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7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10 **SAN DIEGO DIVISION**

11 APPLE INC,  
12 Plaintiff,

13 vs.

14 WI-LAN INC.  
15 Defendant.

No.: 3:14-cv-2235-DMS-BLM;  
Consolidated with 3:14-cv-01507-DMS-  
BLM  
DEMAND FOR JURY TRIAL

**Wi-LAN'S OPENING CLAIM  
CONSTRUCTION BRIEF**

16  
17  
18 WI-LAN INC,  
19 Plaintiff,

20 vs.

21 APPLE INC,  
22 Defendant.

Department: 13A  
Judge: Hon. Dana M. Sabraw  
Magistrate Judge: Hon. Barbara L. Major  
Complaint Filed: June 19, 2014  
Hearing: October 30, 2017 at 9:00 a.m.

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1 Most of the claim construction issues in this case have already been decided  
2 by this Court in *Wi-LAN v. Apple*, No. 13-cv-798-DMS-BLM (S.D. Cal.) (“’798  
3 Case” or “’798”). The ’798 Case involved overlapping patents, the same  
4 inventors, and the same 4G product development activities. Five of the ten terms  
5 at issue here were construed, or stipulated-to, in the ’798 Case in either the same  
6 patent or a patent with the same specification. While Wi-LAN seeks the ’798 Case  
7 constructions, Apple ignores the Court’s Orders and resurrects claim construction  
8 arguments that were extensively litigated, including in a *Markman* Order (’798,  
9 Dkt. 98) (Ex. A), Clarification Order (’798, Dkt. 123) (Ex. B), and Reconsideration  
10 of the Clarification Order (’798, Dkt. 134) (Ex. C), and rejected by the Court as  
11 inconsistent with the intrinsic record.<sup>1</sup> The claim construction issues in the ’798  
12 Case are the same issues here, and there was a final judgment in the ’798 Case.  
13 Therefore, issue preclusion (collateral estoppel) applies to at least five terms in this  
14 case, and the Court should hold Apple to the ’798 constructions.

## 15 **I. BACKGROUND**

16 This case involves six patents-in-suit.<sup>2</sup> The ’798 Case involved the ’040  
17 patent-in-suit and another patent, U.S. Patent No. 8,315,640 (“’640 patent”), which  
18 is a parent or sister patent to the ’723, ’145, ’020, and ’761 patents-in-suit. This  
19 case also involves a ’757 patent-in-suit that shares inventors and was developed by  
20 the same wireless engineering group that developed the other patents-in-suit.

21 All the patents-in-suit relate to advanced 4G wireless technologies that  
22 originated in work by Ken Stanwood, Wi-LAN’s current Chief Technology Officer  
23 (CTO) and inventor on all patents-in-suit, and his team while at Ensemble  
24 Communications focused on developing 4G products. Ensemble was a San Diego  
25 product company founded in 1997 as a start-up that Mr. Stanwood helped grow

26 \_\_\_\_\_  
27 <sup>1</sup> All exhibits are attached to the Declaration of Kevin Schubert filed herewith.

28 <sup>2</sup> The patents-in-suit are U.S. Patent Nos. 8,311,040 (“’040”); 8,462,723 (“’723”);  
8,457,145 (“’145”); 8,615,020 (“’020”); 8,462,761 (“’761”); 8,537,757 (“’757”).

1 (then as Ensemble’s CTO) to over 200 engineers, scientists, and support personnel.  
2 Wi-LAN and Ensemble worked together to extend the capabilities of Wi-LAN’s  
3 pioneering Wideband OFDM (Orthogonal Frequency Division Multiplexing)  
4 technology from Wi-Fi to 4G cellular through the 4G WiMAX Forum. The  
5 WiMAX Forum was co-founded by Wi-LAN, Ensemble, and Nokia around 2001  
6 to promote the development of a 4G cellular standard and products. Wideband  
7 OFDM is the radio frequency (“RF”) technology that makes high-speed wireless  
8 possible. It was a “wired” world before Wi-LAN’s Wideband OFDM invention.<sup>3</sup>  
9 In 2004, Wi-LAN began acquiring Ensemble’s assets and engineers.

10 Mr. Stanwood and his team developed advanced 4G cellular technologies  
11 that were implemented in the 4G WiMAX cellular standard—Mr. Stanwood was a  
12 principal drafter of the original specification and Vice-Chair of the IEEE  
13 committee responsible for the first 4G cellular standard. Many of these  
14 technologies were subsequently adopted for use in the 4G LTE cellular standard  
15 used in today’s 4G mobile devices. According to Intel, a supplier of Apple’s 4G  
16 LTE chips, “WiMAX and LTE are 80% to 85% the same.” Ex. D.<sup>4</sup> The advanced  
17 4G technologies Mr. Stanwood and his team developed include:

18 (1) **Bandwidth-on-demand technologies** enabling 4G cellular devices  
19

20 <sup>3</sup> See, e.g., Ex. P (Time Magazine April 2000 article) (“Wi-LAN is rapidly  
21 becoming a world leader in broadband wireless communications.”); Ex. Q  
22 (Maclean’s July 2000 article) at 40 (“Wi-LAN is one of those next-generation  
23 companies. Its technology may well become the base of what some call the  
24 coming wireless revolution.”); Ex. R (Scientific American October 2000 article) at  
25 57 (“[W]ireless multiplexing hasn’t been exploited for cellular systems . . . That  
26 may change soon . . . Wi-LAN holds a number of key patents for. . . W-OFDM.”).

25 <sup>4</sup> The cellular network providers (Verizon, AT&T, *etc.*) developed the LTE  
26 standard so that the 4G cellular technologies in the 4G WiMAX standard could be  
27 integrated with their existing 2G and 3G networks, allowing for the gradual roll-  
28 out of 4G network infrastructure (a costly endeavor) and phase out of 2G and 3G  
network infrastructure, now scheduled to be completely phased out by 2020.

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