-09-Declaration-of-Amber-Wessels-Yen;> <https://www.scribd.com/document/349022360/Exhibit-A;>  
<https://www.scribd.com/document/349022359/Exhibit-B>

<sup>87</sup> <https://www.scribd.com/document/349022814/2015-02-10-Order-Granting-Motion-to-Dissolve-TRO-PI-and-Transferring-Case-to-SDNY>

SDNY, sanctioned ZTE, and noted neither he nor Judge Kaplan were pleased with ZTE and their counsel's behavior.<sup>88</sup>

Shortly after ZTE's Delaware case was transferred to SDNY, Vringo counterclaimed, seeking a declaration of a global SEP portfolio rate and a finding that ZTE breached its FRAND obligation and that ZTE should no longer be subject to the protections of the FRAND regime or that Vringo be entitled to a FRAND royalty rate.<sup>89</sup> ZTE engaged a third firm to handle the SDNY FRAND litigation.

Judge Kaplan in SDNY consolidated the NDA case and the FRAND cases. During the course of discovery, Vringo achieved significant rulings including that ZTE violated multiple discovery regimes and ZTE's Chinese counsel were not covered by the attorney client privilege. Vringo also uncovered that in addition to sharing its confidential materials with multiple parties - including Google<sup>90</sup> - ZTE had discussed its strategies regarding how to handle Vringo at the highest level of the company and had been in constant discussion with the Chinese government about Vringo. In fact, Vringo was able to secure ZTE's communications with the NDRC which appear to have included the drafts of all communications between the NDRC and Vringo (implying that ZTE had vetted if not actually drafted the NDRC's communications with Vringo). In addition, discovery revealed that the NDRC appeared to have suggested that ZTE short sell Vringo's stock, manipulate Vringo's share price through a global PR campaign, and use every legal means to harass Vringo and its employees.<sup>91</sup>

Finally, as discovery in the case in SDNY progressed it became increasingly clear that ZTE's general counsel, Mr. Guo, was heavily involved in ZTE's actions against Vringo. Based on this, Vringo was able to secure an order requiring Mr. Guo to be deposed in New York City. ZTE, through its counsel refused (twice) to bring Mr. Guo to New York. ZTE was sanctioned, and still refused to bring Mr. Guo to NY. Subsequently, ZTE brought in a fourth law firm, Clifford Chance, to handle the issues relating to Mr. Guo. ZTE later admitted to the Court that the reason Mr. Guo did not wish to come to the United States is that he feared arrest for fleeing a grand jury in Texas investigating ZTE's sales of telecommunication equipment to Iran in violation of US sanctions. Judge Kaplan was not impressed with this excuse and was unwilling, as ZTE's counsel requested, to simply sanction ZTE for violating his order, but suggested that Vringo might choose to file more significant sanctions if ZTE were to continue to disobey his

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<sup>88</sup> <https://www.scribd.com/document/349022834/2015-02-10-Teleconference-With-Judge-Sleet-Indexed> Suffice it to say that this law firm no longer represented ZTE in its litigations with Vringo.

<sup>89</sup> <https://www.scribd.com/document/349023710/2015-02-27-Amended-Answer-and-Counterclaim>

<sup>90</sup> <https://www.scribd.com/document/348968800/2015-11-10-Motion-to-de-Designate-Confidentiality-of-Google-Documents>

<sup>91</sup> <https://www.scribd.com/document/348796264/Exhibit-18>;  
<https://www.scribd.com/document/348796332/Exhibit-19>

orders.<sup>92</sup> Vringo's request for case terminating sanctions and an award of damages<sup>93</sup> was pending when the parties settled on December 21, 2015 for \$21.5 million.<sup>94</sup>

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<sup>92</sup> <https://www.scribd.com/document/349024639/2015-07-24-Order-Compelling-Deposition-of-Guo-Xiaoming>;  
<https://www.scribd.com/document/349024658/2015-08-11-Memorandum-Opinion-Re-Guo-Deposition>

<sup>93</sup> <https://www.scribd.com/document/349024822/2015-09-08-Motion-for-Sanctions>;  
<https://www.scribd.com/document/349024857/256-1>; <https://www.scribd.com/document/349024857/256-1>;  
<https://www.scribd.com/document/349024857/256-1>; <https://www.scribd.com/document/349024848/256-4>;  
<https://www.scribd.com/document/349024847/256-5>; <https://www.scribd.com/document/349024849/256-6>;  
<https://www.scribd.com/document/349024846/256-7>; <https://www.scribd.com/document/349024850/256-8>;  
<https://www.scribd.com/document/349024852/256-9>; <https://www.scribd.com/document/349024854/256-10>;  
<https://www.scribd.com/document/349024858/256-11>; <https://www.scribd.com/document/349024855/256-12>;  
<https://www.scribd.com/document/349024859/256-13>; <https://www.scribd.com/document/349024860/256-14>;  
<https://www.scribd.com/document/349024861/256-15>

<sup>94</sup> [https://www.sec.gov/Archives/edgar/data/1410428/000114420416087235/v432779\\_ex10-15.htm](https://www.sec.gov/Archives/edgar/data/1410428/000114420416087235/v432779_ex10-15.htm)