

Exhibit C

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 TYLER DIVISION

4 WI-LAN, INC.)
5 -vs-) DOCKET NO. 6:10cv521
6 ALCATEL-LUCENT USA, INC.,) Tyler, Texas
7 ET AL) 1:06 p.m.
8) July 11, 2013

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10 WI-LAN, INC.)
11 -vs-) DOCKET NO. 6:13cv252
12 HTC CORPORATION,)
13 ET AL)

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16 TRANSCRIPT OF TRIAL
17 AFTERNOON SESSION
18 BEFORE THE HONORABLE LEONARD DAVIS,
19 UNITED STATES CHIEF DISTRICT JUDGE, AND A JURY

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23 COURT REPORTERS: MS. SHEA SLOAN
24 MS. JUDY WERLINGER
25 211 W. Ferguson
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26 Proceedings taken by Machine Stenotype; transcript was
27 produced by a Computer.

28

1 HSDPA functionality is a small part of that, but it is
2 in the Qualcomm chipset.

3 Q. And there's no dispute between the parties
4 about that, is there?

5 A. No.

6 Q. Okay. Does -- does HTC modify the Qualcomm
7 chipset that goes into its phones?

8 A. No. It is my understanding that they buy the
9 chipset from Qualcomm and they put them in their phone
10 and that's the process.

11 Q. Okay. If the accused functionality is in the
12 Qualcomm chipset, what did you do to figure out how the
13 chipset works?

14 A. So we have to go to what happens in the
15 Qualcomm chipsets. And so there's a lot of documents
16 that I looked at, including -- and we have a slide on
17 that.

18 So what I looked at is the source code. We
19 looked at the Qualcomm engineers' depositions. I looked
20 at the Qualcomm spec sheets. There was a lot of
21 information, most of it is confidential, that's provided
22 by Qualcomm that I was allowed to go through.

23 You signed the protective order, and then you
24 can read all that. So it's kind of exciting, because
25 normally most people don't get to see this.

1 Q. Maybe for you.

2 [Laughter]

3 A. Sorry. It was for me.

4 Q. (By Mr. Bader) After examining the claims of
5 the '211 patent and comparing them to the Qualcomm
6 chipsets, did you come to any conclusions on whether
7 HTC's phones infringe the '211 patent?

8 A. Yes. I did my analysis. I looked at the
9 evidence. And the conclusion that I write to is the HTC
10 phones that include the Qualcomm chipset do not infringe
11 for two reasons: There is no overlay code. There is no
12 overlay code generator. And there is no second decoder.

13 Q. Okay. So let's step through these one at a
14 time as quickly as we can, hopefully.

15 First, what are the two independent codes that
16 are claimed in the '211 patent?

17 A. So the '211 patent, again, has the orthogonal
18 code, and it has the overlay code. And the overlay code
19 is additional code that subdivides an orthogonal
20 channel.

21 Q. Now, you reviewed all these documents that
22 describe the HSP -- HSDPA standard?

23 A. Correct. So I went through the HSDPA standard
24 document-by-document, and there is no mention of an
25 overlay code. There is no second code in the HSDPA

1 standard.

2 Q. And in the system described in the '2 -- I'm
3 sorry -- is the system described in the '211 patent,
4 compliant with the HSDPA standard?

5 A. No. The system described in the '211 patent
6 is -- is not related to the HSDPA standard.

7 Q. Okay. So how many codes does the HSDPA
8 standard require for a single channel?

9 A. There is a single code. There is the OVSF
10 code. And the standard is very clear. We look at
11 different sections in the standard, and here's an
12 example.

13 This is Section 5.2, talking about
14 channelization codes, and it says the channelization
15 code for the primary CPICH -- that was the example that
16 I showed animated at the beginning -- has a fixed 256 --
17 and there's other examples of other codes -- for
18 different channels.

19 So on a single channel, there is one code.

20 Q. And how many codes does the '211 patent
21 require per channel?

22 A. Two.

23 Q. Is there anything in the claims or the
24 specification or the Court's claim construction that
25 describes using a single code or describes a single code

1 from originally?

2 A. Oh, in -- '93, actually was the priority date,
3 and '94 is when it was filed. There is an international
4 patent application that was filed by Klein Gilhousen.

5 He's one of the founders of Qualcomm, that
6 actually describes the variable length of the orthogonal
7 code, and it's those codes that were adopted by the
8 HSDPA standard and used in the Qualcomm chip.

9 Q. Have you ever met Klein Gilhousen?

10 A. Yes. Actually, I feel very honored. I met
11 him in the late '90s, and it was a huge honor to meet
12 him.

13 Q. Okay. So what exactly does the
14 Qualcomm/Gilhousen reference describe? And explain the
15 color-matching that you've done here.

16 A. Okay. So this is Figure 2 out of the
17 international patent application, and I believe the jury
18 has seen this before. It is -- it is this tree that
19 generates this variable length orthogonal code.

20 And on the right, I am showing a figure that's
21 taken right out of the standard. The only thing I've
22 done is I've rotated the figure so that they're both
23 kind of pointing down. So you can see that the code
24 tree and the way the codes are generated at the first
25 level, the second level, the third level is the same,

1 whether it's in Dr. Gilhousen's international patent
2 application or in the standard.

3 Q. So with respect to when the '211 patent was
4 filed, when did Qualcomm file its international patent
5 application on this concept?

6 A. This was two-and-a-half years before.

7 Q. Okay. Now, let's go to the -- I'm sorry. So
8 what's your ultimate conclusion with respect to whether
9 the HTC's phones include an overlay code and an overlay
10 code generator?

11 A. There is no overlay code, and there is no
12 overlay code generator.

13 Q. Okay. Now, with respect to the second reason
14 you mentioned here, what is your conclusion with respect
15 to whether there's a second decoder in HTC's phones?

16 A. So it makes sense, if there is no overlay code
17 and no overlay code generator, there would be no second
18 decoder. So I'm looking for something that's not there.

19 So let's see what is there and why this is not
20 there.

21 Q. Okay. So what does the Qualcomm specification
22 actually show about how the chips operate?

23 A. So, again, this is a diagram out of the
24 Qualcomm specs, and I don't think the jury has seen this
25 before. This is an actual block diagram of what is

1 happening in the Qualcomm chip in the HTC phone.

2 And it's a little bit hard to see, but what I
3 highlighted here in yellow is a single code generator
4 that generates the OVSF code. And you see that being
5 fed to here. And this is a de-spreader; it's a decoder;
6 it's a single decoder that applies the OVSF code.

7 And then the other blocks are -- do something
8 different. Kind of like when we saw in the patent,
9 there's a lot of different blocks in the receiver.

10 But this is the key thing. There is a single
11 code generator; there is a single code; there is a
12 single decoder?

13 Q. So, in summary, what are the main reasons why
14 HTC's phones do not infringe the '211 patent?

15 A. So, again, we have no single -- no second
16 decoder, and there is no overlay code and no overlay
17 code generator.

18 Q. HTC was also accused of infringing Claim 2; is
19 that correct?

20 A. That is correct.

21 Q. How does Claim 2 compare to Claim 5 in the
22 '211 patent?

23 A. The language is very similar, so my analysis
24 for Claim 5 carries over for Claim 2, and for the same
25 reasons. There is no overlay code generator, no overlay

1 time you left Wi-LAN, in which the Airspan
2 patents-in-suit here were the drivers of the deal?

3 ANSWER: I don't remember any agreements
4 like that. No.

5 (End of video clip.)

6 MS. HEFFERNAN: Your Honor, Defendants
7 call their next witness, Christopher Bakewell.

8 THE COURT: He has been sworn, hasn't he?

9 MS. HEFFERNAN: Yes, he has, Your Honor.

10 THE WITNESS: Yes, sir.

11 Thank you.

12 W. CHRISTOPHER BAKEWELL, DEFENDANTS' WITNESS,

13 PREVIOUSLY SWORN

14 DIRECT EXAMINATION

15 BY MS. HEFFERNAN:

16 Q. Good afternoon, Mr. Bakewell.

17 A. Good afternoon.

18 Q. Would you please introduce yourself to the
19 jury?

20 A. Sure. My name is Chris Bakewell.

21 Q. Where do you live?

22 A. I live in Sugar Land, Texas.

23 Q. Now, every other witness has described their
24 family life. Do you want to share any secrets?

25 A. No secrets, not in open court. But I will

1 tell a little bit about my family.

2 Q. Great.

3 A. I'm married. I've been married for 23 years.

4 I have 3 children. I have a 16-year-old boy, a young
5 man, I guess, who just started driving, which is quite
6 an experience. I have a 13-year-old daughter, and I
7 have an 11-year-old son.

8 Q. Have you been retained as a damages expert for
9 Alcatel-Lucent and HTC in this case?

10 A. I have. My firm has.

11 Q. So let's cut right to the chase. What are
12 your opinions regarding a reasonable royalty in this
13 case for Alcatel-Lucent and HTC?

14 MS. HEFFERNAN: And let's go to Slide 2,
15 if you would.

16 A. Sure. As we have here on this slide, it's my
17 opinion that a reasonable royalty applicable to
18 Alcatel-Lucent, assuming that there is infringement and
19 validity found for the three patents asserted against
20 Alcatel-Lucent, would be \$500,000 over the applicable
21 damages period, which would start at the date of
22 trial -- or the date the lawsuit was filed through the
23 day of trial.

24 And for HTC, regarding the '211 patent, the
25 applicable figure is \$100,000.

1 Q. (By Ms. Heffernan) Now, before we get to how
2 you arrived at your opinions in this case -- and we'll
3 spend a fair amount of time talking about that -- I'd
4 like you to tell the jury a little bit about your
5 background.

6 A. Sure.

7 Q. What do you do for a living?

8 A. Well, at the core of what I do, I'm a
9 management consultant, and I focus on the valuation of
10 up intellectual property rights. I will advise
11 companies and inventors on how to maximize the value of
12 their intellectual property rights, help them determine
13 what the value of their IP rights is. And I also get
14 asked from time to time to testify regarding damages in
15 cases like this.

16 Q. Where do you work?

17 A. I work in Houston, Texas, for a firm called
18 Duff & Phelps.

19 Q. And what do you do at Duff & Phelps?

20 A. I am a managing director in the Houston
21 office. I am the head -- the co-head of our
22 intellectual property practice nationwide. I'm also on
23 the vision and strategy committee of the dispute
24 practice.

25 Q. What's the vision and strategy committee?

1 did not know how to do that adjustment --

2 A. I did.

3 Q. -- in this case?

4 And as a result, Mr. Jarosz didn't identify
5 any damages numbers for this jury in this case, did he?

6 A. Yes. I understand that's why he did not
7 present any numbers that he would represent as damages.

8 Q. Dr. Becker, were you able to do a geographic
9 apportionment in this case?

10 A. I was.

11 Q. And as a result, are you able to provide this
12 jury with damages analysis for both Ericsson and Sony
13 Mobile in this case?

14 A. I am.

15 Q. Before we go into your analysis, should the
16 fact that you're offering opinions on damages now
17 suggest in any way that you think there is any
18 infringement here by either Sony Mobile or Ericsson?

19 A. No. It wouldn't be fair to draw that
20 conclusion. I think Mr. Bakewell and even Mr. Jarosz
21 said this, that as damages experts, for our work to be
22 relevant, we have to make an assumption that there might
23 possibly be a finding of validity and infringement.

24 And thus, we work from that as our assumption.
25 But it shouldn't be taken in any way as an indication

1 that I have an opinion that the patents are valid or
2 infringed. That's not my area.

3 Q. Okay. And if the jury finds that there is no
4 infringement or that the patents are invalid, would
5 there be any damages awarded in this case?

6 A. No.

7 Q. With that preface and moving to Slide DX 7,
8 can you give the jury a preface, a little preview of
9 your damages analysis in this case with respect to
10 Ericsson?

11 A. Sure.

12 My opinion is that when we look at the very
13 specific period of time that's the damages window in
14 this case, namely, from October of 2010 until trial, the
15 reasonable royalty for Ericsson, if there's a finding of
16 validity and infringement, would be \$737,000.

17 Q. And did you prepare a similar analysis with
18 respect to Sony Mobile?

19 A. Yes.

20 Q. Okay. And as we move to DX 8, can you tell
21 the jury about that?

22 A. Yes.

23 For Sony Mobile, with the same preface, that
24 if there's a finding of validity and infringement, it's
25 my opinion that for the one patent, the '211, for that

1 period of time that's in the damage window, it would be
2 \$45,600.

3 Q. And before you go into more detail, I want to
4 ask you, you heard Mr. Jarosz and also Mr. Bakewell talk
5 about Georgia-Pacific Factors and a hypothetical
6 negotiation.

7 A. Yes.

8 Q. And instead of going back through all of that,
9 because it's been explained to the jury, let me just ask
10 you, did you consider these as well?

11 A. Yes, I did. I oftentimes have lots of slides
12 to explain that; but there have been two experts that
13 have gone before me that have explained it, so I'll just
14 tell you that, yes, I did consider that framework and
15 the hypothetical negotiation. And the opinions that I
16 have are the result of my consideration of that.

17 Q. Okay. And rather than going through lots of
18 slides, let me just point you to one slide, which is
19 DX 15-10 and ask you how this hypothetical negotiation
20 and the Georgia-Pacific Factors informed your analysis.

21 A. Sure. We see on the upper left there that
22 first assumption that we all have to make in the patent
23 damages world, that the patents are valid and infringed.

24 I then conduct a hypothetical negotiation for
25 the license. I sort of mix the consideration of

1 evidence and a consideration of the Georgia-Pacific
2 Factors. Those things all work together to lead me to a
3 conclusion about the reasonable royalty.

4 Q. And with respect to the hypothetical
5 negotiation, Dr. Becker, what year was the hypothetical
6 negotiation for Ericsson?

7 A. That's in 2005.

8 Q. And with whom would Ericsson have negotiated
9 in this hypothetical negotiation?

10 A. With Airspan.

11 Q. And with respect to Sony Mobile, what year was
12 Sony Mobile's hypothetical negotiation?

13 A. It's 2009, and that would --

14 Q. And --

15 A. -- that would be with Wi-LAN.

16 Q. Okay. Again, without asking you to go through
17 all of the evidence you reviewed, did you review a lot
18 of the same evidence that we've heard from the other
19 experts, such as license agreements?

20 A. Yes. Yes. There were -- among the many, many
21 sort of electronic boxes of information that I got were
22 a large number of licenses from Ericsson, from Wi-LAN,
23 and that was, you know, a pretty significant amount of
24 paper or at least electronic paper.

25 Q. And for many of these licenses, you looked at