

2. The allegations of Paragraph 2 are not directed to LGEMU. LGEMU is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 and therefore denies them.

3. The allegations of Paragraph 3 are not directed to LGEMU. LGEMU is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 and therefore denies them.

4. LGEMU admits that it is a California corporation with its principal place of business at 10101 Old Grove Road, San Diego, California 92131. LGEMU admits that LG Electronics, Inc., is a corporation organized and existing under the laws of South Korea, with its principal place of business at LG Twin Towers, 20, Yeouido-dong, Yeongdeungpo-gu, Seoul 150-721, Korea. With respect to the third sentence of Paragraph 4, LGEMU admits that it sells mobile handsets with CDMA2000 and/or 802.11 functionality. Wi-LAN's complaint does not define terms necessary to understand the allegations of the third sentence of Paragraph 4, and, in light of the ambiguity of such terms, LGEMU lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies them. LGEMU denies that LGEMU and LG Electronics, Inc., are commonly owned by the same corporate entity and are alter egos and/or agents of one another. LGEMU admits that it and LG Electronics, Inc., may be served with process by serving their registered service agent, Alan K. Tse, 10101 Old Grove Road, San Diego, California 92131. LGEMU denies the remaining allegations of Paragraph 4.

5. The allegations of Paragraph 5 are not directed to LGEMU. LGEMU is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 and therefore denies them.

JURISDICTION AND VENUE

6. These allegations set forth legal conclusions to which no response is required. LGEMU admits that Wi-LAN's complaint alleges infringement under the United States patent laws. LGEMU denies any infringement and any remaining allegations in Paragraph 6.

7. LGEMU admits that this Court has subject matter jurisdiction over patent law claims. In view of the denial of the allegations of Paragraphs 10 and 12 below, on information and belief, LGEMU denies that Wi-LAN has standing, and accordingly denies that this Court has subject matter jurisdiction over Wi-LAN's patent claims in this particular case.

8. LGEMU admits that this Court has personal jurisdiction over it in this particular action, and that it has conducted business in the State of Texas. LGEMU admits that it has sold its products in the United States, the State of Texas, and the Eastern District of Texas. To the extent the remaining allegations of Paragraph 8 are directed at LGEMU, they are denied. To the extent the allegations of Paragraph 8 are directed to other entities, LGEMU lacks sufficient information to admit or deny the allegations of Paragraph 8 and therefore denies them.

9. LGEMU admits that venue is proper in the Eastern District of Texas for purposes of this particular action.

COUNT 1: PATENT INFRINGEMENT

10. With respect to the first sentence of Paragraph 10, LGEMU admits that U.S. Reissued Patent No. RE37,802 (the "'802 patent'") is entitled "Multicode Direct Sequence Spread Spectrum," and that the '802 patent bears a date of reissue of July 23, 2002. On information and belief, LGEMU denies the remaining allegations of the first sentence of Paragraph 10. With respect to the second sentence of Paragraph 10, LGEMU is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 and therefore denies them.

11. Denied.

12. With respect to the first sentence of Paragraph 12, LGEMU admits that U.S. Patent No. 5,282,222 (the “‘222 patent”) is entitled “Method and Apparatus for Multiple Access Between Transceivers in Wireless Communications Using OFDM Spread Spectrum,” and that the ‘222 patent bears a date of issue of January 25, 1994. On information and belief, LGEMU denies the remaining allegations of the first sentence of Paragraph 12. With respect to the second sentence of Paragraph 12, LGEMU is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 and therefore denies them.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. LGEMU is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 24 and therefore denies them.

25. Denied.

PRAYER FOR RELIEF

These paragraphs set forth the statement of relief requested by Wi-LAN to which no response is required. LGEMU denies that Wi-LAN is entitled to any of the requested relief and denies any allegations.

DEMAND FOR JURY TRIAL

This paragraph sets forth Wi-LAN's request for a jury trial to which no response is required.

DEFENSES AND AFFIRMATIVE DEFENSES

1. Wi-LAN has failed to state a claim upon which relief can be granted.
2. LGEMU does not infringe and has not infringed – not by direct infringement, contributory infringement, or inducement of infringement – any valid claim of the '222 and '802 patents.
3. One or more claims of the '222 and '802 patents are invalid for failure to satisfy the requirements of one or more of 35 U.S.C. §§ 100 et seq., 101, 102, 103, 112, 132, and 251.
4. By reason of the proceedings in the United States Patent and Trademark Office during prosecution of the applications that led to the '222 and '802 patents, Wi-LAN is estopped from claiming infringement, either literally or under the doctrine of equivalents, by LGEMU of one or more claims of the '222 and '802 patents.
5. Wi-LAN's claims are barred, in whole or in part, by waiver, laches, equitable estoppel, and/or acquiescence.
6. Wi-LAN's claims are barred, in whole or in part, by promissory estoppel
7. Wi-LAN's claims are barred, in whole or in part, by unclean hands.
8. LGEMU and its accused products are licensed, expressly or implicitly.

9. Wi-LAN is not entitled to injunctive relief at least because any alleged injury is not immediate or irreparable, and because Wi-LAN has an adequate remedy at law.

10. Wi-LAN's claim for damages are limited under 35 U.S.C. §§ 286 and 287.

11. Wi-LAN's claims relating to the '802 patent are barred by intervening rights.

12. Wi-LAN's claims relating to the '802 patent are barred by the doctrine of recapture.

13. Wi-LAN's claims for relief are limited by the doctrines of full compensation, exhaustion, and/or first sale, and Wi-LAN is not entitled to multiple recoveries.

COUNTERCLAIMS

For its Counterclaims against plaintiff Wi-LAN, defendant LGEMU avers as follows:

THE PARTIES

1. LGEMU is a corporation organized and existing under the laws of California and has its principal place of business at 10101 Old Grove Road, San Diego, California 92131.

2. Wi-LAN states in its complaint that it is a Canadian corporation with its principal place of business at 11 Holland Ave., Suite 608, Ottawa, Ontario, Canada.

JURISDICTION AND VENUE

3. These Counterclaims arise under 28 U.S.C. §§ 2201 and 2202 and the patent laws set forth in Title 35 of the United States Code.

4. Wi-LAN alleges in its complaint that LGEMU has been and is now infringing the '802 and '222 patents.

5. Wi-LAN alleges in its complaint that it is the assignee of all rights, title, and interest in and to the '802 and '222 patents and that it possesses all rights of recovery including the right to recover damages for past infringement.

6. The '802 and '222 patents are invalid and/or are not and have not been infringed by LGEMU, directly or indirectly. Additionally, Wi-LAN has engaged in misconduct rendering the '802 and '222 patents unenforceable.

7. Consequently, there is an actual case or controversy between the parties concerning the non-infringement, invalidity, and/or unenforceability of the '802 and '222 patents.

8. Subject to LGEMU's denials, defenses, and affirmative defenses, subject matter jurisdiction for these counterclaims exists pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a).

9. This Court has personal jurisdiction over Wi-LAN.

10. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400.

COUNT ONE

Declaratory Judgment of Non-Infringement of U.S. Patent No. RE37,802

11. LGEMU restates and incorporates by reference its allegations in Paragraphs 1 through 10 of its Counterclaims.

12. Wi-LAN alleges that LGEMU has been and is now infringing, directly and/or indirectly, the '802 patent.

13. LGEMU has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '802 patent.

14. An actual controversy exists between LGEMU and Wi-LAN as to whether the '802 patent is not infringed by LGEMU.

15. A judicial declaration is necessary and appropriate so that LGEMU may ascertain its rights regarding the '802 patent.

COUNT TWO

Declaratory Judgment of Invalidity of U.S. Patent No. RE37,802

16. LGEMU restates and incorporates by reference its allegations in Paragraphs 1 through 10 of its Counterclaims.

17. Wi-LAN alleges that LGEMU has been and is now infringing, directly and/or indirectly, the '802 patent.

18. One or more claims of the '802 patent are invalid for failure to satisfy the requirements of one or more of 35 U.S.C. §§ 100 et seq., 101, 102, 103, 112, 132, and 251.

19. An actual case or controversy exists between LGEMU and Wi-LAN as to whether the '802 patent is invalid.

20. A judicial declaration is necessary and appropriate so that LGEMU may ascertain whether the '802 patent is invalid.

COUNT THREE

Declaratory Judgment of Non-Infringement of U.S. Patent No. 5,282,222

21. LGEMU restates and incorporates by reference its allegations in Paragraphs 1 through 10 of its Counterclaims.

22. Wi-LAN alleges that LGEMU has been and is now infringing, directly and/or indirectly, the '222 patent.

23. LGEMU has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '222 patent.

24. An actual controversy exists between LGEMU and Wi-LAN as to whether the '222 patent is not infringed by LGEMU.

25. A judicial declaration is necessary and appropriate so that LGEMU may ascertain its rights regarding the '222 patent.

COUNT FOUR

Declaratory Judgment of Invalidity of U.S. Patent No. 5,282,222

26. LGEMU restates and incorporates by reference its allegations in Paragraphs 1 through 10 of its Counterclaims.

27. Wi-LAN alleges that LGEMU has been and is now infringing, directly and/or indirectly, the '222 patent.

28. One or more claims of the '222 patent are invalid for failure to satisfy the requirements of one or more of 35 U.S.C. §§ 100 et seq., 101, 102, 103, 112, and 132.

29. An actual case or controversy exists between LGEMU and Wi-LAN as to whether the '222 patent is invalid.

30. A judicial declaration is necessary and appropriate so that LGEMU may ascertain whether the '222 patent is invalid.

COUNT FIVE

Fraud

31. LGEMU incorporates and realleges Paragraphs 1 through 30 of its Counterclaims as if set forth fully herein.

A. The IEEE's Rules and Policies Regarding Standards

32. In this action, Wi-LAN has alleged that mobile handsets and other products having wireless capability compliant with the IEEE 802.11 standards infringe the '802 and '222 patents.

33. The IEEE is a professional association and leading developer of technical standards. IEEE members include engineers, scientists and allied professionals whose technical interests relate to electrical and computer sciences, engineering and related disciplines. Members

may participate in the standards-setting process in working groups and/or subgroups called task groups.

34. To protect against unscrupulous conduct by any member who seeks to benefit unfairly from, or to manipulate to its advantage, the IEEE's standard-setting process, and to enable the IEEE and its members to develop standards free from potentially blocking patents, the IEEE instituted policies and rules regarding the disclosure and licensing of patents.

35. At all relevant times alleged herein, the IEEE's rules and policies required fairness and candor with respect to intellectual property. By way of example only, the IEEE required its members to submit letters of assurance including either a general disclaimer to the effect that the patentee will not enforce any of its present or future patents whose use would be required to implement the proposed IEEE standard against any person or entity using the patents to comply with the standard, or a statement that a license will be made available to all applicants without compensation or under reasonable rates, with reasonable terms and conditions that are demonstrably free of any unfair discrimination. For example, the IEEE's Standards Board Bylaws state, "IEEE standards may include the known use of patent(s), including patent applications, if there is technical justification in the opinion of the standards-developing committee and provided the IEEE receives assurance from the patent holder that it will license applicants under reasonable terms and conditions for the purpose of implementing the standard." Additionally, the IEEE's Standards Board Bylaws further state:

This assurance shall be a letter that is in the form of either

- a) A general disclaimer to the effect that the patentee will not enforce any of its present or future patent(s) whose use would be required to implement the proposed IEEE standard against any person or entity using the patent(s) to comply with the standard or
- b) A statement that a license will be made available to all applicants without

compensation or under reasonable rates, with reasonable terms and conditions that are demonstrably free of any unfair discrimination.

36. The IEEE formed the 802.11 working group in 1990. The IEEE 802.11 standard is entitled “Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications” and concerns wireless local area networking (“wireless LAN”).

37. In 1997, the IEEE formed two task groups: the 802.11a and 802.11b. The 802.11a task group was concerned with a standard for wireless LAN in the 5 GHz frequency band. The 802.11b task group was concerned with a standard for wireless LAN in the 2.4 GHz frequency band.

38. Members of the IEEE participating in the standards setting process for 802.11a and 802.11b included Wi-LAN. As a result of its membership in the IEEE, Wi-LAN agreed, both explicitly and implicitly, that it would abide by the rules and policies of the IEEE.

B. Wi-LAN’s Bad Faith Misrepresentations and Omissions

39. On information and belief, Wi-LAN intentionally and knowingly made material misrepresentations and/or omissions in connection with standards-setting organizations, including as set forth below.

40. On July 6-11, 1998, the 802.11 working group met in La Jolla, California in connection with the standards-setting process.

41. Wi-LAN’s president and CEO, Hatim Zaghloul, and Vice President of Engineering, Steven Knudsen, attended the July 1998 802.11 meeting in La Jolla.

42. Numerous proposals had been submitted to the 802.11b task group for consideration prior to the July 1998 meeting in La Jolla, including proposals from Alantro Communications (“Alantro”), Micrilor Inc. (“Micrilor”), Raytheon, KDD, Golden Bridge Technology, Harris Semiconductor (“Harris”), and Lucent Technologies (“Lucent”).

43. On the first day of the 802.11 meeting, July 6, 1998, Harris and Lucent submitted a joint proposal (the “Harris/Lucent Proposal”) to the 802.11b task group.

44. On July 7, 1998, Alantro, Micrilor, Harris and Lucent presented their proposals to members of the 802.11b task group.

45. On July 7, 1998, Wi-LAN submitted a letter to the chairman of the 802.11 working group offering to license its patents on fair, reasonable and non-discriminatory terms and conditions with respect to 802.11b.

46. On July 9, 1998, the 802.11b task group voted in favor of pursuing the Harris/Lucent Proposal, and decided not to pursue other proposals. For example, the 802.11b task group also considered proposals submitted by Alantro and Micrilor. The task group could have decided not to pursue any of the pending proposals.

47. After the 802.11b task group voted to pursue the Harris/Lucent Proposal, it then recommended the Harris/Lucent Proposal to the 802.11 working group as the base for the 802.11b standard. The 802.11 working group accepted the recommendation of the 802.11b task group.

48. The IEEE 802.11 working group met again in September 1998 in Westford, Massachusetts.

49. On September 10, 1998, four days before the September 1998 802.11 meeting, Wi-LAN filed an application to reissue U.S. Patent No. 5,555,268 (the “‘268 patent”). This patent application (hereinafter, the “Reissue Application”) later issued as the ‘802 patent. In prosecuting the Reissue Application, Wi-LAN submitted claims that Wi-LAN alleges are infringed by certain products having wireless capability compliant with the IEEE 802.11 standards.

50. On September 14, 1998, after filing the Reissue Application, Wi-LAN submitted a letter to the chairman of the 802.11 working group stating that Wi-LAN believed that the then-pending Reissue Application was not necessary to the practice of 802.11b. Wi-LAN's letter states, "Wi-LAN Inc. hereby withdraws its previous IP statement dated July 9, 1998 to the extent that it implied that Wi-LAN existing US patent on multicode technology, US patent # 5,555,268, or another pending patent are necessary for the implementation of devices incorporating the IEEE802.11b draft standard."

51. The IEEE 802.11 working group met again in November 1998 in Albuquerque, New Mexico. Wi-LAN's president and CEO, Mr. Zaghoul, and Vice President of Engineering, Mr. Knudsen, attended the November 1998 meeting in Albuquerque, New Mexico. In particular, Mr. Zaghoul attended a meeting of the 802.11b task group at the November 1998 Albuquerque 802.11 meeting. With Mr. Zaghoul in attendance at that meeting, the 802.11b task group addressed Wi-LAN's September 14, 1998 letter. At the meeting, Wi-LAN continued to represent that it believed that the Reissue Application was not necessary to the practice of 802.11b. The meeting minutes for the 802.11b task group state, "270 - r1 WLAN IP statement (They no longer feel that they have any IP related to standard)." Based on Wi-LAN's assertions, the 802.11b task group expressed the view that "We no longer feel that WiLAN IP position applies to the proposed 802.11b standard."

52. On information and belief, at all relevant times, Wi-LAN intentionally and in bad faith failed to inform the IEEE that Wi-LAN had filed the Reissue Application or of its contents, or that Wi-LAN intended to assert its patents in bad faith against the 802.11b standard, without offering licenses on fair, reasonable and non-discriminatory terms.

C. Wi-LAN's Letters of Assurance Regarding 802.11a and 802.11g

53. On July 7, 1998, Wi-LAN submitted a letter to the chair of the IEEE 802.11 working group referencing the "Standards Recommendation Relating to Technology Being Proposed by Lucent Technologies and NTT for Inclusion in the IEEE P802.11a (OFDM) Standards Project" in the subject line and confirming that it was "prepared to license its existing patents directed to and necessary for the practice of the referenced OFDM Technology, if Lucent and NTT's proposal is adopted by the IEEE, on fair, reasonable and non-discriminatory terms and conditions to qualified applicants in accordance with the IEEE Patent Policy." The 802.11 working group adopted the referenced proposal.

54. On November 9, 1998, Wi-LAN submitted a letter of assurance referencing the "Standards Recommendation Relating to the IEEE P802.11a (OFDM) Draft Standards" in the subject line and confirming that it was "prepared to license its existing and future patents directed to and necessary for the practice of the referenced OFDM Technology, if the IEEE802.11a Draft Standard is adopted by the IEEE, on fair, reasonable and non-discriminatory terms and conditions to qualified applicants in accordance with the IEEE Patent Policy." The 802.11 working group adopted the referenced standard.

55. On November 29, 2000, Wi-LAN submitted a letter of assurance referencing the "Standards Recommendation Relating to the IEEE P802.11b Task Group G (OFDM) Draft Standards" in the subject line and confirming that it was "prepared to license its existing and future patents directed to and necessary for the practice of the referenced OFDM Technology, if the IEEE802.11b Task Group G Draft Standard is adopted by the IEEE, on fair, reasonable and non-discriminatory terms and conditions to qualified applicants in accordance with the IEEE Patent Policy."

56. On information and belief, Wi-LAN, intentionally and in bad faith failed to offer licenses on fair, reasonable and non-discriminatory terms, and instead is pursuing excessive royalties and injunctive relief in litigation.

57. On information and belief, Wi-LAN intentionally and knowingly made material misrepresentations and/or omissions to the IEEE, its members, others relying on 802.11 including defendants in this action, and the public, including, as alleged herein, misrepresentations and/or omissions regarding its alleged patents and/or patent applications. Wi-LAN had a duty to disclose facts regarding its alleged intellectual property, including as a result of its representations to the IEEE, as alleged herein.

58. On information and belief, Wi-LAN's misrepresentations and/or omissions were knowingly false and made in bad faith with the intent to induce reliance.

59. The IEEE and its members reasonably have relied on the foregoing misrepresentations and/or omissions in adopting and using the 802.11 standards. Furthermore, LGEMU reasonably has relied on the foregoing misrepresentations and/or omissions, and/or the 802.11 standards, in investing substantial resources developing and marketing products accused of alleged infringement in this action.

60. The foregoing actions and conduct by Wi-LAN have damaged and continue to damage LGEMU. On information and belief, Wi-LAN's conduct was malicious and willful, and LGEMU is entitled to punitive damages.

COUNT SIX

Constructive Fraud

61. LGEMU incorporates and realleges Paragraphs 1 through 60 above as if set forth fully herein.

62. On information and belief, Wi-LAN intentionally and knowingly made material misrepresentations and/or omissions to the IEEE, including, as alleged herein, misrepresentations and/or omissions regarding its alleged patents and/or patent applications. Wi-LAN had a duty to disclose facts regarding its alleged intellectual property, including as a result of its representations to the IEEE, as alleged herein.

63. On information and belief, Wi-LAN's misrepresentations and/or omissions were knowingly false and made in bad faith with the intent to induce reliance.

64. The IEEE and its members reasonably have relied on the foregoing misrepresentations and/or omissions in adopting and using the 802.11 standards. Furthermore, LGEMU reasonably has relied on the foregoing misrepresentations and/or omissions, and/or the 802.11 standards, in investing substantial resources developing and marketing products accused of alleged infringement in this action.

65. The foregoing actions and conduct by Wi-LAN have damaged and continue to damage LGEMU. On information and belief, Wi-LAN's conduct was malicious and willful, and LGEMU is entitled to punitive damages.

COUNT SEVEN

Negligent Misrepresentation

66. LGEMU incorporates and realleges Paragraphs 1 through 65 above as if set forth fully herein.

67. On information and belief, Wi-LAN made material misrepresentations and/or omissions without reasonable belief as to their truth, including, as alleged herein, misrepresentations and/or omissions regarding its alleged patents and/or patent applications. Wi-LAN had a duty to disclose facts regarding its alleged intellectual property, including as a result of its representations to the IEEE, as alleged herein.

68. On information and belief, Wi-LAN's misrepresentations and/or omissions were false and made with the intent to induce reliance.

69. The IEEE and its members reasonably have relied on the foregoing misrepresentations and/or omissions in adopting and using the 802.11 standards. Furthermore, LGEMU reasonably has relied on the foregoing misrepresentations and/or omissions, and/or the 802.11 standards, in investing substantial resources developing and marketing products accused of alleged infringement in this action.

70. The foregoing actions and conduct by Wi-LAN have damaged and continue to damage LGEMU.

COUNT EIGHT

Promissory Estoppel

71. LGEMU incorporates and realleges Paragraphs 1 through 70 above as if set forth fully herein.

72. Wi-LAN made representations and engaged in other conduct, including Wi-LAN's representations that it did not have intellectual property necessary to practice 802.11b, and that it would license its existing and future patents relating to 802.11 on fair, reasonable and non-discriminatory terms and conditions.

73. Wi-LAN's representations and other conduct constituted promises to the IEEE and its members, including LGEMU. By making those promises, Wi-LAN knew or reasonably should have known that they would be relied upon.

74. The IEEE and its members, reasonably have relied on the foregoing promises in adopting and using the 802.11 standards. Furthermore, LGEMU reasonably has relied on the foregoing promises, and/or the 802.11 standards, in investing substantial resources developing and marketing products accused of alleged infringement in this action.

75. LGEMU has been damaged as a result of its reasonable reliance, as alleged herein, in developing and marketing products that have been accused by Wi-LAN of alleged infringement. Injustice can be avoided only by enforcement of Wi-LAN's promises.

COUNT NINE

Breach of Contract

76. LGEMU incorporates and realleges Paragraphs 1 through 75 above as if set forth fully herein.

77. For consideration, including IEEE membership and participation, Wi-LAN entered into an express and/or implied contract with the IEEE's members, or alternatively, with the IEEE to which IEEE members and others are third-party beneficiaries, in which Wi-LAN agreed, among other things, to abide by the IEEE's policies and rules. The IEEE rules and policies, whether formal or informal, including all stipulations, requirements, and representations in any form, constitute a contract between Wi-LAN and the IEEE's members, or alternatively between Wi-LAN and the IEEE, to which IEEE members and others are third-party beneficiaries.

78. In accordance with the foregoing, the IEEE's rules and policies require its members to submit letters of assurance including either a general disclaimer to the effect that the patentee will not enforce any of its present or future patents whose use would be required to implement the proposed IEEE standard against any person or entity using the patents to comply with the standard, or a statements that a license will be made available to all applicants without compensation or under reasonable rates, with reasonable terms and conditions that are demonstrably free of any unfair discrimination.

79. Furthermore, Wi-LAN's representations and other conduct, including the letters of assurance offering licenses on fair, reasonable and non-discriminatory terms, created express

and/or implied contracts with the IEEE and its members, or alternatively between Wi-LAN and the IEEE, to which IEEE members and others are third-party beneficiaries.

80. Wi-LAN breached its contractual obligations, including by failing to offer licenses for the '802 and '222 patents on fair, reasonable and non-discriminatory terms, by seeking to enjoin LGEMU from making and selling 802.11 compliant products, and through misrepresentations and/or omissions regarding its patents and/or patent applications.

81. LGEMU has incurred damages, and will be further damaged in the future due to Wi-LAN's breach of its contractual obligations.

COUNT TEN

Unclean Hands

82. LGEMU incorporates and realleges Paragraphs 1 through 81 above as if set forth fully herein.

83. Wi-LAN's wrongful conduct as alleged herein constitutes unclean hands and renders the '802 and '222 patents unenforceable.

PRAYER FOR RELIEF

WHEREFORE, LGEMU prays for judgment as follows:

- a. A judgment dismissing Wi-LAN's complaint against LGEMU with prejudice;
- b. A judgment in favor of LGEMU on all of its Counterclaims;
- c. A declaration that LGEMU has not infringed, contributed to the infringement of, or induced others to infringe, either directly or indirectly, any valid claims of the '222 and '802 patents;
- d. A declaration that the '222 and '802 patents are invalid;
- e. An award to LGEMU for the amount of damages as proven at trial, including punitive damages;

- f. A declaration that this case is exceptional and an award to LGEMU of its reasonable costs and expenses of litigation, including attorneys' fees and expert witness fees;
- g. A judgment limiting or barring Wi-LAN's ability to enforce the '222 and '802 patents in equity;
- h. A judgment requiring Wi-LAN's specific performance under its contract with IEEE and/or IEEE members to grant licenses to LGEMU on fair, reasonable, and non-discriminatory terms and conditions;
- i. An award to LGEMU of, and a declaration that LGEMU has, a royalty-free license for the '222 and '802 patents;
- j. Such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

In accordance with Rule 38 of the Federal Rules of Civil Procedure and Local Rule CV-38, Defendant LGEMU, Inc. respectfully demands a jury trial of all issues triable to a jury in this action.

Respectfully submitted,

YOUNG PICKETT & LEE

Dated: September 18, 2009

By: */s/ John M. Pickett*

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed.R.Civ.P.5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy via facsimile and/or U.S. First Class Mail this 18th day of September, 2009.

/s/ John M. Pickett