

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

WI-LAN INC.,  <div style="text-align: right; padding-right: 100px;">Plaintiff,</div> v.  ALCATEL-LUCENT USA INC.; <i>et al.</i>  <div style="text-align: right; padding-right: 100px;">Defendants.</div> <hr style="width: 50%; margin-left: 0;"/>	§ § § § § § § § § § §	Civil Action No. 6:10-cv-521-LED  JURY TRIAL DEMANDED
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**JOINT NOTICE OF WITHDRAWAL OF DEFENDANTS’ MOTION TO COMPEL  
[DKT. 255] AND WITHDRAWAL OF PLAINTIFF’S OPPOSITION  
TO ERICSSON AND SONY MOBILE’S MOTION FOR LEAVE TO SUPPLEMENT  
SUMMARY JUDGMENT BRIEFING [DKT. 283]**

For the reasons set forth below, Paintiff Wi-LAN Inc. (“Wi-LAN”), Defendants Telefonaktiebolaget LM Ericsson and Ericsson Inc. ( “Ericsson”), and Defendants Sony Mobile Communications AB and Sony Mobile Communications (USA) (“Sony Mobile”) (collectively “Defendants”) respectfully notify the Court that they have reached an agreement under the terms of which the Ericsson and Sony Mobile Defendants’ Motion to Compel (Dkt. 255) as well as the Ericsson and Sony Mobile Defendants’ Motion for Leave to Supplement Summary Judgment Briefing (Dkt. 275) can be removed from the Court’s February 26, 2013, hearing calendar. Under this agreement, Wi-LAN will produce a witness for the deposition topics that form the subject of the Motion to Compel. Ericsson and Sony Mobile will withdraw their Motion to Compel, and Wi-LAN will withdraw its opposition to the Motion for Leave to Supplement.

## **BACKGROUND & ARGUMENT**

In addition to Plaintiff's claims for patent infringement, Ericsson and Sony Mobile have asserted contract counterclaims against Wi-LAN concerning agreements between the parties known as the Patent and Conflict Resolution Agreements ("PCR Agreements"). As regards the counterclaims, two main issues are in dispute:

- (1) The parties dispute the applicability and scope of the covenant not to sue provision of the PCR Agreements.
- (2) Should the covenant not to sue provision not apply to Wi-LAN's claims in this case, the parties dispute the applicability and scope of the "most-favored license" provision of the PCR Agreements.

With regard to the first issue, the parties' cross motions for summary judgment are now fully briefed. (Dkt Nos. 171, 172, 180, 181, 187, 190, 193, 195, 197, 198.)

With regard to the second issue, Defendants filed a motion to compel a deposition of Wi-LAN on four specific topics of its July 2012 30(b)(6) Deposition Notice to Wi-LAN related to the "most-favored licensee" provision of the PCR Agreements: Nos. 13, 14, 15, and 16.<sup>1</sup> Wi-LAN opposed Defendants' Motion on a number of grounds. (Dkt. 278.) Since that time, the parties have reached agreement concerning those four topics. Wi-LAN will present a witness (Andrew Parolin) in New York, as a 30(b)(6) witness on those four topics, for deposition on March 7, 2013. Accordingly, Ericsson and Sony Mobile respectfully withdraw their Motion to Compel, without prejudice.

In addition, Ericsson and Sony Mobile have filed a Motion for Leave to Supplement their Summary Judgment Briefing regarding the PCRA. (Dkt. 275.) Their proposed motion, which

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<sup>1</sup> Topics 13 and 15 are identical, as are Topics 14 and 16, except as to the party at issue (Ericsson or Sony Mobile). (See Dkt. 255, Ex. C.)

was attached to the Motion for Leave, concerns the “most-favored licensee” provision of the PCR Agreements. Wi-LAN opposed Defendants’ motion for leave on various grounds. (Dkt. 283.) Following further discussions between the parties, Wi-LAN, Ericsson, and Sony Mobile agree that briefing regarding the legal issues concerning the scope of the “most-favored licensee” provision may be helpful to the Court. Accordingly, Wi-LAN respectfully withdraws its opposition to Ericsson and Sony Mobile’s Motion for Leave, and the parties propose the following briefing schedule: Ericsson and Sony Mobile’s motion be deemed served on February 26, 2013; Wi-LAN’s response due March 6, 2013, at noon CST; Wi-LAN’s witness (Andrew Parolin) on Topics 13-16 of Ericsson and Sony Mobile’s Rule 30(b)(6) Notice be deposed on March 7, 2013; Ericsson and Sony Mobile’s Reply due March 14, 2013; and Wi-LAN’s Sur-Reply due March 19, 2013.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on February 25, 2013, counsel of record who are deemed to have consented to electronic service are being served with a copy of this document by electronic mail.

/s/ Richard L. Wynne, Jr.  
Richard L. Wynne, Jr.