

Exhibit E

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) Tyler, Texas
7 ALCATEL-LUCENT USA, INC.,) 9:01 a.m.
8 ET AL) July 12, 2013

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

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18 TRANSCRIPT OF TRIAL
19 MORNING SESSION
20 BEFORE THE HONORABLE LEONARD DAVIS,
21 UNITED STATES CHIEF DISTRICT JUDGE, AND A JURY
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27 COURT REPORTERS: MS. SHEA SLOAN
28 MS. JUDY WERLINGER
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33 Proceedings taken by Machine Stenotype; transcript was
34 produced by a Computer.

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1 P R O C E E D I N G S

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Please be seated.

5 All right. I understand the parties have
6 a matter before we bring the jury in.

7 MR. HILL: That's correct, Your Honor.

8 There is some issue with regard to Dr. Lanning --

9 THE COURT: With who?

10 MR. HILL: Dr. Lanning, who will be the
11 next witness for the Defendants.

12 THE COURT: Okay. All right.

13 MR. BORGMAN: Yes, Your Honor, as part of
14 our meet-and-confer on the demonstratives, we --

15 THE COURT: Why don't you go to the
16 microphone, if you would.

17 MR. BORGMAN: Sorry Your, Honor. Steve
18 Borgman.

19 As part of the meet-and-confer on the
20 slides for the demonstratives for the various witnesses,
21 there were a couple of issues we had with the slides for
22 Mr. Lanning, and I think we've resolved our objections
23 to those, but we haven't resolved our underlying
24 objection to some of the slides, which involves the
25 combination of two separate references for purposes of

1 anticipation.

2 And, essentially, there's a paper called
3 the Tiedemann paper. And Mr. Lanning, we expect, will
4 testify that that paper incorporates by reference the
5 IS-95 standard or the IS-95-A standard, which are two
6 different standards.

7 And our position is that the Tiedemann
8 reference does not incorporate by reference either of
9 those two prior standards.

10 The Tiedemann reference does mention
11 IS-95, but it doesn't incorporate by reference. And
12 under the Advanced Display Systems versus Kent State
13 case, deciding whether or not a reference incorporates
14 by reference another prior art reference is a question
15 of law for the Court. And Advanced Display Systems also
16 says that in order to do that, there has to be some
17 language indicating that to one of skill in the art; and
18 also that to incorporate by reference, the document
19 that's supposedly incorporates by reference, another
20 document has to point out with specificity what's being
21 incorporated. And Tiedemann just doesn't do that, Your
22 Honor.

23 THE COURT: Okay. So your objection
24 to -- it is with regard to anticipation but not as to
25 obviousness?

1 MR. BORGMAN: Correct, Your Honor.

2 THE COURT: All right. Response?

3 MR. APPLEBY: Your Honor, Mr. Lanning

4 will be testifying that the Tiedemann reference itself,

5 within the four corners of the document, anticipates the

6 claims of the asserted patents.

7 THE COURT: Without having to rely upon

8 the incorporated reference?

9 MR. APPLEBY: Without having to rely on

10 the incorporated reference. We are going to discuss the

11 incorporated reference, and he's also going to opine

12 that it would have been obvious to combine the two

13 references, given the fact that the Tiedemann reference

14 expressly references the IS-95 standard.

15 So, basically, Tiedemann says as an

16 extension on IS-95 -- the -- the elements of the

17 asserted claims are expressly disclosed in Tiedemann.

18 We believe it can be properly

19 incorporated by reference. Essentially, Tiedemann says

20 it is IS-95, but Mr. Lanning will rely on the Tiedemann

21 reference itself, and he will opine that it would have

22 been obvious to combine that with the IS-95 standard.

23 MR. BORGMAN: Your Honor, if they stick

24 with the obviousness instead of the anticipation and

25 they stick with the IS-95-A reference, then we're fine

1 with that. But Mr. Appleby just referred to the IS-95
2 standard, which came a year and a half before the
3 Tiedemann article. The IS-95-A standard came about a
4 year after Tiedemann. So there's no way that you can --
5 you can put those together.

6 You can't put IS -- well, if you want to
7 talk about IS-95 by itself, that's outside the scope of
8 Mr. Lanning's report and his testimony. All of his
9 report deals with the IS-95-A standard.

10 So if Mr. Appleby and Mr. Lanning want to
11 talk about the combination of Tiedemann, plus IS-95-A
12 for purposes of obviousness, we're okay with that. We
13 have no objection there.

14 THE COURT: Is that what you're doing?

15 MR. APPLEBY: Sir, what Mr. Lanning will
16 do is he will go through IS-95-A and show some
17 disclosure in IS-95-A. We will then go through
18 Tiedemann and rely on the four corners of the document
19 to show the elements are found in Tiedemann. He will
20 then also opine that it would have been obvious to
21 combine those two documents.

22 MR. BORGMAN: And as long as they stick
23 with IS-95-A and Tiedemann for their combination, we're
24 fine with that, Your Honor.

25 THE COURT: Okay. Very well.

1 Q. Okay. Now I want to turn to -- kind of set
2 the stage for your invalidity analysis.

3 And you had mentioned that we're looking at
4 something called prior art, which is what is known
5 before the patents; is that right?

6 A. Yes.

7 Q. So I think the first thing I'd like to do is
8 talk about what that date is when the patents first
9 arrived at the scene.

10 When were the Airspan patents first filed?

11 A. This is the earliest date for the Airspan
12 patents on the timeline, which is December 1996.

13 Q. So when we're looking at prior art, we're
14 looking at things that existed prior to December of
15 1996; is that right?

16 A. Yes, that were published and known.

17 Q. Sir, let's set the stage here. I'd like to
18 talk about what was generally known before this date.

19 And where I'd like to start is -- is --
20 obviously, this case is about cellular systems.

21 Were there commercial CDMA cellular systems in
22 use before December of 1996?

23 A. Yes, there were.

24 Q. And can you give us an example of one of
25 those?

1 A. Specifically, it's the IS-95 system.

2 Q. And what is the IS-95 system?

3 MR. BORGMAN: Your Honor, may we

4 approach?

5 THE COURT: Yes, you may.

6 (Bench conference.)

7 MR. BORGMAN: This is the exact same

8 issue we talked about earlier, IS-95-A.

9 THE COURT: IS-95-A.

10 MR. APPLEBY: I can say A.

11 THE COURT: Okay.

12 MR. BORGMAN: Thank you.

13 (Bench conference concluded.)

14 Q. (By Mr. Appleby) So let's go back to where we
15 were.

16 MR. APPLEBY: Can we put the slide back
17 up?

18 Q. (By Mr. Appleby) I see on the slide it says
19 IS-95-A. What was the IS-95-A system?

20 A. The IS-95-A system was a first revision to the
21 IS-95 system.

22 Q. And was the IS-95-A system in commercial use
23 before December of 1996?

24 A. Yes, it was.

25 Q. And, in fact, if we look at this -- the cover

1 construction of TDM techniques.

2 Could you -- could you tell us what that is?

3 A. Yes. The TDM techniques are creating time
4 slots or an interval of time within a specified frame
5 period.

6 I think the next slide I've provided gives a
7 more specific example of the TDM techniques, as the
8 Courts construed. And you see the Court's construction
9 at the bottom of the slide.

10 Q. So moving to the next slide, can you explain
11 what we're looking at here?

12 A. Again, this is another figure and page out of
13 the IS-95-A specification, and it shows us two or three
14 pieces of information.

15 If you look at the top where it says 2047 and
16 then goes 0, 1, 2, 3, those are the different slots that
17 are defined in the paging channel.

18 Now, the paging channel has a frame, and
19 there's two different frames that we can use for this
20 claim.

21 The one frame you see by the arrow, and then
22 it's highlighted with the 12 -- 1.28 seconds, and then
23 there's even a longer frame that's shown by the line at
24 the top for all 2048 frames.

25 Now, a paging channel slot shows 6 in the

1 middle that you can see in the middle here. And it also
2 explains that a phone here is assigned a specific paging
3 channel slot based on its identification.

4 Q. So if we take a step back to the previous
5 slide, did you find within IS-95-A techniques for
6 allocating an interval of time within a predetermined
7 frame period to a data item?

8 A. Yes.

9 So the interval of time would be the slots. A
10 predetermined frame period would be the frame period --
11 one of those two frame periods. You can take your pick.

12 There's two different frame periods there that
13 would meet the claim.

14 And the data item, based on one or more
15 characteristics, the one or more characteristics of the
16 data item is the phone's identity, which is the most
17 important thing if you're trying to page a mobile.

18 And maybe -- I don't know if I should explain
19 a little bit about what the paging channel is for.

20 Maybe you have that. But I just realized
21 maybe --

22 Q. Well, what is the paging channel for?

23 A. I just dropped into that mode where I realized
24 what that is, and I don't know if y'all do. But the
25 paging channel is used by the base station to page the

1 mobile when you receive a call. And that's how your
2 phone knows it's receiving a phone call.

3 So if someone calls you on your mobile phone,
4 the base station sends a message to the mobile phone.

5 In this case, for IS-95, it sends it in a
6 specific slot of your mobile phone so the mobile phone
7 only has to look at one or more of those slots. It
8 doesn't have to sit there and wait all the time to look.

9 Q. And I think you mentioned that characteristics
10 associated with the data item you found was the mobile's
11 identity?

12 A. That's correct. It would be the -- one of the
13 pieces used is called equipment serial number, the
14 serial number of the phone when you buy it.

15 Q. And in IS-95-A, the base station will use the
16 mobile's identity to determine the time slot in which to
17 allocate data for a particular mobile; is that right?

18 A. That's correct. It's not only the base
19 station but the mobile. Both of them have to get
20 together and agree on the slot; and they choose the
21 slot, using a consistent method.

22 Q. So let's return to our timeline. And we see
23 here that IS-95-A was available in 1995; is that right?

24 A. Yeah, that's correct.

25 Q. Now, you also have on this timeline something

1 called IS-95 and 93. What is that?

2 A. That was the initial version of the standard
3 in 1993. The dash A just denotes that there were some
4 modifications made to that standard.

5 If you were to look at the IS-95 standard and
6 if I were to hold it up, they both look essentially the
7 same. There were just some editorial-type changes and
8 more information provided to make -- for clarity
9 purposes.

10 Q. And in the course of your work, you've worked
11 with both the IS-95 and the IS-95-A standard?

12 A. Yes.

13 Q. And generally, could you describe what
14 differences, if any, exist between the IS-95-A and the
15 IS-95 standard?

16 MR. BORGMAN: Your Honor, may we
17 approach?

18 THE COURT: Yes, you may.

19 (Bench conference.)

20 MR. BORGMAN: This is outside the scope
21 of his report. He didn't address the differences
22 between IS-95 and IS-95-A apart from the fact that it's
23 a revision and it's an updated standard.

24 MR. APPLEBY: In his --

25 THE COURT: Speak into the mic.

1 MR. APPLEBY: In his report, he discusses
2 IS-95. Because of his work, he knows IS-95 and
3 IS-95-A --

4 THE COURT: You need to speak up.

5 MR. APPLEBY: In his report, he discusses
6 IS-95 generally. That includes IS-95 and IS-95-A. He
7 knows from his own personal work that the two versions
8 have very limited modifications. I think it's a fair
9 question.

10 MR. BORGMAN: Your Honor, if I might
11 respond?

12 THE COURT: Yes.

13 MR. BORGMAN: That was not in his report,
14 the distinction.

15 THE COURT: Okay. Objection's sustained.
16 He needs to stick to 95.

17 MR. APPLEBY: Thank you, Your Honor.

18 (Bench conference concluded.)

19 Q. (By Mr. Appleby) So as I was saying, IS-95
20 came out in 1993; is that right?

21 A. That's correct.

22 Q. Okay. And IS-95-A is a subsequent version of
23 that standard; is that right?

24 A. Yes, that's correct.

25 Q. Okay. So let's -- let's move on.

1 in this Tiedemann paper.

2 Did you find that Tiedemann describes CDMA
3 using orthogonal codes and orthogonal code generators?

4 A. Yes, I did.

5 Q. Can you explain that?

6 A. As shown on this slide, you see the text
7 that's highlighted, and it says the orthogonal covering
8 codes are a set -- are the set of 64-ary Walsh
9 functions. In English, that means that there are 64
10 squared, or they're a square box of 64, and that's the
11 same 64 Walsh codes that I showed you on the slide.

12 So that 64-ary is probably not a common word
13 many of us use, but that's what is meant by that.

14 Q. And did you also find that TDM -- or that
15 Tiedemann described TDM techniques?

16 A. Yes, I did.

17 Q. And could you explain that?

18 A. Yes. And if this looks similar, this is very
19 similar to the language that I showed you for the
20 IS-95-A specification. And here at the top,
21 Mr. Tiedemann is describing the paging channel that I
22 talked about. It's divided into slots of 80
23 milliseconds' duration.

24 So this is the interval of time, are those
25 80-millisecond slots. And then he describes that there

1 is a period of repetition, and that would be the frame.

2 And those are assigned slots.

3 And then he discusses that there's hash

4 functions that are used on the paging channel for a

5 specific slot that the mobile and the base station are

6 to use. The mobile is to monitor.

7 So you can see -- and that is almost the exact

8 language out of the IS-95-A specification.

9 Q. And so did you find that the Tiedemann

10 document itself described TDM techniques under the

11 Court's construction?

12 A. Yes.

13 Q. And did you also find that Tiedemann described
14 overlay codes?

15 A. Yes.

16 Q. And could you explain that?

17 A. As you can see -- as you can see, it's pretty
18 easy to find. It actually says there is a technique
19 called overlay encoding, and overlay encoding adds
20 additional orthogonal channels.

21 And then he actually refers to an overlay
22 encoder block to show how he's modifying IS-95, or
23 extending it to support these new PCS system
24 requirements.

25 Q. And so there is a diagram in Tiedemann, Figure

1 A. Yes, and I pointed to it. I'll point to it
2 again. That would be the Walsh code generator that you
3 see right there in blue.

4 Q. So can I check the orthogonal code generator?

5 A. Yes.

6 Q. And did you find a first encoder? This is the
7 first encoder element in the Tiedemann reference?

8 A. Yes. And I'll circle this one, and it is a
9 circle with a plus in it. That's the encoder. You see
10 the arrow that goes from the Walsh code generator,
11 that's where it goes down and it's encoded with other
12 codes. That's what that means.

13 Specifically, it's an exclusive -- or a gate,
14 but we did put a circle with a plus in there. That
15 means it's included.

16 Q. And may I check that element?

17 A. Yes.

18 Q. And did you find a TDM encoder arranged to
19 apply time division multiplexing techniques in the
20 Tiedemann reference?

21 A. Yes. As I explained earlier, this slide shows
22 that this is the TDM techniques that they're explaining
23 here; that it has all three components.

24 It has -- it has the interval of time; it has
25 the predetermined frame; and it has one or more

1 characteristics associated with the data item, which
2 would be the actual identification of the cell phone.

3 Q. And so can I check that off?

4 A. Yes.

5 Q. Now, moving down the Claim 2, did you find --

6 MR. APPLEBY: Can I have the slide back
7 up?

8 Q. (By Mr. Appleby) Did you find an overlay code
9 generator in the Tiedemann reference?

10 A. One more slide. There it is.

11 Yes. If we can look -- if we look at this box
12 in purple, it actually says overlay code encoder as
13 required by the claim.

14 Q. So may I check that box?

15 A. Yes.

16 I should be clear. This box has both the
17 overlay code generator, which is the first part of Claim
18 2, and it has the second encoder, which is the overlay
19 encoder.

20 Q. So I can check both of those?

21 A. Yes.

22 Q. And Claim 2 is a preamble, a transmission
23 controller as claimed in Claim 1. Do we have that?

24 A. Yes, because we have the same transmission
25 controller in Claim 1 that I described.

1 cellular network is like.

2 And they also need to be familiar with the
3 second-generation and third-generation cellular --
4 cellular networks. And this hypothetical person of
5 ordinary skill also has access to all the prior art.

6 It's like that they have a knowledge and know
7 that that prior art exists.

8 Q. So let's turn to Claim 9 and -- of the '326
9 patent and Claim 11 of the '819 patent.

10 And are those dependent claims?

11 A. Yes. Yes, they are.

12 Q. And Claim 9 of the '326 patent depends on
13 Claim 5?

14 A. That's correct.

15 Q. And we've already found that Claim 5 has all
16 the elements that Tiedemann shows, all the elements of
17 Claim 5; is that right?

18 A. That's correct.

19 Q. So what does Claim 9 require?

20 A. Claim 9 requires that a -- that the control
21 channel, or the acquisition channel, as specifically
22 listed here, includes overlay codes instead of time
23 slots, or TDM encoders, or that TDM techniques as we
24 describe.

25 Q. And is that disclosed by Tiedemann?

1 A. No, it's not.

2 Q. And why do you say that?

3 A. Tiedemann applies the overlay codes only to
4 the traffic channels for increasing the data-rate or
5 slowing the data-rate down on the traffic channels that
6 I described that were used for either data connections
7 or voice connections. Tiedemann does not describe
8 applying overlay codes to a paging channel.

9 Q. Why do you believe Claim 9 -- I should say do
10 you believe that Claim 9 would be obvious in light of
11 Tiedemann?

12 A. Yes. This is the first test. This would be
13 just a single reference, obviousness. One of ordinary
14 skill in the art, reading Claim 9 in Tiedemann, would
15 understand that it would be obvious to modify Tiedemann
16 to just apply the overlay codes to the paging channel,
17 because that -- or instead of the TDM encoder because
18 overlay codes are already being used. All the circuitry
19 is there. As you saw, that circuitry was in the block
20 diagram.

21 Q. And so is it your conclusion that Claim 9 is
22 obvious in light of the Tiedemann reference?

23 A. Yes.

24 Q. So let me move to Claim 11 of the '819 patent.

25 And Claim 11 depends from Claim 7 of that

1 patent; is that right?

2 A. Yes, that's correct.

3 Q. Now, looking at Claim 7, are -- the elements
4 in Claim 7, have we seen those elements already today?

5 A. Yes. These are all of the elements -- these
6 elements are in Claim 5 of the '326, I believe. Yes.

7 Q. And we have already found all of those
8 elements in the Tiedemann reference; is that right?

9 A. That's correct, yes.

10 Q. And Claim 11, what does Claim 11 add to Claim
11 7?

12 A. Claim 11 is like the opposite of Claim 9.

13 And if we can read it, it says: A TDM encoder
14 arranged to apply time division multiplexing techniques,
15 TDM techniques, to data items sent over the traffic
16 channel.

17 Well, remember Tiedemann puts TDM on the
18 paging channel, but he doesn't put TDM on the traffic
19 channels. He put overlay codes.

20 So this is somewhat just the reverse of Claim
21 9.

22 Q. And so did you find Claim 11 disclosed by
23 Tiedemann?

24 A. No, I did not.

25 Q. And why not?

1 A. Because Tiedemann does not have a TDM encoder
2 that would be used for the traffic channels. He uses
3 just the overlay encoder.

4 Q. Do you believe that Claim 11 would have been
5 obvious in light of Tiedemann?

6 A. Yes, I do.

7 Q. And why is that?

8 A. Because, again, the same circuitry is all
9 there. If one of ordinary skill in the art wanted to
10 add that TDM functionality, all those slots that we saw
11 on the paging channel, if they wanted to just add slots
12 on the traffic channels, they would just simply use the
13 same circuitry to do that.

14 Q. And what would the motivation or purpose of
15 one of ordinary skill in the art have for modifying
16 Tiedemann that way?

17 A. If they wanted to actually divide the traffic
18 channels into different slots so that they could support
19 different users for each overlay code, that would be the
20 motivation to --

21 Q. And --

22 A. -- make that modification.

23 Q. If Tiedemann shows that TDM encoder on a
24 control channel, why would it have been obvious to one
25 of skill in the art to use that on a traffic channel?

1 A. Again, for the same reasons you have the TDM
2 encoder on the paging channel, so that you can actually
3 divide that orthogonal channel up into multiple time
4 slots.

5 Q. If -- would one of ordinary skill in the art
6 recognize that if you could use a Tiedemann -- TDM
7 encoder on a paging channel, that you could also use it
8 on a traffic channel?

9 A. Yes. It's -- everything is the same
10 essentially. It's just the choice, do I want to engage
11 this encoder or this encoding circuitry for my traffic
12 channels.

13 Q. In looking back at Claim 9, would one of
14 ordinary -- Claim 9 of the '326 patent, would one of
15 ordinary skill in the art recognize that if you did
16 overlay coding on a traffic channel, you could also use
17 that on a control channel?

18 A. Again, it's all the same circuitry. Tiedemann
19 has described how you do it on a traffic channel. If
20 there was a reason that I wanted to divide up the
21 channel for the paging channel using overlay codes, I
22 could do the same thing with the same circuitry, same
23 block diagram.

24 Q. Okay. So now I'd like to move to another
25 reference.

1 Can you describe what we're looking at here on
2 Slide 28?

3 A. This was a patent that was -- the inventor is
4 Gitlin, Richard Gitlin. You've heard of Dr. Richard
5 Gitlin. He was part of the Bell Labs or the Alcatel --
6 I should say Lucent. I think it was in the Lucent days.
7 He was an employee of Bell Labs. He's one of the
8 pioneers.

9 And this is a patent that describes how
10 CDMA -- how to combine CDMA with TDM.

11 Q. So let's look forward -- move ahead one slide.

12 And can you describe what Gitlin -- what
13 Gitlin disclosure exists, if any, about CDMA plus TDM
14 techniques?

15 A. All right. If we look -- so the CDMA or the
16 orthogonal codes, the CDMA, is shown here. And it's
17 labeled code space and it's C0 through C7. Those refer
18 to 7 -- 8 different codes. Since we start at 0, there's
19 8 different codes.

20 Then he also has time slots going sideways on
21 the horizontal from S0 to S6. So he's combining codes
22 with slots. CDMA plus TDM.

23 Q. And did you find TDM techniques as construed

24 by the Court?

25 A. Yes.

1 Q. Could you explain that?

2 A. You have TDM techniques. So there's a frame.

3 So we need three pieces, right? We need a --

4 we need this slot, or we need the increment of time.

5 And we see all kinds of different slots. This

6 would be the slots (indicating) that are shown from S0

7 to S6. And then the frame period would be from S0

8 through S6. That's the frame period.

9 And the third thing we need for that

10 construction -- for the Court's construction for TDM

11 techniques is a characteristic of the data. Well, if

12 you look down at the bottom of Gitlin, you'll see that

13 the characteristics of data have to do with whether you

14 have high-speed users, medium-speed users, or low-speed

15 users, and also the user ID.

16 So there's two different characteristics

17 associated with the data item.

18 Q. And why would the users need different speeds?

19 A. Users have different speeds, want to pay

20 different amounts, or they may only want to send a fax

21 part of the time, and then want lower speed for voice

22 calls or lower speed data connections at other times.

23 Q. Okay. So let's look quickly at the claim --

24 actually, yeah, let's look quickly at the claim

25 language.

1 And did you find a -- the preamble satisfied
2 by -- actually, it says Gitlin plus Tiedemann. Why

3 would you combine Gitlin and Tiedemann?

4 A. Because Gitlin doesn't have the overlay codes.

5 So, essentially, for at least the reason -- there's two

6 different reasons; but the main reason is that Gitlin

7 doesn't describe overlay codes. But as I showed you

8 earlier, Tiedemann does.

9 So in combining Gitlin with Tiedemann, Gitlin

10 gives us the CDMA plus TDM; Tiedemann gives us the

11 overlay codes.

12 Additionally, Tiedemann also gives us the

13 Walsh codes, if we need to show for the orthogonal codes

14 or CDMA. I have it in two places. Both Gitlin and

15 Tiedemann gives it -- gives us the orthogonal codes.

16 Q. Okay. So does the Gitlin plus Tiedemann

17 combination disclose the preamble of Claim 1?

18 A. Yes.

19 Q. And may I check that?

20 A. Yes.

21 Q. And does -- did you find in Gitlin an

22 orthogonal code generator -- let me start over.

23 Did you find in a combination of Gitlin and

24 Tiedemann an orthogonal code generator and a first

25 encoder?

1 A. Yes.

2 Q. And can you explain that?

3 A. That -- well, we can look at it two ways, but
4 it's at least in Tiedemann. As I've already explained,
5 that there is an orthogonal code generator and the first
6 encoder.

7 And if you remember, it's the box with Walsh
8 encoder or Walsh generator, and then the circle with the
9 plus in it.

10 Q. And we saw C -- CDMA in Gitlin, right?

11 A. Yes. And Gitlin is for CDMA as well.

12 Q. Okay. May I check those?

13 A. Yes.

14 Q. And did we find a TDM encoder arranged to
15 apply time division multiplexing techniques in Gitlin?

16 A. Yes, we did.

17 As you can see with the slots that are here,
18 this would be the TDM encoder. We also find a TDM
19 encoder in Tiedemann for the paging channels. So we've
20 doubled up there as well for the TDM encoder.

21 Q. And may I check that?

22 A. Yes.

23 Q. And the elements of Claim 2, the overlay code
24 generator and the second encoder, where do we find
25 those?

1 A. Those are found in Tiedemann and not Gitlin.

2 Q. Okay. And why would it have been obvious in
3 your mind to combine Gitlin and Tiedemann?

4 A. Because both of these patents are in regard to
5 cellular systems, specifically, CDMA wireless systems.

6 And Gitlin was from Bell Labs, AT&T Bell Labs.
7 Tiedemann was from Qualcomm. And as you've heard, in
8 the early 1990s, they were working together on CDMA
9 solutions.

10 So there's multiple reasons why one of
11 ordinary skill in the art would combine Gitlin with
12 Tiedemann.

13 Q. Okay. So may I check the elements of Claim 2?

14 A. Yes.

15 Q. And so what is your conclusion about whether
16 Claim 2 of the '326 patent is obvious over Gitlin plus
17 Tiedemann?

18 A. The combination of Gitlin plus Tiedemann
19 invalidates Claim 2 of the '326 patent.

20 Q. And if we look at Claim 5 of the '326, we
21 found all of these elements in Gitlin and Tiedemann
22 already; is that correct?

23 A. Yes, that's correct.

24 Q. And would your opinion of obviousness,
25 combining Tiedemann and Gitlin, be to render obvious

1 he's way to the left. Gilhousen is way to the left in
2 1993 for these OVSF codes.

3 Q. And the Gitlin patent -- I don't know if I
4 asked you this -- but that was filed in 1994; is that
5 right?

6 A. That's correct.

7 Q. Now, you understand that Dr. Wells is
8 asserting that these OVSF codes contain an orthogonal
9 code and an overlay code. You understand that?

10 A. Yes.

11 Q. Now -- and the jury will have to decide
12 whether an OVSF code, a single OVSF code, is an
13 orthogonal code and an overlay code. You understand
14 that?

15 A. Yes.

16 Q. If the jury were to conclude that a single
17 OVSF code was both an orthogonal code and an overlay
18 code, do you have an opinion as to whether Gitlin, in
19 combination with Gilhousen, would disclose all of the
20 elements of the asserted claims?

21 A. Yes. So let me go through it just briefly.

22 If you agree with Dr. Wells that the OVSF tree
23 meets the limitations of the claims, then you also have
24 to reconcile in your own mind who really defined it
25 first. And this was three years, at least three years

1 before the Airspan patents.

2 And then when you look at Dr. Gitlin from AT&T

3 Bell Labs, he has the CDMA plus the TDM here. And,

4 again, he's years before the Airspan patents.

5 And, again, you have the combination of AT&T

6 Bell Laboratories and of Qualcomm, when they were

7 working together. And both of these are wireless

8 cellular systems.

9 Q. Okay. So, Mr. Lanning, can you just quickly
10 summarize your opinions?

11 A. All right. As you can see, the first four
12 claims, as on this table, which are specifically the
13 '326, Claim 2; the '211, Claim 2; the '211, Claim 5;
14 '326, Claim 5 are all anticipated by at least Tiedemann.

15 And they're also obvious based on other
16 references, as I described.

17 However, if you look at '326, Claim 9 and the
18 '819, Claim 11, you'll see that I have not put
19 anticipated there. Instead, I've said they're obvious
20 as I've described. And they're obvious by at least
21 Tiedemann and other combinations that I've described.

22 MR. APPLEBY: No further questions.

23 THE COURT: Thank you.

24 Cross-exam?

25 MR. BORGMAN: Yes, Your Honor.