

Exhibit D

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

3 WI-LAN, INC.)
4) DOCKET NO. 6:10cv521
5 -vs-)
6 ALCATEL-LUCENT USA, INC.,) Tyler, Texas
7 ET AL) 1:12 p.m.
8) July 10, 2013

7 *****

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

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

18
19
20 COURT REPORTERS: MS. SHEA SLOAN
21 MS. JUDY WERLINGER
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23
24 Proceedings taken by Machine Stenotype; transcript was
25 produced by a Computer.

1 Q. So on the right hand of this slide, I see
2 something called product information. Can you describe
3 what that material is?

4 A. Okay. This is what told me how the products
5 worked. I had to know how the products worked to
6 determine whether or not the claims read on to those
7 products.

8 So some of the things I looked at included
9 product documentation, descriptions of the products,
10 something called source code, which is very important.

11 The source code is the step-by-step
12 instructions that the processor follows to make the
13 system work. A lot of those little black chips that
14 were in -- that are in that base station have stored
15 source code that tell that base station how to go
16 through its various steps.

17 I looked at schematics. Schematics would be
18 drawings that show how the circuits fit together, how
19 the various chips and other things fit together.

20 And then finally, the standards that you've
21 seen several times already.

22 Q. Now, were you in the courtroom when Dr. Wells,
23 Wi-LAN's expert, testified that the '326, '819, and '327
24 patents are infringed by Alcatel-Lucent's HSDPA base
25 stations?

1 A. Yes.

2 Q. And do you agree with that conclusion?

3 A. No.

4 Q. And why don't you agree with that conclusion?

5 A. In order to infringe those claims, the ones
6 that he walked through several times, each and every
7 element has to be present. That's what I've been told.
8 It's my understanding from both judges and lawyers.

9 And I was not able to find each and every
10 element of any of those claims in the accused products.

11 Q. So --

12 A. There were certain things that were
13 fundamentally missing.

14 Q. So I'd like to just briefly summarize the --
15 your opinion on that issue of infringement. And could
16 you tell us why you concluded that none of these three
17 patents are infringed by Alcatel-Lucent's HSDPA base
18 stations?

19 A. Okay. So I looked at the two different sets
20 of patents. The first set is the overlay code patents.

21 I found there were three fundamental things
22 that were missing, three things that were required by
23 the claims.

24 First off, I didn't see any overlay codes.

25 Furthermore, there was no second encoder.

1 Without any overlay codes, there's no encoder to encode
2 them.

3 And then third, there was no storage of set of
4 orthogonal codes. At no point did I see any memory that
5 would store all the orthogonal codes at the same time.

6 Q. And turning to the '327 patent, which you've
7 called the other cell interference patent, what did you
8 conclude about that patent?

9 A. Okay. The other cell interference patent had
10 some fundamental requirements, and I was unable to find
11 any example in the accused products where channels were
12 removed based on other cell interference.

13 Q. So I want to -- I'm going to go in detail
14 through each one of these conclusions that you've
15 reached in a moment; but before we get there, I'd like
16 to just take a brief step back and talk about some
17 general technical -- technical concepts that are behind
18 the issues that we're talking about in this case.

19 So turning to the next slide, could you
20 describe for us what we see here?

21 A. Certainly. This shows a cellular network.
22 And what it shows is one cell phone that's taking a
23 picture of a beach scene. And that cell phone is
24 attempting to transmit that picture through the network
25 to another cell phone, which is receiving it.

1 So it's a transmitting cell phone on the left
2 and a receiving cell phone on the right. So the cell
3 phone takes the picture, and that picture is converted
4 into 0s and 1s.

5 Let me see if I can draw on this a little bit.
6 There you go. Those are the 0s and 1s that make up that
7 picture.

8 So the cell phone's first going to send those
9 0s and 1s to the base station.

10 Now, the base station has connected to it an
11 antenna, which you see here. You've probably seen a lot
12 of these antennas at various places. That antenna
13 receives those 0s and 1s and brings them down into the
14 base station, which is down here.

15 Now, that base station is going to connect
16 those 0s and 1s into the phone network. The phone
17 network connects you to the next area code, or it could
18 send you clear across the country.

19 So the phone network, I've got right here. So
20 what that's doing is sending those 0s and 1s -- let's
21 say it's going from California to North Carolina.

22 So it's going to go all the way across country
23 until it reaches this base station here. That base
24 station is going to take those 0s and 1s, transmit them
25 through this antenna to the receiving cell phone.

1 original CDMA channels, and then we add the overlay
2 codes. We've got the first two elements of Claim 5 and
3 the last two elements that are combining to provide that
4 first solution.

5 Q. So just so I understand what you're -- what
6 you're telling us, the portion of the claim at the top,
7 which you've identified as first encoder, plus
8 orthogonal codes, plus orthogonal code generator, that
9 relates to CDMA; is that right?

10 A. That's right. That's correct. That's --
11 that's the original system that I showed being limited
12 to four users.

13 Q. And then in looking at the bottom of the claim
14 where we see the second encoder, the additional overlay
15 codes and the overlay code generator, what is that --
16 does that relate to the overlay code portion of this --
17 of this solution?

18 A. That's right. That's what took our original 4
19 channels and let us cover up to 16 people.

20 Q. Now, the other proposal that you mentioned,
21 the other solution that Airspan came up with that you
22 mentioned was the solution of adding CDMA plus time
23 division multiplexing.

24 Do we see that reflected in Claim 5 of the
25 '326 patent?

1 A. We do. If you'll take a look on the right
2 side now, once again, we start from the same point. We
3 start with the first encoder, orthogonal codes, and the
4 orthogonal code generator. Those are our original four
5 CDMA channels.

6 But then we've got a TDM encoder, okay, time
7 division multiplexing. This is where people take turns
8 talking. So that's the second solution. You start with
9 your four channels, for example, and then people take
10 turns talking on each of those four.

11 Q. Now, it appears that Claim 5 has both the
12 CDMA-plus-overlay-code solution and also the
13 CDMA-plus-time-division-multiplexing solution in the
14 same claim; is that -- is that right?

15 A. Well, both of them are there, but it's one or
16 the other. There's some language in here that talks
17 about selective operability.

18 If you'll take a look at this piece right
19 here, what it says here is that we've got a second
20 encoder that's selectively operable instead of the TDMA
21 code.

22 So you get the solution on the left, or you
23 get the solution on the right, but not both. "Instead
24 of" means one or the other.

25 Q. So what -- so the claim covers both solutions,

1 but in practice, one solution or the other, but not both
2 would be used?

3 A. Well, the claim itself says you use one or you
4 use the other, but not both.

5 Q. So now that we've spent some time talking
6 about the patents and gone through Claim 5, I'd like to
7 switch gears now and talk about the accused
8 technologies.

9 We've heard a lot of testimony in this case
10 about the W-CDMA and HSDPA standards. What -- what are
11 those standards?

12 A. Okay. W-CDMA is the big field. It's the big
13 standard. It stands for wideband CDMA. If you took the
14 wideband CDMA standard and stacked it all up, it would
15 be several feet high. It's a big standard.

16 You asked about HSDPA. That's a piece of that
17 standard. It's high-speed downlink packet access.
18 That's what folks have been talking about all week.

19 Q. So you mentioned that HSDPA is a piece of the
20 wideband CDMA standard. How does HSDPA relate to the
21 overall HSDPA standard?

22 A. Okay. Basically, the wideband CDMA standard
23 tells us everything about how the 3G phones works, how
24 the base stations work, et cetera; whereas, HSDPA is an
25 add-on, if you will.

1 It was something that was added to the
2 standard to provide one feature, namely, a high-speed
3 downlink connection for cell phones.

4 Q. Okay. Now, I'm going to spend some more time
5 talking about HSDPA, but before -- before I go there, I
6 do want to just return to Claim 5, which we still have
7 on the screen, and make sure that we all understand
8 precisely what's required by the claim.

9 I think you've identified both the
10 CDMA-plus-overlay-code solution and the
11 CDMA-plus-time-division-multiplexing solution in Claim
12 5; is that right?

13 A. That's correct.

14 Q. And so the claim requires a single system that
15 has both a CDMA-plus-overlay-code solution, plus a
16 CDMA-plus-time-division-multiplexing solution; is that
17 right?

18 A. That's right. That's what this language says.
19 You have a system that provides both solutions. At any

20 one time, you only get one of the solutions. It's
21 selectively operable to provide the overlay codes
22 instead of the CDMA plus TDM.

23 So at any one time, you get solution one or
24 solution two, but both have to be available according to
25 the standard -- excuse me -- according to the claim.

1 Q. Right. So if I had a system that just did
2 CDMA plus time division multiplexing, would that be
3 enough for Claim 5?

4 A. No. They both have to be available. That
5 selectively operable means you've got the choice of
6 either one.

7 Q. And if I just had a system that's CDMA plus
8 overlay codes, would that be enough to satisfy Claim 5?

9 A. It would be the same answer. They would both
10 have to be available. You have to have the ability to
11 select one or the other.

12 Q. So in Claim 5, both -- both solutions, the
13 CDMA-plus-overlay-codes, plus the
14 CDMA-plus-time-division-multiplexing solution have to be
15 available, and you use one or the other, but not both at
16 the same time; is that fair?

17 A. That sums it up, yes.

18 Q. So let's return back to HSDPA in particular,
19 and I'd like to spend a little time talking about
20 what -- what HSDPA really is.

21 I think you'll have to erase the -- there you
22 go.

23 And could you explain what we're looking
24 here at -- on this slide.

25 A. Okay. There's really two things going on