

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
CASE NO. 1:12-cv-23568-CMA**

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

Plaintiffs,

vs.

ALCATEL-LUCENT USA INC.,

Defendant.

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 Defendant Alcatel-Lucent USA 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 Alcatel-Lucent USA Inc. (“Alcatel-Lucent” or “Defendant”) is a corporation organized and existing under the laws of the state of Delaware with its principal place of business at 600-700 Mountain Avenue, Murray Hill, New Jersey 07974.

3. Upon information and belief, Alcatel-Lucent 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

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

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

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

7. Upon information and belief, Alcatel-Lucent has been registered to do business in the State of Florida since 1995 and currently has a registered agent in the State of Florida. Upon information and belief, Alcatel-Lucent has conducted business in this judicial district.

8. Upon information and belief, Alcatel-Lucent maintains an office in this judicial district located at 2400 S. W. 145 Avenue, Monarch Lakes Office Park, Miramar, Florida 33027.

9. Upon information and belief, Alcatel-Lucent maintains an office in this judicial district located at 3137 Commerce Parkway, Hollywood, Florida 33025.

10. Upon information and belief, Alcatel-Lucent maintains an office in this judicial district located at 6500 NW 12th Avenue Suite 120, Fort Lauderdale, Florida 33309.

11. Upon information and belief, Alcatel-Lucent maintains an office in this judicial district located at 801 Brickell Avenue Floor 9, Miami, Florida 33131.

12. Upon information and belief, Alcatel-Lucent maintains an office in this judicial district located at 6671 West Indiantown Road, Jupiter, Florida 33458.

13. Upon information and belief, Alcatel-Lucent maintains an office in this judicial district located at 720 Delaware Avenue Suite G, Fort Pierce, Florida 34950.

14. Upon information and belief, Alcatel-Lucent maintains an office in this judicial district located at 2400 SW 145th Avenue, Hollywood, Florida, 33027.

15. Upon information and belief, Alcatel-Lucent maintains an office in this judicial district located at 1318 Mercer Avenue, West Palm Beach, Florida 33401.

16. Upon information and belief, Alcatel-Lucent maintains an office in this judicial district located at 1094 Creekford Drive, Fort Lauderdale, Florida 33326.

17. Upon information and belief, Alcatel-Lucent maintains an office in this judicial district located at 8177 Glades Road, Boca Raton, Florida 33434.

18. Upon information and belief, Alcatel-Lucent maintains an office in this judicial district located at 3138 Commerce Parkway, Hollywood, Florida 33025.

19. Upon information and belief, Alcatel-Lucent has committed acts of patent infringement within this judicial district. Alcatel-Lucent, directly or through intermediaries, imports, manufactures, uses, sells, and/or offers to sell infringing products within this judicial district. Alcatel-Lucent also purposely and voluntarily has placed infringing products into the stream of commerce with the expectation that they will be purchased by consumers in this

judicial district. Alcatel-Lucent reasonably should have anticipated being subject to suit in this judicial district. Alcatel-Lucent's acts of patent infringement are aimed at this judicial district and/or have effect in this judicial district.

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

DEFENDANT'S PRODUCTS

21. Upon information and belief, Alcatel-Lucent makes, uses, offers for sale, imports, and/or sells products compliant with the 3GPP LTE standard, including but not limited to the 9100 Multi-Standard Base Station and 9926 Distributed Base Station (collectively, "the accused Alcatel-Lucent products").

22. Upon information and belief, the accused Alcatel-Lucent products support at least Release 8 of the 3GPP LTE standard.

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

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

24. 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 Defendant. A true and correct copy of the '298 Patent is attached hereto as Exhibit A.

25. Upon information and belief, Alcatel-Lucent 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 Alcatel-Lucent products, which fall within the scope of one or more of the claims of the '298 Patent.

26. The accused Alcatel-Lucent products are not a staple article or commodity of commerce suitable for substantial non-infringing use.

27. Alcatel-Lucent contributes to and induces infringement by supplying the accused Alcatel-Lucent products to customers with instructions for their use in connection with cellular systems which comply with the 3GPP LTE standard.

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

29. Alcatel-Lucent has had actual notice of the '298 Patent since at least October 1, 2012, when the suit was filed.

30. Upon information and belief, Alcatel-Lucent has had knowledge of Wi-LAN's patent portfolio, which includes the patents asserted in the present suit, prior to October 1, 2012, by way of its involvement in at least six pending litigation matters with Wi-LAN in United States District Courts. The earliest of these litigations has been pending since October 04, 2010.

31. Upon information and belief, Alcatel-Lucent's infringement of the '298 Patent has been and continues to be willful and deliberate.

32. Upon information and belief, Alcatel-Lucent 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 Alcatel-Lucent 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.

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

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

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

35. 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 Defendant. A true and correct copy of the '014 Patent is attached hereto as Exhibit B.

36. Upon information and belief, Alcatel-Lucent 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 Alcatel-Lucent products, which fall within the scope of one or more of the claims of the '014 Patent.

37. The accused Alcatel-Lucent products are not a staple article or commodity of commerce suitable for substantial non-infringing use.

38. Alcatel-Lucent contributes to and induces infringement by supplying the accused Alcatel-Lucent products to customers with instructions for their use in connection with cellular systems which comply with the 3GPP LTE standard.

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

40. Alcatel-Lucent has had actual notice of the '014 Patent since at least October 1, 2012, when the suit was filed.

41. Upon information and belief, Alcatel-Lucent has had knowledge of Wi-LAN's patent portfolio, which includes the patents asserted in the present suit, prior to October 1, 2012, by way of its involvement in at least six pending litigation matters with Wi-LAN in United States District Courts. The earliest of these ligations has been pending since October 04, 2010.

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

43. Upon information and belief, Alcatel-Lucent 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 Alcatel-Lucent 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, Alcatel-Lucent has caused and continues to cause Wi-LAN to suffer damages, and Wi-LAN is entitled to recover from Alcatel-Lucent 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, Alcatel-Lucent 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 Alcatel-Lucent products, which fall within the scope of one or more of the claims of the ’437 Patent.

48. The accused Alcatel-Lucent products are not a staple article or commodity of commerce suitable for substantial non-infringing use.

49. Alcatel-Lucent contributes to and induces infringement by supplying the accused Alcatel-Lucent products to customers with instructions for their use in connection with cellular systems which comply with the 3GPP LTE standard.

50. Alcatel-Lucent’s customers who purchase the accused Alcatel-Lucent products and operate those products in accordance with Alcatel-Lucent’s instructions directly infringe one or more claims of the ’437 Patent.

51. Alcatel-Lucent has had actual notice of the '437 Patent since at least October 1, 2012, when the suit was filed.

52. Upon information and belief, Alcatel-Lucent has had knowledge of Wi-LAN's patent portfolio, which includes the patents asserted in the present suit, prior to October 1, 2012, by way of its involvement in at least six pending litigation matters with Wi-LAN in United States District Courts. The earliest of these ligations has been pending since October 04, 2010.

53. Upon information and belief, Alcatel-Lucent's infringement of the '437 Patent has been and continues to be willful and deliberate.

54. Upon information and belief, Alcatel-Lucent 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 Alcatel-Lucent 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.

55. By way of its infringing activities, Alcatel-Lucent has caused and continues to cause Wi-LAN to suffer damages, and Wi-LAN is entitled to recover from Alcatel-Lucent 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 Defendant as follows:

A. Declaring that Defendant has 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 Defendant and its 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 Defendant's 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 6, 2013

Respectfully submitted,

/s/ Samuel O. Patmore

Jay B. Shapiro, Esquire
Florida Bar No. 776361
Email: jshapiro@stearnsweaver.com
Samuel O. Patmore, Esquire
Florida Bar No. 096432
Email: spatmore@stearnsweaver.com
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street
Suite 2200—Museum Tower
Miami, FL 33130
Telephone: 305.789.3200
Telecopy: 305.789.2647

Of Counsel:

Constance S. Huttner, *Admitted Pro Hac Vice*

chuttner@velaw.com

Hilary L. Preston, *Admitted Pro Hac Vice*

hpreston@velaw.com

Vinson & Elkins L.L.P.

666 Fifth Avenue, 26th Floor

New York, NY 10103

Tel: (212) 237-0000

Fax: (212) 237-0100

David J. Tobin, *Admitted Pro Hac Vice*

Email: dtobin@velaw.com

Vinson & Elkins L.L.P.

2001 Ross Avenue, Suite 3900

Dallas, TX 75201-2975

Telephone: 214.220.7949

Telecopy: 214.999.7949

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 6, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified below, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Janet T. Munn
jmunn@rascoklock.com
Rasco Klock, et al.
283 Catalonia Avenue, Suite 200
Coral Gables, FL 33134
Tel.: 305.476.7101
Fax: 305.476.7102

Robert A. Appleby
robert.appleby@kirkland.com
Jeanne M. Heffernan
jeanne.heffernan@kirkland.com
Akshay S. Deoras
akshay.deoras@kirkland.com
Gregory S. Avoras
Greg.avoras@kirkland.com
Joseph A. Loy
Joseph.loy@kirkland.com
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Tel: (212) 446-4800
Fax: (212) 446-4900

Counsel for Defendant Alcatel-Lucent USA Inc.

/s/ Samuel O. Patmore