

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

WI-LAN INC.,

Plaintiff,

v.

ALCATEL-LUCENT USA INC.;
TELEFONAKTIEBOLAGET LM ERICSSON;
ERICSSON INC.; SONY MOBILE
COMMUNICATIONS AB; SONY MOBILE
COMMUNICATIONS (USA) INC.; HTC
CORPORATION; HTC AMERICA, INC.;
EXEDEA INC.; LG ELECTRONICS, INC.; LG
ELECTRONICS MOBILECOMM U.S.A., INC.;
LG ELECTRONICS U.S.A., INC.

Defendants.

Civil Action No. 6:10-CV-00521-LED

JURY TRIAL DEMANDED

PROPOSED JOINT PRETRIAL ORDER

This cause came before the Court at a pretrial management conference held on March 21, 2013, pursuant to Local Rule CV-16 and Rule 16 of the Federal Rules of Civil Procedure.

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II. STATEMENT OF JURISDICTION

This Court has subject-matter jurisdiction over the claims asserted by Wi-LAN Inc. (“Wi-LAN”) pursuant to 28 U.S.C. §§ 1331 and 1338(a), because this action arises under the patent laws of the United States, including 35 U.S.C. § 1 *et seq.* This Court has subject-matter jurisdiction over the counterclaims asserted by Alcatel-Lucent USA Inc. (“Alcatel-Lucent”), Telefonaktiebolaget LM Ericsson, Ericsson Inc. (collectively, “Ericsson”), Sony Mobile Communications AB, and Sony Mobile Communications (USA) Inc. (collectively, “Sony Mobile”) pursuant to 28 U.S.C. §§ 1331, 1338(a), 1367, 2201, and 2202.

Jurisdiction is not disputed.

III. NATURE OF ACTION

This is a patent-infringement lawsuit. Two defendants assert breach of contract counterclaims. Wi-LAN alleges that each of Defendants Alcatel-Lucent and Ericsson has infringed and continues to infringe certain claims of U.S. Patent Nos. 6,088,326 (“the ’326 patent”); 6,195,327 (“the ’327 patent”); and 6,222,819 (“the ’819 patent”). Wi-LAN alleges that each of Defendants HTC Corporation, HTC America, Inc., Exedea Inc. (collectively, “HTC”), and Sony Mobile has infringed and continues to infringe certain claims of U.S. Patent No. 6,381,211 (“the ’211 patent”). Wi-LAN alleges that Defendants infringe certain claims of the patents in suit literally and under the doctrine of equivalents. Wi-LAN contends that it is owed money damages for Defendants’ acts of infringement. Wi-LAN also seeks injunctive relief to the extent that Defendants do not stop infringing or refuse to pay reasonable royalties to Wi-LAN for

Defendants' ongoing use of the claimed technology following a finding of liability.¹ Wi-LAN further contends that the patents in suit are valid.

Defendants contend that they do not infringe any asserted claim of the patents in suit and that the asserted claims are invalid. Defendants deny Wi-LAN's claim for damages. Defendants further allege that Wi-LAN's claim for pre-suit damages is barred by the doctrine of laches and/or failure to comply with 35 U.S.C. § 287. Defendants deny that Wi-LAN is entitled to damages, injunctive relief, and/or any other relief of any kind, and therefore seek declaratory relief and recovery of their costs, expenses, and attorneys' fees under 35 U.S.C. §§ 285 and 288, as well as any other relief the Court deems appropriate. Alcatel-Lucent, Ericsson, and Sony Mobile each assert counterclaims seeking a declaratory judgment that each asserted claim of the patents in suit is not infringed and invalid.

Ericsson and Sony Mobile further assert counterclaims alleging that Wi-LAN breached the Patent and Conflict Resolution Agreements ("PCRAs") previously entered into by Wi-LAN with each of Ericsson and Sony Mobile. Ericsson and Sony Mobile seek damages related to their breach of contract counterclaims. Wi-LAN denies that it breached the PCRAs based upon its good-faith interpretation of the PCRAs. Wi-LAN denies that Ericsson and Sony Mobile are entitled to damages. Ericsson further assert that it is licensed to the patents in suit.²

IV. CONTENTIONS OF THE PARTIES

A. Wi-LAN's Contentions

Wi-LAN contends the following:

1. Defendants Alcatel-Lucent and Ericsson each are directly infringing one or more

¹ Defendants dispute that injunctive relief following a finding of liability was properly preserved during discovery and thus dispute that injunctive relief is a proper issue for this statement.

² Wi-LAN disputes that inclusion of Ericsson's license defense in this statement is proper because it is based on an agreement between Wi-LAN and a third party that contains a mandatory arbitration clause. Any question as to whether Ericsson is licensed under that agreement must be resolved in another forum, not this Court.

of claims 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the '326 patent; one or more of claims 1, 5, 8, 10, 11, 12, 13, and 15 of the '327 patent; and claim 11 of the '819 patent, in violation of 35 U.S.C. § 271.

2. Defendants Alcatel-Lucent and Ericsson have each infringed the '326 patent, the '327 patent, and the '819 patent literally and/or under the doctrine of equivalents by making, using, offering for sale, and/or selling within the United States, and/or importing into the United States base station or small cell products that support the High Speed Downlink Packet Access ("HSDPA") standard defined in standards adopted by the 3rd Generation Partnership Project ("3GPP") organization.

3. Defendants Sony Mobile and HTC each are directly infringing one or more of claims 1, 2, 3, 4, and 5 of the '211 patent, in violation of 35 U.S.C. § 271.

4. Defendants Sony Mobile and HTC have each infringed the '211 patent literally and/or under the doctrine of equivalents by making, using, offering for sale, and/or selling within the United States, and/or importing into the United States cellular phone, smartphone, and/or handset products that support the HSDPA standard specified in the 3GPP standards.

5. Alcatel-Lucent's and Ericsson's accused base station products comply with the HSDPA standard defined in the 3GPP standards. HTC's and Sony Mobile's accused cellular phone, smartphone, and handset products comply with the HSDPA standard defined in the 3GPP standards.

6. Defendants' base station products that comply with the HSDPA standard defined in the 3GPP standards necessarily infringe one or more of claims 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the '326 patent; one or more of claims 1, 5, 8, 10, 11, 12, 13, and 15 of the '327 patent; and claim 11 of the '819 patent. Defendants' cellular phone, smartphone, or handset products that

comply with the HSDPA standard defined in the 3GPP standards necessarily infringe one or more of claims 1, 2, 3, 4, and 5 of the '211 patent.

7. Wi-LAN has been damaged by Alcatel-Lucent's and Ericsson's infringement of the '326 patent, the '327 patent, and the '819 patent, and Sony Mobile's and HTC's infringement of the '211 patent, and Wi-LAN is therefore entitled to damages of not less than a reasonable royalty under 35 U.S.C. § 284, as detailed in the Expert Report of John C. Jarosz. Wi-LAN further is entitled to pre-filing damages from Alcatel-Lucent and HTC.

8. Upon a finding of Alcatel-Lucent's, Ericsson's, Sony Mobile's, and/or HTC's liability, Wi-LAN is entitled to a court order imposing an ongoing reasonable royalty for any continued infringement of the '326 patent, the '327 patent, the '819 patent, and/or the '211 patent. In the event that an infringing Defendant is not ordered to, or is not willing to, begin paying ongoing reasonable royalties to Wi-LAN, Wi-LAN seeks a permanent injunction preventing continued infringement by said Defendant.

9. Claims 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the '326 patent; claims 1, 5, 8, 10, 11, 12, 13, and 15 of the '327 patent; claim 11 of the '819 patent; and claims 1, 2, 3, 4, and 5 of the '211 patent have not been proven invalid by Defendants for any reason, including under 35 U.S.C. §§ 101, 102, 103, and 112.

10. The inventions of the patents in suit were reduced to practice no later than December 20, 1996, and were conceived prior to reduction to practice. The inventors were diligent in the period between conception and reduction to practice via the filings with the patent office of the United Kingdom. The date of invention of the '326, '819, and '211 patents was at least as early as October 24, 1995, and in any event no later than December 5, 1996. The date of invention of the '327 patent was at least as early as September 11, 1996, and in any event no

later than December 5, 1996.

11. One of ordinary skill in the art of the patents in suit would have a four-year degree in Electrical Engineering, Physics, or Computer Science with some experience in wireless communications or associated technologies.

12. Wi-LAN is entitled to recover reasonable costs.

13. With respect to the contractual issues between Wi-LAN, Ericsson, and Sony Mobile (¶¶ 14–16 below), all issues arising under the PCRAs should be resolved by the Court.

14. Wi-LAN has fully performed its obligations under the PCRAs with Ericsson and Sony Mobile, and denies that it has breached any provision of the PCRAs with Ericsson and Sony Mobile.

15. The covenant-not-to-sue provision of the PCRAs does not apply to the patents in suit. Further, Wi-LAN has acted in good faith and has employed a fair and reasonable reading of the PCRA. As such, Ericsson and Sony Mobile are not entitled to recover any damages relating to the covenant-not-to-sue provision of the PCRAs.

16. The most-favored licensee provision of the PCRAs does not apply to the patents in suit because they were not part of Wi-LAN's patent portfolio at the time the parties executed the PCRA. Further, Wi-LAN has acted in good faith and has employed a fair and reasonable reading of the PCRA.

17. To the extent the Court finds that the MFN does apply to the patents in suit, Wi-LAN has satisfied its obligation to offer Ericsson and Sony Mobile as most-favored-licensee status, because no other licensee is "similarly situated" or has received "more favorable rates" when all relevant circumstances are considered (as required by the PCRAs) than the royalty rates Wi-LAN has offered to Ericsson and Sony Mobile. Accordingly, no breach has occurred.

18. Wi-LAN's claims are not barred by the doctrine of laches or estoppel.
19. Wi-LAN denies each of Defendants' defenses and counterclaims.
20. No Defendant is entitled to any relief whatsoever.
21. This Court has jurisdiction over the parties and the subject matter of this suit.
22. Venue is proper in this Court under 28 U.S.C. § 1391.

B. Defendants' Statements of Their Contentions

By providing these contentions, Defendants do not concede that all of these issues are appropriate for trial. In particular, Defendants do not waive any of their motions *in limine*, motions for summary judgment, or *Daubert* motions, which, if granted, would render some or all of these issues moot. Defendants' contentions in this case are detailed in their answers, affirmative defenses and counterclaims to Wi-LAN's Complaint, and Defendants' invalidity contentions, all of which are incorporated herein by reference. In sum, Defendants contend the following:

1. Defendants Alcatel-Lucent and Ericsson do not infringe, and have not infringed, the asserted '326 patent claims.
2. The asserted claims of the '326 patent are invalid because they were anticipated, would have been obvious to one of skill in the art at the time of the claimed invention, and/or fail to comply with the enablement and written description requirements specified in 35 U.S.C. § 112. The asserted claims are invalid for the reasons stated in Defendants' Invalidity Contentions (as amended and supplemented) and the expert report of Mark Lanning.
3. If Defendants Alcatel-Lucent and Ericsson are found to infringe the asserted claims of the '326 patent, and those claims are found to be valid, Wi-LAN is entitled to no more than the amount set forth in the Expert Report of W. Christopher Bakewell with respect to Alcatel-Lucent and the Expert Report of Stephen Becker with respect to Ericsson.

4. If Defendant Alcatel-Lucent is found to infringe the asserted claims of the '326 patent, Wi-LAN's claims for damages prior to filing the suit are barred and/or unenforceable by the doctrine of laches.

5. If Defendant Alcatel-Lucent is found to infringe the asserted claims of the '326 patent, Wi-LAN's claims for damages prior to filing the suit are barred by 35 U.S.C. § 287.

6. If Defendants Alcatel-Lucent and Ericsson are found to infringe the asserted claims of the '326 patent, Wi-LAN as a non-practicing entity is not entitled to a permanent injunction at least because it cannot make the requisite showing of irreparable harm. In addition, Wi-LAN has conceded it can be adequately compensated for any alleged future infringement by providing a dollar amount for alleged future infringement of the '326 patent in the Expert Report of John Jarosz.

7. Defendants Alcatel-Lucent and Ericsson are entitled to a declaratory judgment that Defendants are not infringing, and have not infringed, any claim of the '326 patent.

8. Defendants Alcatel-Lucent and Ericsson are entitled to a declaratory judgment that the claims of the '326 patent are invalid under one or more sections of 35 U.S.C. §§ 102, 103, and 112.

9. Defendants Alcatel-Lucent and Ericsson do not infringe, and have not infringed, the asserted '819 patent claim.

10. The asserted claim of the '819 patent is invalid because it was anticipated, would have been obvious to one of skill in the art at the time of the claimed invention, and/or fail to comply with the enablement and written description requirements specified in 35 U.S.C. § 112. The asserted claim is invalid for the reasons stated in Defendants' Invalidity Contentions (as amended and supplemented) and the expert report of Mark Lanning.

11. If Defendants Alcatel-Lucent and Ericsson are found to infringe the asserted claim of the '819 patent, and that claim is found to be valid, Wi-LAN is entitled to no more than the amount set forth in the Expert Report of W. Christopher Bakewell with respect to Alcatel-Lucent and the Expert Report of Stephen Becker with respect to Ericsson.

12. If Defendant Alcatel-Lucent is found to infringe the asserted claim of the '819 patent, Wi-LAN's claims for damages prior to filing the suit are barred and/or unenforceable by the doctrine of laches.

13. If Defendant Alcatel-Lucent is found to infringe the asserted claim of the '819 patent, Wi-LAN's claims for damages prior to filing the suit are barred by 35 U.S.C. § 287.

14. If Defendants Alcatel-Lucent and Ericsson are found to infringe the asserted claims of the '819 patent, Wi-LAN as a non-practicing entity is not entitled to a permanent injunction at least because it cannot make the requisite showing of irreparable harm. In addition, Wi-LAN has conceded it can be adequately compensated for any alleged future infringement by providing a dollar amount for alleged future infringement of the '819 patent in the Expert Report of John Jarosz.

15. Defendants Alcatel-Lucent and Ericsson are entitled to a declaratory judgment that Defendants are not infringing, and have not infringed, any claim of the '819 patent.

16. Defendants Alcatel-Lucent and Ericsson are entitled to a declaratory judgment that the asserted claims of the '819 patent are invalid under one or more sections of 35 U.S.C. §§ 102, 103, and 112.

17. Defendants Alcatel-Lucent and Ericsson do not infringe, and have not infringed, the asserted '327 patent claims.

18. The asserted claims of the '327 patent are invalid because they were anticipated, would have been obvious to one of skill in the art at the time of the claimed invention, and/or fail to comply with the enablement and written description requirements specified in 35 U.S.C. § 112. The asserted claims are invalid for the reasons stated in Defendants' Invalidity Contentions (as amended and supplemented) and the expert report of Mark Lanning.

19. If Defendants Alcatel-Lucent and Ericsson are found to infringe the asserted claims of the '327 patent, and those claims are found to be valid, Wi-LAN is entitled to no more than the amount set forth in the Expert Report of W. Christopher Bakewell with respect to Alcatel-Lucent and the Expert Report of Stephen Becker with respect to Ericsson.

20. If Defendant Alcatel-Lucent is found to infringe the asserted claims of the '327 patent, Wi-LAN's claims for damages prior to filing the suit are barred and/or unenforceable by the doctrine of laches.

21. If Defendant Alcatel-Lucent is found to infringe the asserted claims of the '327 patent, Wi-LAN's claims for damages prior to filing the suit are barred by 35 U.S.C. § 287.

22. If Defendants Alcatel-Lucent and Ericsson are found to infringe the asserted claims of the '327 patent, Wi-LAN as a non-practicing entity is not entitled to a permanent injunction at least because it cannot make the requisite showing of irreparable harm. In addition, Wi-LAN has conceded it can be adequately compensated for any alleged future infringement by providing a dollar amount for alleged future infringement of the '327 patent in the Expert Report of John Jarosz.

23. Defendants Alcatel-Lucent and Ericsson are entitled to a declaratory judgment that Defendants are not infringing, and have not infringed, any claim of the '327 patent.

24. Defendants Alcatel-Lucent and Ericsson are entitled to a declaratory judgment that the asserted claims of the '327 patent are invalid under one or more sections of 35 U.S.C. §§ 102, 103, and 112.

25. Defendants HTC and Sony Mobile do not infringe, and have not infringed, the asserted '211 patent claims.

26. The asserted claims of the '211 patent are invalid because they were anticipated, would have been obvious to one of skill in the art at the time of the claimed invention, and/or fail to comply with the enablement and written description requirements specified in 35 U.S.C. § 112. The asserted claims are invalid for the reasons stated in Defendants' Invalidity Contentions (as amended and supplemented) and the expert report of Mark Lanning.

27. If Defendants HTC and Sony Mobile are found to infringe the asserted claims of the '211 patent, and those claims are found to be valid, Wi-LAN is entitled to no more than the amount set forth, respectively, in the Expert Report of W. Christopher Bakewell with respect to HTC and the Expert Report of Stephen Becker with respect to Sony Mobile.

28. If Defendant HTC is found to infringe the asserted claims of the '211 patent, Wi-LAN's claims for damages prior to filing the suit are barred and/or unenforceable by the doctrine of laches.

29. If Defendant HTC is found to infringe the asserted claims of the '211 patent, Wi-LAN's claims for damages prior to filing the suit are barred by 35 U.S.C. § 287.

30. If Defendants HTC and Sony Mobile are found to infringe the asserted claims of the '211 patent, Wi-LAN as a non-practicing entity is not entitled to a permanent injunction at least because it cannot make the requisite showing of irreparable harm. In addition, Wi-LAN has conceded it can be adequately compensated for any alleged future infringement by providing a

dollar amount for alleged future infringement of the '211 patent in the Expert Report of John Jarosz.

31. Defendants HTC and Sony Mobile are entitled to a declaratory judgment that Defendants are not infringing, and have not infringed, any claim of the '211 patent.

32. Defendants HTC and Sony Mobile are entitled to a declaratory judgment that the claims of the '211 patent are invalid under one or more sections of 35 U.S.C. §§ 102, 103, and 112.

33. By bringing this lawsuit against Ericsson, Wi-LAN breached the covenant-not-to-sue provision in Article III of the PCRA it entered into with Ericsson.

34. Wi-LAN's breach of the covenant-not-to-sue provision in Article III of the PCRA was in bad faith and was an obvious breach of that provision.

35. Wi-LAN breached the most-favored-licensee provision of Article VII.1 of the PCRA.

36. Ericsson is entitled to recover damages it has sustained as a result of Wi-LAN's breach of the covenant-not-to-sue provision in Article III of the PCRA.

37. Ericsson is entitled to a judgment requiring Wi-LAN to grant Ericsson most favored licensee status, under the most-favored-licensee provision of Article VII.1 of the PCRA, on terms that are at least equivalent to the terms of the license Wi-LAN granted to prior licensees, including the license Wi-LAN granted to BelAir Networks, Inc.

38. By bringing this lawsuit against Sony Mobile, Wi-LAN breached the covenant-not-to-sue provision in Article III of the PCRA it entered into with Sony Mobile.

39. Wi-LAN's breach of the covenant-not-to-sue provision in Article III of the PCRA was in bad faith and was an obvious breach of that provision.

40. Wi-LAN breached the most-favored-licensee provision of Article VII.1 of the PCRA it entered into with Sony Mobile.

41. Sony Mobile is entitled to recover damages it has sustained as a result of Wi-LAN's breach of the covenant-not-to-sue provision in Article III of the PCRA.

42. Sony Mobile is entitled to a judgment requiring Wi-LAN to grant Sony Mobile most favored licensee status, under the most-favored-licensee provision of Article VII.1 of the PCRA, on terms that are at least equivalent to the terms of the license Wi-LAN granted to prior licensees, including the license Wi-LAN granted to BelAir Networks, Inc.

43. Ericsson is licensed to the patents-in-suit.

44. This is an exceptional case and Defendants are entitled to reasonable attorneys' fees and costs pursuant to 35 U.S.C. § 285.

45. The asserted claims of the patents-in-suit are entitled to a date of invention no earlier than December 20, 1996.

C. Wi-LAN's Objections to Defendants' Statements of Their Contentions

1. Wi-LAN objects to Defendants Ericsson's and Sony Mobile's contentions that the issues arising under the PCRA's are matters for the jury to decide. These are contract interpretation issues that must be resolved by the Court as a matter of law, leaving no questions for the jury to reach.

2. Wi-LAN objects to Defendant Ericsson's contention that it "is licensed to the patents-in-suit." Ericsson's license defense is based on a terminated agreement between Wi-LAN and a third party that contains a mandatory arbitration clause. Any question as to whether Ericsson is licensed pursuant to that agreement must be resolved in another forum, not this Court. Accordingly, whether "Ericsson is licensed to the patents-in-suit" is not a matter that cannot be decided in this action.

D. Defendants' Objections to Wi-LAN's Statement of Its Contentions

1. Defendants object to Wi-LAN's contention that it is entitled to an injunction "[i]n the event that an infringing Defendant is not ordered to, or is not willing to, begin paying reasonable royalties to Wi-LAN." Wi-LAN has already admitted that it can be adequately compensated for any alleged future infringement with a royalty as set forth in the Expert Report of John Jarosz.³

2. Defendants object to Wi-LAN's references to "the HSDPA standard." Defendants are unaware of any standard specification known as "the HSDPA standard." HSDPA is not a standard. Instead, HSDPA refers to a set of features described by specifications within the 3GPP standards.

3. Responding to Wi-LAN's objection, above, that Ericsson and Sony Mobile's breach-of-contract claims must be resolved as a matter of law, Ericsson and Sony Mobile agree that contract interpretation is a matter of law for the Court to decide. In fact, they have submitted summary-judgment motions asking the Court to enter judgment on these issues in their favor. But if the Court disagrees with the parties and finds the PCRA's ambiguous, the parties' intent becomes a fact issue for the jury to decide. Further, in opposing Ericsson and Sony Mobile's summary-judgment motions, Wi-LAN argued there were fact issues to be resolved regarding whether it breached the covenant not to sue.

V. STIPULATIONS AND UNCONTESTED FACTS

A. Stipulations

1. During trial, each party shall provide notice by email no later than 7 p.m. each day of all witnesses intended to be presented live during direct examination the next day at trial. Such notice shall indicate the intended order of call of live and deposition witnesses for the

³ Wi-LAN disputes Defendants' characterization of this issue.

following day.

2. Each party shall provide notice by email no later than 7 p.m. each day of all witnesses intended to be presented by deposition two days later at trial. In other words, if a witness will testify by deposition on a Wednesday, the witness must be identified by 7 p.m. on the previous Monday. The disclosing party shall also identify, out of the party's deposition designations previously submitted in accordance with the Docket Control Order, those portions of the deposition it intends to present. The receiving party shall provide objections to such witnesses by noon, the following day. Such objections shall include objections and counter-designations to deposition designations previously submitted in accordance with the Docket Control Order. The time available for each side's trial presentation shall be reduced by the length of its designations or counter-designations actually played or read at trial. If played, such time shall be measured by the amount of time of each party's designation. If read, such time shall be measured by the lines of testimony each party designates as a percentage of the total number of lines read. If deposition testimony is to be played, the party that seeks to play the deposition testimony must also provide the opposing party, by 9:00 pm one day before the deposition testimony is to be played, a workable copy of the actual recording to be played (or testimony to be read), including all designations and counter-designations. The parties shall cooperate in good faith to prepare the designated portions of the depositions for presentation at trial.

3. The parties will exchange copies of all demonstratives and the identity of any non-preadmitted exhibit to be shown to the jury during opening statements no later than 5 p.m. the night before opening statements. The parties shall exchange objections to these demonstratives and exhibits by 7 p.m.

4. During trial, each party shall provide by email no later than 7 p.m. each day a copy of all demonstratives that are intended to be presented during direct examination the following day at trial, and the receiving party shall provide objections to such demonstratives by 9 p.m. The parties need not exchange demonstrative exhibits for use in cross-examination or closing arguments.

5. During trial, each party shall provide notice by email no later than 7 p.m. each day a good-faith identification of any non-preadmitted exhibit expected to be used during direct examination the following day at trial, and the receiving party shall provide objections to such exhibits by 9 p.m.

6. The parties agree that notice of a party's intended use of blowups (enlargements) of exhibits and of ballooning, excerption, highlighting, etc., of such exhibits need not be given (and need not be exchanged as a demonstrative exhibit), as long as the exhibit is pre-admitted or the party has identified its intention to use the exhibit according to the preceding paragraph.

7. The parties shall make good-faith efforts to resolve objections over the use of identified witnesses, testimony, and demonstratives prior to the subsequent trial day by participating in a meet and confer following the identification of and objection to witnesses, testimony, and demonstratives each day.

8. No later than 5 p.m. on the fifth day prior to opening statements, the parties will file with the Court and exchange amended witness lists containing (a) an identification of each previously-listed witness expected to be called live on direct examination during trial and (b) a good-faith narrowing of all other previously-listed witnesses.

9. The parties stipulate to the authenticity and business-record status of each document that on its face appears to have been generated by Wi-LAN (including documents

generated by its employees during the course of their employment for Wi-LAN) and produced in this case by Wi-LAN subject to the caveat that a party may object to the admissibility of any specific statement in a document to the extent it can show that such statement does not fall within Fed. R. Evid. 803(6) or should otherwise not be admitted (*e.g.*, pursuant to Fed. R. Evid. 402 or 403).

10. The parties stipulate to the authenticity and business-record status of each document that on its face appears to have been generated by Alcatel-Lucent, Mindspeed Technologies, Inc. (“Mindspeed”), or Picochip Ltd. (“Picochip”) (including documents generated by its employees during the course of their employment for Alcatel-Lucent, Mindspeed, or Picochip) and produced in this case by Alcatel-Lucent subject to the caveat that a party may object to the admissibility of any specific statement in a document to the extent it can show that such statement does not fall within Fed. R. Evid. 803(6) or should otherwise not be admitted (*e.g.*, pursuant to Fed. R. Evid. 402 or 403).

11. The parties stipulate to the authenticity and business-record status of each document that on its face appears to have been generated by Ericsson (including documents generated by its employees during the course of their employment for Ericsson) and produced in this case by Ericsson subject to the caveat that a party may object to the admissibility of any specific statement in a document to the extent it can show that such statement does not fall within Fed. R. Evid. 803(6) or should otherwise not be admitted (*e.g.*, pursuant to Fed. R. Evid. 402 or 403).

12. The parties stipulate to the authenticity and business-record status of each document that on its face appears to have been generated by Sony Mobile, Qualcomm, or ST-Ericsson (including documents generated by its employees during the course of their

employment for Sony Mobile, Qualcomm, or ST-Ericsson, and documents generated by predecessor companies) and produced in this case by Sony Mobile subject to the caveat that a party may object to the admissibility of any specific statement in a document to the extent it can show that such statement does not fall within Fed. R. Evid. 803(6) or should otherwise not be admitted (*e.g.*, pursuant to Fed. R. Evid. 402 or 403).

13. The parties stipulate to the authenticity and business-record status of each document that on its face appears to have been generated by HTC or Qualcomm (including documents generated by its employees during the course of their employment for HTC or Qualcomm) and produced in this case by HTC subject to the caveat that a party may object to the admissibility of any specific statement in a document to the extent it can show that such statement does not fall within Fed. R. Evid. 803(6) or should otherwise not be admitted (*e.g.*, pursuant to Fed. R. Evid. 402 or 403).

14. The parties stipulate to the authenticity and business-record status of each document that on its face appears to have been generated by Airspan Networks, Inc. (“Airspan”) (including documents generated by its employees during the course of their employment for Airspan) and produced in this case by Airspan subject to the caveat that a party may object to the admissibility of any specific statement in a document to the extent it can show that such statement does not fall within Fed. R. Evid. 803(6) or should otherwise not be admitted (*e.g.*, pursuant to Fed. R. Evid. 402 or 403).

15. The parties stipulate to the authenticity and business-record status of each document that on its face appears to have been generated by Mindspeed or Picochip (including documents generated by its employees during the course of their employment for Mindspeed or Picochip) and produced in this case by Mindspeed subject to the caveat that a party may object to

the admissibility of any specific statement in a document to the extent it can show that such statement does not fall within Fed. R. Evid. 803(6) or should otherwise not be admitted (*e.g.*, pursuant to Fed. R. Evid. 402 or 403).

16. The parties stipulate to the authenticity and business record status of each document that on its face appears to have been generated by Qualcomm (including documents generated by its employees during the course of their employment for Qualcomm) and produced in this case by Qualcomm subject to the caveat that a party may object to the admissibility of any specific statement in a document to the extent it can show that such statement does not fall within Fed. R. Evid. 803(6) or should otherwise not be admitted (*e.g.*, pursuant to Fed. R. Evid. 402 or 403).

17. The parties stipulate to the authenticity and business record status of each document that on its face appears to have been generated by Silicon Valley Bank (including documents generated by its employees during the course of their employment for Silicon Valley Bank) and produced in this case by Silicon Valley Bank subject to the caveat that a party may object to the admissibility of any specific statement in a document to the extent it can show that such statement does not fall within Fed. R. Evid. 803(6) or should otherwise not be admitted (*e.g.*, pursuant to Fed. R. Evid. 402 or 403).

18. The listing of an exhibit by a party does not waive any objections to the exhibit should the opposing party attempt to offer it.

19. Only those documents that appear on an exhibit list may be offered into evidence at trial with any witness unless otherwise agreed by the parties or upon leave of Court for good cause shown.

20. Any document not specifically identified on an exhibit list, including any

deposition or prior testimony or portion thereof not specifically designated, and not offered into evidence, still may be used at trial for the purposes of impeachment, if otherwise competent for such purposes.

21. If Defendants Ericsson and/or Sony Mobile are found to infringe any of the asserted claims of the '326, '327, '819, or '211 patents, and the asserted claims are found to be valid, Wi-LAN, Ericsson, and Sony Mobile stipulate that damages shall be calculated from the date of filing of the suit, October 5, 2010.

22. Wi-LAN stipulates, solely for this lawsuit and for the purpose of resolving a discovery dispute between the parties, that Wi-LAN believes that HSPA-compliant products infringe one or more of the patents listed in Schedule A to the Patent and Conflict Resolution Agreements. Wi-LAN does not stipulate that there has ever been an adjudication of that issue or that Ericsson or Sony Mobile have met their burden of proof to show that HSPA-compliant products infringe such patents.

B. Uncontested Facts

1. This court has jurisdiction over the parties and the subject matter of this suit.
2. Venue is proper in the United States District Court for the Eastern District of Texas, Tyler Division.
3. Plaintiff Wi-LAN is a Canadian corporation with its principal place of business in Ottawa, Ontario, Canada.
4. Defendant Alcatel-Lucent is a Delaware corporation with its principal place of business in Murray Hill, New Jersey.
5. Defendant Telefonaktiebolaget LM Ericsson is a Swedish corporation with its principal place of business in Stockholm, Sweden.
6. Defendant Ericsson Inc., a subsidiary of Telefonaktiebolaget LM Ericsson, is a

Delaware corporation with its principal place of business in Plano, Texas.

7. Defendant Sony Mobile Communications AB is a Swedish Corporation with its principal place of business in Lund, Sweden.

8. Defendant Sony Mobile Communications (USA) Inc., a subsidiary of Sony Mobile Communications AB, is a Delaware corporation with its principal place of business in Atlanta, Georgia.

9. Defendant HTC Corporation is a Taiwanese (R.O.C.) corporation with its principal place of business in Taoyuan, Taiwan, R.O.C.

10. Defendant HTC America, Inc., a subsidiary of HTC Corporation, is a Texas corporation with its principal place of business in Bellevue, Washington.

11. Defendant Exedea Inc., a subsidiary of Defendant HTC Corporation, is a Texas corporation with its principal place of business in Houston, Texas.

12. The '326 patent resulted from an application filed with the United States Patent and Trademark Office ("USPTO") on November 26, 1997, and issued July 11, 2000.

13. The '326 patent claims priority to an application filed on December 20, 1996, in the patent office of the United Kingdom.

14. The named inventors on the '326 patent are Martin Lysejko and Paul F. Struhsaker.

15. The '326 patent is entitled to a priority date no later than December 20, 1996.

16. The '326 patent was previously assigned to Airspan.

17. Wi-LAN is the current owner by assignment of the '326 patent.

18. The '327 patent resulted from an application filed with the USPTO on November 26, 1997, and issued on February 27, 2001.

19. The '327 patent claims priority to an application filed on December 20, 1996, in the patent office of the United Kingdom.

20. The named inventors on the '327 patent are Martin Lysejko, Joemanne Chi Cheung Yeung, and Paul F. Struhsaker.

21. The '327 patent is entitled to a priority date no later than December 20, 1996.

22. The '327 patent was previously assigned to Airspan.

23. Wi-LAN is the current owner by assignment of the '327 patent.

24. The '819 patent resulted from an application filed with the USPTO on November 26, 1997, and issued on April 24, 2001.

25. The '819 patent claims priority to an application filed on December 20, 1996, in the patent office of the United Kingdom.

26. The named inventors on the '819 patent are Martin Lysejko and Paul F. Struhsaker.

27. The '819 patent is entitled to a priority date no later than December 20, 1996.

28. The '819 patent was previously assigned to Airspan.

29. Wi-LAN is the current owner by assignment of the '819 patent.

30. The '211 patent resulted from an application filed with the USPTO on May 25, 2000, and issued on April 30, 2002.

31. The '211 patent is a continuation of the patent application filed with the USPTO on November 26, 1997, that issued as the '326 patent.

32. The '211 patent claims priority to an application filed on December 20, 1996, in the patent office of the United Kingdom.

33. The named inventors on the '211 patent are Martin Lysejko and Paul F.

Struhsaker.

34. The '211 patent is entitled to a priority date no later than December 20, 1996.
35. The '211 patent was previously assigned to Airspan.
36. Wi-LAN is the current owner by assignment of the '211 patent.
37. U.S. Patent No. 5,966,377 ("Murai") was first filed with the USPTO on December 19, 1996. Murai's effective date as prior art is December 19, 1996.
38. The PCRA signed in 2008 by Wi-LAN and Ericsson is a valid and unambiguous contract.
39. The PCRA signed in 2008 by Wi-LAN and Ericsson is governed by New York law.
40. The PCRA signed in 2008 by Wi-LAN and Sony Mobile is a valid and unambiguous contract.
41. The PCRA signed in 2008 by Wi-LAN and Sony Mobile is governed by New York law.

VI. CONTESTED ISSUES OF FACT AND LAW

The Parties agree that to the extent any issue of fact is incorrectly designated below as an issue of law, it will be considered as an issue of fact. Likewise, any issue of law incorrectly designated below as an issue of fact will be considered as an issue of law.

A. Contested Issues of Fact

1. Whether Wi-LAN has proven by a preponderance of the evidence that Alcatel-Lucent's accused products literally infringe claims 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the '326 patent.
2. Whether Wi-LAN has proven by a preponderance of the evidence that Alcatel-Lucent's accused products infringe claims 2, 5, 6, 7, 8, 9, and 10 of the '326 patent under the

doctrine of equivalents.

3. Whether Wi-LAN has proven by a preponderance of the evidence that Alcatel-Lucent's accused products literally infringe claims 1, 5, 8, 10, 11, 12, 13, and 15 of the '327 patent.

4. Whether Wi-LAN has proven by a preponderance of the evidence that Alcatel-Lucent's accused products infringe claim 13 of the '327 patent under the doctrine of equivalents.

5. Whether Wi-LAN has proven by a preponderance of the evidence that Alcatel-Lucent's accused products literally infringe claim 11 of the '819 patent.

6. Whether Wi-LAN has proven by a preponderance of the evidence that Alcatel-Lucent's accused products infringe claim 11 of the '819 patent under the doctrine of equivalents.

7. If Wi-LAN has proven by a preponderance of the evidence that Alcatel-Lucent has infringed the asserted claims of the '326, '819, or '327 patents, and if the asserted claims are not proved to be invalid by clear and convincing evidence, whether Wi-LAN is entitled to compensatory damages of at least a reasonable royalty to compensate for Alcatel-Lucent's infringement of the '326, '819, and/or '327 patents and, if so, the dollar amount of those damages.⁴

8. Whether Alcatel-Lucent has proven by a preponderance of the evidence that it is entitled to a declaratory judgment that Alcatel-Lucent is not infringing and has not infringed any claims of the '326 patent.

9. Whether Alcatel-Lucent has proven by a preponderance of the evidence that it is entitled to a declaratory judgment that Alcatel-Lucent is not infringing and has not infringed any claims of the '819 patent.

⁴ Alcatel-Lucent and HTC object to the presentation of evidence to the jury regarding any alleged "future damages," which is an equitable issue for the Court.

10. Whether Alcatel-Lucent has proven by a preponderance of the evidence that it is entitled to a declaratory judgment that Alcatel-Lucent is not infringing and has not infringed any claims of the '327 patent.

11. Whether Alcatel-Lucent has proven by clear and convincing evidence that it is entitled to a declaratory judgment that the claims of the '326 patent are invalid under one or more sections of 35 U.S.C. §§ 102, 103, and 112.

12. Whether Alcatel-Lucent has proven by clear and convincing evidence that it is entitled to a declaratory judgment that the claims of the '819 patent are invalid under one or more sections of 35 U.S.C. §§ 102, 103, and 112.

13. Whether Alcatel-Lucent has proven by clear and convincing evidence that it is entitled to a declaratory judgment that the claims of the '327 patent are invalid under one or more sections of Title 35 of the United States code, including, without limitation, 35 U.S.C. §§ 102, 103, and 112.

14. Whether Wi-LAN has proven by a preponderance of the evidence that Ericsson's accused products literally infringe claims 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the '326 patent.

15. Whether Wi-LAN has proven by a preponderance of the evidence that Ericsson's accused products infringe claims 2, 5, 6, 7, 8, 9, and 10 of the '326 patent under the doctrine of equivalents.

16. Whether Wi-LAN has proven by a preponderance of the evidence that Ericsson's accused products literally infringe claims 1, 5, 8, 10, 11, 12, 13, and 15 of the '327 patent.

17. Whether Wi-LAN has proven by a preponderance of the evidence that Ericsson's accused products infringe claim 13 of the '327 patent under the doctrine of equivalents.

18. Whether Wi-LAN has proven by a preponderance of the evidence that Ericsson's

accused products literally infringe claim 11 of the '819 patent.

19. Whether Wi-LAN has proven by a preponderance of the evidence that Ericsson's accused products infringe claim 11 of the '819 patent under the doctrine of equivalents.

20. Whether Wi-LAN is entitled to compensatory damages of at least a reasonable royalty to compensate for Ericsson's alleged infringement of the '326, '819, and '327 patents, and if so, the dollar amount of those damages.

21. Whether Wi-LAN has proven by a preponderance of the evidence that HTC's accused products literally infringe claims 1, 2, 3, 4, and 5 of the '211 patent.

22. Whether Wi-LAN has proven by a preponderance of the evidence that HTC's accused products infringe claims 2 and 5 of the '211 patent under the doctrine of equivalents.

23. Whether Wi-LAN is entitled to compensatory damages of at least a reasonable royalty to compensate for HTC's alleged infringement of the '211 patent, and if so, the dollar amount of those damages.

24. Whether Wi-LAN has proven by a preponderance of the evidence that Sony Mobile's accused products literally infringe claims 1, 2, 3, 4, and 5 of the '211 patent.

25. Whether Wi-LAN has proven by a preponderance of the evidence that Sony Mobile's accused products infringe claims 2 and 5 of the '211 patent under the doctrine of equivalents.

26. Whether Wi-LAN is entitled to compensatory damages of at least a reasonable royalty to compensate for Sony Mobile's alleged infringement of the '211 patent, and if so, the dollar amount of those damages.

27. Whether the '326, '819, '211, and '327 patents are entitled to priority dates before December 20, 1996, and if so, the applicable priority dates.

28. What the level of ordinary skill in the art at the time of invention of the patents in suit was.

29. Whether Defendants have proven by clear and convincing evidence that one or more of claims 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the '326 patent; one or more of claims 1, 2, 5, 8, 10, 11, 12, 13, and 15 of the '327 patent; claim 11 of the '819 patent; and/or one or more of claims 1, 2, 3, 4, and 5 of the '211 patent are invalid under 35 U.S.C. § 102(a) because the claimed invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention of the asserted claim.

30. Whether Defendants have proven by clear and convincing evidence that one or more of claims 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the '326 patent; one or more of claims 1, 2, 5, 8, 10, 11, 12, 13, and 15 of the '327 patent; claim 11 of the '819 patent; and/or one or more of claims 1, 2, 3, 4, and 5 of the '211 patent are invalid under 35 U.S.C. § 102(b) because the claimed invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to November 26, 1997.

31. Whether Defendants have proven by clear and convincing evidence that one or more of claims 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the '326 patent; one or more of claims 1, 2, 5, 8, 10, 11, 12, 13, and 15 of the '327 patent; claim 11 of the '819 patent; and/or one or more of claims 1, 2, 3, 4, and 5 of the '211 patent are invalid under 35 U.S.C. § 102(e) because the invention was described in (1) an application for patent, published under 35 U.S.C. § 122(b), by another filed in the United States before the invention of the asserted claim, or (2) a patent granted on an application for patent by another filed in the United States before the invention of the asserted claim, except that an international application filed under the treaty defined in 35 U.S.C. § 351(a) shall have the effects of an application filed in the United States only if the

international application designated the United States and was published under Article 21(2) of such treaty in the English language.

32. Whether Defendants have proven by clear and convincing evidence that one or more of claims 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the '326 patent; one or more of claims 1, 2, 5, 8, 10, 11, 12, 13, and 15 of the '327 patent; claim 11 of the '819 patent; and/or one or more of claims 1, 2, 3, 4, and 5 of the '211 patent are invalid as obvious under 35 U.S.C. § 103.

33. Whether Defendants have proven by clear and convincing evidence that one or more of claims 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the '326 patent; one or more of claims 1, 2, 5, 8, 10, 11, 12, 13, and 15 of the '327 patent; claim 11 of the '819 patent; and/or one or more of claims 1, 2, 3, 4, and 5 of the '211 patent are invalid as failing to meet the written description requirement under 35 U.S.C. § 112.

34. Whether Defendants have proven by clear and convincing evidence that one or more of claims 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the '326 patent; one or more of claims 1, 2, 5, 8, 10, 11, 12, 13, and 15 of the '327 patent; claim 11 of the '819 patent; and/or one or more of claims 1, 2, 3, 4, and 5 of the '211 patent are invalid as not enabled under 35 U.S.C. § 112.

35. Whether Wi-LAN has proven by a preponderance of the evidence that it complied with the requirements of 35 U.S.C. § 287

36. Whether the asserted claims of the patents-in-suit are entitled to a date of invention earlier than December 20, 1996.

37. Ericsson contends that whether Wi-LAN brought this suit against Ericsson and Sony Mobile in bad faith or in obvious breach of the covenant-not-to-sue provision in Article III of the it entered into with them is a disputed issue of fact. Wi-LAN contends that this issue, if reached, is a matter of law to be resolved by the Court.

38. If the issues concerning the PCR Agreements are not resolved as a matter of law, whether Ericsson and Sony Mobile have proven that their accused products “would, but for [the PCRA], infringe” the WI-LAN PATENTS listed in Schedule A to the PCRA.

B. Contested Issues of Law

1. Whether, if liability is found, Wi-LAN is entitled to a permanent injunction and the scope of any such injunction.

2. If liability is found and damages awarded, the amount of any pre- and post-judgment interest and costs to be awarded to Wi-LAN under 35 U.S.C. § 284.

3. Whether Wi-LAN’s claims for pre-suit damages against Defendants Alcatel-Lucent and HTC are barred by the equitable doctrines of laches.

4. The proper interpretation of the covenant-not-to-sue provision in Article III of the PCRA.

5. Whether Wi-LAN breached the covenant-not-to-sue provision in Article III of the PCRA it entered into with Ericsson and Sony Mobile.

6. Wi-LAN contends that, if the issue is reached, whether Wi-LAN brought this suit against Ericsson and Sony Mobile in bad faith or in obvious breach of the covenant-not-to-sue provision in Article III of PCRA is a matter of law to be resolved by the Court. Ericsson and Sony Mobile contend that matter is a disputed issue of fact.

7. Ericsson, Sony Mobile, and Wi-LAN agree that, if the issue is reached, the amount of damages Ericsson and Sony Mobile are entitled to recover (if any) is a matter of law to be resolved by the Court.

8. The proper interpretation of the most-favored-licensee provision in Article VII of the PCRA, including (1) whether the most-favored-licensee provision applies to after-acquired patents, (2) what is most-favored-licensee status, and (3) whether most-favored-licensee status

includes “similarly situated” and/or “more-favorable rates.”

9. Whether Wi-LAN breached the most-favored-licensee provision in Article VII.1 of the PCRA's it entered into with Ericsson and Sony Mobile, and if so, whether Ericsson and Sony Mobile are entitled to receive licenses from Wi-LAN on terms that are at least equivalent to the terms of the license Wi-LAN granted to other Wi-LAN licensees, including the license Wi-LAN granted to BelAir Networks, Inc.

10. Whether New York law permits recovery of attorneys' fees for breach of contract when not expressly permitted by the contract or statute, and if so, whether “bad faith or in obvious breach” is a correct statement of the standard for recovery under New York law.

11. Ericsson contends that whether it is entitled to a license to the patents-in-suit is a disputed matter of law. Wi-LAN agrees that a legal dispute exists regarding whether Ericsson is licensed, but contends that that question cannot be adjudicated in this Action due to a mandatory arbitration requirement contained in the agreement at issue.

12. Whether Defendants are entitled to a finding that this case is exceptional and, if so, the proper amount of attorneys' fees and/or costs.

VII. LISTS OF WITNESSES AND DEPOSITION DESIGNATIONS

A. Witness Lists

Wi-LAN's list of witnesses is attached as Exhibit 1.

Alcatel-Lucent's list of witnesses is attached as Exhibit 2.

Ericsson's and Sony Mobile's list of witnesses is attached as Exhibit 3.

HTC's list of witnesses is attached as Exhibit 4.

B. Deposition Designations

The parties' deposition designations are attached as exhibits. Objections and rebuttal designations will be submitted on the dates specified in the Docket Control Order, as amended.

Wi-LAN's deposition designations are attached as Exhibit 5.

Defendants Alcatel-Lucent, Ericsson and Sony Mobile's deposition designations are attached as Exhibit 6.

Defendant HTC's deposition designations are attached as Exhibit 7.⁵

VIII. LISTS OF EXHIBITS

Wi-LAN's list of exhibits is attached as Exhibit 8.

Defendants' list of exhibits is attached as Exhibit 9.

IX. LIST OF PENDING MOTIONS

| Docket No. | Dated Filed | Title |
|----------------------|--------------------|--|
| 171 | 03/26/2012 | Plaintiff's Motion for Partial Summary Judgment |
| 172 | 03/27/2012 | The Ericsson Defendants' Motion for Summary Judgment |
| 181 | 04/13/2012 | The Sony Mobile Defendants' Cross-Motion for Summary Judgment |
| 240 | 10/26/2012 | HTC Corporation, HTC America, Inc. and Exedea, Inc.'s Motion to Compel Production of Internal Communications and Documents Withheld by Wi-LAN, Inc. on the Ground of Attorney-Client Privilege |
| [[255]] ⁶ | 11/20/2012 | The Ericsson and Sony Mobile Defendants' Motion to Compel Plaintiff to Provide Discovery |
| 275 | 12/07/2012 | The Ericsson And Sony Mobile Defendants' Motion for Leave to Supplement Summary-Judgment Briefing |
| 277 | 12/07/2012 | Defendants' Motion for Leave to File Two Letter Briefs (filed at Dkt. Nos. 280 and 287) Requesting Permission to File Certain Motions |
| 288 | 01/07/2013 | Plaintiff Wi-LAN's Motion to Strike Defendants' Letter Briefs |
| 305 | 02/04/2013 | Defendants' Motion for Clarification of the Construction of a Single Term in the Court's Claim-Construction Order |
| 306 | 02/04/2013 | Defendants HTC Corporation, HTC America, Inc., and Exedea Inc.'s Motion to Sever |

In addition, all parties' motions *in limine* are to be filed on March 11, 2013, pursuant to the Docket Control Order (Dkt. No. 99).

⁵ In light of HTC's pending motion to sever, Defendants Alcatel-Lucent, Ericsson and Sony Mobile and Defendant HTC attach separate proposed deposition designations. Wi-LAN reserves its objections.

⁶ The parties anticipate that this pending motion may be resolved by agreement and will promptly advise the Court if agreement is reached.

X. PROBABLE LENGTH OF TRIAL

The parties estimate the probable length of trial to be 6 to 8 days.

XI. MANAGEMENT CONFERENCE LIMITATIONS

The parties will confer concerning additional limitations and propose them in advance of the pre-trial conference.

XII. CERTIFICATIONS

The undersigned counsel for each of the parties in this action does hereby certify and acknowledge the following:

- (1) Full and complete disclosure has been made in accordance with the Federal Rules of Civil Procedure and the Court's orders;
- (2) Discovery limitations set forth in the Federal Rules of Civil Procedure, the Local Rules, and the Court's orders have been complied with and not altered by agreement or otherwise; and
- (3) Each exhibit in the List of Exhibits herein:
 - (a) is in existence;
 - (b) is numbered; and
 - (c) has been disclosed and shown to opposing counsel as set forth above.

Approved as to both form and substance:

Dated: February 13, 2013

Respectfully submitted,

/s/ Akshay S. Deoras (with permission)

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) on this the 14th day of February, 2013. 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).

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