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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 NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT**

Date: June 1, 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 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on June 1, 2018 at 1:30 p.m. in the Courtroom
3 of the Honorable Dana M. Sabraw of the above-entitled court, located at 333 W.
4 Broadway, San Diego, California 92101, Plaintiff Apple Inc. (“Apple”) will and
5 hereby does move for summary judgment.

6 Summary judgment is warranted in this case on multiple grounds. Just as in
7 the prior case between Wi-LAN and Apple, Wi-LAN simply cannot stretch its
8 nearly 20-year-old patent disclosure to cover a modern-day iPhone. The accused
9 Apple iPhones do not infringe the asserted patents because, under Wi-LAN’s
10 infringement theory, they do not allocate bandwidth to multiple “users” across
11 “user connections.” Wi-LAN’s infringement theory also requires multiple actors
12 for infringement (Apple and a network carrier), so Apple is not responsible for
13 direct infringement. The accused iPhones that do not use VoLTE also cannot
14 infringe under Wi-LAN’s infringement theory. Apple does not infringe the ’040
15 patent because Wi-LAN cannot identify any “specified connection” under the
16 Court’s claim construction that has a priority. Wi-LAN also cannot sustain its
17 willful infringement claim as a matter of law, because there is no evidence of
18 “egregious” conduct by Apple, particularly where Wi-LAN completely changed its
19 theory of infringement, and the accused products, three years into the case. Finally,
20 Wi-LAN cannot maintain its infringement claims against accused iPhones
21 containing an Intel chipset based on the Wi-LAN/Intel license agreement.

22 This Motion is made pursuant to Civil Local Rule 7.1, and is based on this
23 Notice of Motion and Motion, the accompanying Memorandum of Points and
24 Authorities, the Separate Statement of Undisputed Material Facts, supporting
25 declaration and exhibits, all of which are served and filed herewith, the complete
26 records and files of this action, and any argument or additional evidence that is
27 permitted by this Court.

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Dated: May 1, 2018

DLA PIPER LLP (US)

By /s/ Sean C. Cunningham

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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2018, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants.

/s/ Sean C. Cunningham
Sean C. Cunningham