

# Exhibit 3

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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. )  
 ) DOCKET NO. 6:10cv521  
 -vs- )  
 5 Tyler, Texas  
 6 ALCATEL-LUCENT USA, INC., 1:06 p.m.  
 7 ET AL ) July 11, 2013  
 \*\*\*\*\*  
 8 WI-LAN, INC. )  
 ) DOCKET NO. 6:13cv252  
 9 -vs- )  
 10 HTC CORPORATION,  
 11 ET AL )

12

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

17

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24 Proceedings taken by Machine Stenotype; transcript was  
 25 produced by a Computer.

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1 needs to be. That's where the patents were, at the date  
2 of alleged first infringement; and that's who we are  
3 required to assume is at the negotiating table.

4 Q. Now, when you say that's where the patents  
5 were, do you mean that's -- that's who owned the patents  
6 at the time of the hypothetical negotiation?

7 A. Airspan owned the patents at the time of both  
8 hypothetical negotiations.

9 MS. HEFFERNAN: Let's go to Slide 5.

10 Q. (By Ms. Heffernan) I'd like to talk a little  
11 bit about the areas of disagreement that you have with  
12 Mr. Jarosz.

13 Did you -- did you have an opportunity to  
14 review his expert reports in this case?

15 A. I did. He submitted two expert reports, and  
16 he was deposed twice, and I saw him testify in court  
17 here yesterday.

18 Q. Can you summarize your areas of disagreement  
19 with Mr. Jarosz?

20 A. Sure. Sure. I have them on this slide.

21 They fall into four categories. The first is  
22 that Mr. Jarosz seeks a financial windfall for Wi-LAN.

23 The second is that I believe he uses the wrong  
24 starting point. That's because he placed the wrong  
25 party at the hypothetical negotiation table. He

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1 months after its acquisition from Airspan. And what  
2 Wi-LAN wanted to do was justify the 11-million-dollar  
3 treatment of the transaction for its accountants. It  
4 wanted to book \$3 million in licensing revenue to offset  
5 the \$8 million that they paid for the patents from  
6 Airspan.

7 And so they conducted an analysis -- an  
8 analysis to see if they could justify that value. What  
9 they said is that -- and right in the middle,  
10 Mr. Houston said what I just described. He said the  
11 company may be able to achieve the following royalty  
12 rates. And he outlined a couple of royalty rates. One  
13 is .1 percent of sales for base stations, and the other  
14 is 5 cents per device for handsets or modems.

15 And Mr. Jarosz didn't talk about this  
16 yesterday, but his base station rate, if you do it on an  
17 effective rate basis, if you apply his royalty opinions  
18 of the accused sales, it works out to be about 3.5  
19 percent. So that's 35 percent times what's even in this  
20 memo, which was what Wi-LAN said that it may be able to  
21 achieve, not what it would achieve.

22 Q. Let me interrupt you there. You're referring  
23 to Mr. Jarosz' reasonable royalty opinions.

24 Did you hear him yesterday express a final  
25 conclusion on what the reasonable royalty should be?

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1 considered Wi-LAN and focused on Wi-LAN and not Airspan.  
2 He values more than the patents-in-suit. We'll talk a  
3 little bit more about that later.

4 And I believe that he ignored the best  
5 evidence of value. We had a transaction that we just  
6 saw some video about involving these very same patents  
7 that we're engaged in with Wi-LAN.

8 Q. So let's take those one-by-one.

9 MS. HEFFERNAN: Next slide, please.

10 Q. (By Ms. Heffernan) Now, you heard Mr. Jarosz  
11 talk a bit about a memorandum. Is that where we should  
12 start?

13 A. Sure. I think that's a place where I can help  
14 illustrate why I say that Mr. Jarosz seeks a financial  
15 windfall for Wi-LAN.

16 Q. Okay. So what I have up on the screen now as  
17 Slide 7 is a blowup of DX 55. That is the Cory Houston  
18 memo written to Shaun McEwan in December of 2009 that  
19 we've heard some testimony about.

20 A. Right.

21 Q. You've highlighted some areas of this memo.

22 Can you -- can you tell us what the  
23 significance is of that?

24 A. Sure. So this was a memo that was prepared in  
25 connection with Wi-LAN's -- it was prepared several

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1 A. Well, that's a good point, because that came  
2 out on cross-examination, that he didn't have opinions  
3 regarding a reasonable royalty. He had -- I think he  
4 called them suggestions that needed to be reduced pretty  
5 dramatically. I think it came out on cross, and I think  
6 that's clear from this -- from this memo, too.

7 Q. So for his 3.8-million-dollar amount or  
8 suggestion for Alcatel-Lucent, that was 35 times the  
9 amount on an effective royalty basis --

10 A. Right.

11 Q. -- than the .1 percent of sales?

12 (Electricity went out.)

13 THE COURT: All right. I guess this  
14 would be a good time for a break. We'll take our  
15 afternoon break at this time. We will be on break until  
16 2:30.

17 (Recess.)

18 COURT SECURITY OFFICER: All rise.

19 (Jury in.)

20 THE COURT: Please be seated.

21 All right. You may proceed.

22 MS. HEFFERNAN: Thank you, Your Honor.

23 Q. (By Ms. Heffernan) Mr. Bakewell, before we  
24 experienced that electrical inference, we were talking  
25 about Slide 7 in your demonstratives.

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1 **A. Right.**

2 Q. In particular, we were talking about your  
3 conclusion that Mr. Jarosz essentially invites the jury  
4 to award a windfall to Wi-LAN. And I -- and I think we  
5 left off on the .1 percent of sales for base stations.

6 **A. Right.**

7 Q. Can you tell me how it is that you concluded  
8 that Mr. Jarosz seeks to award an effective royalty rate  
9 to Wi-LAN of about 35 times higher than this .1 percent  
10 rate that we have here on DX 55?

11 **A. Well, he had this suggestion of over  
12 \$3 million or so; and if you compare that to .1 percent  
13 of 120 million, it's way larger.**

14 **So 10 percent of 120 million -- that's the  
15 number he used -- that would be 12 million; and then 1  
16 percent would be 1.2 million; .1 percent is \$120,000.**

17 **His damages estimate, or whatever he called  
18 it, was way higher than that.**

19 Q. Now, why do you use \$120 million as the base  
20 for the effective royalty rate?

21 **A. Because that's the -- what's called the  
22 smallest saleable unit. Those were the accused sales  
23 related to the software upgrades.**

24 Q. And for HTC, the handset modems number here of  
25 a nickel per device, is it your conclusion that

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1 **that guidance; instead, he focused on Wi-LAN's licenses,  
2 and I think that that was the wrong place for him to  
3 start his analysis.**

4 MS. HEFFERNAN: So let's go to the next  
5 slide, Slide 9.

6 Q. (By Ms. Heffernan) On this slide, we have a  
7 listing of the licenses that Mr. Jarosz said were  
8 comparable in arriving at a hypothetical license for  
9 Alcatel-Lucent in this case: ZTE, Huawei, and Motorola  
10 Solutions.

11 Now, you have listed here on this slide  
12 certain columns: Scope, geography, driven by the  
13 patents-in-suit, and base stations only.

14 Let's go through those one by one.

15 **A. Sure.**

16 Q. What do you mean when you say that the scope  
17 of these licenses is not comparable?

18 **A. Well, I think this came out pretty clearly on  
19 cross-examination when you and Mr. Findlay  
20 cross-examined Mr. Jarosz.**

21 **The licenses for base stations, to the extent  
22 they're even considered, are very different; and the  
23 scope of those licenses was much broader than the  
24 license that we have to evaluate in this case, which  
25 relates for Alcatel-Lucent to only three patents.**

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1 Mr. Jarosz seeks to invite the jury to award a windfall  
2 to Wi-LAN?

3 **A. The calculation works out to be similar. The  
4 number -- the equivalent of what he suggested for HTC is  
5 like somewhere between 20 and 25 cents, and that's way  
6 above 5 cents.**

7 Q. So --

8 **A. That's more than -- this thing says may be  
9 able to achieve. Those effective rates are way low for  
10 what Wi-LAN said it may be able to achieve.**

11 Q. All right.

12 MS. HEFFERNAN: Let's go to the next  
13 slide, Slide 8.

14 Q. (By Ms. Heffernan) Let's return to your  
15 summary of the areas of disagreement.

16 The next area of disagreement is that you  
17 state that he uses the wrong starting point.

18 **A. Right.**

19 Q. What do you mean by that?

20 **A. Well, that relates to the slide that I made  
21 regarding the hypothetical negotiation and the  
22 requirement that both he and I have to make under the  
23 law that Airspan is the party that would be licensing  
24 its patent rights to Alcatel-Lucent or HTC.**

25 **Because he did that, he didn't really respect**

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1 **The scope of these licenses was thousands --  
2 literally thousands of patents in most cases; and ZTE  
3 was over 400 patents, plus whatever patents relate to  
4 these wireless standards.**

5 Q. Now, yesterday when I was visiting with  
6 Mr. Jarosz about his opinions in this case, I said that  
7 the Huawei license was for 951 patents, and it was  
8 roughly one-third U.S./two-thirds foreign.

9 **A. I think that's right.**

10 Q. But then we also talked about Huawei getting a  
11 license to almost 3500 patents.

12 **A. Right.**

13 Q. So can you explain how that works out?

14 **A. Oh, sure. I'll clarify, because there's a  
15 clause in the Huawei license that says -- you get it in  
16 plain words. It says, hey, look at the schedule in the  
17 back, and if you look at the schedule in the back, it  
18 lists out 900 patents.**

19 **And then the sentence continues, and it says  
20 and you get rights to all future patents. And we've  
21 heard testimony about Wi-LAN's portfolio growing. And  
22 so that's why it's thousands of patents.**

23 MS. HEFFERNAN: Let's go to the next  
24 slide, Slide 10.

25 Q. (By Ms. Heffernan) What about the geography of

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1 Q. Can you -- so we've basically just discussed  
2 the middle part of the slide. Can you just walk -- get  
3 us through to the end, get us through to the finish line  
4 here?

5 A. Sure. So -- well, I talked about, actually,  
6 all of this. I said there was a bunch of back and  
7 forth. We saw what -- the culmination of that in this  
8 1.55-million-dollar e-mail -- portion of the e-mail.

9 Then we saw this accounting arrangement here.

10 Then what Airspan did is to make sure that it  
11 was getting a -- what it thought would be a fairly  
12 priced, fair value for its patents, it went out, and it  
13 went to the marketplace.

14 And InterDigital -- InterDigital is another  
15 company like Wi-LAN -- and somebody from Airspan  
16 approached -- approached somebody from InterDigital and  
17 asked them what they would offer for the same patents.

18 InterDigital came back and said: The best we  
19 can do is, we'll offer you \$6 million for all of your  
20 patents, all of your patents.

21 Q. And so that's how it changed into a  
22 portfolio-type approach to the deal?

23 A. So then it went from just being three patents  
24 to being a portfolio type of deal. So that's that  
25 transaction -- or proposed transaction.

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1 Then just a few days later, after Airspan  
2 communicated to Wi-LAN that it had gotten this other  
3 offer, Wi-LAN offered more money. It offered a net  
4 price -- and we know this is what Airspan was focused  
5 on, from Mr. Brant's testimony -- of \$8 million, and it  
6 was structured as \$11 million for Airspan's patents.

7 That's that amount, which I should have  
8 underlined and not crossed out.

9 And then the \$3 million for a license to  
10 Wi-LAN's patents, which allowed Wi-LAN to book  
11 \$3 million in revenues. It was an accounting  
12 transaction. The economics were that \$8 million changed  
13 hands.

14 Q. Okay. So you cite here DX 14, and I've got DX  
15 14 in my hand. It's -- actually, it's -- it's another  
16 e-mail. And the jury can take a look at it.

17 Is there a single place in this e-mail where  
18 they say 11 million for the patent acquisition minus  
19 3 million for the Wi-LAN patent license equals 8  
20 million?

21 A. Well, there sort of is. There's three  
22 contracts that are attached to this e-mail. There's the  
23 11-million-dollar purchase; there's the 3-million-dollar  
24 license; and then there's a third agreement that's  
25 called an offset agreement that's at the back.

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1 And this all happened at one time, and the  
2 parties agreed that, look, all that's going to change  
3 here is \$8 million. That's what this setoff agreement  
4 accomplishes.

5 Q. Okay. So, actually, we've talked -- we've  
6 seen the Brant testimony, so I don't need to go to the  
7 next slide.

8 Let's go to -- actually, let me just ask you  
9 this. Let's take a step back.

10 So we've walked through the offers and the  
11 counteroffers. We get to a final deal, as we see here  
12 for \$8 million net.

13 Why is it your opinion that this patent  
14 purchase agreement is the best evidence of how the  
15 parties at the hypothetical negotiation would look at a  
16 license?

17 A. So we saw people negotiating, parties  
18 negotiating rights to patents. They're doing it in the  
19 form of an acquisition, which is different than a  
20 license. If you acquire patents, then you have the  
21 ability to get royalties from others.

22 And so a non-exclusive license, which is what  
23 we're evaluating here, has to be some subset of the  
24 value of something that's purchased.

25 So we have these amounts. We have \$8 million

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1 for all of Airspan patents -- Airspan's patents, or we  
2 have \$1.55 million for three of the four  
3 patents-in-suit. And we know that the rights that apply  
4 to any Defendant in this case, or any licensee, is a  
5 subset of that amount.

6 Q. But you mentioned in your prior testimony a  
7 non-exclusive license. What's that?

8 A. Well, a non-exclusive license, it's like --  
9 one analogy you can use is an apartment, for example.

10 So in an apartment, you pay rent on a monthly  
11 basis. The overall apartment complex is worth more than  
12 just each individual apartment. And a license is the  
13 ability to use the space and pay rent at whatever you  
14 occupy within the apartment building.

15 Q. All right.

16 MS. HEFFERNAN: Let's go to the next  
17 slide, Slide 69.

18 Q. (By Ms. Heffernan) So you've got this  
19 8-million-dollar benchmark. You're calling them value  
20 benchmarks. What do you do with this number in order to  
21 determine how Airspan and -- and Alcatel-Lucent, sitting  
22 down at that table in 2005, would figure out what kind  
23 of a license -- how much Alcatel-Lucent would pay for a  
24 license?

25 A. Sure. So I did a calculation. I looked at,

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1 well, what percent of the royalty income that Wi-LAN  
2 expected of its licensees would relate to -- we'll start  
3 with Alcatel-Lucent. And that number is 12.4 percent.

4 I also checked that against public  
5 information, in terms of, if you compare the handset  
6 market to the base station market and look at the  
7 relative market shares and the different products. And  
8 I got a very similar answer.

9 So I think there's agreement that in terms of  
10 the share of this apartment or pie, that Alcatel-Lucent  
11 is attributable to 12 percent of the \$8 million, or you  
12 can attribute 12 percent of the \$8 million, if you  
13 consider \$8 million to be the entire market to  
14 Alcatel-Lucent.

15 Q. So just following through with your analogy,  
16 if the entire apartment complex is \$8 million,  
17 Alcatel-Lucent's share of that apartment complex, its  
18 apartment is about 12 percent of the total; is that  
19 right?

20 A. That's right. Now, we have to make a couple  
21 of other adjustments for time, because when you pay  
22 rent, you pay on a monthly basis as opposed to a patent  
23 purchase, which covers the life of the patents. So we  
24 have to make some adjustments to reduce the amount that  
25 we've calculated.

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1 Q. Okay. Now, you've also highlighted the  
2 portion for HTC. What is HTC's portion of the market,  
3 based on your calculations?

4 A. So if you look at HTC and its portion of the  
5 market, it's about 2-1/2 percent.

6 Just so everybody can see, because there's  
7 four Defendants in this case, Ericsson is about 12  
8 percent -- or 9 percent, which is a little less than  
9 Alcatel-Lucent.

10 Then Sony Ericsson, we heard some testimony on  
11 this, actually. I'll put a box around that. That 0  
12 percent. These numbers are rounded, and I think it's  
13 0.4 percent of the marketplace if you combine these two  
14 markets together as attributable to Sony Ericsson.

15 So this is a source that confirms, at least  
16 from my point of view, that the accounting records that  
17 Sony submitted are accurate.

18 Q. All right.

19 MS. HEFFERNAN: Let's go to Slide 72.

20 Q. (By Ms. Heffernan) So we take your 8 million  
21 and you multiply it by 12 percent --

22 A. By 12.

23 Q. I'm sorry?

24 A. Excuse me. I said, yes, by 12.

25 Q. And your subtotal that you arrive at is just

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1 under a million dollars?

2 A. Right. It's actually 12.4-something percent,  
3 so that's why these numbers don't work out to be round  
4 numbers. I used the actual number from the spreadsheet.  
5 And then I said we have to make -- I alluded to this  
6 earlier. We have to make a couple of adjustments.

7 Q. And actually, may I interrupt you?

8 A. Sure.

9 Q. Before we get to those adjustments, is this  
10 approach that you're using in this case, taking a market  
11 transaction and applying it to a licensing structure?

12 Is that something that you've done in your  
13 real-world practice before?

14 A. Sure. This is part of the work that I  
15 described that I do in terms of advising clients or  
16 figuring out the value of any patent rights relative to  
17 others. I've done this a lot. I've seen other people  
18 do it. It's also, I think, intuitive. And I think it's  
19 a very valid way to go about doing this.

20 I believe Mr. Jarosz said he never saw anybody  
21 do this, and I, frankly, was a little bit perplexed that  
22 he hadn't.

23 Q. Now, you were saying that you needed to make  
24 some adjustments. Here, we have on the slide "less  
25 post-trial damages." Why are you looking at "less

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1 post-trial damages"?

2 A. Right. So here we are in July of 2013, but  
3 these are a longer life. These patents in this case, in  
4 particular, run out to 2017. So we've got four years  
5 that's in the future, and we're not permitted as damages  
6 experts to speculate and say what's going to happen in  
7 the future beyond today.

8 So we have to make an adjustment and remove  
9 the part of this calculation that relates to the future.  
10 So that's the first calculation that I did.

11 Q. All right. Now, did -- did Mr. Jarosz do a  
12 similar calculation with his, I guess, amounts that he  
13 proposed?

14 A. No, he did not. So if you remember,  
15 Mr. Jarosz put up a slide with those blue horizontal  
16 bars, and there was some cross-examination where I think  
17 you and I believe Mr. Findlay both asked Mr. Jarosz  
18 about whether these licenses that he had used had made  
19 an adjustment for pretrial and the post-trial damages.

20 And he had not. I hope that was clear from  
21 his testimony; but if it wasn't, I just want to make it  
22 abundantly clear.

23 These amounts apply to a much longer timeframe  
24 that's at issue than is at issue in this case.

25 These numbers, in addition to feeding into

<p style="text-align: right;">117</p> <p>1 Q. Yeah.</p> <p>2 <b>A. -- that were consistent with my opinion.</b></p> <p>3 Q. Data points that you in your words said were a</p> <p>4 useful benchmark for the reasonable royalty in this</p> <p>5 case, right?</p> <p>6 <b>A. That's right.</b></p> <p>7 Q. So we have a little bit of a double standard</p> <p>8 here, right? Because these licenses, they're different</p> <p>9 than the hypothetical negotiation, but you relied on</p> <p>10 them, yet you criticized Dr. Becker and Mr. Jarosz for</p> <p>11 relying on Wi-LAN's licenses. Isn't that true, sir?</p> <p>12 <b>A. No, that's not true.</b></p> <p>13 Q. Now, I think I mentioned this, and it's</p> <p>14 reflected here on PDX 1, Dr. Akl actually told you that</p> <p>15 there were five HTC licenses that involved comparable</p> <p>16 patents, right?</p> <p>17 <b>A. He did.</b></p> <p>18 Q. But you only relied on four of them, correct?</p> <p>19 <b>A. Well, there was one --</b></p> <p>20 Q. Sir, can you answer my question yes or no? Am</p> <p>21 I correct that you only relied -- you only found that</p> <p>22 four of the five licenses that Dr. Akl said were</p> <p>23 comparable -- were comparable from a technological</p> <p>24 standpoint provided a useful benchmark for a reasonable</p> <p>25 royalty analysis, right?</p>	<p style="text-align: right;">119</p> <p>1 that in 2005, he had Airspan at the table, not Wi-LAN,</p> <p>2 right?</p> <p>3 <b>A. That's what he said.</b></p> <p>4 Q. Right. That's what he said under oath in the</p> <p>5 courtroom, right?</p> <p>6 <b>A. I'm not sure that's what he did, but that's</b></p> <p>7 <b>what he said.</b></p> <p>8 Q. Sir, can you answer my question?</p> <p>9 That's what he said under oath in this</p> <p>10 courtroom; isn't that true?</p> <p>11 <b>A. Sort of.</b></p> <p>12 Q. Well, sir, did he testify that Airspan, in his</p> <p>13 analysis, was the party at the negotiation table in the</p> <p>14 hypothetical negotiation, that would have occurred in</p> <p>15 2005? Did he say those words, sir?</p> <p>16 <b>A. He did.</b></p> <p>17 Q. And I think you've suggested -- and this is</p> <p>18 what I'm a little unclear about -- you suggested that he</p> <p>19 wasn't -- he didn't really do what he said he did,</p> <p>20 because he relied on Wi-LAN licenses; is that right?</p> <p>21 <b>A. Among other things, yes.</b></p> <p>22 <b>Q. Now, you, sir, you relied in your analysis --</b></p> <p>23 <b>in fact, pretty much the only thing that you relied on</b></p> <p>24 <b>in your analysis was the Airspan/Wi-LAN -- it wasn't</b></p> <p>25 <b>even the acquisition so much as the memo that was</b></p>
<p style="text-align: right;">118</p> <p>1 <b>A. There was one that was very different.</b></p> <p>2 Q. Right. The one that you rejected was the</p> <p>3 Philips license, correct?</p> <p>4 <b>A. That's correct.</b></p> <p>5 Q. And it just so happens, sir, that the Philips</p> <p>6 license that you rejected was the license by far -- the</p> <p>7 one HTC license that Dr. Akl identified to you by far --</p> <p>8 which involved the largest lump-sum royalty payment;</p> <p>9 isn't that true, sir?</p> <p>10 <b>A. That's true.</b></p> <p>11 Q. It was 4.4 million for the Philips license</p> <p>12 that you rejected, but the Traffic Information license</p> <p>13 and the Dicam license and the Digcom license and the SP</p> <p>14 Technology license, those were for very small amounts,</p> <p>15 and you found that those were comparable, right?</p> <p>16 <b>A. I don't know if they're very small. They are</b></p> <p>17 <b>what they are.</b></p> <p>18 Q. Well, \$50,000 versus \$4.4 million is a heck of</p> <p>19 a big difference, isn't it, sir?</p> <p>20 <b>A. Sure. There's a difference. Of course.</b></p> <p>21 Q. I just want to clarify one point.</p> <p>22 You testified in your direct testimony that --</p> <p>23 I think you acknowledged that Mr. -- Dr. -- that Mr.</p> <p>24 Jarosz testified under oath that in his hypothetical</p> <p>25 royalty valuation that between the parties in this case</p>	<p style="text-align: right;">120</p> <p>1 prepared, PX 200, I think you called it -- I don't know</p> <p>2 whether the Defendants have a different number -- PX 200</p> <p>3 is that valuation memo, that impairment memo, that</p> <p>4 Mr. McEwan did.</p> <p>5 <b>A. Right. Did you say that was the only thing I</b></p> <p>6 <b>considered?</b></p> <p>7 <b>Q. No.</b></p> <p>8 <b>A. Because that's not correct.</b></p> <p>9 <b>Q. Your numbers that you testified about to the</b></p> <p>10 <b>jury were based on the Airspan acquisition agreement;</b></p> <p>11 <b>isn't that true, sir?</b></p> <p>12 <b>A. Among other things, yes.</b></p> <p>13 <b>Q. But the only -- the only numerical input into</b></p> <p>14 <b>your analysis came from that agreement; isn't that true,</b></p> <p>15 <b>sir?</b></p> <p>16 <b>A. No.</b></p> <p>17 Q. You started -- you went through a whole long</p> <p>18 testimony about the Wi-LAN/Airspan transaction and</p> <p>19 whether it was \$11 million or \$8 million and -- and then</p> <p>20 you walked through how you went from the \$11 million,</p> <p>21 plus what you call the interest factor --</p> <p>22 <b>A. Right.</b></p> <p>23 Q. -- which I'll talk about with you in a second.</p> <p>24 And that's -- those are the only numbers I</p> <p>25 heard during your testimony; isn't that true, sir?</p>

<p style="text-align: right;">125</p> <p>1 reasonable royalty, I think that that's right. It's a 2 cap on royalty.</p> <p>3 Do you remember giving that answer?</p> <p>4 <b>A. Yes. That's right?</b></p> <p>5 Q. It's true, sir, isn't it, that neither 6 Dr. Becker -- well, that neither Dr. Becker nor 7 Mr. Jarosz expressed the opinion that the Airspan 8 purchase price was a cap on -- on the royalty that 9 Wi-LAN could recover, right?</p> <p>10 <b>A. Their analysis was different.</b></p> <p>11 Q. Right. And actually, sir, that's not the only 12 reason they didn't say it, is it?</p> <p>13 I mean, isn't it true that the -- well, let me 14 just ask you: Part of your job as an expert damages 15 witness is -- and I know you're not a lawyer, but part 16 of your job is to know the law on damages; isn't that 17 true?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And you look at the cases and you are 20 required -- in order to give testimony that's accurate 21 to the jury, you're required to know what the law is, 22 right?</p> <p>23 <b>A. That's right. I try to do that.</b></p> <p>24 Q. And you are aware, aren't you, and I think you 25 were aware when you wrote your report, that the Federal</p>	<p style="text-align: right;">127</p> <p>1 appropriate to start putting up language from court 2 orders on the screen and ask Mr. Bakewell to comment 3 upon court language.</p> <p>4 We've got a motion in limine in this 5 case, agreed upon by both parties, not to talk about 6 court orders.</p> <p>7 MS. HUTTNER: These are not a court 8 order. It's a decision in a Federal Circuit case that 9 was decided in 2011. It's a matter of public record.</p> <p>10 MS. HEFFERNAN: I still don't think it's 11 part of his conclusion. He's not a lawyer.</p> <p>12 THE COURT: You can question him, but 13 he's not to go into the opinion himself.</p> <p>14 MS. HUTTNER: I'm just going to have it 15 read, the language -- I'm not going to ask him questions 16 whether he agrees or does not agree with the --</p> <p>17 THE COURT: Don't go into the opinion. 18 Objection sustained.</p> <p>19 MS. HEFFERNAN: Thank you, Your Honor. 20 (Bench conference concluded.)</p> <p>21 Q. (By Ms. Huttner) So when we left off, we were 22 talking about the SPECTRAlytics case, and you're aware, 23 sir, that in the SPECTRAlytics case --</p> <p>24 MS. HEFFERNAN: Excuse me, Your Honor. I 25 think the Court made a ruling --</p>
<p style="text-align: right;">126</p> <p>1 Circuit is the Appeals Court that hears all patent 2 cases, right?</p> <p>3 <b>A. That's true.</b></p> <p>4 Q. And so you look to the Federal Circuit for 5 guidance on what a damages analysis should be in a 6 patent case, correct?</p> <p>7 <b>A. I do.</b></p> <p>8 Q. And are you aware, sir, that the Federal 9 Circuit in the SPECTRAlytics case expressly rejected the 10 idea that reasonable royalty damages are necessarily 11 limited by the price the company has paid to acquire a 12 patent?</p> <p>13 <b>A. They said necessarily limited. That's true.</b></p> <p>14 Q. Right. So let's look at what they said.</p> <p>15 MS. HUTTNER: Can I have PDX 2, please?</p> <p>16 Q. (By Ms. Huttner) This is from the Federal 17 Circuit's decision. And can you read that out loud for 18 me, please, the quote that's there?</p> <p>19 MS. HEFFERNAN: Excuse me, Your Honor. 20 Permission to approach?</p> <p>21 THE COURT: Excuse me?</p> <p>22 MS. HEFFERNAN: Permission to approach?</p> <p>23 THE COURT: Yes. 24 (Bench conference.) 25 MS. HEFFERNAN: I don't think it's</p>	<p style="text-align: right;">128</p> <p>1 THE COURT: The objection is sustained.</p> <p>2 Q. (By Ms. Huttner) All right. Now, let's talk 3 about what you call in your slides, you know, the 4 interest rate, in quotes. You put quotes around it, 5 right?</p> <p>6 <b>A. Right.</b></p> <p>7 Q. And the reason you put quotes around it is 8 because the number that you used, that 31 percent, was 9 not really an interest rate, right?</p> <p>10 <b>A. Well, it was -- can I tell you why?</b></p> <p>11 Q. Yes or no, sir. Answer my question, please.</p> <p>12 <b>A. No.</b></p> <p>13 Q. It wasn't an interest rate?</p> <p>14 <b>A. No. I'd like to explain.</b></p> <p>15 Q. It was something called the hurdle rate, 16 right?</p> <p>17 <b>A. Among other things.</b></p> <p>18 <b>Q. Wi-LAN -- and you got that number, and we</b> 19 <b>talked about it in your deposition, that the hurdle rate</b> 20 <b>that you used, that 31 percent, you took from the McEwan</b> 21 <b>memo, PX 200, right?</b></p> <p>22 <b>A. Among other places, yes.</b></p> <p>23 Q. Okay. And the hurdle rate -- well, we talked 24 about an interest rate like you get on your passbook 25 savings account from your bank. You know in advance</p>



<p style="text-align: right;">129</p> <p>1 what the bank is going to pay you, right? They're going 2 to pay you whatever it is, 2 percent these days, not too 3 much. But 2 percent or 5 percent of whatever it is, 4 right?</p> <p>5 <b>A. Right, if that. I think it's more like zero.</b></p> <p>6 Q. That's right. But you know in advance and you 7 know that if you keep your money in the bank, that's 8 what they're going to pay you, right?</p> <p>9 <b>A. Correct.</b></p> <p>10 Q. But that's not the same -- that's not the case 11 with the hurdle rate, right?</p> <p>12 <b>A. It's the same concept, but it's a different 13 terminology. Yes.</b></p> <p>14 Q. It's not guarantee -- there is no guarantee 15 with a hurdle rate?</p> <p>16 <b>A. That's true.</b></p> <p>17 Q. In fact, the hurdle rate -- and I think we 18 have a definition that we can put up -- the hurdle 19 rate -- and this is from the business dictionary. I 20 just picked one. There are a number of them out there.</p> <p>21 But the hurdle rate is defined as the minimum 22 return on investment necessary to cover all costs 23 associated with a project. If the expected rate of 24 return is below the hurdle rate, the project is 25 abandoned or modified to increase the return.</p>	<p style="text-align: right;">131</p> <p>1 at your deposition that weighted average cost of capital 2 and the hurdle rate are essentially the same idea.</p> <p>3 Do you recall that?</p> <p>4 <b>A. They can be. Yes.</b></p> <p>5 <b>Q. So in this case, the 31 percent in Mr. -- that 6 Mr. McEwan had in PX 200, that was really his -- based 7 on his best estimate of how an investment in the Airspan 8 portfolio might fare, depending upon things that might 9 happen in the future with the market, with the law, with 10 a court case like this one, right?</b></p> <p>11 <b>A. I'm not sure that he was that precise, but he 12 was attempting to discount an expected future value of 13 some prediction of future cash flows.</b></p> <p>14 Q. Okay. He wasn't saying this is all I'm ever 15 going to make, right?</p> <p>16 <b>A. Yes, he was, actually.</b></p> <p>17 Q. Well, in fact, sir, the purpose of that memo 18 that he wrote was simply to determine whether or not 19 Wi-LAN could book its purchase of the Airspan patent at 20 what it paid, \$11 million, right? That was the only 21 thing he was interested in?</p> <p>22 <b>A. I'm sure he was interested in other things, 23 but that was the main purpose of that memo.</b></p> <p>24 Q. So let's move on. I'd like you to turn to 25 your supplemental report, Exhibit 1.6, I believe.</p>
<p style="text-align: right;">130</p> <p>1 And it goes on. I'm not going to read the 2 whole thing.</p> <p>3 But essentially it's true, isn't it, that the 4 hurdle rate is really a measure that a business uses to 5 decide whether or not it's worthwhile to make a 6 particular investment? Right?</p> <p>7 <b>A. I think I would agree with that. Yes.</b></p> <p>8 Q. It's basically a go/no-go criteria. If an 9 investment -- applying the hurdle rate, if it looks like 10 it's going to yield a return that exceeds the hurdle 11 rate or is equal to or exceeds the hurdle rate, then 12 it -- the business may decide to invest. But if it's 13 below the hurdle rate, the business says our money can 14 be better spent elsewhere, right?</p> <p>15 <b>A. Fair enough.</b></p> <p>16 <b>Q. And that's how companies use the hurdle rate, 17 and that's how Mr. McEwan used the hurdle rate, that 18 31-percent hurdle rate in PX 200, that memo where he was 19 looking at impairment, correct?</b></p> <p>20 <b>A. That's not right. That's not quite right.</b></p> <p>21 Q. He talked about weighted average cost of 22 capital; is that right?</p> <p>23 <b>A. He did.</b></p> <p>24 Q. And weighted average cost of capital -- and I 25 asked you this at your deposition. I think you told me</p>	<p style="text-align: right;">132</p> <p>1 <b>A. Okay.</b></p> <p>2 Q. This is a schedule -- financial schedule you 3 prepared in connection with one of your reports in this 4 case, right?</p> <p>5 <b>A. Hold on a second, please.</b></p> <p>6 Q. 1.6.</p> <p>7 <b>A. Okay.</b></p> <p>8 Q. And in 1.6, you talk about some of the numbers 9 that you talked about during your direct testimony that 10 were taken from that McEwan memo, right?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And I'd like to just walk through some of the 13 numbers with you.</p> <p>14 You report -- you start out in your exhibit -- 15 sorry -- in your schedule with the \$11 million that 16 Wi-LAN paid for the Airspan portfolio, right?</p> <p>17 <b>A. Right.</b></p> <p>18 Q. And you next say -- you know, you point out 19 that the portfolio contained a total of 62 patents, 20 including the 4 being asserted in this case, right?</p> <p>21 I think that's in your -- your Footnote 3.</p> <p>22 <b>A. Right. This is one of the calculations that I 23 did.</b></p> <p>24 Q. Yeah. And -- and if you leave the 4 25 patents-in-suit aside, you calculate here in the</p>

<p style="text-align: right;">141</p> <p>1 approach, please?</p> <p>2 THE COURT: Yes, you may.</p> <p>3 (Bench conference.)</p> <p>4 MS. HUTTNER: I'm not sure -- I'm sorry.</p> <p>5 I'm not sure where counsel is going. I assume you are</p> <p>6 not trying to open the door to the discussion about --</p> <p>7 THE COURT: You need to speak into here.</p> <p>8 MS. HUTTNER: I'm sorry. I don't know</p> <p>9 where counsel is going with the question, but it's</p> <p>10 sufficiently open-ended, and I'm concerned the witness</p> <p>11 is going to wander in the discussion about the Daubert,</p> <p>12 which I intentionally didn't ask him about.</p> <p>13 MS. HEFFERNAN: No, I'm not.</p> <p>14 MS. HUTTNER: That's my only concern.</p> <p>15 Thank you.</p> <p>16 (Bench conference concluded.)</p> <p>17 Q. (By Ms. Heffernan) Okay. So let's pick up</p> <p>18 where we left off.</p> <p>19 Can you explain for the jury why you were</p> <p>20 doing these calculations on the 11-million-dollar</p> <p>21 amount -- purchase price amount on the Airspan patent</p> <p>22 portfolio?</p> <p>23 <b>A. Because in the memo, there was a paragraph</b></p> <p>24 <b>where Wi-LAN said that on average, patents in this space</b></p> <p>25 <b>are worth \$20,000 apiece, in a sweeping statement about</b></p>	<p style="text-align: right;">143</p> <p>1 <b>to remove the value of the other patents.</b></p> <p>2 Q. Okay. Now, there was also some discussion --</p> <p>3 MS. HEFFERNAN: And the screen can go</p> <p>4 dark. Oh, is that up to me?</p> <p>5 Okay. It's up to me.</p> <p>6 Q. (By Ms. Heffernan) You also talked a little</p> <p>7 bit about the purchase price of the Airspan patents</p> <p>8 acting as a cap?</p> <p>9 <b>A. Right.</b></p> <p>10 Q. Do you agree that you used the purchase price</p> <p>11 of the Airspan transaction as a cap on damages in this</p> <p>12 case?</p> <p>13 <b>A. I considered all the evidence. I think it's</b></p> <p>14 <b>indicative of what a reasonable royalty is when you do</b></p> <p>15 <b>the calculations that I did.</b></p> <p>16 Q. And, in fact, when you were using the Airspan</p> <p>17 purchase price, did you use that as a starting point for</p> <p>18 your analysis?</p> <p>19 <b>A. I did.</b></p> <p>20 Q. And did you perform further calculations --</p> <p>21 <b>A. To --</b></p> <p>22 Q. -- to arrive at your reasonable royalty</p> <p>23 conclusion?</p> <p>24 <b>A. To make that amount appropriate for HTC and</b></p> <p>25 <b>Alcatel-Lucent, I made the appropriate adjustments to</b></p>
<p style="text-align: right;">142</p> <p>1 <b>all patents. So I said, well, what if I assume that the</b></p> <p>2 <b>remaining patents that aren't in the suit are worth that</b></p> <p>3 <b>same \$20,000.</b></p> <p>4 <b>This actually -- this calculation actually</b></p> <p>5 <b>reduces the numbers that I presented to the jury. It</b></p> <p>6 <b>doesn't increase the numbers that I presented to the</b></p> <p>7 <b>jury. That was some interesting math that Ms. Huttner</b></p> <p>8 <b>did.</b></p> <p>9 Q. Now, when you were performing your</p> <p>10 calculations in this case, you didn't actually use this</p> <p>11 calculation, this 9,840,000-dollar calculation in your</p> <p>12 analysis, did you?</p> <p>13 I mean, was it an input -- let me ask you</p> <p>14 that. Was this 9,840,000 number a numeric input to your</p> <p>15 reasonable royalty calculations in this case?</p> <p>16 <b>A. No, not to my final conclusions. My final</b></p> <p>17 <b>conclusions didn't consider this 20,000-dollar</b></p> <p>18 <b>allocation. I just wanted to see, because Wi-LAN</b></p> <p>19 <b>mentioned that's the average value of a patent in this</b></p> <p>20 <b>space, in its memo, what the impact would be.</b></p> <p>21 <b>And the impact actually suggests that my</b></p> <p>22 <b>conclusion is conservative, because you have to take out</b></p> <p>23 <b>the value for those other patents before you run the</b></p> <p>24 <b>calculations that I did, that I presented to the jury.</b></p> <p>25 <b>Those calculations didn't make an adjustment</b></p>	<p style="text-align: right;">144</p> <p>1 <b>remove future damages, pre-filing damages, and any</b></p> <p>2 <b>amounts that might relate to other participants in the</b></p> <p>3 <b>marketplace.</b></p> <p>4 Q. And, in fact, didn't you also use a 30</p> <p>5 point -- a 31-percent interest rate that actually</p> <p>6 increased the amounts you used?</p> <p>7 <b>A. That -- I increased the amounts. Remember,</b></p> <p>8 <b>it's Airspan that's at the hypothetical negotiation, not</b></p> <p>9 <b>Wi-LAN. And so I really didn't even have to put that</b></p> <p>10 <b>calculation in, because that's Wi-LAN's hurdle rate. I</b></p> <p>11 <b>was being generous, because Wi-LAN's here in the</b></p> <p>12 <b>courtroom and Mr. Jarosz focused on Wi-LAN.</b></p> <p>13 <b>So I said, you know what, I'll put that number</b></p> <p>14 <b>in. I'll be more than reasonable. I will be generous,</b></p> <p>15 <b>and I'll increase my damages opinions by that amount.</b></p> <p>16 <b>Q. And I just want to ask you to explain, is</b></p> <p>17 <b>there a difference between Mr. Houston's use of the</b></p> <p>18 <b>30 -- roughly 31-percent hurdle rate in the December</b></p> <p>19 <b>2009 memo, the DX 55, and your use of the 31-percent</b></p> <p>20 <b>hurdle rate or interest rate --</b></p> <p>21 <b>A. Interest rate, whatever you call it.</b></p> <p>22 <b>Q. -- discount rate in your calculations?</b></p> <p>23 <b>A. Sure. Actually, in Mr. Houston's work, he</b></p> <p>24 <b>used a variety of rates. I saw one that was 19 percent.</b></p> <p>25 <b>That was the weighted average cost of capital that</b></p>

<p style="text-align: right;">145</p> <p>1 <b>Ms. Huttner was referring to.</b></p> <p>2 <b>I saw a rate that was, I think, 27 percent</b></p> <p>3 <b>that Mr. Houston used. And then he used an amount that</b></p> <p>4 <b>was that 31 percent.</b></p> <p>5 <b>And so to factor into this calculation that I</b></p> <p>6 <b>didn't have to do to begin with, it was a calculation of</b></p> <p>7 <b>generosity, I chose the highest one in order to be</b></p> <p>8 <b>conservative.</b></p> <p>9 MS. HEFFERNAN: No further questions.</p> <p>10 THE COURT: Thank you. Any recross?</p> <p>11 MS. HUTTNER: No, Your Honor, no recross.</p> <p>12 THE COURT: All right. Thank you.</p> <p>13 If the jury will pass down any questions</p> <p>14 you might have for this witness.</p> <p>15 (Pause in the proceedings.)</p> <p>16 THE COURT: All right. You may step</p> <p>17 down.</p> <p>18 THE WITNESS: Thank you, Your Honor.</p> <p>19 THE COURT: All right. Who will your</p> <p>20 next witness be?</p> <p>21 MR. SOSTEK: Your Honor, we call</p> <p>22 Dr. Stephen Becker to the stand.</p> <p>23 THE COURT: Dr. Becker, let me ask the</p> <p>24 jury, how are you doing? Do you need a break?</p> <p>25 Everybody okay?</p>	<p style="text-align: right;">147</p> <p>1 <b>18-year-old son.</b></p> <p>2 MR. SOSTEK: And can we turn to DX 3,</p> <p>3 please?</p> <p>4 Q. (By Mr. Sostek) Can you give us a brief</p> <p>5 summary of your educational experience, Dr. Becker?</p> <p>6 <b>A. Yes. I have a bachelor's of science in</b></p> <p>7 <b>electrical engineering from the University of</b></p> <p>8 <b>Pennsylvania, an MBA in finance from UT Austin, and a</b></p> <p>9 <b>Ph.D. in public policy from UT Austin.</b></p> <p>10 Q. And as we turn to DX 4, can you tell us if you</p> <p>11 are a member of any professional organizations?</p> <p>12 <b>A. Yes. I'm a member of the Licensing Executive</b></p> <p>13 <b>Society, something called the American Economic</b></p> <p>14 <b>Association, and the American Finance Association.</b></p> <p>15 Q. And as we move to Slide No. 5, can you give us</p> <p>16 some background of your work experience?</p> <p>17 <b>A. Yeah. I can try and make this pretty quick.</b></p> <p>18 <b>I started out as an engineer out of my</b></p> <p>19 <b>undergraduate degree, as you saw on that prior slide. I</b></p> <p>20 <b>have a bachelor's of science in electrical engineering</b></p> <p>21 <b>and computer science, and I went to work first for a</b></p> <p>22 <b>company called Schlumberger that's in the oil business,</b></p> <p>23 <b>in the oilfield services business, but I was a research</b></p> <p>24 <b>scientist in their labs in Houston.</b></p> <p>25 <b>I then went and formed my own company called</b></p>
<p style="text-align: right;">146</p> <p>1 I know it's getting warm in here. The</p> <p>2 power surge we had knocked the air conditioning off, and</p> <p>3 they're supposed to be trying to get it back on. If</p> <p>4 anyone would like to take their jackets off, please feel</p> <p>5 free to.</p> <p>6 Does anyone on the jury need a short</p> <p>7 break before we continue with this witness? Everybody</p> <p>8 okay?</p> <p>9 All right. Very good.</p> <p>10 Dr. Becker.</p> <p>11 STEPHEN BECKER, Ph.D., DEFENDANTS' WITNESS, SWORN</p> <p>12 DIRECT EXAMINATION</p> <p>13 BY MR. SOSTEK:</p> <p>14 Q. Good afternoon, Dr. Becker.</p> <p>15 <b>A. Good afternoon.</b></p> <p>16 Q. Would you introduce yourself to the jury,</p> <p>17 please?</p> <p>18 <b>A. Yes. My name is Stephen Becker. I live in</b></p> <p>19 <b>Austin. I am one of the owners of an economic</b></p> <p>20 <b>consulting firm called Applied Economics.</b></p> <p>21 Q. And seems -- since there seems to be a</p> <p>22 requirement, could you tell us a little bit about your</p> <p>23 family?</p> <p>24 <b>A. Sure. My wife, Emily, and I have been married</b></p> <p>25 <b>for 20 years. I've got a 16-year-old daughter and an</b></p>	<p style="text-align: right;">148</p> <p>1 <b>The Solutions Group that did computer design and</b></p> <p>2 <b>basically software design for current systems.</b></p> <p>3 <b>After finishing my master's degree, I went to</b></p> <p>4 <b>work for a firm called Booz-Allen &amp; Hamilton. It's an</b></p> <p>5 <b>international management consulting firm.</b></p> <p>6 <b>And then I formed something called Becker &amp;</b></p> <p>7 <b>Associates, which essentially was continuing to do</b></p> <p>8 <b>management consulting and strategy consulting but for</b></p> <p>9 <b>smaller businesses.</b></p> <p>10 <b>And then ultimately I formed the company that</b></p> <p>11 <b>I have now with my partner called Applied Economics</b></p> <p>12 <b>Consulting Group.</b></p> <p>13 Q. And would you tell us a little bit about your</p> <p>14 company, Applied Economics consulting Group?</p> <p>15 <b>A. Yes. We are a firm of about 20 people in</b></p> <p>16 <b>Austin that do economic and financial consulting for</b></p> <p>17 <b>clients in a variety of industries with a big</b></p> <p>18 <b>concentration in the valuation of intellectual property</b></p> <p>19 <b>and particularly the valuation of patents.</b></p> <p>20 Q. Have you served as an expert in patent damages</p> <p>21 cases before, Dr. Becker?</p> <p>22 <b>A. I have.</b></p> <p>23 Q. And can you tell us a little bit about that.</p> <p>24 <b>A. I've been retained as an expert in -- oh, I</b></p> <p>25 <b>think it's over 40 cases now over the last 15, 20 years</b></p>

209	<p>1 that in front of the jury.</p> <p>2 THE COURT: Right.</p> <p>3 MR. JONES: But we can do that in the</p> <p>4 morning.</p> <p>5 THE COURT: Thank you for reminding me.</p> <p>6 Please remind me again in the morning.</p> <p>7 Let me just ask the parties what</p> <p>8 witnesses will the Defense have left, if any, for in the</p> <p>9 morning?</p> <p>10 MR. AROVAS: The Defendants have two</p> <p>11 witnesses, although one is by deposition and is only</p> <p>12 five minutes.</p> <p>13 The last witness will be Dr. Lanning, who</p> <p>14 will talk about the issue of invalidity. I do imagine</p> <p>15 that will take a little bit of time.</p> <p>16 THE COURT: Okay. What would you define</p> <p>17 as a little bit?</p> <p>18 MR. AROVAS: In the hour to</p> <p>19 hour-and-a-half range.</p> <p>20 THE COURT: Okay. All right.</p> <p>21 MR. AROVAS: For direct.</p> <p>22 THE COURT: Okay. All right. And what</p> <p>23 about Plaintiffs, you'll, of course, have</p> <p>24 cross-examination of that. What about rebuttal</p> <p>25 witnesses?</p>	211	<p>1 THE COURT: Well, it would just be up to</p> <p>2 them.</p> <p>3 MR. HILL: Up to them whether they did it</p> <p>4 Saturday or whenever?</p> <p>5 THE COURT: Right. Saturday or Monday or</p> <p>6 wanted to stay late Friday night or whatever.</p> <p>7 MR. HILL: I think our preference would</p> <p>8 be, Your Honor, to argue Monday.</p> <p>9 THE COURT: What about Defendants?</p> <p>10 MR. AROVAS: We'll be prepared to do it</p> <p>11 at the Court's convenience, whether it's tomorrow or</p> <p>12 Monday.</p> <p>13 THE COURT: Do you have a preference?</p> <p>14 MR. AROVAS: Tomorrow would be our</p> <p>15 preference.</p> <p>16 THE COURT: Okay. All right. Well,</p> <p>17 we'll see how it goes tomorrow and how long we have left</p> <p>18 and how tired the jury is. And I may give them that</p> <p>19 option and see what they would prefer.</p> <p>20 So be prepared to argue tomorrow in case</p> <p>21 that's where we end up; but if not, we'll argue on</p> <p>22 Monday.</p> <p>23 Anything further before we adjourn for</p> <p>24 the evening?</p> <p>25 MR. WEAVER: Not from the Plaintiff, Your</p>
210	<p>1 MR. WEAVER: Then we will be calling a</p> <p>2 rebuttal witness, Dr. Wells.</p> <p>3 THE COURT: With regard to invalidity?</p> <p>4 MR. WEAVER: Correct, with regard to</p> <p>5 validity, yes.</p> <p>6 [Laughter]</p> <p>7 THE COURT: I thought they had the</p> <p>8 burden. Do you want the burden?</p> <p>9 MR. WEAVER: I don't think I'm going to</p> <p>10 let him testify on invalidity, Your Honor.</p> <p>11 THE COURT: All right. Okay. Well, it</p> <p>12 sounds like we're not -- we're probably going to use</p> <p>13 most of our time, which y'all have got about 2 hours --</p> <p>14 a little over 2 hours each left.</p> <p>15 If we start at 9:00, we'll probably go</p> <p>16 'til 1:00 or 2:00.</p> <p>17 What would be the parties choice as to</p> <p>18 whether to argue on Monday or try to argue late tomorrow</p> <p>19 afternoon?</p> <p>20 What would be Plaintiff's preference?</p> <p>21 MR. HILL: Your Honor, would you</p> <p>22 anticipate allowing the jury to make a choice whether</p> <p>23 they stayed and deliberated tomorrow night as opposed to</p> <p>24 coming back over on -- what would be the deliberation</p> <p>25 schedule, I guess?</p>	212	<p>1 Honor.</p> <p>2 THE COURT: Okay. Defendants?</p> <p>3 MR. AROVAS: Not from the Defendants.</p> <p>4 THE COURT: Y'all have a good evening.</p> <p>5 We'll see you in the morning.</p> <p>6 COURT SECURITY OFFICER: All rise.</p> <p>7 (Court adjourned.)</p> <p>8</p> <p>9 CERTIFICATION</p> <p>10</p> <p>11 I HEREBY CERTIFY that the foregoing is a</p> <p>12 true and correct transcript from the stenographic notes</p> <p>13 of the proceedings in the above-entitled matter to the</p> <p>14 best of our abilities.</p> <p>15</p> <p>16</p> <p>17 /s/ Shea Sloan</p> <p>18 SHEA SLOAN, CSR</p> <p>19 Official Court Reporter</p> <p>20 State of Texas No.: 3081</p> <p>21 Expiration Date: 12/31/14</p> <p>22</p> <p>23 /s/ Judith Werlinger</p> <p>24 JUDITH WERLINGER, CSR</p> <p>25 Deputy Official Court Reporter</p> <p>State of Texas No.: 731</p> <p>Expiration Date 12/31/14</p>