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1 Kevin P.B. Johnson (Bar No. 177129)
2 QUINN EMANUEL URQUHART OLIVER &
3 HEDGES, LLP
4 555 Twin Dolphin Drive, Suite 560
5 Redwood Shores, California 94065-2139
6 Telephone: (650) 801-5000
7 Facsimile: (650) 801-5100
8 kevinjohnson@quinnemanuel.com

ORIGINAL FILED

DEC 23 2008

Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

9 Attorneys for Plaintiffs SONY COMPUTER
10 ENTERTAINMENT AMERICA INC. and
11 SONY ELECTRONICS INC.

12 See Signature Page For Complete List of Represented Parties (L.R. 3-4)

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

JCS

15 SONY COMPUTER ENTERTAINMENT
16 AMERICA INC., SONY ELECTRONICS
17 INC., TOSHIBA AMERICA
18 INFORMATION SYSTEMS, INC,
19 HEWLETT-PACKARD COMPANY, AND
20 LENOVO (UNITED STATES) INC.

CASE NO.
C08 05742
COMPLAINT FOR DECLARATORY
JUDGMENT

DEMAND FOR JURY TRIAL

21 Plaintiffs,

22 vs.

23 WI-LAN, INC.,

24 Defendant.

1 **COMPLAINT**

2 Plaintiffs Sony Computer Entertainment America Inc., Sony Electronics Inc. (collectively
3 “Sony”), Toshiba America Information Systems, Inc. (“TAIS”), Hewlett-Packard Company
4 (“HP”), and Lenovo (United States) Inc. (“Lenovo”) (all collectively “Plaintiffs”) for their
5 Complaint against Wi-LAN, Inc. (“Wi-LAN”) hereby demand a jury trial and allege as follows:

6 **NATURE OF THE ACTION**

7 1. This is an action for declaratory judgment of non-infringement, invalidity, and
8 unenforceability of United States Patent No. 6,549,759 (the “759 Patent”) pursuant to the
9 Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and the Patent Laws of the United States, 35
10 U.S.C. § 100 *et seq.*, and for such other relief as the Court deems just and proper.

11 **INTRADISTRICT ASSIGNMENT**

12 2. This action includes patent-based declaratory judgment claims arising in
13 connection with conduct at least partially occurring in or directed to Santa Clara County. This
14 action is related to another action pending in the San Jose Division, *Intel Corporation v. Wi-LAN,*
15 *Inc.*, Case No. 5:08-cv-04555-JW.

16 **PARTIES**

17 3. Plaintiff Sony Computer Entertainment America Inc. is a corporation organized and
18 existing under the laws of the Delaware and having its principal place of business at 919 East
19 Hillsdale Boulevard., Foster City, CA 94404, and is doing business in this District.

20 4. Plaintiff Sony Electronics Inc. is a corporation organized and existing under the
21 laws of the State of Delaware and having its principal place of business at 16450 West Bernardo
22 Drive, San Diego, CA 92127, and is doing business in this District.

23 5. Plaintiff Toshiba America Information Systems, Inc. is a corporation organized and
24 existing under the laws of the State of California and having its principal place of business at 9740
25 Irvine Boulevard, Irvine, California 92618, and is doing business in this District.

26 6. Plaintiff Hewlett-Packard Company is a corporation organized and existing under
27 the laws of the State of Delaware and having its principal place of business at 3000 Hanover
28 Street, Palo Alto, California 94304, and is doing business in this District.

1 **THE PATENT**

2 13. The '759 Patent is titled "Asymmetric Adaptive Modulation in a Wireless
3 Communication System," and bears an issuance date of April 15, 2003. A copy of the '759 Patent
4 is attached hereto as Exhibit 1.

5 **COUNT I**

6 **(Declaration of Noninfringement of U.S. Patent No. 6,549,759)**

7 14. Plaintiffs repeat and reallege the allegations in paragraphs 1-13 as though fully set
8 forth herein.

9 15. Plaintiffs have not infringed and do not infringe, directly or indirectly, any valid
10 and enforceable claim of the '759 Patent.

11 16. As a result of the acts described in the foregoing paragraphs, there exists a
12 substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory
13 judgment.

14 17. A judicial declaration is necessary and appropriate so that Plaintiffs may ascertain
15 their rights regarding the '759 Patent.

16 **COUNT II**

17 **(Declaration of Invalidity of U.S. Patent No. 6,549,759)**

18 18. Plaintiffs repeat and reallege the allegations in paragraphs 1-17 as though fully set
19 forth herein.

20 19. The '759 Patent is invalid for failure to meet the conditions of patentability and/or
21 otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

22 20. As a result of the acts described in the foregoing paragraphs, there exists a
23 substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory
24 judgment.

25 21. A judicial declaration is necessary and appropriate so that Plaintiffs may ascertain
26 their rights regarding the '759 Patent.

COUNT III

(Declaration of Unenforceability of U.S. Patent No. 6,549,759)

1
2
3 22. Plaintiffs repeat and reallege the allegations in paragraphs 1-21 as though fully set
4 forth herein.

5 23. On information and belief, individuals subject to the duty of candor under 37
6 C.F.R. § 1.56 (“Applicants”) engaged in inequitable conduct by withholding or misstating material
7 information with intent to deceive the United States Patent and Trademark Office (“USPTO”) in
8 connection with prosecuting the ‘759 Patent, rendering the ‘759 Patent unenforceable.

9 24. On information and belief, during prosecution of the ‘759 Patent, Applicants were
10 aware of prior art that they knew was material to patentability, including prior public disclosures
11 material to patentability that they deliberately failed to properly disclose to the USPTO with intent
12 to deceive.

13 25. For example, on or around July 7, 2000, a document titled “Media Access Control
14 Layer Proposal for the 802.16.1 Air Interface Specification” was submitted to the 802.16 MAC
15 Subgroup by Glen Sater, of Motorola, and Kenneth L. Stanwood, of Ensemble Corporation.
16 Kenneth L. Stanwood is a named inventor on the ‘759 Patent. A copy of this document is attached
17 hereto as Exhibit 2.

18 26. Applicants' public disclosures, including those described above, were material to
19 the patentability of the application that issued as the ‘759 Patent. On information and belief,
20 during prosecution of the application that issued as the ‘759 Patent, with intent to deceive the
21 USPTO, Applicants failed to disclose these public disclosures to the USPTO. Under Wi-LAN's
22 improper and incorrect apparent applications of the ‘759 Patent's claims, these disclosures
23 constitute prior art that renders the claims of the ‘759 Patent invalid under 35 U.S.C. §§ 102
24 and/or 103.

25 27. 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 declaratory
27 judgment.
28

1 28. A judicial declaration is necessary and appropriate so that Plaintiffs may ascertain
2 their rights regarding the '759 Patent.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, plaintiffs Sony Computer Entertainment America Inc., Sony
5 Electronics Inc., Toshiba America Information Systems, Inc., Hewlett-Packard Company, and
6 Lenovo (United States) Inc. respectfully request that judgment be entered in their favor and prays
7 that the Court grant the following relief:

- 8 A. A declaration that each of the Plaintiffs has not infringed, either directly or
- 9 indirectly, any valid and enforceable claim of the '759 Patent;
- 10 B. A declaration that the claims of the '759 Patent are invalid;
- 11 C. A declaration that the '759 Patent is unenforceable;
- 12 D. An order declaring that Plaintiffs are prevailing parties and that this is an
- 13 exceptional case, awarding Plaintiffs their costs, expenses, disbursements and reasonable
- 14 attorneys' fees under 35 U.S.C. § 285 and all other applicable statutes, rules and common law; and
- 15 E. Such other and further relief as this Court may deem just and proper.

16
17 **JURY DEMAND**

18 Plaintiffs Sony Computer Entertainment America Inc., Sony Electronics Inc., Toshiba
19 America Information Systems, Inc., Hewlett-Packard Company, and Lenovo (United States) Inc.,
20 hereby demand a trial by jury on all issues and claims so triable.

21
22 DATED: December 23, 2008

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

(AB # 253115)

23
24 By Kevin P.B. Johnson
25 Kevin P.B. Johnson
26 Attorneys for Plaintiffs SONY COMPUTER
27 ENTERTAINMENT AMERICA INC. and SONY
28 ELECTRONICS INC.

1 DATED: December 23, 2008

Foley & Lardner LLP

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By 

George C. Best (Bar No. 255,555)
FOLEY & LARDNER LLP
975 Page Mill Road
Palo Alto, CA 94304-1013
Telephone: (650) 856-3700
Facsimile: (650) 856-3710
gbest@foley.com

John J. Feldhaus (to be admitted *pro hac vice*)
jfeldhaus@foley.com
Pavan K. Agarwal (to be admitted *pro hac vice*)
Pagarwal@foley.com

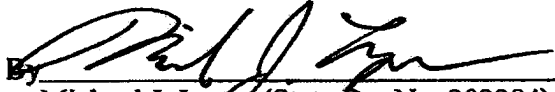
FOLEY & LARDNER LLP
3000 K Street, N.W., Suite 500
Washington, D.C. 20007
Telephone: (202) 672-5300
Facsimile: (202) 672-5399

Attorneys for Plaintiff TOSHIBA AMERICA
INFORMATION SYSTEMS, INC.

1 DATED: December 23, 2008

Morgan, Lewis & Bockius LLP

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Michael J. Lyons (State Bar No. 202284)
MORGAN, LEWIS & BOCKIUS LLP
2 Palo Alto Square
3000 El Camino Real, Suite 700
Palo Alto, CA 94306-2122
Telephone: (650) 843-7507
Facsimile: (650) 843-4001
mlyons@morganlewis.com

David J. Levy (to be admitted *pro hac vice*)
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana Street, Ste 4200
Houston, TX 77002
Telephone: (713) 890-5170
Facsimile: (713) 890-5001
dlevy@morganlewis.com

Rick L. Rambo (to be admitted *pro hac vice*)
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana Street, Ste 4200
Houston, TX 77002
Telephone: (713) 890-5175
Facsimile: (713) 890-5001
rrambo@morganlewis.com

Attorneys for Plaintiff HEWLETT-PACKARD
COMPANY

1 DATED: December 23, 2008

Akin Gump Strauss Hauer & Feld LLP

2
3 By 

4 Fred I. Williams (to be admitted *pro hac vice*)
5 fwilliams@akingump.com
6 300 West 6th Street, Suite 2100
7 Austin, TX 78701-3911
8 Telephone: 512.499.6200
9 Fax: 512.499.6290

10 Ira R. Hatton (to be admitted *pro hac vice*)
11 ihatton@akingump.com
12 1111 Louisiana St., 44th Floor
13 Houston, TX 77002-5200
14 Telephone: 713.220.5800
15 Fax: 713.236.0822

16 Eric J. Klein (to be admitted *pro hac vice*)
17 eklein@akingump.com
18 1700 Pacific Avenue Suite 4100
19 Dallas, TX 75201-4675
20 Telephone: 214.969.2800
21 Fax: 214.969.4343

22 Attorneys for Plaintiff LENOVO (UNITED
23 STATES) INC.
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25
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27
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