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WI-LAN INC.

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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
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12 BROADCOM CORPORATION AND
13 ATHEROS COMMUNICATIONS, INC.

14 Plaintiffs,

15 v.

16 WI-LAN INC.,

17 Defendant.
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Case No. C 08-cv-5543 JW

**DECLARATION OF MICHAEL G.
MCMANUS IN SUPPORT OF EX PARTE
APPLICATION FOR ORDER TO
EXTEND THE TIME FOR WI-LAN'S
RESPONSE TO THE COMPLAINT
UNTIL TEN DAYS AFTER THIS
COURT'S RULING IN A RELATED
CASE**

1 I, Michael G. McManus, hereby declare as follows:

2 1. I am an attorney with the law firm McKool Smith, P.C., and have been retained by
3 Wi-LAN, Inc. (“Wi-LAN”). I am a member, in good standing, of the bar of the District of
4 Columbia and of the State of Georgia. I am registered to practice before the United States Patent
5 and Trademark Office. I have personal knowledge of the facts contained in this declaration,
6 unless otherwise indicated. If called upon to testify regarding such facts I am competent to do so.
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8 2. On October 31, 2007, Wi-LAN brought suit on two wireless communications
9 patents against several defendants in the Eastern District of Texas. That case is styled *Wi-LAN*
10 *Inc. v. Acer, et al.* 2:07-cv-00473-TJW (E.D.Tex.) (hereafter, the “Texas litigation.”)
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12 3. The Texas litigation, as filed, concerned wireless communication devices
13 employing a particular modulation scheme known as the IEEE 802.11 standard, or, alternatively,
14 the “Wi-Fi” standard.

15 4. On September 30, 2008, Intel Corp., filed a declaratory judgment action in this
16 district on certain other patents owned by Wi-LAN (including the patent here at issue, United
17 States Patent No. 6,549,759 (“the ‘759 Patent’)) which concern related technology. That case is
18 styled *Intel Corp. v. Wi-LAN Inc. et al.*, 5:08-cv-04555 (JW) (N.D. Cal.).

19 5. On October 8, 2008, Intel announced the launch of a new product that practiced
20 both the IEEE 802.16 standard (also known as the “WiMAX” standard) as well as the Wi-Fi
21 standard. The Intel press release refers to the new product as “its first ever combined
22 WiMAX/Wi-Fi module”.

23 6. Intel’s October 8, 2008, Press Release is attached hereto as Exhibit 1.

24 7. On October 30, 2008, Wi-LAN amended its Complaint in the Texas litigation as of
25 right to include allegations concerning the IEEE 802.16/WiMAX standard.
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27 8. Wi-LAN alleges that the ‘759 Patent is applicable to certain wireless standards,
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1 including the WiMAX standard.

2 9. Under local rules in Texas, Wi-LAN was obliged to meet and confer with the
3 defendants prior to moving to supplement its complaint. (E.D. Tex. Local Rule CV-7(h)). After
4 Wi-LAN informed the defendants of its intent to move to supplement the Texas complaint to add
5 the '759 Patent, but before it filed its motion, during the meet and confer period, Broadcom filed
6 the instant suit.

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8 10. Attached hereto as Exhibit 2 is a true and correct copy of a White Paper found on
9 www.intel.com titled *WiMAX* and Wi-Fi* Together: Synergies for Next-Generation Broadband*,
10 July 2008.

11 11. Attached hereto as Exhibit 3 is a true and correct copy of Wi-LAN's First
12 Amended Complaint filed in the Eastern District of Texas on October 30, 2008.

13 12. Attached hereto as Exhibit 4 is a true and correct copy of correspondence dated
14 December 10, 2008, from Broadcom's counsel, Michael W. DeVries, of Latham & Watkins LLP.

15 13. Parties that are defendants in the Texas litigation referred to in Paragraph 2 have
16 filed four other declaratory judgment actions in this district: *Acer America Corp. et al v. Wi-Lan,*
17 *Inc*, Case No. 3:08-cv-5624; *Intel Corp. v. Wi-LAN, Inc.*, et al. Case No. 5:08-cv-04555-JW;
18 *Marvell Semiconductor Inc et al v. Wi-Lan, Inc*, Case No. 5:08-cv-5544; *Sony Computer*
19 *Entertainment America Inc. et al v. WI-Lan, Inc.*, Case No. 3:08-cv-05742-JCS.

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22 14. On January, 15, 2008, Wi-LAN filed a motion to dismiss Intel's declaratory
23 judgment action on the basis of lack of personal jurisdiction and lack of subject matter jurisdiction
24 and to transfer the case to Texas on the basis of the first-filed rule. (Case No. 5:08-cv-04555-JW,
25 D.I. 31).

26 13. On January 16, 2009, I informed Broadcom counsel, Mr. DeVries, by telephone,
27 that Wi-LAN proposed to stay the instant litigation until ten days after the Texas Court had ruled
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1 upon Wi-LAN's motion to supplement its Texas Complaint to add allegations concerning United
2 States Patent No. 6,549,759 (the patent-in-suit) or this Court had ruled upon Wi-LAN's motion to
3 dismiss or transfer Intel's declaratory judgment action. Mr. DeVries was unable to state whether
4 Broadcom supported or opposed such motion. Mr. DeVries indicated that he would inform Wi-
5 LAN of Broadcom's position by January 20, 2008.
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7 14. On January 16, 2009, I placed a telephone call to counsel for Atheros
8 Communications, Inc., Mr. Jonah Mitchell of Reed Smith LLP, at 1:03 p.m. Pacific time. I left
9 Mr. Mitchell a voicemail requesting that he telephone me so that we could meet and confer
10 regarding Wi-LAN's proposed motion.

11 15. On January 16, 2009, I placed a telephone call to counsel for Atheros
12 Communications, Inc., Mr. Scott Baker of Reed Smith LLP at 1:13 Pacific time. I left a voicemail
13 requesting that he telephone me so that we could meet and confer regarding Wi-LAN's proposed
14 motion.
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16 16. On January 16, 2009, I sent an electronic mail to Atheros counsel Scott Baker, John
17 Bovitch and Jonah Mitchell of Reed Smith LLP informing them of Wi-LAN's proposed motion.
18 This electronic mail is attached as Exhibit 5.

19 17. On January 20, 2009, McKool Smith's Washington, D.C. office, where I am
20 resident, was closed due to the Presidential Inauguration. On January 20, 2009, I received a
21 voicemail from Mr. DeVries and Mr. Mitchell.

22 18. On January 20, 2009, I attempted to reach both Mr. DeVries and Mr. Mitchell by
23 telephone but was unable to do so. I left voicemails and my cell phone number with both Mr.
24 DeVries and Mr. Mitchell. I also sent an electronic mail requesting that they inform me of a time
25 to contact them. My January 20, 2009, electronic mail is attached as Exhibit 6.

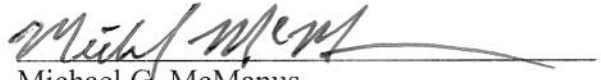
26 19. On January 20, 2009, at 10:40 eastern time, I received an electronic mail from Mr.
27 DeVries indicating that he had been unavailable as he had been in a meeting that lasted "into the
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evening.” Mr. DeVries proposed that we confer at 3:00 Pacific time/6:00 Eastern time on January 21, 2009. Mr. De Vries electronic mail is attached hereto as Exhibit 7.

20. On January 21, 2009, I conferred with Mr. DeVries and Mr. Mitchell via telephone at 6:00 pm eastern time. At the conclusion of such conference, both Broadcom and Atheros asserted that there had not been an adequate meeting and conference to permit them to take a position regarding the present motion.

I hereby certify under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of January 2009.


Michael G. McManus

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2009, a true and correct copy of the foregoing
DECLARATION OF MICHAEL G. MCMANUS IN SUPPORT OF EX PARTE APPLICATION
TO EXTEND THE TIME FOR WI-LAN'S RESPONSE TO THE COMPLAINT UNTIL TEN
DAYS AFTER THIS COURT'S RULING IN A RELATED CASE was filed electronically with
the Clerk of the Court using CM/ECF System. Notice of this filing will be sent by operation of
the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties
may access this filing through the Court's electronic filing system.

By: _____/s/_____
Victoria E. Hopper