

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

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| WI-LAN INC., | § | |
| | § | |
| Plaintiff, | § | Civil Action No. 6:10-cv-521-LED |
| | § | Civil Action No. 6:13-cv-252-LED |
| v. | § | CASES CONSOLIDATED FOR |
| | § | TRIAL |
| ALCATEL-LUCENT USA INC.; <i>et al.</i> | § | |
| | § | JURY TRIAL DEMANDED |
| Defendants. | § | |
| | § | |

**WI-LAN’S MOTION FOR JUDGMENT AS A MATTER OF LAW
ON DEFENDANTS’ EQUITABLE AND OTHER DEFENSES**

I. INTRODUCTION

Plaintiff Wi-LAN Inc. (“Plaintiff”) moves for judgment as a matter of law on several of Defendants’ equitable and other defenses and counterclaims. Defendants Alcatel-Lucent USA Inc.; Ericsson, Inc.; Telefonaktiebolaget LM Ericsson; HTC Corporation; HTC America, Inc.; Exede Inc.; Sony Mobile Communications AB; and Sony Mobile Communications (USA) Inc. have variously asserted that Plaintiff’s claims are barred by laches or waived. Because Defendants have not presented legally sufficient evidence—and, in many cases, any evidence—on these defenses, Plaintiff is entitled to judgment as a matter of law as to the below defenses regarding claims 2 and 5 of U.S. Patent No. 6,381,211 (“the ’211 patent”); claims 2, 5, and 9 of U.S. Patent No. 6,088,326 (“the ’326 patent”); claim 11 of U.S. Patent No. 6,222,819 (“the ’819 patent”); and claims 11 and 12 of U.S. Patent No. 6,195,327 (“the ’327 Patent”) (collectively “the Asserted Claims”).

II. LEGAL STANDARD

Judgment as a matter of law must be granted when “a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue.” *Mirror Worlds, LLC v. Apple, Inc.*, 784 F. Supp. 2d 703, 710 (E.D. Tex. 2011) (quoting FED. R. CIV. P. 50(a)), *aff’d*, 692 F.3d 1351 (Fed. Cir. 2012). “A court should render judgment as a matter of law when a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for the party on that issue.” *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 149 (2000); *see also* FED. R. CIV. P. 50(a) & (b). In deciding a motion for judgment as a matter of law, the proper inquiry is whether sufficient evidence exists to support the non-movant’s claim when the evidence is viewed most favorably to the non-movant. *Id.* at 150.

III. ARGUMENT

A. Laches Does Not Bar Recovery of the Damages Plaintiff Seeks

Defendants all assert the defense of laches.¹ “Laches, if proven, does not preclude a patent infringement action. It has, for example, no effect on an action for *post-filing* damages or an injunction. It simply bars the recovery of *all pre-filing* damages.” *Leinoff v. Louis Milona & Sons, Inc.*, 726 F.2d 734, 741 (Fed. Cir. 1984) (emphases in original). Laches “bars relief on a patentee’s claim only with respect to damages accrued prior to suit.” *A.A. Aukerman Co. v. R.L. Chaides Const. Co.*, 960 F.2d 1010, 1041 (Fed. Cir. 1992).

¹ Only Alcatel-Lucent and HTC maintained this defense in the proposed Pretrial Order. Although the Fifth Circuit abides by the rule that a joint pretrial order signed by both parties supersedes all pleadings and governs the issues and evidence to be presented at trial, *Quick Techs, Inc. v. Sage Grp. PLC*, 313 F.3d 338, 345 n.5 (5th Cir. 2002), Wi-LAN files this Motion out of an abundance of caution as the Pretrial Order has not been formally entered.

Plaintiff seeks only *post-filing* damages in this suit. Plaintiff does not seek pre-filing damages in this case. The doctrine of laches is therefore inapplicable, and Plaintiff is entitled to judgment as a matter of law on Defendants' equitable defense of laches.

B. Wi-LAN's Remedies Have Not Been Waived

In order to prove waiver, Defendants must show by clear and convincing evidence either that Plaintiff, "with full knowledge of the material facts, intentionally relinquished its rights to enforce the [patents in suit] or that its conduct was so inconsistent with an intent to enforce its rights as to induce a reasonable belief that such right has been relinquished." *Qualcomm Inc. v. Broadcom Corp.*, 548 F.3d 1004, 1020 (Fed. Cir. 2008).

Defendant Alcatel-Lucent—the only Defendant asserting the defense of waiver—has offered no evidence of any relinquishment on the part of Wi-LAN or its predecessors in interest. Nor have Defendants requested a jury question on the issue of waiver. Because this is an issue on which Defendants bear the burden of proof by clear and convincing evidence, judgment as a matter of law in favor of Wi-LAN is required.

C. The Doctrines of Equitable Estoppel, Acquiescence, and Ratification are No Bar to Plaintiff's Claims or Remedies²

Defendants all assert the defense of equitable estoppel. To establish equitable estoppel, Defendants must prove: (1) Plaintiff had knowledge of true facts, but misled Defendants, either by words, conduct, or silence; (2) Defendants relied on that communication; and (3) Defendants will now be harmed if Plaintiff is permitted to assert any claim inconsistent with its earlier conduct. *A.C. Aukerman Co. v. R.L. Chaides Const. Co.*, 960 F.2d 1020, 1041 (Fed. Cir. 1992). "Equitable estoppel to assert a claim is [a] defense addressed to the sound discretion of the trial

² Defendants did not maintain these defenses in the proposed pretrial order.

court.” *Id.* (citing *Jamesbury Corp. v. Litton Indu. Prods.*, 839 F.2d 1544, 1553 (Fed. Cir. 1988)).

There is no evidence that would tend to establish any element of Defendants’ estoppel defense. As such, Wi-LAN is entitled to judgment as a matter of law on Defendants’ estoppel defense.

Defendants HTC Corporation, HTC America, Inc., and Exedea Inc. assert the defense of ratification. There is no evidence that would tend to establish any element of Defendants’ ratification defense. As such, Wi-LAN is entitled to judgment as a matter of law on Defendants’ ratification defense.

Defendants HTC Corporation, HTC America, Inc., and Exedea Inc. assert the defense of acquiescence. There is no evidence that would tend to establish any element of Defendants’ acquiescence defense. Accordingly, Wi-LAN is entitled to judgment as a matter of law on Defendants’ acquiescence defense.

V. CONCLUSION AND PRAYER

For the reasons stated above, Plaintiff Wi-LAN Inc. respectfully requests that the Court grant its Motion for Judgment as a Matter of Law that Defendants have failed to meet their burden of proof regarding the above-listed defenses to the Asserted Claims.

Dated: July 12, 2013

Respectfully submitted,

By: /s/ David B. Weaver

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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 12th day of July, 2013.

/s/ David B. Weaver
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