

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

Wi-LAN, INC.,

Plaintiff,

v.

ALCATEL-LUCENT USA INC. *et al.*,

Defendants.

CIVIL ACTION NO. 6:10-CV-521-LED

**SONY ERICSSON MOBILE COMMUNICATIONS (USA) INC.'S FIRST AMENDED ANSWER TO  
PLAINTIFF'S ORIGINAL COMPLAINT, AND SONY ERICSSON MOBILE COMMUNICATIONS (USA)  
INC.'S COUNTERCLAIMS AGAINST PLAINTIFF**

Defendant Sony Ericsson Mobile Communications (USA) Inc. ("SEUS") files this First Amended Answer to Plaintiff's Original Complaint ("Complaint") filed on October 5, 2010, by Plaintiff, Wi-LAN Inc. ("Plaintiff"), and alleges as follows:

**PARTIES**

1. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 1 of the Complaint and therefore denies the allegations in that paragraph.

2. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 2 of the Complaint and therefore denies the allegations in that paragraph.

3. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 3 of the Complaint and therefore denies the allegations in that paragraph.

4. SEUS admits that Defendant Sony Ericsson Mobile Communications AB is a Swedish corporation with a principal place of business at Nya Vattentorget, Lund, Sweden SE-221 88. SEUS further admits that SEUS is a subsidiary of Defendant Sony Ericsson Mobile Communications AB but denies that it has a principal place of business at 7001 Development Drive, Research Triangle Park, North Carolina 27709. SEUS admits that it sells mobile telephones in the United States and that some such products are compliant with portions of the 3GPP standard. SEUS is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 4 and therefore denies those allegations.

5. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 5 of the Complaint and therefore denies the allegations in that paragraph.

6. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 6 of the Complaint and therefore denies the allegations in that paragraph.

#### **JURISDICTION AND VENUE**

7. SEUS admits that this purports to be an action for patent infringement under the Patent Laws of the United States.

8. SEUS admits the allegations in paragraph 8 of the Complaint.

9. Responding to the allegations in paragraph 9 of the Complaint, SEUS does not contest that venue in this action is proper, but SEUS denies that venue is convenient in this forum.

## **THE PATENTS-IN-SUIT**

10. SEUS admits that Exhibit A to the Complaint appears to be a copy of U.S. Patent No. 6,088,326, entitled Processing Data Transmitted and Received over a Wireless Link Connecting a Central Terminal and a Subscriber Terminal of a Wireless Telecommunications System.” SEUS is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 10 of the Complaint and therefore denies those allegations.

11. SEUS admits that Exhibit B to the Complaint appears to be a copy of U.S. Patent No. 6,195,327, entitled “Controlling Interference in a Cell of a Wireless Telecommunication System.” SEUS is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 11 of the Complaint and therefore denies those allegations.

12. SEUS admits that Exhibit C to the Complaint appears to be a copy of U.S. Patent No. 6,222,819, entitled “Processing Data Transmitted and Received Over a Wireless Link Connecting a Central Terminal and a Subscriber Terminal of a Wireless Telecommunications System.” SEUS is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 12 of the Complaint and therefore denies those allegations.

13. SEUS admits that Exhibit D to the Complaint appears to be a copy of U.S. Patent No. 6,381,211, entitled “Processing Data Transmitted and Received Over a Wireless Link Connecting a Central Terminal and a Subscriber Terminal of a Wireless Telecommunications System.” SEUS is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 13 of the Complaint and therefore denies those allegations.

14. SEUS denies the allegations in paragraph 14 of the Complaint.

## COUNT I

15. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 15 of the Complaint and therefore denies the allegations in that paragraph.

16. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 16 of the Complaint and therefore denies the allegations in that paragraph.

17. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 17 of the Complaint and therefore denies the allegations in that paragraph.

18. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 18 of the Complaint and therefore denies the allegations in that paragraph.

19. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 19 of the Complaint and therefore denies the allegations in that paragraph.

20. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 20 of the Complaint and therefore denies the allegations in that paragraph.

21. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 21 of the Complaint and therefore denies the allegations in that paragraph.

22. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 22 of the Complaint and therefore denies the allegations in that paragraph.

23. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 23 of the Complaint and therefore denies the allegations in that paragraph.

24. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 24 of the Complaint and therefore denies the allegations in that paragraph.

25. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 25 of the Complaint and therefore denies the allegations in that paragraph.

## **COUNT II**

26. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 26 of the Complaint and therefore denies the allegations in that paragraph.

27. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 27 of the Complaint and therefore denies the allegations in that paragraph.

28. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 28 of the Complaint and therefore denies the allegations in that paragraph.

29. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 29 of the Complaint and therefore denies the allegations in that paragraph.

30. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 30 of the Complaint and therefore denies the allegations in that paragraph.

### **COUNT III**

31. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 31 of the Complaint and therefore denies the allegations in that paragraph.

32. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 32 of the Complaint and therefore denies the allegations in that paragraph.

33. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 33 of the Complaint and therefore denies the allegations in that paragraph.

34. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 34 of the Complaint and therefore denies the allegations in that paragraph.

35. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 35 of the Complaint and therefore denies the allegations in that paragraph.

36. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 36 of the Complaint and therefore denies the allegations in that paragraph.

37. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 37 of the Complaint and therefore denies the allegations in that paragraph.

38. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 38 of the Complaint and therefore denies the allegations in that paragraph.

39. SEUS admits that it has sold and/or offered for sale certain mobile telephones, including the Vivaz, Xperia X10, Equinox, W518a, Satio, Xperia X2a, Xperia Pureness, Aino, and Naite products. SEUS admits that it has sold and/or offered for sale certain products that are compliant with portions of the 3GPP standard. Sony Ericsson denies the remaining allegations in paragraph 39 of the Complaint.

40. Responding to the allegations in paragraph 40 of the Complaint, SEUS admits that it has sold and/or offered for sale certain products that support portions of the 3GPP standard. SEUS denies the remaining allegations in paragraph 40.

41. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 41 of the Complaint as written and therefore denies the allegations in that paragraph.

42. SEUS denies the allegations in paragraph 42 of the Complaint.

43. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 43 of the Complaint and therefore denies the allegations in that paragraph.

44. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 44 of the Complaint and therefore denies the allegations in that paragraph.

45. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 45 of the Complaint and therefore denies the allegations in that paragraph.

46. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 46 of the Complaint and therefore denies the allegations in that paragraph.

47. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 47 of the Complaint and therefore denies the allegations in that paragraph.

48. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 48 of the Complaint and therefore denies the allegations in that paragraph.

49. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 49 of the Complaint and therefore denies the allegations in that paragraph.



50. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 50 of the Complaint and therefore denies the allegations in that paragraph.

51. SEUS denies the allegations of paragraph 51 as they relate to SEUS. SEUS is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 51 of the Complaint and therefore denies those allegations.

52. SEUS denies the allegations of paragraph 52 as they relate to SEUS. SEUS is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 52 of the Complaint and therefore denies those allegations.

53. SEUS denies the allegations of paragraph 53 as they relate to SEUS. SEUS is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 53 of the Complaint and therefore denies those allegations.

#### **COUNT IV**

54. SEUS admits that it has sold and/or offered for sale certain mobile telephones, including the Vivaz, Xperia X10, Equinox, W518a, Satio, Xperia X2a, Xperia Pureness, Aino, and Naite products. SEUS admits that it has sold and/or offered for sale certain products that are compliant with portions of the 3GPP standard. Sony Ericsson denies the remaining allegations in paragraph 54 of the Complaint.

55. Responding to the allegations in paragraph 55 of the Complaint, SEUS admits that it has sold and/or offered for sale certain products that support portions of the 3GPP standard. SEUS denies the remaining allegations in paragraph 55.

56. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 56 of the Complaint as written and therefore denies the allegations in that paragraph.

57. SEUS denies the allegations in paragraph 57 of the Complaint.

58. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 58 of the Complaint and therefore denies the allegations in that paragraph.

59. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 59 of the Complaint and therefore denies the allegations in that paragraph.

60. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 60 of the Complaint and therefore denies the allegations in that paragraph.

61. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 61 of the Complaint and therefore denies the allegations in that paragraph.

62. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 62 of the Complaint and therefore denies the allegations in that paragraph.

63. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 63 of the Complaint and therefore denies the allegations in that paragraph.

64. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 64 of the Complaint and therefore denies the allegations in that paragraph.

65. SEUS is without sufficient information to form a belief as to the truth of the allegations in paragraph 65 of the Complaint and therefore denies the allegations in that paragraph.

66. SEUS denies the allegations of paragraph 66 as they relate to SEUS. SEUS is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 66 of the Complaint and therefore denies those allegations.

67. SEUS denies the allegations of paragraph 67 as they relate to SEUS. SEUS is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 67 of the Complaint and therefore denies those allegations.

68. SEUS denies the allegations of paragraph 68 as they relate to SEUS. SEUS is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 68 of the Complaint and therefore denies those allegations.

#### **PRAYER FOR RELIEF**

69. SEUS denies that Plaintiff is entitled to any relief requested in the Complaint's "Prayer for Relief."

## **AFFIRMATIVE DEFENSES**

### **FIRST DEFENSE – NON-INFRINGEMENT**

70. SEUS has not infringed and does not infringe any valid claim of United States Patent No. 6,222,819 (“the ’819 patent”). Nor has SEUS actively induced infringement of or contributorily infringed any valid claim of the ’819 patent.

71. SEUS has not infringed and does not infringe any valid claim of United States Patent No. 6,381,211 (“the ’211 patent”). Nor has SEUS actively induced infringement of or contributorily infringed any valid claim of the ’211 patent.

### **SECOND DEFENSE - INVALIDITY**

72. The ’819 patent is partially or wholly invalid for failure to meet the requirements of 35 U.S.C. §§ 1 *et seq.*, including, but not limited to 35 U.S.C. §§ 102, 103, and/or 112.

73. The ’211 patent is partially or wholly invalid for failure to meet the requirements of 35 U.S.C. §§ 1 *et seq.*, including, but not limited to 35 U.S.C. §§ 102, 103, and/or 112.

### **THIRD DEFENSE – PROSECUTION HISTORY ESTOPPEL**

74. Plaintiff is estopped from construing any valid claim of the ’819 patent to cover or include, either literally or by application of the doctrine of equivalents, any product manufactured, used, imported, sold, or offered by SEUS because of admissions and statements to the United States Patent and Trademark Office in the specification of the ’819 patent and during prosecution of the application leading to the issuance of the ’819 patent.

75. Plaintiff is estopped from construing any valid claim of the ’211 patent to cover or include, either literally or by application of the doctrine of equivalents, any product manufactured, used, imported, sold, or offered by SEUS because of admissions and statements to

the United States Patent and Trademark Office in the specification of the '211 patent and during prosecution of the application leading to the issuance of the '211 patent.

**FOURTH DEFENSE – NO IRREPARABLE HARM**

76. Plaintiff is not entitled to injunctive relief because any alleged injury to the Plaintiff is not immediate or irreparable, and Plaintiff has an adequate remedy at law.

**FIFTH DEFENSE –FAILURE TO STATE A CLAIM**

77. Plaintiff has failed to state a claim upon which relief can be granted.

**SIXTH DEFENSE –LIMITATION ON DAMAGES**

78. Plaintiff is not entitled to seek damages from SEUS prior to October 5, 2010, in accordance with the Patent and Conflict Resolution Agreement between Plaintiff and SEUS (the “Conflict Resolution Agreement”).

**SEVENTH DEFENSE – ESTOPPEL**

79. Plaintiff is estopped from construing any valid claim of the '819 patent to cover or include, either literally or by application of the doctrine of equivalents, certain products manufactured, used, imported, sold, or offered by SEUS because of the Conflict Resolution Agreement.

80. Plaintiff is estopped from construing any valid claim of the '211 patent to cover or include, either literally or by application of the doctrine of equivalents, certain products manufactured, used, imported, sold, or offered by SEUS because of the Conflict Resolution Agreement.

### **EIGHTH DEFENSE – COVENANT NOT TO SUE**

81. Plaintiff is barred from maintaining this action and from recovering on its claims against SEUS because of Wi-LAN’s Covenant Not to Sue, which is expressly set forth in Article III of the Conflict Resolution Agreement.

### **OTHER DEFENSES**

82. SEUS reserves the right to assert additional affirmative defenses after appropriate discovery.

### **SEUS’S COUNTERCLAIMS**

1. SEUS is a corporation organized and existing under the laws of the State of Delaware having its principal place of business in Atlanta, Georgia.

2. On information and belief, Wi-LAN Inc. (“Wi-LAN”) is a corporation organized under the laws of Canada with its principal place of business at 11 Holland Ave., Suite 608, Ottawa, Ontario, Canada.

3. This Court has subject-matter jurisdiction over these counterclaims under 28 U.S.C. §§ 1331, 1338, 1367, 2201, and 2202, as they arise under an act of Congress relating to patents, 35 U.S.C. §§ 101 *et seq.*, or are so related to the claims over which this Court has original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

### **BREACH OF CONTRACT**

4. In February 2008, Plaintiff and SEUS entered into a valid and enforceable Patent and Conflict Resolution Agreement that has an effective date of November 1, 2007.

5. Plaintiffs’ assertions of infringement in its Complaint are a knowing and willful breach of the Conflict Resolution Agreement.

6. SEUS fully performed all of its duties under the Conflict Resolution Agreement, and all conditions precedent to SEUS's recovery have occurred.

7. Plaintiff's breaches have damaged SEUS, entitling it to recover actual damages, including but not limited to its attorneys' fees, costs and expenses incurred in defending this action.

#### **NON-INFRINGEMENT AND INVALIDITY OF THE '819 PATENT**

8. The '819 patent was issued on April 24, 2001 by the United States Patent & Trademark Office. Plaintiff claims to own all rights in and to the '819 patent.

9. Plaintiff has asserted that SEUS infringes the '819 patent. An actual controversy exists between Plaintiff and SEUS over the alleged infringement and invalidity of the '819 patent.

10. SEUS has not and does not directly or indirectly infringe, contribute to, or induce infringement of any valid, enforceable claim of the '819 patent either literally or under the doctrine of equivalents.

11. The '819 patent is invalid for failing to meet one or more conditions of patentability set forth in Part II of Title 35 of the United States Code, including but not limited to sections 102, 103, and/or 112.

#### **NON-INFRINGEMENT AND INVALIDITY OF THE '211 PATENT**

12. The '211 patent was issued on April 30, 2002 by the United States Patent & Trademark Office. Plaintiff claims to own all rights in and to the '211 patent.

13. Plaintiff has asserted that SEUS infringes the '211 patent. An actual controversy exists between Plaintiff and SEUS over the alleged infringement and invalidity of the '211 patent.

14. SEUS has not and does not directly or indirectly infringe, contribute to, or induce infringement of any valid, enforceable claim of the '211 patent either literally or under the doctrine of equivalents.

15. The '211 patent is invalid for failing to meet one or more conditions of patentability set forth in Part II of Title 35 of the United States Code, including but not limited to sections 102, 103, and/or 112.

#### **DEMAND FOR JURY TRIAL**

SEUS demands a trial by jury on all counterclaims and issues triable by jury.

#### **PRAYER FOR RELIEF**

FOR THESE REASONS, SEUS respectfully requests that this Court enter judgment in its favor and grant the following relief:

- a. An order awarding SEUS its actual damages caused by Plaintiff's breach of the Conflict Resolution Agreement;
- b. An order finding that Plaintiff's breach was knowing and willful;
- c. An order enjoining Plaintiff from continued assertion of claims in breach of the Conflict Resolution Agreement;
- d. An order declaring that Plaintiff, its officers, directors, agents, servants, employees, and attorneys, and those persons in active concert or participation with it, take nothing on the claims asserted in the Complaint;
- e. A declaration that SEUS does not infringe the '819 patent;
- f. A declaration that the '819 patent is invalid;
- g. A declaration that SEUS does not infringe the '211 patent;
- h. A declaration that the '211 patent is invalid;



- i. An order declaring that this is an exceptional case and awarding SEUS its costs, expenses, and reasonable attorneys' fees under 35 U.S.C. § 285 and all other applicable statutes, rules, and common law; and
- j. Any such other relief as the Court may deem appropriate and just under the circumstances.

Dated: September 2, 2011

Respectfully submitted,

/s/ Richard L. Wynne, Jr.

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ATTORNEYS FOR DEFENDANT SEUS

### **CERTIFICATE OF SERVICE**

On September 2, 2011, true and correct copies of the foregoing document were served in compliance with Local Rule 5.1 and have been served on all counsel who have consented to electronic service and all other counsel by regular mail.

/s/ Richard L. Wynne, Jr.

Richard L. Wynne, Jr.