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8 *Attorneys for Defendant,*  
9 *Wi-LAN Inc.*

10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**  
12 **SAN DIEGO**

13 WI-LAN INC.,

14 *Plaintiff,*

15 vs.

16 APPLE INC.,

17 *Defendant.*

18 ) No. 3:14-cv-1507-DMS-BLM; (Lead Case  
19 ) No. 3:14-cv-2235-DMS-BLM)  
20 ) DEMAND FOR JURY TRIAL

21 ) **WI-LAN’S RESPONSE TO APPLE’S**  
22 ) **OBJECTIONS TO EVIDENCE**  
23 ) **SUBMITTED BY WI-LAN IN**  
24 ) **OPPOSING APPLE’S MOTION FOR**  
25 ) **SUMMARY JUDGMENT**

26 ) **Department: 13A**

27 ) **Judge: Hon. Dana M. Sabraw**

28 ) **Magistrate: Hon. Barbara L. Major**

29 ) **Hearing Date: June 15, 2018**

30 ) **Time: 1:30 pm**

1 Wi-LAN responds to Apple's objections to the declaration of Wi-LAN's  
2 infringement expert, Dr. Vijay Madiseti, that Wi-LAN attached to its opposition of  
3 Apple's summary judgment motion. (ECF No. 380.) Apple objects to certain portions  
4 of Dr. Madiseti's declaration as purportedly offering "new" opinions. Wi-LAN  
5 respectfully disagrees.

6 Dr. Madiseti's declaration is fully consistent with the opinions Dr. Madiseti  
7 provided in his expert report and at deposition. Dr. Madiseti's declaration responds to  
8 Apple's motion for summary judgment to correct a number of inaccurate statements  
9 about his infringement opinions. For example, Apple incorrectly argued that Dr.  
10 Madiseti admitted certain claimed functionality was not present on the accused iPhones  
11 as sold. Wi-LAN's opposition corrected Apple's statements by citing to Dr. Madiseti's  
12 report, his deposition testimony, Apple documents, as well as Dr. Madiseti's  
13 declaration. *See, e.g.*, (ECF No. 358) (Wi-LAN Opp.) at 11, n. 6; 12, n. 8; 14.

14 Moreover, Apple's summary judgment motion is largely based on new theories  
15 that Apple raises for the first time on summary judgment. For example, Apple  
16 presented an indefiniteness argument not raised in its expert reports. (ECF No. 330 at  
17 7.) Apple also presents a new non-infringement theory that bandwidth must be  
18 allocated to individual iPhone apps (as opposed to connections), which Apple did not  
19 raise in its expert reports or its interrogatory responses setting forth Apple's non-  
20 infringement theories. (ECF No. 330 at 5-8). Even if Apple could show Dr. Madiseti  
21 presented any new theory, which it does not, Apple's objection should be denied in  
22 light of Apple's new arguments as well as the public policy reasons favoring deciding  
23 matters on the merits. *DR Sys. v. Eastman Kodak Co.*, 08-CV-669-H (BLM), 2009 U.S.  
24 Dist. LEXIS 104080, \*37-40 (S.D. Cal. Nov. 9, 2009) (denying motion to strike  
25 declaration submitted with summary judgment briefing alleged to contain "entirely new  
26 opinions" and stating "public policy reasons weigh in favor of deciding the matter on  
27 the merits").

1 Dated: June 1, 2018

Respectfully submitted,

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3  
4 By: /s/ Allison Goddard

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**PROOF OF SERVICE**

I hereby certify that on June 1, 2018, I caused a copy of this pleading to be delivered via CM/ECF on the counsel of record.

Dated: June 1, 2018

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