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The Ins and Outs of Patent Damages

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**United States Court of Appeals
for the Federal Circuit**

APPLE INC.,
Plaintiff-Appellant

v.

WI-LAN INC.,
Defendant-Cross-Appellant

2020-2011, 2020-2094

Appeals from the United States District Court for the Southern District of California in Nos. 3:14-cv-02235-DMS-BLM, 3:14-cv-1507-DMS-BLM, Judge Dana M. Sabraw.

Decided: February 4, 2022

MARK S. DAVIES, Orrick, Herrington & Sutcliffe LLP, Washington, DC, argued for plaintiff-appellant. Also represented by BENJAMIN PAUL CHAGNON, JAMES ANGLIN FLYNN, KATHERINE M. KOPP; MAX CARTER-OBERSTONE, San Francisco, CA; THOMAS KING-SUN FU, Los Angeles, CA; SEAN C. CUNNINGHAM, ERIN GIBSON, STANLEY JOSEPH PANIKOWSKI, III, DLA Piper LLP (US), San Diego, CA.

JEFFREY A. LAMKEN, MoloLamken LLP, Washington, DC, argued for defendant-cross-appellant. Also represented by RAYINER HASHEM, LUCAS M. WALKER; LEONID

GRINBERG, New York, NY; WARREN LIPSCHITZ, MIKE MCKOOL, McKool Smith, PC, Dallas, TX.

Before MOORE, *Chief Judge*, BRYSON and PROST, *Circuit Judges*.

MOORE, *Chief Judge*.

The U.S. District Court for the Southern District of California entered a final judgment (1) that Apple infringed claims 9, 26, and 27 of U.S. Patent No. 8,457,145 and claim 1 of U.S. Patent No. 8,537,757; (2) that those claims had not been proven invalid; and (3) that awarded Wi-LAN \$85.23 million in damages. Apple appeals, and Wi-LAN cross-appeals. For the following reasons, we affirm-in-part, reverse-in-part, vacate-in-part, and remand.

BACKGROUND

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The '145 patent is directed to allocating bandwidth in a wireless communication system. '145 patent at Abstract, 1:28–30. Wireless communication systems facilitate two-way communication between user devices (e.g., mobile phones) and an associated fixed network infrastructure (e.g., wire-line system). *Id.* at 1:36–47. The wireless network described in the '145 patent does so using subscriber units associated with the user devices. *Id.* The subscriber units communicate with a base station connected to the fixed network infrastructure. *Id.* Because each base station has limited bandwidth for transmissions to and from the subscriber units it supports, those subscriber units must share bandwidth. *Id.* at 9:8–11. To that end, the subscriber units send bandwidth requests to the base station, which then allocates bandwidth. *Id.* at 3:19–28. This process itself also requires bandwidth. The '145 patent purports to provide a bandwidth allocation method that requires less bandwidth. *Id.* at 5:41–43, 51–56; 6:65–67.

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"The Ins and Outs of Patent Damages"