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18
19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 INTEL CORPORATION,

22 Plaintiff,

23 v.

24 WI-LAN, INC., WI-LAN TECHNOLOGIES
CORPORATION, WI-LAN
25 TECHNOLOGIES, INC., and WI-LAN V-
CHIP CORP.,

26 Defendants.
27
28

Case No. 5:08-CV-4555 JW

**ACER AMERICA CORP., APPLE INC.,
DELL INC., AND GATEWAY INC.'S
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED [Civ. L.R. 3-12]**

The Honorable James Ware

[This Document Relates to: *Acer America
Corporation, et al. v. Wi-LAN, Inc.*, N.D. Cal.
Case No. 3:08-cv-05624-SI]

1 **TO THE COURT AND ALL PARTIES OF RECORD:**

2 **PLEASE TAKE NOTICE** that a related case, *Acer America Corporation, et al. v. Wi-*
3 *LAN, Inc.*, N.D. Cal. Case No. 3:08-cv-05624-SI (the “*Acer Action*”), was filed on December 17,
4 2008, in the U.S. District Court for the Northern District of California. Pursuant to Civil Local
5 Rules 3-12 and 7-11, the plaintiffs in that action (“Plaintiffs”) hereby submit this Administrative
6 Motion to Consider Whether Cases Should Be Related because they believe that the *Acer Action*
7 is related to this action, *Intel Corp. v. Wi-LAN, Inc., et al.*, Case No. 5:08-CV-4555 JW (the
8 “*Intel Action*”).

9 This Court recently ordered the following two other actions related to the *Intel Action*:

- 10 • *Broadcom Corporation, et al. v. Wi-LAN, Inc.*, Case No. 5:08-CV-05543 JW (the
11 “*Broadcom Action*”); and
- 12 • *Marvell Semiconductor, Inc. v. Wi-LAN, Inc.*, Case No. 5:08-CV-05544 JW (the
13 “*Marvell Action*”).

14 (See Docket No 38.) A coordinated Initial Case Management Conference is currently scheduled
15 for March 16, 2009 in the *Intel, Broadcom* and *Marvell* Actions and Plaintiffs propose that an
16 Initial Case Management Conference in the *Acer Action* be coordinated with the other actions on
17 the same date.¹

18 This Administrative Motion is made because the *Intel, Broadcom, Marvell*, and *Acer*
19 Actions each involve U.S. Patent No. 6,549,749 (the “’759 patent”) and the same declaratory
20 judgment defendant, Wi-LAN, Inc. (“Wi-LAN”). In particular, the plaintiffs in each of the
21 actions seek declarations of invalidity, unenforceability, and non-infringement of the ’759 patent.
22 (Compare Declaration of Michael Spillner filed concurrently herewith (“Spillner Decl.”), Exhs.
23 A, B, and C, with D.)² Hence, all the cases concern “substantially the same parties, property,

24 ¹ The plaintiffs in the related actions have made a joint proposal on scheduling issues in the
25 *Broadcom* action to globally coordinate and streamline the pending actions. (See *Broadcom*
Docket No. 15.)

26 ² The *Intel Action* also involves other patents in addition to the ’759 patent. (Spillner Decl., Ex.
27 A.) The claims in the complaint in the *Acer Action* are for non-infringement, invalidity and
28 unenforceability of the ’759 patent. (Spillner Decl., Exh. D.)

1 transaction or event” within the meaning of Civil Local Rule 3-12(a)(1).³

2 The parties have conferred but Plaintiffs have been unable to obtain Wi-LAN's stipulation
 3 that the *Acer* Action is related to the *Intel*, *Broadcom*, and *Marvell* Actions. (See Spillner Decl.
 4 at ¶¶ 6-7, Ex. E). Wi-LAN had previously agreed to stipulate that the actions are related within
 5 the meaning of Civil Local Rule 3-12. (See *id.*) Later, however, Wi-LAN retracted its
 6 agreement to stipulate – forcing Plaintiffs to proceed with this Motion – because it disagrees with
 7 Plaintiffs concerning certain case scheduling issues. (See *id.*). In an effort to globally coordinate
 8 scheduling issues among the related actions, and to streamline the number of filings and reduce
 9 any burden on the Court, Plaintiffs have filed a joint scheduling proposal for the Court's
 10 consideration, which is set forth in the opposition to Wi-LAN's Motion to Change Time in the
 11 *Broadcom* Action. (See *Broadcom* Docket No. 11 (Motion to Change Time); No. 15 (Plaintiffs'
 12 Opposition).) Thus far, despite Plaintiffs’ efforts to coordinate the *Intel*, *Broadcom* and *Marvell*
 13 Actions with the *Acer* Action and the *Sony* Action (see n. 3 above), Wi-LAN has been unwilling
 14 to coordinate the *Intel*, *Broadcom* and *Marvell* Actions with the *Acer* and *Sony* Actions, and has
 15 instead filed separate motions for extensions of time in the *Acer* and *Sony* Actions.⁴ (*Acer*
 16 Docket No. 13; *Sony* Docket No. 41). Despite this, Plaintiffs will continue to attempt to
 17 coordinate and streamline any disputes in the pending actions. Plaintiffs believe that if the cases
 18 are related, the parties can enter a consolidated proposal on scheduling issues and avoid
 19 individual disputes in each of the related actions, thereby reducing the burden on the Court.

20 For the foregoing reasons, Plaintiffs request that the Court deem the *Acer* Action and the
 21 *Intel*, *Broadcom*, and *Marvell* Actions to be “related” pursuant to Civil Local Rule 3-12.

22
 23 ³ The parties also are aware of another case involving the '759 patent: *Sony Computer*
 24 *Entertainment America, Inc. v. Wi-LAN, Inc.*, N.D. Cal. Case No. 3:08-cv-05742-MHP (the
 “*Sony* Action”). The *Sony* Action is also related to the *Intel*, *Broadcom*, *Marvell*, and *Acer*
 Actions.

25 ⁴ Plaintiffs disagree with the factual characterizations made in Wi-LAN’s motions for
 26 extensions of time in the *Acer* and *Sony* Actions. In the interests of coordinating the pending
 27 motions and streamlining the issues, Plaintiffs will focus their oppositions to those motions
 on the joint scheduling proposal made in opposition to Wi-LAN’s motion to change time in
 the *Broadcom* Action to globally coordinate the pending actions. See *Broadcom* Dkt. No. 15.

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DATED: February 2, 2009

/s/ Michael C. Spillner
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Pursuant to General Order 45, Part X, I attest that concurrence in the filing of the document has been obtained from each of the other signatories.

DATED: February 2, 2009

/s/ Michael C. Spillner
Michael C. Spillner