

FEDERAL COURT

B E T W E E N :

WI-LAN INC. and WI-LAN TECHNOLOGIES CORP.

Plaintiffs (Defendants by Counterclaims)

- and -

**D-LINK SYSTEMS, INC. and
D-LINK CANADA INC. (d.b.a. D-LINK NETWORKS)**

Defendants (Plaintiffs by Counterclaims)

WRITTEN REPRESENTATIONS OF THE PLAINTIFFS

(Response to Notice Of Status Review dated May 8, 2007)

1. No Unwarranted Delay in Prosecution of Proceeding

1. This patent infringement proceeding has been relatively short-lived. Challenges to the Plaintiffs' pleading have meant that a Defence has only recently been delivered. Changes in the Plaintiffs' counsel has also affected the pace and continuity of the proceeding.

2. The Statement of Claim in this proceeding was issued on March 28, 2006. Before a Defence was received, the claim was amended to refine the issues in dispute on May 25, 2006.

3. The Defendants moved to strike allegations from the Plaintiffs' pleading, or, in the alternative, requiring the Plaintiffs to provide further particulars. By Order of Prothonotary Milczynski dated August 23, 2006, the Plaintiffs were ordered to provide further particulars of their allegations. The Plaintiff served a third amended pleading on September 1, 2006.

4. The Defendants appealed the August 23, 2006 Order, again seeking to strike allegations from the Plaintiffs' claim. The Defendant's appeal was granted in part by Order dated December 12, 2006 (amended January 8, 2007).

5. By order dated March 22, 2007, on consent, Wi-LAN Inc. was added as a party by a further amendment to the pleading.

6. For the first time, on April 23, 2007, the Plaintiffs were served with a Statement of Defence and Counterclaim.

7. The Statement of Defence and Counterclaim is neither simple, including at least nine discrete attacks on the patent at issue, and citing 71 pieces of prior art, nor is it clear.

8. Accordingly, the Plaintiffs served a demand for particulars on May 2, 2007.

9. On May 4, 2007, the Plaintiffs served a Notice of Change of Solicitors, appointing Goodmans LLP as their counsel.¹

10. In view of the foregoing, it is respectfully submitted that there has been no undue delay in the prosecution of this proceeding.

2. Plaintiffs' Plans to Advance the Action

11. The Plaintiffs have always had and continue to have an intention to diligently prosecute this proceeding.

¹ The change represents the Plaintiffs' second change of counsel, the first having occurred on June 28, 2006.

12. Within two weeks of the completion of this Status Review, the Plaintiffs, through their new counsel, intend to file a revised demand for particulars, seeking a response within 2 weeks thereafter. Should a motion be required to compel the particulars, the Plaintiffs intend to file motion materials within a further 2 weeks. The Plaintiffs intend to file a Reply and Defence to Counterclaim within 30 days of either the provision of particulars or the disposition of the motion.

13. After the close of pleadings, the Plaintiffs expect discovery to be conducted in accordance with the rules and timelines prescribed by the *Federal Courts Rules*.

14. The Plaintiffs consent to case management of this proceeding.

15. In light of the foregoing, the Plaintiffs respectfully request that an Order issue permitting the Plaintiffs to proceed, as described above, to discovery and trial.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4th DAY OF June, 2007.



GOODMANS LLP
Barristers & Solicitors
250 Yonge Street, Suite 2400
Toronto, Canada M5B 2M6

H.B. Radomski
Richard Naiberg
Miles Hastie

Tel: 416. 979.2211
Fax: 416.979.1234
Counsel for the Plaintiffs

TO: DIMOCK STRATTON LLP
20 Queen Street West, Suite 3202
Toronto, Ontario M5H 3R3
Canada

Bruce W. Stratton
Jenna L. Wilson
Etienne P. de Villiers

Tel: (416) 971-7202
Fax: (416) 971-6638

Solicitors for the Defendants (Plaintiffs by Counterclaim)

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WRITTEN REPRESENTATIONS

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Barristers & Solicitors
250 Yonge Street, Suite 2400
Toronto, Canada M5B 2M6

H.B. Radomski
Richard Naiberg
Miles Hastie

Tel: 416.979.2211
Fax: 416.979.1234

Solicitors for the Plaintiffs
WI-LAN Inc. and WI-LAN Technologies Corp.