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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

WI-LAN USA, INC. and WI-LAN, INC.,	
	Plaintiffs,
vs.	
APPLE INC.,	
	Defendant.
AND ALL RELATED COUNTERCLAIMS.	

CASE NO. 13cv0798 DMS (BLM)
**ORDER DENYING WI-LAN USA,
INC. AND WI-LAN INC.’S
MOTION FOR
RECONSIDERATION**

On September 30, 2014, this Court issued an Order granting Apple’s motion for summary judgment of noninfringement of the Patents in Suit. On October 28, 2014, the Wi-Lan parties (“Wi-Lan”) filed the present motion. They seek reconsideration of the Court’s decision that Apple does not infringe the ‘040 Patent and claims 1 and 2 of the ‘640 Patent.¹ Apple filed an opposition to the motion, and Wi-Lan filed a reply.

“Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” *School Dist. No. 1J*,

¹ Wi-Lan does not seek reconsideration of the Court’s decision that Apple does not infringe claims 6 and 7 of the ‘640 Patent.

1 *Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Here,
2 Wi-Lan argues the Court committed clear error in its constructions of “specified
3 connection” in the ‘040 Patent and “UL connections” in the ‘640 Patent. Wi-Lan also
4 asserts the Court committed clear error in interpreting the ‘040 Patent to require more
5 than one “specified connection.”

6 With respect to the Court’s construction of the term “specified connection” as
7 “the communications link between a node and a specific end user” and “UL
8 connections” as “an uplink connection between the wireless subscriber radio unit and
9 its users,” Wi-Lan has not shown the Court committed clear error. Notably, the present
10 motion is the first time Wi-Lan has challenged the Court’s constructions of these terms,
11 despite filing a motion for reconsideration of other terms and the passage of more than
12 ten months since the Court issued its rulings. The impetus for Wi-Lan’s motion appears
13 to be the Court’s finding of noninfringement, which although adverse to Wi-Lan, does
14 not demonstrate the Court’s claim construction is clearly erroneous. The evidence Wi-
15 Lan relies on to support its argument of clear error is not newly discovered. It has been
16 available to Wi-Lan since the outset of this case, as have the arguments it raises in the
17 present motion.

18 Nevertheless, the Court has considered Wi-Lan’s arguments and its newly
19 produced evidence, and finds they do not demonstrate the Court’s claim construction
20 is clearly erroneous. With respect to the ‘040 Patent, although the Patentee amended
21 the claims in the parent application to use the term “specified connection” instead of
22 “user connection,” that amendment does not demonstrate the Patentee intended to
23 change the connection that was being described. (See Decl. of Dirk Thomas in Supp.
24 of Mot. (“Thomas Decl.”), Ex. 5 at 1164.) Furthermore, the evidence Wi-Lan relies on
25 refers to a “connection,” not a “specified connection” as that term is used in the claims.
26 (*Id.* at 1301; Thomas Decl., Ex. 6 at 1531.) With respect to the ‘640 Patent, the Court
27 has reviewed the newly provided evidence, and finds it does not demonstrate the

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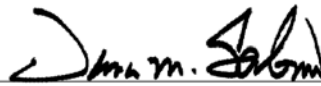
1 Court's construction of "UL connection" is clearly erroneous. Therefore, the Court
2 declines to reconsider its constructions of these terms.

3 Wi-Lan has also failed to show that the Court's interpretation of the '040 Patent
4 as requiring more than one "specified connection" is clearly erroneous. Figures 3 and
5 7 support the Court's finding that more than one "specified connection" is required. So
6 do many other portions of the specification. (*See, e.g.*, '040 Patent at 4:40-41, 50-51)
7 (describing nodes as serving "multiple connections for users" and transmitting
8 information "to the appropriate connection for transmission to the appropriate user");
9 (*id.* at 6:19-20) (stating connection interface is "coupled to a plurality of user
10 connections"). Accordingly, the Court declines to reconsider its finding that the
11 asserted claims of the '040 Patent require more than one "specified connection."

12 For these reasons, Wi-Lan's motion for reconsideration is denied. A telephonic
13 status conference shall be held on **December 18, 2014**, at **2:30 p.m.** to discuss the
14 further progress of this case. Counsel for Wi-Lan shall organize and initiate the
15 conference call to the Court.

16 **IT IS SO ORDERED.**

17 DATED: December 12, 2014

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20 HON. DANA M. SABRAW
21 United States District Judge
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