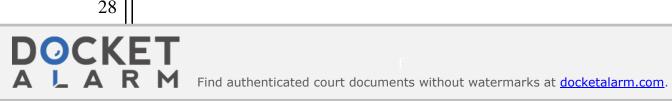
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9	SOUTHERN DISTRICT OF CALIFORNIA		
10	SAN DIEGO DIVISION		
11	ADDLE INC	N. 2.14 . 2225 DMC DLM	
12	APPLE INC,	No.: 3:14-cv-2235-DMS-BLM; Consolidated with 3:14-cv-01507-DMS-	
13	Plaintiff,	BLM DEMAND FOR JURY TRIAL	
14	VS.	Wi-LAN'S OPENING CLAIM	
15	WI-LAN INC.	CONSTRUCTION BRIEF	
16	Defendant.		
17			
18	WI-LAN INC,	Department: 13A	
19	Plaintiff,	Judge: Hon. Dana M. Sabraw Magistrate Judge: Hon. Barbara L. Major	
20	VS.	Complaint Filed: June 19, 2014	
21	APPLE INC,	Hearing: October 30, 2017 at 9:00 a.m.	
22	Defendant.		
23			
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Most of the claim construction issues in this case have already been decided by this Court in *Wi-LAN v. Apple*, No. 13-cv-798-DMS-BLM (S.D. Cal.) ("'798 Case" or "'798"). The '798 Case involved overlapping patents, the same inventors, and the same 4G product development activities. Five of the ten terms at issue here were construed, or stipulated-to, in the '798 Case in either the same patent or a patent with the same specification. While Wi-LAN seeks the '798 Case constructions, Apple ignores the Court's Orders and resurrects claim construction arguments that were extensively litigated, including in a *Markman* Order ('798, Dkt. 98) (Ex. A), Clarification Order ('798, Dkt. 123) (Ex. B), and Reconsideration of the Clarification Order ('798, Dkt. 134) (Ex. C), and rejected by the Court as inconsistent with the intrinsic record. The claim construction issues in the '798 Case are the same issues here, and there was a final judgment in the '798 Case. Therefore, issue preclusion (collateral estoppel) applies to at least five terms in this case, and the Court should hold Apple to the '798 constructions.

I. BACKGROUND

This case involves six patents-in-suit.² The '798 Case involved the '040 patent-in-suit and another patent, U.S. Patent No. 8,315,640 ("'640 patent"), which is a parent or sister patent to the '723, '145, '020, and '761 patents-in-suit. This case also involves a '757 patent-in-suit that shares inventors and was developed by the same wireless engineering group that developed the other patents-in-suit.

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

¹ All exhibits are attached to the Declaration of Kevin Schubert filed herewith.

² 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").

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

Mr. Stanwood and his team developed advanced 4G cellular technologies that were implemented in the 4G WiMAX cellular standard—Mr. Stanwood was a principal drafter of the original specification and Vice-Chair of the IEEE committee responsible for the first 4G cellular standard. Many of these technologies were subsequently adopted for use in the 4G LTE cellular standard used in today's 4G mobile devices. According to Intel, a supplier of Apple's 4G LTE chips, "WiMAX and LTE are 80% to 85% the same." Ex. D.⁴ The advanced 4G technologies Mr. Stanwood and his team developed include:

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

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

⁴ The cellular network providers (Verizon, AT&T, *etc.*) developed the LTE standard so that the 4G cellular technologies in the 4G WiMAX standard could be integrated with their existing 2G and 3G networks, allowing for the gradual rollout 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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