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U.S. DISTRICT COURT  
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DELL INC.

19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA

JL

21 ACER AMERICA CORP., APPLE INC.,  
22 DELL INC., and GATEWAY, INC.,

23 Plaintiffs,

24 v.

25 WI-LAN, INC.,

26 Defendant.

Case No. **C08 05624**

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Acer America Corp. (“Acer America”), Apple Inc. (“Apple”), Dell Inc.  
2 (“Dell”), and Gateway, Inc. (“Gateway”) (collectively, “Plaintiffs”), for their Complaint against  
3 Wi-LAN, Inc. (“Wi-LAN”), hereby allege as follows:

4 **NATURE OF THE ACTION**

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

9 **INTRADISTRICT ASSIGNMENT**

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

14 **PARTIES**

15 3. Plaintiff Acer America is an entity organized and existing under the laws of  
16 California, with its principal place of business at 333 West San Carlos Street, Suite 1500, San  
17 Jose, California 95110.

18 4. Plaintiff Apple is a corporation organized and existing under the laws of  
19 California, with its principal place of business at 1 Infinite Loop, Cupertino, California 95014.

20 5. Plaintiff Dell is a corporation organized and existing under the laws of the State of  
21 Delaware and having its principal place of business at One Dell Way, Round Rock, Texas 78682.

22 6. Plaintiff Gateway is an entity organized and existing under the laws of Delaware,  
23 with its principal place of business at 7565 Irvine Center Drive, Irvine, California 92618.

24 7. On information and belief, defendant Wi-LAN, Inc., is a corporation organized  
25 and existing under the laws of Canada and having its principal place of business at 11 Holland  
26 Avenue, Suite 608, Ottawa, Ontario, Canada.

27 8. As alleged herein, Wi-LAN has engaged in various acts in and directed to  
28 California.

**JURISDICTION AND VENUE**

1  
2 9. The Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C.  
3 §§ 1331, 1338(a), 1367, 2201, and 2202, and the patent laws of the United States, 35 U.S.C. § 1,  
4 *et seq.* Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

5 10. Wi-LAN purports to be the owner of all rights, title, and interest in and to the ‘759  
6 patent. Wi-LAN has made statements and representations threatening to assert the ‘759 patent  
7 against the Plaintiffs’ products. Furthermore, Wi-LAN has confirmed its ability and willingness  
8 to file suit. The Plaintiffs have not infringed and do not infringe, either directly or indirectly, any  
9 valid and enforceable claim of the ‘759 patent, either literally or under the doctrine of  
10 equivalents, nor are they aware of any infringement of the ‘759 patent. A substantial controversy  
11 exists between the parties which is of sufficient immediacy and reality to warrant declaratory  
12 relief.

13 11. The Court has personal jurisdiction over Wi-LAN. Wi-LAN has conducted  
14 business in and directed to California, including pertaining to the ‘759 patent, and has engaged in  
15 various acts in and directed to California. Additionally, inventors and former assignees of the  
16 ‘759 patent, and attorneys responsible for the prosecution of the ‘759 patent, are believed to be  
17 located in California. Wi-LAN is in the business of asserting patent infringement claims and  
18 suing companies for patent infringement. In connection with that business, Wi-LAN has  
19 targeted and met with companies in Santa Clara County.

20 **THE PATENT**

21 12. The ‘759 patent is entitled “Asymmetric Adaptive Modulation in a Wireless  
22 Communication System,” and bears an issuance date of April 15, 2003. A copy of the ‘759  
23 patent is attached hereto as Exhibit A.

24 **COUNT I**

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

26 13. The Plaintiffs repeat and reallege the allegations in paragraphs 1-12 as though  
27 fully set forth herein.  
28

1 14. The Plaintiffs have not infringed and do not infringe, directly or indirectly, any  
 2 valid and enforceable claim of the ‘759 patent.

3 15. As a result of the acts described in the foregoing paragraphs, there exists a  
 4 substantial controversy of sufficient immediacy and reality to warrant the issuance of a  
 5 declaratory judgment.

6 16. A judicial declaration is necessary and appropriate so that the Plaintiffs may  
 7 ascertain their rights regarding the ‘759 patent.

8 **COUNT II**

9 **(Declaration Of Invalidity Of U.S. Patent No. 6,549,759)**

10 17. The Plaintiffs repeat and reallege the allegations in paragraphs 1-16 as though  
 11 fully set forth herein.

12 18. The ‘759 patent is invalid for failure to meet the conditions of patentability and/or  
 13 otherwise to comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

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

17 20. A judicial declaration is necessary and appropriate so that the Plaintiffs may  
 18 ascertain their rights regarding the ‘759 patent.

19 **COUNT III**

20 **(Declaration Of Unenforceability Of U.S. Patent No. 6,549,759)**

21 21. The Plaintiffs repeat and reallege the allegations in paragraphs 1-20 as though  
 22 fully set forth herein.

23 22. On information and belief, individuals subject to the duty of candor under 37  
 24 C.F.R § 1.56 (“Applicants”) engaged in inequitable conduct by withholding or misstating  
 25 material information with intent to deceive the United States Patent and Trademark Office  
 26 (“USPTO”) in connection with prosecuting the ‘759 patent, rendering the ‘759 patent  
 27 unenforceable.  
 28

1 23. On information and belief, during prosecution of the ‘759 patent, Applicants were  
2 aware of prior art that they knew was material to patentability, including prior public disclosures  
3 material to patentability that they deliberately failed properly to disclose to the USPTO with  
4 intent to deceive.

5 24. For example, on or around July 7, 2000, a document entitled “Media Access  
6 Control Layer Proposal for the 802.16.1 Air Interface Specification,” was submitted to the  
7 802.16 MAC Subgroup by Glen Sater, of Motorola, and Kenneth L. Stanwood, of Ensemble  
8 Corporation. Kenneth L. Stanwood is a named inventor on the ‘759 patent.

9 25. Applicants’ public disclosures, including those described above, were material to  
10 the patentability of the application that issued as the ‘759 patent. On information and belief,  
11 during prosecution of the application that issued as the ‘759 patent, with intent to deceive the  
12 USPTO, Applicants failed to disclose these public disclosures to the USPTO. Under Wi-LAN’s  
13 improper and incorrect apparent interpretations of the ‘759 patent’s claims, these disclosures  
14 constitute prior art that render the claims of the ‘759 patent invalid under 35 U.S.C. §§ 102  
15 and/or 103.

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

19 27. A judicial declaration is necessary and appropriate so that the Plaintiffs may  
20 ascertain their rights regarding the ‘759 patent.

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, the Plaintiffs respectfully request that judgment be entered in their favor  
23 and pray that the Court grant the following relief:

24 A. A declaration that each of the Plaintiffs has not infringed, either directly or  
25 indirectly, any valid and enforceable claim of the ‘759 patent;

26 B. A declaration that the claims of the ‘759 patent are invalid;

27 C. A declaration that the ‘759 patent is unenforceable;

28 D. An order declaring that each of the Plaintiffs is a prevailing party and that this is

1 an exceptional case, awarding each of the Plaintiffs its costs, expenses, disbursements, and  
2 reasonable attorney fees under 35 U.S.C. § 285 and all other applicable statutes, rules and  
3 common law; and

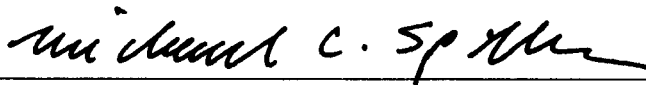
4 E. Such other and further relief as the Court may deem just and proper.

5 **JURY DEMAND**

6 The Plaintiffs hereby respectfully demand a trial by jury on all issues and claims so  
7 triable.

8 Dated: December 17, 2008

Respectfully submitted,


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12 Kai Tseng  
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19 Dated: December 17, 2008

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1 an exceptional case, awarding each of the Plaintiffs its costs, expenses, disbursements, and  
2 reasonable attorney fees under 35 U.S.C. § 285 and all other applicable statutes, rules and  
3 common law; and

4 E. Such other and further relief as this Court may deem just and proper.

5 **JURY DEMAND**

6 The Plaintiffs hereby respectfully demand a trial by jury on all issues and claims so  
7 triable.

8 Dated: December 17, 2008

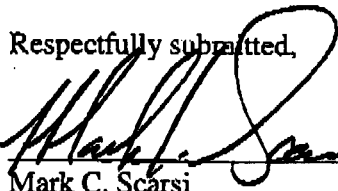
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