FINDLAY CRAFT

<u>**EXHIBIT A**</u>

The Honorable Leonard Davis
United States District Court for the Eastern District of Texas
200 W. Ferguson, Third Floor
Tyler, TX 75702

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Re: ***Wi-LAN, Inc. v. Alcatel Lucent. et al., C.A. No. 6:10-cv-521 Letter Brief
Seeking Permission To File A Motion For Summary Judgment Of
Invalidity of claims 1-5 from U.S. Patent No. 6,088,326 and claims 1-5
from U.S. Patent No. 6,381,211***

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Dear Judge Davis:

Defendants Alcatel-Lucent USA Inc. ("Alcatel-Lucent"), and HTC Corporation,
HTC America, Inc., and Exedea Inc. ("HTC") (collectively "Defendants") respectfully
submit this letter brief requesting permission to file a motion for summary judgment of
invalidity of claims 1-5 of U.S. Patent No. 6,381,211 ("the '211 patent") and claims 1-5 of
U.S. Patent No. 6,088,326 ("the '326 patent").

Defendants' proposed motion will show invalidity of the above-identified claims
of the above-identified patents based on the reasons set forth below.

CLAIMS OF THE '211 AND '356 PATENT

Independent claims 1-5 of the '211 patent are generally directed to a reception
controller for ***decoding*** data items that have been encoded with a combination of CDMA
and TDM ("CDMA/TDM method") and transmitted within an orthogonal channel created
using an orthogonal code. Some of the claims also recite "overlay codes." Independent
claims 1-5 of the '326 patent are generally directed to a transmission controller for
encoding data items to be transmitted over a wireless link connecting a central terminal
and a subscriber terminal with the CDMA/TDM method. Some of the claims also recite
"overlay codes."[1] For purposes of this letter brief, claims 1-5 of the '211 patent are
representative:

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[1] For purposes of this letter brief and the issues raised herein, claim 11 of U.S. Patent No.
6,222,819 ("the '819 patent"), which is asserted against Alcatel-Lucent, also generally
recites the same claimed invention including the "CDMA/TDM method" and "overlay
codes." To the extent the court grants leave to file a motion for summary judgment of
invalidity of claims 1-5 of the '211 and '326 patents, Defendants respectfully request
leave to also move for summary judgment of invalidity of claim 11 of the '819 patent in
the same motion.

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Independent claim 1 recites a reception controller having an orthogonal code generator for providing the orthogonal code, a first decoder for isolating data items within the orthogonal channel using the orthogonal code, and a TDM decoder comprising "an orthogonal code generator for providing an orthogonal code from a set of 'm' orthogonal codes used to create said 'm' orthogonal channels within the single frequency channel"; "a first decoder for applying, to signals received on the single frequency channel, the orthogonal code provided by the orthogonal code generator, in order to isolate data items transmitted within the corresponding orthogonal channel"; and "a TDM decoder arranged to extract a data item from a predetermined time slot within said orthogonal channel, a plurality of data items relating to different wireless links being transmitted within the same orthogonal channel during a predetermined frame period."

Dependent claim 3, which depends from claim 1, recites "wherein the orthogonal code generator is a storage arranged to store the set of orthogonal codes." Dependent claim 4, which depends from claim 1, recites "wherein the set of orthogonal codes comprise a set of Rademacher-Walsh (RW) codes."

Dependent claim 2 and independent claim 5 are generally directed to a reception controller for decoding data items that have been encoded with a combination of CDMA and "overlay codes" ("CDMA/Overlay Codes method") or decoding data items encoded with the CDMA/TDM method. Dependent claim 2, which depends from claim 1, recites "an overlay code generator for providing an overlay code from a first set of 'n' overlay codes which are orthogonal to each other, the set of 'n' overlay codes enabling 'n' data items pertaining to different wireless links to be transmitted simultaneously within the same orthogonal channel" and "a second decoder, selectively operable instead of the TDM decoder, to apply to the data items of the orthogonal channel, the overlay code from the overlay code generator so as to isolate a particular data items transmitted using that overlay code." Independent claim 5 recites a subscriber terminal of a wireless telecommunications system comprising a reception controller having the above-identified limitations of claims 1, 2 and 4.

THE COURT'S CLAIM CONSTRUCTION

Under the Court's Claim Construction Opinion:

- "orthogonal channels" means *"a set of channels created using orthogonal codes."*

- "time division multiplexing (TDM) techniques" mean *"techniques for allocating an interval of time within a predetermined frame period to a data item, based on one or more characteristics associated with the data item."*

- "time slot" means *"an interval of time."*

- "TDM decoder" means *"hardware and/or software for extracting a data item from a channel that has been encoded using TDM techniques."*

- "overlay code" means *"an additional code that subdivides an orthogonal channel."*

CONSTRUCTION OF THE TERM "TDM TECHNIQUES"

Following briefing and oral argument, the Court construed the term "TDM techniques" to mean "techniques for allocating an interval of time within a predetermined frame period to a data item, based on one or more characteristics associated with the data item." The Court reached this decision, based in-part on Wi-LAN's arguments that "the ordinary meaning of TDM had broadened," such that *"TDM now comes in a variety of forms."* (*See* D.I. 182 at 6 (emphasis in original).) Indeed, the Court noted that "one skilled in the art would understand TDM techniques to encompass a *broad array* of techniques for dividing a channel into time slots." (Claim Construction Order at 10 (emphasis added).) The Court also found that "the specification discusses that the invention can be used flexibly to address the individual needs of subscriber terminals on demand." (*Id.* at 11.)

When finding that "TDM techniques" means "techniques for allocating an interval of time within a predetermined frame period to a data item, based on one or more characteristics associated with the data item" the Court's Order reflects that the Court did not limit TDM techniques to any specific technique, but rather intended a construction that broadly includes all types of TDM techniques, including the well-known implementations of TDM, such as TDMA. The parties have exchanged expert reports and taken expert depositions on invalidity of the asserted patents. It is apparent that Wi-LAN is now attempting to assert a narrower claim construction than provided by the Court to read out well-known prior art TDM techniques. Wi-LAN's expert Dr. Jonathan Wells, relying on the phrase "based on one or more characteristics associated with the data item," repeatedly distinguishes prior art references that he admits disclose TDMA or TDM "generally," as not disclosing the "specific technique" claimed in the '211 or '326 patents. (Wells Rebuttal Report ¶¶ 50, 52–53, 79, 88–89, 101, 142, 151, 164.) Thus, the Court should clarify that the construction includes all time-division multiplexing techniques or, in the alternative, strike "based on one or more characteristics associated with the data item" from its construction of "TDM techniques."

CLAIMS 1-5 OF THE '211 PATENT AND CLAIMS 1-5 OF THE '326 PATENT ARE ANTICIPATED

Defendants' proposed motion will show that claims 1-5 of the '211 patent and claims 1-5 of the '326 parent are invalid as being anticipated under 35 USC § 102(a), (b), or (e) in light of the following three references:

A.   TIA/EIA IS-95-A Standard ("IS-95") discloses each and every element set forth in claims 1-5 of the '211 patent and claims 1-5 of the '326 patent. IS-95 discloses the generation and use of Walsh orthogonal codes (which Dr. Wells admits that one of skill in the art would have understood as Rademacher-Walsh codes) having a spreading factor of 64 (IS-95, 7.1.3.1.8). IS-95 also discloses up to seven paging channels which are encoded and decoded with the CDMA/TDM method as claimed in the '211 and '326 patents (IS-95, p. 7-87 and 88.) The only dispute with regard to anticipation of claims 1-5 of the '211 patent and claims 1-5 of the '326 patent by IS-95 is whether the court limited its construction of "TDM techniques" to a specific TDM technique. As discussed above, Defendants believe the court intended "TDM techniques" to include a broad array of techniques. Furthermore, during his deposition on December 12, 2012, Wi-LAN's technical expert Dr. Wells admitted that IS-95, which uses orthogonal spreading codes having a spreading factor of 64, discloses an overlay code generator for providing a set of "n" overlay codes. Therefore, IS-95 also discloses the CDMA/Overlay Codes method as claimed in the '211 and '326 patents. Accordingly, claims 1-5 of the '211 and '326 patents are invalid as being anticipated by IS-95.

B.   U.S. Patent No. 5,533,013 by Pentti Leppanen ("Leppanen") discloses each and every element set forth in claims 1-5 of the '211 patent and claims 1-5 of the '326 patent. Leppanen teaches the CDMA/TDM method claimed in the '211 and '326 patents. (*See e.g.,* Leppanen Figure 4b.) The only dispute with regard to the CDMA/TDM method disclosed by Leppanen is whether the court limited its construction of "TDM techniques" to a specific TDM technique. As discussed above, Defendants believe the Court intended "TDM techniques" to include a broad array of techniques. Leppanen teaches the use of its system to transmit or receive orthogonal CDMA traffic as claimed in the '211 and '326 patents. (*See e.g., id.* Figure 4a.) Leppanen further teaches the generation and use of orthogonal codes and uses Walsh codes (which one of skill in the art would have understood as Rademacher-Walsh codes) as these codes are claimed in the '211 and '326 patents. (*See e.g., id.* Figure 6.) Accordingly, these claims are invalid as being anticipated by Leppanen. During his deposition on December 12, 2012, Wi-LAN's technical expert Dr. Wells admitted that CDMA systems which use such orthogonal spreading codes necessarily disclose overlay codes. Accordingly, claims 1-5 of the '211 and '326 patents are invalid as being anticipated by Leppanen.
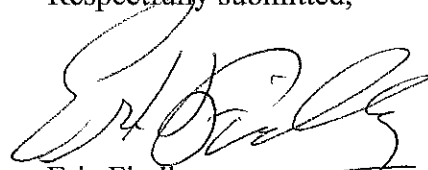
C.   U.S. Patent No. 6,018,528 by Richard D. Gitlin, et al. ("Gitlin") discloses each and every element set forth in claims 1-5 of the '211 patent and claims 1-5 of the '326 patent. Gitlin teaches the CDMA/TDM method claimed in the '211 and '326 patents. (*See e.g.,* Gitlin Figure 7.) The only dispute with regard to the CDMA/TDM method disclosed by Gitlin is whether the court limited its construction of "TDM techniques" to a specific TDM technique. As discussed above, Defendants believe the Court intended "TDM techniques" to include a broad array of techniques. Gitlin teaches the use of its system to transmit or receive division of orthogonal CDMA traffic as claimed in the '211 and '326 patents. (*See e.g., id.* Figure 9.) Gitlin further teaches the generation and use of orthogonal codes for CDMA (which one skilled in the art would understand to be Walsh codes). (*See e.g.,* Gitlin 8:58-63.) During his deposition on December 12, 2012, Wi-LAN's technical expert Dr. Wells admitted that CDMA systems

which use such orthogonal spreading codes necessarily disclose overlay codes. Accordingly, claims 1-5 of the '211 and '326 patents are invalid as being anticipated by Gitlin.

For the reasons stated above, Defendants respectfully request permission to move for summary judgment of invalidity of claims 1-5 of the '211 patent, claims 1-5 of the '326 patent, and claim 11 of the '819 patent based on the references discussed above.

Date: December 14, 2012

Respectfully submitted,

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cc: Clerk of the Court
Counsel of Record