



party is precluded from referencing, for the purposes of impeachment, any affidavits, declarations, or the like submitted with such motions or briefs.

3. **References to Jury Consultants and/or Shadow Jurors:** Any reference to any party's use, if any, of jury consultants or jury study or focus groups to assist with trial preparation, jury selection, or trial. Such use is not relevant to any issue in this litigation. FED. R. EVID. 401-403.

4. **References to Equitable Issues:** Any reference to equitable defenses, including laches, unclean hands, equitable estoppel, and waiver, which are properly reserved for the Court and not the jury. FED. R. EVID. 401-403; *see e.g., z4 Techs., Inc. v. Microsoft Corp.*, No. 6:06-CV-142 (Davis, J.), 2006 U.S. Dist. LEXIS 58374, at \*60 (E.D. Tex. Aug. 18, 2006) (reserving issue of inequitable conduct to be heard outside the presence of the jury). No party is precluded from referencing facts that may be relevant to such equitable defenses to the extent they are also relevant to issues before the jury.

5. **References to Arguments that Contradict the Court's Orders, including the Court's Markman Order:** Unless specifically authorized, references to facts or arguments regarding any motion or brief on behalf of the parties that contradicts any of the Court's rulings on any such motion, including the Court's *Markman* Order, should be precluded, with the exception of references to such motions, arguments, or briefs to enforce compliance with the Court's previous Orders. FED. R. EVID. 401-403. No party is precluded from referencing, for the purposes of impeachment, any affidavits, declarations, or the like submitted with such motions or briefs.

6. **Derogatory Terms:** Any references of either party using the derogatory terms “patent troll” and “lawsuit mill.”. Such statements would tend to confuse the jury, are irrelevant to the substantive issues, and be unfairly prejudicial. FED. R. EVID. 402, 403.

7. **Reference to Acquisition of BelAir:** Any reference, comment or statement by counsel, or by any witness, regarding LME’s acquisition of BelAir Networks Inc., any claim or defense of license as a result of that acquisition, or the co-pending arbitration proceedings regarding that matter. The Ericsson Defendants and Wi-LAN dispute whether Ericsson obtained a license to the patents-in-suit as a result of its acquisition of BelAir Networks Inc., a question committed to mandatory, binding arbitration in another forum. Because such issues are not before this jury, such evidence would both be irrelevant and unfairly prejudicial. FED. R. EVID. 401–403.

8. **References to Law Firms or Lawyers Representing Any Party:** With respect to any law firm representing any party in this lawsuit, any reference or testimony about the size of the law firm, other matters handled by the law firm or any of its lawyers, any disciplinary action or investigation into the law firm or lawyer representing any party, and the wealth of any attorney or law firm. FED. R. EVID. 401-403.

9. **Reference to Jury Instructions and Verdict Form:** Any reference to the instructions and verdict form ultimately submitted to the jury as Plaintiffs’ or Defendants’. FED. R. EVID. 401-403. The parties may refer to such instructions and verdict form as the Court’s instructions and the Court’s verdict form.

10. **Reference to Fee Arrangements:** Any reference to the fee arrangements between the parties and their attorneys or the attorneys’ fees paid by the parties to their

attorneys in the instant lawsuit, excepting any fee arrangements with or fees paid to expert or consulting witnesses, which are not before the jury. FED. R. EVID. 401-403

11. **Objections to Discovery**: To the extent previously resolved by the Court, objections made by any party to deposition notices, interrogatories, interrogatory answers, and deposition questions and testimony, except for references to objections to enforce compliance with the Court's previous Orders, which the Court will rule on separately; the parties do not waive these objections but rather agree that the objections shall be maintained for the Court and need not be argued in front of the jury.

12. **References to Clear and Convincing Standard of Proof in Texas Family Code**: Any reference, comment, or statement by counsel, or by any witness called to testify, regarding the "clear and convincing" standard of proof contained in the Texas Family Code. FED. R. EVID. 401-403.

13. **References to Foreign Business Entities**: Any reference, comment, or statement by counsel, or by any witness called to testify, describing the "ethnicity" of the parties or their lawyers or any negative connotations based on a party being a foreign entity, including that the entity is, for example "Canadian" or "Taiwanese." Such statements would be irrelevant to the substantive issues, are inflammatory, are improper, would tend to confuse the jury, and are more prejudicial than probative. This motion shall not prohibit references that any party has, for example, an office or employees located outside of the United States. FED. R. EVID. 401-403.

Dated: March 11, 2013

Respectfully submitted,

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**CERTIFICATE OF CONFERENCE**

The undersigned certifies that Plaintiff Wi-LAN, Inc. has complied with the requirements of Local Rule CV-7(h), and no party opposes the relief sought herein.

*Ajeet P. Pai*

\_\_\_\_\_  
Ajeet P. Pai

**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 March 11, 2013.

*Ajeet P. Pai*

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Ajeet P. Pai