

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

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

**WI-LAN’S RESPONSE TO HTC’S NOTICE REGARDING
DOCUMENTS SUBMITTED BY WI-LAN, INC. FOR IN CAMERA REVIEW**

Plaintiff Wi-LAN Inc. respectfully responds to HTC’s “Notice” (Dkt. No. 343) concerning twelve privilege log entry numbers.

(1) HTC inaccurately states that, following HTC’s identification of documents for review, “Wi-LAN responded by either waiving its privilege claims or admitting error as to twelve (12) documents.” That is not correct. As stated in Wi-LAN’s Objections, *eight* of those twelve documents (Nos. 4359, 4423, 4461, 4490, 4840, 5622, 6181, 9155) had already been produced to HTC last summer and fall, though the corresponding entry inadvertently was not removed from Wi-LAN’s privilege log. HTC’s claims of prejudice are implausible, given that it has long been in possession of the documents indicated by those privilege log entries.

(2) With regard to the remaining documents identified in its Notice, HTC claims prejudice because “five of the twelve documents were produced last night.” As HTC could have verified from a simple search of Wi-LAN’s production, one of these documents is a duplicate production of previously produced entry No. 4461. The substance of another of those

documents, No. 5710—which HTC appears to believe is “a highly relevant financial summary”—was previously produced in alternate form. Of the remaining three documents, two (No. 1037 and 5104, which HTC appears to characterize as “extensive communications between the parties”) are merely non-substantive transmittal copies of documents already produced to HTC in their entirety. Again, HTC’s claims of prejudice are without basis.

(4) In its Notice, HTC argues that a “15% error rate” from “such a random sampling” should be applied to “the entire log of 13,762 documents.” Leaving aside that HTC’s purported “sampling” was neither random nor resulted in a “15% error rate,” HTC now appears to attempt to evade its representation to the Court during the February 26, 2013 hearing that its challenge was narrowed to approximately 1,600 documents. (Hearing Tr. at pg. 30–31 (Feb. 26, 2013).) In addition to being wrong on the merits about purported “error,” therefore, HTC grossly inflates the number of privilege log entries at issue.

(3) Finally, HTC misleadingly states that Wi-LAN has refused to identify to HTC the bates numbers corresponding the above documents. But that is simply incorrect. Rather, HTC’s request to Wi-LAN was made on the afternoon of March 5th, and its Notice was filed shortly after 9:30 am on March 6th. HTC now complains despite not permitting Wi-LAN a reasonable amount of time to respond.

In short, HTC’s arguments are without merit, and its claims of prejudice ring hollow. Wi-LAN respectfully requests that any relief sought by HTC be denied.

Dated: March 6, 2013

Respectfully submitted,

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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). As such, this document was served on all counsel who are deemed to have consented to electronic service on this the 6th day of March, 2013.

/s/ Ajeet P. Pai

Ajeet P. Pai