

1 COUNSEL LISTED ON SIGNATURE PAGE

2

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

3

4

5

6

INTEL CORPORATION,

Case No. 5:08-cv-4555

7

Plaintiff,

Case No. 5:08-cv-5543

8

v.

Case No. 5:08-cv-5544

9

WI-LAN, INC.,

Case No. 5:08-cv-5624

10

Defendant.

Case No. 5:08-cv-5742

11

**JOINT CASE MANAGEMENT
STATEMENT UNDER FED R. CIV. P. 26(f)
AND CIV. L. R. 16-9**

12

AND RELATED ACTIONS

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Civil Local Rule 16-9, and
2 the Court's Order Relating Cases; Staying Case Deadlines; Setting Case Management Conference;
3 Denying Motion to Extend Time entered February 20, 2009 ("Order"), Plaintiffs Intel Corporation
4 ("Intel"), Atheros Communications, Inc. ("Atheros"), Broadcom Corporation ("Broadcom"), Marvell
5 Semiconductor, Inc. ("Marvell"), Acer America Corp. ("Acer"), Apple Inc. ("Apple"), Dell Inc.
6 ("Dell"), Gateway, Inc. ("Gateway"), Hewlett-Packard Company ("Hewlett-Packard"), Lenovo
7 (United States) Inc. ("Lenovo"), Sony Computer Entertainment America Inc. ("Sony"), Sony
8 Electronics Inc. ("Sony"), Toshiba America Information Systems, Inc. ("TAIS") and specially
9 appearing Defendant Wi-LAN, Inc. ("Wi-LAN") hereby submit the following Joint Case
10 Management Statement and Rule 26(f) Report.

11 **A. Summary Of Procedural Status, Jurisdiction and Service**

12 **1. Plaintiffs' Contentions**

13 Intel filed its action pending before this Court on September 30, 2008 (the "Intel Action") for
14 declaratory relief relating to eighteen patents that were not previously in suit between the parties.
15 Prior to that filing, Wi-LAN had aggressively claimed that the eighteen patents-in-suit covered
16 Intel's and others' products complying with a standardized fourth generation ("4G") cellular
17 technology called "WiMAX," both in public statements and specific communications with Intel. For
18 years prior to this action, Intel participated in the development of WiMAX standards, designed,
19 tested, marketed and sold WiMAX products, and worked on the deployment of WiMAX technology.
20 To resolve the cloud of uncertainty cast by Wi-LAN's assertions of its patents against Intel's
21 WiMAX products, Intel exercised its rights under the Declaratory Judgment Act and filed this
22 action. Intel chose this District because it is the venue most closely connected to the operative facts;
23 *e.g.*, the patents-in-suit allegedly originated here, most of the listed inventors are located here, Intel's
24 headquarters is here, many Intel technical and business witnesses are located here, and Wi-LAN has
25
26
27
28

1 had substantial contacts with this forum, including in connection with the patents-in-suit.¹

2 On January 15, 2008, Wi-LAN filed a Motion to Dismiss for Lack of Personal Jurisdiction,
3 Subject Matter Jurisdiction and Improper Venue, and Motion to Transfer to First Filed Forum. In
4 accordance with the Court's February 20, 2009 Order Relating Cases, the deadline for Intel's
5 opposition to Wi-LAN's motion to dismiss/transfer has been stayed.

6 Wi-LAN's motion to dismiss/transfer presents three primary issues: whether the Court (1)
7 has personal jurisdiction over Wi-LAN; (2) has declaratory judgment jurisdiction over the patents-
8 in-suit; and (3) should transfer this matter to the Eastern District of Texas. As Intel will show in its
9 forthcoming opposition brief, substantial evidence supports the Court's exercise of jurisdiction over
10 Wi-LAN and the subject matter of this action. With respect to transfer, as Intel will show in its
11 forthcoming brief, this venue is home to Intel and most of the relevant witnesses and documents
12 (including most of the listed inventors and the original assignees of most of the patents-in-suit), and
13 Wi-LAN has had substantial contacts with this venue relating to the patents-in-suit, making this
14 District the most convenient forum for this dispute. By contrast, the patents-in-suit do not share
15 similar ties to the Texas forum, and Wi-LAN has no current connections there other than an office
16 location for its litigation counsel. Moreover, as Intel will show in its opposition brief, seventeen of
17 the patents-in-suit are exclusively pending before this Court, and only involve one allegedly
18 infringing party (Intel) and a single accused standard (WiMAX) relating to a limited number of
19 accused products. Those seventeen patents, as a group, are subject to global defenses which Intel
20 expects will either result in the early disposition of this matter or substantially narrow the issues for
21 trial. By contrast, the litigation in Texas (the "Texas Action")² is a complex action that was initiated
22 sixteen months ago involving over twenty defendants accused of allegedly infringing several

23 ¹ After Intel filed this action, Wi-LAN requested from Intel and received as a courtesy over 100 days to respond to
24 Intel's complaint. During that period, before responding to Intel's complaint in this Court, Wi-LAN sought and was
25 granted leave to add one of the eighteen patents in the Intel Action (U.S. Patent No. 6,549,759 (the "'759 patent'")) to
26 co-pending litigation in the Eastern District of Texas against Intel and the other Plaintiffs, asserting the '759 patent
27 against two standards (WiMAX and Bluetooth).

28 ² The Texas Action involves two cases that have been consolidated for discovery and claim construction. *See Wi-*
LAN, Inc. v. Acer, Inc., et al., No. 2:07-CV-473 (E.D. Tex.); *Wi-LAN, Inc. v. Westell Tech., Inc., et al.*, No. 2:07-
CV-474 (E.D. Tex. filed Oct. 31, 2007).

1 unrelated patents currently asserted against five different technical standards (Wi-Fi, ADSL, VDSL,
2 Bluetooth and WiMAX) relating to thousands of different accused products. Transfer of the
3 seventeen patents exclusively pending here to the Texas forum would unnecessarily complicate and
4 delay this action and further complicate and delay the Texas Action by mixing claims on seventeen
5 patents only involving Intel with those involving twenty other defendants on different patents and
6 standards. Moreover, transfer would force the parties to litigate the claims at issue here – which are
7 closely connected to California and this District – in an inconvenient forum with little relation to the
8 operative facts underlying the action and no ability to procure attendance of many key witnesses at
9 trial.

10 In view of Intel's first-filed action in this Court and the substantial ties of the parties and
11 subject matter of the actions to this venue, in the interests of efficiency and coordination, the
12 remaining Plaintiffs (Atheros, Broadcom, Marvell, Acer, Apple, Dell, Gateway, Hewlett-Packard,
13 Lenovo, Sony, and TAIS) also brought declaratory judgment actions on the '759 patent in this
14 District, and sought to relate those claims to Intel's declaratory judgment action. All parties to those
15 actions have been properly served. As for the Intel Action, this District is the most convenient
16 forum for these actions given the location of most of the relevant witnesses, parties, and documents,
17 as well as Wi-LAN's substantial contacts with this venue relating to the patent-in-suit. On January
18 16, 2009, this Court issued an order relating the Intel Action with the Broadcom and Marvell
19 Actions. *See* Dkt No. 39. On February 20, 2009, this Court issued an order relating the Acer and
20 Sony Actions to the Intel, Broadcom and Marvell Actions. *See* Dkt No. 54. Wi-LAN has not yet
21 responded to the complaints in the other Plaintiffs' actions pending in this Court.

22 With respect to Wi-LAN's contentions immediately below, Wi-LAN largely repeats the
23 arguments that it makes in its motion to dismiss/transfer. While purporting to recite facts relating to
24 jurisdiction, Wi-LAN omits highly relevant facts establishing Wi-LAN's continuous assertions of its
25 alleged WiMAX patents against Intel's and others' WiMAX products prior to this action, and Wi-
26 LAN's systematic and continuous contacts with this forum. As such, as Intel will show in detail in
27 its opposition to Wi-LAN's motion to dismiss/transfer, contrary to Wi-LAN's assertions, this Court
28 has subject matter jurisdiction over this action and personal jurisdiction over Wi-LAN.

1 Additionally, this venue is the most convenient forum for this action and Wi-LAN's motion to
2 transfer should be denied.

3 **2. Defendant Wi-LAN's Contentions**

4 The instant declaratory judgment action brought by Intel ("the Intel DJ action") and the four
5 related actions ("the non-Intel DJ actions") are brought under the Declaratory Judgment Act, 28
6 U.S.C. §§ 2201 and 2202. Wi-LAN Inc. ("Wi-LAN"), however, contends that there is no subject
7 matter jurisdiction over the Intel DJ action because there was no actual case or controversy at the
8 time the complaint was filed. Wi-LAN also contends that Wi-LAN is not subject to personal
9 jurisdiction. Additionally, Wi-LAN contends that venue is improper in this district and, further, that
10 the Intel and non-Intel DJ actions should be dismissed and/or transferred in view of a first-filed
11 action between the parties that is pending in the Eastern District of Texas.

12 Prior to the time Plaintiff Intel filed the first DJ action in September 2008, and subsequent to
13 that time, Wi-LAN has asserted infringement by Intel of only two of the eighteen wireless patents
14 that are the subject of Intel's DJ complaint. (Declaration of William Middleton, CV-04555 Dkt. No.
15 32 ¶¶ 24-30). Those two patents are United States Patent Nos. 6,549,759 ("the '759 patent") and
16 6,925,068 ("the '5,068 patent"). The '759 patent was added in February 2009 to the first-filed Texas
17 litigation between the parties by a grant of Wi-LAN's motion to supplement its Complaint filed in
18 response to Intel's DJ action (*See* E.D. Texas Order dated February 3, 2009 (CV-04555 Dkt. No. 50,
19 attached hereto as Exhibit A)³, and the '5,068 patent is no longer enforceable by Wi-LAN due to a
20 terminal disclaimer. There have been no communications from Wi-LAN to Intel asserting
21 infringement of any of the other sixteen wireless patents that are the subject of Intel's DJ action,
22 prompting Wi-LAN's motion to dismiss for lack of subject matter jurisdiction. (Middleton Decl. ¶¶
23 24-30); *See Sandisk Corporation v. Audio Mpeg, Inc.*, 2007 WL 30598 (N.D.Cal.) at *3-4 (N.D. Cal.
24 2007) (J. Whyte) (no "definite and concrete" dispute as to any patents in a standard-related patent

25 _____
26 ³ The motion to file the supplemental complaint in the Texas litigation was filed December 12, 2008. Under local rules
27 in Texas, the complaint is considered filed as of the date of the motion for leave to file. E.D. Tex. Local Rule CV-7(k).
28 Wi-LAN has served infringement contentions for the '759 patent and produced documents relevant to the '759 patent in
the Texas litigation.

1 portfolio other than the asserted patents); *Applera Corp. v. Michigan Dianostics, LLC*, 2009 WL
2 205318 (D.Mass. 2009) (same). However, Wi-LAN's communications with Intel concerning the
3 '759 patent did include an assertion of infringement of two additional Wi-LAN wireless patents not
4 included in the Intel DJ action, U.S. Patent No. 5,282,222 and U.S. Patent No. RE37,802 (hereinafter
5 "the '222 patent and "the '802 patent"). (Middleton Decl. ¶¶ 24-27). The '222 and '802 patents
6 were included in the original Complaint filed by Wi-LAN in the first-filed Texas litigation that was
7 commenced in October 2007 (and continue to be asserted in the Texas action).

8 Wi-LAN has also moved for transfer of the Intel DJ to Texas on the basis of the first-filed
9 rule, in the interest of judicial economy and to avoid inconsistent rulings by two different courts
10 regarding the same subject matter. Wi-LAN regards the Texas action as first-filed because that
11 patent infringement action concerns the same and related wireless products, because the wireless
12 technology (Wi-MAX) that is the subject of the DJ actions and a related wireless technology (Wi-Fi)
13 are already at issue in the Texas action, because both technologies are in the same wireless products
14 at issue in both actions (products with dual Wi-Fi/Wi-MAX wireless capability), and because both
15 actions involve the same parties. The Court may rule on such motion to transfer without addressing
16 the remainder of Wi-LAN's motion. *See, e.g., Zhang v. Chertoff*, 2008 WL 5271995 (N.D.Cal. 2008)
17 (J. Ware) (declining to rule on subject matter jurisdiction and transferring case); *Yung v. Institutional*
18 *Trading Co.*, 2008 WL 1734743 *1 (N.D.Cal. 2008) ("where, as here, 'defendants have challenged a
19 court's power over their person and, at the same time, have moved alternatively for transfer, the
20 interests of judicial economy are best served by initial address of the transfer issue").

21 Furthermore, there is no personal jurisdiction over Wi-LAN. Wi-LAN has no presence in
22 California for general jurisdiction and, as to specific jurisdiction, its contacts with the state have had
23 little or nothing to do with the patents that are the subject matter of these DJ actions. (Middleton
24 Decl. ¶¶ 13-23). As to the non-Intel DJ plaintiffs, Wi-LAN has either had no communications in
25 California because the DJ plaintiffs are not California companies or has had no communications
26 about the '759 patent, the only patent at issue in the non-Intel DJ actions. For Intel, Wi-LAN's
27 communications with Intel have merely served to notify Intel of its patent holdings and the specific
28 patent rights among those patents in its portfolio that it was asserting against Intel, the '222 patent,

1 the '802 patent, and the '759 patent (and the '068 patent which Wi-LAN can no longer enforce.) (*Id.*
2 ¶¶ 24-30); *Breckenridge Pharmaceutical, Inc. v. Metabolite Laboratories, Inc.*, 444 F.3d 1356, 1362
3 (Fed. Cir. 2006) (“the Federal Circuit provides that a patent owner may, without more, send cease
4 and desist letters to a suspected infringer, or its customers, without being subjected to personal
5 jurisdiction in the suspected infringer's home state”).

6 **B. Facts**

7 **1. Plaintiffs' Contentions**

8 The Intel Action is an action for a declaratory judgment of non-infringement, invalidity, and
9 unenforceability of eighteen United States Patents, including the '759 patent. The Broadcom,
10 Marvell, Acer, and Sony Actions are actions for a declaratory judgment of non-infringement,
11 invalidity, and unenforceability of the '759 patent. All parties to this action have been properly
12 served. With respect to jurisdiction, Plaintiffs contend that this Court has exclusive subject matter
13 jurisdiction over their claims pursuant to 28 U.S.C. §§ 1331, 1338(a), 1367, 2201, and 2202, and the
14 Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, that personal jurisdiction exists in this
15 Court, and that venue in this District is proper, appropriate, convenient for the parties and witnesses,
16 and in the interest of justice. As stated above, on January 15, 2009, Wi-LAN filed a Motion To
17 Dismiss For Lack Of Personal Jurisdiction, Subject Matter Jurisdiction And Improper Venue, And
18 Motion To Transfer To First Filed Forum in the Intel Action. Intel opposes Wi-LAN's motion to
19 dismiss/transfer. The plaintiffs in the Broadcom, Marvell, Acer, and Sony Actions understand that
20 Wi-LAN contemplates filing motions to dismiss and/or transfer their actions as well. A brief
21 chronology relating to the jurisdictional issues is provided in Section A above.

22 With respect to Wi-LAN's contentions immediately below, Wi-LAN again repeats
23 arguments relating to its motion to dismiss/transfer. As Intel will show in its opposition to that
24 motion, contrary to Wi-LAN's assertions, this action should not be transferred to the Texas Action.
25 Unlike the instant action, the Texas Action is a complicated proceeding involving many parties,
26 patents, accused standards and thousands of products not at issue here. Transfer of the patents-in-
27 suit will unnecessarily complicate and delay this action, as well as the Texas Action. Plaintiffs also
28 object to Wi-LAN's characterization of the principal factual issues in dispute. In the interests of

1 brevity, Plaintiffs do not repeat the relevant factual disputes, which are discussed above, but note
2 specifically that Wi-LAN's listing omits important factual issues, including those relating to general
3 jurisdiction, such as Wi-LAN's continuous and systematic contacts with this forum.

4 **2. Wi-LAN's Contentions**

5 As discussed above, the instant actions derive from certain patent litigation in the Eastern
6 District of Texas. On October 31, 2007, Wi-LAN brought suit in Texas on two wireless
7 communications patents against laptop manufacturers and suppliers of wireless communication
8 chipsets and modules. This litigation includes the same companies who are parties to the pending DJ
9 actions, including Intel Corporation, Broadcom Corporation, Atheros Communications, Inc., Marvell
10 Semiconductor, Inc., Acer America Corp., Apple Inc., Dell Inc., Gateway, Inc., Sony Computer
11 Entertainment America Inc., Sony Electronics Inc., Toshiba America Information Systems, Inc.,
12 Hewlett-Packard Company, and Lenovo (United States) Inc.. (Case styled *Wi-LAN Inc. v. Acer, et*
13 *al.*, 2:07-cv-00473-TJW (E.D. Tex.)). The Texas litigation, as filed, concerned products with
14 wireless capability employing the IEEE 802.11 wireless communication standard, alternatively
15 known as the "Wi-Fi" standard ("Wi-Fi products").

16 On September 30, 2008, Intel Corp. (a Texas defendant), in anticipation of a new wireless
17 product launch, filed the first of the several related declaratory judgment actions at bar. (CV 08-
18 04555 Dkt. No. 1). Intel's new products, announced on October 8, 2008, are wireless products that
19 practice both the Wi-Fi standard and the IEEE 802.16 standard, also known as the "WiMAX"
20 standard. Thus, Intel's new wireless products have dual Wi-Fi/Wi-MAX wireless capability.
21 WiMAX, is the successor to Wi-Fi, and extends the range of wireless communication using a laptop
22 or other mobile device from a local network in a home or office to a city-wide area. Indeed, both
23 standards depend on the same underlying wireless modulation technique that is the subject of these
24 patents, called wideband Orthogonal Frequency Division Multiplexing (or "W-OFDM"). In this
25 regard, an Intel White Paper published on www.intel.com states as follows:

26 The IEEE 802.11 and IEEE 802.16 standards are referred to as Wi-Fi and WiMAX,
27 respectively. The draft IEEE 802.11n standard is a new high-throughput
28 enhancement designed for digital home and office applications. IEEE 802.16e- 2005

1 is the mobile enhancement to IEEE 802.16-2004 designed to support widearea
2 mobility using scalable *orthogonal frequency-division multiple access (OFDMA)*
3 *technology*. Characteristics in common between WiMAX and Wi-Fi help to drive
4 rapid adoption of WiMAX services by users.

5 * * *

6 The most widespread Wi-Fi technology being shipped today is IEEE 802.11g, which
7 is based on *orthogonal frequency division multiplexing (OFDM)*....Common
8 underlying technologies of *OFDM* and MIMO between WiMAX and Wi-Fi
9 technologies enables the sharing of silicon blocks to reduce die size and cost, as well
10 as the sharing of MIMO antennas.

11 (CV 08-04555 Ex D to Isbester Decl. (Dkt. No. 33-5)) (italics added).

12
13 On October 30, 2008, Wi-LAN was permitted by the Texas court's Docket Control Order to
14 amend the Texas complaint to assert the '222 and '802 patents against wireless products practicing
15 the new WiMAX standard (in addition to the original focus of the complaint, which, as mentioned
16 above, included products practicing the existing Wi-Fi standard). (Docket Control Order attached
17 hereto as Exhibit B).

18 On December 5, 2008, Wi-LAN began efforts to meet and confer with Intel and the other
19 Texas defendants concerning its intent to add the '759 patent to the Texas litigation. Subsequently,
20 all of the non-Intel Texas defendants (some without waiting to meet and confer and others over the
21 course of the next few weeks) filed declaratory judgment actions in this district. While the '759
22 patent is one of many patents in the Intel DJ action, the '759 patent is the only patent included the
23 non-Intel DJ actions.

24 On December 12, 2008, Wi-LAN moved for leave to supplement the Texas complaint so as
25 to add allegations concerning infringement of the '759 patent by Intel and the other DJ Plaintiffs.
26 (See Wi-LAN's Supplemental First Amended Complaint attach hereto as Exhibit C). Plaintiffs
27 opposed such motion. On February 3, 2009, the Texas court granted Wi-LAN's motion to add the
28 '759 patent to the Texas litigation. (See Order dated February 3, 2009, attached hereto as Exhibit A)

1 (in granting Wi-LAN’s motion the Texas court reasoned “The first to file rule applies when the two
2 pending actions are so duplicative that one court should decide the subject matter of both actions.
3 This is true when both actions involve closely related questions or common subject matter, or the
4 core issues overlap.... Here, the technologies, while different, are related in such a way that compels
5 trying the patents together. Indeed, the accused products include both the Wi-Fi and Wi-MAX
6 technologies. The parties are the same, and discover will substantially overlap.”) (citations omitted.)

7 On January 15, 2009, Wi-LAN filed a motion to dismiss Intel’s DJ action on the basis of lack
8 of subject matter and personal jurisdiction and/or to transfer the case to Texas on the basis of the
9 first-filed rule. (CV-08-04555 Dkt. No. 31). On January 16, 2009, the Court related the Intel DJ
10 action and the DJ action filed by Broadcom and Atheros. (CV-08-04555 Dkt. No. 10). On
11 February 20, 2009, the Court issued its Order relating the other three DJ actions (the Acer, Sony, and
12 Marvel DJ Actions), staying all deadlines in the cases, and ordering that the parties submit this Joint
13 Case Management Report . (CV-08-04555 Dkt. No. 52).

14 The principal factual issues that the parties dispute include:

- 15 A. Whether a case or controversy existed between Intel and Wi-LAN on September
16 30, 2008, when the Intel DJ action was filed, concerning the eighteen wireless
17 patents at issue;
- 18 B. Whether Plaintiffs' claims in the Intel and non-Intel DJ actions arise out of Wi-
19 LAN's forum-related activity;
- 20 C. Whether Wi-LAN purposefully availed itself of the privilege of conducting
21 activities within the State of California;
- 22 D. Whether the exercise of personal jurisdiction in the Intel and non-Intel DJ actions
23 is fair and reasonable as to each plaintiff;
- 24 E. Whether the Texas action or the instant Intel and non-Intel DJ actions are
25 first-filed for purposes of transfer.

26 **C. Legal Issues**

27 **1. Plaintiffs’ Contentions**

28 The parties dispute legal issues relating to personal jurisdiction, jurisdiction under the

1 Declaratory Judgment Act, and transfer, together with infringement, invalidity, and unenforceability
2 of the patents-in-suit. Additionally, the parties submit that additional factual and legal issues may
3 arise as the case progresses.

4 **2. Defendant Wi-LAN's Contentions**

- 5 A. Whether the Court has subject matter jurisdiction over the Intel DJ action and
6 the related non-Intel DJ actions;
- 7 B. Whether the Court has personal jurisdiction over Wi-LAN for the Intel DJ
8 action and the related non-Intel DJ actions;
- 9 C. Whether venue is proper for the Intel DJ action and the related non-Intel DJ
10 actions; and,
- 11 D. Whether transfer pursuant to 28 U.S.C. § 1404 is appropriate for the Intel DJ
12 action and the related non-Intel DJ Actions.

13 **D. Motions**

14 **1. Plaintiffs' Contentions**

15 On January 15, 2009, Wi-LAN filed a Motion To Dismiss For Lack Of Personal Jurisdiction,
16 Subject Matter Jurisdiction And Improper Venue, And Motion To Transfer To First Filed Forum in
17 the Intel Action. Intel opposes this motion.

18 On February 23, 2009, Intel and Wi-LAN filed a Joint Motion To Enter Interim Protective
19 Order Pending Entry of Final Protective Order in connection with discovery relating to jurisdictional
20 issues raised by Wi-LAN's motion to dismiss/transfer. On March 5, 2009, the Court granted the
21 parties' joint motion and entered the Interim Protective Order Pending Entry of Final Protective
22 Order.

23 Wi-LAN also currently plans to file motions to dismiss and/or transfer the Broadcom,
24 Marvell, Acer, and Sony actions. With respect to Wi-LAN's suggestions below that the Court *sua*
25 *sponte* transfer or dismiss these actions, Plaintiffs disagree that any such transfer or dismissal is
26 warranted and object to any dismissal or transfer of their actions without notice and an opportunity
27 to be heard.

28 In addition to the above, Plaintiffs further anticipate filing motions for summary judgment of

1 non-infringement, invalidity, and/or unenforceability with respect to the patents-in-suit.

2 **2. Defendant Wi-LAN's Contentions**

3 Wi-LAN's motion to dismiss the Intel DJ action for lack of personal jurisdiction, subject
4 matter jurisdiction, and improper venue, and/or to transfer to the first-filed Texas forum is currently
5 pending. (C 08-04555 Dkt. No. 31). If the non-Intel DJ actions are not transferred for consolidation
6 with the Texas litigation or dismissed *sua sponte* in view of the Texas court's order and Plaintiffs'
7 identical counterclaims now asserted in that litigation as to the '759 patent (*see, e.g.*, Intel Answer
8 and Counterclaims and attach hereto as Exhibit D), Wi-LAN anticipates that it may file motions to
9 dismiss and/or transfer the related non-Intel DJ actions, but the nature and extent of such motion
10 practice is greatly dependent on the outcome of Wi-LAN's motion to dismiss and/or transfer the
11 Intel DJ action.

12 **E. Amendment of Pleadings**

13 **1. Plaintiffs' Contentions**

14 On January 15, 2009 Intel and the defendants in the Intel Action jointly moved to dismiss
15 without prejudice Defendants Wi-LAN Technologies Corporation, Wi-LAN Technologies Inc., and
16 Wi-LAN V-Chip Corporation based on Wi-LAN's confirmation that those entities do not hold any
17 right or title in the patents-in-suit. Intel took no position on the ownership of the patents-in-suit, and
18 reserved all rights and arguments on that issue and any transactions regarding the patents-in-suit. On
19 February 20, 2009, the Court granted the parties' joint motion. When the time comes to set a
20 schedule governing these actions, the parties would propose that a deadline be set to amend
21 pleadings as a matter of right for purposes other than to add patent infringement claims.

22 **1. Defendant's Contentions**

23 Wi-LAN contends, pursuant to LR 16-10(c), that setting deadlines affecting any substantive
24 litigation among the parties, including the amendment of pleadings, is dependent on the outcome of
25 Wi-LAN's jurisdictional motion practice.

26 **F. Evidence Preservation**

27 The parties acknowledge their obligations regarding evidence preservation and agree to abide
28 by such obligations.

1 **G. Disclosures**

2 **1. Plaintiffs' Contentions**

3 The parties propose that Initial Disclosures be made within 14 days after the Court rules on
4 Wi-LAN's motion to dismiss/transfer.

5 **2. Defendant Wi-LAN's Contentions**

6 Wi-LAN proposes that any schedule for service of initial disclosures pursuant to Fed. R. Civ.
7 P. 26(a) be determined after all jurisdictional motions have been ruled upon, because the nature and
8 extent, including the need and timing, of such disclosures is contingent on the Court's decision.

9 **H. Discovery**

10 **1. Plaintiffs' Contentions**

11 Plaintiffs intend to pursue discovery in the form of requests for production of documents and
12 things, interrogatories, depositions, and other forms of discovery authorized by the Federal Rules.
13 Other than as set forth below, the parties currently agree to the default limits on discovery set forth
14 within the rules, but reserve all rights to seek modifications of such limits and agree to confer in
15 good faith if a need arises for additional discovery.

16 **2. Defendant Wi-LAN's Contentions**

17 The parties have filed a joint motion to enter an interim stipulated protective order pending
18 entry of the final protective order, which Magistrate Lloyd signed on March 2, 2009 . (CV 08-04555
19 Dkt. No. 61). The parties anticipate conducting jurisdictional discovery pursuant to this interim
20 stipulated protective order. Wi-LAN believes it is appropriate to defer all matters relating to
21 substantive discovery until all jurisdictional motions have been ruled upon.

22 **I. Class Actions**

23 This is not a class action.

24 **J. Related Cases**

25 **1. Plaintiffs' Contentions**

26 These proceedings involve five related actions:

- 27 • *Intel Corp. v. Wi-LAN, Inc.*, No. 5:08-cv-4555 (the "Intel Action") (filed September 30,
28 2008)

- 1 • *Broadcom Corp. v. Wi-LAN, Inc.*, No. 5:08-cv-05543 (the "Broadcom Action") (filed
2 Dec. 10, 2008)
- 3 • *Marvell Semiconductor, Inc., et al. v. Wi-LAN, Inc.*, No. 5:08-cv-05544 (the "Marvell
4 Action") (filed Dec. 10, 2008)
- 5 • *Acer America Corp., et al. v. Wi-LAN, Inc.*, No. 5:08-cv-05624 (the "Acer Action") (filed
6 Dec. 17, 2008)
- 7 • *Sony Computer Entertainment America Inc., et al. v. Wi-LAN, Inc.*, No. 5:08-cv-05742
8 (the "Sony Action") (filed Dec. 23, 2008)

9 As discussed in Section A, above, the Intel Action was filed first on September 30, 2008.

10 Subsequently, Wi-LAN filed a motion seeking to add the '759 patent already pending before this
11 Court to the Texas Wi-Fi Action. At that time, in view of Intel's first-filed action in this Court
12 concerning the '759 patent, in the interests of efficiency, coordination, and the convenience of the
13 parties and witnesses, plaintiffs Atheros, Broadcom, Marvell, Acer, Apple, Dell, Gateway, Sony,
14 Lenovo, Hewlett-Packard and TAIS brought declaratory judgment actions on the '759 patent in this
15 District and sought to relate those actions to the first-filed Intel Action. On January 16, 2009, this
16 Court issued an order relating the Intel Action with the Broadcom and Marvell Actions. *See* Dkt No.
17 39. On February 20, 2009, this Court issued an order relating the Acer and Sony Actions to the
18 Intel, Broadcom and Marvell Actions. *See* Dkt No. 54.

20 **2. Defendant Wi-LAN's Contentions**

21 As discussed above, on October 31, 2007, Wi-LAN filed a complaint for patent infringement
22 in the Eastern District of Texas against Intel and the non-Intel DJ Plaintiffs for infringement of its
23 '222 and '802 patents. On December 12, 2008, Wi-LAN moved for leave to supplement the Texas
24 complaint to add allegations concerning infringement of the '759 patent, and served detailed
25 infringement contentions as required by the Court's local patent rules. (Supplemental First Amended
26 Complaint attached hereto as Exhibit C). On February 3, 2009, Wi-LAN's motion to add the '759
27 patent to the Texas litigation was granted. (Ex. A (also attached to Notice of Pendency of Related
28

1 Proceedings and Rulings, CV 08-04555 Dkt. No. 50)). On February 23, 2009, Intel and the other DJ
2 plaintiffs served and filed answers to the Supplement Complaint. Discovery is underway in the
3 Texas litigation. (Intel Answer and Counterclaim attached hereto as Exhibit D).

4 On January 16, 2009, the Court issued an order relating the *Intel Corp. v. Wi-LAN, Inc.*, No.
5 CV 08-04555, action to two later-filed cases, *Broadcom Corp v. Wi-LAN, Inc.*, No. CV 08-05543,
6 and *Marvell Semiconductor, Inc. v. Wi-LAN, Inc.*, No. CV 08-05544. (C 08-04555 Dkt. No. 38). On
7 February 20, 2009, the Court issued an order relating *Sony Computer Entertainment America, Inc v.*
8 *Wi-LAN, Inc.*, No. CV 08-05742, and *Acer America Corp. v. Wi-LAN, Inc.*, No. CV 08-05624. (CV
9 08-04555 Dkt. No. 52).

10 **K. Relief**

11 **1. Plaintiffs' Contentions**

12 Plaintiffs seek declaratory relief that (a) they do not infringe, directly or indirectly, any valid
13 and enforceable claim of any of the respective patents-in-suit asserted against them; (b) the
14 respective patents-in-suit are invalid; and (c) certain of the patents-in-suit are unenforceable.
15 Plaintiffs further seek as relief a declaration that this is an exceptional case and that Plaintiffs are the
16 prevailing parties, and an award of costs and attorneys' fees pursuant to 35 U.S.C. § 285.

17 **2. Defendant Wi-LAN's Contentions**

18 Plaintiff Intel Corporation is seeking a declaratory judgment of noninfringement, invalidity
19 and unenforceability regarding eighteen separate wireless patents, including the '759 patent. The
20 Plaintiffs in the non-Intel DJ actions are seeking a declaratory judgment of noninfringement,
21 invalidity and unenforceability regarding just the '759 patent.

22 **L. Settlement and ADR**

23 The parties will explore prospects for settlement relating to this matter in accordance with
24 ADR Local Rule requirements. All ADR deadlines were stayed by the Court's February 20, 2009
25 Orders.

26 **M. Consent to Magistrate Judge For All Purposes**

27 The parties do not consent to the use of a Magistrate Judge.
28

1 **N. Other References**

2 The parties do not presently believe that the case is suitable to reference to binding
3 arbitration or a special master, or the Judicial Panel on Multidistrict Litigation.

4 **O. Narrowing of Issues**

5 Plaintiffs are not presently aware of particular issues to be narrowed. Wi-LAN proposes that
6 the Court limit the Case Management Conference and Order to jurisdictional matters.

7 **P. Scheduling**

8 **1. Plaintiffs' Contentions**

9 Plaintiffs propose that the Claim Construction Hearing for this matter should occur in March
10 2010 or on a date thereafter convenient for the Court. The parties will agree to meet and confer
11 concerning other deadlines upon scheduling of a Claim Construction Hearing.

12 With respect to Wi-LAN's schedule below, Plaintiffs propose that the parties meet and
13 confer with respect to the deadlines for jurisdictional discovery and depositions, taking into
14 consideration witness availability and related issues. Plaintiffs agree that the deadline for Intel's
15 Opposition should be on April 3, 2009, the deadline for Wi-LAN's Reply should be on April 10,
16 2009 and join in Wi-LAN's request for a hearing on Wi-LAN's motion to dismiss/transfer to be held
17 on April 17, 2009. With respect to Wi-LAN's suggestions below that the Court *sua sponte* transfer
18 or dismiss these actions, Plaintiffs disagree that any such transfer or dismissal is warranted and
19 object to any dismissal or transfer of their actions without notice and an opportunity to be heard.

20 The parties have generally agreed that Wi-LAN's responses to the non-Intel actions are not
21 due until 10 days after the Court issues an order on Wi-LAN's motion to dismiss/transfer in the Intel
22 Action. Contrary to Wi-LAN's assertions, conflicts relating to Wi-LAN's own counsel, Townsend
23 & Townsend, precluding that firm from participating in these proceedings is not a justification for
24 transferring the non-Intel actions. Plaintiffs do not agree and reserve all rights and objections to any
25 conflict issues presented by Townsend & Townsend's participation as Wi-LAN's counsel.

26 **2. Defendant Wi-LAN's Contentions**

27 Wi-LAN proposes the following schedule:
28

1	Productions of Wi-LAN's and Intel's jurisdictional	March 18, 2009
2	documents (requests already served)	
3	Depositions of Wi-LAN's and Intel's 30(b)(6) witnesses	March 26, 2009
4	(notices already served)	
5	Intel's Opposition to Wi-LAN's motion to dismiss	April 3, 2009
6	Wi-LAN's Reply in support of motion to dismiss	April 10, 2009
7	Hearing on Wi-LAN's motion to dismiss	April 17, 2009
8		
9		

10 For the non-Intel DJ actions, should the Court not transfer these actions *sua sponte* based on
11 the Texas court's Order (Ex. A) and Plaintiffs' identical counterclaims in the Texas litigation (Ex.
12 C), Wi-LAN respectfully submits that judicial economy would otherwise be best served by having
13 its answer or other responsive pleading and any subsequent motions to dismiss or transfer the non-
14 Intel DJ actions be due ten days after the Court issues its ruling on Wi-LAN's motion to dismiss the
15 Intel action (or otherwise be set at a post-ruling case management conference). Shortly before this
16 Court's February 20 Order relating the non-Intel DJ actions, Plaintiffs agreed to this approach. (*See*
17 *Stipulation and [Proposed] Order to Extend Time to Respond to Amended Complaint, CV 08-05624*
18 *Dkt. No. 26*) ("This stipulated request is made on the grounds that the parties wish to avoid
19 duplicative motion practice. Judge Ware's ruling in the *Intel* action will give the parties substantial
20 guidance as to how to proceed and may eliminate the need for motion practice in the instant action")
21 (so ordered by Judge Ilston on February 20, 2009).

22 Wi-LAN's proposal to focus the jurisdictional issues on the Intel DJ action first and or
23 transfer the non-Intel DJ actions is also requested to allow for the possibility that Townsend &
24 Townsend, Wi-LAN's California counsel of record, could represent Wi-LAN in this matter in
25 connection with Intel's motion to dismiss. That firm, however, also represents, in unrelated
26 matters, certain of the plaintiffs in the non-Intel DJ actions. Accordingly, Townsend & Townsend
27 has been forced to withdraw from any participation in these proceedings, which works a significant
28

1 hardship upon Wi-LAN.

2 **Q. Trial**

3 Plaintiffs have requested a jury trial on all issues triable to a jury. Plaintiffs believe that the
4 length of the trial will depend on the resolution of the parties' pre-trial motions, including
5 appropriate summary judgment motions, and the parties' ability to narrow the issues. Wi-LAN
6 believes that the nature and extent of any trial, including the need for and the length of time of a trial,
7 are contingent on the outcome of Wi-LAN's jurisdiction motion practice.

8 **R. Disclosure of Non-Party Interested Entities or Persons**

9 Plaintiffs have filed Certifications of Interested Entities or Persons required by Civil Local
10 Rule 3-16. Plaintiffs disclosures may be found at the following docket entries: Intel Action, Dkt.
11 No. 2; Broadcom Action, Dkt. Nos. 2-3; Marvell Action, Dkt. No. 2; Acer Action , Dkt. Nos. 2-5;
12 Sony Action, Dkt. Nos. 2-6. Due to the length of these disclosures, rather than repeating them
13 herein, Plaintiffs incorporate them by reference. In general, Plaintiffs disclose the following
14 persons, firms, partnerships, corporations or other entities known by them have either (i) a financial
15 interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of
16 interest that could be substantially affected by the outcome of the proceeding: the parties to this
17 action, their customers, and users of their products.

18 Defendant Wi-LAN will file Certifications of Interested Entities or Persons required by Civil
19 Local Rule 3-16 prior to the Case Management Conference. Wi-LAN further asserts that no
20 persons, firms, partnerships, corporations or other entities known by it have either (i) a financial
21 interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of
22 interest that could be substantially affected by the outcome of the proceeding.

23 **S. Discovery Plan Pursuant to Fed. R. Civ. P. 26(f)**

24 **1. Changes to the Timing, Form, or Requirement for Disclosures Under Rule 26(a)(1)**

25 The parties do not currently believe any modification to the timing or form of the disclosures
26 required by Rule 26(a)(1) is necessary or appropriate, but reserve all rights to seek modifications and
27 agree to confer in good faith if a need arises for additional discovery.

28 Wi-LAN believes that the nature and extent of, including the need for, any modification to

1 the Timing, Form, or Requirement for Disclosures Under Rule 26(a)(1) is dependent on the outcome
2 of Wi-LAN's jurisdictional motion practice.

3 **2. The Subjects on Which Discovery May Be Needed, When Discovery Should be**
4 **Completed, and Whether Discovery Should be Phased or Focused**

5 Plaintiffs will seek discovery relating to the non-infringement, invalidity and enforceability
6 of the respective patents-in-suit asserted against them. In addition, in view of Wi-LAN's motion to
7 dismiss/transfer, the parties have agreed to limited jurisdictional discovery relating to that motion.

8 Wi-LAN believes that the nature and extent of, including the need for, any discovery is
9 dependent on the outcome of Wi-LAN's jurisdictional motion practice.

10 **3. Any Issues Relating to Disclosure or Discovery of Electronically Stored Information**
11 **or to Claims of Privilege**

12 The parties will agree to a protocol for production of electronically stored information and a
13 proposed protective order that will address issues relating to claims of privilege.

14 Wi-LAN believes that the nature and extent of, including the need for, any discovery of
15 electronically stored information is dependent on the outcome of Wi-LAN's jurisdictional motion
16 practice.

17 **4. Changes or Additions to the Limitations on Discovery Imposed by the Local Rules**

18 The parties currently agree to the default limits on discovery set forth within the rules, but
19 reserve all rights to seek modifications of such limits and agree to confer in good faith if a need
20 arises for additional discovery.

21 Wi-LAN believes that the nature and extent of, including the need for, any discovery
22 limitations is dependent on the outcome of Wi-LAN's jurisdictional motion practice.

23 **5. Any Other Orders That Should Be Entered by the Court**

24 As stated above, the parties will provide the Court with a stipulated Protective Order upon
25 agreement by the parties as to form.

26 Wi-LAN believes that the nature and extent of, including the need for, any Protective Order
27 is dependent on the outcome of Wi-LAN's jurisdictional motion practice.
28

1 **T. Patent Local Rule 2-1 Disclosures**

2 **1. Modifications to the Obligations or Deadlines Set Forth in the Patent Local Rules**

3 The parties do not currently believe that any modifications to the obligations or deadlines set
4 forth in the Patent Local Rules are necessary but agree to meet and confer concerning scheduling
5 deadlines.

6 Wi-LAN proposes that the parties submit any modifications to the local rules during a further
7 Case Management Statement and Conference should one be necessary following the Court's
8 decision on Wi-LAN's motion to dismiss the Intel DJ action.

9 **2. The Scope and Timing of Claim Construction Discovery, Including Expert
10 Discovery**

11 Plaintiffs propose that the parties agree to meet and confer concerning any issues regarding
12 scope of claim construction discovery. The parties further agree to meet and confer over deadlines
13 associated with any claim construction discovery.

14 Wi-LAN believes that the nature and extent of, including the need for, any claim construction
15 discovery is dependent on the outcome of Wi-LAN's jurisdictional motion practice.

16 **3. The Format Of the Claim Construction Hearing**

17 At this time, Plaintiffs do not anticipate presenting live testimony at the Claim Construction
18 Hearing, but reserve the right to do so if the need arises. Plaintiffs submit that, as plaintiffs, they
19 should present their positions first, with an opportunity for rebuttal following Wi-LAN's
20 presentation.

21 Wi-LAN believes that the nature and extent of, including the need for, any claim construction
22 hearing is dependent on the outcome of Wi-LAN's jurisdictional motion practice.

23 **4. Education of the Court On the Technology at Issue**

24 Plaintiffs propose providing a brief technology tutorial immediately prior to the claim
25 construction hearing. With the Court's permission, Plaintiffs will meet and confer with Wi-LAN
26 concerning an appropriate format for the technical tutorial.

27 Wi-LAN believes that the nature and extent of, including the need for, any tutorial is
28 dependent on the outcome of Wi-LAN's jurisdictional motion practice.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: March 6, 2009

/s/ Adam R. Alper

John Desmarais (*pro hac vice*)
jdesmarais@kirkland.com
Gregory S. Arovas (*pro hac vice*)
garovas@kirkland.com
KIRKLAND & ELLIS LLP
153 East 53rd Street
New York, New York 10022-4611
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Christian Chadd Taylor (S.B.N. 237872)
ctaylor@kirkland.com
Adam R. Alper (S.B.N. 196834)
aalper@kirkland.com
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, California 94104-1501
Telephone: (415) 439-1400
Facsimile: (415) 439-1500

Attorneys for Plaintiff INTEL CORPORATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

/s/
Michael C. Spillner
State Bar No. 205785
ORRICK HERRINGTON SUTCLIFF LLP
1000 Marsh Road
Menlo Park, California 94025
Telephone: (650) 614-7400
Facsimile: (650) 614-7401
Email: mspillner@orrick.com

G. Hopkins Guy, III
State Bar No. 124811
ORRICK HERRINGTON SUTCLIFF LLP
1000 Marsh Road
Menlo Park, California 94025
Telephone: (650) 614-7400
Facsimile: (650) 614-7401
Email: hopguy@orrick.com

Kai Tseng
State Bar No. 193756
ORRICK HERRINGTON SUTCLIFF LLP
1000 Marsh Road
Menlo Park, California 94025
Telephone: (650) 614-7400
Facsimile: (650) 614-7401
Email: ktseng@orrick.com

Attorneys for Plaintiffs ACER AMERICA CORP. and
GATEWAY INC.

/s/
Mark C. Scarsi
State Bar No. 183926
MILBANK, TWEED, HADLEY & MCCLOY LLP
601 South Figueroa Street
30th Floor
Los Angeles , CA 90017-5735
Telephone: (213) 892-4000
Facsimile: (213) 629-5063

Attorney for Plaintiff APPLE INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

/s/
Jonah D. Mitchell
jmittell@reedsmith.com
Reed Smith LLP
Two Embarcadero Center, Suite 2000
San Francisco, California 94111
Telephone: (415) 543 - 8700
Facsimile: (415) 391-8269

Attorneys for Plaintiff ATHEROS COMMUNICATIONS,
INC.

/s/
Bob Steinberg (S.B.N. 126407)
bob.steinberg@lw.com
LATHAM & WATKINS LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560
Telephone: (213) 485-1234
Facsimile: (213) 891-8763

Michael W. De Vries (S.B.N. 211001)
mike.devries@lw.com
LATHAM & WATKINS LLP
650 Town Center Drive, 20th Floor
Costa Mesa, California 92626-1925
Telephone: (714) 540-1235
Facsimile: (714) 755-8290

Mark Tung (SBN 245782)
LATHAM & WATKINS LLP
140 Scott Drive
Menlo Park, California 94025-2600
Telephone: (650) 328-4600
Facsimile: (650) 463-2600
Email: mark.tung@lw.com

Attorneys for Plaintiff BROADCOM CORPORATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

/s/
C. Larry O'Rourke (SBN 219255)
FINNEGAN, HENDERSON, FARABOW, GARRETT &
DUNNER, LLP
3300 Hillview Ave.
Palo Alto, California 94304-1203
Telephone: (650) 849-6600
Facsimile: (650) 849-6666
Email: larry.o'rourke@finnegan.com

Roger D. Taylor (To Be Admitted *Pro Hac Vice*)
roger.taylor@finnegan.com
FINNEGAN, HENDERSON, FARABOW, GARRETT &
DUNNER, LLP
303 Peachtree Street, N.E.
Atlanta, GA 30308-3263
Telephone: (404) 653-6400
Facsimile: (404) 653-6444

Linda Thayer (State Bar No. 195115)
Linda.Thayer@finnegan.com
FINNEGAN, HENDERSON, FARABOW, GARRETT &
DUNNER, LLP
55 Cambridge Parkway
Cambridge, Massachusetts 02142-1215
Telephone: (617) 452-1600
Facsimile: (617) 452-1666

Lily Lim
State Bar No. 214536
FINNEGAN, HENDERSON, FARABOW, GARRETT &
DUNNER, L.L.P.
3300 Hillview Ave.
Palo Alto, California 94304-1203
Telephone: (650) 849-6600
Facsimile: (650) 849-6666
Email: lily.lim@finnegan.com

Attorneys for Plaintiff MARVELL SEMICONDUCTOR,
INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

/s/
Kevin P.B. Johnson (Bar No. 177129)
QUINN EMANUEL URQUHART OLIVER & HEDGES,
LLP
555 Twin Dolphin Drive, Suite 560
Redwood Shores, California 94065-2139
Telephone: (650) 801-5000
Facsimile: (650) 801-5100
kevinjohnson@quinnemanuel.com

Attorneys for Plaintiffs SONY COMPUTER
ENTERTAINMENT AMERICA INC. and SONY
ELECTRONICS INC.

/s/
George C. Best, State Bar No. 255555
gbest@foley.com
FOLEY & LARDNER LLP
975 Page Mill Road
Palo Alto, CA 94304-1013
Telephone: 650.856.3700
Facsimile: 650.856.3710

Pavan K. Agarwal, (admitted *pro hac vice*)
pagarwal@foley.com
John J. Feldhaus, (admitted *pro hac vice*)
jfeldhaus@foley.com
FOLEY & LARDNER LLP
Washington Harbour
3000 K Street, NW, Suite 500
Washington, DC 20007-5143
Telephone: 202.672-5300
Facsimile: 202.672.5399

Attorneys for Plaintiff TOSHIBA AMERICA
INFORMATION SYSTEMS, INC.

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2009, a true and correct copy of the foregoing JOINT CASE MANAGEMENT STATEMENT UNDER FED. R. CIV. P. 26(f) AND CIV. L. R. 16-9 was filed electronically with the Clerk of the Court using CM/ECF System. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

By: /s/ Adam R. Alper

Adam R. Alper

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28