



1 Defendant Wi-LAN, Inc. (“Wi-LAN” or “Defendant”) files this Answer to  
2 Plaintiff Apple Inc.’s (“Apple”) Second Amended Complaint (the “complaint”) for  
3 Declaratory Judgment, dated September 18, 2014. Wi-LAN denies that Apple is  
4 entitled to any relief. The statements herein are made upon information and belief.  
5 Wi-LAN’s specific responses to the numbered allegations are set forth below. Except  
6 as specifically admitted herein, Wi-LAN denies any remaining allegation in Apple’s  
7 complaint.

### 8 **NATURE OF THE ACTION**

9 1. Answering the allegations in Paragraph 1, Wi-LAN admits that this is an  
10 action for declaratory judgment of non-infringement, invalidity, and unenforceability  
11 of five (5) United States patents pursuant to the Declaratory Judgment Act.

### 12 **PARTIES**

13 2. The allegations in Paragraph 2 are not directed to Wi-LAN, and therefore  
14 no answer is required.

15 3. Admitted.

16 4. Wi-LAN admits that it has engaged in acts in and directed to California,  
17 but otherwise denies the allegations of this paragraph.

### 18 **JURISDICTION AND VENUE**

19 5. Admitted.

20 6. Answering the allegations in Paragraph 6, Wi-LAN admits that it is the  
21 owner of the patents-in-suit. Wi-LAN also admits that it has accused Apple of  
22 infringing the patents-in-suit and that it has requested a meeting with Apple regarding  
23 a potential license to the patents-in-suit. Wi-LAN also admits that it has previously  
24 initiated lawsuits against Apple. Wi-LAN also admits that a substantial controversy  
25 exists between the parties which is of sufficiency immediacy and reality to warrant an  
26 action on the patents-in-suit. Wi-LAN denies the remainder of the allegations in this  
27 paragraph.





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**COUNT IV**

**DECLARATION OF INVALIDITY OF U.S. PATENT NO. 8,462,723**

31. Answering the allegations in Paragraph 31, Wi-LAN incorporates by reference Paragraphs 1-30 as if fully set forth herein.

32. Denied.

33. Answering the allegations in Paragraph 33, Wi-LAN admits that there is an actual case or controversy regarding whether Apple infringes the patents-in-suit. Wi-LAN disagrees that a declaration of non-infringement, invalidity, or unenforceability on any of the patents is warranted.

34. Denied.

**COUNT V**

**DECLARATION OF INVALIDITY OF U.S. PATENT NO. 8,462,761**

35. Answering the allegations in Paragraph 35, Wi-LAN incorporates by reference Paragraphs 1-34 as if fully set forth herein.

36. Denied.

37. Answering the allegations in Paragraph 37, Wi-LAN admits that there is an actual case or controversy regarding whether Apple infringes the patents-in-suit. Wi-LAN disagrees that a declaration of non-infringement, invalidity, or unenforceability on any of the patents is warranted.

38. Denied.

**COUNT VI**

**DECLARATION OF INVALIDITY OF U.S. PATENT NO. 8,462,761**

39. Answering the allegations in Paragraph 39, Wi-LAN incorporates by reference Paragraphs 1-38 as if fully set forth herein.

40. Denied.

41. Answering the allegations in Paragraph 41, Wi-LAN admits that there is an actual case or controversy regarding whether Apple infringes the patents-in-suit.

1 Wi-LAN disagrees that a declaration of non-infringement, invalidity, or  
2 unenforceability on any of the patents is warranted.

3 42. Denied.

4 **COUNT VII**

5 **DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 8,615,020**

6 43. Answering the allegations in Paragraph 43, Wi-LAN incorporates by  
7 reference Paragraphs 1-42 as if fully set forth herein.

8 44. Denied.

9 45. Answering the allegations in Paragraph 45, Wi-LAN admits that there is  
10 an actual case or controversy regarding whether Apple infringes the patents-in-suit.  
11 Wi-LAN disagrees that a declaration of non-infringement, invalidity, or  
12 unenforceability on any of the patents is warranted.

13 46. Denied.

14 **COUNT VIII**

15 **DECLARATION OF INVALIDITY OF U.S. PATENT NO. 8,615,020**

16 47. Answering the allegations in Paragraph 47, Wi-LAN incorporates by  
17 reference Paragraphs 1-46 as if fully set forth herein.

18 48. Denied.

19 49. Answering the allegations in Paragraph 49, Wi-LAN admits that there is  
20 an actual case or controversy regarding whether Apple infringes the patents-in-suit.  
21 Wi-LAN disagrees that a declaration of non-infringement, invalidity, or  
22 unenforceability on any of the patents is warranted.

23 50. Denied.

24 **COUNT IX**

25 **DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 8,537,757**

26 51. Answering the allegations in Paragraph 51, Wi-LAN incorporates by  
27 reference Paragraphs 1-50 as if fully set forth herein.

1 52. Denied.

2 53. Answering the allegations in Paragraph 53, Wi-LAN admits that there is  
3 an actual case or controversy regarding whether Apple infringes the patents-in-suit.  
4 Wi-LAN disagrees that a declaration of non-infringement, invalidity, or  
5 unenforceability on any of the patents is warranted.

6 54. Denied.

7 **COUNT X**

8 **DECLARATION OF INVALIDITY OF U.S. PATENT NO. 8,537,757**

9 55. Answering the allegations in Paragraph 55, Wi-LAN incorporates by  
10 reference Paragraphs 1-54 as if fully set forth herein.

11 56. Denied.

12 57. Answering the allegations in Paragraph 57, Wi-LAN admits that there is  
13 an actual case or controversy regarding whether Apple infringes the patents-in-suit.  
14 Wi-LAN disagrees that a declaration of non-infringement, invalidity, or  
15 unenforceability on any of the patents is warranted.

16 58. Denied.

17 **COUNT XV**

18 **DECLARATION OF UNENFORCEABILITY DUE TO UNCLEAR HANDS**

19 59. Answering the allegations in Paragraph 59, Wi-LAN incorporates by  
20 reference Paragraphs 1-58 as if fully set forth herein.

21 60. Wi-LAN admits that Apple manufactures and sells products in this  
22 action. The remainder of the allegations in this Paragraph are denied.

23 61. Denied.

24 62. Wi-LAN admits that it sued Apple alleging infringement of U.S. Patent  
25 No. RE37,802 and Apple was found at the district court not to infringe certain claims.  
26 Wi-LAN also admits that it sued Apple alleging infringement of U.S. Patent No.

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1 6,381,211 and certain claims were found invalid at the district court. The remainder  
2 of the allegations in this Paragraph are denied.

3 63. Denied.

4 64. Wi-LAN admits that Telus Corporation brought an ownership dispute  
5 against Wi-LAN on patents that are not in this suit. The remainder of the allegations  
6 in this Paragraph are denied.

7 65. Denied.

8 66. Denied.

9 67. Denied.

### 10 **PRAYER FOR RELIEF**

11 These paragraphs set forth the statement of relief requested by Plaintiff to  
12 which no response is required. Wi-LAN denies that Plaintiff is entitled to any of the  
13 requested relief.

### 14 **JURY DEMAND**

15 Defendant hereby demands a trial by jury on all issues and claims so triable.

### 16 **COUNTERCLAIMS**

17 Without waiver of any rights, Wi-LAN, by and through its counsel, and by way  
18 of Counterclaims against Apple, alleges:

### 19 **THE PARTIES**

20 1. Wi-LAN, Inc. is a corporation organized and existing under the laws of  
21 Canada with its principal place of business at 303 Terry Fox Drive, Ottawa, ON  
22 Canada. Wi-LAN, Inc. is referred to herein as "Wi-LAN."

23 2. Wi-LAN's wholly-owned subsidiary, Cygnus Broadband, Inc. ("Cygnus  
24 Broadband") has its principal place of business at 15090 Ave of Science, San Diego,  
25 California.

26 3. Cygnus Broadband is a company dedicated to developing advanced 4G  
27 technologies and products for Wi-LAN and others in the wireless industry that  
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1 enhance the capacity, quality of user experience, and connectivity of 4G (and next  
2 generation 5G) mobile devices and networks.

3 4. The 4G patents asserted in this action, which are assigned to Wi-LAN (to  
4 hold for the benefit of all Wi-LAN companies and licensees), were developed by Wi-  
5 LAN's own Ken Stanwood, the CEO of Cygnus Broadband, and his team.

6 5. Mr. Stanwood has played a leadership role in the development of 4G  
7 technologies and standards for more than a decade, starting with the industry's first  
8 major 4G cellular initiative, referred to as WiMAX. He served as Vice Chair of the  
9 IEEE 802.16 standards committee for WiMAX from 2003-2006 and as principal  
10 author of the original IEEE 802.16 standard for 4G cellular networks and mobile  
11 devices.

12 6. Mr. Stanwood has written extensively on 4G technologies, including  
13 coauthoring a popular textbook on the subject, and has been awarded 87 U.S. patents,  
14 with more than 100 patent applications currently pending before the United States  
15 Patent Office and worldwide, many of which relate to 4G technologies.

16 7. Like Ken Stanwood, Wi-LAN's founders, Michel Fattouche and Hatim  
17 Zaghoul, are widely recognized and acknowledged as wireless industry pioneers.  
18 Their technologies, patents and writings have been cited in patents and publications  
19 written by thousands of engineers and scientists in the wireless industry.

20 8. Wi-LAN's founders sought to achieve—and did achieve—for wireless data  
21 what Qualcomm's founders did for cellular “voice” communication. Qualcomm's  
22 founders developed key CDMA technologies that became the foundational air  
23 interface for 2G and 3G cellular networks and mobile devices.

24 9. Just as importantly, Wi-LAN's founders developed key cellular “data”  
25 technologies, including the W-OFDM air interface, to enable data to be exchanged at  
26 desktop speeds over a wireless channel, such as in Wi-Fi networks, or from mobile  
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1 devices in 4G cellular networks. Wi-LAN's technologies have made Wi-Fi and 4G in  
2 mobile devices possible.<sup>1</sup>

3 10. The Wi-LAN success story is featured in major publications worldwide,  
4 including in such publications as *Scientific American*<sup>2</sup> and *Time Magazine*,<sup>3</sup> and in  
5 many others. Wi-LAN and its founders have also been the subject of numerous  
6 industry awards for their wireless innovations, and for their contribution to the growth  
7 in wireless data capability present in today's smartphones, tablets, and other mobile  
8 devices.

9 11. One of Wi-LAN's co-founders is featured in one of Canada's leading  
10 business publications as among the Top 100 Canadians of the 20th century for Wi-  
11 LAN's wireless innovations.<sup>4</sup> And Wi-LAN's original wireless designs and first  
12 wireless mobile device have been displayed in the Canadian equivalent of the  
13 Smithsonian Institution.

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17 <sup>1</sup> See, e.g., *Ergen, Mustafa, Mobile Broadband: Including WiMAX and LTE*, John  
18 Wiley & Sons, 2009 at p. 110, Section 4.1 "Principles of OFDM: Introduction"  
19 (recognizing one of Wi-LAN's first patents, U.S. Patent No. 5,282,222, to W-OFDM  
20 as a major milestone in the development of Wi-Fi and 4G technologies, turning a  
21 single lane wireless communication channel into a multi-lane super highway, and  
22 enabling mobile devices to transmit and receive data at desktop speeds).

23 <sup>2</sup> *The Future of Wireless, Scientific American*, October 2000 at p. 57 ("To date,  
24 wireless multiplexing hasn't been exploited for cellular systems... That may change  
25 soon... Wi-LAN holds a number of key patents for multiplexing technology known  
26 as wideband orthogonal frequency division multiplexing, or W-OFDM").

27 <sup>3</sup> *Wi-LAN Shows How to be Successful-and Canadian-in the Global Economy, Time*  
28 *Magazine*, April 3, 2000.

<sup>4</sup> *Great Canadians, Maclean's*, July 1, 2000 ("Riding the wave of invention ... Wi-  
LAN is one of those next generation companies. Its technology may well become the  
base for what some call the coming wireless revolution: the ability to e-mail, surf the  
Net, adjust the lights in your home and order theater tickets from a cellphone or hand-  
held computer.")



1           19. These advanced 4G technologies, developed by Ken Stanwood and his  
2 team, include:

3                   (i) the bandwidth-on-demand and periodic bandwidth services built  
4 into 4G mobile devices to enable apps installed on such devices to have exactly the  
5 bandwidth they need, when they need it, in real-time;

6                   (ii) the multi-tasking and app management technologies in 4G mobile  
7 devices that enable such devices to run multiple apps simultaneously, including  
8 foreground and background apps, without degrading the user experience; and

9                   (iii) the adaptive modulation capabilities in 4G mobile devices that  
10 allow such devices to operate in all kinds of variable wireless conditions due to  
11 interference, noise, and user mobility.

12           20. The efforts of Mr. Stanwood and his team in developing these advanced  
13 4G technologies have enabled 4G mobile devices to support a variety of services  
14 popular among users of Apple 4G LTE mobile devices, such as voice, conversational  
15 video, live streaming of video and music, real-time gaming, video and photo sharing,  
16 email, and instant messaging, all in the palm of your hand (“4G Network Services”).

17           21. Apple Inc. (“Apple”) is a corporation organized and existing under the  
18 laws of the State of California, with its principal place of business at 1 Infinite Loop,  
19 Cupertino, California.

20           22. Wi-LAN’s advanced 4G technologies that are the subject of the patents  
21 asserted in this action enable Apple’s 4G LTE smartphones, tablets, and other 4G LTE  
22 mobile devices to provide Apple users with the 4G Network Services that have made  
23 Apple’s products so popular, and to operate with desktop speeds anywhere, anytime.

24           23. Wi-LAN’s wireless technologies and patents, including its advanced 4G  
25 technologies, have been licensed by nearly all companies in the wireless industry,  
26 comprising more than 130 companies. Apple is the only major company that has not  
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1 respected Wi-LAN's intellectual property and its contribution to the growth and  
2 success of the wireless industry.

3 24. Apple's infringement gives Apple an unfair advantage over its  
4 competitors, all of whom have chosen to do the right thing and license their use of Wi-  
5 LAN's wireless technologies and patents.

6 25. All of Apple's major competitors in the mobile device industry, including  
7 Samsung, HTC, LG, Nokia, RIM, and Motorola have licensed Wi-LAN's wireless  
8 technologies and patents. To encourage licensing of Wi-LAN's technologies and  
9 patents in mobile devices and growth of the wireless industry, Wi-LAN has set its  
10 licensing rates at a fraction of the rates that Apple charges companies for use of  
11 Apple's technologies and patents.

12 26. Wi-LAN has made numerous efforts to license the unauthorized use of its  
13 wireless technologies and patents by Apple, but Apple has consistently refused to take  
14 a license, choosing to use Wi-LAN's 4G technologies without paying anything for  
15 that right.

16 27. Apple has willfully chosen to not respect the intellectual property of Wi-  
17 LAN, including the five 4G patents asserted in this action directed to Wi-LAN's  
18 advanced 4G technologies, and it does so despite understanding the importance of  
19 intellectual property and insisting that other companies respect Apple's own  
20 intellectual property.

21 28. Indeed, Apple has vigorously pursued litigations and patent enforcement  
22 proceedings against anyone it believes is using Apple's patented technology without a  
23 license. For example, from 2011 through 2014 Apple prosecuted massive and well  
24 publicized litigations against Samsung for various Apple patents, and Apple was  
25 awarded hundreds of millions of dollars in damages for five of its user interface  
26 patents on inventions as simple as the "bounce-back" feature of its touch screen  
27 iPhones and the curved shape of the corners of the icons used in its displays.

1           29. In its patent litigations against Samsung, Apple asked Samsung for as  
2 much as \$40 per mobile device for use of its five interface patents—elements that may  
3 subtly differentiate Apple’s products from its competitors but that do not touch on the  
4 fundamental wireless data communication technologies, including Wi-LAN’s Wi-Fi  
5 and 4G technologies and patents, that underlie and make possible all of the core  
6 functions of Apple’s mobile devices that have made them so desirable to consumers.

7           30. Wi-LAN is not the only company that has had to deal with Apple’s  
8 disrespect for the intellectual property rights of others. Many well-known and well  
9 respected companies in the wireless industry, including Samsung, Nokia, Motorola  
10 Mobility, HTC, Eastman Kodak, and Pitney-Bowes have had to sue Apple for alleged  
11 infringement of their patented technologies and use of their patented technologies  
12 without paying for that right.

13           31. Notably, when Apple’s co-founder Steve Jobs discussed Apple’s success  
14 in a PBS documentary entitled “Triumph of the Nerds,” he said, “We have always  
15 been shameless about stealing great ideas.”

16           32. In early meetings between Wi-LAN and Apple, years before Apple  
17 would introduce its 4G LTE mobile devices, Wi-LAN presented Apple with a detailed  
18 blueprint of Wi-LAN’s wireless technologies and how they would enable Apple’s  
19 computers and mobile devices to provide 4G Network Services, such as streaming  
20 movies and videos, sharing pictures, surfing the internet, and chatting online with  
21 friends.<sup>5</sup>

22           33. Apple arrogantly dismissed Wi-LAN’s wireless technologies and vision  
23 at the time, believing that if it was not invented by Apple it was not possible.

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25 <sup>5</sup> See The Future of Wireless Data Communications, Network Living, *Wi-LAN 1999*  
26 *Annual Report* at 9-33 (“This is no longer a remote possibility—the technology needed  
27 to make this reality is available... where we all live with the ease of wireless  
28 communication in our everyday tasks; anytime, anywhere, to anyone. And its  
WOFDM technology that will fuel this new way of life.”)



1 voluntarily places infringing products into the stream of commerce with the  
2 expectation that they will be purchased by consumers in this district. Apple reasonably  
3 should have anticipated being subject to suit in this district. Apple's acts of patent  
4 infringement are aimed at this district and/or have effect in this district.

5 41. This is a civil action in which Wi-LAN seeks damages and other relief  
6 against Apple for acts of patent infringement in violation of the Patent Laws of the  
7 United States, 35 U.S.C. §§ 271 et seq.

### 8 **JURISDICTION AND VENUE**

9 42. This Court has subject matter jurisdiction of the federal question claims  
10 raised in this Complaint pursuant to 28 U.S.C. §§ 1331 and 1338(a). 43.

11 43. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b),  
12 in that the acts and transactions complained of herein were conceived, carried out,  
13 made effective, or had effect within the State of California and within this district,  
14 among other places. Apple conducts business activities in this district, including  
15 regularly doing or soliciting business, engaging in conduct and/or deriving substantial  
16 revenue from goods and services provided to consumers in the State of California and  
17 in this district.

18 44. The Court has personal jurisdiction over Apple. Apple: (a) has operated,  
19 conducted, engaged in, and/or carried on a business or business venture in California  
20 and this district; (b) has at least an office or agent in California and this district; (c)  
21 has committed one or more tortious acts within California and this district; and (d) has  
22 been and is engaged in substantial and not isolated activity within California and this  
23 district.

24 45. Apple has been registered to do business in the State of California since  
25 1977 and currently has a registered agent in the State of California.



1 **APPLE'S PRODUCTS**

2 46. Apple directly or indirectly through subsidiaries or affiliated companies  
3 markets, distributes, manufactures, imports, sells, and/or offers for sale wireless  
4 communication products, such as products compliant with the 3rd Generation  
5 Partnership Project ("3GPP") 4G LTE standard, including but not limited to the  
6 iPhone 6, iPhone 6 Plus, iPhone 5, iPhone 5S, iPhone 5C, iPad (3rd Generation), iPad  
7 with Retina display (Wi-Fi + 4G Cellular), iPad mini (Wi-Fi + 4G Cellular), iPad  
8 mini with Retina display (Wi-Fi + 4G Cellular), and the iPad Air (Wi-Fi +4G  
9 Cellular), in the United States and in this district. Apple's products support at least  
10 Release 8, et seq. of the 4G LTE standard.

11 47. Upon information and belief, Apple's products also include software and  
12 associated hardware that prioritize the transmission of data generated by various  
13 applications that run on these Apple products, and in doing such prioritization utilize  
14 the claimed inventions of the patents asserted in this action.

15 **FIRST COUNTERCLAIM: INFRINGEMENT OF**  
16 **U.S. PATENT NO. 8,457,145**

17 48. The allegations of all foregoing paragraphs are re-alleged as if fully set  
18 forth herein.

19 49. On June 4, 2013, the United States Patent and Trademark Office  
20 ("USPTO") duly and legally issued U.S. Patent No. 8,457,145 (the "'145 patent"),  
21 entitled "Method and apparatus for bandwidth request/grant protocols in a wireless  
22 communication system" after a full and fair examination.

23 50. The '145 patent relates to, among other things, multitasking and  
24 management of apps using periodic bandwidth requests.

25 51. Wi-LAN, Inc. is the sole owner of the '145 patent. A true and correct  
26 copy of the '145 patent has been filed at D.I. 59-1.

1           52. Apple has been and is now infringing, literally and/or under the doctrine  
2 of equivalents, the '145 patent in this district and elsewhere by making, using, offering  
3 for sale, importing, and/or selling, without authority from Wi-LAN, products that fall  
4 within the scope of one or more of the claims of the '145 patent.

5           53. Apple had actual notice of the '145 patent and that its actions constitute  
6 direct and indirect infringement of the '145 patent. The most recent written  
7 communication to Apple providing notice of its infringement is dated June 16, 2014.

8           54. Apple has been and is now indirectly infringing at least one claim of the  
9 '145 patent in accordance with 35 U.S.C. § 271(b) in this district and elsewhere in the  
10 United States. More specifically, Apple has been and is now actively inducing direct  
11 infringement by other persons – i.e. Apple's customers who use, sell or offer for sale  
12 products that embody and/or otherwise practice one or more claims of the '145 patent.  
13 Apple had knowledge of the '145 patent, and that its actions resulted in a direct  
14 infringement of the '145 patent, prior to the filing of this complaint, and knew or was  
15 willfully blind that its actions would induce direct infringement by others and  
16 intended that its actions would induce direct infringement by others.

17           55. Apple actively induces such infringement by, among other things,  
18 providing user manuals and other instruction material for Apple's devices that induce  
19 Apple's customers to use Apple's devices in their normal and customary way to  
20 infringe the '145 patent.<sup>6</sup> Through its manufacture and sales of its devices, Apple  
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22 <sup>6</sup> See, e.g., Apple's website for the iPhone, <https://www.apple.com/iphone/compare/>  
23 (instructing use on 4G LTE networks); iPhone User Guide For iOS 7.1 Software,  
24 [http://manuals.info.apple.com/MANUALS/1000/MA1565/en\\_US/iphone\\_user\\_guide.](http://manuals.info.apple.com/MANUALS/1000/MA1565/en_US/iphone_user_guide.pdf)  
25 pdf (instructing use on 4G LTE networks); iPhone User Guide For iOS 6.1 Software,  
26 [http://manuals.info.apple.com/MANUALS/1000/MA1658/en\\_US/iphone\\_ios6\\_user\\_g](http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_guide.pdf)  
27 uide.pdf (instructing use on 4G LTE networks); Apple's website for the iPad,  
28 <https://www.apple.com/ipad/compare/> (instructing use on 4G LTE networks); iPad  
User Guide For iOS 7.1 Software,  
[http://manuals.info.apple.com/MANUALS/1000/MA1595/en\\_US/ipad\\_user\\_guide.pdf](http://manuals.info.apple.com/MANUALS/1000/MA1595/en_US/ipad_user_guide.pdf)

1 specifically intended its customers to infringe the '145 patent. Further, Apple was  
2 aware that these normal and customary activities would infringe the '145 patent.  
3 Apple performed the acts that constitute induced infringement, and that would induce  
4 actual infringement, with knowledge of the '145 patent and with the knowledge or  
5 willful blindness that the induced acts would constitute direct infringement.

6 56. Accordingly, a reasonable inference is that Apple specifically intends for  
7 others, such as its customers, to directly infringe one or more claims of the '145 patent  
8 in the United States because Apple has knowledge of the '145 patent and Apple  
9 actively induces others (*i.e.* its customers) to directly infringe the '145 patent by using,  
10 selling, or offering to sell Apple's devices.

11 57. Apple has been and is now indirectly infringing at least one claim of the  
12 '145 patent in accordance with 35 U.S.C. § 271(c) in this district and elsewhere in the  
13 United States. More specifically, Apple has been and is now providing non-staple  
14 articles of commerce to others for use in an infringing system or method with  
15 knowledge of the '145 patent, and with knowledge that the use of its products resulted  
16 in a direct infringement of the '145 patent by its customers, and with knowledge that  
17 these non-staple articles of commerce are used as a material part of the claimed  
18 invention of the '145 patent.

19 58. Apple's devices compliant with 4G LTE include components comprising  
20 an application processor and a baseband processor specifically designed to support  
21 communication and transmission of data over 4G LTE-compliant networks. These  
22 components are mounted to a circuit board in Apple's accused devices and, absent  
23 these components, Apple's devices compliant with 4G LTE would not function in an  
24 acceptable manner to send or receive data over 4G LTE networks. A reasonable  
25 inference to be drawn from the facts set forth is that these components in Apple's  
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27 f (instructing use on 4G LTE networks); <http://support.apple.com/kb/ht4211>  
28 (instructing use of multitasking).

1 devices are especially made or especially adapted to operate in the accused Apple  
2 devices to provide wireless communication, including the transmission of data in  
3 accordance with the 4G LTE standard. Further, a reasonable inference to be drawn  
4 from the facts is that these components comprising an application processor and a  
5 baseband processor are intended to support communication of data over a 4G LTE  
6 network and are not staple articles or commodities of commerce, and that the use of  
7 the components is required for operation of the Apple devices to send or receive data  
8 over a 4G LTE-compliant network. Any other use would be unusual, far-fetched,  
9 illusory, occasional, aberrant, or experimental.

10 59. The components comprising an application processor and a baseband  
11 processor designed to support communication of data using 4G LTE in Apple's  
12 devices are each a material part of the invention of the '145 patent and are especially  
13 made for the infringing manufacture, sale, and use of Apple's accused devices.  
14 Apple's devices, including those components, are especially made or adapted to  
15 infringe the '145 patent, and have no substantial non-infringing uses.

16 60. The '145 patent is valid and enforceable.

17 61. By way of its infringing activities, Apple has caused and continues to  
18 cause Wi-LAN to suffer damages, and Wi-LAN is entitled to recover from Apple  
19 damages in an amount to be determined at trial.

20 **SECOND COUNTERCLAIM: INFRINGEMENT OF**

21 **U.S. PATENT NO. 8,462,723**

22 62. The allegations of all foregoing paragraphs are re-alleged as if fully set  
23 forth herein.

24 63. On June 11, 2013, the USPTO duly and legally issued U.S. Patent No.  
25 8,462,723 (the "'723 patent"), entitled "Methods and systems for transmission of  
26 multiple modulated signals over wireless networks" after a full and fair examination.  
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1           64. The '723 patent relates to, among other things, multitasking and  
2 management of apps using non-contention bandwidth-on-demand requests.

3           65. Wi-LAN, Inc. is the sole owner of the '723 patent. A true and correct  
4 copy of the '723 patent has been filed at D.I. 59-2.

5           66. Apple has been and is now infringing, literally and/or under the doctrine  
6 of equivalents, the '723 patent in this district and elsewhere by making, using, offering  
7 for sale, importing, and/or selling, without authority from Wi-LAN, products that fall  
8 within the scope of one or more of the claims of the '723 patent.

9           67. Apple had actual notice of the '723 patent and that its actions constitute  
10 direct and indirect infringement of the '723 patent. The most recent written  
11 communication to Apple providing notice of its infringement is dated June 16, 2014.

12           68. Apple has been and is now indirectly infringing at least one claim of the  
13 '723 patent in accordance with 35 U.S.C. § 271(b) in this district and elsewhere in the  
14 United States. More specifically, Apple has been and is now actively inducing direct  
15 infringement by other persons – i.e. Apple's customers who make, use, sell or offer  
16 for sale products that embody and/or otherwise practice one or more claims of the  
17 '723 patent. Apple had knowledge of the '723 patent, and that its actions resulted in a  
18 direct infringement of the '723 patent, prior to the filing of this complaint, and knew  
19 or was willfully blind that its actions would induce direct infringement by others and  
20 intended that its actions would induce direct infringement by others.

21           69. Apple actively induces such infringement by, among other things,  
22 providing user manuals and other instruction material for Apple's devices that induce  
23 Apple's customers to use Apple's accused devices in their normal and customary way  
24 to infringe the '723 patent.<sup>7</sup> Through its manufacture and sales of its accused devices,  
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26 <sup>7</sup> See, e.g., Apple's website for the iPhone, <https://www.apple.com/iphone/compare/>  
27 (instructing use on 4G LTE networks); iPhone User Guide For iOS 7.1 Software,  
28 [http://manuals.info.apple.com/MANUALS/1000/MA1565/en\\_US/iphone\\_user\\_guide](http://manuals.info.apple.com/MANUALS/1000/MA1565/en_US/iphone_user_guide).

1 Apple specifically intended its customers to infringe the '723 patent. Further, Apple  
2 was aware that these normal and customary activities would infringe the '723 patent.  
3 Apple performed the acts that constitute induced infringement, and would induce  
4 actual infringement, with the knowledge of the '723 patent and with the knowledge or  
5 willful blindness that the induced acts would constitute direct infringement.

6 70. Accordingly, a reasonable inference is that Apple specifically intends for  
7 others, such as its customers, to directly infringe one or more claims of the '723 patent  
8 in the United States because Apple has knowledge of the '723 patent and Apple  
9 actively induces others (i.e. its customers) to directly infringe the '723 patent by using,  
10 selling, or offering to sell Apple's devices.

11 71. Apple has been and is now indirectly infringing at least one claim of the  
12 '723 patent in accordance with 35 U.S.C. § 271(c) in this district and elsewhere in the  
13 United States. More specifically, Apple has been and is now providing non-staple  
14 articles of commerce to others for use in an infringing system or method with  
15 knowledge of the '723 patent, and with knowledge that the use of its accused products  
16 results in a direct infringement of the '723 patent by its customers, and with  
17 knowledge that these non-staple articles of commerce are used as a material part of the  
18 claimed invention of the '723 patent.

19 72. Apple's accused devices include components comprising an application  
20 processor and a baseband processor designed to support communication of data on 4G  
21 LTE-compliant networks. These components are mounted to a circuit board in

22  
23 pdf (instructing use on 4G LTE networks); iPhone User Guide For iOS 6.1 Software,  
24 [http://manuals.info.apple.com/MANUALS/1000/MA1658/en\\_US/iphone\\_ios6\\_user\\_g](http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_guide.pdf)  
25 <https://www.apple.com/ipad/compare/> (instructing use on 4G LTE networks); iPad  
26 User Guide For iOS 7.1 Software,  
27 [http://manuals.info.apple.com/MANUALS/1000/MA1595/en\\_US/ipad\\_user\\_guide.pdf](http://manuals.info.apple.com/MANUALS/1000/MA1595/en_US/ipad_user_guide.pdf)  
28 f (instructing use on 4G LTE networks); <http://support.apple.com/kb/ht4211>  
(instructing use of multitasking).

1 Apple's accused devices and, absent these components, Apple's accused devices  
2 would not function in an acceptable manner to send or receive data over 4G LTE-  
3 compliant networks. A reasonable inference to be drawn from the facts set forth is  
4 that these components in Apple's accused devices are especially made or especially  
5 adapted to provide wireless communication, including the transmission of data, in 4G  
6 LTE-compliant networks. Further, a reasonable inference to be drawn from the facts  
7 is that these components are not staple articles or commodities of commerce, and that  
8 the use of these components is required for operation of the Apple devices to send or  
9 receive data in a 4G LTE-compliant network. Any other use would be unusual,  
10 farfetched, illusory, occasional, aberrant, or experimental.

11 73. The components comprising the application processor and the baseband  
12 processor in Apple's accused devices are each a material part of the invention of the  
13 '723 patent and are especially made for use in devices that infringe one or more  
14 claims of the '723 patent. Apple's accused devices have no substantial non-infringing  
15 uses.

16 74. The '723 patent is valid and enforceable.

17 75. By way of its infringing activities, Apple has caused and continues to  
18 cause Wi-LAN to suffer damages, and Wi-LAN is entitled to recover from Apple  
19 damages in an amount to be determined at trial.

20 **THIRD COUNTERCLAIM: INFRINGEMENT OF**

21 **U.S. PATENT NO. 8,537,757**

22 76. The allegations of all foregoing paragraphs are re-alleged as if fully set  
23 forth herein.

24 77. On June 11, 2013, the USPTO duly and legally issued U.S. Patent No.  
25 8,537,757 (the "'757 patent"), entitled "Method and system for adaptively obtaining  
26 bandwidth allocation requests" after a full and fair examination.

1 78. The '757 patent relates to, among other things, adaptive modulation for  
2 variable condition wireless channels due to interference, noise, and mobility.

3 79. Wi-LAN, Inc. is the sole owner of the '757 patent. A true and correct  
4 copy of the '757 patent has been filed at D.I. 59-6.

5 80. Apple has been and is now infringing, literally and/or under the doctrine  
6 of equivalents, the '757 patent in this district and elsewhere by making, using, offering  
7 for sale, importing, and/or selling, without authority from Wi-LAN, products that fall  
8 within the scope of one or more of the claims of the '757 patent.

9 81. Apple had actual notice of the '757 patent and that its actions constitute  
10 direct and indirect infringement of the '757 patent. The most recent written  
11 communication to Apple providing notice of its infringement is dated June 16, 2014.

12 82. Apple has been and is now indirectly infringing at least one claim of the  
13 '757 patent in accordance with 35 U.S.C. § 271(b) in this district and elsewhere in the  
14 United States. More specifically, Apple has been and is now actively inducing direct  
15 infringement by other persons – *i.e.* Apple's customers who use, sell or offer for sale  
16 products that embody and/or otherwise practice one or more claims of the '757 patent.  
17 Apple had knowledge of the '757 patent by others, and that its actions resulted in a  
18 direct infringement of the '757 patent, prior to the filing of this complaint, and knew  
19 or was willfully blind that its actions would induce direct infringement by others and  
20 intended that its actions would induce direct infringement by others.

21 83. Apple actively induces such infringement by, among other things,  
22 providing user manuals and other instruction material for Apple's devices that induce  
23 Apple's customers to use Apple's devices in their normal and customary way to  
24 infringe the '757 patent.<sup>8</sup> Through its manufacture and sales of its devices, Apple

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26 <sup>8</sup> See, e.g., Apple's website for the iPhone, <https://www.apple.com/iphone/compare/>  
27 (instructing use on 4G LTE networks); iPhone User Guide For iOS 7.1 Software,  
28 [http://manuals.info.apple.com/MANUALS/1000/MA1565/en\\_US/iphone\\_user\\_guide](http://manuals.info.apple.com/MANUALS/1000/MA1565/en_US/iphone_user_guide).



1 specifically intended its customers to infringe the '757 patent. Further, Apple was  
2 aware that these normal and customary activities when undertaken by its customer  
3 would result in a direct infringement of the '757 patent. Apple performed the acts that  
4 constitute induced infringement, and that would induce actual infringement, with the  
5 knowledge of the '757 patent and with the knowledge or willful blindness that the  
6 induced acts would constitute direct infringement.

7 84. Accordingly, a reasonable inference is that Apple specifically intends for  
8 others, such as its customers, to directly infringe one or more claims of the '757 patent  
9 in the United States because Apple has knowledge of the '757 patent and Apple  
10 actively induces others (i.e. its customers) to directly infringe the '757 patent by using,  
11 selling, or offering to sell Apple's devices.

12 85. Apple has been and is now indirectly infringing at least one claim of the  
13 '757 patent in accordance with 35 U.S.C. § 271(c) in this district and elsewhere in the  
14 United States. More specifically, Apple has been and is now providing non-staple  
15 articles of commerce to others for use in an infringing system or method with  
16 knowledge of the '757 patent, and with knowledge that the use of its products results  
17 in a direct infringement of the '757 patent by its customers, and with knowledge that  
18 these non-staple articles of commerce are used as a material part of the claimed  
19 invention of the '757 patent.

20 86. Apple's devices include components comprising an application processor  
21 and a baseband processor designed to support communication of data in an LTE

22  
23 pdf (instructing use on 4G LTE networks); iPhone User Guide For iOS 6.1 Software,  
24 [http://manuals.info.apple.com/MANUALS/1000/MA1658/en\\_US/iphone\\_ios6\\_user\\_g](http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_guide.pdf)  
25 <https://www.apple.com/ipad/compare/> (instructing use on 4G LTE networks); iPad  
26 User Guide For iOS 7.1 Software,  
27 [http://manuals.info.apple.com/MANUALS/1000/MA1595/en\\_US/ipad\\_user\\_guide.pdf](http://manuals.info.apple.com/MANUALS/1000/MA1595/en_US/ipad_user_guide.pdf)  
28 f (instructing use on 4G LTE networks); <http://support.apple.com/kb/ht4211>  
(instructing use of multitasking).

1 compliant network. These components are mounted to a circuit board in Apple's  
2 accused devices and, absent these components, Apple's accused devices would not  
3 function in an acceptable manner to send or receive data in a 4G LTE-compliant  
4 network. A reasonable inference to be drawn from the facts set forth is that these  
5 components in Apple's accused devices are especially made or especially adapted to  
6 operate in a manner that results in a direct infringement of the '757 patent. Further, a  
7 reasonable inference to be drawn from the facts is that the components are not a staple  
8 articles or commodities of commerce and that the use of the components is required  
9 for the accused Apple devices to send or receive data in a 4G LTE-compliant network.  
10 Any other use would be unusual, far-fetched, illusory, occasional, aberrant, or  
11 experimental.

12 87. The components comprising an application processor and a baseband  
13 processor in Apple's accused devices are each a material part of the invention of the  
14 '757 patent and are especially made or adapted to infringe the '757 patent. Apple's  
15 accused devices products have no substantial uses that do not infringe the '757 patent.

16 88. The '757 patent is valid and enforceable.

17 89. By way of its infringing activities, Apple has caused and continues to  
18 cause Wi-LAN to suffer damages, and Wi-LAN is entitled to recover from Apple  
19 damages in an amount to be determined at trial.

20 **FOURTH COUNTERCLAIM: INFRINGEMENT OF**

21 **U.S. PATENT NO. 8,615,020**

22 90. The allegations of all foregoing paragraphs are re-alleged as if fully set  
23 forth herein.

24 91. On December 24, 2013, the USPTO duly and legally issued U.S. Patent  
25 No. 8,615,020 (the "'020 patent"), entitled "Method and System for Adaptively  
26 Obtaining Bandwidth Allocation Requests" after a full and fair examination.

1           92. The '020 patent relates to, among other things, multitasking and  
2 management of apps using non-contention bandwidth-on-demand requests.

3           93. Wi-LAN, Inc. is the sole owner of the '020 patent. A true and correct  
4 copy of the '020 patent has been filed at D.I. 59-5.

5           94. Apple has been and is now infringing, literally and/or under the doctrine  
6 of equivalents, the '020 patent in this district and elsewhere by making, using, offering  
7 for sale, importing, and/or selling, without authority from Wi-LAN, products that fall  
8 within the scope of one or more of the claims of the '020 patent.

9           95. Apple had actual notice of the '020 patent and that its actions constitute  
10 direct and indirect infringement of the '020 patent. The most recent written  
11 communication to Apple providing notice of its infringement is dated June 16, 2014.

12           96. Apple has been and is now indirectly infringing at least one claim of the  
13 '020 patent in accordance with 35 U.S.C. § 271(b) in this district and elsewhere in the  
14 United States. More specifically, Apple has been and is now actively inducing direct  
15 infringement by other persons – *i.e.* Apple's customers who use, sell or offer for sale  
16 products that embody and/or otherwise practice one or more claims of the '020 patent.  
17 Apple had knowledge of the '020 patent by others, and that its actions resulted in a  
18 direct infringement of the '020 patent, prior to the filing of this complaint, and knew  
19 or was willfully blind that its actions would induce direct infringement by others and  
20 intended that its actions would induce direct infringement by others.

21           97. Apple actively induces such infringement by, among other things,  
22 providing user manuals and other instruction material for Apple's devices that induce  
23 Apple's customers to use Apple's devices in their normal and customary way to  
24 infringe the '020 patent.<sup>9</sup> Through its manufacture and sales of its devices, Apple

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26 <sup>9</sup> *See, e.g.*, Apple's website for the iPhone, <https://www.apple.com/iphone/compare/>  
27 (instructing use on 4G LTE networks); iPhone User Guide For iOS 7.1 Software,  
28 [http://manuals.info.apple.com/MANUALS/1000/MA1565/en\\_US/iphone\\_user\\_guide](http://manuals.info.apple.com/MANUALS/1000/MA1565/en_US/iphone_user_guide).

1 specifically intended its customers to infringe the '020 patent. Further, Apple was  
2 aware that these normal and customary activities when undertaken by its customer  
3 would result in a direct infringement of the '020 patent. Apple performed the acts that  
4 constitute induced infringement, and that would induce actual infringement, with the  
5 knowledge of the '020 patent and with the knowledge or willful blindness that the  
6 induced acts would constitute direct infringement.

7 98. Accordingly, a reasonable inference is that Apple specifically intends for  
8 others, such as its customers, to directly infringe one or more claims of the '020 patent  
9 in the United States because Apple has knowledge of the '020 patent and Apple  
10 actively induces others (i.e. its customers) to directly infringe the '020 patent by using,  
11 selling, or offering to sell Apple's devices.

12 99. Apple has been and is now indirectly infringing at least one claim of the  
13 '020 patent in accordance with 35 U.S.C. § 271(c) in this district and elsewhere in the  
14 United States. More specifically, Apple has been and is now providing non-staple  
15 articles of commerce to others for use in an infringing system or method with  
16 knowledge of the '020 patent, and with knowledge that the use of its products results  
17 in a direct infringement of the '020 patent by its customers, and with knowledge that  
18 these non-staple articles of commerce are used as a material part of the claimed  
19 invention of the '020 patent.

20 100. Apple's devices include components comprising an application processor  
21 and a baseband processor designed to support communication of data in a 4G LTE-

22  
23 pdf (instructing use on 4G LTE networks); iPhone User Guide For iOS 6.1 Software,  
24 [http://manuals.info.apple.com/MANUALS/1000/MA1658/en\\_US/iphone\\_ios6\\_user\\_g](http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_guide.pdf)  
25 <https://www.apple.com/ipad/compare/> (instructing use on 4G LTE networks); iPad  
26 User Guide For iOS 7.1 Software,  
27 [http://manuals.info.apple.com/MANUALS/1000/MA1595/en\\_US/ipad\\_user\\_guide.pdf](http://manuals.info.apple.com/MANUALS/1000/MA1595/en_US/ipad_user_guide.pdf)  
28 f (instructing use on 4G LTE networks); <http://support.apple.com/kb/ht4211>  
(instructing use of multitasking).

1 compliant network. These components are mounted to a circuit board in Apple's  
2 accused devices and, absent these components, Apple's accused devices would not  
3 function in an acceptable manner to send or receive data in a 4G LTE-compliant  
4 network. A reasonable inference to be drawn from the facts set forth is that these  
5 components in Apple's accused devices are especially made or especially adapted to  
6 operate in a manner that results in a direct infringement of the '020 patent. Further, a  
7 reasonable inference to be drawn from the facts is that the components are not a staple  
8 articles or commodities of commerce and that the use of the components is required  
9 for the accused Apple devices to send or receive data in a 4G LTE-compliant network.  
10 Any other use would be unusual, far-fetched, illusory, occasional, aberrant, or  
11 experimental.

12 101. The components comprising an application processor and a baseband  
13 processor in Apple's accused devices are each a material part of the invention of the  
14 '020 patent and are especially made or adapted to infringe the '020 patent. Apple's  
15 accused devices products have no substantial uses that do not infringe the '020 patent.

16 102. The '020 patent is valid and enforceable.

17 103. By way of its infringing activities, Apple has caused and continues to  
18 cause Wi-LAN to suffer damages, and Wi-LAN is entitled to recover from Apple  
19 damages in an amount to be determined at trial.

20 **FIFTH COUNTERCLAIM: INFRINGEMENT OF**

21 **U.S. PATENT NO. 8,462,761**

22 104. The allegations of all foregoing paragraphs are re-alleged as if fully set  
23 forth herein.

24 105. On June 11, 2013, the USPTO duly and legally issued U.S. Patent No.  
25 8,462,761 (the "'761 patent"), entitled "Method and system for adaptively obtaining  
26 bandwidth allocation requests" after a full and fair examination.

1 106. The '761 patent relates to, among other things, multitasking and  
2 management of apps using non-contention bandwidth-on-demand requests or periodic  
3 bandwidth requests.

4 107. Wi-LAN, Inc. is the sole owner of the '761 patent. A true and correct  
5 copy of the '761 patent has been filed at D.I. 59-4.

6 108. Apple has been and is now infringing, literally and/or under the doctrine  
7 of equivalents, the '761 patent in this district and elsewhere by making, using, offering  
8 for sale, importing, and/or selling, without authority from Wi-LAN, products that fall  
9 within the scope of one or more of the claims of the '761 patent.

10 109. Apple had actual notice of the '761 patent and that its actions constitute  
11 direct and indirect infringement of the '761 patent. The most recent written  
12 communication to Apple providing notice of its infringement is dated June 16, 2014.

13 110. Apple has been and is now indirectly infringing at least one claim of the  
14 '761 patent in accordance with 35 U.S.C. § 271(b) in this district and elsewhere in the  
15 United States. More specifically, Apple has been and is now actively inducing direct  
16 infringement by other persons – *i.e.* Apple's customers who use, sell or offer for sale  
17 products that embody and/or otherwise practice one or more claims of the '761 patent.  
18 Apple had knowledge of the '761 patent by others, and that its actions resulted in a  
19 direct infringement of the '761 patent, prior to the filing of this complaint, and knew  
20 or was willfully blind that its actions would induce direct infringement by others and  
21 intended that its actions would induce direct infringement by others.

22 111. Apple actively induces such infringement by, among other things,  
23 providing user manuals and other instruction material for Apple's devices that induce  
24 Apple's customers to use Apple's devices in their normal and customary way to  
25 infringe the '761 patent.<sup>10</sup> Through its manufacture and sales of its devices, Apple

26  
27 <sup>10</sup> See, e.g., Apple's website for the iPhone, <https://www.apple.com/iphone/compare/>  
28 (instructing use on 4G LTE networks); iPhone User Guide For iOS 7.1 Software,

1 specifically intended its customers to infringe the '761 patent. Further, Apple was  
2 aware that these normal and customary activities when undertaken by its customer  
3 would result in a direct infringement of the '761 patent. Apple performed the acts that  
4 constitute induced infringement, and that would induce actual infringement, with the  
5 knowledge of the '761 patent and with the knowledge or willful blindness that the  
6 induced acts would constitute direct infringement.

7 112. Accordingly, a reasonable inference is that Apple specifically intends for  
8 others, such as its customers, to directly infringe one or more claims of the '761 patent  
9 in the United States because Apple has knowledge of the '761 patent and Apple  
10 actively induces others (i.e. its customers) to directly infringe the '761 patent by using,  
11 selling, or offering to sell Apple's devices.

12 113. Apple has been and is now indirectly infringing at least one claim of the  
13 '761 patent in accordance with 35 U.S.C. § 271(c) in this district and elsewhere in the  
14 United States. More specifically, Apple has been and is now providing non-staple  
15 articles of commerce to others for use in an infringing system or method with  
16 knowledge of the '761 patent, and with knowledge that the use of its products results  
17 in a direct infringement of the '761 patent by its customers, and with knowledge that  
18 these non-staple articles of commerce are used as a material part of the claimed  
19 invention of the '761 patent.

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22 [http://manuals.info.apple.com/MANUALS/1000/MA1565/en\\_US/iphone\\_user\\_guide.pdf](http://manuals.info.apple.com/MANUALS/1000/MA1565/en_US/iphone_user_guide.pdf)  
23 [http://manuals.info.apple.com/MANUALS/1000/MA1658/en\\_US/iphone\\_ios6\\_user\\_g](http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_guide.pdf)  
24 [uide.pdf](https://www.apple.com/ipad/compare/) (instructing use on 4G LTE networks); Apple's website for the iPad,  
25 <https://www.apple.com/ipad/compare/> (instructing use on 4G LTE networks); iPad  
26 [User Guide For iOS 7.1 Software,](http://manuals.info.apple.com/MANUALS/1000/MA1595/en_US/ipad_user_guide.pdf)  
27 [http://manuals.info.apple.com/MANUALS/1000/MA1595/en\\_US/ipad\\_user\\_guide.pdf](http://manuals.info.apple.com/MANUALS/1000/MA1595/en_US/ipad_user_guide.pdf)  
28 [f](http://support.apple.com/kb/ht4211) (instructing use on 4G LTE networks); <http://support.apple.com/kb/ht4211>  
(instructing use of multitasking).

1 114. Apple's devices include components comprising an application processor  
2 and a baseband processor designed to support communication of data in a 4G LTE-  
3 compliant network. These components are mounted to a circuit board in Apple's  
4 accused devices and, absent these components, Apple's accused devices would not  
5 function in an acceptable manner to send or receive data in a 4G LTE-compliant  
6 network. A reasonable inference to be drawn from the facts set forth is that these  
7 components in Apple's accused devices are especially made or especially adapted to  
8 operate in a manner that results in a direct infringement of the '761 patent. Further, a  
9 reasonable inference to be drawn from the facts is that the components are not a staple  
10 articles or commodities of commerce and that the use of the components is required  
11 for the accused Apple devices to send or receive data in a 4G LTE-compliant network.  
12 Any other use would be unusual, far-fetched, illusory, occasional, aberrant, or  
13 experimental.

14 115. The components comprising an application processor and a baseband  
15 processor in Apple's accused devices are each a material part of the invention of the  
16 '761 patent and are especially made or adapted to infringe the '761 patent. Apple's  
17 accused devices products have no substantial uses that do not infringe the '761 patent.

18 116. The '761 patent is valid and enforceable.

19 117. By way of its infringing activities, Apple has caused and continues to  
20 cause Wi-LAN to suffer damages, and Wi-LAN is entitled to recover from Apple  
21 damages in an amount to be determined at trial.

### 22 **WILLFUL INFRINGEMENT**

23 118. The allegations of all foregoing paragraphs are re-alleged as fully set  
24 forth herein.

25 119. Before initiating litigation, Wi-LAN made substantial efforts to license  
26 Apple's use of Wi-LAN's advanced 4G technologies and patents used in Apple's 4G  
27 LTE mobile devices, expecting that Apple would proceed in good faith.





1 result of Apple's acts of infringement, Wi-LAN has suffered and will continue to  
2 suffer damages in an amount to be proved at trial.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Wi-LAN prays for judgment against Apple as follows:

5 126. Declaring that Apple has been and is now infringing, literally and/or  
6 under the doctrine of equivalents, one or more claims of each of U.S. Patent No.  
7 8,457,145, U.S. Patent No. 8,462,723, U.S. Patent No. 8,537,757, U.S. Patent No.  
8 8,615,020, and U.S. Patent No. 8,462,761;

9 127. Declaring that Apple has been and is now contributorily infringing one or  
10 more claims of each of U.S. Patent No. 8,457,145, U.S. Patent No. 8,462,723, U.S.  
11 Patent No. 8,537,757, U.S. Patent No. 8,615,020, and U.S. Patent No. 8,462,761;

12 128. Declaring that Apple has been and is now inducing infringement of U.S.  
13 Patent No. 8,457,145, U.S. Patent No. 8,462,723, U.S. Patent No. 8,537,757, U.S.  
14 Patent No. 8,615,020, and U.S. Patent No. 8,462,761;

15 129. Permanently enjoining Apple and its officers, directors, agents, servants,  
16 employees, affiliates, divisions, branches, subsidiaries, parents and all others acting in  
17 concert or privity with any of them from infringing, inducing the infringement of, or  
18 contributing to the infringement of one or more of each of U.S. Patent No. 8,457,145,  
19 U.S. Patent No. 8,462,723, U.S. Patent No. 8,537,757, U.S. Patent No. 8,615,020, and  
20 U.S. Patent No. 8,462,761;

21 130. Declaring that Apple's infringement is willful and that this is an  
22 exceptional case under 35 U.S.C. § 285 and awarding attorneys' fees and costs in this  
23 action;

24 131. Awarding to Wi-LAN damages arising out of Apple's infringement of  
25 one or more of each of U.S. Patent No. 8,457,145, U.S. Patent No. 8,462,723, U.S.  
26 Patent No. 8,537,757, U.S. Patent No. 8,615,020, and U.S. Patent No. 8,462,761,  
27

1 together with prejudgment and post-judgment interest, in an amount to be determined  
2 at trial;

3 132. Awarding to Wi-LAN its costs in connection with this action; and

4 133. Such other and further relief in law or in equity to which Wi-LAN may  
5 be justly entitled.

6 Respectfully submitted,

7 Dated this 14th day of October, 2014.

8 By: /s/ Dirk D. Thomas

9 Dirk D. Thomas  
10 **MCKOOL SMITH, P.C.**

11 *Attorney for Defendant,*  
12 *Wi-LAN, INC.*

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 14, 2014, a true and correct copy of the foregoing, DEFENDANT WI-LAN, INC.'S ANSWER TO APPLE INC.'S SECOND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT was filed through the Court's CM/ECF system, and was served through that system under FRCP 5(b)(2)(E) on all counsel who are deemed to have consented to electronic service.

By: /s/ Dirk D. Thomas