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15 UNITED STATES DISTRICT COURT
 16 SOUTHERN DISTRICT OF CALIFORNIA

17 APPLE INC.,
 18 Plaintiff,
 19 v.
 20 WI-LAN, INC.,
 21 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 TO
 STRIKE WI-LAN'S NEW
 INFRINGEMENT THEORIES**

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

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 25 AND RELATED
 COUNTERCLAIMS
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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<u>Page</u>
I. INTRODUCTION.....	1
II. BACKGROUND.....	2
A. Wi-LAN’s August 2017 Final Infringement Contentions Rely Exclusively On The LTE Standard.....	2
B. Wi-LAN’s August 2017 Final Infringement Contentions Do Not Cite Any Apple-Produced Technical Documents Or Source Code.....	3
C. Wi-LAN Insisted During Fact Discovery That Its LTE Standard-Based Infringement Contentions Were “Final.”.....	4
D. Wi-LAN’s February 2018 Expert Reports Offer Brand-New Product-Based Infringement Theories.....	4
III. LEGAL STANDARDS FOR MOTIONS TO STRIKE.....	6
IV. ARGUMENT.....	7
A. Wi-LAN’s Experts Impermissibly Substituted A New Theory Of Infringement In Their Expert Reports.....	7
1. Apple Was Surprised By Wi-LAN’s Change Of Infringement Theory, Especially After Wi-LAN Repeatedly Represented Its Infringement Theories Were “Final.”.....	9
2. Apple Has No Ability To Cure Wi-LAN’s Change In Infringement Theory After The Close Of Fact Discovery.....	11
3. Permitting Wi-LAN To Fundamentally Change Its Infringement Theory Now Would Disrupt The Trial.....	12
4. The Evidence Is Indisputably Important.....	12
5. Wi-LAN Has No Excuse For Failing To Disclose Its Product-Based Infringement Theory Sooner.....	12
B. The Proper Remedy Is Striking Wi-LAN’s New Infringement Theory And Limiting Wi-LAN To The Standards-Based Infringement Theory Disclosed In Its Infringement Contentions.....	13
C. The Court Also Should Strike Dr. Madisetti’s Incorporation Of Source Code By Reference.....	14
D. The Court Also Should Strike Dr. Madisetti’s New Theory Concerning The Claimed “Node,” Which Does Not Appear In Wi-LAN’s Final Infringement Contentions.....	15
V. CONCLUSION.....	17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page

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No. 11-cv-12, 2015 WL 1932173 (D. Nev. Apr. 28, 2015)..... 15

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2014 WL 709865 (N.D. Cal. Feb. 23, 2014)..... 6, 13, 16

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359 F. Supp. 2d 558 (E.D. Tex. 2005) 13

Ameranth, Inc. v. Pizza Hut, Inc.,
No. 12-cv-729, 2013 WL 3894880 (S.D. Cal. July 26, 2013) 6, 9

ASUS Comput. Int’l v. Round Rock Research, LLC,
No. 12-cv-02099, 2014 WL 1463609 (N.D. Cal. Apr. 11, 2014)..... 16

Droplets, Inc. v. Amazon.com, Inc.,
No. 12-cv-03733, 2013 WL 1563256 (N.D. Cal. Apr. 12, 2013)..... 14

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No. 13-cv-03999, 2015 WL 3640694 (N.D. Cal. June 11, 2015)..... 8, 16

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No. 13-cv-05808-HSG, 2016 WL 612907 (N.D. Cal. Feb. 16, 2016)..... 7

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No. 14-cv-01197, 2015 WL 5012679 (N.D. Cal. Aug. 24, 2015) 10, 11, 12

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620 F.3d 1321 (Fed. Cir. 2010)..... 7, 9

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No. 14-cv-03009, 2016 WL 6762573 (C.D. Cal. June 15, 2016) 10

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No. 10-cv-2618, 2012 WL 4547449 (S.D. Cal. Sept. 28, 2012)..... 10, 11

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No. 07-cv-704, 2008 WL 152147 (S.D. Cal. Jan. 16, 2008)..... 6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
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1 **I. INTRODUCTION**

2 Wi-LAN radically changed its infringement theory after the close of fact
3 discovery and after representing that its LTE standard-based infringement
4 contentions served in August 2017 were “final” and did not require amendment.
5 Despite its assurances, Wi-LAN did an about-face in its expert reports, asserting a
6 fundamentally different product-based infringement theory. Wi-LAN’s final
7 infringement contentions cited no source code and no Apple technical documents.
8 Yet Wi-LAN’s expert reports cite to hundreds of Apple technical documents and
9 source code files for the first time. And in their depositions, Wi-LAN’s experts,
10 Vijay Madiseti and Trevor Smedley, distanced themselves from any reliance on the
11 LTE standard, confirming Wi-LAN’s improper about-face in its theory.

12 This situation satisfies the factors for a motion to strike in this District. The
13 law prohibits Wi-LAN’s “shifting sands” approach to its infringement theories—
14 rather, a patentee is limited to the infringement theories disclosed in its
15 infringement contentions. If Wi-LAN wanted to pursue a product-based
16 infringement theory, it was required to disclose that theory and cite to Apple’s
17 documents and source code in its contentions. Wi-LAN did nothing of the sort.
18 Rather, it insisted its LTE standard-based infringement contentions were final, then
19 surprised Apple with a new product-based theory in its expert reports.

20 Apple therefore seeks an order: (1) limiting Wi-LAN to the LTE standard-
21 based infringement theory disclosed in its final infringement contentions;
22 (2) striking Dr. Madiseti’s citations to Apple’s internal technical documents and
23 source code in support of his new product-based infringement theory; (3) striking
24 Dr. Madiseti’s reliance on Dr. Smedley’s “source code” expert report; (4) striking
25 portions of Dr. Madiseti’s untimely “supplemental” expert report; and (5) striking
26 Dr. Madiseti’s new infringement theory concerning the claim term “node,” which
27 Wi-LAN did not disclose in its contentions at all. Wi-LAN should proceed to trial
28 with the LTE standard-based infringement theory it espoused in its final

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