

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 1:12-CV-24349-DMM**

WI-LAN USA, INC. )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RESEARCH IN MOTION LIMITED and )  
 RESEARCH IN MOTION )  
 CORPORATION )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

**FIRST AMENDED COMPLAINT**

This is an amended complaint for patent infringement. Plaintiff, Wi-LAN USA, Inc., for its amended complaint states as follows:

**PARTIES**

1. Plaintiff Wi-LAN USA, Inc. (“Wi-LAN”) is a corporation existing under the laws of the state of Florida with its principal place of business at 175 S.W. 7<sup>th</sup> Street, No. 1803, Miami, Florida 33130. Plaintiff is involved in the business of licensing and enforcing intellectual property from its parent corporation Wi-LAN Inc., a Canadian corporation and leading technology innovation and licensing business actively engaged in the research, development, and licensing of new technologies.

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. Upon information and belief, Defendant Research In Motion Limited may have changed its corporate name or may now being doing business as “BlackBerry.”

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 5000 Riverside Drive, Irving, Texas 75039 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. Upon information and belief, Defendant Research In Motion Corporation may have changed its corporate name or may now being doing business as “BlackBerry.”

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. 6,260,168**

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

11. Wi-LAN is the owner of United States Patent No. 6,260,168 (“the ’168 Patent”) which duly and legally issued on July 10, 2001.

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. The Bluetooth Specification, published by the Bluetooth SIG, defines a Data Voice packet (“DV packet”) for use in data communication wherein the DV packet’s payload is divided into a data field that is protected by forward error protection (FEC) and a voice field that is not protected by FEC. Figure 6.10, reproduced below, of the Bluetooth Specification Version 2.1 illustrates the DV packet format.

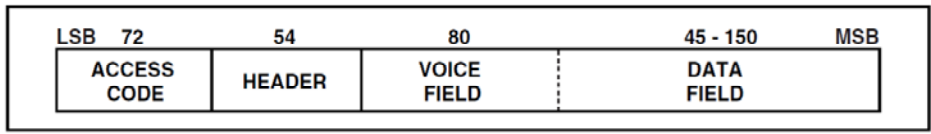


Figure 6.10: DV packet format

14. Defendants make, import, sell, use, and/or offer to sell mobile phones, tablets, and/or accessories that, upon information and belief, incorporate the use of DV packets for data communication as defined in the Bluetooth Specification (these products hereinafter “Bluetooth-Compliant Products”). Defendants have caused to be listed at least 60 product models as being compliant with Bluetooth Specification on the Bluetooth SIG’s “Qualified Listings” accessible at <https://www.bluetooth.org/>. 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, and Smart Card Reader. Bluetooth-Compliant

Products of Defendants are being sold, offered for sale, and used in this judicial district.

15. Defendants' making, importing, selling, using and/or offering for sale their Bluetooth-Compliant Products that incorporate the use of DV packets for data communication directly infringes the '168 patent.

16. Upon information and belief, Defendants also have been and are infringing, directly and/or indirectly by way of inducement and contributory infringement, one or more claims of the '168 Patent by their actions relating to making, using, importing, selling and/or offering for sale their Bluetooth-Compliant Products that incorporate the use of DV packets for data communication.

17. The use of Defendants' Bluetooth-Compliant Products to transmit DV packets results in direct infringement of the '168 Patent. Upon information and belief, transmitting DV packets during Bluetooth communications is a built-in, automatic capability of Defendants' Bluetooth-Compliant Products. Upon information and belief, users of Defendants' Bluetooth-Compliant Products, including employees of Defendants, use the products to transmit DV packets for data communication in a manner that infringes the '168 Patent.

18. Defendants' Bluetooth-Compliant Products that incorporate the use of DV packets for data communication constitute at least a material component of the invention claimed in the '168 Patent and are especially adapted for use in infringing the '168 Patent in that these devices when implementing DV packets

determine portions of a data link layer that do not require forward error correction and assign portions of the data link layer segments to include forward error correction and portions to be unprotected based on that determination. See, e.g., Bluetooth Specification Version 2.1 at Section 6.5.2.4 “DV packet.” The programming and functionality for generating the DV packets have no substantial non-infringing use and are not a staple article of commerce.

19. Defendants know and have known their Bluetooth-Compliant Products are especially made or especially adapted for use in infringing the ’168 Patent. Defendants knew of (or were willfully blind to) the ’168 Patent since the filing and/or service of the original complaint and knew of (or were willfully blind to) the ’168 Patent prior to the filing of the original complaint.

20. At least as early as the filing and/or service of the original complaint, Defendants knew of the ’168 Patent. Plaintiff filed the original complaint on December 10, 2012, sent the original complaint to Defendants, through Defendants’ counsel, on December 11, 2012, and formally served Defendants by no later than December 20, 2012.

21. Upon information and belief, Defendants knew of (or were willfully blind to) the ’168 Patent prior to the filing of the original complaint and at least as early as October of 2012, when Plaintiff disclosed the ’168 Patent to RIM’s counsel. At the time, Plaintiff and Defendants were engaged in patent litigation involving patents having the same assignee as the ’168 Patent and one of which listed the same inventor as the ’168 Patent. In that litigation, Defendants sought

discovery into patents, including the '168 Patent, that shared inventors with the patents involved in that action. Upon information and belief, Defendants would have been aware of (or were willfully blind to) the '168 Patent based on its other patent litigation with Plaintiff.

22. Upon information and belief, Defendants also knew of (or were willfully blind to) the '168 Patent prior to the filing of the original complaint and prior to October of 2012 through their competition, collaboration, and litigation with the original assignee of the '168 Patent. The original assignee of the '168 Patent, Glenayre Electronics, Inc. ("Glenayre"), was a direct competitor with Defendants. During the same year the '168 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 (or were willfully blind to) the '168 Patent based on its competition, collaboration, and litigation with Glenayre.

23. Defendants' actions induce infringement of the '168 Patent. In their product literature and marketing materials, both prior to and since filing of the original complaint, 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 '168 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/38289/26045.jsp)

[http://docs.blackberry.com/en/smartphone\\_users/deliverables/38346/26045.jsp](http://docs.blackberry.com/en/smartphone_users/deliverables/38346/26045.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/store/bbrryus/en\\_US/DisplayCategoryProductListPage/ThemeID.32403100/categoryID.61654600](http://store.shopblackberry.com/store/bbrryus/en_US/DisplayCategoryProductListPage/ThemeID.32403100/categoryID.61654600)

<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>

24. Defendants know and have known their acts induce infringement of the '168 Patent. At least as early as service and/or filing of the original complaint, Defendants knew or were willfully blind that use of the Bluetooth-Compliant Products' Bluetooth capability results in direct infringement of the '168 Patent, and 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 '168 Patent. Since filing of the complaint, Defendants have continued to encourage users to use the Bluetooth-Compliant Products to communicate in a Bluetooth network as claimed in the '168 Patent and continued

to make, use, sell, offer for sale, and import products they know to be accused of infringing the '168 Patent. Upon information and belief, Defendants had the specific intent to induce infringement of the '168 Patent.

25. Defendants' infringement is willful. Despite knowledge of the '168 Patent and knowledge that the Bluetooth-Compliant Products are accused of infringing the '168 Patent, Defendants have continued to make, use, sell, offer for sale, and/or import Bluetooth-Compliant Products and have continued to encourage users to use the Bluetooth-Compliant Products to communicate in a Bluetooth network as claimed in the '168 Patent. Upon information and belief, to date, Defendants have not made any changes to the operation of the Bluetooth-Compliant Products and have not provided their users with instruction on how to avoid infringement since Defendants had notice of the '168 Patent. To date, Defendants have not produced or relied upon an opinion of counsel related to the '168 Patent. To date, Defendants have not produced any evidence of investigation, design around or remedial actions with respect to infringement of the '168 Patent. Defendants have continued to act despite an objectively high likelihood that their actions constituted infringement of the '168 Patent and this likelihood was known or so obvious that it should have been known to Defendants.

26. Plaintiff has provided notice pursuant to and in satisfaction of 35 U.S.C. § 287.

27. Plaintiff has been and continues to be irreparably harmed and monetarily harmed by Defendants' infringement of the '168 Patent. If Defendants' infringement is not enjoined, Plaintiff will continue to be irreparably and monetarily harmed.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the following relief:

- A. A judgment that Defendants have infringed the '168 Patent;
- B. A judgment and order requiring Defendants to pay all appropriate damages under 35 U.S.C. § 284; including up to treble damages for willful infringement;
- C. A judgment and order requiring Defendants to pay the costs of this action, including all disbursements, interest, 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 '168 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, Plaintiff  
demands a trial by jury of all issues so triable.

Dated: February 25, 2013

**Wi-LAN USA, Inc.**

Attorneys for Plaintiff,

CARLSON & LEWITTES, P.A.

s/Curtis Carlson

Curtis Carlson (FlaBarNo. 236640)  
One Southeast Third Avenue, Suite 1200  
Miami, FL 33131  
Phone: (305) 372-9700  
Fax: (305) 372-8265

*Pro hac vice:*

Alan G. Carlson (MN# 14,801)  
Dennis C. Bremer (MN# 299,182)  
CARLSON, CASPERS, VANDENBURGH,  
LINDQUIST & SCHUMAN, P.A.  
225 South Sixth Street, Suite 4200  
Minneapolis, Minnesota 55402  
Phone: (612) 436-9600  
Fax: (612) 436-9605

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on February 25, 2013, I caused the foregoing to be served on all counsel of record via the Court's CM/ECF system as well as by email.

Marcos D. Jiménez  
Jeremy T. Elman  
Kevin E. Gaunt  
McDERMOTT WILL & EMERY LLP  
333 Avenue of the Americas, Ste. 4500  
Miami, Florida 33131  
Tel. 305.358.3500  
Fax 305.347.6500  
mjimenez@mwe.com  
jelman@mwe.com  
kgaunt@mw.com

s/ Curtis Carlson

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Curtis Carlson (FlaBarNo. 236640)  
CARLSON & LEWITTES, P.A.  
One Southeast Third Avenue, Suite 1200  
Miami, FL 33131  
Phone: (305) 372-9700  
Fax: (305) 372-8265  
carlson@carlson-law.net