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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Intel Corp.,

NO. C 08-04555 JW

Plaintiff,

**FIRST PATENT SCHEDULING ORDER;
NOTICE OF INTENT TO APPOINT A
SPECIAL MASTER**

v.

Wi-LAN, Inc.,

Defendant.

On September 1, 2009, the Court conducted a Case Management Conference. Counsel for the respective parties were present. In light of the discussion at the conference, the Court orders as follows:

A. Third-Party Disclosures

On or before **September 11, 2009**, the parties shall file a Stipulation regarding third party disclosures in the Wi-LAN, Inc. v. Acer, Inc., et al., No. 2:07-CV-473 (E.D. Tex.) for the purposes of supporting or contesting infringement, invalidity, obviousness, and enforceability to promote efficiency in this case.

B. Notice of Intent to Appoint a Special Master

The Court suggested the appointment of a Special Master to assist in the management of this lawsuit. The parties were agreeable. Due to the parties' consent, the complexity of legal and factual issues involved in this case, and the cost savings to the parties which will result from a more focused management of pre-trial matters, the Court concludes that the appointment of a Special Master in this lawsuit would be beneficial to all. Pursuant to FED. R. CIV. P. 53, the Court notifies the parties of its intent to appoint a Special Master.

1 **1. Scope of the Special Master’s Appointment**

2 The Special Master shall preside over all proceedings, with the power to hear and make
3 reports and recommendations on the following pretrial matters:

- 4 a. Timing of pre-answer motions or any responsive pleadings;
- 5 b. Timing and content of initial disclosures;
- 6 c. Case development processes (e.g., staged discovery and discovery schedules or
7 plans);
- 8 d. Disclosures or discovery;
- 9 e. Disclosures or discovery disputes;
- 10 f. Limits on the number of party experts.

11 Furthermore, the Special Master shall have the authority to:

- 12 g. Conduct pretrial conferences and hearings to establish:
 - 13 (1) The substance of the claims and defenses presented in the case and of the
14 issues to be decided;
 - 15 (2) The material facts not reasonably disputable;
 - 16 (3) The disputed material factual issues;
 - 17 (4) The relief claimed, including a particularized itemization of all elements of
18 damages which may reasonably be claimed based upon the evidence which
19 would be presented at trial;
 - 20 (5) The pertinent undisputed and disputed points of law, with respect to liability
21 and relief, including proposed jury instructions;
 - 22 (6) The witnesses necessary to be called at trial, except for impeachment or
23 rebuttal, together with the substance of the testimony to be given;
 - 24 (7) A compilation of all documents and other items necessary to be offered as
25 exhibits at trial, except for impeachment or rebuttal, together with a brief
26 statement following each item describing its substance or purpose and the
27 identity of the authenticating witness;
- 28 h. Audit and establish attorney fees to be awarded, if any.

 The Special Master shall exercise the power necessary or proper to regulate all proceedings
before him and shall do all acts and take all measures necessary or proper for the efficient
performance of his duties under this Order.

1 The Special Master shall file numbered interim reports or recommendations which: 1)
2 advise this Court of the status of the case, and 2) recommend the disposition of any matter heard by
3 him. The parties shall have ten (10) days from the date an interim report or recommendation is filed
4 to file any objections. Any party opposing the objection(s) shall file an opposition within ten (10)
5 days after the objection is filed. If no objection is filed, the Special Master's report or
6 recommendation shall become a binding Order of the Court and the parties shall comply with the
7 Order. If, however, an objection is filed, the matter shall be deemed submitted to the Court without
8 oral argument twenty (20) days after the Special Master's report or recommendation is filed—unless
9 an application is made and the Court orders the matter to be scheduled for hearing.

10 Reports or recommendations pertaining to non-dispositive motions or pretrial discovery
11 matters shall be reconsidered by this Court only where the Special Master's report or
12 recommendation is clearly erroneous or contrary to law.

13 **2. Fees and Costs of Special Master**

14 Unless the Court receives a recommendation from the Special Master for some other
15 apportionment, each party shall bear the cost of the Special Master on a *per capita* basis, payable in
16 advance. Upon the appointment of the Special Master, the parties shall meet and confer with the
17 Master and develop a plan to set up a trust account whereby the parties shall deposit, initially,
18 \$50,000 each to cover the anticipated fees and costs. The Special Master shall issue statements to
19 the parties and draw from the trust account every 30 days for his or her performance of the
20 appointment. The Special Master will bill at the rate of \$600.00 per hour.

21 The Special Master shall report to the Court on a periodic basis, every 90 days, regarding the
22 state of his fees and expenses and make a recommendation to the Court as to whether the trust
23 account needs additional deposits from the parties as the case progresses.

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3. Nomination of Special Master

The Court nominates Tom Denver.¹ The parties shall file any objections to Mr. Denver being named as Special Master on or before **September 14, 2009**. In their objections, the parties shall provide alternate nominations.

If no objection is filed and Mr. Denver accepts his appointment, Mr. Denver shall file an affidavit as required by FED. R. CIV. P. 53(b)(3). The Court’s appointment of the Special Master shall become effective on **September 15, 2009**. Once the appointment is effective, the parties shall notice all relevant discovery and pretrial motions before the Special Master.

C. Case Schedule

<p>Infringement Contentions (¶ 1) as to the following patents only: (the “Adaptive Allocation” patents): 6,693,887; 7,006,530; 7,023,798; 7,289,467; 7,317,704; 6,925,068</p>	<p>February 1, 2010</p>
<p>Invalidity Contentions (¶ 2) as to the Adaptive Allocation patents only.</p>	<p>March 8, 2010</p>
<p>Case Tutorial (¶ 4)</p>	<p>February 19, 2010</p>

1. On the date set in the Case Schedule, the party asserting infringement must serve on all parties a Disclosure of Asserted Claims and Infringement Contentions and make available for inspection and copying the documents described in Patent L.R. 3-1.

2. On the date set in the Case Schedule, each opposing party shall serve on all parties Invalidation Contentions and produce and make available for inspection and copying the documents described in Patent L.R. 3-3.

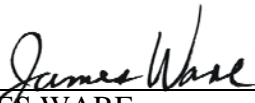
3. Amendment of the Infringement Contentions or the Invalidation Contentions may be made only by order of the Court upon a timely showing of good cause. Motions to amend shall be filed pursuant to the Civil Local Rules of Court and noticed for a hearing before the assigned Magistrate Judge.

¹ Mr. Denver is with Mediation Masters and may be reached at (408) 280-7883.

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1 4. On the date set in the Case Schedule, the parties shall appear before the Court at **9 a.m.** to
2 present a tutorial. The purpose of the tutorial is to allow each party to inform the Court about the
3 background of the technical information which is involved in the case and the nature of the dispute.
4 Presentations may include demonstrations, expert testimony, or audio visual materials. No cross-
5 examination will be permitted. However, the Court may pose questions to parties or witnesses. No
6 record will be made of the proceedings. Statements made during the tutorial may not be cited as
7 judicial admissions against a party. Each party shall have **30 minutes** for their presentation. Any
8 party wishing for additional time shall make the appropriate administrative motion in accordance
9 with the Civil Local Rules of Court. See Civ. L.R. 7-11.

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11 Dated: September 3, 2009



JAMES WARE
United States District Judge

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1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

- 2 Adam R. Alper aalper@kirkland.com
- 3 Amy Rebecca Schofield aschofield@kirkland.com
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- 11 Michael Woodrow De Vries mike.devries@lw.com
- 12 Robert A. Cote rcote@mckoolsmith.com

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10 **Dated: September 3, 2009**

Richard W. Wieking, Clerk

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**By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy**

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