

**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)	Civil Action No. 6:10-cv-521 (LED)
ERICSSON MOBILE COMMUNICATIONS)	
AB; SONY ERICSSON MOBILE)	JURY TRIAL DEMANDED
COMMUNICATIONS (USA) INC.; HTC)	
CORPORATION; HTC AMERICA, INC.;)	
EXEDEA INC.; LG ELECTRONICS, INC.;)	
LG ELECTRONICS MOBILECOMM)	
U.S.A., INC.; and LG ELECTRONICS)	
U.S.A., INC.,)	
)	
Defendants.)	

ALCATEL-LUCENT’S ANSWER AND COUNTERCLAIMS

Defendant Alcatel-Lucent USA Inc. (“Alcatel-Lucent”) for its Answer to the Original Complaint (“Complaint”) of Plaintiff Wi-LAN Inc. (“Wi-LAN”) hereby demands a jury trial and responds as follows:

PARTIES

1. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 and therefore denies them.

2. Alcatel-Lucent admits that it is a corporation organized and existing under the laws of the state of Delaware and that it has a principal place of business at 600-700 Mountain Avenue, Murray Hill, NJ 07974. Alcatel-Lucent further admits that it manufactures, sells, and/or offers for sale wireless communication products in the United States, and that it has marketed

certain products as compliant with portions of one or more 3GPP specifications. Except as so admitted, Alcatel-Lucent denies the allegations of paragraph 2.

3. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 and therefore denies them.

4. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 and therefore denies them.

5. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 and therefore denies them.

6. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 and therefore denies them.

JURISDICTION AND VENUE

7. Alcatel-Lucent admits that Wi-LAN's Complaint purports to bring an action for patent infringement under 35 U.S.C. § 271 of the Patent Laws of the United States, but denies that Alcatel-Lucent has committed any acts of infringement and further denies that Wi-LAN is entitled to any relief.

8. Admitted.

9. Admitted.

THE PATENTS-IN-SUIT

10. Alcatel-Lucent admits that U.S. Patent No. 6,088,326 ("the '326 patent") is entitled "Processing Data Transmitted and Received Over a Wireless Link Connecting a Central Terminal and a Subscriber Terminal of a Wireless Telecommunication System" and that a copy of the '326 patent is attached to Wi-LAN's Complaint as Exhibit A. Alcatel-Lucent also admits that the United States Patent and Trademark Office ("USPTO") issued the '326 patent on July 11, 2000, but denies that the '326 patent was duly and legally issued. Alcatel-Lucent lacks

sufficient knowledge to form a belief as to the truth of the allegation that “Wi-LAN was assigned the ‘326 Patent and possesses all rights of recovery under the ‘326 Patent, including the right to recover damages for past infringement,” and therefore denies that allegation. Alcatel-Lucent denies any remaining allegations of paragraph 10.

11. Alcatel-Lucent admits that U.S. Patent No. 6,195,327 (“the ‘327 patent”) is entitled “Controlling Interference in a Cell of a Wireless Telecommunication System” and that a copy of the ‘327 patent is attached to Wi-LAN’s Complaint as Exhibit B. Alcatel-Lucent also admits that the USPTO issued the ‘327 patent on February 27, 2001, but denies that the ‘327 patent was duly and legally issued. Alcatel-Lucent lacks sufficient knowledge to form a belief as to the truth of the allegation that “Wi-LAN was assigned the ‘327 Patent and possesses all rights of recovery under the ‘327 Patent, including the right to recover damages for past infringement,” and therefore denies that allegation. Alcatel-Lucent denies any remaining allegations of paragraph 11.

12. Alcatel-Lucent admits that U.S. Patent No. 6,222,819 (“the ‘819 patent”) is entitled “Processing Data Transmitted and Received Over a Wireless Link Connecting a Central Terminal and a Subscriber Terminal of a Wireless Telecommunication System” and that a copy of the ‘819 patent is attached to Wi-LAN’s Complaint as Exhibit C. Alcatel-Lucent also admits that the USPTO issued the ‘819 patent on April 24, 2001, but denies that the ‘819 patent was duly and legally issued. Alcatel-Lucent lacks sufficient knowledge to form a belief as to the truth of the allegation that “Wi-LAN was assigned the ‘819 Patent and possesses all rights of recovery under the ‘819 Patent, including the right to recover damages for past infringement,” and therefore denies that allegation. Alcatel-Lucent denies any remaining allegations of paragraph 12.

13. Alcatel-Lucent admits that U.S. Patent No. 6,381,211 (“the ‘211 patent”) is entitled “Processing Data Transmitted and Received Over a Wireless Link Connecting a Central Terminal and a Subscriber Terminal of a Wireless Telecommunication System” and that a copy of the ‘211 patent is attached to Wi-LAN’s Complaint as Exhibit D. Alcatel-Lucent also admits that the USPTO issued the ‘211 patent on April 30, 2002, but denies that the ‘211 patent was duly and legally issued. Alcatel-Lucent lacks sufficient knowledge to form a belief as to the truth of the allegation that “Wi-LAN was assigned the ‘211 Patent and possesses all rights of recovery under the ‘211 Patent, including the right to recover damages for past infringement,” and therefore denies that allegation. Alcatel-Lucent denies any remaining allegations of paragraph 13.

14. Denied.

COUNT I: INFRINGEMENT OF THE ‘326 PATENT

15. Alcatel-Lucent admits that it manufactures, sells, and/or offers for sale products that have been marketed as compliant with aspects of one or more 3GPP specifications. Alcatel-Lucent also admits that it has manufactured, sold, and/or offered for sale products under the names 9311 Macro Node B, 9360 Small Cell, and 9926 Digital 2U Node B. Except as so admitted, Alcatel-Lucent denies the allegations of paragraph 15.

16. Alcatel-Lucent admits that it has manufactured, sold, and/or offered for sale products that have been marketed as compliant with aspects of one or more 3GPP specifications. Except as so admitted, Alcatel-Lucent denies the allegations of paragraph 16.

17. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17, and therefore denies them.

18. Denied.

19. The allegations of paragraph 19 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19, and therefore denies them.

20. The allegations of paragraph 20 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20, and therefore denies them.

21. The allegations of paragraph 21 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21, and therefore denies them.

22. The allegations of paragraph 22 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22, and therefore denies them.

23. Insofar as the allegations of paragraph 23 relate to Alcatel-Lucent, those allegations are denied. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 insofar as those allegations relate to other defendants, and therefore denies them.

24. Insofar as the allegations of paragraph 24 relate to Alcatel-Lucent, those allegations are denied. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 insofar as those allegations relate to other defendants, and therefore denies them.

25. Paragraph 25 expressly contains no allegation and therefore no response is required. Alcatel-Lucent denies that Wi-LAN may properly “reserve the right” to make

allegations in the future. To the extent that paragraph 25 is construed to contain any allegation, it is denied.

COUNT II: INFRINGEMENT OF THE '327 PATENT

26. Denied.

27. The allegations of paragraph 27 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27, and therefore denies them.

28. Insofar as the allegations of paragraph 28 relate to Alcatel-Lucent, those allegations are denied. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 insofar as those allegations relate to other defendants, and therefore denies them.

29. Insofar as the allegations of paragraph 29 relate to Alcatel-Lucent, those allegations are denied. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29 insofar as those allegations relate to other defendants, and therefore denies them.

30. Paragraph 30 expressly contains no allegation and therefore no response is required. Alcatel-Lucent denies that Wi-LAN may properly “reserve the right” to make allegations in the future. To the extent that paragraph 30 is construed to contain any allegation, it is denied.

COUNT III: INFRINGEMENT OF THE '819 PATENT

31. Alcatel-Lucent admits that it manufactures, sells, and/or offers for sale products that have been marketed as compliant with aspects of one or more 3GPP specifications. Alcatel-Lucent also admits that it has manufactured, sold, and/or offered for sale products under the

names 9311 Macro Node B, 9360 Small Cell, and 9926 Digital 2U Node B. Except as so admitted, Alcatel-Lucent denies the allegations of paragraph 31.

32. Alcatel-Lucent admits that it has manufactured, sold, and/or offered for sale products that have been marketed as compliant with aspects of one or more 3GPP specifications. Except as so admitted, Alcatel-Lucent denies the allegations of paragraph 32.

33. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33, and therefore denies them.

34. Denied.

35. The allegations of paragraph 35 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35, and therefore denies them.

36. The allegations of paragraph 36 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36, and therefore denies them.

37. The allegations of paragraph 37 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37, and therefore denies them.

38. The allegations of paragraph 38 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38, and therefore denies them.

39. The allegations of paragraph 39 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39, and therefore denies them.

40. The allegations of paragraph 40 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40, and therefore denies them.

41. The allegations of paragraph 41 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41, and therefore denies them.

42. The allegations of paragraph 42 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42, and therefore denies them.

43. The allegations of paragraph 43 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43, and therefore denies them.

44. The allegations of paragraph 44 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44, and therefore denies them.

45. The allegations of paragraph 45 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45, and therefore denies them.

46. The allegations of paragraph 46 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46, and therefore denies them.

47. The allegations of paragraph 47 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47, and therefore denies them.

48. The allegations of paragraph 48 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 48, and therefore denies them.

49. The allegations of paragraph 49 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 49, and therefore denies them.

50. The allegations of paragraph 50 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 50, and therefore denies them.

51. Insofar as the allegations of paragraph 51 relate to Alcatel-Lucent, those allegations are denied. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51 insofar as those allegations relate to other defendants, and therefore denies them.

52. Insofar as the allegations of paragraph 52 relate to Alcatel-Lucent, those allegations are denied. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52 insofar as those allegations relate to other defendants, and therefore denies them.

53. Paragraph 53 expressly contains no allegation and therefore no response is required. Alcatel-Lucent denies that Wi-LAN may properly “reserve the right” to make

allegations in the future. To the extent that paragraph 53 is construed to contain any allegation, it is denied.

COUNT IV: INFRINGEMENT OF THE '211 PATENT

54. The allegations of paragraph 54 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54, and therefore denies them.

55. The allegations of paragraph 55 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55, and therefore denies them.

56. The allegations of paragraph 56 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56, and therefore denies them.

57. The allegations of paragraph 57 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 57, and therefore denies them.

58. The allegations of paragraph 58 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 58, and therefore denies them.

59. The allegations of paragraph 59 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 59, and therefore denies them.

60. The allegations of paragraph 60 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 60, and therefore denies them.

61. The allegations of paragraph 61 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 61, and therefore denies them.

62. The allegations of paragraph 62 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 62, and therefore denies them.

63. The allegations of paragraph 63 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 63, and therefore denies them.

64. The allegations of paragraph 64 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 64, and therefore denies them.

65. The allegations of paragraph 65 are not directed to Alcatel-Lucent, and therefore no response is required. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 65, and therefore denies them.

66. To the extent paragraph 66 contains allegations directed to Alcatel-Lucent, those allegations are denied. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 66, and therefore denies them.

67. To the extent paragraph 67 contains allegations directed to Alcatel-Lucent, those allegations are denied. Alcatel-Lucent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 67, and therefore denies them.

68. Paragraph 68 expressly contains no allegation and therefore no response is required. Alcatel-Lucent denies that Wi-LAN may properly “reserve the right” to make

allegations in the future. To the extent that paragraph 68 is construed to contain any allegation directed to Alcatel-Lucent, it is denied.

DEMAND FOR JURY TRIAL

This paragraph sets forth Wi-LAN's request for a trial by jury of any and all issues triable of right before a jury to which no response is required.

ANSWER TO PRAYER FOR RELIEF

Alcatel-Lucent denies that Wi-LAN is entitled to any relief. Alcatel-Lucent further denies each and every allegation in the Complaint to which it has not specifically responded.

AFFIRMATIVE DEFENSES

Subject to the responses above, Alcatel-Lucent alleges and asserts the following defenses in response to the allegations, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein.

1. Alcatel-Lucent does not infringe and has not infringed, either directly or indirectly, any valid and enforceable claim of the '326, '327, or '819 patents (and, if asserted against Alcatel-Lucent, the '211 patent), either literally or under the doctrine of equivalents.

2. The claims of the '326, 327, and '819 patents (and, if asserted against Alcatel-Lucent, the '211 patent) are invalid for failure to satisfy one or more of the requirements of 35 U.S.C. §§ 1 *et seq.*, including 35 U.S.C. §§ 101, 102, 103 and 112.

3. Wi-LAN is estopped, based on statements, representations, and admissions made during prosecution of the applications that led to the '326, '327, and '819 patents (and, if asserted against Alcatel-Lucent, the '211 patent) from asserting any interpretation of the claims of those patents that would be broad enough to cover any of Alcatel-Lucent's products or methods alleged to infringe those patents, either literally or under the doctrine of equivalents.

4. Wi-LAN's claims are barred, in whole in part, by the doctrine of laches, estoppel, and/or waiver.

5. Wi-LAN cannot satisfy the requirements applicable to its request for injunctive relief and has an adequate remedy at law.

6. Wi-LAN's alleged damages are limited because it has not satisfied the requirements of obtaining damages under 35 U.S.C. § 287, and the limitations period further bars past damages claims.

COUNTERCLAIMS

Alcatel-Lucent, for its Counterclaims against Wi-LAN states as follows:

THE PARTIES

1. Defendant Alcatel-Lucent USA Inc. ("Alcatel-Lucent") is a Delaware corporation organized and existing under the laws of the State of Delaware with its principal place of business at 600-700 Mountain Avenue, Murray Hill, New Jersey 07974.

2. On information and belief, Plaintiff Wi-LAN Inc. is a corporation organized and existing under the laws of Canada with its principal place of business at 11 Holland Avenue, Suite 608, Ottawa, Ontario, Canada.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of these Counterclaims under, without limitation, 28 U.S.C. §§ 1331, 1367, 1338(a), 2201, and 2202, and venue for these Counterclaims is proper in this district.

4. This Court has personal jurisdiction over Wi-LAN.

COUNT ONE

Declaratory Judgment of Noninfringement of U.S. Patent No. 6,088,326

5. Alcatel-Lucent restates and incorporates by reference its allegations in paragraphs 1 through 4 of its Counterclaims.

6. By virtue of the Complaint in this action and Alcatel-Lucent's Answer above, an actual case or controversy exists between Wi-LAN and Alcatel-Lucent regarding the issue of noninfringement of U.S. Patent No. 6,088,326 ("the '326 patent").

7. A judicial determination is necessary and appropriate so that Alcatel-Lucent may ascertain its rights regarding the '326 patent.

8. Alcatel-Lucent has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '326 patent, either literally or under the doctrine of equivalents.

COUNT TWO

Declaratory Judgment of Invalidity of U.S. Patent No. 6,088,326

9. Alcatel-Lucent restates and incorporates by reference its allegations in paragraphs 1 through 8 of its Counterclaims.

10. By virtue of the Complaint in this action and Alcatel-Lucent's Answer above, an actual case or controversy exists between Wi-LAN and Alcatel-Lucent regarding the issue of invalidity of the '326 patent.

11. A judicial determination is necessary and appropriate so that Alcatel-Lucent may ascertain its rights regarding the '326 patent.

12. The '326 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 1 *et seq.*, including 35 U.S.C. §§ 101, 102, 103 and 112.

COUNT THREE

Declaratory Judgment of Noninfringement of U.S. Patent No. 6,195,327

13. Alcatel-Lucent restates and incorporates by reference its allegations in paragraphs 1 through 12 of its Counterclaims.

14. By virtue of the Complaint in this action and Alcatel-Lucent's Answer above, an actual case or controversy exists between Wi-LAN and Alcatel-Lucent regarding the issue of noninfringement of U.S. Patent No. 6,195,327 ("the '327 patent").

15. A judicial determination is necessary and appropriate so that Alcatel-Lucent may ascertain its rights regarding the '327 patent.

16. Alcatel-Lucent has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '327 patent, either literally or under the doctrine of equivalents.

COUNT FOUR

Declaratory Judgment of Invalidity of U.S. Patent No. 6,195,327

17. Alcatel-Lucent restates and incorporates by reference its allegations in paragraphs 1 through 16 of its Counterclaims.

18. By virtue of the Complaint in this action and Alcatel-Lucent's Answer above, an actual case or controversy exists between Wi-LAN and Alcatel-Lucent regarding the issue of invalidity of the '327 patent.

19. A judicial determination is necessary and appropriate so that Alcatel-Lucent may ascertain its rights regarding the '327 patent.

20. The '327 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 1 *et seq.*, including 35 U.S.C. §§ 101, 102, 103 and 112.

COUNT FIVE

Declaratory Judgment of Noninfringement of U.S. Patent No. 6,222,819

21. Alcatel-Lucent restates and incorporates by reference its allegations in paragraphs 1 through 20 of its Counterclaims.

22. By virtue of the Complaint in this action and Alcatel-Lucent's Answer above, an actual case or controversy exists between Wi-LAN and Alcatel-Lucent regarding the issue of noninfringement of U.S. Patent No. 6,222,819 ("the '819 patent").

23. A judicial determination is necessary and appropriate so that Alcatel-Lucent may ascertain its rights regarding the '819 patent.

24. Alcatel-Lucent has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '819 patent, either literally or under the doctrine of equivalents.

COUNT SIX

Declaratory Judgment of Invalidity of U.S. Patent No. 6,222,819

25. Alcatel-Lucent restates and incorporates by reference its allegations in paragraphs 1 through 24 of its Counterclaims.

26. By virtue of the Complaint in this action and Alcatel-Lucent's Answer above, an actual case or controversy exists between Wi-LAN and Alcatel-Lucent regarding the issue of invalidity of the '819 patent.

27. A judicial determination is necessary and appropriate so that Alcatel-Lucent may ascertain its rights regarding the '819 patent.

28. The '819 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 1 *et seq.*, including 35 U.S.C. §§ 101, 102, 103 and 112.

PRAYER FOR RELIEF

WHEREFORE, Alcatel-Lucent prays for judgment as follows:

- a. A judgment dismissing Wi-LAN's Complaint against Alcatel-Lucent with prejudice;
- b. A judgment in favor of Alcatel-Lucent on all its Counterclaims;
- c. A declaration that Alcatel-Lucent has not infringed, either directly or indirectly, any valid and enforceable claim of the '326, '327, and '819 patents;
- d. A declaration that the '326, '327, and '819 patents are invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 101, 102, 103, and 112;
- e. An order declaring this to be an exceptional case under 35 U.S.C. § 285 and requiring Wi-LAN to pay Alcatel-Lucent's attorneys' fees and expenses;
- f. A judgment limiting or barring Wi-LAN's ability to enforce the '326, '327, and '819 patents in equity;
- g. Such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Under Rule 38 of the Federal Rules of Civil Procedure, Alcatel-Lucent hereby demands a trial by jury for all triable issues in Wi-LAN's Complaint and Alcatel-Lucent's Answer and Counterclaims.

Dated: January 3, 2011

Respectfully submitted,

/s/ Michael E. Jones
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on January 3, 2011. Any other counsel of record will be served by First Class U.S. mail on this same date.

/s/ Michael E. Jones _____