

ORIGINAL

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23 CORPORATION

24  
25 UNITED STATES DISTRICT COURT  
26 NORTHERN DISTRICT OF CALIFORNIA

27 REALTEK SEMICONDUCTOR  
28 CORPORATION, a Taiwanese corporation,

Plaintiff,

vs.

LSI CORPORATION, a Delaware corporation;  
and AGERE SYSTEMS, INC., a Delaware  
corporation,

Defendants.

FILED  
JUN 29 2012  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Case No. **12 3451**

ORIGINAL COMPLAINT

DEMAND FOR JURY TRIAL

DMR

Plaintiff Realtek Semiconductor Corporation ("Realtek") alleges as follows for its Complaint against LSI Corporation ("LSI") and Agere Systems, Inc. ("Agere") (collectively, "Defendants"):

## NATURE OF THE ACTION

1  
2           1.       Realtek brings this action for Defendants' breach of their contractual commitments to  
3 the Institute of Electrical and Electronics Engineers Standards Association ("IEEE-SA") and its  
4 members, affiliates and adopters — including Realtek.

5           2.       The IEEE-SA is the standard setting arm of the IEEE, and it promulgates technical  
6 standards in a variety of fields, including telecommunications. The IEEE-SA has specific policies  
7 designed to address situations where a participant in the standards setting efforts owns a patent or  
8 patent application deemed "essential" to the standard.

9           3.       Defendant Agere participated in the IEEE-SA standards setting efforts relating to the  
10 wireless technology known as "wireless local area network" ("WLAN"). Pursuant to the IEEE-SA  
11 policy regarding "essential" patents, Agere agreed to offer to license any of the patents that it  
12 identified as "essential" to the applicable WLAN standard(s) to any entity under reasonable rates on  
13 a non-discriminatory basis. Realtek is informed and believes and thereon alleges that LSI is legally  
14 bound by Agere's contractual obligations to the IEEE-SA, and LSI has admitted the same in writing  
15 to Realtek.

16           4.       IEEE-SA and its participants and affiliates and adopters of the standards, including  
17 Realtek, relied on Defendants' promises in developing, adopting and implementing IEEE-SA  
18 technical standards into WLAN-compliant products. These standards are now implemented  
19 worldwide in a variety of electronic devices that have become commonplace. Realtek invested  
20 substantial resources in developing and marketing products in compliance with these standards,  
21 relying on the assurances of participating patent holders — including Defendants — that any patents  
22 asserted to be "essential" by such patent holders would be available for licensing on such terms,  
23 regardless of whether such patents were, in fact, used in any particular implementation.

24           5.       Defendants broke their promise to IEEE-SA and its members, affiliates and adopters  
25 by refusing to offer to Realtek a license that is consistent with the IEEE-SA's requirements of  
26 reasonable and non-discriminatory terms.

27           6.       Defendants' breach of their commitments does not depend on whether any patents  
28 which Defendants have identified in relation to standards are, in fact, "essential" to practicing those

standards, whether those standards can be practiced in ways that do not infringe the identified patents or whether Realtek has infringed any valid Defendant patents. Because Defendants promised to license any such patents on reasonable and non-discriminatory terms, companies that rely on those commitments are entitled to avoid becoming embroiled in patent controversies and to receive the benefit of an offer of a reasonable and non-discriminatory license.

7. Accordingly, Realtek seeks: (a) a judicial declaration that Defendants' promises to IEEE-SA and its members, affiliates and adopters constitute contractual obligations that are binding and enforceable by Realtek; (b) a judicial declaration that Defendants have breached these obligations by demanding excessive and discriminatory royalties from Realtek; (c) a judicial accounting of what constitutes a royalty rate in all respects consistent with Defendants' promises for WLAN patents identified as "essential" by Defendants; and (d) a judicial determination of and compensation for Defendants' breach and other wrongful acts.

### PARTIES

8. Plaintiff Realtek is a corporation organized under the laws of Taiwan with its principal place of business at No.2 Innovation Road II, Hsinchu Science Park, Hsinchu 300, Taiwan.

9. Founded in 1987, Realtek is a leading designer and supplier of integrated circuits, including for WLAN technology.

10. Upon information and belief, Defendant LSI is a corporation organized and existing under the laws of Delaware, with its principal place of business at 1621 Barber Lane, Milpitas, California 95035. On information and belief, LSI is the parent company of Defendant Agere and is legally bound by Agere's contractual commitments to the IEEE-SA.

11. Upon information and belief, Defendant Agere is a Delaware corporation having its principal place of business at 110 American Parkway NE, Allentown, Pennsylvania.

12. Upon information and belief, Agere was incorporated in Delaware in 2000 as a result of a reorganization by Lucent Technologies, Inc. ("Lucent), in which Lucent spun off its optoelectronic components and microelectronic businesses into Agere. Upon information and belief, the reorganization and resulting spin-off of Agere as a separate entity were completed in June 2002. Upon information and belief, Lucent itself resulted from a reorganization of AT&T Corporation

1 (“AT&T”). Upon information and belief, Agere obtained rights to these patents which it has  
2 represented as “essential” to WLAN through assignment from Lucent, which, in turn, obtained rights  
3 to these patents from AT&T.

4 13. Upon information and belief, Agere was acquired by LSI in 2007 and is a wholly-  
5 owned subsidiary of LSI. Upon information and belief, Agere maintains facilities in the Northern  
6 District.

### 7 **JURISDICTION AND VENUE**

8 14. This Court has jurisdiction over the subject matter of this dispute pursuant to 28  
9 U.S.C. § 1332, because this is an action between citizens of different states and because the value of  
10 declaratory and injunctive relief sought, the value of Realtek’s rights this action will protect and  
11 enforce, and the extent of the injury to be prevented exceed the amount of \$75,000, exclusive of  
12 interest and costs.

13 15. Upon information and belief, Defendants are subject to this Court’s personal  
14 jurisdiction because LSI has its principal place of business in this district, and Agere conducts  
15 business and has continuous and systematic contacts with the State of California in this district.

16 16. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(a), 1391(c), and  
17 1391(d).

### 18 **BACKGROUND**

#### 19 **Introduction to Standards**

20 17. New wireless technologies typically are only broadly commercialized after service  
21 providers and device manufacturers agree on compatible technology specifications for related  
22 products or services. For virtually all successful wireless technologies, that process has involved  
23 inclusive, multi-participant standards development efforts conducted under the auspices of leading  
24 standards development organizations.

25 18. Technical standards play a critical role in the development of wireless technologies.  
26 Standards facilitate the adoption and advancement of technology, as well as the development of  
27 products that can interoperate with one another. Companies that produce products compatible with a  
28 standard can design products by referencing only the standard documentation, without the need to

1 communicate separately with every other company with which their products may need to  
2 interoperate. Companies producing products that implement and are tested to a standard can  
3 therefore be confident that their products will operate with other products that also are compatible  
4 with that standard.

5       19. Standards development also reduces costs for both suppliers and purchasers. For  
6 suppliers, standardization reduces the need in many instances to develop products to a particular  
7 purchaser's specifications. Accordingly, because a single product or product line may be sold to  
8 multiple purchasers and distributed more widely, manufacturing volumes increase and per unit costs  
9 decrease. Purchasers benefit from increased price competition among suppliers. Because many  
10 suppliers make standards-compliant products, switching suppliers typically does not require a  
11 substantial redesign of one's products or a substantial technical transfer to enable the new supplier to  
12 produce compatible products. The lower "switching cost" intensifies competition among suppliers,  
13 leading to lower prices.

14       20. As a practical matter, the technologies that are used to allow a consumer electronics  
15 device to connect wirelessly to the Internet are described in standards adopted by a recognized SDO  
16 (standard development organization), and thereby accepted by key industry members, in order to be  
17 commercially successful. For example, Realtek's products could not be incorporated into third-party  
18 devices that connect wirelessly to the Internet unless its products were compatible with standards  
19 described by an SDO.

20       21. On the other hand, technical standardization also creates a "lock-in" effect and the  
21 risk of "patent hold-up." Although standards are the products of coordination and compromise  
22 among competitors, certain aspects of standards may be -- and often are -- claimed by patents.  
23 Before standardization, the royalty a patentee can earn from a patent license for its technology is  
24 constrained in part by the availability of alternative technical approaches to perform that function. If  
25 a standard requires a designer to employ that patented technology, however, the patentee may  
26 demand royalties far in excess of what is warranted by the intrinsic value of the technology.

27       22. In order to reduce the likelihood that implementers of their standards will be subject  
28 to abusive practices by patent holders, SDOs have adopted rules, policies and procedures that

1 address the disclosure and licensing of intellectual property, such as patents or patent applications,  
2 that SDO participants may assert in relation to the practice of the standard under consideration.  
3 These rules, policies and/or procedures are set out in the intellectual property rights policies (“IPR  
4 policies”) of the SDOs.

5 23. Many IPR policies — including those at issue in this litigation — encourage or  
6 require participants to disclose on a timely basis any IPR that they believe are sufficiently relevant to  
7 standards under consideration. These disclosures permit the SDOs and their members to evaluate  
8 technologies with full knowledge of disclosed IPR that may affect the costs of implementing the  
9 standard.

10 24. Unless the patent holder specifically discloses that it is not willing to provide licenses  
11 under reasonable and non-discriminatory terms, IPR policies — including those at issue in this  
12 litigation — require participants claiming to own such “essential” patents to offer licenses for those  
13 patents to any implementer of the standard on reasonable and non-discriminatory terms and  
14 conditions. As their inclusion in the IPR policies of various standards development organizations  
15 suggests, such commitments are crucial to the standards development process. They enable  
16 participants in standards development to craft technology standards with the expectation that an  
17 owner of any patented technology will be prevented from demanding unfair, unreasonable, or  
18 discriminatory licensing terms and thereby be prevented from keeping parties seeking to implement  
19 the standard from doing so or imposing undue costs or burdens on parties seeking to implement the  
20 standard.

### 21 **Wireless LAN Standards**

22 25. Defendants’ unlawful licensing demands pertain in part to patents that they claim are  
23 “essential” to a widely practiced standard for wireless Internet connectivity known as “WLAN,”  
24 “Wi-Fi,” and/or “802.11.”

25 26. WLAN enables an electronic device to access the Internet wirelessly at high speeds  
26 over short distances. WLAN networks typically consist of one or more access points that are  
27 connected to an Ethernet local area network, each of which communicates by radio signals with  
28 devices such as notebook computers and other electronics devices.

27. The use of WLAN technology has grown in the United States since its introduction in the 1990s. Manufacturers now offer WLAN connectivity in various devices for various reasons.

28. WLAN is based on the 802.11 wireless networking standard developed by the Institute of Electrical and Electronics Engineers ("IEEE") beginning in the early 1990s. The initial 802.11 protocol ("legacy 802.11") was released in 1997. Since then, there have been a number of amendments issued, including, among others, 802.11a (1999), 802.11b (1999), 802.11e (2005, now incorporated into 802.11-2007), 802.11g (2003), 802.11-2007 (consolidation of the a, b, d, e, g, h, i, j amendments), and 802.11n (2009).

### **Defendants' Involvement in Development of the WLAN Standards**

29. The standard setting arm of IEEE, the IEEE-SA, promulgates technical standards in a variety of fields, including telecommunications. IEEE-SA had an IPR policy at the time it was drafting the 802.11 (WLAN) protocols. Under the IPR policy, when individuals participating in IEEE standards development came to believe that a company, university, or other patent holder owned patents or patent applications that might be "essential" to implement an IEEE standard under development, IEEE-SA would request Letters of Assurance from those entities.

30. The requirements for the Letters of Assurance sought by IEEE are set forth in Clause 6 of the IEEE-SA Standards Board Bylaws. Clause 6 of those Bylaws (which was revised only slightly over the years) generally provides in pertinent part:

A Letter of Assurance shall be either:

- a) A general disclaimer to the effect that the submitter without conditions will not enforce any present or future Essential Patent Claims against any person or entity making, using, selling, offering to sell, importing, distributing, or implementing a compliant implementation of the standard; or
- b) A statement that a license for a compliant implementation of the standard will be made available to an unrestricted number of applicants on a worldwide basis without compensation or under reasonable rates, with reasonable terms and conditions that are demonstrably free of any unfair discrimination.

31. According to IEEE's IPR policy, Letters of Assurance, once provided, are irrevocable and shall be in force at least until the standard's withdrawal.

1           32.     If the Letters of Assurance were not provided for patents asserted to be “essential” by  
2 participants, the IEEE working group either would revise the standard so that compliance could be  
3 achieved without facing any potential issues related to such patent(s), discontinue work on the  
4 standard altogether, or otherwise proceed in a manner consistent with the non-disclosure and lack of  
5 Letters of Assurance so that participating and relying entities would not be exposed to discriminatory  
6 patent assertions and/or unreasonable licensing terms.

7           33.     Defendants have represented to Realtek that Agere owns rights in a number of patents  
8 and pending applications that it asserts are or may become “essential” to comply with one or more  
9 amendments to the 802.11 standard. These patents include U.S. Patent Nos. 6,452,958 (“the ‘958  
10 patent”) and 6,707,867 (“the ‘867 patent”). Realtek does not concede that such listed patents are  
11 either “essential” to the 802.11 standards or are practiced in the implementation of such standards in  
12 any Realtek products.

13           34.     Prior to the releases of the 802.11 protocols, Agere submitted Letters of Assurance to  
14 the IEEE pursuant to Clause 6 of the IEEE-SA Standards Board Bylaws with respect to those  
15 protocols, guaranteeing that any “essential” patents would be licensed under reasonable and non-  
16 discriminatory terms and conditions. Defendants’ Letters of Assurance apply to any “essential”  
17 patents they then held as well as any other “essential” patents they subsequently obtained.  
18 Specifically, Agere’s Letters of Assurance identified the ‘958 and ‘867 patents (the latter by its  
19 application number, U.S. Application No. 10/092,295) as including “one or more claims that may be  
20 required to practice” the 802.11e and 802.11g standards, and stated that Defendants “is prepared to  
21 grant a license to an unrestricted number of applicants on a worldwide, non-discriminatory basis and  
22 on reasonable terms and conditions to comply with the [Proposed] IEEE Standard.” True and  
23 correct copies of Agere’s Letters of Assurance are attached hereto as Exhibit A.

24           35.     In reliance on these letters of assurance, IEEE released the 802.11 standard and  
25 amendments to that standard which Defendants now asserts incorporated their patented technology.  
26 On information and belief, absent the Letters of Assurance, the relevant IEEE working groups would  
27 have either revised the standards, employing alternative technologies instead, or stopped working on  
28 the protocols.



36. In submitting their Letters of Assurance pursuant to the applicable IEEE IPR policy, Defendants entered into an actual and/or implied contract with IEEE, for the benefit of IEEE members and any entity that implements the 802.11 standard. Defendants are bound by their agreements to offer licenses consistent with the referenced IEEE bylaws.

**Realtek's Reliance on Commitments with Respect to WLAN Technologies**

37. Realtek and other companies adopting the WLAN standard relied on Defendants' commitments to ensure that the royalties Defendants would seek would conform to the promises made by Defendants.

38. In reliance on the integrity of the SDO process and the commitments made by Defendants and others regarding WLAN patents they deem "essential," Realtek began developing and selling its products which are compatible with WLAN connectivity. Realtek made its decision to develop and sell products compatible with WLAN connectivity in reliance on, and under the assumption that, it and/or any third party supplier could avoid patent litigation and take a license to any patents that Defendants, or any other company, has disclosed to the WLAN standard under IEEE's well publicized IPR policy.

39. Realtek and other manufacturers of WLAN-compliant products necessarily relied on the commitments of Defendants and others to disclose and license any identified patents under these terms to avoid any patent controversy even if such patents are not necessary to compliant implementations or actually practiced in any particular implementation.

**Defendants' Breach of Their Contractual Obligation to License Their Identified Patents on The Promised Terms**

40. In willful disregard of the commitments they made to IEEE and its members, affiliates and adopters, Defendants have refused to extend to Realtek a license consistent with Defendants' promises for their patents that they identified as "essential" to WLAN connectivity.

41. Instead, Defendants have offered to license their allegedly "essential" patents to Realtek under only unreasonable and discriminatorily exorbitant terms. Defendants have thus unreasonably and discriminatorily targeted Realtek's products for the purpose of extracting unreasonable royalties from Realtek.

42. By letter to Realtek, dated March 7, 2012, Warren K. Waskiewicz, LSI's Vice President of Intellectual Property Business, asserted that Realtek products, as incorporated into certain third-party devices, infringe the '958 and '867 patents. On March 12, 2012, less than a week later, Defendants filed a complaint with the U.S. International Trade Commission ("ITC") against Realtek and numerous other respondents. The ITC instituted an investigation based on that complaint on April 11, 2012, USITC Inv. No. 337-TA-837 (Certain Audiovisual Components and Products Containing the Same). The complaint, among other things, alleged that Realtek had infringed the '958 and '867 patents, the same patents Defendants identified as necessary or essential to practice the 802.11 standard.

43. Realtek responded to Mr. Waskiewicz's letter on May 24, 2012, requesting that LSI and/or Agere disclose the reasonable and non-discriminatory ("RAND") license terms consistent with Agere's contractual obligations. On June 20, 2012, LSI provided license terms to Realtek for the identified "essential" patents. Although the terms of the proposal are confidential, the effect of the proposal, if accepted, is that Realtek would be required to pay a royalty that exceeds the selling price of Realtek's products, which is inherently unreasonable. Thus, by failing to license the identified "essential" patents on reasonable terms, Defendants have breached their RAND obligations.

44. Upon information and belief, Defendants have made licensing proposals to other component manufacturers that included a different royalty structure that did not have the impact of requiring a royalty that would exceed the selling price of the component. By treating Realtek differently than similarly-situated prospective licensees, Defendants' proposal to Realtek is discriminatory and unfair. Thus, by failing to license the identified "essential" patents to Realtek on non-discriminatory terms, Defendants have further breached their RAND obligations.

45. Defendants have thereby refused to offer to license their allegedly "essential" patents at a reasonable rate, with reasonable terms, under conditions that are demonstrably free of any unfair discrimination.

46. Defendants have represented that they possesses patents "essential" to such implementations. On that basis, Defendants are required to tender an offer to license their "essential"

1 patents in all respects consistent with their binding assurances to the IEEE and its members, affiliates  
2 and adopters. Defendants' demands constitute a breach of their WLAN commitments.

3 **CLAIMS FOR RELIEF**

4 **FIRST CAUSE OF ACTION**

5 **(Breach Of Contract)**

6 47. Realtek realleges and incorporates by reference the allegations set forth in the  
7 foregoing paragraphs.

8 48. Defendants entered into express or implied contractual commitments with IEEE-SA  
9 and its members, affiliates and adopters relating to the WLAN standard.

10 49. Each third party that would potentially implement the WLAN technology was an  
11 intended beneficiary of those contracts.

12 50. Defendants were contractually obligated, among other things, to offer a license to  
13 their identified patents consistent with the applicable patent policy of the IEEE-SA Standards Board  
14 Bylaws.

15 51. Defendants breached their contract, among other ways, by refusing to offer licenses to  
16 their identified patents under reasonable rates, with reasonable terms, and on a non-discriminatory  
17 basis.

18 52. Defendants further breached these contracts by filing patent infringement actions  
19 seeking to enjoin Realtek's implementation of the technology of the allegedly "essential" patents and  
20 to exclude Realtek from, among other things, importing or selling products that implement such  
21 technology. To the extent this technology is actually necessary to implementation of the relevant  
22 standards (as Defendants have asserted), Defendants were obligated to offer licenses to Realtek on  
23 RAND terms.

24 53. As a result of Defendants' contractual breaches, Realtek has been injured in its  
25 business or property, and is threatened by imminent loss of profits, loss of customers and potential  
26 customers, and loss of goodwill and product image.

27 54. Realtek will suffer irreparable injury by reason of the acts, practices, and conduct of  
28 Defendants alleged above until and unless the Court enjoins such acts, practices, and conduct.

1           55.     Among other things, Realtek is entitled to a preliminary and permanent injunction  
2 prohibiting Defendants from enforcing their allegedly “essential” patents against Realtek, or from  
3 excluding Realtek from implementing the technology allegedly embodied in those patents.

4                               **SECOND CAUSE OF ACTION**

5                               **(Promissory Estoppel)**

6           56.     Realtek realleges and incorporates by reference the allegations set forth in the  
7 foregoing paragraphs.

8           57.     Defendants made a clear and definite promise to potential licensees through their  
9 commitments to IEEE that they would license identified patents under reasonable rates, with  
10 reasonable terms, and on a non-discriminatory basis.

11          58.     The intended purpose of Defendants’ promises was to induce reliance. Defendants  
12 knew or should have reasonably expected that this promise would induce companies producing  
13 products in wireless networking technologies, such as Realtek, to develop products compliant with  
14 the relevant standards.

15          59.     Realtek developed and marketed its products and services in reliance on Defendants’  
16 promises, as described above, including making its products and services compliant with WLAN  
17 technical standards in various Realtek product offerings.

18          60.     Defendants are estopped from reneging on these promises to the IEEE under the  
19 doctrine of promissory estoppel.

20          61.     Realtek has been harmed as a result of its reasonable reliance on Defendants’  
21 promises and is threatened by the imminent loss of profits, loss of customers and potential  
22 customers, and loss of goodwill and product image.

23          62.     Realtek will suffer irreparable injury by reason of the acts and conduct of Defendants  
24 alleged above until and unless the court enjoins such acts, practices and conduct.

25          63.     Among other things, Realtek is entitled to a preliminary and permanent injunction  
26 prohibiting Defendants from enforcing the allegedly “essential” patents against Realtek and its  
27 products.  
28

**THIRD CAUSE OF ACTION**

**(Declaratory Judgment that Defendants Must Offer Realtek a RAND License Or That The Alleged "Essential" Patents Are Unenforceable As to Realtek)**

64. Realtek realleges and incorporates by reference the allegations set forth in the foregoing paragraphs.

65. Defendants expressly stated in their declarations to IEEE that they would license their patents which it identified as essential to WLAN under reasonable rates and non-discriminatory terms.

66. There is a dispute between the parties concerning whether Defendants have offered to license to Realtek patents consistent with Defendants' declarations and the referenced policy of the IEEE-SA Standards Board.

67. The dispute is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

68. Realtek is entitled to a declaratory judgment that Defendants have not offered license terms to Realtek on terms consistent with Defendants' declarations and the referenced policy of the IEEE-SA Standards Board.

69. Because Defendants have refused to offer a license on RAND terms to Realtek, Realtek is further entitled to a declaratory judgment setting forth the RAND terms and conditions for a license to the RAND terms, including the applicable royalty rate.

70. Realtek is further entitled to a declaratory judgment that if Defendants refuse to offer a license on RAND terms, the allegedly "essential" patents shall be unenforceable as to Realtek.

**FOURTH CAUSE OF ACTION**

**(Unfair Competition Under Cal. Bus. & Prof. Code § 17200)**

71. Realtek realleges and incorporates by reference the allegations set forth in the foregoing paragraphs.

72. By the acts alleged, Defendants have engaged in unfair competition within the meaning of Cal. Bus. & Prof. Code § 17200, et seq. Defendants' conduct, as set forth in these counterclaims, constitutes unfair and deceptive business acts or practices, significantly threatening

1 and harming competition in California and elsewhere. Defendants' unfair, and fraudulent business  
2 acts and practices are a direct and proximate cause of injury to the public and Realtek.

3 73. Defendants engaged in unfair and deceptive conduct by refusing to offer licenses with  
4 respect to their identified patents, despite their acknowledged RAND commitments to Realtek.

5 74. Defendants committed unfair business acts or practices by failing to meet their  
6 RAND commitments by refusing to offer Realtek a license on RAND terms and by asserting their  
7 identified patents against Realtek and pursuing an injunction, notwithstanding that Realtek is  
8 licensed, or, in the alternative, has the right to a RAND license for the patents by virtue of  
9 Defendants' RAND commitments.

10 75. As a direct, proximate, and foreseeable result of Defendants' wrongful conduct, as  
11 alleged above, competition has been injured in the market for WLAN-compatible products.  
12 Defendants' wrongful conduct also brings a significant threat of injury for downstream price,  
13 quality, and innovation competition for WLAN-compatible products, thereby causing injury to  
14 consumers in California and elsewhere. These threatened injuries include the inevitable passing on to  
15 consumers of improper royalties demanded by Defendants and decreases in innovation and quality  
16 competition for end products that comply with the WLAN standard. Among other things,  
17 Defendants' abusive conduct threatens to dampen innovation for products that comply with the  
18 WLAN standard by eliminating manufacturers' ability to invest in and bring to market innovative  
19 products with confidence that holders of claimed essential patents will not seek to enjoin their  
20 products or demand exorbitant, non-RAND licensing terms.

21 76. As a direct, proximate, and foreseeable result of Defendants' wrongful conduct, as  
22 alleged above, Realtek has suffered harm in California and elsewhere as a supplier of chips for  
23 WLAN-compatible products. This harm includes, among other things: Defendants' threatened  
24 injunctive relief against Realtek products notwithstanding Defendants' failure to offer a RAND  
25 license despite Defendants' assurance that it would offer such RAND licenses and being forced to  
26 expend resources to defend claims for patent infringement in other actions. Further, Realtek has  
27 suffered or faces the threat of, in particular, increased costs, lower quality or innovation in the  
28 market for WLAN-compatible products, loss of profits, loss of customers and potential customers,

1 loss of goodwill and product image, uncertainty in business planning, and uncertainty among  
2 customers and potential customers.

3  
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Realtek prays for relief as follows:

6 A. Adjudge and decree that Defendants are liable for breach of contract;

7 B. Adjudge and decree that Defendants are liable for promissory estoppel;

8 C. Decree that Defendants have violated the California Unfair Competition Law and  
9 enjoin Defendants from further violations of that Law;

10 D. Decree that Realtek is entitled to license any and all patents that fall within  
11 Defendants' commitments to the IEEE in relation to WLAN technology, including the '958 and '867  
12 patents, on a non-discriminatory basis on reasonable terms and conditions;

13 E. Enjoin Defendants from further demanding excessive royalties from Realtek that are  
14 not consistent with Defendants' RAND obligations, and from enforcing, or seeking to enforce,  
15 patent infringement claims in the ITC (or elsewhere) in breach of their RAND obligations as alleged  
16 above;

17 F. Decree that if Defendants refuse to offer Realtek a license on a non-discriminatory  
18 basis on reasonable terms and conditions, that Defendants' patents are unenforceable as to Realtek  
19 and its products;


20 G. Enter judgment against Defendants for the amount of damages that Realtek proves at  
21 trial;

22 H. Enter a judgment awarding Realtek its expenses, costs, and attorneys fees in  
23 accordance with Rule 54(d) of the Federal Rules of Civil Procedure; and

24 I. For such other and further relief as the Court deems just and proper.  
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Date: June 29, 2012

By:   
Adrian Sue Shin  
Attorneys for Plaintiff  
*REALTEK SEMICONDUCTOR*  
*CORPORATION*


REED SMITH LLP  
A limited liability partnership formed in the State of Delaware



**DEMAND FOR JURY TRIAL**

Realtek hereby demands a jury trial on all issues so triable.

Date: June 29, 2012

By:   
Adrian Sue Shin  
Attorneys for Plaintiff  
*REALTEK SEMICONDUCTOR*  
*CORPORATION*

REED SMITH LLP

A limited liability partnership formed in the State of Delaware

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## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained hereon neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (See INSTRUCTIONS ON REVERSE PAGE OF THIS FORM)

## I. (a) PLAINTIFFS

REALTEK SEMICONDUCTOR CORPORATION

## DEFENDANTS

LSI CORPORATION and AGERE SYSTEMS, INC.

(b) County of Residence of First Listed Plaintiff Taiwan

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Delaware

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) Attorneys (Firm Name, Address, and Telephone Number)

Scott Baker/William Overend/Adrian Sue Shin

REED SMITH LLP

101 Second Street, 18<sup>th</sup> Floor

San Francisco, CA 94105

Telephone: 415.543.8700

Attorneys (If Known)

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |  |   |  |
|---|--|---|--|
| Citizen of This State                   | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1    | Incorporated or Principal Place of Business In This State     | PTF <input type="checkbox"/> 4 DEF <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5         |
| Citizen or Subject of a Foreign Country | <input checked="" type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6                    |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

## VI. CAUSE OF ACTION

Brief description of cause:  
Breach of contract

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$75,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

## IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

☐ SAN FRANCISCO/OAKLAND☒ SAN JOSE☐ EUREKA

June 29, 2012

DATE

SIGNATURE OF ATTORNEY OF RECORD

**LETTER OF ASSURANCE FOR ESSENTIAL PATENTS**

Please return or FAX to: Secretary, IEEE-SA Standards Board Patent Committee  
Institute of Electrical and Electronics Engineers, Inc.  
445 Hoes Lane  
Piscataway, NJ 08855 USA  
FAX (+1 732-562-1571)

*No license is implied by submission of this Letter of Assurance*

**A. PATENT HOLDER/ORGANIZATION:**

Legal Name of Organization: Agere Systems Inc.

**B. PATENT HOLDER'S CONTACT FOR LICENSE APPLICATION:**

Name & Department: Caroline D. Liott, Manager - Licensing, Intellectual Property  
Address: 1100 American Parkway NE, Room 12C-350, Allentown, PA 18109  
Telephone: (610)712-3474 Fax: (610)712-3467 E-mail: cliott@agere.com

**C. IEEE STANDARD or PROPOSED IEEE STANDARD:**

Number: IEEE 802.11g  
Title: Further High-Speed Physical Layer Extension in the 2.4 GHz Band

**D. PATENT HOLDER'S POSITION REGARDING LICENSING ESSENTIAL PATENT RIGHTS:**

If the Patent Holder owns or controls granted patent(s) and/or pending applications that it believes may be infringed by compliance with the Proposed IEEE Standard, please specify the patent number, published application, and/or relevant claims. (A patent search is not required.)

Patent Number(s) (if known): See Appendix A attached hereto.

Relevant Claims (optional): \_\_\_\_\_

The Patent Holder states that its position with respect to licensing such patent(s) is as follows (*check one box only*):

- ☐ 1. The Patent Holder is prepared to grant a free license to an unrestricted number of applicants on a worldwide, non-discriminatory basis to comply with the [Proposed] IEEE Standard.
- ☒ 2. The Patent Holder is prepared to grant a license to an unrestricted number of applicants on a worldwide, non-discriminatory basis and on reasonable terms and conditions to comply with the [Proposed] IEEE Standard.
- ☐ 3. The Patent Holder is unwilling to grant licenses according to the provisions of either 1 or 2 above.
- ☐ 4. I am not aware of any patent(s) and/or patent claim(s) that my company may hold that would be relevant to the subject matter of the [Proposed] Standard.

**E. SIGNATURE:**

Print name of authorized person: Stephen R. Pomraning

Title of authorized person: Director - Licensing, Intellectual Property

Signature of authorized person: S. R. Pomraning Date: 1-24-03

*Note: This assurance applies from the date of the standard's approval to the date of the standard's withdrawal and is irrevocable during that period.*

**To Whom It May Concern:**

At this time, Agere Systems owns the following Issued United States patents and pending patent applications that include one or more claims that may be required to practice the draft standard for IEEE 802.11g (Further Higher-Speed Physical Layer Extension in the 2.4 GHz Band). Agere owns a large portfolio of patents, including a large number of patents in the Wireless Local Area Network space, and there may be other patents and patent applications in our patent portfolio that are required to meet the 802.11g standard in addition to the ones listed below.

<b>U.S. Issued Patents</b>	<b>U.S. Pending Patent Applications</b>
5,151,920	09/224,696 (corresponds to EP patent application 929,172)
5,546,420	10/092,295 (corresponds to EP patent application 615,363)
5,706,428	
5,751,739	
5,862,182	
6,404,732	
6,452,958	

Agere Systems will make available on a non-exclusive basis, under reasonable terms and conditions that are nondiscriminatory, licenses to patents and patent applications owned by Agere to the extent required to practice the IEEE 802.11g standard, subject to receipt by Agere of reciprocal licenses from the licensee.

If you have any questions regarding this matter, please contact Caroline Lott by e-mail ([clott@agere.com](mailto:clott@agere.com)) or telephone (610-712-3474).

## LETTER OF ASSURANCE FOR ESSENTIAL PATENTS

Please return or FAX to: Secretary, IEEE-SA Standards Board Patent Committee  
Institute of Electrical and Electronics Engineers, Inc.  
445 Hoes Lane  
Piscataway, NJ 08855 USA  
FAX (+1 732-562-1571)

No license is implied by submission of this Letter of Assurance

**A. PATENT HOLDER/ORGANIZATION:**

Legal Name of Organization: Agere Systems Inc.

**B. PATENT HOLDER'S CONTACT FOR LICENSE APPLICATION:**

Name & Department: Viren M Pathare, Manager - Licensing, Intellectual Property  
Address: 1100 American Parkway NE, Room 12C-347, Allentown, PA 18109  
Telephone: (610)712-6906 Fax: (610)712-3467 E-mail: pathare@agere.com

**C. IEEE STANDARD or PROPOSED IEEE STANDARD:**

Number: IEEE 802.11e  
Title: MAC enhancements for QoS

**D. PATENT HOLDER'S POSITION REGARDING LICENSING ESSENTIAL PATENT RIGHTS:**

If the Patent Holder owns or controls granted patent(s) and/or pending applications that it believes may be infringed by compliance with the Proposed IEEE Standard, please specify the patent number, published application, and/or relevant claims. (A patent search is not required.)

Patent Number(s) (if known): See Appendix A attached

Relevant Claims (optional): \_\_\_\_\_

The Patent Holder states that its position with respect to licensing such patent(s) is as follows (*check one box only*):

- ☐ 1. The Patent Holder is prepared to grant a free license to an unrestricted number of applicants on a worldwide, non-discriminatory basis to comply with the [Proposed] IEEE Standard.
- ☒ 2. The Patent Holder is prepared to grant a license to an unrestricted number of applicants on a worldwide, non-discriminatory basis and on reasonable terms and conditions to comply with the [Proposed] IEEE Standard.
- ☐ 3. The Patent Holder is unwilling to grant licenses according to the provisions of either 1 or 2 above.
- ☐ 4. I am not aware of any patent(s) and/or patent claim(s) that my company may hold that would be relevant to the subject matter of the [Proposed] Standard.

**E. SIGNATURE:**

Print name of authorized person: Stephen R. Pomraning

Title of authorized person: Director - Licensing, Intellectual Property

Signature of authorized person: S. R. Pomraning Date: 7-4-03

Note: This assurance applies from the date of the standard's approval to the date of the standard's withdrawal and is irrevocable during that period.

## Appendix A

### To Whom It May Concern:

At this time, Agere Systems Inc. owns the following issued United States patents and pending applications that include one or more claims that may be required to practice the draft standard for IEEE 802.11e (MAC enhancements for QoS). Agere owns a large portfolio of patents, including a large number of patents in the wireless Local Area Network space, and there may be other patents and patent applications in our patent portfolio that are required to meet the 802.11e standard in addition to the ones listed below.

U.S. Issued Patents	U.S. Pending Patent Applications
5,422,887	10/092,295
5,329,531	10/368,018
	09/859334

Agere Systems will make available on a non-exclusive basis, under reasonable terms and conditions that are non-discriminatory, licenses to patents and patent applications owned by Agere to the extent required to practice the IEEE 802.11e standard, subject to receipt by Agere of reciprocal licenses from the licensee.

If you have any questions regarding this matter, please contact Viren Pathare by e-mail ([pathare@agere.com](mailto:pathare@agere.com)) or telephone (610-712-6906).