

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

WI-LAN INC.,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 6:10-cv-521-LED
v.	§	
	§	JURY TRIAL DEMANDED
ALCATEL-LUCENT USA INC.; <i>et al.</i>	§	
	§	
Defendants.	§	
	§	

**PLAINTIFF WI-LAN INC.’S SUR-REPLY IN OPPOSITION TO DEFENDANTS’
MOTION FOR LEAVE TO FILE TWO LETTER BRIEFS REQUESTING
PERMISSION TO FILE CERTAIN MOTIONS**

Rather than offer any reasonable explanation for their failure to meet the Court’s long-standing deadlines, Defendants’ Reply (Dkt. No. 289) instead reiterates their unsupported belief that following the Court’s Docket Control Order constitutes litigation by “gotcha.” (Dkt. 289 at 2.) Defendants again argue that they did not believe that the Standing Order’s deadlines applied in this case in light of the “impracticability of the same.” (*Id.*) Notably absent from Defendants’ Reply, however, is any plausible explanation of *why* it would have been impracticable to timely file letter briefs in accordance with the Court’s Order, or, at the very least, seek an extension of time to do so. At no point did the dispositive motions deadline contained in the Docket Control Order change in a manner that would have placed the date for letter briefing in the past or otherwise created an impossible deadline. Defendants simply did not observe the deadline.

As the sole example of purported impracticability offered in their Reply, Defendants incorrectly argue that they could not have filed their letter brief regarding invalidity until Wi-LAN’s rebuttal report was filed. (Reply at 3.) Yet when Wi-LAN *specifically asked* Defendants in November whether that rebuttal report was the basis for their contention that their untimely

briefs should be permitted, Defendants chose not to engage the issue. (Dkt. 285 at 9.) Defendants should not now be heard to justify their decision to ignore the Court's deadline on that ground.

With regard to whether Defendants have been diligent, is telling that Defendants *still* did not promptly file their proposed letter briefs after all of Wi-LAN's expert reports were served. Indeed, Defendants refused to file their proposed letters on December 7, 2012, along with their Motion for Leave to file letter briefs, despite Local Rule CV-7(k)'s requirement that they be filed simultaneously. (*See* Dkt. No. 285 at 5; Local Rule CV-7(k).) Rather than file those letter briefs on December 7, 2012, Defendants chose to provide themselves with an additional unilateral three-week extension of time, waiting until January 4, 2013 to file the second of their two letter briefs nearly three months late. (Dkt. Nos. 277, 287.) As with their failure to meet the Court's original deadline, Defendants offer no plausible excuse for their continuing noncompliance with the Court's Orders and Local Rules.

Accordingly, for the reasons set forth above, as well as the reasons contained in Wi-LAN's opposition (Dkt. No. 285), Wi-LAN respectfully requests that the Court deny Defendants' Motion for Leave.

Dated: January 18, 2013

Respectfully submitted,

By: /s/ Ajeet P. Pai

Local Counsel

Johnny Ward (TX Bar No. 00794818)
Wesley Hill (TX Bar No. 24032294)
WARD & SMITH LAW FIRM
P.O. Box 1231
1127 Judson Rd., Ste. 220
Longview, TX 75606-1231
Tel: (903) 757-6400
Fax: (903) 757-2323

David B. Weaver (TX Bar No. 00798576)
Lead Attorney
Avelyn M. Ross (TX Bar No. 24027817)
Ajeet P. Pai (TX Bar No. 24060376)
Syed K. Fareed (TX Bar No. 24065216)
Jeffrey T. Han (TX Bar No. 24069870)
Janice Ta (TX Bar No. 24075138)
Seth A. Lindner (TX Bar No. 24078862)

jw@jwfirm.com
wh@jwfirm.com

VINSON & ELKINS LLP
2801 Via Fortuna, Suite 100
Austin, TX 78746
Tel: (512) 542-8400
Fax: (512) 542-8612
dweaver@velaw.com
aross@velaw.com
apai@velaw.com
sfareed@velaw.com
jhan@velaw.com
jta@velaw.com
slindner@velaw.com

Chuck P. Ebertin (CA Bar No. 161374)
VINSON & ELKINS LLP
525 University Avenue, Suite 410
Palo Alto, CA 94301-1918
Tel: (650) 687-8204
Fax: (650) 618-8508
cebertin@velaw.com

Steve R. Borgman (TX Bar No. 02670300)
VINSON & ELKINS LLP
1001 Fannin Street, Suite 2500
Houston, TX 77002-6760
Tel: (713) 758-2222
Fax: (713) 758-2346
sborgman@velaw.com
Wi-LAN@velaw.com

Attorneys for Plaintiff, Wi-LAN Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A), on this the 18th day of January, 2013.

/s/ Ajeet P. Pai

Ajeet P. Pai