

Exhibit 2

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

4 WI-LAN, INC.)
5 DOCKET NO. 6:10cv521

6 -vs-)
7 Tyler, Texas

8 ALCATEL-LUCENT USA, INC., 8:50 a.m.
9 ET AL) July 10, 2013

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11 WI-LAN, INC.)
12 DOCKET NO. 6:13cv252

13 -vs-)
14 HTC CORPORATION,
15 ET AL)

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TRANSCRIPT OF TRIAL
MORNING SESSION
BEFORE THE HONORABLE LEONARD DAVIS,
UNITED STATES CHIEF DISTRICT JUDGE, AND A JURY

26 COURT REPORTERS: MS. SHEA SLOAN
27 MS. JUDY WERLINGER
28 211 W. Ferguson
29 Tyler, Texas 75702
30 shea_sloan@txed.uscourts.gov

31 Proceedings taken by Machine Stenotype; transcript was
32 produced by a Computer.

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<p style="text-align: right;">53</p> <p>1 impairment or not.</p> <p>2 Q. Let me show you Slide 12, please.</p> <p>3 And this is be an excerpt from PX 200 and also</p> <p>4 DX 60. Is this the memo that you were referring to?</p> <p>5 A. Yes. This is one of the two memos. This is a</p> <p>6 later memo from Mr. Houston to Mr. McEwan that</p> <p>7 summarizes what Wi-LAN's findings were with regard to</p> <p>8 the transaction.</p> <p>9 It valued two of the patents here, the '211</p> <p>10 and the '326, using the royalty rates there at the</p> <p>11 bottom to assess whether the company had paid too much</p> <p>12 for the portfolio it obtained from Airspan.</p> <p>13 Q. So at the time that it happened -- let me go</p> <p>14 back.</p> <p>15 So what did you understand from this memo with</p> <p>16 respect to -- how did -- how did Wi-LAN use this memo?</p> <p>17 A. It used it to determine, again, whether it had</p> <p>18 paid too much, whether the \$11 million was too much.</p> <p>19 And what they concluded in this memo was, no, they did</p> <p>20 not.</p> <p>21 These patents, even though there had been no</p> <p>22 jury finding, were probably worth a fair amount more</p> <p>23 than \$11 million. So they did not need to make an</p> <p>24 adjustment in their accounting books.</p> <p>25 Q. And the rates that we see at the bottom of</p>	<p style="text-align: right;">55</p> <p>1 seven-year period would be about 26 percent. That's not</p> <p>2 an approach that I've seen used before in valuing</p> <p>3 intellectual property, and it gives a number that's just</p> <p>4 a fraction of the \$11 million.</p> <p>5 Q. So if we use the example that Wi-LAN spent</p> <p>6 \$10, what would Mr. Bakewell's rate of return be?</p> <p>7 A. Well, the rate of return would be that 26 or</p> <p>8 30 percent. He, in essence, says it should -- \$10 would</p> <p>9 give you a return of 12 or \$13.</p> <p>10 Q. Did you hear Mr. Parolin's testimony yesterday</p> <p>11 that Wi-LAN sought a 10 to 20 times return on its</p> <p>12 investments for patents that it acquired from Airspan?</p> <p>13 A. Yes.</p> <p>14 Q. And can you explain what the 10 to 20 times</p> <p>15 return on investment means?</p> <p>16 A. What Wi-LAN was hoping to receive wasn't this</p> <p>17 20-percent return but a hundred- or 200-percent</p> <p>18 return -- or actually, a thousand-percent return.</p> <p>19 So what it was hoping and what it typically</p> <p>20 invests in, if it invests, \$10, it's hoping, on a</p> <p>21 successful project, to get a hundred dollars back.</p> <p>22 That's their business motel. That's a common</p> <p>23 business model for people who own patents.</p> <p>24 Q. That seems really high to me. How do they get</p> <p>25 10 to 20 times their investment?</p>
<p style="text-align: right;">54</p> <p>1 this memo for base stations and handsets, what do you</p> <p>2 understand those to represent?</p> <p>3 A. They -- there's -- the base rates that is -- I</p> <p>4 think they represent the rates in existing licenses that</p> <p>5 Wi-LAN entered; and then at the very bottom, those are</p> <p>6 additional rates that they could get above and beyond</p> <p>7 the base rates because of the '211 patent, which is the</p> <p>8 patent associated with the handsets, and the '326</p> <p>9 patent, which is associated with the base stations.</p> <p>10 Q. And at this time, did Wi-LAN know whether it</p> <p>11 would be able to license the patents successfully?</p> <p>12 A. No, it did not.</p> <p>13 Q. What did Mr. Bakewell, the expert for</p> <p>14 Alcatel-Lucent and HTC, say that the royalty payment to</p> <p>15 Wi-LAN should be here for Alcatel-Lucent and HTC?</p> <p>16 A. He said it should be clued off only the</p> <p>17 purchase price that Wi-LAN paid to Airspan. So he said</p> <p>18 the appropriate royalty that Alcatel-Lucent and HTC</p> <p>19 should pay is a small portion of that \$11 million with a</p> <p>20 slight return on top of that.</p> <p>21 Q. What return did Mr. Bakewell use?</p> <p>22 A. He used the discount rate that was in this</p> <p>23 memo that Mr. Parolin talked about that's useful for</p> <p>24 other reasons.</p> <p>25 He said the return over, in essence, a</p>	<p style="text-align: right;">56</p> <p>1 A. They realize that they buy pieces of land, and</p> <p>2 unfortunately, many of those pieces of land have no oil</p> <p>3 underneath them, but some do.</p> <p>4 Occasionally, the jury finds -- a jury finds</p> <p>5 or a negotiating party finds that there are some patents</p> <p>6 that they own that are very strong, and therefore, it is</p> <p>7 entitled to a return associated with those.</p> <p>8 So there are many, many dry pieces of land,</p> <p>9 but there are some for which there's oil, and they</p> <p>10 should get the adequate return on the land that has oil</p> <p>11 under it.</p> <p>12 Q. Let's go back to Slide 13, the chart that you</p> <p>13 prepared that lists the comparables.</p> <p>14 What's the next entry on the chart?</p> <p>15 A. I looked fairly closely at a number of Wi-LAN</p> <p>16 licenses.</p> <p>17 Q. Now, help me understand, sir. You said</p> <p>18 earlier that three of the Defendants -- or three of the</p> <p>19 hypothetical negotiations would have occurred with</p> <p>20 Airspan as opposed to Wi-LAN. So why are the Wi-LAN</p> <p>21 licenses relevant?</p> <p>22 A. Well, number one, the four hypothetical</p> <p>23 involves Wi-LAN, but more importantly, the Wi-LAN</p> <p>24 licenses give information of how participants in the</p> <p>25 wireless business are valuing and pricing intellectual</p>

<p style="text-align: right;">65</p> <p>1 Alcatel-Lucent, at its height, comprised about 2 48.9 percent. 3 Q. And why -- why is the max market share 4 important to this analysis? 5 A. Well, as the book of wisdom allows us to 6 consider how history has unfolded, I wanted to consider 7 how well Ericsson and Alcatel-Lucent have done over 8 time. I also looked at minimums and averages. 9 For this presentation, I've shown kind of the 10 highest they've been, but it certainly has been lower 11 than the green bars at various points in time. But the 12 book of wisdom asks us to consider all of history, from 13 the point in the negotiation through today. 14 Q. And at the hypothetical negotiation, the 15 parties would have been aware of the maximum market 16 share as well; is that true, sir? 17 A. They're presumed to be aware through this book 18 of wisdom. 19 MS. ROSS: Let's pull up 19, please. 20 Thank you. 21 Q. (By Ms. Ross) What does this show? 22 A. This shows a similar analysis for the handset 23 manufacturers, and I've presented the unit shares here. 24 Huawei, Sharp, ZTE, HTC, Sony Mobile, and Motorola and 25 LG have all entered licenses with Wi-LAN. Some of those</p>	<p style="text-align: right;">67</p> <p>1 Let's talk about your third adjustment on 2 Slide 20, please. 3 Did you also consider the value that the 4 patents had to Wi-LAN's wireless portfolio? 5 A. Yes. I looked -- I considered the new 6 number -- we're just talking about the four patents 7 here. And Wi-LAN's other licenses had a larger set of 8 patents. So I needed to adjust for the smaller set of 9 rights here. 10 Q. And how did you adjust for that smaller set of 11 rights? 12 A. Well, I relied on several things, but a very 13 important thing was the analysis that was contained in 14 the Houston/McEwan memo that you put on the screen a few 15 minutes ago that gave breakdowns of the incremental or 16 added value of the '211 patent, which is for the 17 handsets here, and the '326 patent, which is for the 18 base stations here. So I relied heavily on that memo. 19 MS. ROSS: Let's go to Slide 21, please. 20 Q. (By Ms. Ross) Does this summarize the 21 apportionment factors that you obtained from the McEwan 22 memo at PX 20 or DX 60? 23 A. Yes. There were inputs from that memo, and 24 there was a bottom chart in that demonstrative slide 25 that you showed earlier where there were three different</p>
<p style="text-align: right;">66</p> <p>1 were fairly small players in the handset business. 2 Others: Sony, Sony Mobile, and LG were fairly 3 large. 4 The handset manufacturers we have here, HTC 5 and Sony Mobile, kind of fall in the middle; so versus 6 the ones on the left, they're doing better versus the 7 ones on the right doing not as well. So I needed to 8 adjust and the jury would need to adjust the lump-sum 9 payments with that in mind. 10 And just like with the other chart, I've 11 provided in the red the share of the two Defendants at 12 the point of negotiation and their maximum share over 13 time. 14 Q. Could you read for me, sir, the shares that 15 you calculated and the market share information that you 16 calculated for the licensees and for the Defendants? 17 A. For the licensees, Huawei was 0.4 percent; 18 Sharp was 0.4 percent; ZTE was 0.5 percent; Motorola 19 Mobility was 7.1 percent; and LG was 18.4 percent. 20 With regard to the hypothetical negotiation, 21 the Defendants at issue here, HTC's share at negotiation 22 was 0.9 percent; and Sony Mobile was 1.2 percent. The 23 maximum share for HTC was 9.2 percent; and for Sony 24 Mobile, was 1.2 percent. 25 Q. Thank you.</p>	<p style="text-align: right;">68</p> <p>1 kind of base handset rates. 2 And there are these -- are the '211 patent 3 would have an impact on that. It would raise that base 4 rate. So what it would raise the base rate by was from 5 13.2 percent up to 33 percent. That's what you see in 6 the blue bars. 7 On the base station side, there was just one 8 calculation. There was one base -- base station rate. 9 And the added amount associated with the '326 patent 10 was -- represents 28.6 percent. 11 I believe, however, that these are probably 12 somewhat conservative. 13 Q. And these -- these numbers are related to the 14 wireless portfolio in 2009; is that correct? 15 A. That's exactly right. 16 Q. How did you calculate these percentages? 17 A. I simply took the added rate associated with 18 each of the two patents, divided by the rate that 19 existed before these two patents were added to the 20 portfolio. 21 Q. So with respect to the handset, the ranges in 22 the handsets, which factor is the best one to use? 23 A. Well, probably for the jury's consideration is 24 the 33.3 percent. The reason is, in that memo, it said: 25 Now that we've gotten the '211 patent or the '326</p>

<p style="text-align: right;">69</p> <p>1 patent, we're able to add on to our royalties that we're 2 getting in the marketplace. 3 In a hypothetical negotiation, we wouldn't be 4 adding on the '211 or the '326 patent. Those would be 5 the patents. They would be the core patents that would 6 be licensed. And when you add a patent to a portfolio, 7 that has a much smaller effect and it should, than when 8 you just have the patent standing alone. And there's 9 literature that supports this.</p> <p>10 Q. Let me show you what's on Jarosz 22. Who 11 wrote this article, sir?</p> <p>12 A. Eric Stasik, who used to be head of property 13 licensing at Ericsson.</p> <p>14 Q. What does this article show?</p> <p>15 A. There's a lot in this article, but the most 16 important message is what is underlined in the red. It 17 says: The incremental increase of each additional 18 patent is negligible.</p> <p>19 In other words, he's pointing to Ericsson's 20 experience and experiences in the industry. When you 21 add a patent to a portfolio, it only adds a little bit, 22 but standing alone, it can be quite valuable.</p> <p>23 Q. So what does this mean for the hypothetical 24 negotiation here?</p> <p>25 A. Well, one can consider the factors that I had</p>	<p style="text-align: right;">71</p> <p>1 A. Yes. After adjusting for the size of the 2 various manufacturers and adjusting for the portion of 3 the -- of the portfolio here, you'll see the numbers, 4 the range of numbers reported here for the base station 5 manufacturers.</p> <p>6 These do not have an adjustment for geography; 7 that is, allowing for the fact what we are talking about 8 here are U.S. patents and not Wi-LAN's worldwide patents 9 that were part of these other licenses.</p> <p>10 Q. And so this graphic depicts what the parties 11 to the hypothetical negotiation would have considered 12 would be the appropriate range for a fully paid-up 13 lump-sum license; is that correct?</p> <p>14 A. These are calculations of converting those 15 lump-sum payments to the hypothetical negotiation, and 16 they represent payments over the life of the patents.</p> <p>17 So these are inputs to consider and they're 18 various alternative ways to make adjustments that are 19 reflected in this chart.</p> <p>20 Q. Can you explain for the jury what the 21 different ranges that are depicted here represent?</p> <p>22 A. They're really driven by which manufacturer is 23 adjusted. So there were different lump-sum fees for the 24 different manufacturers. And some suggest, in the case 25 of Alcatel-Lucent, for instance, a number closer to \$9.3</p>
<p style="text-align: right;">70</p> <p>1 on the previous slide, but based on our understanding of 2 the value of patents, those numbers are probably a 3 little bit low. If the jury focuses on any particular 4 number for handsets, it should probably be the 33 5 percent as opposed to the 13.2 percent.</p> <p>6 Q. So are the rates that come -- with respect to 7 the patents that are part of a portfolio that are 8 licensed, is their value linear with respect to the 9 license?</p> <p>10 A. Absolutely not. And the economic literature 11 and licensing literature is filled with articles on this 12 point, that if you go from, say, four patents to eight 13 patents, that doesn't double a royalty rate from 14 1 percent to 2 percent.</p> <p>15 It's a concept known as numeric 16 proportionality. That is, when you add on -- each 17 add-on becomes less and less versus the one before, to 18 the point at which some certain number of patents don't 19 increase the price at all, because there's enough of 20 a -- of a core existing already.</p> <p>21 MS. ROSS: Let's go to Jarosz 23, please.</p> <p>22 Q. (By Ms. Ross) Does Jarosz 23 summarize the 23 implied lump-sum payments that you calculated for the 24 base stations after your adjustments that we just 25 discussed were made?</p>	<p style="text-align: right;">72</p> <p>1 million, and some suggest a number closer to \$27.5 2 million. So it depends on the inputs, and there are 3 several different inputs.</p> <p>4 So rather than just focusing on one party at 5 one time, I looked at all the relevant information. 6 That's why I came up with this range.</p> <p>7 Q. And on the left-hand side of the column where 8 it says max share, negotiation share, and average share, 9 can you tell us what that means?</p> <p>10 A. Those were related to the bar charts that we 11 saw before where I had the red bar and the neon green 12 bar. So max share is the maximum share that one of 13 these Defendants had in the period at issue.</p> <p>14 Negotiations share would be at the point of 15 their hypothetical negotiation, and average share would 16 be during that period.</p> <p>17 Q. Okay. Can you run the jury through these 18 numbers that you calculated?</p> <p>19 A. Sure. For Alcatel-Lucent, the range for the 20 max share is 9.3 million to 27.5 million. The 21 negotiation share is 7.5 million to 22.2 million. And 22 the average share is 7.6 million to 22.7 million.</p> <p>23 For Ericsson, for the maximum share, the range 24 is 9.2 million to 27.2 million. For the negotiation 25 share, the range is 4 million to 11.8 million. And for</p>

<p style="text-align: right;">77</p> <p>1 if I just apply those royalty rates to U.S. sales that 2 are at issue here, there's no additional need to adjust 3 for geography.</p> <p>4 Q. How do you use these running rates to inform 5 your lump-sum payment?</p> <p>6 A. Well, they were inputs, too, of the lump-sum 7 payments, and they're information that the jury could 8 and should consider in coming to a number here.</p> <p>9 I did come up with a chart that summarized 10 those, but I don't know that we need to cover that.</p> <p>11 Q. Oh, I'd like to pull it up.</p> <p>12 MS. ROSS: Slide 26.</p> <p>13 Q. (By Ms. Ross) Is this what you're referring 14 to?</p> <p>15 A. Yes.</p> <p>16 Q. Could you run the jury through these numbers, 17 please?</p> <p>18 A. Sure. For Sony Mobile, you see the numbers on 19 the left; for HTC, you will see the numbers on the 20 right.</p> <p>21 Again, as I did before, I did a high portfolio 22 adjustment and low portfolio adjustment, what we talked 23 about before. And here we don't really know what the 24 sales will be through trial. We don't -- we didn't have 25 full records from the Defendants through trial. So I</p>	<p style="text-align: right;">79</p> <p>1 What they did provide seemed to be about 2 57 percent of what is in the IDC reports, so I used the 3 IDC data for the sales information.</p> <p>4 Q. Are you aware that the Defendants contend that 5 there are many components of the accused products that 6 do not use the technology at issue?</p> <p>7 A. Yes.</p> <p>8 Q. Do the Wi-LAN licenses here for running 9 royalties that you considered, does that take that fact 10 into consideration?</p> <p>11 A. Yes, because the royalty rates are just a 12 portion of revenues. It adjusts for the fact -- the 13 rate automatically adjusts for the fact that there are 14 other things that contribute value.</p> <p>15 And I don't -- certainly don't dispute that 16 here. There are many drivers of value here. HSDPA is 17 important, but there are other things. But the running 18 royalties reflect the significance of some of the 19 inventions to the products at issue.</p> <p>20 Q. Were the licenses involving the Wi-LAN patents 21 limited to the patents-in-suit only?</p> <p>22 A. No. They were broader.</p> <p>23 Q. And did you take this fact into consideration 24 in your analysis?</p> <p>25 A. Yes. We talked earlier about the</p>
<p style="text-align: right;">78</p> <p>1 had to make some assumptions through trial or through 2 life of the patent as to what those numbers would be.</p> <p>3 And so that's why you see no growth and growth 4 assumptions built in.</p> <p>5 For Sony Mobile, the numbers are .2 million to 6 .5 million in the no-growth high portfolio adjustment. 7 And then the growth adjustment scenario is .4 million to 8 .7 million. In the low portfolio adjustment scenarios, 9 the no-growth number is .1 million to .2 million. And 10 the growth numbers are .1 million to .3 million.</p> <p>11 HTC on the right, again, has higher numbers. 12 They've had more success in the business. For the high 13 portfolio adjustment numbers, no growth is 3.9 million 14 to 7.6 million. The growth scenario has 4.8 million to 15 9.4 million. The low portfolio adjustment scenarios for 16 no growth has 1.5 million to 3 million. And the growth 17 scenario, 1.9 million to 3.7 million.</p> <p>18 Q. Now, you said that you didn't have some actual 19 data for Sony Mobile. How did the sales data for the 20 models produced by Sony Mobile compare to the IDC Sony 21 Mobile sales estimates.</p> <p>22 A. Yeah. I'm not sure if I said that explicitly. 23 I had pretty good data for HTC. Sony Mobile, it was 24 less good data. They didn't appear to be able to 25 provide information on all the infringing models.</p>	<p style="text-align: right;">80</p> <p>1 Houston/McEwan memo that has adjustments for the 2 wireless portfolio. That's built in the analysis that 3 I've done.</p> <p>4 Q. And that adjustment is reflected here on this 5 page?</p> <p>6 A. Yes.</p> <p>7 Q. And then on the preceding pages where we 8 looked at the lump sum, that fact was taken into 9 account?</p> <p>10 A. Absolutely.</p> <p>11 Q. Okay.</p> <p>12 MS. ROSS: Let's return to Jarosz 27, 13 please.</p> <p>14 Q. (By Ms. Ross) So the last item on the chart 15 was both the Defendants' licenses. Did you find any of 16 the Defendants' licenses particularly useful?</p> <p>17 A. I found them somewhat useful, but none of 18 them, of course, covered the patents-in-suit, because 19 that's why we're here. There is no license.</p> <p>20 There were licenses covering a variety of 21 wireless technologies, and I looked at those. Some had 22 lump sums; some had royalties. I found those useful, 23 but not as useful as the Wi-LAN licenses.</p> <p>24 Q. Did this make the Defendants' licenses more or 25 less informative than the Wi-LAN licenses?</p>

<p style="text-align: right;">125</p> <p>1 the fact that the Defendants would only get a discount 2 for the Airspan patents, right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Let's -- I -- I recall we had a couple 5 of depositions in this case. When I took your 6 deposition the first time in this case, you told me you 7 did not know how to do a calculation to account for the 8 fact that the Defendants are only getting a license to 9 three patents in Airspan's portfolio.</p> <p>10 Do you recall that?</p> <p>11 MS. ROSS: May we approach?</p> <p>12 THE COURT: Yes, you may. (Bench conference.)</p> <p>13 MS. ROSS: Your Honor, this is improper 14 impeachment.</p> <p>15 THE COURT: Excuse me. You have to speak 16 a little louder.</p> <p>17 MS. ROSS: This is improper impeachment 18 evidence. She didn't permit him to answer the question 19 and look at the deposition testimony.</p> <p>20 THE COURT: And what?</p> <p>21 MS. ROSS: Before she started impeaching 22 him with the deposition testimony.</p> <p>23 MR. HEFFERNAN: I'm just trying to 24 establish what he came up with. 25</p>	<p style="text-align: right;">127</p> <p>1 you just mentioned it -- on the McEwan memo, DX 55, 2 right?</p> <p>3 A. I don't know the number, but I looked at the 4 Cory Houston/Shawn McEwan memo.</p> <p>5 MR. HEFFERNAN: Let's pull up DX 55. 6 Let's go to 261, the page underneath 261. 7 Yes. And if you could blow up the first 8 figure, not the paragraph underneath it.</p> <p>9 Q. (By Ms. Heffernan) Now, it's your opinion, 10 sir, that by adding the Air -- you rely on this memo for 11 the conclusion that by adding the Airspan patents to the 12 CDMA portfolio that Wi-LAN had at the time, Wi-LAN 13 thought it could get an extra .1 percent on its running 14 royalty license for base stations, right?</p> <p>15 A. I'm sorry. That's not my opinion. That's 16 what's reflected here in the memo. I think it's 17 Mr. Houston's opinion and maybe the opinion of others at 18 Wi-LAN.</p> <p>19 Q. And you equate that incremental rate, that 20 extra .1 percent, that Wi-LAN could get by virtue of 21 having the Airspan patents in his portfolio, to 22 approximately 28.6 percent, the value of Wi-LAN's 23 portfolio, right?</p> <p>24 A. It's not approximately. It's .1 divided by 25 .35.</p>
<p style="text-align: right;">126</p> <p>1 THE COURT: Then ask your question again 2 and let him answer.</p> <p>3 MS. ROSS: Thank you, Your Honor. (Bench conference concluded.)</p> <p>4 Q. (By Ms. Heffernan) Now, earlier in Ms. Ross' 5 direct examination of you, you presented a portfolio 6 adjustment of 28.6 percent to get at the fact that the 7 Defendants would only be getting a license to three of 8 the patents-in-suit, right?</p> <p>9 A. Yes, but I believe that number may be too low, 10 for the reasons that we talked about. I relied on a 11 memo that just assessed these patents in an incremental 12 basis, not if these patents were licensed in and of 13 themselves.</p> <p>14 Q. Fair enough.</p> <p>15 Now, that's a calculation that you did the 16 first time in this case just a couple of weeks ago, 17 right?</p> <p>18 A. Yes.</p> <p>19 Q. And when I took your deposition earlier, you 20 told me that you didn't actually know how to do that 21 calculation, right?</p> <p>22 A. That's right.</p> <p>23 Q. Now, for the U.S. portfolio -- in your 24 apportionment of that U.S. portfolio, you rely -- and 25</p>	<p style="text-align: right;">128</p> <p>1 Q. And that equals 28.6 percent, correct?</p> <p>2 A. Yes.</p> <p>3 Q. Now, you do a similar analysis for handsets. 4 Prior to the addition of the Airspan patents 5 in the case, Wi-LAN was getting approximately 10 cents 6 in a running royalty per handset. With the addition of 7 the Airspan patents, that's another 5 cents, and so you 8 say that's about -- the Airspan patents represent about 9 a third of the value of Wi-LAN's portfolio. Right?</p> <p>10 A. Well, there was a range. Remember, I had 11 three blue bars. One went from 13 point something 12 percent up to 33 point something percent.</p> <p>13 Q. But 33.3 percent is the number that you 14 testified to on direct as being the most accurate, 15 right?</p> <p>16 A. Well, I didn't say accurate. I think I placed 17 the most weight on that number.</p> <p>18 Q. Fair enough.</p> <p>19 Now, you don't know, though, do you, sir, how 20 Mr. Houston, the author of this memo, arrived at 21 .1 percent of sales for base stations. You don't know 22 how he did that, right?</p> <p>23 A. Correct. I see the results of his work but 24 not the inputs to the work.</p> <p>25 Q. And you don't know how he arrived at 5 cents</p>

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1 per device for handsets either, right?

2 **A. Correct. I see the results but not the**
3 **inputs.**

4 Q. Now, this paragraph is just talking about --
5 the paragraph above those rates, it's just talking about
6 the CDMA patents in Wi-LAN's portfolio, right?

7 **A. Yes, that's right, as applied to a certain set**
8 **of products. Yes.**

9 Q. Now, you know, don't you, that Wi-LAN had
10 other patents in its portfolio as of December 2009 when
11 this memo was written, right?

12 **A. Right.**

13 Q. And this -- this memo says nothing at all
14 about how the Airspan patents should stack up against
15 all of those other patents in Wi-LAN's portfolio, right?

16 **A. Correct. It does not address that specific**
17 **issue. That's right.**

18 Q. But you take the numbers from this document
19 and you say that the -- actually, the single Airspan
20 patent for the base station Defendants, it would be the
21 '326, and for the handset Defendants, it would be the
22 '211, right?

23 **A. Yes, because that's what this document says.**
24 **It oriented it to those single patents.**

25 Q. So you say that the single patents here that

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1 Wi-LAN's portfolio in 2009? You know that, sir, right?

2 **A. It depends on when in 2009 you're talking. I**
3 **know it was in the hundreds. I don't think it was over**
4 **a thousand at that point.**

5 Q. So as of December 2009, there were
6 approximately 810 patents in Wi-LAN's portfolio. You
7 know that, right?

8 **A. I don't know the precise number. I do believe**
9 **it was less than a thousand.**

10 Q. Now, even though this memo was written in 2009
11 when there were only about 810 patents in Wi-LAN's -- in
12 Airspan -- excuse me -- in Wi-LAN's portfolio -- let me
13 start that over again.

14 **A. Fine with me.**

15 Q. Even though this memo was written in December
16 of 2009 when there were only about 810 patents in
17 Wi-LAN's portfolio, it's still your opinion, sir, that
18 the Airspan patent, single Airspan patent, accounts for
19 approximately 30 percent of Wi-LAN's entire portfolio
20 even today, with 33 hundred patents in it, right?

21 **A. Yes. And I can explain why, if you'd like.**

22 Q. No, thank you. You can do that on redirect,
23 sir.

24 **A. Okay.**

25 Q. Now, you didn't perform any calculations to

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1 are referenced here account for roughly, let's say, 30
2 percent of the value of Wi-LAN's entire portfolio,
3 right?

4 **A. It's Mr. Houston's opinion that the price --**
5 **that the price that they could demand for the**
6 **combination of their pre-existing portfolio, plus the**
7 **Airspan portfolio, of that total price, about 30 percent**
8 **would be associated with the Airspan patent.**

9 Q. But you say that's Mr. Houston's opinion, but
10 you actually adopt that opinion and you use those
11 numbers for your calculations in this case, right?

12 **A. I used those, knowing that the setting isn't**
13 **precisely what we have.**

14 Q. But you used those numbers, right?

15 **A. I did, yes.**

16 Q. Now, this memo, we established, was written in
17 December of 2009, but we know that today, in Wi-LAN's
18 patent portfolio, they've got over 3,300 patents in the
19 patent portfolio, right?

20 **A. I actually think that Mr. Parolin said it**
21 **might be 3500 today, but, yes, there are thousands of**
22 **patents in their portfolio today.**

23 Q. And even though this memo is written in
24 2009 -- and I should establish that actually. You know,
25 don't you, that there are only about 810 patents in

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1 account for the increase in the size of Wi-LAN's
2 portfolio, right?

3 **A. No, I did not, because I didn't need to.**

4 Q. And it's true, isn't it, that even though you
5 used 28.6 percent as the value of the Airspan patents
6 for Wi-LAN's entire portfolio, you know, sir, don't you,
7 that no one at Wi-LAN has ever performed a valuation of
8 the three Airspan patents asserted here and determined
9 what value they have, right?

10 **A. No one, other than what you see in this memo,**
11 **is that what you're saying?**

12 Q. We heard Mr. Parolin testify yesterday that --
13 that no one at Wi-LAN has actually valuated, placed a
14 value on the three Airspan patents-in-suit, right? You
15 heard him testify about that?

16 **A. Yes. And what this memo is oriented is to a**
17 **price, not necessarily a value. I think Mr. Parolin was**
18 **asking about value -- was asked about value.**

19 Q. But the way that you applied it here in this
20 case and in your damages calculations is as a value.
21 You say it's approximately 28.6 percent of the value of
22 Wi-LAN's entire portfolio, correct?

23 **A. No, not exactly correct. I used this input to**
24 **determine what the appropriate price should be.**

25 Q. Now, Huawei and Motorola Solutions are

<p style="text-align: right;">133</p> <p>1 licensed to all of Wi-LAN's patents today. That's over 2 3300 patents. According to Mr. Parolin, that's about 3 3500 patents today.</p> <p>4 A. I think that's correct. Yes.</p> <p>5 Q. And the -- the amount of the license that 6 Wi-LAN and Motorola Solutions paid to Wi-LAN, that -- 7 that's a license to use any and -- or all of those 3300 8 patents, right?</p> <p>9 A. I think that's right, although I expect their 10 expectation is they are going to use a very small 11 subset, so...</p> <p>12 Q. So Huawei and Motorola Solutions, they're 13 licensed to Wi-LAN's WiMAX patents, right?</p> <p>14 A. Yes, I think that's right.</p> <p>15 Q. And when I say WiMAX patents, I mean patents 16 that cover the WiMAX standard. Do you recall that?</p> <p>17 A. I thought that's what you had in your 18 question. I have no idea whether they plan to use that 19 technology, but I think they have a license to it.</p> <p>20 Q. And they're licensed to Wi-LAN's Wi-Fi 21 patents, too?</p> <p>22 A. Yes, same answer.</p> <p>23 Q. Wi-LAN's Bluetooth patents?</p> <p>24 A. I believe they have a license. I have no idea 25 whether they plan to use that technology.</p>	<p style="text-align: right;">135</p> <p>1 Q. But you say that a single Airspan patent 2 accounts for roughly 30 percent of the licensing revenue 3 that Wi-LAN got from the Huawei and Motorola Solutions 4 licenses, right?</p> <p>5 A. The calculation I did, I said the price that 6 they obtained, a third of it is associated with the base 7 station -- well, a third with the handset and less than 8 a third with regard to base station.</p> <p>9 Q. All right. Now, I'd like to talk about the 10 worldwide apportionment or the geographic apportionment 11 that you said with Ms. Ross on your direct that you 12 didn't do. And I want to talk about why that's 13 important.</p> <p>14 It's important, right, because in addition to 15 all of the U.S. patents in Wi-LAN's portfolio that 16 Huawei and Motorola Solutions and ZTE got a license to, 17 they also got a license to Wi-LAN's foreign patents, 18 right?</p> <p>19 A. Which licensees are we talking about?</p> <p>20 Q. Huawei, for example. Huawei got a license to 21 all patents worldwide, right?</p> <p>22 A. Yes. And Mr. Parolin talked about that topic 23 in his examination --</p> <p>24 Q. That's right.</p> <p>25 A. -- about their --</p>
<p style="text-align: right;">134</p> <p>1 Q. And they're licensed to Wi-LAN's DOCSIS 2 patents, right?</p> <p>3 A. That's right. I think I have seen that, 4 although I'm not sure what that is.</p> <p>5 Q. And Wi-LAN's LTE or 4G patents, they have a 6 license to those, too, right?</p> <p>7 A. Yes. I believe that's correct.</p> <p>8 Q. Now, we do agree, though, that this document 9 that you rely on, DX 55, it says nothing about how the 10 Airspan patents stack up to the patents that Wi-LAN has, 11 that cover other standards. Right?</p> <p>12 A. No. There's -- yes, I agree with you. 13 There's no comparison of these patents against other 14 patents.</p> <p>15 Q. But all of those patents that cover other 16 standards that are in Wi-LAN's portfolio, all of those 17 patents, they have value, too, right?</p> <p>18 A. Some, yes. Some value. Some it's very, very 19 small value. For others, it's --</p> <p>20 Q. You haven't done a valuation in this case on 21 the value of all those other patents, have you?</p> <p>22 A. I have not. Correct.</p> <p>23 Q. Now, they can't all be worth 30 percent of the 24 portfolio. We can agree on that, right?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">136</p> <p>1 Q. And Motorola Solutions --</p> <p>2 A. Did you want me to finish or no?</p> <p>3 Q. No. It was just a yes or no question, right?</p> <p>4 So Huawei, it got a license to all of the 5 patents in Wi-LAN's portfolio, both U.S. and foreign, 6 right?</p> <p>7 A. Yes.</p> <p>8 Q. And Motorola Solutions, it, too, got a license 9 to the foreign patents in Wi-LAN's portfolio, right?</p> <p>10 A. Yes. And Mr. Parolin talked about those.</p> <p>11 MS. HEFFERNAN: Now, let's put up 12 Slide 24.</p> <p>13 Q. (By Ms. Heffernan) So what I show here on 14 Slide 24 is the Huawei licenses, the breakdown of the 15 license. It's a nice license in a sense, because the 16 listed number of patents that were licensed when Huawei 17 signed the license, broke down pretty evenly or in a 18 nice fashion between U.S. patents and foreign patents.</p> <p>19 So Huawei basically got a license, at the time 20 it signed a license, to 321 U.S. patents and 630 foreign 21 patents, right?</p> <p>22 A. That sounds right to me. Yes, ma'am.</p> <p>23 Q. So that's -- roughly a third of that license 24 was for U.S. patents and roughly two-thirds was for 25 foreign patents, right?</p>

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1 MS. ROSS: Jen, is there a way we can
2 pull up DX 297, please?
3 Can you blow up that section, the license
4 grant, please?
5 REDIRECT EXAMINATION
6 BY MS. ROSS:
7 Q. Now, Mr. Jarosz --
8 MS. ROSS: Oh, I'm sorry. It's down a
9 little further, Jen, down at the bottom, right here in
10 the middle. Perfect.
11 Q. (By Ms. Ross) Now, Mr. Jarosz, could you read
12 for me, please? This is the Cal-Comp license.
13 **A. Read what part?**
14 Q. The license grant.
15 **A. The license?**
16 Q. Uh-huh.
17 **A. Subject to the terms of this agreement, Wi-LAN**
18 **hereby grants to the licensee and its subsidiaries and**
19 **affiliates during the term, non-exclusive,**
20 **non-assignable licenses under the licensed patents to**
21 **make, have made, import, use, lease, offer for sale,**
22 **sell, transfer and/or otherwise dispose of subject**
23 **products in the jurisdictions only, in each case with no**
24 **right to grant sublicenses.**
25 Q. Okay.

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1 MS. ROSS: If we could jump to Page 11,
2 please.
3 Actually, let's do Page 12.
4 And can you blow up this box on the
5 royalties?
6 Thank you.
7 Q. (By Ms. Ross) And so, Mr. Jarosz, what were
8 the royalty amounts that the parties to this Cal-Comp
9 agreement agreed to?
10 **A. In year one, 25 cents per unit; in year two,**
11 **30 cents per unit; and thereafter, 35 cents per unit.**
12 Q. Thank you.
13 MS. ROSS: Jen, could we skip ahead to
14 298, please.
15 Q. (By Ms. Ross) This is another agreement that
16 Mr. Findlay put in front of you. It is the Sharp
17 Corporation agreement.
18 If you could for me, look at the jurisdictions
19 that are part of the license grant.
20 MS. ROSS: (f), please.
21 **A. The United States of America and Canada and**
22 **their respective territories and possessions.**
23 Q. (By Ms. Ross) Okay.
24 **A. So this not a worldwide license.**
25 Q. Thank you.

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1 MS. ROSS: Let's pull up (g), please.
2 Q. (By Ms. Ross) If you could look at the
3 licensed patents and read that, please?
4 **A. (Witness complies.)**
5 Q. Would you tell me whether that -- this license
6 applies to after-acquired patents in the Wi-LAN
7 portfolio?
8 **A. No, it does not appear to.**
9 Q. Okay. Now, sir, is it your understanding that
10 Wi-LAN has different -- smaller portfolios within its
11 global portfolio?
12 **A. Yes.**
13 Q. And so the patents-in-suit today relate to the
14 wireless portfolio; is that correct?
15 **A. That's correct.**
16 Q. Okay. And did Mr. -- did you ever understand
17 Mr. Parolin's testimony to be that these licenses are
18 directed toward the wireless portfolio?
19 **A. Yes.**
20 **Q. Okay. And the Cory Houston memo that you**
21 **relied upon in your calculations, what portfolio did**
22 **that relate to?**
23 **A. The wireless portfolio.**
24 **Q. Do you feel that you have equipped our jury**
25 **with the appropriate relevant inputs from which they can**

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1 **assess the proper damages in this case, if they find the**
2 **patents are infringed by the Defendants and have failed**
3 **to prove that the patents are invalid by clear and**
4 **convincing evidence, as instructed by the Court?**
5 **A. Yes, I do.**
6 Q. Thank you.
7 MS. ROSS: I pass the witness.
8 THE COURT: All right. Thank you.
9 Any further recross?
10 MR. HEFFERNAN: Nothing further from
11 Alcatel-Lucent, Your Honor.
12 THE COURT: All right.
13 MR. FINDLAY: Nothing further, Your
14 Honor.
15 THE COURT: All right. Thank you.
16 If the jury would pass down any questions
17 it might have for this witness.
18 (Pause in proceedings.)
19 THE COURT: All right. Thank you.
20 We don't have any questions of this
21 witness.
22 Ladies and Gentlemen, we're going to take
23 our lunch break at this time. We will be in recess
24 until 1:10. Please remember my instructions, and enjoy
25 your lunch.

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<p>1 COURT SECURITY OFFICER: All rise for the</p> <p>2 jury.</p> <p>3 (Jury out.)</p> <p>4 THE COURT: Please be seated.</p> <p>5 Let me give the parties their time --</p> <p>6 oh -- well, I will do that later this afternoon.</p> <p>7 I -- there were some questions, but they</p> <p>8 were all marked out, so I think that they got them</p> <p>9 answered. But as with my practice, I'll read the</p> <p>10 questions to you anyway.</p> <p>11 First question was: As shown in the</p> <p>12 hypothetical negotiation, if there was infringement, why</p> <p>13 would Airspan not have brought up infringe --</p> <p>14 infringement suits on the Defendants in the prior years</p> <p>15 when they still owned the patents hypothetically?</p> <p>16 And then that's marked out.</p> <p>17 Next question: Why would you not -- why</p> <p>18 would you not use the sworn testimony of actual numbers</p> <p>19 instead of IDC numbers to figure a damages calculation,</p> <p>20 especially when there is such a large difference?</p> <p>21 The next question is a little difficult</p> <p>22 to read, but I believe it reads: If the company was</p> <p>23 taken to lawsuit before attempted negotiation, is that</p> <p>24 accounted for in the hypothetical negotiation, i.e.,</p> <p>25 HTC?</p>	<p>1 CERTIFICATION</p> <p>2</p> <p>3 I HEREBY CERTIFY that the foregoing is a</p> <p>4 true and correct transcript from the stenographic notes</p> <p>5 of the proceedings in the above-entitled matter to the</p> <p>6 best of our abilities.</p> <p>7</p> <p>8</p> <p>9 /s/ Shea Sloan</p> <p>10 SHEA SLOAN, CSR</p> <p>11 Official Court Reporter</p> <p>12 State of Texas No.: 3081</p> <p>13 Expiration Date: 12/31/14</p> <p>14</p> <p>15 /s/ Judith Werlinger</p> <p>16 JUDITH WERLINGER, CSR</p> <p>17 Deputy Official Court Reporter</p> <p>18 State of Texas No.: 731</p> <p>19 Expiration Date 12/31/14</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 Next question, which is also marked out:</p> <p>2 Does Qualcomm manufacture the chip used in the base</p> <p>3 units and handsets?</p> <p>4 Does Qualcomm have a license for these</p> <p>5 four patents in question, question mark?</p> <p>6 All right. That was all of the</p> <p>7 questions, but they've marked them all out, so,</p> <p>8 apparently, they changed their minds, but I did want to</p> <p>9 share those with you.</p> <p>10 We'll be in recess until 1:10.</p> <p>11 COURT SECURITY OFFICER: All rise.</p> <p>12 (Lunch recess.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	