

1 Ryan E. Hatch (SBN 235577)
2 ryan@hatchlaw.com
3 HATCH LAW PC
4 13323 Washington Blvd., Suite #302
5 Los Angeles, CA 90066
6 Tel: 310-279-5076
7 Fax: 310-693-5328

8 *(additional counsel listed on next page)*

9 **Attorneys for Plaintiffs**
10 **Wi-LAN Inc., Wi-LAN USA, Inc. and**
11 **Wi-LAN Labs, Inc.**

12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 WI-LAN INC., WI-LAN USA, INC., and
16 WI-LAN LABS, INC.,

17 Plaintiffs,

18 vs.

19 HUIZHOU TCL MOBILE
20 COMMUNICATION CO. LTD., TCT
21 MOBILE (US) INC., and TCL MOBILE
22 COMMUNICATION (HK) CO., LTD.,

23 Defendants.

Case No.: 8:19-cv-00870 JVS (ADSx)

24 **SECOND AMENDED COMPLAINT**
25 **FOR PATENT INFRINGEMENT**
26 **DEMAND FOR JURY TRIAL**
27
28

1 Edward R. Nelson III (Admitted *Pro Hac Vice*)
2 ed@nelbum.com

3 John P. Murphy (Admitted *Pro Hac Vice*)
4 murphy@nelbum.com

5 Robert A. Delafield II (Admitted *Pro Hac Vice*)
6 bobby@nelbum.com

7 **NELSON BUMGARDNER CONROY PC**
8 3131 West 7th Street, Suite 300
9 Fort Worth, Texas 76107
10 Telephone: (817) 377-9111

11 Ryan P. Griffin (Admitted *Pro Hac Vice*)
12 ryan@nelbum.com

13 Jonathan H. Rastegar (Admitted *Pro Hac Vice*)
14 jon@nelbum.com

15 **NELSON BUMGARDNER CONROY PC**
16 2727 N. Harwood Street, Suite 250
17 Dallas, Texas 75201
18 Telephone: (214) 446-4956

19 **Attorneys for Plaintiffs**
20 **Wi-LAN Inc., Wi-LAN USA, Inc., and**
21 **Wi-LAN Labs, Inc.**
22
23
24
25
26
27
28

1 Plaintiffs Wi-LAN Inc., Wi-LAN USA, Inc., and Wi-LAN Labs, Inc.
2 (collectively, “Plaintiffs” or “Wi-LAN”) hereby submit this Second Amended
3 Complaint against Defendants Huizhou TCL Mobile Communication Co. Ltd., TCT
4 Mobile (US) Inc., and TCL Mobile Communication (HK) Co., Ltd. (collectively,
5 “TCL” or “Defendants”).
6

7 **NATURE OF ACTION**

8 1. This is an action for infringement of U.S. Patent Nos. 8,817,805 (“the
9 ’805 Patent”) and 9,854,577 (“the ’577 Patent”) (collectively, the “patents-in-suit”).
10 A true and correct copy of the ’805 Patent is attached as Exhibit A. A true and correct
11 copy of the ’577 Patent is attached as Exhibit B.
12

13 2. TCL filed *Ex Parte* Reexamination Request No. 90/014,588 against the
14 ’805 Patent on October 5, 2020. The United States Patent and Trademark Office
15 (“USPTO”) confirmed the patentability of claims 12 and 17. A true and correct copy
16 of the *Ex Parte* Reexamination Certificate for the ’805 Patent, issued on September 1,
17 2023, is attached as Exhibit C.
18

19 3. TCL filed *Ex Parte* Reexamination Request No. 90/014,587 against the
20 ’577 Patent on October 5, 2020. The United States Patent and Trademark Office
21 (“USPTO”) confirmed the patentability of claims 1-22. A true and correct copy of the
22 *Ex Parte* Reexamination Certificate for the ’577 Patent, issued on August 15, 2023, is
23 attached as Exhibit D.
24

25 4. U.S. Patent No. 8,259,688 has been severed into its own case, which is
26 stayed pending the outcome of *Ex Parte* Reexamination Request No. 90/019,259 filed
27 by TCL on September 26, 2023. *See* ECF 115.
28

THE PARTIES

1
2 5. Plaintiff Wi-LAN Inc. is a corporation organized and existing under the
3 laws of Canada, with a Canadian Corporation Number of 854057-8 and Business
4 Number (BN) of 811594530RC0001. Its principal place of business is 1891 Robertson
5 Road, Suite 100, Ottawa, ON, K2H 5B7, Canada.
6

7 6. Plaintiff Wi-LAN USA, Inc. is a corporation organized and existing
8 under the laws of Florida, with its principal executive office at 1891 Robertson Road,
9 Suite 100, Ottawa, ON, K2H 5B7, Canada, and a principal business office at 600
10 Anton Blvd., Suite 1350, Costa Mesa, California, 92626.
11

12 7. Plaintiff Wi-LAN Labs, Inc. is a corporation organized and existing
13 under the laws of Delaware, with its principal executive office at 1891 Robertson
14 Road, Suite 100, Ottawa, ON, K2H 5B7, Canada, and a principal business office at
15 5962 La Place Court, Suite 265, Carlsbad, California, 92008.
16

17 8. Defendant Huizhou TCL Mobile Communication Co. Ltd. is a company
18 organized and existing under the laws of China with its principal place of business at
19 No. 86 Hechang Qi Lu Xi, Zhongkai Gaoxin District, Huizhou City, Guangdong
20 Province, P.R. China.
21

22 9. Defendant TCT Mobile (US) Inc. is a corporation organized and existing
23 under the laws of Delaware, with its principal place of business at 25 Edelman, Suite
24 200, Irvine, California, 92618. TCT Mobile (US) Inc. can be served with process
25 through its registered agent for service of process – Corporation Service Company
26 (d/b/a as CSC – Lawyers Incorporating Service) at 2710 Gateway Oaks Drive, Suite
27 150N, Sacramento, California, 95833.
28

1 10. Defendant TCL Mobile Communication (HK) Co., Ltd. has been
2 identified by TCL's counsel as a TCL entity relevant to this action. TCL Mobile
3 Communication (HK) Co., Ltd. has agreed to be served with process through its
4 counsel, Perkins Coie LLP at 11452 El Camino Real, Suite 300, San Diego, CA
5 92130.
6

7 **JURISDICTION AND VENUE**

8 11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331
9 and 1338(a) because this action arises under the patent laws of the United States, 35
10 U.S.C. §§ 1 *et seq.*, including but not limited to, 35 U.S.C. § 271.
11

12 12. Each TCL Defendant is subject to this Court's specific and general
13 personal jurisdiction pursuant to due process and/or the California Long Arm Statute,
14 Cal. Code Civ. Proc § 410.10, due at least to its substantial business conducted in this
15 State and this District, including: (i) having solicited business in the State of California
16 and this District, having transacted business within the State of California and this
17 District, and having attempted to derive financial benefit from residents of the State
18 of California and this District, including benefits directly related to the instant patent
19 infringement causes of action set forth herein; (ii) having placed its products and
20 services into the stream of commerce throughout the United States and having been
21 actively engaged in transacting business in the State of California and this District,
22 and (iii) having committed the complained of tortious acts in the state of California
23 and this District.
24

25 13. TCL, directly and/or through subsidiaries and agents (including
26 distributors, retailers, and others), makes, imports, ships, distributes, offers for sale,
27 sells, uses, and advertises (including offering products and services through its website
28

1 as well as other retailers) its products and/or services in the United States, the State of
2 California and the Central District of California.

3 14. TCL, directly and/or through its subsidiaries and agents (including
4 distributors, retailers, and others), has purposefully and voluntarily placed one or more
5 of its infringing products and/or services, as described below, into the stream of
6 commerce with the expectation that they will be purchased and used by consumers in
7 the Central District of California. These infringing products and/or services have been
8 and continue to be purchased and used by consumers in the Central District of
9 California. TCL has committed acts of patent infringement within the State of
10 California and, more particularly, within the Central District of California as
11 evidenced by its principal place of business being located in the Central District of
12 California at 25 Edelman, Suite 200, Irvine, California, 92618.

13
14
15 15. This Court's exercise of personal jurisdiction over TCL is consistent with
16 the California Long Arm Statute, Cal. Code Civ. Proc § 410.10, and traditional notions
17 of fair play and substantial justice.

18
19 16. Venue is proper under 28 U.S.C. § 1400(b) because, *inter alia*, Defendant
20 TCT Mobile (US) Inc. maintains a regular and established place of business in this
21 District and has committed and continues to commit acts of patent infringement in this
22 District and in the State of California generally. Venue is proper as to Defendants
23 Huizhou TCL Mobile Communication Co. Ltd. and TCL Mobile Communication
24 (HK) Co., Ltd., which are resident in foreign countries, under 28 U.S.C. § 1391(c)(3),
25 which provides that "a defendant not resident in the United States may be sued in any
26 judicial district, and the joinder of such a defendant shall be disregarded in
27 determining where the action may be brought with respect to other defendants."
28

1 17. Joinder of Defendants is proper under 28 U.S.C. § 299(a) because they
2 are related parties which are jointly or severally liable for infringement, or which
3 make, use, sell, offer for sale, or import the same or similar accused products that
4 practice the same features and/or standards with respect to or arising out of the same
5 transaction, occurrence, or series of transactions relating to infringement, with
6 questions of fact common to them all.
7

8 **BACKGROUND OF THE TECHNOLOGY**

9 18. Wi-LAN Labs, Inc. developed advanced 4G technologies and products
10 for Wi-LAN and others in the wireless industry that enhance the capacity, quality of
11 user experience, and connectivity of 4G (and next generation 5G) mobile devices and
12 networks.
13

14 19. The inventions disclosed in the '577 Patent and numerous other 4G
15 patents were developed by Ken Stanwood and his team at Ensemble Communications
16 ("Ensemble") and Nextwave Communications ("Nextwave"). Mr. Stanwood is
17 currently the president of Wi-LAN Labs, Inc. and CTO at Wi-LAN Inc.
18

19 20. Mr. Stanwood has played a leadership role in the development of 4G
20 technologies and standards for more than a decade, starting with the industry's first
21 major 4G cellular initiative, referred to as WiMAX. He served as Vice Chair of the
22 IEEE 802.16 standards committee for WiMAX from 2003-2006 and as a principal
23 contributor to the original IEEE 802.16 standard for 4G cellular networks and mobile
24 devices.
25

26 21. Mr. Stanwood has written extensively on 4G technologies, including
27 coauthoring a popular textbook on the subject, and has been awarded 149 U.S. patents,
28 with many more patent applications currently pending before the United States Patent

1 Office and other patent offices around the world, many of which relate to 4G
2 technologies.

3 22. Like Ken Stanwood, Wi-LAN's founders, Michel Fattouche and Hatim
4 Zaghoul, are widely recognized and acknowledged as wireless industry pioneers.
5 Their technologies, patents, and writings have been cited in patents and publications
6 written by thousands of engineers and scientists in the wireless industry.
7

8 23. Wi-LAN's founders developed key cellular "data" technologies,
9 including the W-OFDM air interface, to enable data to be exchanged at desktop speeds
10 over a wireless channel, such as in Wi-Fi networks, or from mobile devices in 4G
11 cellular networks. Wi-LAN's technologies have made Wi-Fi and 4G in mobile devices
12 possible.¹
13

14 24. The Wi-LAN success story is featured in major publications worldwide,
15 including in such publications as *Scientific American*² and *Time Magazine*,³ and in
16 many others. Wi-LAN and its founders have also been the subject of numerous
17

18
19 ¹ See, e.g., *Ergen, Mustafa, Mobile Broadband: Including WiMAX and LTE*, John Wiley
20 & Sons, 2009 at p. 110, Section 4.1 "Principles of OFDM: Introduction" (recognizing
21 one of Wi-LAN's first patents, U.S. Patent No. 5,282,222, to WOFDM as a major
22 milestone in the development of Wi-Fi and 4G technologies, turning a single lane
23 wireless communication channel into a multi-lane super highway, and enabling mobile
24 devices to transmit and receive data at desktop speeds).

25 ² *The Future of Wireless, Scientific American*, October 2000 at p. 57 ("To date, wireless
26 multiplexing hasn't been exploited for cellular systems That may change soon . .
27 . . Wi-LAN holds a number of key patents for multiplexing technology known as
28 wideband orthogonal frequency division multiplexing, or WOFDM").

³ *Wi-LAN Shows How to be Successful-and Canadian-in the Global Economy, Time Magazine*, April 3, 2000.

1 industry awards for their wireless innovations, and for their contribution to the growth
2 in wireless data capability present in today’s smartphones, tablets, and other mobile
3 devices.

4 25. One of Wi-LAN’s co-founders is featured in one of Canada’s leading
5 business publications as among the Top 100 Canadians of the 20th century for Wi-
6 LAN’s wireless innovations.⁴ Wi-LAN’s original wireless designs and first wireless
7 mobile device have been displayed in the Canadian equivalent of the Smithsonian
8 Institution.

9
10 26. Enabling high-speed wireless data capability in mobile devices was no
11 small task; it posed incredible challenges—something taken for granted today with
12 desktop speeds now standard in 4G mobile devices.

13
14 27. Over the years, Wi-LAN and their predecessors have invested hundreds
15 of millions of dollars in developing, making, and selling many of the world’s first
16 fixed and mobile devices capable of transmitting and receiving wireless data at
17 desktop speeds.

18 28. Wi-LAN’s products which had 4G data speeds include, among others,
19 the I.WILL, BWS 300, LIBRA 3000, LIBRA 5800, LIBRA MX, and the LIBRA
20 Mobilis.

21
22 29. Wi-LAN was the first company in the world to build Wi-Fi and 4G data
23 speeds into mobile devices, with speeds reaching up to 100 megabits per second
24

25
26 ⁴ Great Canadians, *Maclean’s*, July 1, 2000 (“Riding the wave of invention ... Wi-LAN
27 is one of those next generation companies. Its technology may well become the base
28 for what some call the coming wireless revolution: the ability to e-mail, surf the Net,
adjust the lights in your home and order theater tickets from a cellphone or handheld
computer.”).

1 (Mbps), and it did so a decade before 4G would become the standard in the wireless
2 industry that it is today.

3 30. A number of Wi-LAN's advanced 4G technologies have their origin in
4 work started by Wi-LAN's Ken Stanwood and his team while at Ensemble, a San
5 Diego company that Mr. Stanwood helped grow (then, as Ensemble's Chief
6 Technology Officer) to over 200 engineers, scientists, and support personnel.
7

8 31. Others of Wi-LAN's advanced 4G technologies have their origin in work
9 created at NextWave, another San Diego company where Mr. Stanwood served as a
10 Vice President. Other technologies were first developed at SOMA Networks, a
11 California-based company involved in 4G technologies.
12

13 32. The advanced 4G technologies developed by Mr. Stanwood and his team
14 were employed in the network stacks utilizing the 4G WiMAX cellular standard, and
15 were subsequently adopted for use in the network stacks utilizing the 4G LTE cellular
16 standard used in today's 4G mobile devices.

17 33. These advanced 4G technologies include:

18 (i) the bandwidth-on-demand and periodic bandwidth services built into 4G
19 mobile devices to enable apps installed on such devices to have the bandwidth they
20 need, when they need it, in real-time;
21

22 (ii) the quality-of-service functions built into 4G mobile devices to enable
23 mobile devices to prioritize the services that have the most pressing need for
24 bandwidth;
25

26 (iii) the handoff functionality built into 4G mobile devices to identify particular
27 devices and use pre-allocated codes to respond faster to requests from mobile devices;
28

and

1 (iv) the carrier aggregation functionality built into 4G mobile devices to receive
2 data from more than one carrier, which increases the amount of data that the 4G mobile
3 devices can receive from the cellular network.

4 34. The efforts of Mr. Stanwood and other Wi-LAN inventors in developing
5 these advanced 4G technologies have enabled 4G mobile devices to support a variety
6 of services popular among users of Defendants' 4G LTE mobile devices, such as
7 voice, conversational video, live streaming of video and music, real-time gaming,
8 video and photo sharing, email, and instant messaging, all in the palm of your hand.

9 35. Wi-LAN's wireless technologies and patents, including its advanced 4G
10 technologies, have been licensed by a substantial number of companies in the wireless
11 industry, comprising more than 130 companies.

12 36. Defendants' infringement gives them an unfair advantage over their
13 competitors, many of whom have chosen to do the right thing and license their use of
14 Wi-LAN's wireless technologies and patents. Many of Defendants' major competitors
15 in the mobile device industry, including Apple, Samsung, ZTE, Nokia, and Kyocera
16 have licensed Wi-LAN's wireless technologies and patents.

17 37. Wi-LAN has made numerous efforts to license the unauthorized use of
18 its wireless technologies by Defendants, but Defendants have consistently refused to
19 acquire a license, choosing instead to use Wi-LAN's 4G technologies without paying
20 for that right.

21 38. Defendants have chosen to disrespect the intellectual property of Wi-
22 LAN, including the 4G patents asserted in this action directed to Wi-LAN's advanced
23 4G technologies, and it does so despite understanding the importance of intellectual
24 property.

1 39. Before initiating litigation, Wi-LAN made substantial efforts to license
2 Defendants' use of Wi-LAN's advanced 4G technologies and patents in their 4G LTE
3 mobile devices, expecting that Defendants would proceed in good faith.

4 40. In the spring of 2015, Wi-LAN contacted Defendants to engage in
5 licensing discussions of Wi-LAN's LTE and 4G wireless technology, including the
6 '805 Patent. Despite Wi-LAN's repeated efforts, including numerous follow-up
7 letters, Defendants ignored Wi-LAN's requests to engage in license discussions of
8 Wi-LAN's patents.

9 41. Defendants' actions have forced Wi-LAN's hand, leaving it with no
10 choice but to protect its intellectual property through litigation.

11
12 **ACCUSED PRODUCTS**

13 42. With respect to the '805 Patent, the '805 Accused 4G LTE Devices are
14 devices that that support LTE (e.g., any device capable of sending and receiving
15 information over an LTE network, such as the LTE networks operated by AT&T,
16 Verizon, T-Mobile, and Sprint). The '805 Accused 4G LTE Devices include, but are
17 not limited to, devices under the TCL brand, Blackberry brand, Alcatel brand, and/or
18 OneTouch brand that support LTE. The '805 Accused 4G LTE Devices shall also
19 include any devices that comply, operate in accordance with, and/or are configured in
20 accordance with Releases 8-18, *et seq.*, of the 3rd Generation Partnership Project
21 ("3GPP") 4G LTE standard. At a minimum, the '805 Accused 4G LTE Devices
22 include, but are not limited to, the '805 Accused 4G LTE devices identified in the
23 Original Complaint, First Amended Complaint, TCL's Responses and Supplemental
24 Responses to Wi-LAN's Interrogatory No. 1, Wi-LAN's Disclosure of Asserted
25
26
27
28

1 Claims and Infringement Contentions, and Wi-LAN's Amended Disclosure of
2 Asserted Claims and Infringement Contentions.

3 43. With respect to the '577 Patent, the '577 Accused Devices are devices
4 that that support LTE and carrier aggregation (e.g., any device capable of receiving
5 downlink resources from more than one component carrier via carrier aggregation in
6 an LTE environment). As one example and explanation of carrier aggregation and
7 component carrier, see [http://www.3gpp.org/technologies/keywords-acronyms/101-](http://www.3gpp.org/technologies/keywords-acronyms/101-carrier-aggregation-explained)
8 [carrier-aggregation-explained](http://www.3gpp.org/technologies/keywords-acronyms/101-carrier-aggregation-explained). As another example of the '577 Accused Devices that
9 support carrier aggregation, Wi-LAN identifies devices that have been certified (e.g.,
10 PTCRB, GCF, etc.) to support carrier aggregation, which is indicated by UE category
11 6 or higher for downlink, or by other obvious naming conventions, such as CA, CA
12 Downlink, E-UTRA CA Downlink, E-UTRA LAA Downlink CA, etc. The '577
13 Accused Devices include, but are not limited to, devices under the TCL brand,
14 Blackberry brand, Alcatel brand, and/or OneTouch brand that support LTE. The '577
15 Accused Devices shall also include any devices capable of carrier aggregation that
16 comply, operate in accordance with, and/or are configured in accordance with
17 Releases 10-18, *et seq.*, of the 3GPP 4G LTE standard. At a minimum, the '577
18 Accused Devices include, but are not limited to, the '577 Accused Devices in the
19 Original Complaint, First Amended Complaint, TCL's Responses and Supplemental
20 Responses to Wi-LAN's Interrogatory No. 1, Wi-LAN's Disclosure of Asserted
21 Claims and Infringement Contentions, and Wi-LAN's Amended Disclosure of
22 Asserted Claims and Infringement Contentions.
23
24
25
26
27
28

COUNT ONE: INFRINGEMENT OF U.S. PATENT NO. 8,817,805

1
2 44. On August 26, 2014, the '805 Patent was duly and legally issued for
3 inventions entitled, "Apparatus, System and Method for the Transmission of Data with
4 Different QOS Attributes." Wi-LAN Inc. owns the '805 Patent and holds the right to
5 sue and recover damages for infringement thereof.
6

7 45. The '805 Patent is valid and enforceable.

8 46. Defendants have directly infringed and continue to directly infringe
9 numerous claims of the '805 Patent, including at least claims 12 and 17, by
10 manufacturing, using, selling, offering to sell, and/or importing the '805 Accused 4G
11 LTE Devices. Defendants are liable for infringement of the '805 Patent pursuant to 35
12 U.S.C. § 271(a).
13

14 47. TCL designs and manufactures the '805 Accused 4G LTE Devices to be
15 used on 4G LTE networks. For example, the Alcatel OneTouch Pop STAR LTE and
16 Alcatel Insight are Accused 4G LTE Devices that are made to communicate on 4G
17 LTE networks. The Alcatel OneTouch Pop STAR LTE includes a processor, the
18 MediaTek MT6735P. The Alcatel OneTouch Pop STAR LTE and the MediaTek
19 MT6735P are compliant with at least Release 8 of the 3GPP 4G LTE standard. The
20 Alcatel Insight includes a processor, the MediaTek MT6739. The Alcatel Insight and
21 the MediaTek MT6739 are compliant with at least Release 8 of the 3GPP 4G LTE
22 standard.
23

24 48. Wi-LAN incorporates by reference Exhibit D, which is an infringement
25 claim chart alleging how each of the '805 Accused 4G LTE Devices meet the claim
26 limitations of at least claims 12 and 17 of the '805 Patent based on compliance with
27 at least Release 8 of the 4G LTE standard.
28

1 49. The '805 Accused 4G LTE Devices are configured to operate, and
2 operate, as described in the portions of the 3GPP 4G LTE standard referred to in
3 Exhibit E.

4 50. Prior to the filing of the Original Complaint in this action, Defendants
5 knew that they infringed the '805 Patent, or willfully blinded themselves to their
6 infringements. On March 13, 2015, Wi-LAN invited Defendants to license its patents
7 covering its 4G LTE technology, including the '805 Patent, in a letter sent to both
8 TCL Communications and TCL Corporation. The March 13, 2015 letter identified
9 claims 1 through 27 of the '805 Patent as infringed and specifically identified certain
10 of TCL's infringing LTE products: Alcatel OneTouch Pop STAR LTE, Alcatel
11 OneTouch Snap LTE, Alcatel OneTouch Sonic LTE, Alcatel OneTouch Idol 3, and
12 Alcatel OneTouch Pop Mega LTE, which are representative of the '805 Accused 4G
13 LTE Devices as to infringement of the '805 Patent. Wi-LAN sent follow-up requests
14 to discuss licensing the '805 Patent on September 22, 2015 and October 26, 2015.
15 Despite Wi-LAN's follow-up requests, Defendants never replied, thereby effectively
16 refusing to take a license. Subsequent to the filing of the Original Complaint, Wi-LAN
17 sent numerous follow-up requests to Defendants to discuss licensing the '805 Patent,
18 but they have refused to engage. Through all of these communications, Defendants
19 gained knowledge that they were infringing the '805 Patent.

20 51. Accordingly, Defendants have had knowledge, or reasonably should
21 have had knowledge, of their infringements of the '805 Patent since at least March 13,
22 2015.

1 52. Defendants also had knowledge of their infringements of the '805 Patent
2 since the filing of the Original Complaint on May 9, 2019 and service of the Original
3 Complaint on May 13, 2019.

4 53. Defendants also had knowledge of their infringements of the '805 Patent
5 since the filing and service of the First Amended Complaint on July 24, 2019.

6 54. Defendants also had knowledge of their infringements of the '805 Patent
7 since Wi-LAN served its Disclosure of Asserted Claims and Infringement Contentions
8 on November 18, 2019.

9 55. Defendants also had knowledge of their infringements of the '805 Patent
10 and the validity of claims 12 and 17 of the '805 Patent since at least August 5, 2020
11 when the Patent Trial and Appeal Board denied IPR2020-00303 filed by Defendants.
12

13 56. Defendants also had knowledge of their infringements of the '805 Patent
14 and the validity of claims 12 and 17 of the '805 Patent by at least the date that the
15 USPTO confirmed the patentability of claims 12 and 17 in *Ex Parte* Reexamination
16 Request No. 90/014,588, when the Examiner allowed claim 17 and the PTAB reversed
17 the Examiner's rejection of claim 12. Furthermore, Defendants were also on notice as
18 to the validity of claims 12 and 17 on September 1, 2023, when the USPTO issued the
19 *Ex Parte* Reexamination Certificate for the '805 Patent.
20
21

22 57. Since at least the above-mentioned dates when Defendants were on
23 notice of its infringements of the '805 Patent, Defendants have actively induced, under
24 U.S.C. § 271(b), their distributors, customers, resellers, end users, subsidiaries,
25 importers, and/or consumers to directly infringe claims 12 and 17 of the '805 Patent
26 by their using, offering for sale, selling, and/or importing the '805 Accused 4G LTE
27 Devices. Since at least the notice provided on the above-mentioned dates, Defendants
28

1 do so with knowledge of, or willful blindness to, the fact that their inducements
2 constitute infringement of the '805 Patent. Upon information and belief, Defendants
3 intend to cause, and have taken affirmative steps to induce, infringement by their
4 distributors, customers, resellers, end users, subsidiaries, importers, and/or consumers
5 by at least creating advertisements that promote the infringing use and capability of
6 the '805 Accused 4G LTE Devices (e.g., by advertising and promoting LTE),
7 manufacturing Accused 4G LTE Devices in conformity with the LTE standards,
8 distributing or making available instructions or manuals for Accused 4G LTE Devices
9 to purchasers and prospective buyers, testing LTE features of such products, and/or
10 providing technical support, replacement parts, or services for such products to
11 purchasers in the United States.
12

13
14 58. Despite having knowledge of the '805 Patent and knowledge that they
15 are directly and/or indirectly infringing claims 12 and 17 of the '805 Patent,
16 Defendants have nevertheless continued their infringing conduct and otherwise
17 disregarded an objectively high likelihood of their infringement. Defendants'
18 infringements of the '805 Patent thus occurs with knowledge of infringement and/or
19 objective recklessness and has been, and continues to be, willful, egregious, and
20 deliberate. This includes, but is not limited to, Defendants' collective willful
21 blindness, including their refusal to investigate whether the '805 Accused 4G LTE
22 Devices infringes claims 12 and 17 of the '805 Patent. Defendants' infringing
23 activities relative to the '805 Patent have been, and continue to be, willful, wanton,
24 malicious, in bad-faith, deliberate, consciously wrongful, flagrant, characteristic of a
25 pirate, and an egregious case of misconduct beyond typical infringement such that Wi-
26
27
28

1 LAN is entitled under 35 U.S.C. § 284 to enhanced damages up to three times the
2 amount found or assessed.

3 59. Wi-LAN has been damaged as a result of Defendants' infringing conduct
4 described in this Count. Defendants are, thus, liable to Wi-LAN in an amount that
5 adequately compensates it for Defendants' infringements, which, by law, cannot be
6 less than a reasonable royalty, together with interest and costs as fixed by this Court
7 under 35 U.S.C. § 284.

8
9 **COUNT TWO: INFRINGEMENT OF U.S. PATENT NO. 9,854,577**

10 60. On December 26, 2017, the '577 Patent was duly and legally issued for
11 inventions entitled, "Multi-Band Channel Aggregation." Wi-LAN Inc. owns the '577
12 Patent and holds the right to sue and recover damages for infringement thereof.

13
14 61. The '577 Patent is valid and enforceable.

15 62. Defendants have directly infringed and continue to directly infringe
16 numerous claims of the '577 Patent, including at least claims 1-7, 9-18, and 20-22, by
17 manufacturing, using, selling, offering to sell, and/or importing the '577 Accused
18 Devices. Defendants are liable for infringement of the '577 Patent pursuant to 35
19 U.S.C. § 271(a).

20
21 63. Defendants design and manufacture the '577 Accused Devices to receive
22 downlink resources from more than one component carrier via carrier aggregation on
23 4G LTE networks. For example, the DTEK50 and DTEK60 are made and configured
24 to receive downlink resources from more than one component carrier via carrier
25 aggregation on 4G LTE networks. The DTEK50 includes a processor, the Qualcomm
26 Snapdragon 617. The DTEK50 and the Qualcomm Snapdragon 617 are compliant
27 with at least Releases 10 and 11 of the 3GPP 4G LTE standard. In another example,
28

1 the DTEK60 includes a processor, the Qualcomm Snapdragon 820. The DTEK60 and
2 the Qualcomm Snapdragon 820 are compliant with at least Releases 10 and 11 of the
3 3GPP 4G LTE standard.

4
5 64. Wi-LAN incorporates by reference Exhibit F, which is an infringement
6 claim chart alleging how each of the '577 Accused Devices read on the claim
7 limitations of at least claims 1-7, 9-18, and 20-22 of the '577 Patent based on
8 compliance with at least Releases 10 and/or 11 of the 4G LTE standard.

9
10 65. The '577 Accused Devices are configured to operate, and operate, as
11 described in the portions of the 3GPP 4G LTE standard referred to in Exhibit F.

12
13 66. Defendants have had knowledge of their infringements of the '577 Patent
14 since at least the filing of the Original Complaint on May 9, 2019 and service of the
15 Original Complaint on May 13, 2019.

16
17 67. Defendants also had knowledge of their infringements of the '577 Patent
18 since the filing and service of the First Amended Complaint on July 24, 2019.

19
20 68. Defendants also had knowledge of their infringements of the '577 Patent
21 since Wi-LAN served its Disclosure of Asserted Claims and Infringement Contentions
22 to TCL on November 18, 2019.

23
24 69. Defendants also had knowledge of their infringements of the '577 Patent
25 and the validity of all claims of the '577 Patent since at least August 5, 2020 when the
26 Patent Trial and Appeal Board denied IPR2020-00304 filed by Defendants.

27
28 70. Defendants also had knowledge of their infringements of the '577 Patent
and the validity of all claims of the '577 Patent by at least the date that the USPTO
confirmed the patentability of all claims in *Ex Parte* Reexamination Request No.
90/014,587, when the Examiner allowed all claims. Furthermore, Defendants had

1 knowledge of their infringements of the '577 Patent and the validity of all claims of
2 the '577 Patent by at least August 15, 2023, when the USPTO issued the *Ex Parte*
3 Reexamination Certificate for the '577 Patent.

4 71. Since at least the above-mentioned dates when Defendants were on
5 notice of their infringements of the '577 Patent, Defendants have actively induced,
6 under U.S.C. § 271(b), their distributors, customers, resellers, end users, subsidiaries,
7 importers, and/or consumers to directly infringe claims 1-7, 9-18, and 20-22 of the
8 '577 Patent through their using, offering for sale, selling, and/or importing the '577
9 Accused Devices. Since at least the notice provided on the above-mentioned dates,
10 Defendants do so with knowledge of, or willful blindness to, the fact that the induced
11 acts constitute infringement of the '577 Patent. Upon information and belief,
12 Defendants intend to cause, and have taken affirmative steps to induce, infringement
13 by their distributors, customers, resellers, end users, subsidiaries, importers, and/or
14 consumers by at least creating advertisements that promote the infringing use and
15 capability of the '577 Accused Devices (e.g., by advertising and promoting LTE
16 and/or carrier aggregation), manufacturing the '577 Accused Devices in conformity
17 with the LTE standards, distributing or making available instructions or manuals for
18 the '577 Accused Devices to purchasers and prospective buyers, testing LTE and/or
19 carrier aggregation features of such products, and/or providing technical support,
20 replacement parts, or services for such products to purchasers in the United States.

21 72. Despite having knowledge of the '577 Patent and knowledge that they
22 are directly and/or indirectly infringing claims 1-7, 9-18, and 20-22 of the '577 Patent,
23 Defendants have nevertheless continued their infringing conduct and have otherwise
24 disregarded an objectively high likelihood of infringement. TCL's infringement of the
25
26
27
28

1 '577 Patent thus occurs with knowledge of infringement and/or objective recklessness
2 and has been and continues to be willful, egregious, and deliberate. This includes, but
3 is not limited to, Defendants' collective willful blindness, including their refusal to
4 investigate whether the '577 Accused Devices infringes claims 1-7, 9-18, and 20-22
5 of the '577 Patent. Defendants' infringing activities relative to the '577 Patent have
6 been, and continue to be, willful, wanton, malicious, in bad-faith, deliberate,
7 consciously wrongful, flagrant, characteristic of a pirate, and an egregious case of
8 misconduct beyond typical infringement such that Wi-LAN is entitled under 35
9 U.S.C. § 284 to enhanced damages up to three times the amount found or assessed.
10

11 73. Wi-LAN has been damaged as a result of Defendants' infringing conduct
12 described in this Count. Defendants are, thus, liable to Wi-LAN in an amount that
13 adequately compensates Wi-LAN for Defendants' infringements, which, by law,
14 cannot be less than a reasonable royalty, together with interest and costs as fixed by
15 this Court under 35 U.S.C. § 284.
16

17 **DEMAND FOR A JURY TRIAL**

18 Wi-LAN demands a trial by jury on all issues triable of right by jury pursuant
19 to Rule 38 of the Federal Rules of Civil Procedure.
20

21 **PRAYER FOR RELIEF**

22 WI-LAN respectfully requests that this Court enter judgment in its favor and
23 grant the following relief:

- 24 (i) Judgment and Order that Defendants have directly and/or indirectly
25 infringed one or more claims of the patents-in-suit;
26
27 (ii) Judgment and Order that Defendants must pay Wi-LAN past and future
28 damages under 35 U.S.C. § 284, including supplemental damages arising

1 from any continuing, post-verdict infringements for the time between
2 trial and entry of the final judgment, together with an accounting, as
3 needed, as provided for under 35 U.S.C. § 284;

4 (iii) Judgment and Order that Defendants must pay Wi-LAN reasonable
5 ongoing royalties on a go-forward basis after Final Judgment;

6 (iv) Judgment and Order that Defendants' infringements of the patents-in-suit
7 have been willful from the time that they became aware of the infringing
8 nature of their products, and that the Court award treble damages
9 pursuant to 35 U.S.C. § 284;

10 (v) Judgment and Order that Defendants must pay Wi-LAN pre-judgment
11 and post-judgment interest on the damages award;

12 (vi) Judgment and Order that Defendants must pay Wi-LAN's costs;

13 (vii) Judgment and Order that the Court find this case exceptional under the
14 provisions of 35 U.S.C. § 285 and, accordingly, order Defendants to pay
15 Wi-LAN's attorneys' fees;

16 and

17 (viii) Such other and further relief as the Court may deem just and proper.
18
19

20 Dated: October 30, 2023

Respectfully submitted,

21 /s/ Edward R. Nelson III

22 Ryan E. Hatch (SBN 235577)

23 ryan@hatchlaw.com

24 HATCH LAW PC

25 13323 Washington Blvd., Suite #302

26 Los Angeles, CA 90066

27 Tel: 310-279-5076

28 Fax: 310-693-5328

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Edward R. Nelson III
ed@nelbum.com
John P. Murphy
murphy@nelbum.com
Robert A. Delafield II
bobby@nelbum.com
NELSON BUMGARDNER CONROY PC
3131 West 7th Street, Suite 300
Fort Worth, Texas 76107
Telephone: (817) 377-9111

Ryan P. Griffin
ryan@nelbum.com
Jonathan H. Rastegar
jon@nelbum.com
NELSON BUMGARDNER CONROY PC
2727 N. Harwood Street, Suite 250
Dallas, Texas 75201
Telephone: (214) 446-4956

Attorneys for Plaintiffs
Wi-LAN Inc., Wi-LAN USA, Inc., and
Wi-LAN Labs, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on all counsel of record on October 30, 2023 via the Court’s CM/ECF system.

/s/ Edward R. Nelson III