

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CIVIL CASE NO. 1:12-CV-24319

Wi-LAN USA, INC. and Wi-LAN INC.,	§
	§
Plaintiffs,	§
	§
v.	§
	§
HTC CORPORATION,	§
and HTC AMERICA, INC.	§
	§
Defendants.	§
	§

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**FIRST AMENDED COMPLAINT**

This is an action for patent infringement. Plaintiffs Wi-LAN USA, Inc. and Wi-LAN Inc. file this Complaint against Defendants HTC Corporation and HTC America, Inc., and state as follows:

**PARTIES**

1. Plaintiff Wi-LAN USA, Inc. is a corporation organized and existing under the laws of the state of Florida with its principal place of business at 175 S.W. 7th Street, No. 1803, Miami, Florida 33130. Plaintiff Wi-LAN Inc. is a corporation organized and existing under the laws of Canada with its principal place of business at 11 Holland Ave., Suite 608, Ottawa, Ontario, Canada K1Y 4S1. Wi-LAN USA, Inc. is a wholly owned subsidiary of Wi-LAN Inc. Plaintiffs will be collectively referred to herein as “Wi-LAN.”

2. Upon information and belief, Defendant HTC Corporation is a corporation organized and existing under the laws of the country of Taiwan, R.O.C. with a registered place of business at 23 Xinghua Road, Taoyuan 330, Taiwan, R.O.C. and a principal place of business at 88 Section 3, Zhongxing Road, Xindian District, New Taipei City 231, Taiwan, Republic of

China. Upon information and belief, Defendant HTC America, Inc. is a subsidiary of Defendant HTC Corporation and is a corporation organized and existing under the laws of the State of Washington with its principal place of business at 13920 SE Eastgate Way, Suite 400, Bellevue, Washington 98005. HTC Corporation and HTC America, Inc. will be collectively referred to herein as “Defendants” or “HTC.”

3. Upon information and belief, Defendants directly or indirectly through subsidiaries or affiliated companies market, distribute, manufacture, import, sell, and/or offer for sale wireless communication products, including but not limited to products compliant with the 3<sup>rd</sup> Generation Partnership Project—Long Term Evolution (“3GPP LTE”) standard, in the United States and, more particularly, in the Southern District of Florida.

#### **JURISDICTION AND VENUE**

4. This action for patent infringement arises under the Patent Laws of the United States, including 35 U.S.C. § 271.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over HTC under Florida Statute § 48.193. Upon information and belief, HTC (a) has at least an office or agency in Florida; (b) has committed one or more tortious acts within Florida; and (c) has been and is engaged in substantial and not isolated activity within Florida.

7. Upon information and belief, HTC has been registered to do business in the State of Florida since 2011 and currently has a registered agent in the State of Florida. Upon information and belief, HTC has conducted business in this judicial district.

8. Upon information and belief, Defendants have committed acts of patent infringement within this judicial district. Defendants, directly or through intermediaries, import, manufacture, use, sell, and/or offer to sell infringing products within this judicial district. Defendants have also knowingly and intentionally induced others to commit acts of patent infringement within this judicial district. Further, Defendants have purposely and voluntarily placed infringing products into the stream of commerce with the expectation that they will be purchased by consumers in this judicial district. Defendants reasonably should have anticipated being subject to suit in this judicial district. Defendants' acts of patent infringement are aimed at this judicial district and/or have effect in this judicial district.

9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b).

#### **DEFENDANTS' PRODUCTS**

10. Upon information and belief, Defendants make, use, offer for sale, import, and/or sell products compliant with the 3GPP LTE standard, including but not limited to the Droid Incredible 4G and Evo 4G LTE.

11. Upon information and belief, Defendants' accused products support at least Release 8, et seq. of the 3GPP LTE standard.

#### **COUNT I: INFRINGEMENT OF U.S. PATENT NO. 8,315,640**

12. The allegations of paragraphs 1 through 11 are re-alleged as if fully set forth herein.

13. On November 20, 2012, the USPTO duly and legally issued U.S. Patent No. 8,315,640 (the "'640 Patent"), entitled "Methods and Systems for Transmission of Multiple Modulated Signals Over Wireless Networks" after a full and fair examination. Wi-LAN Inc. is the sole owner of the '640 Patent. Wi-LAN USA, Inc. holds certain exclusive rights under the

'640 Patent, including an exclusive right to license Defendants. A true and correct copy of the '640 Patent is attached hereto as Exhibit A.

14. Upon information and belief, Defendants have been and are now infringing, directly and indirectly by way of inducement and/or contributory infringement, literally and/or under the doctrine of equivalents, the '640 Patent in this judicial district and elsewhere by making, using, offering for sale, importing, selling, and/or intentionally inducing others to use (without authority from Wi-LAN) the Defendants' accused products, which fall within the scope of one or more of the claims of the '640 Patent.

15. Defendants knowingly contribute to and induce infringement by supplying the accused products to customers with instructions for their use in connection with cellular systems that comply with the 3GPP LTE standard.

16. The accused products are developed to comply with the 3GPP LTE standard and thus are not staple articles or commodities of commerce suitable for substantial non-infringing use.

17. Defendants' customers who purchase the accused products and operate those products in accordance with Defendants' instructions directly infringe one or more claims of the '640 Patent.

18. During the course of ongoing license negotiations, on or before August 4, 2012, Wi-LAN informed Defendants that its patent portfolio included patents relevant to the 3GPP LTE standard.

19. On or about November 18, 2012, Wi-LAN communicated to Defendants a list of patents in Wi-LAN's portfolio. The '640 Patent, identified by its U.S. Patent number, serial number, publication number, and title was included in the list.

20. Upon information and belief, Defendants have had knowledge of the '640 Patent prior to the filing of this Complaint, by way of the information disclosed to Defendants during the licensing negotiations.

21. Defendants have had actual notice of the '640 Patent since at least November 18, 2012, or, alternatively by December 6, 2012, when this suit was filed.

22. Since becoming aware of the '640 Patent, Defendants were objectively reckless and knew or should have known that the accused products and the components thereof were especially made and/or especially adapted for use in infringing the '640 Patent.

23. Upon information and belief, Defendants' infringement of the '640 Patent has been and continues to be willful and deliberate.

24. The '640 Patent is valid and enforceable.

25. By way of its infringing activities, Defendants have caused and continue to cause Wi-LAN to suffer damages, and Wi-LAN is entitled to recover from Defendants damages in an amount to be determined at trial.

**COUNT II: INFRINGEMENT OF U.S. PATENT NO. 8,311,040**

26. The allegations of paragraphs 1 through 25 are re-alleged as if fully set forth herein.

27. On November 13, 2012, the USPTO duly and legally issued U.S. Patent No. 8,311,040 (the "'040 Patent"), entitled "Packing Source Data Packets Into Transporting Packets With Fragmentation" after a full and fair examination. Wi-LAN Inc. is the sole owner of the '040 Patent. Wi-LAN USA, Inc. holds certain exclusive rights under the '040 Patent, including an exclusive right to license Defendants. A true and correct copy of the '040 Patent is attached hereto as Exhibit B.

28. Upon information and belief, Defendants have been and are now infringing, directly and indirectly by way of inducement and/or contributory infringement, literally and/or under the doctrine of equivalents, the '040 Patent in this judicial district and elsewhere by making, using, offering for sale, importing, selling, , and/or intentionally inducing others to use (without authority from Wi-LAN) the Defendants' accused products, which fall within the scope of one or more of the claims of the '040 Patent.

29. Defendants knowingly contribute to and induce infringement by supplying the accused products to customers with instructions for their use in connection with cellular systems that comply with the 3GPP LTE standard.

30. The accused products are developed to comply with the 3GPP LTE standard and thus are not staple articles or commodities of commerce suitable for substantial non-infringing use.

31. Defendants' customers who purchase the accused products and operate those products in accordance with Defendants' instructions directly infringe one or more claims of the '040 Patent.

32. During the course of ongoing license negotiations, on or before August 4, 2012, Wi-LAN informed Defendants that its patent portfolio included patents relevant to the 3GPP LTE standard.

33. On or about November 18, 2012, Wi-LAN communicated to Defendants a list of patents in Wi-LAN's portfolio. The '040 Patent, identified by its U.S. Patent number, serial number, publication number, and title was included in the list.

34. Upon information and belief, Defendants have had knowledge of the '040 Patent prior to the filing of this Complaint, by way of the information disclosed to Defendants during the licensing negotiations.

35. Defendants have had actual notice of the '040 Patent since at least November 18, 2012, or, alternatively by December 6, 2012, when this suit was filed.

36. Since becoming aware of the '040 Patent, Defendants were objectively reckless and knew or should have known that the accused products and the components thereof were especially made and/or especially adapted for use in infringing the '040 Patent.

37. Upon information and belief, Defendants' infringement of the '040 Patent has been and continues to be willful and deliberate.

38. The '040 Patent is valid and enforceable.

39. By way of its infringing activities, Defendants have caused and continue to cause Wi-LAN to suffer damages, and Wi-LAN is entitled to recover from Defendants damages in an amount to be determined at trial.

#### **DEMAND FOR JURY TRIAL**

Wi-LAN demands a trial by jury for any and all issues triable of right before a jury.

#### **PRAYER FOR RELIEF**

WHEREFORE, Wi-LAN requests entry of judgment in its favor and against Defendants as follows:

A. Declaring that Defendants have willfully infringed one or more claims of each of U.S. Patent No. 8,315,640 and U.S. Patent No. 8,311,040;

B. Permanently enjoining Defendants and their 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. 8,315,640 and U.S. Patent No. 8,311,040;

C. Awarding to Wi-LAN damages arising out of Defendants' infringement of one or more of each of U.S. Patent No. 8,315,640 and U.S. Patent No. 8,311,040, together with enhanced damages, attorneys' fees, pre-judgment and post-judgment interest, in an amount to be determined at trial;

D. Awarding to Wi-LAN its costs in connection with this action; and

E. Such other and further relief in law or in equity to which Wi-LAN may be justly entitled.

Dated: March 19, 2013

Respectfully submitted,

By: /s/ Samuel O. Patmore

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 19, 2013, the foregoing document is being served this day on all counsel of record, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Samuel O. Patmore  
Samuel O. Patmore