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16 UNITED STATES DISTRICT COURT
17 SOUTHERN DISTRICT OF CALIFORNIA

18 APPLE INC.,
19 Plaintiff,
20 v.
21 WI-LAN, INC.,
22 Defendant.

CASE NO. 3:14-cv-02235-DMS-BLM
(lead case);
CASE NO. 3:14-cv-1507-DMS-BLM
(consolidated)

**APPLE INC.'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF ITS MOTION FOR
LEAVE TO AMEND APPLE'S
INVALIDITY CONTENTIONS**

Date: March 9, 2018
Time: 1:30 p.m.
Dept.: 13A
Judge: Hon. Dana M. Sabraw
Magistrate Judge: Hon. Barbara L. Major

25 AND RELATED
26 COUNTERCLAIMS

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1 **I. INTRODUCTION**

2 Wi-LAN misrepresented the priority dates for three of its six asserted patents
3 to the Patent Office and to Apple, and Wi-LAN failed to disclose evidence of sales
4 of its own prior art products before the correct priority dates, as required by Patent
5 L.R. 3.2(a). Apple recently discovered Wi-LAN's misrepresentations and learned
6 that Wi-LAN made those misrepresentations for a reason: Using the correct
7 priority dates, Wi-LAN's own product indisputably anticipates and invalidates
8 those three patents. To remedy Wi-LAN's misrepresentations, Apple seeks leave to
9 amend its invalidity contentions to add Wi-LAN's own invalidating prior art:

10 (1) the "Fiberless" product released in late 1999, and (2) its predecessor company's
11 proposal to an IEEE working group in the year 2000.

12 Good cause exists for Apple to amend its invalidity contentions to add the
13 Fiberless product and the IEEE submission. Wi-LAN already contends that its
14 Fiberless product practices many of the asserted claims, so summary judgment of
15 invalidity is warranted if the Court agrees with Apple that the '723, '020 and '761
16 patents are not entitled to the 1999 priority dates Wi-LAN wrongly claimed. And
17 Wi-LAN is not prejudiced by this amendment because: (1) Apple is seeking to add
18 Wi-LAN's own product and its predecessor's IEEE submission—information
19 uniquely within Wi-LAN's possession; (2) Wi-LAN misrepresented the priority
20 dates of these patents in the first place; and (3) Wi-LAN contends its Fiberless
21 product practices many of the asserted claims, so Wi-LAN already has mapped its
22 prior art product to the asserted claims.

23 **II. BACKGROUND**

24 Throughout this case, Wi-LAN has contended that three of its patents¹ are
25 entitled to claim priority back to May 1999. This is wrong, as Apple first informed
26 Wi-LAN on January 24, 2018. In 2011, Wi-LAN misrepresented to the Patent

27 _____
28 ¹ The patents at issue are United States Patent Nos. 8,462,723 ("the '723 patent"),
8,615,020 ("the '020 patent") and 8,462,761 ("the '761 patent").

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