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7	ALIPHCOM		
8	UNITED STATES DI	STRICT (COURT
9	NORTHERN DISTRICT	OF CAL	IFORNIA
10	SAN FRANCISCO	O DIVISI	ON
11			
12	ALIPHCOM, a California corporation,	Case	No. 3:10-cv-02337-SI
13	Plaintiff,		T AMENDED COMPLAINT
14	v.	OF PA	DECLARATORY JUDGMENT ATENT INVALIDITY,
15	WI-LAN, INC., a Canadian corporation,		INFRINGEMENT, AND NFORCEABILITY
16	Defendant.	DEV	IAND FOR JURY TRIAL
17			IAND FOR JURI TRIAL
18	Plaintiff Aliphcom ("Aliph"), for its First An	mended C	Complaint for Declaratory Judgment
19	of Patent Invalidity, Noninfringement, and Unenfor	ceability (("Complaint") against Defendant
20	Wi-LAN, Inc. ("Wi-LAN"), hereby demands a jury	trial and	alleges as follows:
21	NATURE OF TH	IE ACTI	ON
22	1. This is an action for declaratory ju	dgment o	f invalidity, noninfringement, and
23	unenforceability of two United States patents pursuant to the Declaratory Judgment Act, 28		
24	U.S.C. §§ 2201-02, and the Patent Laws of the United States, 35 U.S.C. § 100 et seq., and for		
25	such other relief as the Court deems just and proper.		
26			
27			
28			
	FIRST AMENDED COMPLAINT FOR DECLARATORY JU Case No. 3:10-cv-02337-SI pa-1407372	UDGMENT	

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1	PARTIES
2	2. Plaintiff Aliph is a corporation organized and existing under the laws of the
3	State of California, with its principal place of business at 99 Rhode Island Street, Third Floor,
4	San Francisco, CA 94103.
5	3. On information and belief, Defendant Wi-LAN is a corporation organized and
6	existing under the laws of Canada, with its principal place of business at 11 Holland Avenue,
7	Suite 608, Ottawa, Ontario, Canada. As alleged herein, Wi-LAN has engaged in various acts
8	in and directed to California.
9	JURISDICTION
10	4. This Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C.
11	§§ 1331, 1338(a), 1367, 2201 and 2202, and the Patent Laws of the United States, 35 U.S.C.
12	§ 1 <i>et seq</i> .
13	5. On information and belief, this Court has personal jurisdiction over Wi-LAN
14	because Wi-LAN has constitutionally sufficient contacts with California so as to make personal
15	jurisdiction proper in this Court.
16	6. This Court may declare the rights and other legal relations of the parties
17	pursuant to 28 U.S.C. §§ 2201 and 2202 because this is a case of actual controversy within the
18	Court's jurisdiction seeking a declaratory judgment that the Wi-LAN patents are invalid,
19	unenforceable, and not infringed by Aliph.
20	VENUE
21	7. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400. Aliph has
22	suffered harm in this district, and a substantial part of the events giving rise to the claims
23	alleged herein occurred in this judicial district.
24	INTRADISTRICT ASSIGNMENT
25	8. This action includes patent-based declaratory judgment claims arising in
26	connection with conduct occurring in or directed to San Francisco County. Moreover, Aliph's
27	headquarters is located in San Francisco, and Aliph employees with a knowledge of the
28	
	FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT2Case No. 3:10-cv-02337-SIpa-1407372

1	products likely to be at issue in this litigation are located in San Francisco. Accordingly,	
2	pursuant to Local Rule 3-2(c), assignment to the San Francisco Division is appropriate.	
3	GENERAL ALLEGATIONS	
4	9. Since its founding in 1999, Aliph has revolutionized mobile audio Bluetooth [®]	
5	products through its innovative technology and design. Aliph was the first company to	
6	successfully introduce noise-suppression technology to the market due to its expertise in	
7	producing and designing earwear. Indeed, Aliph's noise-suppression technology has allowed it	
8	to become the leader in the Bluetooth [®] headset market with its Jawbone [®] product line.	
9	10. Wi-LAN purports to own U.S. Patent No. 5,515,369 ("the '369 patent"), entitled	
10	"Method for Frequency Sharing and Frequency Punchout in Frequency Hopping	
11	Communications Network," a copy of which is attached as Exhibit A.	
12	11. Wi-LAN also purports to own U.S. Patent No. 6,549,759 ("the '759 patent"),	
13	entitled "Asymmetric Adaptive Modulation in a Wireless Communication System," a copy of	
14	which is attached hereto as Exhibit B.	
15	12. On information and belief, Wi-LAN acquired the rights to the '369 and '759	
16	patents with the intent to bring suit against other parties, including Aliph. On information and	
17	belief, Wi-LAN currently has no business activity other than the bringing of patent litigation	
18	and licensing of patents.	
19	13. On May 20, 2010, Wi-LAN sent Aliph's Chief Executive Officer, Hosain	
20	Rahman, a cease and desist letter, alleging that Aliph's importation, manufacture, use, offers	
21	for sale, and sales of the Jawbone [®] Icon [®] and Jawbone [®] Earcandy [®] products, and potentially	
22	other Aliph Bluetooth [®] products, infringe Wi-LAN's '369 and '759 patents. In its letter, Wi-	
23	LAN stated that Aliph "requires a license" to Wi-LAN's patents, and if no license were taken,	
24	threatened to "do what is required to protect our patent rights."	
25	14. On information and belief, during prosecution of the '759 patent, the applicants	
26	were aware of prior art that they knew was material to patentability, including prior public	
27	disclosures material to patentability that they deliberately failed to properly disclose to the	
28	USPTO with intent to deceive.	
	FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT3Case No. 3:10-cv-02337-SIpa-1407372	

1	15. For example, on or around July 7, 2000, a document entitled "Media Access	
2	Control Layer Proposal for the 802.16.1 Air Interface Specification" was submitted to the	
3	802.16 MAC Subgroup by Glen Slater, of Motorola, and Kenneth L. Stanwood, of Ensemble	
4	Corporation. Kenneth L. Stanwood is a named inventor on the '759 patent.	
5	16. Wi-LAN has asserted the '369 and '759 patents and filed suit against numerous	
6	other companies alleging infringement of these patents, made public statements regarding the	
7	alleged applicability of its patents to Bluetooth [®] products, and has confirmed its willingness	
8	and ability to file suit.	
9	17. Aliph has not infringed, and does not infringe, either directly or under the	
10	doctrine of equivalents, one or more valid and enforceable claims of the '369 or '759 patents.	
11	18. Aliph denies that the '369 and '759 patents are valid or enforceable.	
12	19. By virtue of these acts, an actual and justiciable controversy exists between the	
13	parties concerning the validity and enforceability of the '369 and '759 patents and concerning	
14	Plaintiff's liability for alleged infringement of any valid claim thereof. Plaintiff now seeks a	
15	declaratory judgment of noninfringement, invalidity and unenforceability of the '369 and '759	
16	patents.	
17	COUNT I	
18	Declaratory Judgment of Invalidity of the '369 Patent	
19	20. Aliph incorporates by reference, as though fully set forth herein, the allegations	
20	contained in paragraphs 1-19 of this Complaint.	
21	21. Each claim of the '369 patent is invalid for failure to meet the conditions of	
22	patentability and/or otherwise comply with one of more of the requirements of Title 35, United	
23	States Code, including, but not limited to, 35 U.S.C. §§ 100 et seq., 101, 102, 103, 112 and/or	
24	132.	
25	COUNT II	
26	Declaratory Judgment of Invalidity of the '759 Patent	
27	22. Aliph incorporates by reference, as though fully set forth herein, the allegations	
28	contained in paragraphs 1-21 of this Complaint.	
	FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT4Case No. 3:10-cv-02337-SIpa-1407372	

1	23. Each claim of the '759 patent is invalid for failure to meet the conditions of		
2	patentability and/or otherwise comply with one of more of the requirements of Title 35, United		
3	States Code, including, but not limited to, 35 U.S.C. §§ 100 et seq., 101, 102, 103, 112 and/or		
4	132.		
5	COUNT III		
6	Declaratory Judgment of Noninfringement of the '369 Patent		
7	24. Aliph incorporates by reference, as though fully set forth herein, the allegations		
8	contained in paragraphs 1-23 of this Complaint.		
9	25. Aliph has not directly infringed, contributed to the infringement of, or induced		
10	others to infringe, one or more valid and enforceable claims of the '369 patent either literally or		
11	under the doctrine of equivalents.		
12	26. Aliph has not willfully infringed one or more claims of the '369 patent.		
13	27. As a result of the acts described in the foregoing paragraphs, there exists a		
14	substantial controversy of sufficient immediacy and reality to warrant the issuance of a		
15	declaratory judgment.		
16	28. A judicial declaration is necessary and appropriate so that Aliph may ascertain		
17	its rights regarding the '369 patent.		
18	COUNT IV		
19	Declaratory Judgment of Noninfringement of the '759 Patent		
20	29. Aliph incorporates by reference, as though fully set forth herein, the allegations		
21	contained in paragraphs 1-28 of this Complaint.		
22	30. Aliph has not directly infringed, contributed to the infringement of, or induced		
23	others to infringe, one or more valid and enforceable claims of the '759 patent either literally or		
24	under the doctrine of equivalents.		
25	31. Aliph has not willfully infringed one or more claim of the '759 patent.		
26	32. As a result of the acts described in the foregoing paragraphs, there exists a		
27	substantial controversy of sufficient immediacy and reality to warrant the issuance of a		
28	declaratory judgment.		
	FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT5Case No. 3:10-cv-02337-SIpa-1407372		

1 33. A judicial declaration is necessary and appropriate so that Aliph may ascertain its rights regarding the '759 patent. 3 COUNT V 4 Declaratory Judgment of Unenforceability of the '759 Patent 5 34. Aliph incorporates by reference, as though fully set forth herein, the allegations 6 contained in paragraphs 1-33 of this Complaint. 7 35. The '759 patent is unenforceable because individuals subject to the duty of 8 candor under 37 C.F.R. 1.56 ("Applicants") engaged in inequitable conduct by withholding or 9 misstating material information with intent to deceive the United States Patent and Trademark 10 Office ("USPTO") during prosecution of the '759 patent. 11 36. During prosecution of the '759 patent. Applicants were aware of prior art that 12 they knew was material to patentability, including prior public disclosures material to 13 patentability that they deliberately failed to properly disclose to the USPTO with intent to 14 deceive. 37. For example, on or around July 7, 2000, a document entitled "Media Access 16 Control Layer Proposal for the 802.16.1 Air Interface Specification" was submitted to the 17 38. Applicants' public disclosures, including those described above, were material 18 to the patentability of the application	Ca	se 2:10-cv-00498-TJW Document 11 Filed 07/01/10 Page 6 of 7 PageID #: 61
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27 declaratory judgment.	25	39. As a result of the acts described in the foregoing paragraphs, there exists a
	26	substantial controversy of sufficient immediacy and reality to warrant the issuance of a
28	27	declaratory judgment.
	28	

1	1 40. A judicial declaration is necessary and appropriate so that Ali	ph may ascertain	
2	its rights regarding the '759 patent.		
3	3		
4	4 PRAYER FOR RELIEF		
5	WHEREFORE, Aliph respectfully requests:		
6	A. A Declaratory Judgment that each of the claims of the '369 pater	nt is invalid;	
7	B. A Declaratory Judgment that each of the claims of the '759 pater	nt is invalid;	
8	C. A Declaratory Judgment that Aliph, does not infringe, contribut	e to the	
9	infringement of, induce the infringement of, or willfully infringe, one or more c	laim of the '369	
10	D patent;		
11	D. A Declaratory Judgment that Aliph, does not infringe, contribute	e to the	
12	infringement of, induce the infringement of, or willfully infringe, one or more claim of the '759		
13	3 patent;		
14	E. A Declaratory Judgment that each claim of the '759 patent is un	enforceable due to	
15	5 inequitable conduct;		
16	F. A declaration that this case is exceptional and an award to Aliph	of its reasonable	
17	costs and expenses of litigation, including attorneys' fees and expert witness fee	28;	
18	G. For plaintiff's costs in this action; and		
19	H. Such further relief as the Court may deem just and proper.		
20	Dated: July 1, 2010 ERIC S. WALTERS ERIKA L. YAWGER		
21	1 MORRISON & FOERSTER LLP		
22			
23	ERIC S. WALTERS		
24	ALIPHCOM		
25			
26			
27			
28	5 FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT Case No. 3:10-cv-02337-SI pa-1407372	7	