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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

APPLE INC.,  
  
Plaintiff,  
  
v.  
  
WI-LAN, INC.,  
  
Defendant.  
  
AND RELATED COUNTERCLAIMS

Case No.: 14cv2235-DMS (BLM),  
consolidated with 14cv1507-DMS  
(BLM)

**AMENDED CASE MANAGEMENT  
ORDER REGULATING  
DISCOVERY AND OTHER  
PRETRIAL PROCEEDINGS IN A  
PATENT CASE**

1. WiLAN shall serve an amended Disclosure of Asserted Claims and Infringement Contentions on or before **May 15, 2017**.

2. On or before **June 15, 2017**, each party opposing a claim of infringement shall serve Invalidity Contentions pursuant to Patent L.R. 3.3 and produce documents as required by Patent L.R. 3.4.

3. On or before **June 29, 2017**, the parties shall exchange Preliminary Claim Constructions pursuant to Patent L.R. 4.1(a) and identify extrinsic evidence as required by Patent L.R. 4.1(b).

4. On or before **July 13, 2017**, the parties shall exchange Responsive Claim Constructions pursuant to Patent L.R. 4.1(c) and identify extrinsic evidence as required by

1 Patent L.R. 4.1(d).

2 5. On or before **July 27, 2017**, parties shall complete and file a Joint Claim  
3 Construction Chart, Joint Claim Construction Worksheet, and Joint Hearing Statement  
4 pursuant to Patent L.R. 4.2.

5 6. All discovery intended for use in the Claim Construction Hearing must be  
6 completed by **August 24, 2017**. See Patent L.R. 4.3.

7 7. On or before **August 31, 2017**, the parties must file simultaneously their  
8 Opening Claim Construction Briefs. See Patent L.R. 4.4(a).

9 8. On or before **September 25, 2017**, the parties must file simultaneously their  
10 Responsive Claim Construction Briefs. See Patent L.R. 4.4(b).

11 9. The Claim Construction and tutorial hearing will be held **October 30, 2017**,  
12 at **9:00 a.m.** See Patent L.R. 4.5.

13 10. Not later than thirty (30) days after the filing of the Claim Construction Order,  
14 any party relying upon advice of counsel as part of a patent-related claim or defense for  
15 any reason must make the disclosures required by Patent L.R. 3.7

16 11. A party asserting infringement must serve final amended infringement  
17 contentions, within the meaning of Patent L.R. 3.6(a)(1), not later than thirty (30) days  
18 after service of the Court's Claim Construction Ruling.

19 12. A party opposing a claim of infringement must serve final amended invalidity  
20 contentions, within the meaning of Patent L.R. 3.6(b)(2), not later than fifty (50) days after  
21 service of the Court's Claim Construction ruling.

22 13. The initial date for the substantial completion of document discovery  
23 including electronically stored information ("ESI") is **September 27, 2017**. See Patent  
24 L.R. 2.1(a)(1).

25 14. All fact discovery shall be completed by all parties on or before **January 12,**  
26 **2018**. All expert discovery shall be completed by all parties on or before **April 9, 2018**.  
27 "Completed" means that all discovery under Rules 30-36 of the Federal Rules of Civil  
28 Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of

1 time in advance of the cut-off date, so that it may be completed by the cut-off date, taking  
2 into account the times for service, notice, and response as set forth in the Federal Rules of  
3 Civil Procedure.

4 Counsel shall promptly and in good faith meet and confer with regard to all  
5 discovery disputes in compliance with Federal Rule of Civil Procedure 37(a)(1) and Civil  
6 Local Rule 26.1(a). All discovery motions must be filed within 30 days of the service of  
7 an objection, answer or response which becomes the subject of dispute or the passage of a  
8 discovery due date without response or production, and only after counsel have met and  
9 conferred and have reached impasse with regard to the particular issue. The Court's  
10 procedures for resolving discovery disputes are set forth in Magistrate Judge Barbara L.  
11 Major's Civil Chambers Rules, which are posted on the Court's website. **A failure to  
12 comply in this regard will result in a waiver of a party's discovery issue. Absent an  
13 order of the court, no stipulation continuing or altering this requirement will be  
14 recognized by the court.**

15 15. All expert disclosures required by Fed. R. Civ. P. 26(a)(2) shall be served on  
16 all parties on or before **November 10, 2017**. Any contradictory or rebuttal disclosures  
17 within the meaning of Rule 26(a)(2)(D)(ii) shall be disclosed on or before **November 20,**  
18 **2017**. Unless otherwise stipulated by the parties, the required expert disclosures shall  
19 include an expert report as required by Rule 26(a)(2)(B). If a written report is not required,  
20 the disclosure must provide the information required under Rule 26(a)(2)(c).

21 16. Each expert witness designated by a party shall prepare a written report to be  
22 provided to all other parties **no later than February 8, 2018**, containing the information  
23 required by Fed. R. Civ. P. 26(a)(2)(A) and (B). **Except as provided in paragraph 17**  
24 **below, any party that fails to make these disclosures shall not, absent substantial**  
25 **justification, be permitted to use evidence or testimony not disclosed at any hearing**  
26 **or at the time of trial. In addition, the Court may impose sanctions as permitted by**  
27 **Fed. R. Civ. P. 37.**

28 17. Any party, through any expert designated, shall in accordance with Fed. R.

1 Civ. P. 26(a)(2)(D) and Fed. R. Civ. P. 26(e)(2), supplement any of its expert reports  
2 regarding evidence intended solely to contradict or rebut evidence on the same subject  
3 matter identified in an expert report submitted by another party. Any such supplemental  
4 reports are due on or before **March 8, 2018**.

5 18. All other dispositive motions, including those addressing Daubert issues, shall  
6 be FILED on or before **April 23, 2018**. Please be advised that counsel for the moving party  
7 must obtain a motion hearing date from the law clerk of the judge who will hear the motion.  
8 Failure of counsel to timely request a motion date may result in the motion not being heard.  
9 Motions in Limine are to be filed as directed in the Local Rules, or as otherwise set by  
10 Judge **Dana M. Sabraw**.

11 19. Briefs or memoranda in support of or in opposition to any pending motion  
12 shall not exceed twenty-five (25) pages in length without permission of the judge or  
13 magistrate judge who will hear the motion. No reply memorandum shall exceed ten (10)  
14 pages without leave of the judge or magistrate judge who will hear the motion.

15 20. A Mandatory Settlement Conference shall be conducted on **May 23, 2018** at  
16 **9:30 a.m.** in the chambers of Magistrate Judge Barbara L. Major located at **333 West**  
17 **Broadway, Suite 1110, San Diego, CA 92101**. All discussions at the Mandatory  
18 Settlement Conference will be informal, off the record, privileged, and confidential.  
19 Counsel for any non-English speaking party is responsible for arranging for the appearance  
20 of an interpreter at the conference.

21 a. **Personal Appearance of Parties Required**: All parties, adjusters for  
22 insured defendants, and other representatives of a party having full and complete authority  
23 to enter into a binding settlement, as well as the principal attorneys responsible for the  
24 litigation, must be present **in person** and legally and factually prepared to discuss  
25 settlement of the case. Counsel appearing without their clients (whether or not counsel has  
26 been given settlement authority) will be cause for immediate imposition of sanctions and  
27 may also result in the immediate termination of the conference.  
28

1 Unless there is good cause, persons required to attend the conference pursuant to  
2 this Order shall not be excused from personal attendance. Requests for excuse from  
3 attendance for good cause shall be made in writing at least three (3) court days prior to the  
4 conference. Failure to appear in person at the Mandatory Settlement Conference will be  
5 grounds for sanctions.

6 b. **Full Settlement Authority Required:** In addition to counsel who will  
7 try the case, a party or party representative with full settlement authority<sup>1</sup> must be present  
8 for the conference. In the case of a corporate entity, an authorized representative of the  
9 corporation who is not retained outside counsel must be present and must have  
10 discretionary authority to commit the company to pay an amount up to the amount of  
11 Plaintiff's prayer (excluding punitive damages prayers). The purpose of this requirement  
12 is to have representatives present who can settle the case during the course of the  
13 conference without consulting a superior. Counsel for a government entity may be excused  
14 from this requirement so long as the government attorney who attends the Mandatory  
15 Settlement Conference (1) has primary responsibility for handling the case, and (2) may  
16 negotiate settlement offers which the attorney is willing to recommend to the government  
17 official having ultimate settlement authority.

18 c. **Confidential Settlement Statements Required:** No later than **May**  
19 **11, 2018**, the parties shall submit directly to Magistrate Judge Major's chambers (via hand  
20 delivery or email address) confidential settlement statements no more than ten (10) pages  
21 in length. **These confidential statements shall not be filed or served on opposing**  
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25 <sup>1</sup> "Full settlement authority" means that the individuals at the settlement conference must be authorized to  
26 explore settlement options fully and to agree at that time to any settlement terms acceptable to the parties.  
27 Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have  
28 "unfettered discretion and authority" to change the settlement position of a party. Pitman v. Brinker Int'l,  
Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement  
authority to attend the conference contemplates that the person's view of the case may be altered during  
the face to face conference. Id. at 486. A limited or a sum certain of authority is not adequate. See Nick  
v. Morgan's Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

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