

1 A. I heard his testimony. I didn't quite understand it, but I heard the reference to the 10 hours.
2 The testimony at issue is by USEI's expert David Kennedy that Intel asserts was used to
bolster the validity of the patents. *See id.* at 2.

3 Q. How much time did it take you and your team to reach the conclusion to actually enter the
4 deal that 3Com was proposing?

5 A. I don't know how many hours, but it was a full-time effort. Most -- weeks or a lot of weeks,
6 seven days a week between November and May 29th when we closed on the transaction. And
7 that was not just myself and other members of USEI. We had a team of patent attorneys, contract
8 attorneys, due diligence-type technical experts that we consulted with. We spent hundreds of
thousands of dollars analyzing these patents before we bought them. And, you know, at that point
-- before we were going to invest millions of dollars in them, **we wanted to make sure we felt
like the patents were valid and the technology had been successful.**

9 *Id.* at 4-5. Intel contends that this testimony was an attempt to bolster the validity of the patents, and
10 the reference to the due diligence was about USEI's conclusions based on attorneys' advice that the
11 patents were valid. *Id.* at 2.. This, USEI concludes, waives the privilege as to the underlying due
12 diligence. *Id.* USEI responds that (1) the waiver argument is predicated on Mr. Kennedy's use of
13 the word the use of the word "valid," and the context of his testimony shows he meant "valuable,"
14 (2) the testimony is that of an investor describing the process by which Parallel, USEI's parent
15 company, purchased the patents, and the full context shows that Mr. Kennedy was describing the
16 commercial success of the 3Com technology and 3Com's ability to license the technology, and (3)
17 the non-specific reference did not disclose the contents of the diligence investigation or the advice of
18 counsel and instead was about Mr. Kennedy's conclusions as an investor. *Id.* at 5-6. USEI also
19 points out that TI said that they would file a similar motion in front of the trial court in Texas that
20 heard the testimony, and that motion will be heard before that trial starts on June 16, 2014. *Id.* at 6.

21 Given the upcoming trial in Texas before the court that heard the testimony, it is appropriate to
22 let the court there consider the issue first. If TI does not file the motion, or if the parties otherwise
23 want the matter heard after any Texas ruling, then the parties may renew this dispute by filing a one-
24 page document cross-referencing ECF No. 1113 and attach any order.

25 Given this procedural context, the court denies ECF No. 1113 without prejudice.

26 **IT IS SO ORDERED.**

27 Dated: June 15, 2014

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LAUREL BEELER
United States Magistrate Judge