

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

CASE NO. 12-CV-24318-KMM

Wi-LAN USA INC. and Wi-LAN INC.,	§
	§
Plaintiffs,	§
	§
v.	§
	§
APPLE INC.	§
	§
Defendant.	§
	§

FIRST AMENDED COMPLAINT

This is an action for patent infringement. Plaintiffs Wi-LAN USA, Inc. and Wi-LAN Inc. file this Complaint against Defendant Apple 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 Apple Inc. (“Apple” or “Defendant”) is a corporation organized and existing under the laws of the State of California, with its principal place of business at 1 Infinite Loop, Cupertino, California 95040.

3. Upon information and belief, Defendant 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 3rd

Generation Partnership Project – Long Term Evolution (“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 Defendant under Florida Statute § 48.193. Upon information and belief, Defendant (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, Apple has been registered to do business in the State of Florida since 1997 and currently has a registered agent in the State of Florida. Upon information and belief, Apple has conducted business in this judicial district.

8. Upon information and belief, Apple has an office in this jurisdiction located at 8888 SW 136th Street, Miami, FL 33176.

9. Upon information and belief, Apple has an office in this jurisdiction located at 738 Lincoln Road, Miami Beach, FL 33139.

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

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

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

DEFENDANT'S PRODUCTS

12. Upon information and belief, Defendant makes, uses, offers for sale, imports, and/or sells products compliant with the 3GPP LTE standard, including but not limited to the iPhone 5 and iPad (3rd Generation).

13. Upon information and belief, Defendant's accused products support at least Release 8, et seq. of the 3GPP LTE standard.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 8,315,640

14. The allegations of paragraphs 1 through 13 are re-alleged as if fully set forth herein.

15. On November 20, 2012, the USPTO duly and legally issued U.S. Patent No. 8,315,640 (the "'640 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 '640 Patent. Wi-LAN USA, Inc. holds certain exclusive rights under the '640 Patent, including an exclusive right to license Defendant. A true and correct copy of the '640 Patent is attached hereto as Exhibit A.

16. Upon information and belief, Defendant 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 '640 Patent in this judicial district and elsewhere by making, using, offering for sale, importing, and/or selling, without authority from Wi-LAN the Defendant's accused products, which fall within the scope of one or more of the claims of the '640 Patent.

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

18. The accused Apple 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.

19. Apple's customers who purchase the accused Apple products and operate those products in accordance with Apple's instructions directly infringe one or more claims of the '640 Patent.

20. At least as of June 2012, Wi-LAN had approached Apple about entering into a licensing agreement, where Apple would license Wi-LAN's 3GPP LTE standard-related patents.

21. At least as of September 2012, Wi-LAN inquired whether Apple had evaluated Wi-LAN's previously-sent licensing proposal.

22. At least as of October 2012, while negotiations were pending between Wi-LAN and Apple, Wi-LAN informed Apple, among other things, that it had acquired a portfolio of patents related to the 3GPP LTE standard.

23. At least as of October 2012, while negotiations were pending between Wi-LAN and Apple, Wi-LAN informed Apple that it had initiated litigation against other parties that infringe Wi-LAN patents related to the 3GPP LTE standard.

24. At least as of November 2012, while negotiations were pending between Wi-LAN and Apple, Wi-LAN informed Apple that its patent portfolio included 3GPP LTE standard-related patents.

25. Upon information and belief, Apple has had knowledge of the '640 Patent prior to the filing of this complaint, by way of the information disclosed to Apple during the licensing negotiations.

26. Apple has had actual notice of the '640 Patent since at least December 6, 2012, when the suit was filed.

27. Since becoming aware of the '640 Patent, Apple was objectively reckless and knew or should have known that the accused Apple products and the components thereof were especially made and/or especially adapted for use in infringing the '640 Patent.

28. Upon information and belief, Apple's infringement of the '640 Patent has been and continues to be willful and deliberate.

29. The '640 patent is valid and enforceable.

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

COUNT II: INFRINGEMENT OF U.S. PATENT NO. 8,311,040

31. The allegations of paragraphs 1 through 13 are re-alleged as if fully set forth herein.

32. On November 13, 2012, the USPTO duly and legally issued U.S. Patent No. 8,311,040 (the "'040 Patent"), entitled "Packing Source Data Packets Into Transporting Packets With Fragmentation" after a full and fair examination. Wi-LAN Inc. is the sole owner of the '040 Patent. Wi-LAN USA, Inc. holds certain exclusive rights under the '040 Patent, including an exclusive right to license Defendant. A true and correct copy of the '040 Patent is attached hereto as Exhibit B.

33. Upon information and belief, Defendant 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 '040 Patent in this judicial district and elsewhere by making, using, offering for sale, importing, and/or selling, without authority from Wi-LAN the Defendant's accused products, which fall within the scope of one or more of the claims of the '040 Patent.

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

35. The accused Apple 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.

36. Apple's customers who purchase the accused Apple products and operate those products in accordance with Apple's instructions directly infringe one or more claims of the '040 Patent.

37. At least as of June 2012, Wi-LAN had approached Apple about entering into a licensing agreement, where Apple would license Wi-LAN's 3GPP LTE standard-related patents.

38. At least as of September 2012, Wi-LAN inquired whether Apple had evaluated Wi-LAN's previously-sent licensing proposal.

39. At least as of October 2012, while negotiations were pending between Wi-LAN and Apple, Wi-LAN informed Apple, among other things, that it had acquired a portfolio of patents related to the 3GPP LTE standard.

40. At least as of October 2012, while negotiations were pending between Wi-LAN and Apple, Wi-LAN informed Apple that it had initiated litigation against other parties that infringe Wi-LAN patents related to the 3GPP LTE standard.

41. At least as of November 2012, while negotiations were pending between Wi-LAN and Apple, Wi-LAN informed Apple that its patent portfolio included 3GPP LTE standard-related patents.

42. Upon information and belief, Apple has had knowledge of the '040 Patent prior to the filing of this complaint, by way of the information disclosed to Apple during the licensing negotiation.

43. Apple has had actual notice of the '040 Patent since at least December 6, 2012, when the suit was filed.

44. Since becoming aware of the '040 Patent, Apple was objectively reckless and knew or should have known that the accused Apple products and the components thereof were especially made and/or especially adapted for use in infringing the '040 Patent.

45. Upon information and belief, Apple's infringement of the '040 Patent has been and continues to be willful and deliberate.

46. The '040 patent is valid and enforceable.

47. By way of its infringing activities, Defendant has caused and continues to cause Wi-LAN to suffer damages, and Wi-LAN is entitled to recover from Defendant 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 No. 8,315,640 and U.S. Patent No. 8,311,040

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 No. 8,315,640 and U.S. Patent No. 8,311,040;

C. Awarding to Wi-LAN damages arising out of Defendant's infringement of one or more of each of U.S. Patent No. 8,315,640 and U.S. Patent No. 8,311,040, together with enhanced damages, attorneys' 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

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*Attorneys for Plaintiffs Wi-LAN USA, Inc.
and Wi-LAN Inc.*

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 6, 2013 on all counsel or parties of record on the Service List below.

/s/ Samuel O. Patmore

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