

EXHIBIT C

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

3 WI-LAN, INC.)
4) DOCKET NO. 6:10cv521
5 -vs-)
6 ALCATEL-LUCENT USA, INC.,) Tyler, Texas
7 ET AL) 8:27 a.m.
8) July 11, 2013

7 *****

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

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

18
19
20 COURT REPORTERS: MS. SHEA SLOAN
21 MS. JUDY WERLINGER
22 211 W. Ferguson
Tyler, Texas 75702
shea_sloan@txed.uscourts.gov

23
24 Proceedings taken by Machine Stenotype; transcript was
25 produced by a Computer.

1 orthogonal codes used to create those original channels
2 are going to be stored; in other words, they'll be in
3 memory, so when we need them we will just read them out
4 of memory.

5 Q. Okay. Restoring a set of orthogonal codes?

6 A. That's right. It says the set, so that would
7 be all of them.

8 Q. And do the patents discuss storage of the set
9 of orthogonal codes?

10 A. Yes, they do.

11 Q. So let's look at the patent, and this is an
12 excerpt from the '326 patent.

13 Could you -- could you explain what we're
14 looking at?

15 A. Okay. This is the '326 patent, and it's on
16 Column 3, Lines 30 through 36. It's talking about
17 different ways you can obtain these orthogonal code
18 sequences. So what it's saying is the orthogonal code
19 generator may be arranged to generate orthogonal codes
20 on-the-fly.

21 In other words, whenever you need them, you
22 generate them using predetermined algorithms. We have
23 actually seen some of those algorithms today.

24 However, the orthogonal code generator may be
25 provided as a storage arranged to store the set of

1 orthogonal codes. So it's saying there are two
2 different approaches. You could do it on-the-fly, or,
3 alternatively, you can have a storage arranged to store
4 the set of orthogonal codes.

5 Q. So it's one or the other. You either generate
6 the codes on-the-fly, or you can store the entire set of
7 orthogonal codes?

8 A. Yes. I think it's -- you know, it's really
9 clear. It's basically saying here is one technique
10 on-the-fly. Alternatively, there's another thing you
11 can do, which is storage arranged to store, et cetera.

12 Q. So if we turn back to Claim 5, which of those
13 two approaches is the claim directed to?

14 A. Well, it's the second approach. In fact, you
15 can see the language is exactly the same: Storage
16 arranged to store the set of orthogonal codes.

17 If you go back to the previous slide -- if we
18 can go back to the previous slide -- it stays storage
19 arranged to store the set of orthogonal codes. It's the
20 exact same words.

21 Q. So now I'd like to talk about what
22 Alcatel-Lucent's base stations actually do.

23 And do you recall that Dr. Wells testified
24 about that during his testimony?

25 A. Yes.

1 Q. I'd like to show you a question and answer
2 from Dr. Wells, if I could.

3 So this is testimony from a couple of days
4 ago, and Dr. Wells was asked: So now let's talk very
5 briefly about where those codes are or where they sort
6 of physically reside in the products. And it's correct,
7 isn't it, that the Defendants' products basically have
8 an on-the-fly system where they generate the codes as
9 they need them? Right?

10 Answer: Yes, they do.

11 Do you recall Dr. Wells giving that testimony?

12 A. Yes.

13 Q. And what is he telling us?

14 A. He's telling us that the accused products do
15 the first solution, the on-the-fly generation of the
16 codes, as opposed to the storage.

17 Q. Now, have you looked at Alcatel-Lucent's base
18 stations to see if they do the storage element of Claim
19 5?

20 A. Yes, I have.

21 Q. And do you agree with Dr. Wells that
22 Alcatel-Lucent's base stations generate on-the-fly?

23 A. Yes, he's correct about that.

24 Q. And what did you do to confirm this point?

25 A. Well, I went to the code. There's a kind of

1 interference from other cells. You simply don't know.

2 Q. Okay.

3 MR. APPLEBY: So let's turn back to Claim
4 11.

5 Q. (By Mr. Appleby) And have you formed an
6 opinion, Dr. Wicker, as to whether HSDPA-compatible base
7 stations have the analyzer required by Claim 11?

8 A. Yes.

9 Q. And what is that opinion?

10 A. It's not present.

11 Q. And why do you say that?

12 A. There is nothing in the handsets that's able
13 to tell how much interference is being -- is coming from
14 adjacent cells. There's simply no way to do it.

15 Q. And, therefore, the base station has no
16 information regarding whether a handset is experiencing
17 interference from other cells?

18 A. That's right.

19 The base station will simply know roughly what
20 the handset thinks it can receive. Many factors come
21 into that particular number.

22 Q. So let's move to the last element of Claim 11.

23 And could you remind us again what the last
24 element requires.

25 A. Okay. That's the channel controller. This is

1 the portion of the claim that takes that estimate of how
2 channels are being affected by other cell interference
3 and takes some of those cells out of the people, takes
4 them out of commission, and says: These channels cannot
5 be used by anybody in the cell, because of this
6 interference from other cells.

7 Q. And do HSDPA-compatible base stations satisfy
8 that element of Claim 11?

9 A. No.

10 Q. And why do you say that?

11 A. We talked a lot about HSDPA and the 15 data
12 channels. They're going to be allocated to someone
13 within the cell if there's data to send. There is no
14 situation in which one of those channels is locked out,
15 taken out of use because of interference from other
16 cells. It simply doesn't happen.

17 Q. Looking back at this demonstrative that we
18 used earlier in the day, is there anything on this
19 figure that -- that relates to that opinion?

20 A. Yes. What this shows, once again, our 15
21 codes, they create 15 data channels.

22 Okay. Going this way, as we go from TTI to
23 TTI, transmission time interval to transmission time
24 interval, all those channels are being used. They're
25 being assigned to different users at different times;

1 but at no point do we take a channel and say: We're
2 going to take this out of the -- of the pool. No one
3 can use it.

4 In this example, all the channels are being
5 used all the time.

6 Q. So turning back to Claim 11, have you formed
7 an opinion about whether the last element is present in
8 HSDP -- HSDPA-compatible base station itself?

9 A. Yes.

10 Q. And what is that opinion?

11 A. It's not there.

12 Q. And have you formed an opinion about whether
13 Claim 11 is infringed by HSDPA-compatible base stations?

14 A. Yes.

15 Q. And what is that opinion?

16 A. Well, once again, all the elements have to be
17 present, and I've shown you that these two are not
18 present. Since they're not present, the claim's not
19 infringed.

20 Q. And your opinion is based on the HSDPA
21 standard; is that correct?

22 A. That's correct.

23 Q. So regardless of who manufactures the
24 HSDPA-compatible base station, be it Alcatel-Lucent or
25 Ericsson, is it your view that that base station would

1 that the orthogonal code generator is a storage arranged
2 to store all the orthogonal codes at the same time,
3 didn't you?

4 A. Yes.

5 Q. That is your testimony?

6 A. Yes, it is.

7 Q. So you'd like to shoehorn that language into
8 the -- into the claim itself, don't you, sir?

9 A. No.

10 Q. Well, your testimony was --

11 MR. WEAVER: And can we pull up -- can we
12 pull up the slide with his testimony in it, please?

13 Q. (By Mr. Weaver) All right. And this was from
14 yesterday, sir.

15 You said that: At no point did I see any
16 memory that would store all the orthogonal codes at the
17 same time.

18 A. That's correct.

19 Q. So you do want the "at the same time language"
20 in the claim, don't you, sir?

21 A. I don't agree that we're adding it. I think
22 that's what the language means.

23 Q. I understand that's your opinion, sir. But
24 that language is being added under your opinion.

25 A. (No response.)

1 Q. All right. Let's talk about -- let's go back
2 to the three --

3 MR. WEAVER: Can you pull up Claim --
4 sorry.

5 Q. (By Mr. Weaver) Let's talk about the '327
6 patent for a minute, and I want to walk you through what
7 you discussed with Mr. Appleby.

8 Now, you argue that the Alcatel-Lucent
9 products don't infringe the '327 patent because the CQI
10 doesn't measure essentially only intercell interference.

11 Isn't that what you're arguing?

12 A. Yes.

13 Q. And it doesn't just need to be indicative of.
14 So we can strike that language. It needs to be only
15 measuring whether the wireless link is subject to
16 interference solely from signals generated by other
17 cells.

18 That's really your opinion, isn't it, sir?

19 A. It is my opinion that the analyzer has to
20 receive parameters indicative of, and I'm simply
21 interpreting that word indicative.

22 Q. So you interpreted the word "indicative of" to
23 mean only measuring the interference from other cells?

24 A. That's right. It indicates the interference
25 from other cells.

1 Q. And you went through testimony where you said
2 there's interference that's caused by other things,
3 correct?

4 A. That's correct.

5 Q. There's intercell interference. It might be
6 in an elevator. You said those things could happen.

7 But, sir, if you hold all of those things
8 constant and the interference from another cell changes,
9 you'd agree that the CQI that's measured would change,
10 don't you?

11 A. If everything was kept constant, including the
12 type of phone, the sensitivity of the phone --

13 Q. Correct.

14 A. -- the only thing that changed was other cell
15 interference, then you're correct. Yes, the CQI would
16 change only because of the other cell interference
17 change.

18 Q. All right. So let's look at what happens as a
19 result of that.

20 Now, you've said that the claim requires that
21 you selectively reduce the number of code division
22 multiplexed channels in the channel pool from the entire
23 cell.

24 So no one in the cell can use those channels;
25 that's your opinion?

1 be the entire system.

2 Q. I'm sorry?

3 A. In other words, the fact that one channel
4 can't be modified doesn't mean that another channel can
5 be modified. The selective operability in the claim
6 language, as opposed to this figure, says that we have a
7 choice. We have a choice between the first solution and
8 the second solution.

9 So we get one or the other, according to the
10 claim language.

11 Q. But here -- I mean, you're not suggesting that
12 these first 15 channels are not subject to TDM
13 techniques?

14 A. They can be shared in different ways among
15 different users. I would not call them TDM techniques
16 as construed by the Court.

17 Q. Sir, are these time division multiplex
18 channels, 0 through 15?

19 A. They may be used by different users at
20 different times, but they don't cycle in a frame
21 structure.

22 Q. So your position is, even though the lawyers
23 have talked about this during opening and throughout
24 this case that these channels are subject to time
25 division multiplexing, that they aren't subject to time

1 division multiplexing?

2 Is that your position?

3 A. I'm sorry. You'll have to repeat the
4 question. You gave me both sides.

5 Q. Is it your position that these channels are
6 not subject -- channels 0 through 14 are not subject to
7 time division multiplexing?

8 A. They are not time division multiplexed as
9 construed by the Court.

10 Q. Sir, you've read the Court's claim
11 construction opinion in this case.

12 A. Yes, I have.

13 Q. Okay. And with respect to overlay codes,
14 you'd agree with me that you can apply the overlay code
15 before you apply the orthogonal code, correct?

16 A. That's correct.

17 Q. And you could apply the overlay code after you
18 apply the orthogonal code, correct?

19 A. That's correct.

20 Q. Doesn't matter which order you do it?

21 A. That's correct.

22 Q. And, in fact, you can apply it simultaneously,
23 can't you?

24 A. That's correct.

25 Q. And -- and that's the -- the construction

1 you've used in this case.

2 A. That's correct.

3 MR. WEAVER: Pass the witness.

4 THE COURT: All right. Thank you.

5 Redirect?

6 MR. APPLEBY: Yes, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. APPLEBY:

9 Q. Dr. Wicker, can we -- can we bring up
10 DDX 10-37?

11 Now, on cross-examination you were asked, Dr.
12 Wicker, a lot of questions about embodiments and figures
13 and whether you were using the embodiments to limit the
14 claim.

15 And you're not using the embodiments to limit
16 the claim, are you?

17 A. No.

18 Q. In fact, I want to go back and I want to focus
19 on the claim language.

20 Now, if we look at the Claim 5 of the '326
21 patent, Claim 5 requires an orthogonal code generator,
22 right?

23 A. That's correct.

24 Q. And there is another element in Claim 5 that
25 requires an overlay code generator; is that right?

1 Also asserted against Ericsson is the '327,
2 which is that other cell interference patent.

3 Against Sony Mobile, there's just one patent
4 asserted against them, and that's the '211, which we've
5 also looped into being an overlay code patent.

6 Q. Could you describe for the jury what
7 investigation you did to determine whether there was any
8 infringement by the Ericsson or Sony Mobile products?

9 A. Sure. The first thing I did is, I got the
10 patents, got the file histories for the patents, read
11 and studied those. Then I proceeded to the court
12 documents, the depositions, the pleadings, the expert
13 reports, and especially the claim construction order.

14 I then went to get technical documents to
15 further my opinions and support my opinions, such as
16 standards documents, published articles.

17 And then finally, I looked at product
18 information, such as product documentation from Sony and
19 Mobile -- Sony Mobile and Ericsson source code and
20 schematics.

21 Q. And approximately how many hours have you
22 spent doing this investigation?

23 A. Over a hundred hours.

24 Q. And over what period of time?

25 A. Since April last year.

1 Q. April of 2012?

2 A. Yes.

3 Q. Now, I'm sure the jury doesn't -- wouldn't
4 appreciate going all the way through all of the details
5 of your analysis, but could you summarize the
6 conclusions that you've reached?

7 A. Sure.

8 My conclusions are that the Ericsson base
9 stations do not infringe the Airspan patents; and we're
10 talking about the '326 patent here, the '819, and the
11 '327.

12 It's also my opinion that the Sony Mobile
13 phones do not infringe the Airspan patent, the '211
14 patent.

15 Q. And is it your understanding that the Ericsson
16 base station products and the Sony Mobile products
17 comply with the HSDPA standard?

18 A. Yes, it is.

19 Q. Is there any dispute about that in this case?

20 A. I don't believe so.

21 Q. Now, were you present in the courtroom for all
22 of Dr. Wicker's testimony?

23 A. Yes, I was.

24 Q. And based on the independent investigation
25 that you performed, do you disagree with any of the

1 opinions that Dr. Wicker reached regarding

2 HSDPA-compatible products?

3 A. No, I do not.

4 Q. And are -- in fact, are Dr. Wicker's opinions

5 consistent with those that you made as part of your

6 independent investigation?

7 A. Yes, they are.

8 Q. And, in fact, have you ever even discussed

9 your opinions with Dr. Wicker?

10 A. Never.

11 Q. And when was the first time you met

12 Dr. Wicker?

13 A. Here in the courtroom.

14 Q. Before we go further, is it possible for

15 Ericsson or Sony Mobile to comply with the HSDPA

16 standard and infringe the HS -- or the Airspan patents?

17 A. Yes. I'm sorry. I misunderstood your

18 question.

19 Q. Okay. Can Ericsson and Sony Mobile comply

20 with the HSDPA standard and infringe the Airspan

21 patents?

22 A. No, they cannot.

23 Q. And why -- why is that?

24 A. Because the HSDPA standards describe a system

25 that is fundamentally different than what's claimed in

1 the Airspan patents.

2 Q. Well, with respect to the Ericsson base
3 stations, can you explain how the HSDPA standard is
4 different from the asserted claims of the Airspan
5 patents?

6 A. Sure.

7 We've already heard this before, but briefly,
8 for the overlay code patents on the Ericsson base
9 station -- we're talking about the '326 and '819 -- I
10 could find no overlay codes, no overlay code generator,
11 and no second encoder for applying the overlay code in
12 the HSDPA standards.

13 And, additionally, for the '327 patent, I
14 could find no receiving parameters indicative of
15 interference from other cells or removing channels based
16 on interference from other cells.

17 Q. Do Ericsson's base stations use overlay codes?

18 A. No, they do not.

19 Q. And did you determine that -- how did you
20 determine that?

21 A. By looking at the documentation, looking at
22 the source code, looking at the schematics.

23 Q. And do the Ericsson base stations have the
24 ability to analyze parameters indicative of interference
25 generated by signals from other cells?

1 your reading of that term, then the jury's free to
2 disregard your opinions, correct?

3 A. The opinions regarding the overlay code, yes.

4 Q. Now, Dr. Wicker also, I believe, said this
5 morning that you could use the same hardware and
6 software to provide a first encoder and a second encoder
7 for an orthogonal code generator and overlay code
8 generator.

9 Do you remember that testimony?

10 A. I think you're confused. I don't understand
11 your question.

12 Q. All right. Do you remember the testimony
13 about the first encoder and the second encoder?

14 A. Yes, I do.

15 Q. All right. You remember the testimony about
16 the orthogonal code generator and the overlay code
17 generator, right?

18 A. Yes, I do.

19 Q. All right. Now, there was testimony about
20 whether those have to be separate; in other words,
21 separate hardware, separate software for the first
22 encoder and the second encoder.

23 A. Okay. So we're talking about the first
24 encoder and second encoder?

25 Q. Correct.

1 A. Okay.

2 Q. Now that you're with me, do you need to have
3 different hardware and different software for the first
4 encoder and the second encoder in the claims of the base
5 station patents?

6 A. It's not required.

7 Q. All right. And how about in the claims of the
8 subscriber terminal patent, the '211 patent?

9 A. It's not required that the encoders be
10 separate pieces of hardware.

11 Q. All right. Thank you.

12 Now, with respect to the orthogonal code
13 generator and the overlay code generator in the claims
14 of the base station patents, can that be the same
15 hardware and software too?

16 A. You could imagine a system where you could
17 generate both the overlay code and the orthogonal code
18 with the same piece of equipment.

19 Q. All right. So it's possible the claims don't
20 exclude that?

21 A. Correct.

22 Q. And the same answer with respect to the '211
23 patent?

24 A. I think we'd have to change some of the
25 questions.

1 Q. All right. Good point.

2 Let's stick with the orthogonal code and
3 overlay code generators first, okay? We could have the
4 same hardware and software doing the orthogonal code
5 generator and the overlay code generator in the handset
6 patent, correct?

7 A. That's not necessary that they be separate
8 pieces of hardware. Correct.

9 Q. Now -- thank you for correcting me.
10 We get to the first decoder and the second
11 decoder in the handset patents, right?

12 A. Right.

13 Q. All right. Now, can the first decoder and the
14 second decoder be the same hardware and the same
15 software?

16 A. You could imagine that you could build a
17 system where such was true.

18 Q. All right. So the claims don't call that out.
19 They don't exclude that?

20 A. You still have to have the encoders, but
21 there's no requirement that they have to be separate
22 pieces of hardware.

23 Q. Now, I believe Dr. Wicker also testified that
24 with respect to the overlay code -- and I'll wait till
25 you get a sip.

1 A. Thank you.

2 Q. Now, Dr. Wicker also testified that with
3 respect to the orthogonal code and the overlay code that
4 you could do the orthogonal code first and the overlay
5 code second, right?

6 A. Do you mean generate? Encode? I don't
7 understand your question.

8 Q. Let's talk about the claims, what the claims
9 permit.

10 A. Okay.

11 Q. All right. What the claims cover, because you
12 understand it's the claims that matter the most here,
13 right?

14 A. Absolutely.

15 Q. All right. Now, in the claims -- and let's --
16 let's just stick with the base station patents for a
17 second.

18 So in the claims of the base station
19 patents -- and I believe Dr. Wicker said this, but I
20 want to make sure that you agree -- you can do the
21 orthogonal code first and then generate the overlay
22 codes, correct?

23 A. Correct.

24 Q. And you can also generate the overlay codes
25 first and then the orthogonal codes next?

1 A. Correct.

2 Q. Or I can do the orthogonal codes and the
3 overlay codes at the exact same time, correct?

4 A. As long as you have two generators.

5 Q. All right. I understand that's your opinion;
6 but as far as the timing goes, I can do them right at
7 the same time. Correct?

8 A. The two generators can work at the same time.

9 Correct.

10 Q. And that's true for the '211 patent covering
11 the handsets, correct?

12 A. Correct.

13 Q. Although, of course -- well, the handsets for
14 the generators that's fine, right? The decoders is a
15 different issue?

16 A. Well, you always have to decode in the reverse
17 order that you encoded.

18 Q. Fair enough.

19 Now, we talked about the Court's claim
20 construction. I believe you talked about that already
21 this morning, correct?

22 A. Yes, I did.

23 Q. And you were very careful to apply the Court's
24 claim construction, right?

25 A. Yes, I was.

1 Q. Okay. You understand that's very important to
2 follow that?

3 A. Yes, I do.

4 Q. And as part of that, you understand that it's
5 not appropriate to refer to examples in the figures of
6 the patent and to try and limit the claims to just those
7 figures, correct?

8 A. That is correct.

9 Q. And you know it's not proper to limit the
10 claims of a patent to the examples that are described in
11 the specification of the patent, correct?

12 A. That is correct.

13 Q. Or the tables showing numbers, correct?

14 A. Correct.

15 Q. And to determine infringement, we don't
16 compare a product -- an accused product. Like the
17 Ericsson base stations or the Sony Mobile phones, we
18 don't compare the accused products to the figures in the
19 patent. That's not a proper analysis, is it, Doctor?

20 A. No, that's not correct.

21 Q. No. We have to compare those accused products
22 to the claims, correct?

23 A. Absolutely correct.

24 Q. All right. Now, we've talked a lot about
25 these Walsh codes, RW codes?