

2. Upon information and belief, Defendant Research In Motion Limited is a corporation organized and existing under the laws of Ontario, Canada with its principal place of business at 295 Phillip Street, Waterloo, Ontario, Canada, N2L 3W8. Defendant Research In Motion Limited directly or indirectly through subsidiaries or affiliated companies markets, distributes, manufactures, imports, sells, and/or offers to sell consumer electronic products, including mobile phones, tablets, accessories, and associated equipment and software, in this judicial district and throughout the United States.

3. Upon information and belief, Defendant Research In Motion Corporation is a corporation organized and existing under the laws of the state of Delaware with a principal place of business at 122 West John Carpenter Freeway, Suite 430, Irving, Texas 75038 and, upon information and belief, a regional place of business in Sunrise, Florida. Defendant Research In Motion Corporation directly or indirectly through subsidiaries, parents, or affiliated companies markets, distributes, manufactures, imports, sells, and/or offers to sell consumer electronic products, including mobile phones, tablets, accessories, and associated equipment and software, in this judicial district and throughout the United States.

4. Upon information and belief, Defendant Research In Motion Corporation is a wholly owned subsidiary of Defendant Research In Motion Limited and is the managing entity of the United States operations of Defendant Research In Motion Limited. Upon information and belief, Defendant Research In Motion Limited and Defendant Research In Motion Corporation share, at least

some, directors and/or officers. Upon information and belief, Defendant Research In Motion Limited exercises operational control over Defendant Research In Motion Corporation.

JURISDICTION

5. This action for patent infringement arises under the Patent Act, 35 U.S.C. § 271, *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendants under Florida Statute § 48.193. Defendants have engaged in business, have at least one office, and have committed or caused tortuous injury in this judicial district. Defendants have also engaged in substantial and not isolated activity within this state.

7. Upon information and belief, Defendants have conducted business in this judicial district. Upon information and belief, Defendant Research In Motion Corporation has been registered as a foreign corporation in Florida since 2002 and currently has a registered agent in this judicial district. Upon information and belief, Defendant Research In Motion Limited's website lists two offices in this judicial district located at 1200 Sawgrass Corporate Parkway, Suites 100, 200, Sunrise, Florida 33323 and 13800 Northwest 14th St., Sunrise, Florida 33323. Upon information and belief, since 2005, Defendants have annually hosted their largest BlackBerry event, "BlackBerry World" (formerly part of the "Wireless Enterprise Symposium"), in Florida.

8. Defendants have committed acts of patent infringement within this judicial district. Defendants, directly or through intermediaries, import, manufacture, use, sell, and/or offer to sell (including through <http://www.rim.com>, an interactive web page) infringing products within this judicial district. Defendants also purposefully and voluntarily place infringing products into the stream of commerce with the expectation that they will be purchased by consumers in this judicial district. Defendants reasonably should have anticipated being subject to suit in this judicial district. Defendants' acts of patent infringement are aimed at this judicial district and/or have effect in this judicial district.

9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT I

Claim for Patent Infringement of U.S. Patent No. 5,515,369

10. The allegations of paragraphs 1 through 9 are re-alleged as if fully set forth herein.

11. Wi-LAN Inc. is the owner of United States Patent No. 5,515,369 ("the '369 Patent") which duly and legally issued on May 7, 1996. Wi-LAN USA, Inc. holds certain exclusive rights under the '369 Patent, including an exclusive right to license Defendants.

12. The Bluetooth Special Interest Group ("Bluetooth SIG") is a not-for-profit trade association responsible for publishing specifications for certain

wireless technology under the Bluetooth name. Upon information and belief, Defendant Research In Motion Limited is a member of the Bluetooth SIG.

13. In 2003, the Bluetooth SIG adopted Bluetooth Specification version 1.2. Version 1.2 and all subsequent versions of the Bluetooth Specification define a frequency hopping scheme for wireless communication referred to as adaptive frequency hopping (“AFH”).

14. Defendants make, import, sell, use, and/or offer to sell tablets, mobile phones, and accessories that perform AFH as defined in Bluetooth Specification version 1.2 or later (these products hereinafter “Bluetooth-Compliant Products”). Defendants have caused to be listed at least 60 product models as being compliant with Bluetooth Specification version 1.2 or later on the Bluetooth SIG’s “Qualified Listings” accessible at <https://www.bluetooth.org/>. Defendants’ product models listed on the Bluetooth SIG’s “Qualified Listings” indicate they support the “Adaptive Frequency Hopping Kernel.” Examples of Defendants’ Bluetooth-Compliant Products include, but are not limited to, the BlackBerry PlayBook, Bold, Torch, Curve, Style, Pearl, Storm, Storm2, Tour, Wireless Headset, Visor Mount Speakerphone, Presenter, Music Gateway, and Smart Card Reader. Bluetooth-Compliant Products of Defendants are being sold, offered for sale, and used in this judicial district.

15. Defendants’ Bluetooth-Compliant Products constitute at least a material component of the inventions claimed in the ’369 Patent in that the products define a node as claimed in the ’369 Patent that communicates a channel-

hopping band plan, determined at least in part by using a channel punchout mask (see the AFH_channel_map in the Bluetooth Specification), to other Bluetooth devices by transmitting data from which the other device can derive the plan, including, for example, the AFH_channel_map and the transmitting node's address. This adapted frequency hopping functionality in Defendants' Bluetooth-Compliant Products has no substantial non-infringing use and is not a staple article of commerce.

16. Defendants know and have known their Bluetooth-Compliant Products are especially made or especially adapted for use in infringing the '369 Patent. At least as early as service of the First Amended Complaint, Defendants had knowledge of the '369 Patent. Upon information and belief, Defendants had knowledge of the '369 Patent, or were willfully blind to it, prior to service of the First Amended Complaint via their knowledge of WiLAN's litigation against Texas Instruments Incorporated (a supplier of components for Defendants' devices) involving the '369 Patent.

17. The use of Defendants' Bluetooth-Compliant Products that execute this adapted frequency hopping scheme to communicate in a Bluetooth network results in direct infringement of the '369 Patent. Upon information and belief, users of Defendants' Bluetooth-Compliant Products, including employees of Defendants, use the products' AFH capability to infringe the '369 Patent. Upon information and belief, the AFH capability in Defendants' Bluetooth-Compliant

Products is a built-in capability that is automatically executed when a user uses the Bluetooth-Compliant Product to make Bluetooth communications.

18. Defendants' actions induce infringement of the '369 Patent. In their product literature and marketing materials, Defendants advertise the Bluetooth capability of the Bluetooth-Complaint Products and instruct users how to use that capability to communicate in a Bluetooth network as claimed in the '369 Patent.

Example of such literature and marketing material include without limitation:

http://docs.blackberry.com/en/smartphone_users/deliverables/38289/26045.jsp

http://docs.blackberry.com/en/smartphone_users/deliverables/38346/26045.jsp

http://docs.blackberry.com/en/smartphone_users/deliverables/42557/26045.jsp

<http://helpblog.blackberry.com/2011/02/blackberry-bluetooth-pairing/>

<http://www.youtube.com/user/blackberrysupport/videos?query=bluetooth>

<http://us.blackberry.com/specifications/connection/bluetooth.html>

<http://store.shopblackberry.com/Product/BlackBerry-HS700-Wireless-Headset/ACC-23688-002>

<http://us.blackberry.com/smartphones/blackberry-bold-9900-9930.html#/h:/smartphones/blackberry-bold-9900-9930/phone-specifications.html>

<http://us.blackberry.com/smartphones/blackberry-torch-9850-9860.html#/h:/smartphones/blackberry-torch-9850-9860/phone-specifications.html>

<http://us.blackberry.com/smartphones/blackberry-curve-3g.html#/h:/smartphones/blackberry-curve-3g/phone-specifications.html>

19. Defendants know and have known their acts induce infringement of the '369 Patent. Upon information and belief, Defendants knew or were willfully blind that use of the Bluetooth-Compliant Products' Bluetooth capability results in direct infringement of the '369 Patent. Upon information and belief, Defendants used Bluetooth components supplied by TI in Bluetooth-Complaint Products despite knowing Wi-LAN Inc. accused TI Bluetooth components of infringing the '369 Patent. Texas Instruments Incorporated ("TI") is the primary supplier of Bluetooth components for Defendants' Bluetooth-Compliant Products. RIM admitted in its Answer to the Third Amended Complaint: "RIM admits that it was aware of litigation between Wi-LAN and Texas Instruments Incorporated involving Bluetooth technology prior to the service of the Complaint." Upon information and belief, Defendants designed and advertised their Bluetooth-Complaint Products as compliant with the Bluetooth standard despite knowing Wi-LAN Inc. accused other products compliant with the Bluetooth standard of infringing the '369 Patent. Defendants have caused to be listed at least 60 product models as being compliant with Bluetooth Specification version 1.2 or later on the Bluetooth SIG's "Qualified Listings" accessible at <https://www.bluetooth.org/>. The publicly available complaint in the litigation between Wi-LAN Inc. and TI states: "Upon information and belief, Texas Instruments has been and is now infringing, directly and indirectly by way of inducement and/or contributory infringement, literally and/or under the doctrine of equivalents, the ['369 Patent] in this District and elsewhere by making, using, offering for sale, importing,

and/or selling integrated circuits and/or circuit boards used and/or designed for use in mobile handsets and/or other products with wireless capability compliant with the Bluetooth standards that fall within the scope of at least one claim of the Patent-in-Suit.” Upon information and belief, Defendants knew or were willfully blind that they were encouraging users to use the Bluetooth-Compliant Products to communicate in a Bluetooth network as claimed in the ‘369 Patent. Upon information and belief, Defendants had the specific intent to induce infringement of the ‘369 Patent.

20. Upon information and belief, Defendants have been and are infringing, directly and/or indirectly by way of inducement and contributory infringement, one or more claims of the ‘369 Patent by their actions relating to making, using, importing, selling and/or offering for sale their Bluetooth-Compliant Products.

21. Defendants’ infringement is willful. Upon information and belief, despite knowledge of the ‘369 Patent, knowledge that the Bluetooth-Compliant Products infringe the ‘369 Patent, knowledge that Wi-LAN Inc. was asserting the ‘369 Patent against Defendants’ primary supplier of Bluetooth components, and knowledge that Wi-LAN Inc. was asserting the ‘369 Patent against TI whose products, like Defendants’ products, complied with the Bluetooth standard, Defendants continued to make, use, sell, offer for sale, and/or import Bluetooth-Complaint Products. Defendants acted despite an objectively high likelihood that

their actions constituted infringement of a valid patent and this likelihood was known or so obvious that it should have been known to Defendants.

22. Plaintiffs have been and continue to be irreparably harmed and monetarily harmed by Defendants' infringement of the '369 Patent. If Defendants' infringement is not enjoined, Plaintiffs will continue to be irreparably and monetarily harmed.

COUNT II

Claim for Infringement of U.S. Patent No. 6,232,969

23. The allegations of paragraphs 1 through 22 are re-alleged as if fully set forth herein.

24. Wi-LAN USA, Inc. is the owner of United States Patent No. 6,232,969 ("the '969 Patent") which duly and legally issued on May 15, 2001.

25. Defendants manufacture, import, use, sell, and/or offer for sale BlackBerry mobile phones that are covered by and infringe one or more claims of the '969 Patent. Examples of infringing mobile phones include, but are not limited to, the BlackBerry Bold, Torch, Curve, and Pearl. Each of these mobile phones includes a character selection display interface accessed by pressing the "sym" key that is covered by one or more claims of the '969 Patent. Infringing mobile phones of Defendants are being sold, offered for sale, and used in this judicial district.

26. Defendants' mobile phones constitute at least a material component of the inventions claimed in the '969 Patent in that the mobile phones are

programmed for editing and composing a string of characters and have a character selection display interface and features as claimed in the '969 Patent. These display and user interface features for composing and editing messages have no substantial non-infringing use and are not staple articles of commerce. Upon information and belief, users of Defendants' mobile phones, including employees of Defendants, use these display and user interface features for composing and editing messages, thereby directly infringing the '969 Patent.

27. Defendants know and have known their mobile phones are especially made or especially adapted for use in infringing the '969 Patent. At least as early as service of the First Amended Complaint, Defendants had knowledge of the '969 Patent. Upon information and belief, Defendants had knowledge of the '969 Patent prior to service of the First Amended Complaint through competition, collaboration, and litigation with the original assignee of the '969 Patent. The original assignee of the '969 Patent, Glenayre Electronics Inc. ("Glenayre"), was a direct competitor with Defendants. During the same year the '969 patent issued, Glenayre and Defendants were involved in patent infringement litigation, *Research In Motion v. Glenayre Elecs.*, 01-cv-00322 (D. Del. 2001). After the parties settled the patent litigation, Defendants and Glenayre entered into a collaboration relationship to integrate Glenayre's messaging services with Defendants' BlackBerry Wireless Handheld. Upon information and belief, Defendants would have been aware of the '969 Patent based on its competition, collaboration, and litigation with Glenayre.

28. Defendants have been and are infringing, directly and/or as contributory infringers, one or more claims of the '969 Patent by their actions relating to their making, using, importing, selling and/or offering for sale BlackBerry mobile phones covered by one or more claims of the '969 Patent, including but not limited to the BlackBerry Bold, Torch, Curve, and Pearl.

29. Plaintiffs have been and continue to be irreparably harmed and monetarily harmed by Defendants' infringement of the '969 Patent. If Defendants' infringement is not enjoined, Plaintiffs will continue to be irreparably and monetarily harmed.

COUNT III

Claim for Patent Infringement of U.S. Patent No. 6,240,088

30. The allegations of paragraphs 1 through 29 are re-alleged as if fully set forth herein.

31. Wi-LAN USA, Inc. is the owner of United States Patent No. 6,240,088 ("the '088 Patent") which duly and legally issued on May 29, 2001.

32. Defendants manufacture, import, use, sell, and/or offer for sale software and software-implemented services that constitute electronic communication transmitters for transmitting messages to BlackBerry mobile phones as described in the '088 Patent (these products hereinafter "BlackBerry Transmitter Products"). Examples of BlackBerry Transmitter Products include, but are not limited to, the BlackBerry Enterprise Server. BlackBerry Transmitter Products are being sold, offered for sale, and used in this judicial district.

33. Defendants manufacture, import, use, sell, and/or offer for sale BlackBerry mobile phones that constitute electronic communication receivers as described in the '088 Patent (these products hereinafter "BlackBerry Receiver Products"). Examples of such BlackBerry Receiver Products include, but are not limited to, the BlackBerry Bold, Torch, Curve, Style, Pearl, Storm, Storm2, and Tour. Each of the BlackBerry Receiver Products includes a message review feature which allows users after reviewing a first portion of a message and/or data package to have additional portions of the message and/or data package transmitted from the BlackBerry Transmitter Product in response to selections by the user. BlackBerry Receiver Products are being sold, offered for sale, and used in this judicial district.

34. Defendants' BlackBerry Transmitter Products and BlackBerry Receiver Products constitute apparatus for use in practicing at least material parts of the inventions claimed in the '088 Patent. The BlackBerry Transmitter Products constitute electronic communication transmitters as described in the '088 Patent with the built-in functionality to transmit three portions of a message and/or data package (e.g., by responding to selections by the user for additional portions of the message and/or data package). The BlackBerry Receiver Products constitute electronic communication receivers as described in the '088 Patent with the built-in functionality to transmit instructions and allow the user to select to receive second and third portions of a message and/or data package. The BlackBerry Transmitter Products and BlackBerry Receiver Products' functionality

for transmitting and receiving three or more portions of a message and/or data package has no substantial non-infringing use and is not a staple article of commerce.

35. Defendants know and have known their BlackBerry Transmitter Products and BlackBerry Receiver Products are especially made or especially adapted for use in infringing the '088 Patent. At least as early as service of this Second Amended Complaint, Defendants had knowledge of the '088 Patent. Upon information and belief, Defendants had knowledge of the '088 Patent prior to service of the Second Amended Complaint through competition, collaboration, and litigation with the original assignee of the '088 Patent. The original assignee of the '088 Patent, Glenayre Electronics Inc. ("Glenayre"), was a direct competitor with Defendants. During the same year the '088 patent issued, Glenayre and Defendants were involved in patent infringement litigation, *Research In Motion v. Glenayre Elecs.*, 01-cv-00322 (D. Del. 2001). After the parties settled the patent litigation, Defendants and Glenayre entered into a collaboration relationship to integrate Glenayre's messaging services with Defendants' BlackBerry Wireless Handheld. Upon information and belief, Defendants would have been aware of the '088 Patent based on its competition, collaboration, and litigation with Glenayre. Additionally, Defendants cited the '088 Patent on the face of its own patents, including but not limited to U.S. Patent Nos. 6,389,457; 6,401,113; 6,438,585; 6,463,463; 6,463,464; 6,701,378, 6,779,019; and 7,010,033, further evidencing Defendants' knowledge of the '088 Patent.

36. The use of BlackBerry Transmitter Products and BlackBerry Receiver Products to transmit at least three portions of a message and/or data package from a BlackBerry Transmitter Product to a BlackBerry Receiver Product results in direct infringement of the '088 Patent. Upon information and belief, users of BlackBerry Transmitter Products and BlackBerry Receiver Products, including employees of Defendants, use the products' functionality to infringe the '088 Patent.

37. Upon information and belief, Defendants have been and are infringing, directly and/or as contributory infringers, one or more claims of the '088 Patent by their actions relating to making, using, importing, selling and/or offering for sale their BlackBerry Transmitter Products and BlackBerry Receiver Products.

38. Plaintiffs have been and continue to be irreparably harmed and monetarily harmed by Defendants' infringement of the '088 Patent. If Defendants' infringement is not enjoined, Plaintiffs will continue to be irreparably and monetarily harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

- A. A judgment that Defendants have infringed the '369 Patent, '969 Patent, and '088 Patent;
- B. A judgment and order requiring Defendants to pay all appropriate damages under 35 U.S.C. § 284; including treble damages for willful infringement;
- C. A judgment and order requiring Defendants to pay the costs of this action, including all disbursements, and attorney fees, if this case is exceptional as provided by 35 U.S.C. § 285; and
- D. Both preliminary and permanent injunctions against Defendants and their officers, agents, employees, attorneys, and all persons in active concert or participation with them, prohibiting infringement of the '369 Patent, '969 Patent, and '088 Patent; and
- E. Such other and further relief that this Court may deem just and equitable.

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury of all issues so triable.

Dated: August 3, 2012

**Wi-LAN USA, Inc., and
Wi-LAN Inc.**

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on August 8, 2012, the foregoing was served on all counsel of record by CM/ECF and U.S. Mail.

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