

2. Wi-LAN admits the allegations in Paragraph 2 of the Counterclaim.

JURISDICTION AND VENUE

3. Answering the allegations in Paragraph 3, Wi-LAN admits that this Court has subject matter jurisdiction over Defendant's First, Second, Third, Fourth and Tenth Counterclaims. Wi-LAN is without sufficient knowledge or information regarding Defendant's Fifth, Sixth, Seventh, Eighth, and Ninth Counterclaims to determine the propriety of subject matter jurisdiction and therefore denies that subject matter jurisdiction is proper.

4. Wi-LAN admits the allegations in Paragraph 4 of the Counterclaim.

FACTUAL BACKGROUND

5. Wi-LAN admits the allegations in Paragraph 5 of the Counterclaim.
6. Wi-LAN denies the allegations in Paragraph 6 of the Counterclaim.
7. Wi-LAN admits the allegations in Paragraph 7 of the Counterclaim.

COUNT ONE

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

8. Answering the allegations in Paragraph 8, Wi-LAN incorporates by reference paragraphs 1-7 as if fully set forth herein.

9. Wi-LAN admits the allegations in Paragraph 9 of the Counterclaim.

10. The allegations in Paragraph 10 of the Counterclaim contain conclusions of law to which no response is required. To the extent a response is required, Wi-LAN denies the allegations in Paragraph 10.

11. Wi-LAN denies the allegations in Paragraph 11 of the Counterclaim.

12. The allegations in Paragraph 12 of the Counterclaim contain conclusions of law to which no response is required. To the extent a response is required, Wi-LAN denies the allegations in Paragraph 12.

COUNT TWO

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

13. Answering the allegations in Paragraph 13, Wi-LAN incorporates by reference paragraphs 1-12 as if fully set forth herein.

14. Wi-LAN admits the allegations in Paragraph 14 of the Counterclaim.

15. The allegations in Paragraph 15 of the Counterclaim contain conclusions of law to which no response is required. To the extent a response is required, Wi-LAN denies the allegations in Paragraph 15.

16. Wi-LAN denies the allegations in Paragraph 16 of the Counterclaim.

17. The allegations in Paragraph 17 of the Counterclaim contain conclusions of law to which no response is required. To the extent a response is required, Wi-LAN denies the allegations in Paragraph 17.

COUNT THREE

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

18. Answering the allegations in Paragraph 18, Wi-LAN incorporates by reference paragraphs 1-17 as if fully set forth herein.

19. Wi-LAN admits the allegations in Paragraph 19 of the Counterclaim.

20. The allegations in Paragraph 20 of the Counterclaim contain conclusions of law to which no response is required. To the extent a response is required, Wi-LAN denies the allegations in Paragraph 20.

21. Wi-LAN denies the allegations in Paragraph 21 of the Counterclaim.

22. The allegations in Paragraph 22 of the Counterclaim contain conclusions of law to which no response is required. To the extent a response is required, Wi-LAN denies the allegations in Paragraph 22.

COUNT FOUR

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

23. Answering the allegations in Paragraph 23, Wi-LAN incorporates by reference paragraphs 1-22 as if fully set forth herein.

24. Wi-LAN admits the allegations in Paragraph 24 of the Counterclaim.

25. The allegations in Paragraph 25 of the Counterclaim contain conclusions of law to which no response is required. To the extent a response is required, Wi-LAN denies the allegations in Paragraph 25.

26. Wi-LAN denies the allegations in Paragraph 26 of the Counterclaim.

27. The allegations in Paragraph 27 of the Counterclaim contain conclusions of law to which no response is required. To the extent a response is required, Wi-LAN denies the allegations in Paragraph 27.

COUNT FIVE

Fraud

28. Answering the allegations in Paragraph 28, Wi-LAN incorporates by reference paragraphs 1-27 as if fully set forth herein.

29. Wi-LAN admits the allegations in Paragraph 29 of the Counterclaim.

30. Answering the allegations in Paragraph 30, Wi-LAN admits that the IEEE is a professional association and leading developer of technical standards. Wi-LAN admits that IEEE members include engineers, scientists and allied professionals whose technical interests relate to electrical and computer sciences, engineering and related disciplines. Wi-LAN is without sufficient knowledge or information to form a belief regarding the remaining allegations in Paragraph 30 and therefore denies such allegations.

31. Wi-LAN is without sufficient knowledge or information to form a belief regarding the allegations in Paragraph 31 and therefore denies such allegations.

32. Answering the allegations in Paragraph 32, Wi-LAN denies that the current version of the IEEE's Standards Board Bylaws include the provisions quoted in Paragraph 32 of the Counterclaim. Wi-LAN is without sufficient knowledge or information to form a belief regarding the remaining allegations in Paragraph 32 and therefore denies such allegations.

33. Answering the allegations in Paragraph 33, Wi-LAN admits that the IEEE formed the 802.11 working group in 1990. Wi-LAN admits that 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”).

34. Answering the allegations in Paragraph 34, Wi-LAN is without sufficient knowledge or information to form a belief regarding the time of formation of the 802.11a and 802.11b task groups and therefore denies such allegations. Wi-LAN admits the remaining allegations in Paragraph 34 of the Counterclaim.

35. Wi-LAN denies the allegations in Paragraph 35 of the Counterclaim.

36. Wi-LAN denies the allegations in Paragraph 36 of the Counterclaim.

37. Wi-LAN admits the allegations in Paragraph 37 of the Counterclaim.

38. Wi-LAN admits the allegations in Paragraph 38 of the Counterclaim

39. Wi-LAN is without sufficient knowledge or information to form a belief regarding the allegations in Paragraph 39 and therefore denies such allegations.

40. Wi-LAN is without sufficient knowledge or information to form a belief regarding the allegations in Paragraph 40 and therefore denies such allegations.

41. Wi-LAN is without sufficient knowledge or information to form a belief regarding the allegations in Paragraph 41 and therefore denies such allegations.

42. Answering the allegations in Paragraph 42, Wi-LAN admits that on July 7, 1998, Wi-LAN submitted a letter to Mr. Victor Hayes, Chair of the IEEE 802.11 committee, referencing “Standards Recommendation Relating to Technology Being Proposed by Lucent Technologies and Harris Semiconductor for Inclusion in the IEEE P802.11b (Multicode) Standards Project” in the subject line. The letter stated, in part, that Wi-LAN “is prepared to license its existing patents directed to and necessary for the

practice of the referenced Multicode Technology, if Lucent and Harris' proposals are adopted by the IEEE, on fair, reasonable and non-discriminatory terms and conditions to qualified applicants in accordance with the IEEE Patent Policy." Wi-LAN denies all remaining allegations set forth in Paragraph 42.

43. Wi-LAN is without sufficient knowledge or information to form a belief regarding the allegations in Paragraph 43 and therefore denies such allegations.

44. Wi-LAN is without sufficient knowledge or information to form a belief regarding the allegations in Paragraph 44 and therefore denies such allegations.

45. Wi-LAN admits the allegations in Paragraph 45 of the Counterclaim.

46. Answering the allegations in Paragraph 46, Wi-LAN admits that on September 10, 1998, Wi-LAN filed an application to reissue U.S. Patent No. 5,555,268. Wi-LAN admits that this patent application later issued as the '802 patent. Wi-LAN admits that it alleges that certain claims of the '802 patent are infringed by certain products having wireless capability compliant with the IEEE 802.11 standards. Wi-LAN denies all remaining allegations set forth in Paragraph 46.

47. Answering the allegations in Paragraph 47, Wi-LAN admits that on September 14, 1998, Wi-LAN submitted a letter to Mr. Victor Hayes, Chair of the IEEE 802.11 committee, stating that "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." Wi-LAN denies all remaining allegations set forth in Paragraph 47.

48. Answering the allegations in Paragraph 48, Wi-LAN admits that the IEEE 802.11 working group met in November 1998 in Albuquerque, New Mexico. Wi-LAN admits that Mr. Zaghoul and Mr. Knudsen attended the meeting of the working group. Wi-LAN admits that 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).” Wi-LAN denies all remaining allegations set forth in Paragraph 48.

49. Wi-LAN denies the allegations in Paragraph 49 of the Counterclaim.

50. Answering the allegations in Paragraph 50, Wi-LAN admits that on July 7, 1998, Wi-LAN submitted a letter to Mr. Victor Hayes, Chair of the IEEE 802.11 committee, referencing “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. The letter stated, in part, that “it is 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.” Wi-LAN is without sufficient knowledge or information to form a belief regarding the remaining allegations in Paragraph 50 and therefore denies such allegations.

51. Answering the allegations in Paragraph 51, Wi-LAN admits that on November 9, 1998, Wi-LAN submitted a letter to Mr. Victor Hayes, Chair of the IEEE 802.11 committee, referencing “Standards Recommendation Relating to the IEEE P802.11a (OFDM) Draft Standards” in the subject line. The letter stated that “Wi-LAN Inc. hereby declares that it is 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.” Wi-LAN is without sufficient knowledge or information to form a belief regarding the remaining allegations in Paragraph 51 and therefore denies such allegations.

52. Answering the allegations in Paragraph 52, Wi-LAN admits that on November 29, 2000, Wi-LAN submitted a letter to Mr. Stuart Kerry, Chair of the IEEE 802.11 committee, referencing “Standards Recommendation Relating to the IEEE P802.11b Task Group G (OFDM) Draft Standards” in the subject line. The letter stated that “Wi-LAN Inc. hereby declares that it is 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.” Wi-LAN is without sufficient knowledge or information to form a belief regarding the remaining allegations in Paragraph 52 and therefore denies such allegations.

53. Wi-LAN denies the allegations in Paragraph 53 of the Counterclaim.

54. Wi-LAN denies the allegations in Paragraph 54 of the Counterclaim.

55. Wi-LAN denies the allegations in Paragraph 55 of the Counterclaim.

56. Wi-LAN denies the allegations in Paragraph 56 of the Counterclaim.

57. Wi-LAN denies the allegations in Paragraph 57 of the Counterclaim.

COUNT SIX

Constructive Fraud

58. Answering the allegations in Paragraph 58, Wi-LAN incorporates by reference paragraphs 1-57 as if fully set forth herein.

59. Wi-LAN denies the allegations in Paragraph 59 of the Counterclaim.

60. Wi-LAN denies the allegations in Paragraph 60 of the Counterclaim.

61. Wi-LAN denies the allegations in Paragraph 61 of the Counterclaim.

62. Wi-LAN denies the allegations in Paragraph 62 of the Counterclaim.

COUNT SEVEN

Negligent Misrepresentation

63. Answering the allegations in Paragraph 63, Wi-LAN incorporates by reference paragraphs 1-62 as if fully set forth herein.

64. Wi-LAN denies the allegations in Paragraph 64 of the Counterclaim.

65. Wi-LAN denies the allegations in Paragraph 65 of the Counterclaim.

66. Wi-LAN denies the allegations in Paragraph 66 of the Counterclaim.

67. Wi-LAN denies the allegations in Paragraph 67 of the Counterclaim.

COUNT EIGHT

Promissory Estoppel

68. Answering the allegations in Paragraph 68, Wi-LAN incorporates by reference paragraphs 1-67 as if fully set forth herein.

69. Answering the allegations in Paragraph 69, Wi-LAN admits that on September 14, 1998, Wi-LAN submitted a letter to Mr. Victor Hayes, the Chair of the IEEE 802.11 committee, stating that “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.” Wi-LAN admits that on November 9, 1998, Wi-LAN submitted a letter to Mr. Victor Hayes, the Chair of the IEEE 802.11 committee, referencing “Standards Recommendation Relating to the IEEE P802.11a (OFDM) Draft Standards” in the subject line. The letter stated that “Wi-LAN Inc. hereby declares that it is 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.” Wi-LAN admits that on November 29, 2000, Wi-LAN submitted a letter to Mr. Stuart Kerry, the Chair of the IEEE 802.11 committee, referencing “Standards Recommendation Relating to the IEEE P802.11b Task Group G (OFDM) Draft Standards” in the subject line. The letter stated that “Wi-LAN Inc. hereby declares that it is 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.” Wi-LAN denies all remaining allegations in set forth in Paragraph 69.

70. Wi-LAN denies the allegations in Paragraph 70 of the Counterclaim.

71. Wi-LAN denies the allegations in Paragraph 71 of the Counterclaim.

72. Wi-LAN denies the allegations in Paragraph 72 of the Counterclaim.

COUNT NINE

Breach Of Contract

73. Answering the allegations in Paragraph 73, Wi-LAN incorporates by reference paragraphs 1-72 as if fully set forth herein.

74. Wi-LAN denies the allegations in Paragraph 74 of the Counterclaim.

75. Wi-LAN denies the allegations in Paragraph 75 of the Counterclaim.

76. Wi-LAN denies the allegations in Paragraph 76 of the Counterclaim.

77. Wi-LAN denies the allegations in Paragraph 77 of the Counterclaim.

78. Wi-LAN denies the allegations in Paragraph 78 of the Counterclaim.

COUNT TEN

Unclean Hands

79. Answering the allegations in Paragraph 79, Wi-LAN incorporates by reference paragraphs 1-78 as if fully set forth herein.

80. Wi-LAN denies the allegations in Paragraph 80 of the Counterclaim.

PRAYER FOR RELIEF

Wi-LAN denies that Defendant is entitled to the relief requested in subparagraphs (a)-(j) of the Counterclaim or any other relief.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a jury trial as to all issues raised in Defendant's counterclaims which are triable to a jury in this action.

DEFENSES

FIRST AFFIRMATIVE DEFENSE

81. Each cause of action set forth in Defendant's counterclaim fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

82. Each cause of action set forth in Defendant's counterclaim is barred, in whole or in part, by the Defendant's lack of standing.

THIRD AFFIRMATIVE DEFENSE

83. Defendant's counterclaims are barred, in whole or in part, by the equitable defenses of estoppel, waiver, laches and/or unclean hands.

FOURTH AFFIRMATIVE DEFENSE

84. Defendant has failed to make reasonable efforts to mitigate its damages, if any.

FIFTH AFFIRMATIVE DEFENSE

85. Defendant's claims are subject to a set off based upon Defendant's and/or other parties' acts and wrongdoing.

SIXTH AFFIRMATIVE DEFENSE

86. Defendant's claim for constructive fraud is barred by the lack of a fiduciary duty between the Plaintiff and the Defendant.

SEVENTH AFFIRMATIVE DEFENSE

87. Defendant's claim for breach of contract fails for lack of occurrence of a condition precedent.

EIGHTH AFFIRMATIVE DEFENSE

88. Defendant's claim for breach of contract fails due to the occurrence of a condition subsequent.

NINTH AFFIRMATIVE DEFENSE

89. Each cause of action set forth in Defendant's counterclaim is barred by the applicable statute of limitations.

TENTH AFFIRMATIVE DEFENSE

90. Defendant's claim for breach of contract and related claims fail for lack of privity.

DATED: October 14, 2009

Respectfully submitted,

MCKOOL SMITH, P.C.

/s/ Sam Baxter

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic service are being served with a copy of this PLAINTIFF'S ANSWER TO DEFENDANT MOTOROLA INC.'S COUNTERCLAIMS TO WI-LAN INC.'S THIRD AMENDED COMPLAINT via the Court's CM/ECF system per Local Rule CV-5(a)(3).

Date: October 14, 2009

By: /s/ Sam Baxter