

Plaintiff and Declaratory Judgment Defendant Commonwealth Scientific and Industrial Research Organisation (“CSIRO” or “Plaintiff”) hereby amends its Amended and Supplemented Consolidated Complaint against Defendants Acer, Inc. (“Acer”), Acer America Corporation (“Acer America”), Gateway, Inc. (“Gateway”), AT&T Inc. (“AT&T”), AT&T Mobility LLC f/k/a Cingular Wireless LLC (“AT&T Mobility”), Wayport, Inc., d/b/a AT&T Wi-Fi Services, (“AT&T Wi-Fi Services”), Lenovo (United States) Inc. (“Lenovo”), Lenovo Group Limited (“LGL”), Lenovo Holding Company, Inc. (“LHC”), Sony Corporation (“Sony Japan”), Sony Corporation of America (“Sony America”), Sony Electronics, Inc. (“SEI”), T-Mobile USA, Inc. (“T-Mobile”), and Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”), and its Counterclaims against Declaratory Judgment Plaintiffs Broadcom Corporation (“Broadcom”) and Atheros Communications, Inc. (“Atheros”) filed on April 6, 2011, to dismiss AT&T Inc. without prejudice, and add SBC Internet Services, Inc. (“SBC”) as a party in the above-captioned action, and as follows:

THE PARTIES

1. CSIRO is one of the largest and most diverse scientific research institutions in the world, and has a principal place of business at Limestone Avenue, Cambell ACT 2612, Australia.
2. CSIRO is informed and believes, and on that basis alleges, that Defendant Acer is a corporation organized and existing under the laws of Taiwan, having a principal place of business at 8F, 88, Sec. 1, Hsin Tai Wu Rd., Hsichih, Taipei 221, Taiwan, R.O.C.
3. CSIRO is informed and believes, and on that basis alleges, that Defendant Acer America is a corporation organized and existing under the laws of California, having a principal place of business at 333 West San Carlos Street, Suite 1500, San Jose, California 95110.

4. CSIRO is informed and believes, and on that basis alleges, that Defendant Gateway is a corporation organized and existing under the laws of Delaware, having a principal place of business at 7565 Irvine Center Drive, Irvine, California 92618.

5. CSIRO is informed and believes, and on that basis alleges, that Defendant Lenovo is a corporation organized and existing under the laws of Delaware, having a principal place of business at The Centre at Purchase, One Manhattanville Road, Purchase, New York 10577.

6. CSIRO is informed and believes, and on that basis alleges, that Defendant LGL is a corporation organized and existing under the laws of China, having a principal place of business at 23rd Fl., Lincoln House, Taikoo Place, 979 King's Rd., Quarry Bay, Hong Kong, P.R.O.C.

7. CSIRO is informed and believes, and on that basis alleges that Defendant LHC is a corporation organized and existing under the laws of Delaware having a principal place of business at 1009 Think Place, Morrisville, North Carolina 27560.

8. CSIRO is informed and believes, and on that basis alleges, that Defendant Sony Japan is a corporation organized and existing under the laws of Japan, having a principal place of business at 7-1, Konan 1-Chome, Minato-ku, Tokyo 108-0075, Japan.

9. CSIRO is informed and believes, and on that basis alleges, that Defendant Sony America is a corporation organized and existing under the laws of New York, having a principal place of business at 550 Madison Avenue, New York, New York 10022.

10. CSIRO is informed and believes, and on that basis alleges, that Defendant SEI is a corporation organized and existing under the laws of Delaware, having a principal place of business at 16765 West Bernardo Drive, San Diego, California 92127.

11. CSIRO is informed and believes, and on that basis alleges, that Defendant T-Mobile is a Delaware corporation with its principal place of business at 12920 SE 38th Street, Bellevue, Washington 98006. T-Mobile can be served with process through its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

12. CSIRO is informed and believes, and on that basis alleges, that Defendant Verizon Wireless is a general partnership organized and existing under the laws of Delaware with its principal place of business at One Verizon Way, Basking Ridge, New Jersey 07920. Verizon Wireless can be served with process through its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

13. CSIRO is informed and believes, and on that basis alleges, that Defendant SBC is a California corporation with its principal place of business at 2623 Camino Ramone, San Ramon, California 94583. SBC can be served with process through its registered agent, the CT Corporation System, 818 W. Seventh Street, Los Angeles, California, 90017.

14. CSIRO is informed and believes, and on that basis alleges, that Defendant AT&T Mobility is a Delaware limited liability company with its principal place of business at Glenridge Highlands Two, 5565 Glenridge Connector, Atlanta, Georgia 30342. AT&T Mobility can be served with process through its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. AT&T Mobility is a subsidiary of Defendant AT&T.

15. CSIRO is informed and believes, and on that basis alleges, that Defendant AT&T Wi-Fi Services is a Delaware corporation with its principal place of business at 6363 N. State Highway 161, Suite 650, Irving, Texas 75038. AT&T Wi-Fi Services can be served with process

through its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

16. CSIRO is informed and believes, and on that basis alleges, that Declaratory Judgment Plaintiff Broadcom is a California corporation having its principal place of business at 5300 California Avenue, Irvine, California 92617.

17. CSIRO is informed and believes, and on that basis alleges, that Declaratory Judgment Plaintiff Atheros is a Delaware corporation having its principal place of business at 5480 Great America Parkway, Santa Clara, California 95054.

18. Defendants Acer, Acer America, Gateway, Lenovo, LGL, LHC, Sony Japan, Sony America, SEI, T-Mobile, Verizon Wireless, SBC, AT&T Mobility, and AT&T Wi-Fi Services, and Declaratory Judgment Plaintiffs Broadcom and Atheros are referred to collectively herein as “Defendants.”

JURISDICTION AND VENUE

19. The court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* Venue is proper in this federal district pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(b) in that each Defendant has done business in this District, has committed acts of infringement in this District, and continues to commit acts of infringement in this District, entitling CSIRO to relief.

INFRINGEMENT OF U.S. PATENT NO. 5,487,069

20. On January 23, 1996, United States Patent No. 5,487,069 (the “’069 Patent”) was duly and legally issued for inventions entitled “Wireless LAN.” CSIRO holds all rights and interest in the ’069 Patent. A true and correct copy of the ’069 Patent is attached hereto as Exhibit A.

21. On December 22, 2008, Intel Corporation filed with the U.S. Patent and Trademark Office (“PTO”) a request for reexamination of the ’069 Patent.

22. On March 15, 2011, the PTO issued an Ex Parte Reexamination Certificate. In the Certificate the PTO deemed patentable without amendment all of the existing claims of the ’069 Patent which have been asserted by CSIRO in this matter while also deeming patentable new Claims 73-152. A true and correct copy of the Ex Parte Reexamination Certificate is attached hereto as Exhibit B.

23. Upon information and belief, Defendants have directly infringed and/or induced and/or contributed to the infringement of the ’069 Patent, including but not limited to the new claims allowed in the reexamined patent, and continue to do so.

24. Upon information and belief, Defendants have infringed directly and indirectly and continue to infringe directly and indirectly the ’069 Patent. The infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of products practicing the IEEE 802.11a, 802.11g, 802.11n and/or draft 802.11n standards. The accused products do not include products practicing or implementing the IEEE 802.11a/g/n and/or draft n standards solely through the use of Wireless LAN integrated circuits supplied by Intel Corporation. Defendants are liable for infringement of the ’069 Patent pursuant to 35 U.S.C. § 271.

25. The acts of infringement by Defendants, and each of them, have caused damage to CSIRO and CSIRO is entitled to recover from Defendants, and each of them, the damages sustained by CSIRO as a result of their wrongful acts in an amount subject to proof at trial. The infringement of CSIRO’s exclusive rights under the ’069 Patent by Defendant, and each of them,

has damaged and will continue to damage CSIRO, causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court.

26. Upon information and belief, Defendants, and each of them, have knowledge of their infringement of the '069 Patent, yet each Defendant continues to infringe said patent. The infringement of the '069 Patent by Defendants, and each of them, is willful and deliberate, and with full knowledge of the patent, entitling CSIRO to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

JURY DEMAND

27. CSIRO hereby demands a trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, CSIRO requests entry of judgment in its favor and against Defendants as follows:

- a. A declaration that Defendants, and each of them, have infringed and are infringing the '069 Patent;
- b. An Order permanently enjoining Defendants, and each of them, their officers, agents, employees, and those acting in privity with them, from further direct and/or indirect infringement of the '069 Patent;
- c. An award of damages to CSIRO arising out of the infringement of the '069 Patent by Defendants, and each of them, including enhanced damages pursuant to 35 U.S.C. § 284, together with prejudgment and post-judgment interest, in an amount according to proof;
- d. An award of attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and,

e. Granting CSIRO its costs and further relief as the Court may deem just and proper.

Dated: February 21, 2012

Respectfully submitted,

KERR & WAGSTAFFE LLP

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**ATTORNEYS FOR COMMONWEALTH
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ORGANISATION**

CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served this February 21, 2012 a copy of this document via the Court's CM/ECF System per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Maria Radwick
Maria Radwick