

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 1:12-CV-23569-DMM**

WI-LAN USA, INC. and WI-LAN, INC.,

Plaintiffs,

vs.

TELEFONAKTIEBOLAGET LM  
ERICSSON, and ERICSSON INC.,

Defendants.

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**FIRST AMENDED COMPLAINT**

This is an action for patent infringement. Plaintiffs Wi-LAN USA, Inc. and Wi-LAN, Inc. file this First Amended Complaint against Defendants Telefonaktiebolaget LM Ericsson and Ericsson Inc., and state as follows:

**PARTIES**

1. Plaintiff Wi-LAN USA, Inc. is a corporation organized and existing under the laws of the state of Florida with its principal place of business at 175 S.W. 7th Street, No. 1803, Miami, Florida 33130. Plaintiff Wi-LAN, Inc. is a corporation organized and existing under the laws of Canada with its principal place of business at 11 Holland Ave., Suite 608, Ottawa, Ontario, Canada K1Y 4S1. Wi-LAN USA, Inc. is a wholly owned subsidiary of Wi-LAN, Inc. Plaintiffs will be collectively referred to herein as “Wi-LAN.”

2. Upon information and belief, Defendant Telefonaktiebolaget LM Ericsson is a corporation organized and existing under the laws of the country of Sweden with its principal place of business at Torshamnsgatan 23, Kista, 164 83 Stockholm, Sweden.

3. Upon information and belief, Defendant Ericsson Inc. is a subsidiary of Defendant Telefonaktiebolaget LM Ericsson and is a corporation organized and existing under the laws of the state of Delaware with its principal place of business at 6300 Legacy Drive, Plano, Texas 75024. Defendant Telefonaktiebolaget LM Ericsson and Defendant Ericsson Inc. are individually and collectively referred to herein as “Ericsson” or “Defendants.”

4. Upon information and belief, Ericsson directly or indirectly through subsidiaries or affiliated companies markets, distributes, manufactures, imports, sells, and/or offers for sale wireless communication products, including but not limited to products compliant with the 3GPP LTE standard, in the United States and, more particularly, in the Southern District of Florida.

#### **JURISDICTION AND VENUE**

5. This action for patent infringement arises under the Patent Laws of the United States, including 35 U.S.C. § 271.

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Defendants under Florida Statute § 48.193. Defendants (a) have operated, conducted, engaged in, and/or carried on a business or business venture in Florida; (b) have at least an office or agency in Florida; (c) have committed one or more tortious acts within Florida; and (d) have been and are engaged in substantial and not isolated activity within Florida.

8. Upon information and belief, Ericsson Inc. has been registered to do business in the State of Florida since 1992 and currently has a registered agent in the State of Florida. Upon information and belief, Ericsson has conducted business in this judicial district. Upon information and belief, Ericsson supplied Miami International Airport with a digital communication and video surveillance system.

9. Upon information and belief, Ericsson maintains an office in this judicial district located at 1001 Broken Sound Pkwy NW Suite A, Boca Raton, Florida 33487.

10. Upon information and belief, Ericsson maintains an office in this judicial district located at 1801 Corporate Drive, Boynton Beach, Florida 33426.

11. Upon information and belief, Ericsson maintains an office in this judicial district located at 18520 NW 11th Ct., Pembroke Pines, Florida 33029.

12. Upon information and belief, Ericsson maintains an office in this judicial district located at 10540 NW 26th St., Suite G301, Miami, Florida 33172.

13. Upon information and belief, Ericsson maintains an office in this judicial district located at 9690 NW 41st Street, Miami, Florida 33178.

14. Upon information and belief, Ericsson maintains an office in this judicial district located at 11700 NW 101st Road, Suite 1, Miami, Florida 33178.

15. Upon information and belief, Ericsson maintains an office in this judicial district located at 2385 NW Executive Center Dr., STE 400, Boca Raton, Florida 33431.

16. Upon information and belief, Ericsson maintains an office in this judicial district located at 601 Brickell Key Drive, Miami, Florida 33131.

17. Upon information and belief, 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 infringing products within this judicial district. Defendants also purposely and voluntarily placed infringing products into the stream of commerce with the expectation that they would 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.

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

**DEFENDANTS' PRODUCTS**

19. Upon information and belief, Ericsson makes, uses, offers for sale, imports, and/or sells products compliant with the 3GPP LTE standard, including but not limited to the RBS 6101, RBS 6102, RBS 6201, RBS 6301, and RBS 6601 (collectively, "the accused Ericsson products").

20. Upon information and belief, the accused Ericsson products support at least Release 8 of the 3GPP LTE standard.

**COUNT I: INFRINGEMENT OF U.S. PATENT NO. 8,027,298**

21. The allegations of paragraphs 1 through 20 are re-alleged as if fully set forth herein.

22. On September 27, 2011, the United States Patent and Trademark Office ("USPTO") duly and legally issued U.S. Patent No. 8,027,298 (the "'298 Patent"), entitled "Methods and Systems for Transmission of Multiple Modulated Signals over Wireless Networks" after a full and fair examination. Wi-LAN, Inc. is the sole owner of the '298 Patent. Wi-LAN USA, Inc. holds certain rights under the '298 Patent, including rights to license Defendants. A true and correct copy of the '298 Patent is attached hereto as Exhibit A.

23. Upon information and belief, Ericsson 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 '298 Patent in this judicial district and elsewhere by making, using, offering for sale, or selling within the United States, or importing into the United States, without

authority from Wi-LAN the accused Ericsson products, which fall within the scope of one or more of the claims of the '298 Patent.

24. Ericsson knowingly contributes to and induces infringement by supplying the accused Ericsson products to customers with instructions for their use in connection with cellular systems which comply with the 3GPP LTE standard.

25. Ericsson's customers who purchase the accused Ericsson products and operate those products in accordance with Ericsson's instructions directly infringe one or more claims of the '298 Patent.

26. Ericsson has had actual notice of the '298 Patent since at least October 1, 2012, when the suit was filed.

27. Upon information and belief, Ericsson has had knowledge of Wi-LAN's patent portfolio, which includes the patents asserted in the present suit, prior to the filing of this complaint, by way of its involvement in at least three pending litigation matters with Wi-LAN in United States District Courts. The earliest of these ligations has been pending since October 04, 2010.

28. The accused Ericsson products are developed to comply with the 3GPP LTE standard, and thus are not staple articles or commodities of commerce suitable for substantial non-infringing use.

29. Since becoming aware of the '298 patent, Ericsson was willfully blind, knew, or should have known that the accused Ericsson products and the components thereof were especially made and/or especially adapted for use in infringing the '298 patent.

30. Upon information and belief, Ericsson's infringement of the '298 Patent has been and continues to be willful and deliberate.

31. Upon information and belief, Ericsson continues to make, use, offer for sale, or sell within the United States, or import into the United States, without authority from Wi-LAN the accused Ericsson products. Accordingly, Wi-LAN is entitled to increased damages under 25 U.S.C. § 284 and to attorney's fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

32. By way of its infringing activities, Ericsson has caused and continues to cause Wi-LAN to suffer damages, and Wi-LAN is entitled to recover from Ericsson damages in an amount to be determined at trial.

**COUNT II: INFRINGEMENT OF U.S. PATENT NO. 8,249,014**

33. The allegations of paragraphs 1 through 32 are re-alleged as if fully set forth herein.

34. On August 21, 2012, the USPTO duly and legally issued U.S. Patent No. 8,249,014 (the "'014 Patent"), entitled "Methods and Systems for Transmission of Multiple Modulated Signals over Wireless Networks" after a full and fair examination. Wi-LAN, Inc. is the sole owner of the '014 Patent. Wi-LAN USA, Inc. holds certain rights under the '014 Patent, including rights to license Defendants. A true and correct copy of the '014 Patent is attached hereto as Exhibit B.

35. Upon information and belief, Ericsson 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 '014 Patent in this judicial district and elsewhere by making, using, offering for sale, or selling within the United States, or importing into the United States, without authority from Wi-LAN the accused Ericsson products, which fall within the scope of one or more of the claims of the '014 Patent.

36. Ericsson knowingly contributes to and induces infringement by supplying the accused Ericsson products to customers with instructions for their use in connection with cellular systems which comply with the 3GPP LTE standard.

37. Ericsson's customers who purchase the accused Ericsson products and operate those products in accordance with Ericsson's instructions directly infringe one or more claims of the '014 Patent.

38. Ericsson has had actual notice of the '014 Patent since at least October 1, 2012, when the suit was filed.

39. Upon information and belief, Ericsson has had knowledge of Wi-LAN's patent portfolio, which includes the patents asserted in the present suit, prior to the filing of this complaint, by way of its involvement in at least three pending litigation matters with Wi-LAN in United States District Courts. The earliest of these litigations has been pending since October 04, 2010.

40. The accused Ericsson products are developed to comply with the 3GPP LTE standard, and thus are not staple articles or commodities of commerce suitable for substantial non-infringing use.

41. Since becoming aware of the '014 patent, Ericsson was willfully blind, knew, or should have known that the accused Ericsson products and the components thereof were especially made and/or especially adapted for use in infringing the '014 patent.

42. Upon information and belief, Ericsson's infringement of the '014 Patent has been and continues to be willful and deliberate.

43. Upon information and belief, Ericsson continues to make, use, offer for sale, or sell within the United States, or import into the United States, without authority from Wi-LAN

the accused Ericsson products. Accordingly, Wi-LAN is entitled to increased damages under 25 U.S.C. § 284 and to attorney's fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

44. By way of its infringing activities, Ericsson has caused and continues to cause Wi-LAN to suffer damages, and Wi-LAN is entitled to recover from Ericsson damages in an amount to be determined at trial.

**COUNT III: INFRINGEMENT OF U.S. PATENT NO. 8,229,437**

45. The allegations of paragraphs 1 through 44 are re-alleged as if fully set forth herein.

46. On July 24, 2012, the USPTO duly and legally issued U.S. Patent No. 8,229,437 (the "'437 Patent"), entitled "Pre-Allocated Random Access Identifiers" after a full and fair examination. Wi-LAN, Inc. is the sole owner of the '437 Patent. Wi-LAN USA, Inc. holds certain rights under the '437 Patent, including rights to license Defendants. A true and correct copy of the '437 Patent is attached hereto as Exhibit C.

47. Upon information and belief, Ericsson 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 '437 Patent in this judicial district and elsewhere by making, using, offering for sale, or selling within the United States, or importing into the United States, without authority from Wi-LAN the accused Ericsson products, which fall within the scope of one or more of the claims of the '437 Patent.

48. Ericsson knowingly contributes to and induces infringement by supplying the accused Ericsson products to customers with instructions for their use in connection with cellular systems which comply with the 3GPP LTE standard.



49. Ericsson's customers who purchase the accused Ericsson products and operate those products in accordance with Ericsson's instructions directly infringe one or more claims of the '437 Patent.

50. Ericsson has had actual notice of the '437 Patent since at least October 1, 2012, when the suit was filed.

51. Upon information and belief, Ericsson has had knowledge of Wi-LAN's patent portfolio, which includes the patents asserted in the present suit, prior to the filing of this complaint, by way of its involvement in at least three pending litigation matters with Wi-LAN in United States District Courts. The earliest of these litigations has been pending since October 04, 2010.

52. The accused Ericsson products are developed to comply with the 3GPP LTE standard, and thus are not staple articles or commodities of commerce suitable for substantial non-infringing use.

53. Since becoming aware of the '437 patent, Ericsson was willfully blind, knew, or should have known that the accused Ericsson products and the components thereof were especially made and/or especially adapted for use in infringing the '437 patent.

54. Upon information and belief, Ericsson's infringement of the '437 Patent has been and continues to be willful and deliberate.

55. Upon information and belief, Ericsson continues to make, use, offer for sale, or sell within the United States, or import into the United States, without authority from Wi-LAN the accused Ericsson products. Accordingly, Wi-LAN is entitled to increased damages under 25 U.S.C. § 284 and to attorney's fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

56. By way of its infringing activities, Ericsson has caused and continues to cause Wi-LAN to suffer damages, and Wi-LAN is entitled to recover from Ericsson damages in an amount to be determined at trial.

**DEMAND FOR JURY TRIAL**

Wi-LAN demands a trial by jury for any and all issues triable of right before a jury.

**PRAYER FOR RELIEF**

WHEREFORE, Wi-LAN requests entry of judgment in its favor and against Defendants as follows:

A. Declaring that Defendants have willfully infringed one or more claims of each of U.S. Patent Nos. 8,027,298, 8,249,014 and 8,229,437;

B. Permanently enjoining Defendants and their officers, directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, parents and all others acting in concert or privity with any of them from infringing, inducing the infringement of, or contributing to the infringement of one or more of each of U.S. Patent Nos. 8,027,298, 8,249,014 and 8,229,437;

C. Awarding to Wi-LAN damages arising out of Defendants' infringement of one or more of each of U.S. Patent Nos. 8,027,298, 8,249,014 and 8,229,437, together with enhanced damages, attorney's fees, pre-judgment and post-judgment interest, in an amount to be determined at trial;

D. Awarding to Wi-LAN its costs in connection with this action; and

E. Such other and further relief in law or in equity to which Wi-LAN may be justly entitled.

Dated: February 7, 2013

Respectfully submitted,

/s/ Samuel O. Patmore  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Notices of Electronic Filing generated by CM/ECF on February 7, 2013 on all counsel or parties of record on the Service List below.

/s/ Samuel O. Patmore

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