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9 *Attorneys for Plaintiff,*
WiLAN, Inc.

10
11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13
14 WILAN, INC.,

15 Plaintiff,

16 vs.

17 APPLE INC.,

18 Defendant.

Case No. '14CV1507 BAS DHB

19 **COMPLAINT FOR PATENT**
20 **INFRINGEMENT**

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff WiLAN, Inc. files this complaint against Defendant Apple Inc. and
23 makes the following statements with personal knowledge as to its own actions and
24 upon information and belief as to other matters:
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PARTIES

A. WiLAN

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1. Plaintiff WiLAN, Inc. is a corporation organized and existing under the laws of Canada with its principal place of business at 303 Terry Fox Drive, Ottawa, ON Canada. Plaintiff WiLAN, Inc. is referred to herein as “WiLAN.”

2. WiLAN’s wholly-owned subsidiary, Cygnus Broadband, Inc. (“Cygnus Broadband”) has its principal place of business at 15090 Ave of Science, San Diego, California.

3. Cygnus Broadband is a company dedicated to developing advanced 4G technologies and products for WiLAN and others in the wireless industry that enhance the capacity, quality of user experience, and connectivity of 4G (and next generation 5G) mobile devices and networks.

4. The 4G patents asserted in this action, which are assigned to WiLAN (to hold for the benefit of all WiLAN companies and licensees), were developed by WiLAN’s own Ken Stanwood, the CEO of Cygnus Broadband, and his team.

5. Mr. Stanwood has played a leadership role in the development of 4G technologies and standards for more than a decade, starting with the industry’s first major 4G cellular initiative, referred to as WiMAX. He served as Vice Chair of the IEEE 802.16 standards committee for WiMAX from 2003-2006 and as principal author of the original IEEE 802.16 standard for 4G cellular networks and mobile devices.

1 6. Mr. Stanwood has written extensively on 4G technologies, including co-
2 authoring a popular textbook on the subject, and has been awarded 87 U.S. patents,
3 with more than 100 patent applications currently pending before the United States
4 Patent Office and worldwide, many of which relate to 4G technologies.

5
6 7. Like Ken Stanwood, WiLAN's founders, Michel Fattouche and Hatim
7 Zaghoul, are widely recognized and acknowledged as wireless industry pioneers.
8 Their technologies, patents and writings have been cited in patents and publications
9 written by thousands of engineers and scientists in the wireless industry.

10
11 8. WiLAN's founders sought to achieve—and did achieve—for wireless data
12 what Qualcomm's founders did for cellular “voice” communication. Qualcomm's
13 founders developed key CDMA technologies that became the foundational air
14 interface for 2G and 3G cellular networks and mobile devices.

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17 9. Just as importantly, WiLAN's founders developed key cellular “data”
18 technologies, including the W-OFDM air interface, to enable data to be exchanged at
19 desktop speeds over a wireless channel, such as in Wi-Fi networks, or from mobile
20 devices in 4G cellular networks. WiLAN's technologies have made Wi-Fi and 4G in
21 mobile devices possible.¹

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25 ¹ See, e.g., *Ergen, Mustafa, Mobile Broadband: Including WiMAX and LTE*, John
26 Wiley & Sons, 2009 at p. 110, Section 4.1 “Principles of OFDM: Introduction”
27 (recognizing one of WiLAN's first patents, U.S. Patent No. 5,282,222, to W-OFDM
28 as a major milestone in the development of Wi-Fi and 4G technologies, turning a
single lane wireless communication channel into a multi-lane super highway, and
enabling mobile devices to transmit and receive data at desktop speeds).

1 10. The WiLAN success story is featured in major publications worldwide,
2 including in such publications as *Scientific American*² and *Time Magazine*,³ and in
3 many others. WiLAN and its founders have also been the subject of numerous
4 industry awards for their wireless innovations, and for their contribution to the growth
5 in wireless data capability present in today's smartphones, tablets, and other mobile
6 devices.
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9 11. One of WiLAN's co-founders is featured in one of Canada's leading
10 business publications as among the Top 100 Canadians of the 20th century for
11 WiLAN's wireless innovations.⁴ And WiLAN's original wireless designs and first
12 wireless mobile device have been displayed in the Canadian equivalent of the
13 Smithsonian Institution.
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20 ² The Future of Wireless, *Scientific American*, October 2000 at p. 57 ("To date,
21 wireless multiplexing hasn't been exploited for cellular systems.... That may change
22 soon.... WiLAN holds a number of key patents for multiplexing technology known
as wideband orthogonal frequency division multiplexing, or W-OFDM").

23 ³ WiLAN Shows How to be Successful-and Canadian-in the Global Economy, *Time*
24 *Magazine*, April 3, 2000.

25 ⁴ Great Canadians, *Maclean's*, July 1, 2000 ("Riding the wave of invention ...
26 WiLAN is one of those next generation companies. Its technology may well become
27 the base for what some call the coming wireless revolution: the ability to e-mail, surf
28 the Net, adjust the lights in your home and order theater tickets from a cellphone or
hand-held computer.")

1 12. Enabling high-speed wireless data capability in mobile devices was no
2 small task—it posed incredible challenges—something we take for granted today with
3 desktop speeds now standard in 4G mobile devices.
4

5 13. Over the years, WiLAN, Cygnus Broadband, and their predecessors have
6 invested hundreds of millions of dollars in developing, making and selling many of
7 the world’s first fixed and mobile devices capable of transmitting and receiving
8 wireless data at desktop speeds.
9

10 14. WiLAN’s 4G products include, among others, the I.WILL, BWS 300,
11 LIBRA 3000, LIBRA 5800, LIBRA MX, and the LIBRA Mobilis.
12

13 15. WiLAN was the first company in the world to build Wi-Fi and 4G data
14 speeds into mobile devices, with speeds reaching up to 100 megabits per second
15 (Mbps), and it did so a decade before 4G would become the standard in the wireless
16 industry that it is today.
17

18 16. WiLAN is a company ahead of its time, and through the courage,
19 perseverance, and tireless efforts of its co-founders (immigrants of modest means
20 when they started WiLAN), the wireless industry that exists today was born,
21 connecting people across the globe like never before.
22

23 17. A number of WiLAN’s advanced 4G technologies have their origin in
24 work started by WiLAN’s Ken Stanwood and his team while at Ensemble
25 Communications (“Ensemble”), another San Diego company that Mr. Stanwood
26
27
28

1 helped grow (then, as Ensemble's Chief Technology Officer) to over 200 engineers,
2 scientists, and support personnel.

3
4 18. The advanced 4G technologies developed by Mr. Stanwood and his team
5 were employed in the network stacks utilizing the 4G WiMAX cellular standard, and
6 were subsequently adopted for use in the network stacks utilizing the 4G LTE
7 cellular standard used in today's 4G mobile devices.
8

9 19. These advanced 4G technologies, developed by Ken Stanwood and his
10 team, include:

11 (i) the bandwidth-on-demand and periodic bandwidth services built
12 into 4G mobile devices to enable apps installed on such devices to have exactly the
13 bandwidth they need, when they need it, in real-time;
14

15 (ii) the multi-tasking and app management technologies in 4G mobile
16 devices that enable such devices to run multiple apps simultaneously, including
17 foreground and background apps, without degrading the user experience; and
18

19 (iii) the adaptive modulation capabilities in 4G mobile devices that
20 allow such devices to operate in all kinds of variable wireless conditions due to
21 interference, noise, and user mobility.
22

23
24 20. The efforts of Mr. Stanwood and his team in developing these advanced
25 4G technologies have enabled 4G mobile devices to support a variety of services
26 popular among users of Apple 4G LTE mobiles devices, such as voice, conversational
27
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1 video, live streaming of video and music, real-time gaming, video and photo sharing,
2 email, and instant messaging, all in the palm of your hand (“4G Network Services”).

3 **B. Apple**

4
5 21. Defendant Apple Inc. (“Apple” or “Defendant”), is a corporation
6 organized and existing under the laws of the State of California, with its principal
7 place of business at 1 Infinite Loop, Cupertino, California.
8

9 22. WiLAN’s advanced 4G technologies that are the subject of the patents
10 asserted in this action enable Apple’s 4G LTE smartphones, tablets, and other 4G LTE
11 mobile devices to provide Apple users with the 4G Network Services that have made
12 Apple’s products so popular, and to operate with desktop speeds anywhere, anytime.
13

14 23. WiLAN’s wireless technologies and patents, including its advanced 4G
15 technologies, have been licensed by nearly all companies in the wireless industry,
16 comprising more than 130 companies. Apple is the only major company that has not
17 respected WiLAN’s intellectual property and its contribution to the growth and
18 success of the wireless industry.
19
20

21 24. Apple’s infringement gives Apple an unfair advantage over its
22 competitors, all of whom have chosen to do the right thing and license their use of
23 WiLAN’s wireless technologies and patents.
24

25 25. All of Apple’s major competitors in the mobile device industry, including
26 Samsung, HTC, LG, Nokia, RIM, and Motorola have licensed WiLAN’s wireless
27 technologies and patents. To encourage licensing of WiLAN’s technologies and
28

1 patents in mobile devices and growth of the wireless industry, WiLAN has set its
2 licensing rates at a fraction of the rates that Apple charges companies for use of
3 Apple's technologies and patents.
4

5 26. WiLAN has made numerous efforts to license the unauthorized use of its
6 wireless technologies and patents by Apple, but Apple has consistently refused to take
7 a license, choosing to use WiLAN's 4G technologies without paying anything for that
8 right.
9

10 27. Apple has willfully chosen to not respect the intellectual property of
11 WiLAN, including the five 4G patents asserted in this action directed to WiLAN's
12 advanced 4G technologies, and it does so despite understanding the importance of
13 intellectual property and insisting that other companies respect Apple's own
14 intellectual property.
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16

17 28. Indeed, Apple has vigorously pursued litigations and patent enforcement
18 proceedings against anyone it believes is using Apple's patented technology without a
19 license. For example, from 2011 through 2014 Apple prosecuted massive and well-
20 publicized litigations against Samsung for various Apple patents, and Apple was
21 awarded hundreds of millions of dollars in damages for five of its user interface
22 patents on inventions as simple as the "bounce-back" feature of its touch screen
23 iPhones and the curved shape of the corners of the icons used in its displays.
24
25

26 29. In its patent litigations against Samsung, Apple asked Samsung for as
27 much as \$40 per mobile device for use of its five interface patents—elements that may
28

1 subtly differentiate Apple's products from its competitors but that do not touch on the
2 fundamental wireless data communication technologies, including WiLAN's Wi-Fi
3 and 4G technologies and patents, that underlie and make possible all of the core
4 functions of Apple's mobile devices that have made them so desirable to consumers.
5

6 30. WiLAN is not the only company that has had to deal with Apple's
7 disrespect for the intellectual property rights of others. Many well-known and well-
8 respected companies in the wireless industry, including Samsung, Nokia, Motorola
9 Mobility, HTC, Eastman Kodak, and Pitney-Bowes have had to sue Apple for alleged
10 infringement of their patented technologies and use of their patented technologies
11 without paying for that right.
12

13
14 31. Notably, when Apple's co-founder Steve Jobs discussed Apple's
15 success in a PBS documentary entitled "Triumph of the Nerds," he said, "We have
16 always been shameless about stealing great ideas."
17

18 32. In early meetings between WiLAN and Apple, years before Apple would
19 introduce its 4G LTE mobile devices, WiLAN presented Apple with a detailed
20 blueprint of WiLAN's wireless technologies and how they would enable Apple's
21 computers and mobile devices to provide 4G Network Services, such as streaming
22 movies and videos, sharing pictures, surfing the internet, and chatting online with
23 friends.⁵
24
25
26

27 ⁵ See The Future of Wireless Data Communications, Network Living, *WiLAN 1999*
28 *Annual Report* at 9-33 ("This is no longer a remote possibility-the technology needed

1 33. Apple arrogantly dismissed WiLAN's wireless technologies and vision at
2 the time, believing that if it was not invented by Apple it was not possible.

3 34. Yet today, after WiLAN has proven the promise of its wireless
4 technologies to the world, Apple is riding the wave in growth of the wireless industry,
5 in particular with its 4G LTE smartphones, tablets, and other 4G LTE mobile devices
6 that use WiLAN's great ideas, including WiLAN's advanced 4G capabilities, and
7 Apple is making billions of dollars in profits doing so.
8

9 35. Before initiating litigation, WiLAN made substantial efforts for more
10 than a year to license Apple's use of WiLAN's advanced 4G technologies and patents
11 in its 4G LTE mobile devices, expecting that Apple would proceed in good faith,
12 which it has not done.
13

14 36. Most recently, in a written communication to Apple on June 16, 2014,
15 WiLAN requested a meeting with Apple to resolve this matter and WiLAN provided
16 significant details concerning the relevance of the five 4G patents asserted herein to
17 Apple's 4G LTE mobile devices.
18

19 37. Three days later, on June 19, 2014, rather than provide dates for a
20 meeting, Apple initiated litigation against WiLAN in the Northern District of
21 California involving the five 4G patents asserted in this action in a clear attempt at
22 gamesmanship to remove this matter from this Court, which is presently handling a
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27 to make this reality is available... where we all live with the ease of wireless
28 communication in our every day tasks; anytime, anywhere, to anyone. And its W-
OFDM technology that will fuel this new way of life.”)

1 related dispute between the parties involving overlapping 4G patents and technologies
2 and the same Apple 4G LTE products.

3 38. Apple's actions have forced WiLAN's hand, leaving it with no choice but
4 to protect its intellectual property through litigation.
5

6 **NATURE OF THE ACTION**

7 39. This is an action for patent infringement arising under the Patent Laws of
8 the United States, including 35 U.S.C. § 271.
9

10 40. Apple has committed acts of patent infringement within this district.
11 Apple, directly or through intermediaries, imports, manufactures, uses, sells, and/or
12 offers to sell infringing products within this district. Apple also purposely and
13 voluntarily places infringing products into the stream of commerce with the
14 expectation that they will be purchased by consumers in this district. Apple
15 reasonably should have anticipated being subject to suit in this district. Apple's acts
16 of patent infringement are aimed at this district and/or have effect in this district.
17
18

19 41. This is a civil action in which WiLAN seeks damages and other relief
20 against Apple for acts of patent infringement in violation of the Patent Laws of the
21 United States, 35 U.S.C. §§ 271 *et seq.*
22

23 **JURISDICTION AND VENUE**

24 42. This Court has subject matter jurisdiction of the federal question claims
25 raised in this Complaint pursuant to 28 U.S.C. §§ 1331 and 1338(a).
26
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1 Fi + 4G Cellular), iPad mini (Wi-Fi + 4G Cellular), iPad mini with Retina display
2 (Wi-Fi + 4G Cellular), and the iPad Air (Wi-Fi +4G Cellular), in the United States and
3 in this district. Apple's products support at least Release 8, *et seq.* of the 4G LTE
4 standard.

5
6 47. Upon information and belief, Apple's products also include software and
7 associated hardware that prioritize the transmission of data generated by various
8 applications that run on these Apple products, and in doing such prioritization utilize
9 the claimed inventions of the patents asserted in this action.
10

11 **COUNT I: INFRINGEMENT OF U.S. PATENT NO. 8,457,145**

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13 48. The allegations of all foregoing paragraphs are re-alleged as if fully set
14 forth herein.

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16 49. On June 4, 2013, the United States Patent and Trademark Office
17 ("USPTO") duly and legally issued U.S. Patent No. 8,457,145 (the "'145 patent"),
18 entitled "Method and apparatus for bandwidth request/grant protocols in a wireless
19 communication system" after a full and fair examination.
20

21 50. The '145 patent relates to, among other things, multitasking and
22 management of apps using periodic bandwidth requests.

23
24 51. WiLAN, Inc. is the sole owner of the '145 patent. A true and correct
25 copy of the '145 patent is attached hereto as Exhibit A.

26
27 52. Apple has been and is now infringing, literally and/or under the doctrine
28 of equivalents, the '145 patent in this district and elsewhere by making, using, offering

1 for sale, importing, and/or selling, without authority from WiLAN, products that fall
2 within the scope of one or more of the claims of the '145 patent.

3
4 53. Apple had actual notice of the '145 patent and that its actions constitute
5 direct and indirect infringement of the '145 patent. The most recent written
6 communication to Apple providing notice of its infringement is dated June 16, 2014.

7
8 54. Apple has been and is now indirectly infringing at least one claim of the
9 '145 patent in accordance with 35 U.S.C. § 271(b) in this district and elsewhere in the
10 United States. More specifically, Apple has been and is now actively inducing direct
11 infringement by other persons – *i.e.* Apple's customers who use, sell or offer for sale
12 products that embody and/or otherwise practice one or more claims of the '145 patent.
13 Apple had knowledge of the '145 patent, and that its actions resulted in a direct
14 infringement of the '145 patent, prior to the filing of this complaint, and knew or was
15 willfully blind that its actions would induce direct infringement by others and
16 intended that its actions would induce direct infringement by others.

17
18
19 55. Apple actively induces such infringement by, among other things,
20 providing user manuals and other instruction material for Apple's devices that induce
21 Apple's customers to use Apple's devices in their normal and customary way to
22 infringe the '145 patent.⁶ Through its manufacture and sales of its devices, Apple
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26 ⁶ See, e.g., Apple's website for the iPhone, <https://www.apple.com/iphone/compare/>
27 (instructing use on 4G LTE networks); iPhone User Guide For iOS 7.1 Software,
28 http://manuals.info.apple.com/MANUALS/1000/MA1565/en_US/iphone_user_guide.pdf
(instructing use on 4G LTE networks); iPhone User Guide For iOS 6.1 Software,

1 specifically intended its customers to infringe the '145 patent. Further, Apple was
2 aware that these normal and customary activities would infringe the '145 patent.
3 Apple performed the acts that constitute induced infringement, and that would induce
4 actual infringement, with knowledge of the '145 patent and with the knowledge or
5 willful blindness that the induced acts would constitute direct infringement.
6

7
8 56. Accordingly, a reasonable inference is that Apple specifically intends for
9 others, such as its customers, to directly infringe one or more claims of the '145 patent
10 in the United States because Apple has knowledge of the '145 patent and Apple
11 actively induces others (*i.e.* its customers) to directly infringe the '145 patent by using,
12 selling, or offering to sell Apple's devices.
13

14 57. Apple has been and is now indirectly infringing at least one claim of the
15 '145 patent in accordance with 35 U.S.C. § 271(c) in this district and elsewhere in the
16 United States. More specifically, Apple has been and is now providing non-staple
17 articles of commerce to others for use in an infringing system or method with
18 knowledge of the '145 patent, and with knowledge that the use of its products resulted
19 in a direct infringement of the '145 patent by its customers, and with knowledge that
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24 [http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_g](http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_guide.pdf)
25 [uide.pdf](https://www.apple.com/ipad/compare/) (instructing use on 4G LTE networks); Apple's website for the iPad,
26 <https://www.apple.com/ipad/compare/> (instructing use on 4G LTE networks); iPad
27 [User Guide For iOS 7.1 Software,](http://manuals.info.apple.com/MANUALS/1000/MA1595/en_US/ipad_user_guide.pdf)
28 http://manuals.info.apple.com/MANUALS/1000/MA1595/en_US/ipad_user_guide.pdf
(instructing use on 4G LTE networks); <http://support.apple.com/kb/ht4211>
(instructing use of multitasking).

1 these non-staple articles of commerce are used as a material part of the claimed
2 invention of the '145 patent.

3 58. Apple's devices compliant with 4G LTE include components comprising
4 an application processor and a baseband processor specifically designed to support
5 communication and transmission of data over 4G LTE-compliant networks. These
6 components are mounted to a circuit board in Apple's accused devices and, absent
7 these components, Apple's devices compliant with 4G LTE would not function in an
8 acceptable manner to send or receive data over 4G LTE networks. A reasonable
9 inference to be drawn from the facts set forth is that these components in Apple's
10 devices are especially made or especially adapted to operate in the accused Apple
11 devices to provide wireless communication, including the transmission of data in
12 accordance with the 4G LTE standard. Further, a reasonable inference to be drawn
13 from the facts is that these components comprising an application processor and a
14 baseband processor are intended to support communication of data over a 4G LTE
15 network and are not staple articles or commodities of commerce, and that the use of
16 the components is required for operation of the Apple devices to send or receive data
17 over a 4G LTE-compliant network. Any other use would be unusual, far-fetched,
18 illusory, occasional, aberrant, or experimental.

19 59. The components comprising an application processor and a baseband
20 processor designed to support communication of data using 4G LTE in Apple's
21 devices are each a material part of the invention of the '145 patent and are especially

1 made for the infringing manufacture, sale, and use of Apple's accused devices.
2 Apple's devices, including those components, are especially made or adapted to
3 infringe the '145 patent, and have no substantial non-infringing uses.
4

5 60. The '145 patent is valid and enforceable.

6 61. By way of its infringing activities, Apple has caused and continues to
7 cause WiLAN to suffer damages, and WiLAN is entitled to recover from Apple
8 damages in an amount to be determined at trial.
9

10 **COUNT II: INFRINGEMENT OF U.S. PATENT NO. 8,462,723**

11 62. The allegations of all foregoing paragraphs are re-alleged as if fully set
12 forth herein.
13

14 63. On June 11, 2013, the USPTO duly and legally issued U.S. Patent No.
15 8,462,723 (the "'723 patent"), entitled "Methods and systems for transmission of
16 multiple modulated signals over wireless networks" after a full and fair examination.
17

18 64. The '723 patent relates to, among other things, multitasking and
19 management of apps using non-contention bandwidth-on-demand requests.
20

21 65. WiLAN, Inc. is the sole owner of the '723 patent. A true and correct
22 copy of the '723 patent is attached hereto as Exhibit B.
23

24 66. Apple has been and is now infringing, literally and/or under the doctrine
25 of equivalents, the '723 patent in this district and elsewhere by making, using, offering
26 for sale, importing, and/or selling, without authority from WiLAN, products that fall
27 within the scope of one or more of the claims of the '723 patent.
28

1 67. Apple had actual notice of the '723 patent and that its actions constitute
2 direct and indirect infringement of the '723 patent. The most recent written
3 communication to Apple providing notice of its infringement is dated June 16, 2014.
4

5 68. Apple has been and is now indirectly infringing at least one claim of the
6 '723 patent in accordance with 35 U.S.C. § 271(b) in this district and elsewhere in the
7 United States. More specifically, Apple has been and is now actively inducing direct
8 infringement by other persons – *i.e.* Apple's customers who make, use, sell or offer
9 for sale products that embody and/or otherwise practice one or more claims of the
10 '723 patent. Apple had knowledge of the '723 patent, and that its actions resulted in a
11 direct infringement of the '723 patent, prior to the filing of this complaint, and knew
12 or was willfully blind that its actions would induce direct infringement by others and
13 intended that its actions would induce direct infringement by others.
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17 69. Apple actively induces such infringement by, among other things,
18 providing user manuals and other instruction material for Apple's devices that induce
19 Apple's customers to use Apple's accused devices in their normal and customary way
20 to infringe the '723 patent.⁷ Through its manufacture and sales of its accused devices,
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23 ⁷ See, e.g., Apple's website for the iPhone, <https://www.apple.com/iphone/compare/>
24 (instructing use on 4G LTE networks); iPhone User Guide For iOS 7.1 Software,
25 [http://manuals.info.apple.com/MANUALS/1000/MA1565/en_US/iphone_user_guide.](http://manuals.info.apple.com/MANUALS/1000/MA1565/en_US/iphone_user_guide.pdf)
26 [http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_g](http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_guide.pdf)
27 [uide.pdf](https://www.apple.com/ipad/compare/) (instructing use on 4G LTE networks); Apple's website for the iPad,
28 <https://www.apple.com/ipad/compare/> (instructing use on 4G LTE networks); iPad
User Guide For iOS 7.1 Software,

1 Apple specifically intended its customers to infringe the '723 patent. Further, Apple
2 was aware that these normal and customary activities would infringe the '723 patent.
3 Apple performed the acts that constitute induced infringement, and would induce
4 actual infringement, with the knowledge of the '723 patent and with the knowledge or
5 willful blindness that the induced acts would constitute direct infringement.
6

7
8 70. Accordingly, a reasonable inference is that Apple specifically intends for
9 others, such as its customers, to directly infringe one or more claims of the '723 patent
10 in the United States because Apple has knowledge of the '723 patent and Apple
11 actively induces others (*i.e.* its customers) to directly infringe the '723 patent by using,
12 selling, or offering to sell Apple's devices.
13

14 71. Apple has been and is now indirectly infringing at least one claim of the
15 '723 patent in accordance with 35 U.S.C. § 271(c) in this district and elsewhere in the
16 United States. More specifically, Apple has been and is now providing non-staple
17 articles of commerce to others for use in an infringing system or method with
18 knowledge of the '723 patent, and with knowledge that the use of its accused products
19 results in a direct infringement of the '723 patent by its customers, and with
20 knowledge that these non-staple articles of commerce are used as a material part of the
21 claimed invention of the '723 patent.
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27 http://manuals.info.apple.com/MANUALS/1000/MA1595/en_US/ipad_user_guide.pdf
28 (instructing use on 4G LTE networks); <http://support.apple.com/kb/ht4211>
(instructing use of multitasking).

1 72. Apple's accused devices include components comprising an application
2 processor and a baseband processor designed to support communication of data on 4G
3 LTE-compliant networks. These components are mounted to a circuit board in
4 Apple's accused devices and, absent these components, Apple's accused devices
5 would not function in an acceptable manner to send or receive data over 4G LTE-
6 compliant networks. A reasonable inference to be drawn from the facts set forth is
7 that these components in Apple's accused devices are especially made or especially
8 adapted to provide wireless communication, including the transmission of data, in 4G
9 LTE-compliant networks. Further, a reasonable inference to be drawn from the facts
10 is that these components are not staple articles or commodities of commerce, and that
11 the use of these components is required for operation of the Apple devices to send or
12 receive data in a 4G LTE-compliant network. Any other use would be unusual, far-
13 fetched, illusory, occasional, aberrant, or experimental.

18 73. The components comprising the application processor and the baseband
19 processor in Apple's accused devices are each a material part of the invention of the
20 '723 patent and are especially made for use in devices that infringe one or more
21 claims of the '723 patent. Apple's accused devices have no substantial non-infringing
22 uses.
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25 74. The '723 patent is valid and enforceable.
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1 75. By way of its infringing activities, Apple has caused and continues to
2 cause WiLAN to suffer damages, and WiLAN is entitled to recover from Apple
3 damages in an amount to be determined at trial.
4

5 **COUNT III: INFRINGEMENT OF U.S. PATENT NO. 8,537,757**

6 76. The allegations of all foregoing paragraphs are re-alleged as if fully set
7 forth herein.
8

9 77. On June 11, 2013, the USPTO duly and legally issued U.S. Patent No.
10 8,537,757 (the “’757 patent”), entitled “Method and system for adaptively obtaining
11 bandwidth allocation requests” after a full and fair examination.
12

13 78. The ’757 patent relates to, among other things, adaptive modulation for
14 variable condition wireless channels due to interference, noise, and mobility.
15

16 79. WiLAN, Inc. is the sole owner of the ’757 patent. A true and correct
17 copy of the ’757 patent is attached hereto as Exhibit C.
18

19 80. Apple has been and is now infringing, literally and/or under the doctrine
20 of equivalents, the ’757 patent in this district and elsewhere by making, using, offering
21 for sale, importing, and/or selling, without authority from WiLAN, products that fall
22 within the scope of one or more of the claims of the ’757 patent.
23

24 81. Apple had actual notice of the ’757 patent and that its actions constitute
25 direct and indirect infringement of the ’757 patent. The most recent written
26 communication to Apple providing notice of its infringement is dated June 16, 2014.
27
28

1 82. Apple has been and is now indirectly infringing at least one claim of the
2 '757 patent in accordance with 35 U.S.C. § 271(b) in this district and elsewhere in the
3 United States. More specifically, Apple has been and is now actively inducing direct
4 infringement by other persons – *i.e.* Apple's customers who use, sell or offer for sale
5 products that embody and/or otherwise practice one or more claims of the '757 patent.
6 Apple had knowledge of the '757 patent by others, and that its actions resulted in a
7 direct infringement of the '757 patent, prior to the filing of this complaint, and knew
8 or was willfully blind that its actions would induce direct infringement by others and
9 intended that its actions would induce direct infringement by others.
10
11
12

13 83. Apple actively induces such infringement by, among other things,
14 providing user manuals and other instruction material for Apple's devices that induce
15 Apple's customers to use Apple's devices in their normal and customary way to
16 infringe the '757 patent.⁸ Through its manufacture and sales of its devices, Apple
17 specifically intended its customers to infringe the '757 patent. Further, Apple was
18 aware that these normal and customary activities when undertaken by its customer
19
20

21 ⁸ See, e.g., Apple's website for the iPhone, <https://www.apple.com/iphone/compare/>
22 (instructing use on 4G LTE networks); iPhone User Guide For iOS 7.1 Software,
23 [http://manuals.info.apple.com/MANUALS/1000/MA1565/en_US/iphone_user_guide.](http://manuals.info.apple.com/MANUALS/1000/MA1565/en_US/iphone_user_guide.pdf)
24 [http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_g](http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_guide.pdf)
25 [uide.pdf](http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_guide.pdf) (instructing use on 4G LTE networks); Apple's website for the iPad,
26 <https://www.apple.com/ipad/compare/> (instructing use on 4G LTE networks); iPad
27 User Guide For iOS 7.1 Software, http://manuals.info.apple.com/MANUALS/1000/MA1595/en_US/ipad_user_guide.pdf
28 (instructing use on 4G LTE networks); <http://support.apple.com/kb/ht4211>
(instructing use of multitasking).

1 would result in a direct infringement of the '757 patent. Apple performed the acts that
2 constitute induced infringement, and that would induce actual infringement, with the
3 knowledge of the '757 patent and with the knowledge or willful blindness that the
4 induced acts would constitute direct infringement.
5

6 84. Accordingly, a reasonable inference is that Apple specifically intends for
7 others, such as its customers, to directly infringe one or more claims of the '757 patent
8 in the United States because Apple has knowledge of the '757 patent and Apple
9 actively induces others (*i.e.* its customers) to directly infringe the '757 patent by using,
10 selling, or offering to sell Apple's devices.
11
12

13 85. Apple has been and is now indirectly infringing at least one claim of the
14 '757 patent in accordance with 35 U.S.C. § 271(c) in this district and elsewhere in the
15 United States. More specifically, Apple has been and is now providing non-staple
16 articles of commerce to others for use in an infringing system or method with
17 knowledge of the '757 patent, and with knowledge that the use of its products results
18 in a direct infringement of the '757 patent by its customers, and with knowledge that
19 these non-staple articles of commerce are used as a material part of the claimed
20 invention of the '757 patent.
21
22

23 86. Apple's devices include components comprising an application processor
24 and a baseband processor designed to support communication of data in an LTE-
25 compliant network. These components are mounted to a circuit board in Apple's
26 accused devices and, absent these components, Apple's accused devices would not
27
28

1 function in an acceptable manner to send or receive data in a 4G LTE-compliant
2 network. A reasonable inference to be drawn from the facts set forth is that these
3 components in Apple's accused devices are especially made or especially adapted to
4 operate in a manner that results in a direct infringement of the '757 patent. Further, a
5 reasonable inference to be drawn from the facts is that the components are not a staple
6 articles or commodities of commerce and that the use of the components is required
7 for the accused Apple devices to send or receive data in a 4G LTE-compliant network.
8 Any other use would be unusual, far-fetched, illusory, occasional, aberrant, or
9 experimental.
10
11

12
13 87. The components comprising an application processor and a baseband
14 processor in Apple's accused devices are each a material part of the invention of the
15 '757 patent and are especially made or adapted to infringe the '757 patent. Apple's
16 accused devices products have no substantial uses that do not infringe the '757 patent.
17

18 88. The '757 patent is valid and enforceable.
19

20 89. By way of its infringing activities, Apple has caused and continues to
21 cause WiLAN to suffer damages, and WiLAN is entitled to recover from Apple
22 damages in an amount to be determined at trial.
23

24 **COUNT IV: INFRINGEMENT OF U.S. PATENT NO. 8,615,020**

25 90. The allegations of all foregoing paragraphs are re-alleged as if fully set
26 forth herein.
27

1 91. On December 24, 2013, the USPTO duly and legally issued U.S. Patent
2 No. 8,615,020 (the “’020 patent”), entitled “Method and System for Adaptively
3 Obtaining Bandwidth Allocation Requests” after a full and fair examination.
4

5 92. The ’020 patent relates to, among other things, multitasking and
6 management of apps using non-contention bandwidth-on-demand requests.
7

8 93. WiLAN, Inc. is the sole owner of the ’020 patent. A true and correct
9 copy of the ’020 patent is attached hereto as Exhibit D.
10

11 94. Apple has been and is now infringing, literally and/or under the doctrine
12 of equivalents, the ’020 patent in this district and elsewhere by making, using, offering
13 for sale, importing, and/or selling, without authority from WiLAN, products that fall
14 within the scope of one or more of the claims of the ’020 patent.
15

16 95. Apple had actual notice of the ’020 patent and that its actions constitute
17 direct and indirect infringement of the ’020 patent. The most recent written
18 communication to Apple providing notice of its infringement is dated June 16, 2014.
19

20 96. Apple has been and is now indirectly infringing at least one claim of the
21 ’020 patent in accordance with 35 U.S.C. § 271(b) in this district and elsewhere in the
22 United States. More specifically, Apple has been and is now actively inducing direct
23 infringement by other persons – *i.e.* Apple’s customers who use, sell or offer for sale
24 products that embody and/or otherwise practice one or more claims of the ’020 patent.
25 Apple had knowledge of the ’020 patent by others, and that its actions resulted in a
26 direct infringement of the ’020 patent, prior to the filing of this complaint, and knew
27
28

1 or was willfully blind that its actions would induce direct infringement by others and
2 intended that its actions would induce direct infringement by others.

3
4 97. Apple actively induces such infringement by, among other things,
5 providing user manuals and other instruction material for Apple's devices that induce
6 Apple's customers to use Apple's devices in their normal and customary way to
7 infringe the '020 patent.⁹ Through its manufacture and sales of its devices, Apple
8 specifically intended its customers to infringe the '020 patent. Further, Apple was
9 aware that these normal and customary activities when undertaken by its customer
10 would result in a direct infringement of the '020 patent. Apple performed the acts that
11 constitute induced infringement, and that would induce actual infringement, with the
12 knowledge of the '020 patent and with the knowledge or willful blindness that the
13 induced acts would constitute direct infringement.

14
15
16
17 98. Accordingly, a reasonable inference is that Apple specifically intends for
18 others, such as its customers, to directly infringe one or more claims of the '020 patent
19 in the United States because Apple has knowledge of the '020 patent and Apple
20

21 ⁹ See, e.g., Apple's website for the iPhone, <https://www.apple.com/iphone/compare/>
22 (instructing use on 4G LTE networks); iPhone User Guide For iOS 7.1 Software,
23 [http://manuals.info.apple.com/MANUALS/1000/MA1565/en_US/iphone_user_guide.](http://manuals.info.apple.com/MANUALS/1000/MA1565/en_US/iphone_user_guide.pdf)
24 [http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_g](http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_guide.pdf)
25 [uide.pdf](http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_guide.pdf) (instructing use on 4G LTE networks); Apple's website for the iPad,
26 <https://www.apple.com/ipad/compare/> (instructing use on 4G LTE networks); iPad
27 User Guide For iOS 7.1 Software,
28 http://manuals.info.apple.com/MANUALS/1000/MA1595/en_US/ipad_user_guide.pdf
(instructing use on 4G LTE networks); <http://support.apple.com/kb/ht4211>
(instructing use of multitasking).

1 actively induces others (*i.e.* its customers) to directly infringe the '020 patent by using,
2 selling, or offering to sell Apple's devices.

3
4 99. Apple has been and is now indirectly infringing at least one claim of the
5 '020 patent in accordance with 35 U.S.C. § 271(c) in this district and elsewhere in the
6 United States. More specifically, Apple has been and is now providing non-staple
7 articles of commerce to others for use in an infringing system or method with
8 knowledge of the '020 patent, and with knowledge that the use of its products results
9 in a direct infringement of the '020 patent by its customers, and with knowledge that
10 these non-staple articles of commerce are used as a material part of the claimed
11 invention of the '020 patent.
12
13

14 100. Apple's devices include components comprising an application processor
15 and a baseband processor designed to support communication of data in a 4G LTE-
16 compliant network. These components are mounted to a circuit board in Apple's
17 accused devices and, absent these components, Apple's accused devices would not
18 function in an acceptable manner to send or receive data in a 4G LTE-compliant
19 network. A reasonable inference to be drawn from the facts set forth is that these
20 components in Apple's accused devices are especially made or especially adapted to
21 operate in a manner that results in a direct infringement of the '020 patent. Further, a
22 reasonable inference to be drawn from the facts is that the components are not a staple
23 articles or commodities of commerce and that the use of the components is required
24 for the accused Apple devices to send or receive data in a 4G LTE-compliant network.
25
26
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1 Any other use would be unusual, far-fetched, illusory, occasional, aberrant, or
2 experimental.

3 101. The components comprising an application processor and a baseband
4 processor in Apple's accused devices are each a material part of the invention of the
5 '020 patent and are especially made or adapted to infringe the '020 patent. Apple's
6 accused devices products have no substantial uses that do not infringe the '020 patent.
7
8

9 102. The '020 patent is valid and enforceable.

10 103. By way of its infringing activities, Apple has caused and continues to
11 cause WiLAN to suffer damages, and WiLAN is entitled to recover from Apple
12 damages in an amount to be determined at trial.
13

14 **COUNT V: INFRINGEMENT OF U.S. PATENT NO. 8,462,761**

15 104. The allegations of all foregoing paragraphs are re-alleged as if fully set
16 forth herein.
17

18 105. On June 11, 2013, the USPTO duly and legally issued U.S. Patent No.
19 8,462,761 (the "'761 patent"), entitled "Method and system for adaptively obtaining
20 bandwidth allocation requests" after a full and fair examination.
21

22 106. The '761 patent relates to, among other things, multitasking and
23 management of apps using non-contention bandwidth-on-demand requests or periodic
24 bandwidth requests.
25

26 107. WiLAN, Inc. is the sole owner of the '761 patent. A true and correct
27 copy of the '761 patent is attached hereto as Exhibit D.
28

1 108. Apple has been and is now infringing, literally and/or under the doctrine
2 of equivalents, the '761 patent in this district and elsewhere by making, using, offering
3 for sale, importing, and/or selling, without authority from WiLAN, products that fall
4 within the scope of one or more of the claims of the '761 patent.
5

6 109. Apple had actual notice of the '761 patent and that its actions constitute
7 direct and indirect infringement of the '761 patent. The most recent written
8 communication to Apple providing notice of its infringement is dated June 16, 2014.
9

10 110. Apple has been and is now indirectly infringing at least one claim of the
11 '761 patent in accordance with 35 U.S.C. § 271(b) in this district and elsewhere in the
12 United States. More specifically, Apple has been and is now actively inducing direct
13 infringement by other persons – *i.e.* Apple's customers who use, sell or offer for sale
14 products that embody and/or otherwise practice one or more claims of the '761 patent.
15 Apple had knowledge of the '761 patent by others, and that its actions resulted in a
16 direct infringement of the '761 patent, prior to the filing of this complaint, and knew
17 or was willfully blind that its actions would induce direct infringement by others and
18 intended that its actions would induce direct infringement by others.
19
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21

22 111. Apple actively induces such infringement by, among other things,
23 providing user manuals and other instruction material for Apple's devices that induce
24 Apple's customers to use Apple's devices in their normal and customary way to
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1 infringe the '761 patent.¹⁰ Through its manufacture and sales of its devices, Apple
2 specifically intended its customers to infringe the '761 patent. Further, Apple was
3 aware that these normal and customary activities when undertaken by its customer
4 would result in a direct infringement of the '761 patent. Apple performed the acts that
5 constitute induced infringement, and that would induce actual infringement, with the
6 knowledge of the '761 patent and with the knowledge or willful blindness that the
7 induced acts would constitute direct infringement.
8

9
10 112. Accordingly, a reasonable inference is that Apple specifically intends for
11 others, such as its customers, to directly infringe one or more claims of the '761 patent
12 in the United States because Apple has knowledge of the '761 patent and Apple
13 actively induces others (*i.e.* its customers) to directly infringe the '761 patent by using,
14 selling, or offering to sell Apple's devices.
15
16

17 113. Apple has been and is now indirectly infringing at least one claim of the
18 '761 patent in accordance with 35 U.S.C. § 271(c) in this district and elsewhere in the
19 United States. More specifically, Apple has been and is now providing non-staple
20

21 ¹⁰ See, e.g., Apple's website for the iPhone, <https://www.apple.com/iphone/compare/>
22 (instructing use on 4G LTE networks); iPhone User Guide For iOS 7.1 Software,
23 [http://manuals.info.apple.com/MANUALS/1000/MA1565/en_US/iphone_user_guide.](http://manuals.info.apple.com/MANUALS/1000/MA1565/en_US/iphone_user_guide.pdf)
24 [http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_g](http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_guide.pdf)
25 [uide.pdf](http://manuals.info.apple.com/MANUALS/1000/MA1658/en_US/iphone_ios6_user_guide.pdf) (instructing use on 4G LTE networks); Apple's website for the iPad,
26 <https://www.apple.com/ipad/compare/> (instructing use on 4G LTE networks); iPad
27 User Guide For iOS 7.1 Software, http://manuals.info.apple.com/MANUALS/1000/MA1595/en_US/ipad_user_guide.pdf
28 (instructing use on 4G LTE networks); <http://support.apple.com/kb/ht4211>
(instructing use of multitasking).

1 articles of commerce to others for use in an infringing system or method with
2 knowledge of the '761 patent, and with knowledge that the use of its products results
3 in a direct infringement of the '761 patent by its customers, and with knowledge that
4 these non-staple articles of commerce are used as a material part of the claimed
5 invention of the '761 patent.
6

7
8 114. Apple's devices include components comprising an application processor
9 and a baseband processor designed to support communication of data in a 4G LTE-
10 compliant network. These components are mounted to a circuit board in Apple's
11 accused devices and, absent these components, Apple's accused devices would not
12 function in an acceptable manner to send or receive data in a 4G LTE-compliant
13 network. A reasonable inference to be drawn from the facts set forth is that these
14 components in Apple's accused devices are especially made or especially adapted to
15 operate in a manner that results in a direct infringement of the '761 patent. Further, a
16 reasonable inference to be drawn from the facts is that the components are not a staple
17 articles or commodities of commerce and that the use of the components is required
18 for the accused Apple devices to send or receive data in a 4G LTE-compliant network.
19 Any other use would be unusual, far-fetched, illusory, occasional, aberrant, or
20 experimental.
21
22
23
24

25 115. The components comprising an application processor and a baseband
26 processor in Apple's accused devices are each a material part of the invention of the
27

1 '761 patent and are especially made or adapted to infringe the '761 patent. Apple's
2 accused devices products have no substantial uses that do not infringe the '761 patent.

3 116. The '761 patent is valid and enforceable.
4

5 117. By way of its infringing activities, Apple has caused and continues to
6 cause WiLAN to suffer damages, and WiLAN is entitled to recover from Apple
7 damages in an amount to be determined at trial.
8

9 **WILLFUL INFRINGEMENT**

10 118. The allegations of all foregoing paragraphs are re-alleged as fully set
11 forth herein.
12

13 119. Before initiating litigation, WiLAN made substantial efforts to license
14 Apple's use of WiLAN's advanced 4G technologies and patents used in Apple's 4G
15 LTE mobile devices, expecting that Apple would proceed in good faith.
16

17 120. On June 16, 2014, WiLAN expressly provided notice to Apple that it
18 infringes the five 4G patents-in-suit. WiLAN provided detailed information
19 concerning the pioneering nature of Ken Stanwood's inventions that are claimed in the
20 patents-in-suit, and explained that these fundamental inventions, which are
21 implemented in products compliant with the 4G LTE standard, enable advanced
22 features of Apple's 4G LTE mobile products.
23
24

25 121. On June 17, 2014, Apple responded to WiLAN's notice communication,
26 admitting that it had not studied the patents-in-suit.
27
28

1 122. Two days later, instead of following through on its commitment to meet
2 in order to negotiate a license, Apple filed suit against WiLAN. Given that the
3 inventions claimed in the five 4G patents-in-suit are fundamental to implementation of
4 products compliant with the 4G LTE standard, an objectively defined risk exists that
5 Apple infringes the patents-in-suit. Furthermore, upon information and belief, prior to
6 initiating suit against WiLAN, Apple did not conduct a reasonable investigation to
7 ascertain whether it infringes the patents-in-suit.
8
9

10 123. Apple's infringement of the patents-in-suit thus occurs with knowledge
11 of and/or objective recklessness and has been and continues to be willful and
12 deliberate.
13

14 124. Apple's willful and deliberate infringement entitles WiLAN to enhanced
15 damages under 35 U.S.C. § 285.
16

17 **IRREPARABLE HARM TO WILAN**

18 125. WiLAN has been irreparably harmed by Apple's acts of infringement,
19 and will continue to be harmed unless and until Apple's acts of infringement are
20 enjoined by this Court. Apple has no adequate remedy at law to redress Apple's
21 continuing acts of infringement. The hardships that would be imposed upon Apple
22 by an injunction are less than those faced by WiLAN should an injunction not issue.
23 Furthermore, the public interest would be served by issuance of an injunction. As a
24 result of Apple's acts of infringement, WiLAN has suffered and will continue to
25 suffer damages in an amount to be proved at trial.
26
27
28

PRAYER FOR RELIEF

WHEREFORE, WiLAN prays for judgment against Apple as follows:

126. Declaring that Apple has been and is now infringing, literally and/or under the doctrine of equivalents, one or more claims of each of U.S. Patent No. 8,457,145, U.S. Patent No. 8,462,723, U.S. Patent No. 8,537,757, U.S. Patent No. 8,615,020, and U.S. Patent No. 8,462,761;

127. Declaring that Apple has been and is now contributorily infringing one or more claims of each of U.S. Patent No. 8,457,145, U.S. Patent No. 8,462,723, U.S. Patent No. 8,537,757, U.S. Patent No. 8,615,020, and U.S. Patent No. 8,462,761;

128. Declaring that Apple has been and is now inducing infringement of U.S. Patent No. 8,457,145, U.S. Patent No. 8,462,723, U.S. Patent No. 8,537,757, U.S. Patent No. 8,615,020, and U.S. Patent No. 8,462,761;

129. Permanently enjoining Apple and its officers, directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, parents and all others acting in concert or privity with any of them from infringing, inducing the infringement of, or contributing to the infringement of one or more of each of U.S. Patent No. 8,457,145, U.S. Patent No. 8,462,723, U.S. Patent No. 8,537,757, U.S. Patent No. 8,615,020, and U.S. Patent No. 8,462,761;

130. Declaring that Apple's infringement is willful and that this is an exceptional case under 35 U.S.C. § 285 and awarding attorneys' fees and costs in this action;

1 131. Awarding to WiLAN damages arising out of Apple's infringement of one
2 or more of each of U.S. Patent No. 8,457,145, U.S. Patent No. 8,462,723, U.S. Patent
3 No. 8,537,757, U.S. Patent No. 8,615,020, and U.S. Patent No. 8,462,761, together
4 with prejudgment and post-judgment interest, in an amount to be determined at trial;
5

6 132. Awarding to WiLAN its costs in connection with this action; and
7

8 133. Such other and further relief in law or in equity to which WiLAN may be
9 justly entitled.

10 Dated: June 23, 2014

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*Attorneys for Plaintiff,
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1 **DEMAND FOR JURY TRIAL**

2 WiLAN hereby demands a jury trial pursuant to Rule 38 of the Federal Rules of
3 Civil Procedure as to all issues in this lawsuit.

4
5 Dated: June 23, 2014 By: /s/ Allison H. Goddard
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