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10
 11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13 APPLE INC.,
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 Plaintiff,
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 v.
 16 WI-LAN, INC.,
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 Defendant.

Case No.
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COMPLAINT FOR DECLARATORY JUDGMENT
DEMAND FOR JURY TRIAL

21 Plaintiff Apple Inc. (“Apple”) for its Complaint against Wi-LAN, Inc. (“Wi-LAN”) hereby demands a jury trial and alleges as follows:

23 **NATURE OF THE ACTION**

24 1. This is an action for declaratory judgment of non-infringement, invalidity, and unenforceability of United States Patent Nos. 8,457,145 (the “145 Patent”); 8,462,723 (the “723 Patent”); 8,462,761 (the “761 Patent”); 8,615,020 (the “020 Patent”); 8,537,757 (the “757 Patent”) (collectively, the “Patents-In-Suit”) pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, and the patent laws of the United States, 35 U.S.C. § 100 et seq., and for

1 such other relief as the Court deems just and proper.

2 **PARTIES**

3 2. Plaintiff Apple is a corporation organized and existing under the laws of California,
4 with its principal place of business at 1 Infinite Loop, Cupertino, California 95014.

5 3. On information and belief, defendant Wi-LAN is a corporation organized and
6 existing under the laws of Canada and having its principal place of business at 303 Terry Fox
7 Drive, Suite 300, Ottawa, Ontario, Canada.

8 4. As alleged herein, Wi-LAN has engaged in various acts in and directed to
9 California.

10 **JURISDICTION AND VENUE**

11 5. This Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,
12 1338(a), 1367, 2201, and 2202, and the patent laws of the United States, 35 U.S.C. § 1, et seq.
13 Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

14 6. Wi-LAN purports to be the owner of all rights, title, and interest in and to the
15 Patents-In-Suit. Wi-LAN has made statements alleging that Apple infringes the Patents-In-Suit
16 and demanding that Apple license the Patents-In-Suit. Furthermore, Wi-LAN has demonstrated
17 its ability and willingness to file suit through its initiation of multiple lawsuits against Apple and
18 other similarly situated companies. Apple has not infringed and does not infringe, either directly
19 or indirectly, any valid and enforceable claim of any of the Patents-In-Suit, either literally or
20 under the doctrine of equivalents, nor is Apple aware of any infringement of any of the Patents-
21 In-Suit. A substantial controversy exists between the parties which is of sufficient immediacy
22 and reality to warrant declaratory relief.

23 7. This Court has personal jurisdiction over Wi-LAN. Wi-LAN has conducted
24 business in and directed to California, including pertaining to the Patents-In-Suit, and has
25 engaged in various acts in and directed to California. Additionally, Wi-LAN purchased the
26 Patents-In-Suit (or underlying patent applications) from the inventors and/or former assignees
27 believed to be located in California. Wi-LAN is in the business of asserting patent infringement
28 claims and suing companies for patent infringement. In connection with that business, Wi-LAN

1 has targeted and met with companies in Santa Clara County, including Apple.

2 **BACKGROUND OF PARTIES**

3 8. Apple is an American multinational corporation and leading designer and
4 manufacturer of mobile communication devices, personal computers, and portable digital media
5 players. As a result of its significant investment in research and development, Apple has
6 developed innovative technologies that have changed the face of the computer and
7 telecommunications industries. For example, when Apple introduced the first iPhone in 2007, it
8 revolutionized the way people view mobile phones.

9 9. Apple introduced another revolutionary product, the iPad, in 2010. The iPad is an
10 elegantly designed computer tablet with a color touch screen, a user interface similar to the
11 iPhone's user interface, and robust functionality that includes mobile computing, media storage
12 and playback, and cellular connectivity. Because of its innovative technology and distinctive
13 design, the iPad achieved instant success.

14 10. Since 2006, Wi-LAN has been solely in the business of acquiring and asserting
15 patents. Wi-LAN's business model revolves around threatening to initiate litigation against
16 technology companies to extract licensing fees. If a company fails to take a license, Wi-LAN
17 initiates litigation. Wi-LAN has used this approach on over 275 companies.

18 11. Since 2007, Wi-LAN has sued Apple on at least four other occasions. On October
19 31, 2007 Wi-LAN sued Apple, and over 25 other defendants, asserting infringement of U.S.
20 Patent Nos. 5,282,222 and RE37,802. (*Wi-LAN Inc. v. Acer, Inc.*, E.D. Tex. Case No. 2:07-cv-
21 00473.) On September 1, 2011, Wi-LAN again sued Apple and nine other defendants asserting
22 infringement of U.S. Patent Nos. 5,282,222 and RE37,802. (*Wi-LAN Inc. v. Apple Inc. et al.*,
23 E.D. Tex. Case No. 6:11-cv-453.) On December 12, 2012, Wi-LAN filed two new suits against
24 Apple: one case in the Eastern District of Texas asserting infringement of U.S. Patent No.
25 6,381,211 and one in the Southern District of Florida asserting infringement of U.S. Patent Nos.
26 8,315,640 and 8,311,040 ("Wi-LAN LTE Litigation"). (*See Wi-LAN Inc. v. Apple Inc.*, E.D.
27 Tex. Case No. 6:12-cv-920; *Wi-LAN Inc. v. Apple Inc.*, S.D. Fla. Case No. 1:12-cv-24318.)

28 12. On or around June 16, 2014 while the Wi-LAN LTE Litigation was still pending,

1 Wi-LAN sent an email to Apple putting Apple on notice of infringement of the Patents-In-Suit
2 (the “Notice Letter”). Most of the Patents-In-Suit are included in the same patent family as one
3 of the patents at issue in the Wi-LAN LTE Litigation.

4 13. Given the contents of the Notice Letter, Wi-LAN’s prior litigation history with
5 Apple, and the relationship of the Patents-In-Suit to one of the patents in the current Wi-LAN
6 LTE Litigation, there is an actual case or controversy regarding whether Apple infringes the
7 Patents-In-Suit and whether the Patents-In-Suit are valid.

8 **THE PATENTS-IN-SUIT**

9 14. The ’145 Patent is entitled “Method and Apparatus for Bandwidth Request/Grant
10 Protocols in a Wireless Communication System” and bears an issuance date of June 4, 2013. A
11 copy of the ’145 Patent is attached hereto as Exhibit 1.

12 15. The ’723 Patent is entitled “Method and Systems for Transmission of Multiple
13 Modulated Signals Over Wireless Networks” and bears an issuance date of June 11, 2013. A
14 copy of the ’723 Patent is attached hereto as Exhibit 2.

15 16. The ’761 Patent is entitled “Method and System for Adaptively Obtaining
16 Bandwidth Allocation Requests” and bears an issuance date of June 11, 2013. A copy of the
17 ’761 Patent is attached hereto as Exhibit 3.

18 17. The ’020 Patent is entitled “Method and System for Adaptively Obtaining
19 Bandwidth Allocation Requests” and bears an issuance date of December 24, 2013. A copy of
20 the ’020 Patent is attached hereto as Exhibit 4.

21 18. The ’757 Patent is entitled “Adaptive Call Admission Control for Use in a Wireless
22 Communication System” and bears an issuance date of September 17, 2013. A copy of the ’145
23 Patent is attached hereto as Exhibit 5.

24 **COUNT I**

25 **DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 8,457,145**

26 19. Apple repeats and realleges the allegations in paragraphs 1–18 as though fully set
27 forth herein.

28 20. Apple has not infringed and does not infringe, directly or indirectly, any valid and

1 enforceable claim of the '145 Patent.

2 21. As a result of the acts described in the foregoing paragraphs, there exists a
3 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
4 declaratory judgment.

5 22. A judicial declaration is necessary and appropriate so that the Apple may ascertain
6 its rights regarding the '145 Patent.

7 **COUNT II**

8 **DECLARATION OF INVALIDITY OF U.S. PATENT NO. 8,457,145**

9 23. Apple repeats and realleges the allegations in paragraphs 1–22 as though fully set
10 forth herein.

11 24. The '145 Patent is invalid for failure to meet the conditions of patentability and/or
12 otherwise to comply with one or more of 35 U.S.C. §§ 100 et seq., 101, 102, 103, 112 and 132.

13 25. As a result of the acts described in the foregoing paragraphs, there exists a
14 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
15 declaratory judgment.

16 26. A judicial declaration is necessary and appropriate so that Apple may ascertain its
17 rights regarding the '145 Patent.

18 **COUNT III**

19 **DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 8,462,723**

20 27. Apple repeats and realleges the allegations in paragraphs 1–26 as though fully set
21 forth herein.

22 28. Apple has not infringed and does not infringe, directly or indirectly, any valid and
23 enforceable claim of the '723 Patent.

24 29. As a result of the acts described in the foregoing paragraphs, there exists a
25 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
26 declaratory judgment.

27 30. A judicial declaration is necessary and appropriate so that Apple may ascertain its
28 rights regarding the '723 Patent.

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COUNT IV

DECLARATION OF INVALIDITY OF U.S. PATENT NO. 8,462,723

31. Apple repeats and realleges the allegations in paragraphs 1–30 as though fully set forth herein.

32. The '723 Patent is invalid for failure to meet the conditions of patentability and/or otherwise to comply with one or more of 35 U.S.C. §§ 100 et seq., 101, 102, 103, 112 and 132.

33. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

34. A judicial declaration is necessary and appropriate so that Apple may ascertain its rights regarding the '723 Patent.

COUNT V

DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 8,462,761

35. Apple repeats and realleges the allegations in paragraphs 1–34 as though fully set forth herein.

36. Apple has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '761 Patent.

37. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

38. A judicial declaration is necessary and appropriate so that Apple may ascertain its rights regarding the '761 Patent.

COUNT VI

DECLARATION OF INVALIDITY OF U.S. PATENT NO. 8,462,761

39. Apple repeats and realleges the allegations in paragraphs 1–38 as though fully set forth herein.

40. The '761 Patent is invalid for failure to meet the conditions of patentability and/or otherwise to comply with one or more of 35 U.S.C. §§ 100 et seq., 101, 102, 103, 112 and 132.

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COUNT IX

DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 8,537,757

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51. Apple repeats and realleges the allegations in paragraphs 1–50 as though fully set forth herein.

52. Apple has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '757 Patent.

53. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

54. A judicial declaration is necessary and appropriate so that Apple may ascertain its rights regarding the '757 Patent.

COUNT X

DECLARATION OF INVALIDITY OF U.S. PATENT NO. 8,537,757

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55. Apple repeats and realleges the allegations in paragraphs 1–54 as though fully set forth herein.

56. The '757 Patent is invalid for failure to meet the conditions of patentability and/or otherwise to comply with one or more of 35 U.S.C. §§ 100 et seq., 101, 102, 103, 112 and 132.

57. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

58. A judicial declaration is necessary and appropriate so that Apple may ascertain its rights regarding the '757 Patent.

COUNT X

DECLARATION OF UNENFORCEABILITY DUE TO UNCLEAN HANDS

59. Apple repeats and realleges the allegations in paragraphs 1–58 as though fully set forth herein.

60. Wi-LAN has engaged in conduct comprising unclean hands rendering the Patents-In-Suit unenforceable in this action. Wi-LAN has engaged in a pattern and practice of improper

1 activity to acquire, license, and assert its patents in bad faith, including by making claims of
2 patent infringement with knowledge that the patents are not actually infringed or are invalid.

3 61. Moreover, Wi-LAN has asserted its patents against Apple in bad faith. For
4 example, Wi-LAN sued Apple alleging infringement of U.S. Patent No. RE37,802, but Apple
5 was found not to infringe any of the claims of the that patent. Wi-LAN also sued Apple alleging
6 infringement of U.S. Patent No. 6,381,211, but the patent was found invalid. Wi-LAN has
7 recently filed four litigations against Apple and has failed to prevail in any of them. Yet Wi-
8 LAN continues to target Apple and threaten litigation against it.

9 62. As a result of the acts described in the foregoing paragraphs, there exists a
10 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
11 declaratory judgment.

12 63. A judicial declaration is necessary and appropriate so that Apple may ascertain its
13 rights regarding the Patents-In-Suit.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Apple respectfully requests that judgment be entered in its favor and
16 pray that the Court grant the following relief:

17 A. A declaration that Apple has not infringed, either directly or indirectly, any valid
18 and enforceable claim of the '145 Patent;

19 B. A declaration that the claims of the '145 Patent are invalid;

20 C. A declaration that Apple has not infringed, either directly or indirectly, any valid
21 and enforceable claim of the '723 Patent;

22 D. A declaration that the claims of the '723 Patent are invalid;

23 E. A declaration that Apple has not infringed, either directly or indirectly, any valid
24 and enforceable claim of the '761 Patent;

25 F. A declaration that the claims of the '761 Patent are invalid;

26 G. A declaration that Apple has not infringed, either directly or indirectly, any valid
27 and enforceable claim of the '020 Patent;

28 H. A declaration that the claims of the '020 Patent are invalid;

1 I. A declaration that Apple has not infringed, either directly or indirectly, any valid
2 and enforceable claim of the '757 Patent;

3 J. A declaration that the claims of the '757 Patent are invalid;

4 K. An order declaring that Apple is a prevailing party and that this is an exceptional
5 case, awarding Apple its costs, expenses, disbursements, and reasonable attorney fees under 35
6 U.S.C. § 285 and all other applicable statutes, rules and common law; and

7 L. Such other and further relief as this Court may deem just and proper.
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9 **JURY DEMAND**

10 Apple hereby respectfully demands a trial by jury on all issues and claims so triable.
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12 DATED: June 19, 2014

Respectfully submitted,

13 /s/ Mark C. Scarsi

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