EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TELCORDIA TECHNOLOGIES, INC., Plaintiff,	)	
v.	)	Civil Action No. 04-874
ALCATEL S.A. and ALCATEL USA, INC., Defendants.	)	

COMPLAINT AND DEMAND FOR JURY TRIAL

Telcordia Technologies, Inc. ("TELCORDIA") hereby sues Alcatel S.A. and Alcatel USA, Inc. (sometimes collectively referred to herein as "ALCATEL") for infringing U.S. Patent No. 4,893,306 ("the '306 patent"), and alleges as follows:

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CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE

THE PLAINTIFF

1. Plaintiff TELCORDIA is a corporation organized and existing under the laws of Delaware, having a place of business at One Telcordia Drive, Piscataway, New Jersey 08854.

2. TELCORDIA is a provider of communications software, engineering, and consulting services throughout the United States, including in the District of Delaware.

THE DEFENDANTS

3. Upon information and belief, defendant Alcatel S.A. is a corporation organized and existing under the laws of France, having a business address at 54, rue La Boétie, 75008, Paris, France.

4. Upon information and belief, defendant Alcatel USA, Inc. is a corporation organized and existing under the laws of Delaware, having a business address at 3400 W. Plano Parkway, Plano, Texas 75075.

5. Upon information and belief, ALCATEL is a manufacturer of communication network products that ALCATEL ships, distributes, sells, and/or offers for sale throughout the United States, including in the District of Delaware.

JURISDICTION AND VENUE

6. The claims asserted in this Complaint arise under the Patent Laws of the United States, 35 U.S.C. §§ 1-376.

7. Subject matter jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338.

8. This Court has personal jurisdiction over Alcatel S.A. and Alcatel USA, Inc.

9. Venue is proper under 28 U.S.C. §§ 1391 and 1400.

INFRINGEMENT

10. TELCORDIA realleges and incorporates by reference each of paragraphs 1-9 above.

11. The '306 patent, entitled "Method and Apparatus for Multiplexing Circuit and Packet Traffic," was lawfully issued by the United States Patent and Trademark Office on January 9, 1990 to the inventors, Hung-Hsiang J. Chao, Sang H. Lee, and Liang T. Wu. The '306 patent issued from U.S. Patent Application Serial No. 07/118,977, filed November 10, 1987. A copy of the '306 patent is attached as Exhibit A.

12. On its issuance, the '306 patent was assigned to Bell Communications Research, Inc. ("Bellcore"), which became TELCORDIA in 1999. TELCORDIA and Bellcore have at all times since the '306 patent's issuance held the entire right, title, and interest in the patent.

13. Upon information and belief, ALCATEL has infringed one or more claims of the '306 patent by making, using, offering for sale, selling, and/or importing into the United States communication network products embodying the patented invention.

14. Upon information and belief, ALCATEL has infringed one or more claims of the '306 patent by inducing others to infringe the patent and/or contributing to the patent's infringement by others.

15. As a consequence of ALCATEL's infringement of the '306 patent, TELCORDIA has been damaged in an amount not yet determined.

16. Upon information and belief, ALCATEL's infringement of the '306 patent will continue in the future, and TELCORDIA will continue to suffer damages as a consequence, unless ALCATEL's infringing acts are enjoined by this Court.

17. Upon information and belief, ALCATEL's infringement of the '306 patent has been, and continues to be, willful.

JURY DEMAND

18. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, TELCORDIA requests a trial by jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, TELCORDIA respectfully requests that the Court enter judgment against Alcatel S.A. and Alcatel USA, Inc.:

A. determining that Alcatel S.A. and Alcatel USA, Inc. have infringed one or more claims of the '306 patent;

B. permanently enjoining Alcatel S.A. and Alcatel USA, Inc., their officers, agents, servants, employees, and attorneys, and all those persons in active concert or participation with them or any of them who receive actual notice of the judgment, from further infringing any claim of the '306 patent;

C. ordering Alcatel S.A. and Alcatel USA, Inc. to account for and pay to TELCORDIA all damages suffered by TELCORDIA as a consequence of the infringement of the '306 patent by Alcatel S.A. and Alcatel USA, Inc.;

D. awarding TELCORDIA prejudgment and post-judgment interest on the damages suffered by it as a consequence of the infringement of the '306 patent by Alcatel S.A. and Alcatel USA, Inc.;

E. trebling TELCORDIA's damages under 35 U.S.C. § 284 on the ground that the infringement of the '306 patent by Alcatel S.A. and Alcatel USA, Inc. was deliberate and willful;

F. finding that this is an exceptional case under 35 U.S.C. § 285 and awarding TELCORDIA its reasonable attorney fees; and

G. granting TELCORDIA such other and further relief as the Court may deem just and proper.

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Attorneys for Plaintiff
Telcordia Technologies, Inc.

Dated: July 16, 2004

EXHIBIT 2

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CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TELCORDIA TECHNOLOGIES, INC., Plaintiff,	)	
v.	)	Civil Action No. 04-875
LUCENT TECHNOLOGIES, INC., Defendant.	)	

COMPLAINT AND DEMAND FOR JURY TRIAL

Telcordia Technologies, Inc. ("TELCORDIA") hereby sues Lucent Technologies, Inc. ("LUCENT") for infringing U.S. Patent No. 4,893,306 ("the '306 patent"), and alleges as follows:

THE PLAINTIFF

1. Plaintiff TELCORDIA is a corporation organized and existing under the laws of Delaware, having a place of business at One Telcordia Drive, Piscataway, New Jersey 08854.

2. TELCORDIA is a provider of communications software, engineering, and consulting services throughout the United States, including in the District of Delaware.

THE DEFENDANT

3. Upon information and belief, defendant LUCENT is a corporation organized and existing under the laws of Delaware, having a place of business at 600 Mountain Avenue, Murray Hill, New Jersey 07974.

4. Upon information and belief, LUCENT is a manufacturer of communication network products that LUCENT ships, distributes, sells, and/or offers for sale throughout the United States, including in the District of Delaware.

JURISDICTION AND VENUE

5. The claims asserted in this Complaint arise under the Patent Laws of the United States, 35 U.S.C. §§ 1-376.

6. Subject matter jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338.

7. This Court has personal jurisdiction over LUCENT.

8. Venue is proper under 28 U.S.C. §§ 1391 and 1400.

INFRINGEMENT

9. TELCORDIA realleges and incorporates by reference each of paragraphs 1-8 above.

10. The '306 patent, entitled "Method and Apparatus for Multiplexing Circuit and Packet Traffic," was lawfully issued by the United States Patent and Trademark Office on January 9, 1990 to the inventors, Hung-Hsiang J. Chao, Sang H. Lee, and Liang T. Wu. The '306 patent issued from U.S. Patent Application Serial No. 07/118,977, filed November 10, 1987. A copy of the '306 patent is attached as Exhibit A.

11. On its issuance, the '306 patent was assigned to Bell Communications Research, Inc. ("Bellcore"), which became TELCORDIA in 1999. TELCORDIA and Bellcore have at all times since the '306 patent's issuance held the entire right, title, and interest in the patent.

12. Upon information and belief, LUCENT has infringed one or more claims of the '306 patent by making, using, offering for sale, selling, and/or importing into the United States communication network products embodying the patented invention.

13. Upon information and belief, LUCENT has infringed one or more claims of the '306 patent by inducing others to infringe the patent and/or contributing to the patent's infringement by others.

14. As a consequence of LUCENT's infringement of the '306 patent, TELCORDIA has been damaged in an amount not yet determined.

15. Upon information and belief, LUCENT's infringement of the '306 patent will continue in the future, and TELCORDIA will continue to suffer damages as a consequence, unless LUCENT's infringing acts are enjoined by this Court.

16. Upon information and belief, LUCENT's infringement of the '306 patent has been, and continues to be, willful.

JURY DEMAND

17. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, TELCORDIA requests a trial by jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, TELCORDIA respectfully requests that the Court enter judgment against LUCENT:

A. determining that LUCENT has infringed one or more claims of the '306 patent;

B. permanently enjoining LUCENT, its officers, agents, servants, employees, and attorneys, and all those persons in active concert or participation with them or any of them who receive actual notice of the judgment, from further infringing any claim of the '306 patent;

C. ordering LUCENT to account for and pay to TELCORDIA all damages suffered by TELCORDIA as a consequence of LUCENT's infringement of the '306 patent;

D. awarding TELCORDIA prejudgment and post-judgment interest on the damages suffered by it as a consequence of LUCENT's infringement of the '306 patent;

E. trebling TELCORDIA's damages under 35 U.S.C. § 284 on the ground that LUCENT's infringement of the '306 patent was deliberate and willful;

F. finding that this is an exceptional case under 35 U.S.C. § 285 and awarding TELCORDIA its reasonable attorney fees; and

G. granting TELCORDIA such other and further relief as the Court may deem just and proper.

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Attorneys for Plaintiff
Telcordia Technologies, Inc.

Dated: July 16, 2004

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TELCORDIA TECHNOLOGIES, INC., Plaintiff,	)	
v.	)	Civil Action No. 04- 876
CISCO SYSTEMS, INC., Defendant.	)	

COMPLAINT AND DEMAND FOR JURY TRIAL

Telcordia Technologies, Inc. ("TELCORDIA") hereby sues Cisco Systems, Inc. ("CISCO") for infringing U.S. Patent Nos. 4,893,306 ("the '306 patent") and Re. 36,633 ("the '633 patent"), and alleges as follows:

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CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE

THE PLAINTIFF

1. Plaintiff TELCORDIA is a corporation organized and existing under the laws of Delaware, having a place of business at One Telcordia Drive, Piscataway, New Jersey 08854.

2. TELCORDIA is a provider of communications software, engineering, and consulting services throughout the United States, including in the District of Delaware.

THE DEFENDANT

3. Upon information and belief, defendant CISCO is a corporation organized and existing under the laws of California, having a place of business at 170 West Tasman Drive, San Jose, California 95134.

4. Upon information and belief, CISCO is a manufacturer of communication network products that CISCO ships, distributes, sells, and/or offers for sale throughout the United States, including in the District of Delaware.

JURISDICTION AND VENUE

5. The claims asserted in this Complaint arise under the Patent Laws of the United States, 35 U.S.C. §§ 1-376.

6. Subject matter jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338.

7. This Court has personal jurisdiction over CISCO.

8. Venue is proper under 28 U.S.C. §§ 1391 and 1400.

COUNT I: INFRINGEMENT OF THE '306 PATENT

9. TELCORDIA realleges and incorporates by reference each of paragraphs 1-8 above.

10. The '306 patent, entitled "Method and Apparatus for Multiplexing Circuit and Packet Traffic," was lawfully issued by the United States Patent and Trademark Office ("PTO") on January 9, 1990 to the inventors, Hung-Hsiang J. Chao, Sang H. Lee, and Liang T. Wu. The '306 patent issued from U.S. Patent Application Serial No. 07/118,977, filed November 10, 1987. A copy of the '306 patent is attached as Exhibit A.

11. On its issuance, the '306 patent was assigned to Bell Communications Research, Inc. ("Bellcore"), which became TELCORDIA in 1999. TELCORDIA and Bellcore have at all times since the '306 patent's issuance held the entire right, title, and interest in the patent.

12. Upon information and belief, CISCO has infringed one or more claims of the '306 patent by making, using, offering for sale, selling, and/or importing into the United States communication network products embodying the patented invention.

13. Upon information and belief, CISCO has infringed one or more claims of the '306 patent by inducing others to infringe the patent and/or contributing to the patent's infringement by others.

14. As a consequence of CISCO's infringement of the '306 patent, TELCORDIA has been damaged in an amount not yet determined.

15. Upon information and belief, CISCO's infringement of the '306 patent will continue in the future, and TELCORDIA will continue to suffer damages as a consequence, unless CISCO's infringing acts are enjoined by this Court.

16. Upon information and belief, CISCO's infringement of the '306 patent has been, and continues to be, willful.

COUNT II: INFRINGEMENT OF THE '633 PATENT

17. TELCORDIA realleges and incorporates by reference each of paragraphs 1-16 above.

18. The '633 patent, entitled "Synchronous Residual Time Stamp for Timing Recovery in a Broadband Network," was lawfully issued by the PTO on March 28, 2000 to the inventors, Paul E. Fleischer and Chi-Leung Lau. The '633 patent issued from U.S. Patent Application Serial No. 08/555,196, filed November 8, 1995. A copy of the '633 patent is attached as Exhibit B.

19. On its issuance, the '633 patent was assigned to Bellcore, which became TELCORDIA in 1999. TELCORDIA and Bellcore have at all times since the '633 patent's issuance held the entire right, title, and interest in the patent.

20. Upon information and belief, CISCO has infringed one or more claims of the '633 patent by making, using, offering for sale, selling, and/or importing into the United States communication network products embodying the patented invention.

21. Upon information and belief, CISCO has infringed one or more claims of the '633 patent by inducing others to infringe the patent and/or contributing to the patent's infringement by others.

22. As a consequence of CISCO's infringement of the '633 patent, TELCORDIA has been damaged in an amount not yet determined.

23. Upon information and belief, CISCO's infringement of the '633 patent will continue in the future, and TELCORDIA will continue to suffer damages as a consequence, unless CISCO's infringing acts are enjoined by this Court.

24. Upon information and belief, CISCO's infringement of the '633 patent has been, and continues to be, willful.

JURY DEMAND

25. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, TELCORDIA requests a trial by jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, TELCORDIA respectfully requests that the Court enter judgment against CISCO:

A. determining that CISCO has infringed one or more claims of the '306 and '633 patents;

B. permanently enjoining CISCO, its officers, agents, servants, employees, and attorneys, and all those persons in active concert or participation with them or any of them who receive actual notice of the judgment, from further infringing any claim of the '306 and '633 patents;

C. ordering CISCO to account for and pay to TELCORDIA all damages suffered by TELCORDIA as a consequence of CISCO's infringement of the '306 and '633 patents;

D. awarding TELCORDIA prejudgment and post-judgment interest on the damages suffered by it as a consequence of CISCO's infringement of the '306 and '633 patents;

E. trebling TELCORDIA's damages under 35 U.S.C. § 284 on the ground that CISCO's infringement of the '306 and '633 patents was deliberate and willful;

F. finding that this is an exceptional case under 35 U.S.C. § 285 and awarding TELCORDIA its reasonable attorney fees; and

G. granting TELCORDIA such other and further relief as the Court may deem just and proper.

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Attorneys for Plaintiff
Telcordia Technologies, Inc.

Dated: July 16, 2004

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

TELCORDIA TECHNOLOGIES, INC., Plaintiff, vs. ALCATEL S.A. and ALCATEL USA, INC., Defendants, Counterclaim-Plaintiffs.	Case No. 04-874 GMS **JURY TRIAL DEMANDED**

ANSWER AND COUNTERCLAIMS OF DEFENDANT/COUNTERCLAIM PLAINTIFF ALCATEL USA, INC.

For its Answer to the Complaint of Plaintiff Telcordia Technologies, Inc. ("Plaintiff"), Defendant Alcatel USA, Inc. ("Alcatel USA"), upon knowledge as to its own acts and upon information and belief as to the acts of others, by and through its undersigned attorneys, responds to each of the numbered paragraphs thereof as follows:

THE PLAINTIFF

1. Alcatel USA lacks knowledge or information sufficient to form a belief as to the truth and correctness of the allegations in Paragraph 1 of the Complaint and therefore denies the allegations.

2. Alcatel USA lacks knowledge or information sufficient to form a belief as to the truth and correctness of the allegations in Paragraph 2 of the Complaint and therefore denies the allegations.

THE DEFENDANTS

3. Alcatel USA states that its parent company is named "Alcatel, a French société anonyme", that there is no entity named "Alcatel S.A.", but otherwise admits the allegations in Paragraph 3 of the Complaint.

4. Alcatel USA admits the allegations in Paragraph 4 of the Complaint.

5. Alcatel USA admits that it distributes, sells and offers for sale networking products throughout the United States. Alcatel USA denies the remaining allegations in paragraph 5.

JURISDICTION AND VENUE

6. Alcatel USA admits that the Complaint contains averments of patent infringement that arise under Title 35 United States Code.

7. Alcatel USA admits that 28 U.S.C. §§ 1331 and 1338(a) grant this Court subject matter jurisdiction over civil actions arising under the patent laws of the United States.

8. For purposes of this litigation only, Alcatel USA does not contest that this Court has personal jurisdiction over Alcatel USA. Alcatel USA lacks knowledge or information sufficient to form a belief as to the truth and correctness of the remaining allegations in Paragraph 8 and therefore denies the allegations.

9. For purposes of this litigation only, Alcatel USA does not contest that, with respect to Alcatel USA, venue is proper under 28 U.S.C. §§ 1391(b), (c) and 1400(b). Alcatel USA lacks knowledge or information sufficient to form a belief as to the truth and correctness of the remaining allegations in Paragraph 9 and therefore denies the allegations.

INFRINGEMENT

10. Paragraph 10 of the Complaint realleges and incorporates by reference paragraphs 1-9 of the Complaint. Thus, Alcatel USA answers paragraph 10 in the same manner it answered paragraphs 1-9.

11. Alcatel USA admits that, on its face, United States Patent No. 4,893,306 (the "'306 patent") is entitled "Method and Apparatus for Multiplexing Circuit and Packet Traffic"; was filed on November 10, 1987; issued from United States Patent Application No. 118,977 on January 9, 1990; and named Hung-Hsiang J. Chao, Sang H. Lee, and Liang T. Wu as inventors. Alcatel USA admits that what appears to be a copy of the '306 patent was attached to the Complaint as Exhibit A. Alcatel USA denies the remaining allegations in Paragraph 11 of the Complaint.

12. Alcatel USA admits that, on its face, the '306 patent lists Bell Communications Research, Inc. as assignee. Alcatel USA lacks knowledge or information sufficient to form a belief as to the truth and correctness of the remaining allegations in Paragraph 12 of the Complaint and therefore denies the allegations.

13. Alcatel USA denies the allegations in Paragraph 13 of the Complaint.

14. Alcatel USA denies the allegations in Paragraph 14 of the Complaint.

15. Alcatel USA denies the allegations in Paragraph 15 of the Complaint.

16. Alcatel USA denies the allegations in Paragraph 16 of the Complaint.

17. Alcatel USA denies the allegations in Paragraph 17 of the Complaint.

JURY DEMAND

18. Alcatel USA does not contest that Plaintiff has requested a jury trial on all issues so triable, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE
NON-INFRINGEMENT

19. Alcatel USA incorporates by reference and realleges each and every allegation contained in paragraphs 1-18 of its Answer to the Complaint as if fully set forth herein.

20. Alcatel USA has not infringed and does not infringe (either directly, contributorily or by inducement) any valid and enforceable claim of the '306 patent.

SECOND AFFIRMATIVE DEFENSE
INVALIDITY

21. Alcatel USA incorporates by reference and realleges each and every allegation contained in paragraphs 1-20 of its Answer to the Complaint as if fully set forth herein.

22. The '306 patent is invalid for failing to comply with one or more of the conditions and requirements of the patent laws, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and 112, and the rules, regulations and laws pertaining thereto.

THIRD AFFIRMATIVE DEFENSE
UNENFORCEABILITY

23. Alcatel USA incorporates by reference and realleges each and every allegation contained in paragraphs 1-22 of its Answer to the Complaint as if fully set forth herein.

24. On information and belief, the '306 patent is unenforceable because the applicants, and/or individuals acting on behalf of the applicants, deliberately and knowingly withheld, omitted, and/or misrepresented material information in connection with the prosecution of the application which matured into the '306 patent in violation of the duty of candor to the

United States Patent and Trademark Office ("PTO"), as prescribed by 37 C.F.R. § 1.56. The reasons presently known to Alcatel USA that support its belief that the '306 patent is unenforceable are set forth in paragraphs 25-32 infra.

25. The '306 patent is listed as issuing from U.S. Patent Application Ser. No. 118,977 filed November 10, 1987 (the "'977 application"). Hung-Hsiang Chao, Sang H. Lee, and Liang T. Wu are the applicants listed on the face of the '977 application. On information and belief, at the time that the application was filed, the applicants were each employed by Plaintiff.

26. On or before November 22, 1985, Mark W. Beckner and Steven T. Minzer published an article entitled "A Tutorial on Asynchronous Time Division Multiplexing (ATDM): A Packet Access Capability For Broadband Interfaces to ISDNs" (the "Beckner-Minzer Article"). This article was published more than one year prior to the filing date of the '977 application and was material to the patentability of the '977 application. On information and belief, at the time that the article was published, the authors were each employed by Plaintiff.

27. On information and belief, Hung-Hsiang Chao and Mark W. Beckner were co-workers at Plaintiff's company. On information and belief, Hung-Hsiang Chao and Mark W. Beckner were co-inventors on U.S. Patent No. 4,819,226, filed on the same day as the '977 application and covering related technology. On information and belief, Hung-Hsiang Chao was aware of Mark W. Beckner's publications, especially those related to network communications. For example, in an article entitled "Design Architectures of a DTDM Packet Assembler and Packet Multiplexer" authored by H.J. Chao, published on or before November 11, 1987, H.J. Chao thanks M. W. Beckner for his comments and cites other publications co-authored by M.W. Beckner. Notwithstanding the foregoing, neither the applicants nor any individuals acting on behalf of the applicants informed the PTO of this article.

28. Based on the foregoing, on information and belief, one or more of the applicants, and/or individuals acting on behalf of the applicants, were well aware of the Beckner-M nzer Article, but they deliberately and knowingly withheld this material reference from the P'IO during prosecution of the '977 application.

29. On or before June 10, 1987, L. T. Wu (a co-inventor of the '306 patent), f.H. Lee (a co-inventor of the '306 patent), and T. T. Lee (not a co-inventor of the '306 patent) pu blished an article entitled "Dynamic TDM – A Packet Approach to Broad Band Networking" (th: "Wu Article"). This article was published prior to the filing date of the '977 application and v.as not entirely authored by the applicants of the '977 application. It was therefore material to the patentability of the '977 application and to the inventorship of the alleged inventions of t:e '977 application, but was not disclosed to the PTO. On information and belief, at the time tha· the article was published, the authors were each employed by Plaintiff.

30. In addition, on information and belief, the Wu Article discloses a mode of practicing the alleged inventions of the'306 patent that was not disclosed in the '977 application.

31. Based on the foregoing, on information and belief, the applicants, and/or individuals acting on behalf of the applicants, were aware of this publication and deliberately and knowingly withheld this material reference during prosecution of the '977 application.

32. On information and belief, one or more additional references that were ma:arial to the patentability of the '306 patent were known to persons of ordinary skill in the art, and upon information and belief, were known by the applicants and/or any individuals acting on bel:alf of the applicants, but the applicants and/or any individuals acting on behalf of the applicants deliberately and knowingly withheld these additional material references from the PTO during prosecution of the '977 application.

FOURTH AFFIRMATIVE DEFENSE
LACHES

33. Alcatel USA incorporates by reference and realleges each and every allegation contained in paragraphs 1-32 of its Answer to the Complaint as if fully set forth herein.

34. On or about February 6, 1991, Plaintiff offered Alcatel Network Systems, a predecessor in interest to Alcatel USA, a license under certain patents, including the '306 patent.

35. Plaintiff filed its Complaint in this action on July 16, 2004, over thirteen years after first contacting Alcatel Network Systems about a license under the '306 patent and fifteen years after the issuance of the '306 patent. Moreover, during the past thirteen years, Plaintiff gave Alcatel USA numerous reasons to believe that the '306 patent would not be asserted against it. Based upon the course of conduct of Plaintiff and the numerous interactions between the parties over the course of the past thirteen years, Plaintiff's delay in bringing suit is unreasonable, unjustified, and materially prejudicial to Alcatel USA.

36. By reason, inter alia, of the foregoing, Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE
LICENSE, ACQUIESCENCE

37. Alcatel USA incorporates by reference and realleges each and every allegation contained in paragraphs 1-36 of its Answer.

38. On or about May 21, 1998, Alcatel Network Systems and Plaintiff entered into an agreement to develop proposed generic requirements related to Synchronous Optical Network (SONET) Transport Systems (the "Agreement"). The terms of the Agreement grant Alcatel Network Systems and its affiliates a license to sell, license, or otherwise transfer products and

services that utilize or incorporate the alleged inventions of the '306 patent. Alcatel Network Systems provided Plaintiff with valuable consideration in exchange for the license.

39. On information and belief, Plaintiff failed to disclose to Alcatel Network Systems the alleged applicability of the '306 patent to the products envisioned by the Agreement

40. On information and belief, Plaintiff granted to the Regional Bell Operating Companies ("RBOCs") and to AT&T a license that included rights to use and to have made products covered by the '306 patent. To the extent that any of Plaintiff's allegations of infringement are premised on the alleged use, sale, offer for sale, or importation of Alcatel's products that were manufactured for or provided to the RBOCs or to AT&T, such allegations are barred pursuant to license.

41. By reason, inter alia, of the foregoing, Plaintiff's claims are barred, in whole or in part, by the doctrines of express license, implied license and/or acquiescence.

SIXTH AFFIRMATIVE DEFENSE
EQUITABLE ESTOPPEL

42. Alcatel USA incorporates by reference and realleges each and every allegation contained in paragraphs 1-42 of its Answer.

43. By reason, inter alia, of the foregoing, Plaintiff's claims are barred, in whole or in part, by the doctrine of equitable estoppel.

SEVENTH AFFIRMATIVE DEFENSE
UNCLEAN HANDS

44. Alcatel USA incorporates by reference and realleges each and every allegation contained in paragraphs 1-44 of its Answer to the Complaint as if fully set forth herein.

45. By reason, inter alia, of the foregoing, Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

PRAYER FOR RELIEF
FOR ANSWER

WHEREFORE, Alcatel USA requests that the Court enter judgment:

(a) Dismissing the Complaint against Alcatel USA in its entirety with prejudice;

(b) Finding the '306 patent not infringed under 35 U.S.C. § 271;

(c) Finding the '306 patent invalid under 35 U.S.C. §§ 101, 102, 103 and/or 112, and the rules, regulations and laws pertaining thereto;

(d) Finding the '306 patent unenforceable;

(e) Finding that, pursuant to 35 U.S.C. § 285, Federal Rule of Civil Procedure 11, and/or other applicable laws, Plaintiff's conduct in commencing and pursuing this action renders this an exceptional case and that Alcatel be awarded costs of this action and its attorneys' fees to the extent permitted by law; and

(f) Granting such other and further relief as the Court deems just and proper

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Alcatel USA requests a trial by jury of all issues so triable.

COUNTERCLAIMS

Alcatel USA, through its attorneys, asserts the following counterclaims against Plaintiff and alleges as follows:

PARTIES

1. Alcatel USA is a corporation organized and existing under the laws of Delaware, having a business address at 3400 W. Plano Parkway, Plano, Texas 75075.

2. As averred by Plaintiff in its Complaint, Plaintiff is a corporation organized and existing under the laws of Delaware, having a place of business at One Plaintiff Drive, Piscataway, New Jersey 08854.

JURISDICTION AND VENUE

3. This is an action for a declaratory judgment of non-infringement, unenforceability, and invalidity of the '306 patent.

4. Plaintiff alleges in its Complaint in this action that it is the owner of the '306 patent, and that Alcatel USA infringes that patent. Alcatel USA denies that it infringes any valid claim of the '306 patent.

5. As a consequence of the foregoing, there is an actual and justiciable controversy between Alcatel USA and Plaintiff with respect to which Alcatel USA requests a declaration by this Court.

6. This Court has subject matter jurisdiction over this controversy based on 28 U.S.C. §§ 1331 and 1338(a), and 28 U.S.C. §§ 2201(a) and 2202.

7. This Court has personal jurisdiction over Plaintiff.

8. Venue is proper under 28 U.S.C. §§ 1391(b) and (c).

FIRST COUNTERCLAIM – DECLARATORY JUDGMENT PATENT NON-INFRINGEMENT

9. Alcatel USA incorporates by reference and realleges each and every allegation contained in paragraphs 1-8 of these Counterclaims and paragraphs 19-45 of its Affirmative Defenses as if fully set forth herein.

10. Alcatel USA does not import, make, use, sell or offer for sale any communication network product that infringes, induces infringement of, or contributes to the infringement of,

any valid claim of the '306 patent, either literally or under the doctrine of equivalents, nor has it ever done so.

SECOND COUNTERCLAIM – DECLARATORY JUDGMENT
PATENT INVALIDITY

11. Alcatel USA incorporates by reference and realleges each and every allegation contained in paragraphs 1-10 of these Counterclaims and paragraphs 19-45 of its Affirmative Defenses as if fully set forth herein.

12. The '306 patent is invalid for failing to comply with one or more of the conditions and requirements of the patent laws, including, but not limited to, 35 U.S.C. §§ 101, 102. 103 and 112, and the rules, regulations and laws pertaining thereto.

THIRD COUNTERCLAIM – DECLARATORY JUDGMENT
PATENT UNENFORCEABILITY

13. Alcatel USA incorporates by reference and realleges each and every allegation contained in paragraphs 1-12 of these Counterclaims and paragraphs 19-45 of its Affirmative Defenses as if fully set forth herein.

14. On information and belief, the '306 patent is unenforceable because the applicants, and/or individuals acting on behalf of the applicants, deliberately and knowingly withheld, omitted, and/or misrepresented material information in connection with the prosecution of the application which matured into the '306 patent in violation of the duty of candor to the PTO, as prescribed by 37 C.F.R. § 1.56. The reasons presently known to Alcatel USA that support its belief that the '306 patent is unenforceable are set forth in paragraphs 15-22 infra.

15. The '306 patent is listed as issuing from U.S. Patent Application Ser. No. 118,977 filed November 10, 1987 (the "'977 application"). Hung-Hsiang Chao, Sang H. Lee, and Liang

T. Wu are the applicants listed on the face of the '977 application. On information and belief, at the time that the application was filed, the applicants were each employed by Plaintiff.

16. On or before November 22, 1985, Mark W. Beckner and Steven T. Minzer published an article entitled "A Tutorial on Asynchronous Time Division Multiplexing (ATDM): A Packet Access Capability For Broadband Interfaces to ISDNs" (the "Beckner-Minzer Article"). This article was published more than one year prior to the filing date of the '977 application and was material to the patentability of the '977 application. On information and belief, at the time that the article was published, the authors were each employed by Plaintiff.

17. On information and belief, Hung-Hsiang Chao and Mark W. Beckner were co-workers at Plaintiff's company. On information and belief, Hung-Hsiang Chao and Mark W. Beckner were co-inventors on U.S. Patent No. 4,819,226, filed on the same day as the '977 application and covering related technology. On information and belief, Hung-Hsiang Chao was aware of Mark W. Beckner's publications, especially those related to network communications. For example, in an article entitled "Design Architectures of a DTDM Packet Assembler and Packet Multiplexer" authored by H.J. Chao, published on or before November 11, 1987, H.J. Chao thanks M. W. Beckner for his comments and cites other publications co-authored by M.W. Beckner. Notwithstanding the foregoing, neither the applicants nor any individuals acting on behalf of the applicants informed the PTO of this article.

18. Based on the foregoing, on information and belief, one or more of the applicants, and/or individuals acting on behalf of the applicants, were well aware of the Beckner-Minzer Article, but they deliberately and knowingly withheld this material reference from the PTO during prosecution of the '977 application.

19. On or before June 10, 1987, L. T. Wu (a co-inventor of the '306 patent), S.H. Lee (a co-inventor of the '306 patent), and T. T. Lee (not a co-inventor of the '306 patent) published an article entitled "Dynamic TDM – A Packet Approach to Broad Band Networking" (the "Wu Article"). This article was published prior to the filing date of the '977 application and was not entirely authored by the applicants of the '977 application. It was therefore material to the patentability of the '977 application and to the inventorship of the alleged inventions of the '977 application, but was not disclosed to the PTO. On information and belief, at the time that the article was published, the authors were each employed by Plaintiff.

20. In addition, on information and belief, the Wu Article discloses a mode of practicing the alleged inventions of the '306 patent that was not disclosed in the '977 application.

21. Based on the foregoing, on information and belief, the applicants, and/or individuals acting on behalf of the applicants, were aware of this publication and deliberately and knowingly withheld this material reference during prosecution of the '977 application.

22. On information and belief, one or more additional references that were material to the patentability of the '306 patent were known to persons of ordinary skill in the art, and upon information and belief, were known by the applicants and/or any individuals acting on behalf of the applicants, but the applicants and/or any individuals acting on behalf of the applicants deliberately and knowingly withheld these additional material references from the PTO during prosecution of the '977 application.

FOURTH COUNTERCLAIM – DECLARATORY JUDGMENT
LACHES

23. Alcatel USA incorporates by reference and realleges each and every allegation contained in paragraphs 1-22 of these Counterclaims and paragraphs 19-45 of its Affirmative Defenses as if fully set forth herein.

24. On or about February 6, 1991, Plaintiff offered Alcatel Network Systems a predecessor in interest to Alcatel USA, a license under certain Plaintiff patents, including the '306 patent.

25. Plaintiff filed its Complaint in this action on July 16, 2004, over thirteen years after first contacting Alcatel Network Systems about a license under the '306 patent and fifteen years after the issuance of the '306 patent. Moreover, during the past thirteen years, Plaintiff gave Alcatel USA numerous reasons to believe that the '306 patent would not be asserted against it. Based upon the course of conduct of Plaintiff and the numerous interactions between the parties over the course of the past thirteen years, Plaintiff's delay in bringing suit is unreasonable, unjustified, and materially prejudicial to Alcatel USA.

26. By reason, inter alia, of the foregoing, Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

FIFTH COUNTERCLAIM – DECLARATORY JUDGMENT
LICENSE, ACQUIESCENCE

27. Alcatel USA incorporates by reference and realleges each and every allegation contained in paragraphs 1-26 of these Counterclaims and paragraphs 19-45 of its Affirmative Defenses as if fully set forth herein.

28. On or about May 21, 1998, Alcatel Network Systems and Plaintiff entered into an agreement to develop proposed generic requirements related to Synchronous Optical Network (SONET) Transport Systems (the "Agreement"). The terms of the Agreement grant Alcatel Network Systems and its affiliates a license to sell, license, or otherwise transfer products and services that utilize or incorporate the alleged inventions of the '306 patent. Alcatel Network Systems provided Plaintiff with valuable consideration in exchange for the license.

29. On information and belief, Plaintiff failed to disclose to Alcatel Network Systems the alleged applicability of the '306 patent to the products envisioned by the Agreement

30. On information and belief, Plaintiff granted to the Regional Bell Operating Companies ("RBOCs") and to AT&T a license that included rights to use and to have made products covered by the '306 patent. To the extent that any of Plaintiff's allegations of infringement are premised on the alleged use, sale, offer for sale, or importation of Alcatel's products that were manufactured for or provided to the RBOCs or to AT&T, such allegations are barred pursuant to license.

31. By reason, inter alia, of the foregoing, Plaintiff's claims are barred, in whole or in part, by the doctrines of express license, implied license and/or acquiescence.

SIXTH COUNTERCLAIM – DECLARATORY JUDGMENT
EQUITABLE ESTOPPEL

32. Alcatel USA incorporates by reference and realleges each and every allegation contained in paragraphs 1-31 of these Counterclaims and paragraphs 19-45 of its Affirmative Defenses as if fully set forth herein.

33. By reason, inter alia, of the foregoing, Plaintiff's claims are barred, in whole or in part, by the doctrine of equitable estoppel.

SEVENTH COUNTERCLAIM – DECLARATORY JUDGMENT
UNCLEAN HANDS

34. Alcatel USA incorporates by reference and realleges each and every allegation contained in paragraphs 1-33 of these Counterclaims and paragraphs 19-45 of its Affirmative Defenses as if fully set forth herein.

35. By reason, inter alia, of the foregoing, Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hand

PRAYER FOR RELIEF
FOR COUNTERCLAIM

WHEREFORE, Alcatel USA requests that the Court enter judgment:

(a) Declaring the '306 patent not infringed under 35 U.S.C. § 271;

(b) Declaring the '306 patent invalid under 35 U.S.C. §§ 101, 102, 103 and/or 112, and the rules, regulations and laws pertaining thereto;

(c) Declaring the '306 patent unenforceable;

(d) Declaring that Plaintiff's claims are barred by the doctrine of laches;

(e) Declaring that Plaintiff's claims are barred by the doctrines of license, implied license and/or acquiescence;

(f) Declaring that Plaintiff's claims are barred by the doctrine of equitable estoppel;

(g) Declaring that Plaintiff's claims are barred by the doctrine of unclean hands;

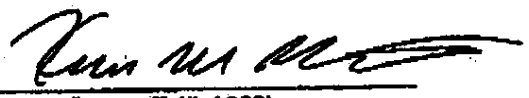
(h) Finding that, pursuant to 35 U.S.C. § 285, Federal Rule of Civil Procedure 11, and/or other applicable laws, Plaintiff's conduct in commencing and pursuing this action renders this an exceptional case and that Alcatel be awarded costs of this action and its attorneys' fees to the extent permitted by law; and

(i) Granting such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Alcatel USA requests a trial by jury of all issues so triable.

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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Dated: December 2, 2004

CERTIFICATE OF SERVICE

I, Kevin M. Baird, hereby certify that on December 2, 2004, copies of the foregoing document were caused to be served upon the following:

BY HAND DELIVERY

Steven J. Balick, Esquire
John G. Day, Esquire
Ashby & Geddes
222 Delaware Avenue
P.O. Box 1150
Wilmington, DE 19899

Kevin M. Baird (#4219)

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

TELCORDIA TECHNOLOGIES, INC., Plaintiff,	)	
v.	)	Civil Action No. 04-875-GMS
LUCENT TECHNOLOGIES INC., Defendant.	)	

LUCENT TECHNOLOGIES INC.'S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS IN RESPONSE TO PLAINTIFF TELCORDIA TECHNOLOGIES, INC.'s COMPLAINT AND DEMAND FOR A JURY TRIAL

Defendant, Lucent Technologies Inc. ("Lucent"), demands a trial by jury and respectfully submits its Answer, Affirmative Defenses, and Counterclaims in response to the Complaint and Demand For Jury Trial of Plaintiff Telcordia Technologies, Inc. ("Telcordia") as follows:

I. ANSWER TO TELCORDIA'S COMPLAINT AND DEMAND FOR JURY TRIAL

THE PLAINTIFF

1. Plaintiff TELCORDIA is a corporation organized and existing under the laws of Delaware, having a place of business at One Telcordia Drive, Piscataway, New Jersey 08854.

ANSWER: Lucent admits that Telcordia is the Plaintiff in the above-captioned civil action. Otherwise, Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1, and on that basis denies such allegations.

2. TELCORDIA is a provider of communications software, engineering, and consulting services throughout the United States, including in the District of Delaware.

ANSWER: Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2, and on that basis denies such allegations.

THE DEFENDANT

3. Upon information and belief, defendant LUCENT is a corporation organized and existing under the laws of Delaware, having a place of business at 600 Mountain Avenue, Murray Hill, New Jersey 07974.

ANSWER: Lucent admits that it is a corporation organized and existing under the laws of the state of Delaware. Lucent admits having a place of business at 600 Mountain Avenue, Murray Hill, New Jersey 07974.

4. Upon information and belief, LUCENT is a manufacturer of communication network products that LUCENT ships, distributes, sells, and/or offers for sale throughout the United States, including in the District of Delaware.

ANSWER: Lucent is without knowledge and information sufficient to form an understanding as to what is meant by "communication network products," and on that basis denies such allegations.

JURISDICTION AND VENUE

5. The claims asserted in this Complaint arise under the Patent Laws of the United States, 35 U.S.C. §§ 1-376.

ANSWER: Lucent admits that the complaint purports to allege an action for patent infringement under 35 U.S.C. §§ 1, *et seq.* Lucent denies that the complaint properly states such a claim and specifically denies any wrongdoing or infringement.

6. Subject matter jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338.

ANSWER: Lucent admits that the complaint purports to base federal jurisdiction under 28 U.S.C. §§ 1331 and 1338. Otherwise, this allegation contains conclusions of law to which no answer is required.

7. This Court has personal jurisdiction over LUCENT.

ANSWER: Lucent admits that this Court has personal jurisdiction over Lucent, but denies that any wrongdoing or infringing acts have occurred in Delaware or elsewhere.

8. Venue is proper under 28 U.S.C. §§ 1391 and 1400.

ANSWER: Lucent admits that venue is proper in this Court.

INFRINGEMENT

9. TELCORDIA realleges and incorporates by reference each of paragraphs 1-8 above.

ANSWER: Lucent repleads and incorporates by reference each of its answers to paragraphs 1-8 above.

10. The '306 patent, entitled "Method and Apparatus for Multiplexing Circuit and Packet Traffic," was lawfully issued by the United States Patent and Trademark Office on January 9, 1990 to the inventors, Hung-Hsiang J. Chao, Sang H. Lee, and Liang T. Wu. The '306 patent issued from U.S. Patent Application Serial No. 07/118,977, filed November 10, 1987. A copy of the '306 patent is attached as Exhibit A.

ANSWER: Lucent admits that what appears to be a copy of U.S. Patent No. 4,893,306 is attached as Exhibit A to the complaint. Lucent admits that, on its face, Exhibit A is entitled "Method and Apparatus for Multiplexing Circuit and Packet Traffic." Lucent admits that, on its face, Exhibit A states that U.S. Patent No. 4,893,306 was issued by the United States Patent and Trademark Office ("USPTO") on January 9, 1990. Lucent admits that, on its face, Exhibit A states that U.S. Patent No. 4,893,306 issued from U.S Patent Application Serial No. 07/118,977, filed November 10, 1987. Lucent admits that, on its face, Exhibit A identifies Hung-Hsiang J. Chao, Sang H. Lee, and Liang T. Wu as inventors. Otherwise, Lucent denies each and every allegation contained in Paragraph 10, and specifically denies that U.S. Patent No. 4,893,306 was lawfully issued by the USPTO to Hung-Hsiang J. Chao, Sang H. Lee, and Liang T. Wu.

11. On its issuance, the '306 patent was assigned to Bell Communications Research, Inc. ("Bellcore"), which became TELCORDIA in 1999. TELCORDIA and Bellcore

have at all times since the '306 patent's issuance held the entire right, title, and interest in the patent.

ANSWER: To the extent that this allegation contains conclusions of law, no answer is required. Otherwise, Lucent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11, and on that basis denies such allegations.

12. Upon information and belief, LUCENT has infringed one or more claims of the '306 patent by making, using, offering for sale, selling, and/or importing into the United States communication network products embodying the patented invention.

ANSWER: Lucent denies each and every allegation contained in Paragraph 12, and specifically denies any wrongdoing or infringement.

13. Upon information and belief, LUCENT has infringed one or more claims of the '306 patent by inducing others to infringe the patent and/or contributing to the patent's infringement by others.

ANSWER: Lucent denies each and every allegation contained in Paragraph 13, and specifically denies any wrongdoing or infringement.

14. As a consequence of LUCENT's infringement of the '306 patent, TELCORDIA has been damaged in an amount not yet determined.

ANSWER: Lucent denies each and every allegation contained in Paragraph 14, specifically denies any wrongdoing or infringement, and further denies that Telcordia is entitled to recover any damages whatsoever.

15. Upon information and belief, LUCENT's infringement of the '306 patent will continue in the future, and TELCORDIA will continue to suffer damages as a consequence, unless LUCENT's infringing acts are enjoined by this Court.

ANSWER: Lucent denies each and every allegation contained in Paragraph 15, and specifically denies any wrongdoing or infringement.

16. Upon information and belief, LUCENT's infringement of the '306 patent has been, and continues to be, willful.

ANSWER: Lucent denies each and every allegation contained in Paragraph 16, specifically denies any wrongdoing or infringement, and further denies any willful infringement.

JURY DEMAND

17. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, TELCORDIA requests a trial by jury for all issues so triable.

ANSWER: This paragraph contains conclusions of law to which no answer is necessary.

WHEREFORE, Lucent denies that any of its products infringe any valid claim of the patent identified in Telcordia's complaint, and further denies that Telcordia is entitled to any judgment against Lucent whatsoever. Lucent asks that Telcordia's complaint be dismissed with prejudice, that judgment be entered for Lucent, and that Lucent be awarded attorneys' fees incurred in defending against Telcordia's complaint, together with such other and further relief as the Court deems appropriate.

II. AFFIRMATIVE DEFENSES

As and for its Affirmative Defenses, Lucent alleges as follows:

First Affirmative Defense
(Failure to State a Claim)

18. Telcordia's purported claims are barred because they fail to state a claim upon which relief can be granted.

Second Affirmative Defense
(Non-Infringement)

19. Lucent has not directly infringed, contributed to the infringement, or induced the infringement of any claim of the patent identified in Telcordia's complaint through any of its products.

Third Affirmative Defense
(Patent Invalidity)

20. Telcordia's purported claims for infringement are barred because the claims in the patent identified in Telcordia's complaint are invalid for failure to comply with the requirements of 35 U.S.C. §§ 1 *et seq*.

Fourth Affirmative Defense
(Inequitable Conduct)

21. Telcordia's purported claims for infringement are barred because one or more claims in the patent identified in Telcordia's complaint are unenforceable due to inequitable conduct.

22. During the prosecution of the application for the patent identified in Telcordia's complaint, one or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application had knowledge of articles published by J. O. Limb, including at least an article entitled "Description of Fasnet--A Unidirectional Local--Area Communications Network," published by J. O. Limb et al. in September of 1982.

23. The article entitled "Description of Fasnet--A Unidirectional Local--Area Communications Network" was prior art that was material to the patentability of one or more claims of the patent identified in Telcordia's complaint.

24. The article entitled "Description of Fasnet--A Unidirectional Local--Area Communications Network" was not disclosed to the USPTO during the filing and prosecution of the application for the patent identified in Telcordia's complaint. One or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application withheld the article entitled "Description of Fasnet--A Unidirectional Local--Area Communications Network" with an intent to deceive the USPTO.

25. During prosecution of the application for the patent identified in Telcordia's complaint, one or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application had knowledge of IEEE Standard 802.6 and QPSX products and systems that were known, in public use, and/or described in a printed publication prior to November 10, 1987.

26. IEEE Standard 802.6 and QPSX products and systems were prior art that were material to the patentability of one or more claims of the patent identified in Telcordia's complaint.

27. IEEE Standard 802.6 and QPSX products and systems were not disclosed to the USPTO during the filing and prosecution of the application for the patent identified in Telcordia's complaint. One or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application withheld information regarding IEEE Standard 802.6 and QPSX products and systems with an intent to deceive the USPTO.

28. During the prosecution of the application for the patent identified in Telcordia's complaint, one or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application had knowledge of an article entitled "Dynamic TDM-A Packet Approach To Broadband Networking," published by LT. Wu, S.H. Lee, and T.T. Lee in June 1987.

29. The article entitled "Dynamic TDM-A Packet Approach To Broadband Networking" was prior art that was material to the patentability of one or more claims of the patent identified in Telcordia's complaint.

30. The article entitled "Dynamic TDM-A Packet Approach To Broadband Networking" was not disclosed to the USPTO during the filing and prosecution of the application for the patent identified in Telcordia's complaint. One or more of the inventors, and/or the prosecuting

attorneys, and/or others associated with the filing and prosecution of the application withheld the article entitled "Dynamic TDM-A Packet Approach To Broadband Networking" with an intent to deceive the USPTO.

31. During the prosecution of the application for the patent identified in Telcordia's complaint, one or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application had knowledge of an article entitled "A Protocol and Prototype For Broadband Subscriber Access to ISDNs," published by Mark Beckner, T.T. Lee, and Steven Minzer in March 1987.

32 The article entitled "A Protocol and Prototype For Broadband Subscriber Access to ISDNs" was prior art that was material to the patentability of one or more claims of the patent identified in Telcordia's complaint.

33. The article entitled "A Protocol and Prototype For Broadband Subscriber Access to ISDNs" was not disclosed to the USPTO during the filing and prosecution of the application for the patent identified in Telcordia's complaint. One or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application withheld the article entitled "A Protocol and Prototype For Broadband Subscriber Access to ISDNs" with an intent to deceive the USPTO.

34. During the prosecution of the application for the patent identified in Telcordia's complaint, one or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application had knowledge of an article entitled "A Broadband ISDN Local Access System Using Emerging Technology Components," published by G. Hayward, L. Linnell, D. Mahoney and L. Smoot in March 1987.

35. The article entitled "A Broadband ISDN Local Access System Using Emerging Technology Components" was prior art that was material to the patentability of one or more claims of the patent identified in Telcordia's complaint.

36. The article entitled "A Broadband ISDN Local Access System Using Emerging Technology Components" was not disclosed to the USPTO during the filing and prosecution of the application for the patent identified in Telcordia's complaint. One or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application withheld the article entitled "A Broadband ISDN Local Access System Using Emerging Technology Components" with an intent to deceive the USPTO.

37. During the prosecution of the application for the patent identified in Telcordia's complaint, one or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application had knowledge of an article entitled "Starlite: A Wideband Digital Switch," published by A. Huang and S. Knauer in 1984.

38. The article entitled "Starlite: A Wideband Digital Switch" was prior art that was material to the patentability of one or more claims of the patent identified in Telcordia's complaint.

39. The article entitled "Starlite: A Wideband Digital Switch" was not disclosed to the USPTO during the filing and prosecution of the application for the patent identified in Telcordia's complaint. One or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application withheld the article entitled "Starlite: A Wideband Digital Switch" with an intent to deceive the USPTO.

40. During the prosecution of the application for the patent identified in Telcordia's complaint, one or more of the inventors, and/or the prosecuting attorneys, and/or others

associated with the filing and prosecution of the application had knowledge of an article entitled "A CMOS VLSI Framer Chip for a Broadband ISDN Local Access System," published by H.J. Chao, T.J. Robe, and L.S. Smoot in May 1987.

41. The article entitled "A CMOS VLSI Framer Chip for a Broadband ISDN Local Access System" was prior art that was material to the patentability of one or more claims of the patent identified in Telcordia's complaint.

42. The article entitled "A CMOS VLSI Framer Chip for a Broadband ISDN Local Access System" was not disclosed to the USPTO during the filing and prosecution of the application for the patent identified in Telcordia's complaint. One or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application withheld the article entitled "A CMOS VLSI Framer Chip for a Broadband ISDN Local Access System" with an intent to deceive the USPTO.

43. During the prosecution of the application for the patent identified in Telcordia's complaint, one or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application had knowledge of an article entitled "Broadband User-Network Interfaces to ISDN," published by Steven Minzer in June 1987.

44. The article entitled "Broadband User-Network Interfaces to ISDN" was prior art that was material to the patentability of one or more claims of the patent identified in Telcordia's complaint.

45. The article entitled "Broadband User-Network Interfaces to ISDN" was not disclosed to the USPTO during the filing and prosecution of the application for the patent identified in Telcordia's complaint. One or more of the inventors, and/or the prosecuting attorneys, and/or

others associated with the filing and prosecution of the application withheld the article entitled "Broadband User-Network Interfaces to ISDN" with an intent to deceive the USPTO.

46. During the prosecution of the application for the patent identified in Telcordia's complaint, one or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application had knowledge of an article entitled "Broadband ISDN Switching Capabilities From a Service Perspective," published by Dan R. Spears in October 1987.

47. The article entitled "Broadband ISDN Switching Capabilities From a Service Perspective" was prior art that was material to the patentability of one or more claims of the patent identified in Telcordia's complaint.

48. The article entitled "Broadband ISDN Switching Capabilities From a Service Perspective" was not disclosed to the USPTO during the filing and prosecution of the application for the patent identified in Telcordia's complaint. One or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application withheld the article entitled "Broadband ISDN Switching Capabilities From a Service Perspective" with an intent to deceive the USPTO.

49. During the prosecution of the application for the patent identified in Telcordia's complaint, one or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application had knowledge of United States Patent No. 4,082,922 entitled "Statistical Multiplexing System For Computer Communications," issued to Wesley W. Chu on April 4, 1978.

50. U.S. Patent No. 4,082,922 was prior art that was material to the patentability of one or more claims of the patent identified in Telcordia's complaint.

51. U.S. Patent No. 4,082,922 was not disclosed to the USPTO during the filing and prosecution of the application for the patent identified in Telcordia's complaint. One or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application withheld U.S. Patent No. 4,082,922 with an intent to deceive the USPTO.

52. During the prosecution of the application for the patent identified in Telcordia's complaint, one or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application had knowledge of United States Patent No. 4,093,823 entitled "Statically Multiplexing System For Computer Communications," issued to Wesley W. Chu on June 6, 1978.

53. U.S. Patent No. 4,093,823 was prior art that was material to the patentability of one or more claims of the patent identified in Telcordia's complaint.

54. U.S. Patent No. 4,093,823 was not disclosed to the USPTO during the filing and prosecution of the application for the patent identified in Telcordia's complaint. One or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application withheld U.S. Patent No. 4,093,823 with an intent to deceive the USPTO.

55. During the prosecution of the application for the patent identified in Telcordia's complaint, one or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application had knowledge of an article entitled "A Wide-Band Local Access System Using Emerging-Technology Components," published by Lloyd R. Linnell in July 1986.

56. The article entitled "A Wide-Band Local Access System Using Emerging-Technology Components" was prior art that was material to the patentability of one or more claims of the patent identified in Telcordia's complaint.

57. The article entitled "A Wide-Band Local Access System Using Emerging-Technology Components" was not disclosed to the USPTO during the filing and prosecution of the application for the patent identified in Telcordia's complaint. One or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application withheld the article entitled "A Wide-Band Local Access System Using Emerging-Technology Components" with an intent to deceive the USPTO.

58. The article entitled "Synchronous Wideband Network-An Interoffice Facility Hubbing Network" was not disclosed to the USPTO during the filing and prosecution of the application for the patent identified in Telcordia's complaint. One or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application withheld the article entitled "Synchronous Wideband Network-An Interoffice Facility Hubbing Network" with an intent to deceive the USPTO.

59. The article entitled "Synchronous Wideband Network-An Interoffice Facility Hubbing Network" was prior art that was material to the patentability of one or more claims of the patent identified in Telcordia's complaint.

60. The article entitled "Synchronous Wideband Network-An Interoffice Facility Hubbing Network" was not disclosed to the USPTO during the filing and prosecution of the application for the patent identified in Telcordia's complaint. One or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution of the application

withheld the article entitled "Synchronous Wideband Network-An Interoffice Facility Hubbing Network" with an intent to deceive the USPTO.

Fifth Affirmative Defense
(Laches)

61. Telcordia's claim for any damages purportedly incurred prior to filing this action is barred by the equitable doctrine of laches.

Sixth Affirmative Defense
(License)

62. Bell Communications Research, Inc. ("Bellcore"), which became TELCORDIA in 1999, granted to American Telephone and Telegraph Company ("AT&T") a license that includes rights to use and to have made products covered by the patent identified in Telcordia's complaint. To the extent that any of Telcordia's allegations of infringement are premised on the alleged use, sale, offer for sale, or importation of Lucent's products that were manufactured for or provided to AT&T, such allegations are barred pursuant to license.

63. Bellcore, which became TELCORDIA in 1999, granted to the Regional Bell Operating Companies ("RBOCs") a license that included rights to use and to have made products covered by the patent identified by Telcordia's complaint. To the extent that any of Telcordia's allegations of infringement are premised on the alleged use, sale, offer for sale, or importation of Lucent's products that were manufactured for or provided to the RBOCs, such allegations are barred pursuant to license.

64. Because Telcordia fails to specify any Lucent products that purportedly infringe the patent identified in Telcordia's complaint, Lucent reserves the right to plead additional defenses, such as equitable estoppel, exhaustion, implied license, and patent misuse, when Telcordia

specifically identifies its contentions regarding Lucent products that purportedly infringe and any damages that Telcordia may contend that it incurred as result of such purported infringement.

III. COUNTERCLAIMS

Jurisdiction and Venue

65. This is an action for declaratory relief for which this Court has jurisdiction under 28 U.S.C. §§ 1331, 1338, and 2201.

66. To the extent that this action remains in this Court, venue is appropriate because Telcordia has consented to the propriety of venue in this Court by filing its claim for patent infringement in this Court, in response to which these counterclaims are asserted.

67. Lucent is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business in Murray Hill, New Jersey 07874.

68. Telcordia alleges that it is a corporation organized and existing under the laws of Delaware, having a place of business at One Telcordia Drive, Piscataway, New Jersey 08854.

First Counterclaim
(Non-Infringement)

69. Lucent repeats and realleges paragraphs 65-68 above as if fully set forth herein.

70. By filing its complaint, Telcordia has purported to assert a claim for infringement.

71. Lucent has denied Telcordia's claim of infringement and believes that the complaint has been filed without good cause.

72. An actual controversy has arisen between Lucent and Telcordia concerning the infringement of the patent identified in Telcordia's complaint.

73. Lucent is entitled to judgment from this Court finding that the patent identified in Telcordia's complaint is not infringed by any Lucent product.

74. Telcordia also filed this action without a good faith basis, making this an exceptional case. Consequently, Telcordia is liable for any and all attorneys' fees incurred by Lucent in connection with this action.

Second Counterclaim
(Invalidity)

75. Lucent repeats and realleges paragraphs 65-68 above as if fully set forth herein.

76. Lucent has denied that the patent identified in Telcordia's complaint is valid and has asserted that such patent is invalid pursuant to 35 U.S.C. §§ 1 *et seq*.

77. Lucent is entitled to judgment from this Court finding that the patent identified in Telcordia's complaint is invalid for failure to comply with the requirements of 35 U.S.C. §§ 1 *et seq*.

Third Counterclaim
(Inequitable Conduct)

78 Lucent repeats and realleges paragraphs 65-68 as if fully set forth herein.

79. Lucent repeats and realleges paragraphs 21-60 as if fully set forth herein as and for its counterclaim that the patent identified in Telcordia's complaint is unenforceable as result of inequitable conduct committed before the USPTO during the prosecution of the patent by one or more of the inventors, and/or the prosecuting attorneys, and/or others associated with the filing and prosecution.

Fourth Counterclaim
(License)

80. Lucent repeats and realleges paragraphs 65-68 as if fully set forth herein.

81. Bellcore granted to AT &T a license that includes rights to use and to have made products covered by the patent identified in Telcordia's complaint. To the extent that any of Telcordia's allegations of infringement are premised on the alleged use, sale, offer for sale, or importation of Lucent's products that were manufactured for or provided to AT&T, such allegations are barred pursuant to a license.

82. Bellcore granted to the RBOCs a license that included rights to use and to have made products covered by the patent identified by Telcordia's complaint. To the extent that any of Telcordia's allegations of infringement are premised on the alleged use, sale, offer for sale, or importation of Lucent's products that were manufactured for or provided to the RBOCs, such allegations are barred pursuant to a license.

IV. DEMAND FOR JURY TRIAL

83. Lucent hereby demands a trial by jury.

V. RELIEF

WHEREFORE, Lucent seeks the following relief:

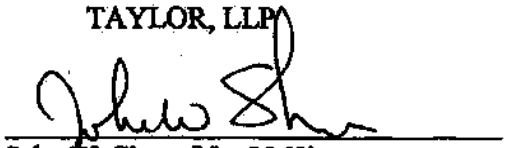
84. That the patent identified in Telcordia's complaint, and every claim thereof, be declared not infringed, invalid, and unenforceable;

85. That Telcordia take nothing by its complaint and that Telcordia's complaint be dismissed with prejudice;

86. That, pursuant to 35 U.S.C. § 285, Federal Rule of Civil Procedure 11, and/or other applicable laws, the Court find that Telcordia's conduct in commencing and pursuing this action renders this an exceptional case and that Lucent be awarded its attorneys' fees incurred in connection with this action; and

87. That Lucent be granted such other and additional relief as this Court deems just and proper.

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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Dated: December 2, 2004

CERTIFICATE OF SERVICE

I, John W. Shaw, hereby certify that on December 2, 2004, copies of the foregoing document were caused to be served upon the following:

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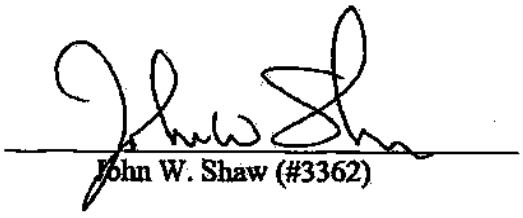

John W. Shaw (#3362)

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

TELCORDIA TECHNOLOGIES, INC., Plaintiff, v. CISCO SYSTEMS, INC., Defendant.	Civil Action No. 04-876-GMS DEMAND FOR JURY TRIAL

CISCO SYSTEMS' ANSWER TO COMPLAINT, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS

Defendant Cisco Systems, Inc. ("Cisco"), by and through its undersigned counsel, hereby responds to the Complaint of plaintiff Telcordia Technologies, Inc. ("Telcordia") by admitting, denying, alleging, and counterclaiming as follows:

I. ANSWER

THE PLAINTIFF

1. Cisco is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Complaint and therefore denies those allegations.

2. Cisco is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Complaint and therefore denies those allegations.

THE DEFENDANT

3. Cisco admits the allegations in paragraph 3 of the Complaint.

4. Cisco admits the allegations in paragraph 4 of the Complaint.

JURISDICTION AND VENUE

5. Cisco admits that this action purports to arise under the Patent Laws of the United States, 35 U.S.C. §§ 1-376.

6. Cisco admits that this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338 over the allegations in the Complaint as plead.

7. Cisco admits that it is subject to personal jurisdiction in this judicial district.

8. Cisco denies the allegations of paragraph 8 of the Complaint.

COUNT I: INFRINGEMENT OF THE '306 PATENT

9. Cisco incorporates by reference its responses in each of paragraphs 1-8 above.

10. Cisco admits that U.S. Patent No. 4,893,306 ("the '306 patent") entitled "Method and Apparatus for Multiplexing Circuit and Packet Traffic," states on its face that it issued on January 9, 1990 to Hung-Hsiang J. Chao, Sang H. Lee, and Liang T. Wu as named inventors. Cisco admits that the '306 states on its face that it issued from U.S. Patent Application No. 118,977, filed on November 10, 1987. Except as so expressly admitted, Cisco denies the allegations of paragraph 10 of the Complaint.

11. Cisco admits that the '306 patent states on its face that it was assigned to Bell Communications Research, Inc. Except as so expressly admitted, Cisco denies the allegations of paragraph 11 of the Complaint.

12. Cisco denies the allegations in paragraph 12 of the Complaint.

13. Cisco denies the allegations in paragraph 13 of the Complaint.

14. Cisco denies the allegations in paragraph 14 of the Complaint.

15. Cisco denies the allegations in paragraph 15 of the Complaint.

16. Cisco denies the allegations in paragraph 16 of the Complaint.

COUNT II: INFRINGEMENT OF THE '633 PATENT

17. Cisco incorporates by reference its responses in each of paragraphs 1-16 above.

18. Cisco admits that U.S. Patent No. Re. 36,633 ("the '633 patent") entitled "Synchronous Residual Time Stamp For Time Recovery In A Broadband Network," states on its face that it issued on March 28, 2000 to Paul E. Fleischer and Chi-Leung Lau as named inventors. Cisco admits that the '633 states on its face that it issued from U.S. Patent Application No. 08/555,196, filed on November 8, 1985. Except as so expressly admitted, Cisco denies the allegations of paragraph 18 of the Complaint.

19. Cisco admits that the '633 patent states on its face that it was assigned to Telcordia Technologies Inc. Except as so expressly admitted, Cisco denies the allegations of paragraph 19 of the Complaint.

20. Cisco denies the allegations in paragraph 20 of the Complaint.

21. Cisco denies the allegations in paragraph 21 of the Complaint.

22. Cisco denies the allegations in paragraph 22 of the Complaint.

23. Cisco denies the allegations in paragraph 23 of the Complaint.

24. Cisco denies the allegations in paragraph 24 of the Complaint.

II. DEFENSES

25. In addition to the defenses described below, Cisco expressly reserves the right to allege additional defenses as they become known through the course of discovery.

FIRST DEFENSE – NON-INFRINGEMENT

26. Cisco has not infringed, directly or indirectly, any valid claims of the '306 patent or '633 patent.

SECOND DEFENSE – INVALIDITY

27. The '306 patent and '633 patent are invalid for failure to meet the conditions of patentability of 35 U.S.C. § 101 et seq., including, without limitation §§ 102, 103, 112, and 251.

THIRD DEFENSE – LACHES AND ESTOPPEL

28. The relief sought by Telcordia is barred in whole or in part by the doctrines of laches and/or equitable estoppel.

FOURTH DEFENSE – PATENT MISUSE/UNCLEAN HANDS

29. The relief sought by Telcordia is barred in whole or in part by the doctrines of unclean hands and/or patent misuse.

FIFTH DEFENSE – PATENT EXHAUSTION/IMPLIED LICENSE

30. The relief sought by Telcordia is barred in whole or in part by the doctrines of patent exhaustion and/or implied license.

SIXTH DEFENSE – INTERVENING RIGHTS

31. The relief Telcordia seeks is barred, in whole or in part, because Cisco is entitled to intervening rights with respect the '633 patent.

SEVENTH DEFENSE – INEQUITABLE CONDUCT

A. The '306 patent

32. The '306 patent is unenforceable under the doctrine of inequitable conduct. On information and belief, prior to the issuance of the '306 patent, the named inventors and/or others substantively involved in prosecuting the applications leading to the '306 patent were aware of material information, including prior art, but withheld, concealed and/or mischaracterized that information with the intent to deceive the Patent and Trademark Office. The concealed information includes, without limitation: (1) L.T. Wu, S.H. Lee, and T.T. Lee, "Dynamic TDM – A Packet Approach to Broadband Networking," *Proceedings of the IEEE International Conference on Communications '87*, 46.1.1-46.1.8 (1987); (2) IEEE Standard 802.6 "Distributed Queue Dual Bus" and/or Queue Packet and Synchronization Circuit Exchange ("QPSX")

products known, made, used, sold, offered for sale, in public use, patented and/or described in a printed publication prior to November 10, 1987; (3) the well-known FASTNET local area network protocol and products known, made, used, sold, offered for sale, in public use, patented and/or described in a printed publication prior to November 10, 1987, including as described in, *inter alia*, Limb et al., "An Architecture and Protocol for a High Speed Local Area Network Supporting Integrated Traffic," *Proceedings of the IEEE Infocom* 1984 (1984) and Limb. J.O. and Flores C., *Description of Fastnet – A Unidirectional Local Area Communications Network*, in Advances in Local Area Networks (IEEE Press 1987); (4) the Cisco/Stratacom IPX product known, made, used, sold, offered for sale, in public use, patented and/or described in a printed publication prior to November 10, 1987, including as described in, *inter alia*, Corbalis, "The Challenge of Packet Voice," *Telecommunications* (October 1986) and Corbalis, "A Design Example of a T1-based Fast Packet Voice Switch," *Proceedings of the IEEE International Communications Conference '87* (1987); (5) ISDN and B-ISDN schemes and products known, made, used, sold, offered for sale, in public use, patented and/or described in a printed publication prior to November 10, 1987, including as described in, *inter alia, Proceedings of the First Pan European Conference on ISDN "ISDN Europe 86"* (November 5-7, 1986), the Groupe Special Large Bande ("GSLB") publication entitled "CEPT Studies on Broadband Aspects of ISDN – Status Report" (May 1986), Beckner, M. et al., "A Protocol and Prototype for Broadband Subscribers Access to ISDNs," *Proceedings of the International Switching Symposium 1987: 'Innovations in Switching Technology,'* Vol. 2 pp. 462-69 (March 1987), Minzer, S., "Broadband User-Network Interfaces to ISDN" *Proceedings of the IEEE International Communications Conference '87* (June 1987), Spears, D.R., "Broadband ISDN Switching Capabilities from a Service Perspective," *IEEE Journal on Selected Areas in Communications*, Vol. SAC-5 No. 8,

pp. 1222-30 (October 1987), Linnell, L.R., "A Wide-Band Local Access System using Emerging-Technology Components" *IEEE Journal on Selected Areas in Communications*, Vol. SAC-4 No. 4, pp. 612-18 (July 1986), and Hayward, G. et al., "A Broadband ISDN Local Access System Using Emerging Technology Components," *Proceedings of the International Switching Symposium 1987: 'Innovations in Switching Technology,'* Vol. 3, pp. 597-601 (March 1987); and (6) the Prelude network known, made, used, sold, offered for sale, in public use, patented and/or described in a printed publication prior to November 10, 1987, including as described in, *inter alia*, J.P. Courdreuse et al., "Prelude: An Asynchronous Time Division Switched Network," *Proceedings of the IEEE International Communications Conference '87* (June 1987).

B. The '633 Patent

33. The '633 patent is unenforceable under the doctrine of inequitable conduct. On information and belief, prior to the issuance of the U.S. Patent No. 5,260,978, the patent from which the '633 patent reissued, the named inventors and/or others substantively involved in prosecuting the applications leading to the '978 patent were aware of material information, including prior art, but withheld, concealed and/or mischaracterized that information with the intent to deceive the Patent and Trademark Office. The concealed information includes, without limitation: (1) U.S. Pat. No. 4,530,091 entitled "Synchronization of Real-Time Clocks in a Packet Switching System," issued to Crockett, G.B.; (2) U.S. Pat. No. 5,255,291 entitled "Microprocessor Based Packet Isochronous Clocking Transmission System and Method," issued to Holden, B.D., et al.; (3) JP 3-114333 entitled "Clock Synchronization format in packet transmission, a packet transmitter, and packet receiver," issued to Ishikawa T., et al.; (4) CCITT Study Group XVIII/8 Contribution D.1123, entitled "Proposed Method to Provide the Clock Recovery Function for Circuit Emulation," December 1990; (5) Letter from P. Adam of CNET

dated August 26, 1991 concerning discussion on TS/SFET; (6) Memorandum from R. Lau and B. Kittams of Bellcore dated October 11, 1991 concerning A Compromise of SFET and TS; (7) Memorandum from T. Houdoin to B. Kittams and R. Lau dated October 14, 1991 concerning Compromise SFET/TS; (8) CNET Memorandum from T. Houdoin to R. Lau and B. Kittams concerning Compromise SFET/TS (undated); (9) CCITT Study Group XVIII Contribution D.1020, entitled "Timing Recovery for CBR Circuit Emulation," (December 1990); (10) CCITT Study Group XVIII Contribution D.1451, entitled "Performance Comparison of Timing Recovery Methods of CBR (June 1991); (11) Submission to T1S1, entitled "Broadband Aspects of ISDN," T1S1.5/91-382 (Nov. 4, 1991); (12) Summary Minutes of T1 Services, Architecture, and Signaling Technical Subcommittees (T1S1) Session (Nov. 8, 1991); (13) CCITT Study Group XVIII Contribution entitled "Synchronous Residue-Time Stamp: A Combination of SFET/TS" (December 1991); (14) CCITT Study Group XVIII Contribution entitled "Report of the Meeting of SWP XVIII/8-3 (Services IVS and AAL types 1 and 2)" (December 1991); and (15) well-known prior art pulse stuffing synchronization techniques, including as described in, *inter alia*, Lau, R. C. et al., "Synchronous Techniques for Timing Recovery in BISDN," *IEEE Globecom*, pp. 814-820 (Dec. 1992).

III. COUNTERCLAIMS

Counterclaim plaintiff Cisco counterclaims against counterclaim defendant Telcordia as follows:

JURISDICTION AND VENUE

34. These counterclaims arise under Title 35 of the United States Code. The Court has subject matter jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

THE PARTIES

35. Cisco is a corporation organized and existing under the laws of California, having a principal place of business at 170 West Tasman Drive, San Jose, California 95134.

36. Telcordia alleges that it is a corporation organized and existing under the laws of Delaware, having a principal place of business at One Telcordia Drive, Piscataway, New Jersey 08854. Telcordia further alleges that it is a provider of communications software, engineering and consulting services throughout the United States, including in the District of Delaware.

FIRST COUNTERCLAIM – DECLARATORY JUDGMENT '306 PATENT

37. Cisco incorporates herein by reference the allegations of paragraphs 1 - 36 of this Answer, Affirmative Defenses and Counterclaims.

38. Cisco counterclaims against Telcordia pursuant to the patent laws of the United States, Title 35 of the United States Code, and the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202.

39. In its Complaint against Cisco filed July 16, 2004, Telcordia alleged that Cisco has infringed and is currently infringing the '306 patent by making, using, offering for sale, selling and/or importing communication network products embodying the patented invention of the '306 patent.

40. An actual controversy exists between Telcordia and Cisco by virtue of the allegations of Telcordia's Complaint in this action and Cisco's Answer as to the validity, enforceability and infringement of the '306 patent.

41. The '306 patent is invalid, unenforceable, and not infringed, as set forth in paragraphs 25 through 33 above.

42. Cisco is entitled to judgment that the '306 patent is invalid, unenforceable, and not infringed.

SECOND COUNTERCLAIM – DECLARATORY JUDGMENT '633 PATENT

43. Cisco incorporates herein by reference the allegations of paragraphs 1 - 42 of this Answer, Affirmative Defenses and Counterclaims.

44. Cisco counterclaims against Telcordia pursuant to the patent laws of the United States, Title 35 of the United States Code, and the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202.

45. In its Complaint against Cisco filed July 16, 2004, Telcordia alleged that Cisco has infringed and is currently infringing the '633 patent by making, using, offering for sale, selling and/or importing communication network products embodying the patented invention of the '633 patent.

46. An actual controversy exists between Telcordia and Cisco by virtue of the allegations of Telcordia's Complaint in this action and Cisco's Answer as to the validity, enforceability and infringement of the '633 patent.

47. The '633 patent is invalid, unenforceable, and not infringed, as set forth in paragraphs 25 through 33 above.

48. Cisco is entitled to judgment that the '633 patent is invalid, unenforceable, and not infringed.

DEMAND FOR JURY TRIAL

49. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Cisco hereby demands a trial by jury of all issues.

PRAYER FOR RELIEF

WHEREFORE, Cisco prays for judgment as follows on Telcordia's Complaint and on Cisco's Counterclaims:

A. That Telcordia's Complaint be dismissed with prejudice and that Telcordia take nothing;

B. That judgment be entered in favor of Cisco against Telcordia on Telcordia's Complaint;

C. For entry of an Order declaring the '306 patent and the '633 patent invalid, unenforceable, and not infringed by Cisco;

D. That Telcordia be required to pay Cisco's costs of suit;

E. That Telcordia be required to pay Cisco's attorneys' fees pursuant to 35 U.S.C. § 285;

F. That this case be declared an exceptional case; and

G. That Cisco be awarded such other and further relief as the court may deem just and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL

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December 2, 2004

CERTIFICATE OF SERVICE

I, Jack B. Blumenfeld, hereby certify that copies of the foregoing were caused to be served this 2nd day of December, 2004 upon the following in the manner indicated:

BY HAND

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Jack B. Blumenfeld

EXHIBIT 7

1

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

- - -

TELCORDIA TECHNOLOGIES INC.. : CIVIL ACTION
Plaintiff. :
v :
ALCATEL S.A., and ALCATEL USA INC.. :
Defendants. : NO. 04-874 (GMS)

TELCORDIA TECHNOLOGIES INC.. :
Plaintiff. :
v :
LUCENT TECHNOLOGIES. INC. :
Defendant. : NO. 04-875 (GMS)

TELCORDIA TECHNOLOGIES INC.. :
Plaintiff. :
v :
CISCO SYSTEMS INC.. :
Defendant. : NO. 04-876 (GMS)

- - -

Wilmington, Delaware
Thursday, April 14, 2005 at 2:00 p.m.
RULE 16.2(b) CONFERENCE

- - -

BEFORE: HONORABLE GREGORY M. SLEET, U.S.D.C.J.

- - -

2

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and

3

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(New York, New York)

Counsel for Cisco Systems Inc.

Brian P. Gaffigan
Official Court Reporter

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P R O C E E D I N G S

(REPORTER'S NOTE: The following 16(2)(b) scheduling hearing was held in open court, beginning at 2:00 p.m.)

THE COURT: Good afternoon, everyone.

(Attorneys respond, "good afternoon, Your Honor.")

THE COURT: This is an informal office conference but because of the numbers we don't have the space inside to accommodate everyone, so why don't we start with plaintiff whom I'm assuming are the outgunned lawyers here.

MR. BALICK: Yes, Your Honor. Your Honor, usually I'm on the other side.

THE COURT: Hello, Mr. Cherney. How are you?

MR. BALICK: It's not true today.

THE COURT: I'll leave this alone.

MR. BALICK: Your Honor, I'm here on behalf of Telcordia; and here from the Finnegan Henderson firm here are Don Burley and Richard Rainey.

THE COURT: Good afternoon.

MR. RAINEY: Good afternoon, Your Honor.

MR. BALICK: Your Honor, Mr. Dunner was planning

5

and looking forward to being here and unexpectedly couldn't make it but he sends his regrets.

THE COURT: Okay. That's fine.

Do you want to start, Mr. Cherney?

MR. CHERNEY: Steve Cherney and Sasha Mayergoyz from Latham & Watkins for Lucent; John Shaw; and Elaine Drager is from Lucent Technologies.

THE COURT: Good afternoon.

Mr. Shaw.

MR. SHAW: I'm here for Alcatel; and with me are Stuart Sinder and Ben Hershkowitz from Kenyon & Kenyon.

THE COURT: Good afternoon.

MR. SHAW: And John Berres who is Vice President and Deputy Director of Intellectual Properties.

THE COURT: Good afternoon.

Mr. Blumenfeld.

MR. BLUMENFELD: Good afternoon, Your Honor. For Cisco, I'm here with Ed Reines from Weil Gotshal in California and Jessica Davis from Weil Gotshal in New York.

THE COURT: Good afternoon.

All right. We have things we have to talk about. I think it's quite a comprehensive joint status report and I guess the first thing we should talk about is on page two. And that is Alcatel USA's motion to dismiss for lack of personal jurisdiction.

6

I would be prepared -- I know I am probably catching you a little unawares with this statement but I'd be prepared to hear a little bit about your positions on this. I do have a distinct inclination. So if you want to be heard before I put it to paper completely, I'm willing to listen.

The motion is by Alcatel.

MR. SINDER: Yes, Your Honor.

THE COURT: Yes.

MR. SINDER: If I may, I think I can summarize the motion very quickly. There are two Alcatel companies that were named as defendants. One is the U.S. company that sells the accused products and the other is the ultimate foreign French parent holding company.

THE COURT: Right.

MR. SINDER: As our papers indicate, it's just a holding company. It has no activities in the United States. It doesn't manufacture any products. It doesn't sell any products, not only in Delaware but anywhere in the country. It's basically in the nature of an investment company and it holds the various subsidiaries of Alcatel.

And we don't believe that any case has been made by Telcordia in its papers that would support the exercise of personal jurisdiction over the parent. If you go through the requirements of the Delaware long-arm statute, there is

7

insufficient contacts for any specific jurisdiction which would require that the cause of action arise out of some contact with Delaware. And this being a case for patent infringement, it would require that Alcatel SA have taken some steps in connection with selling the product and that hasn't even really been alleged.

General jurisdiction would require continuous and systematic contacts which really haven't been alleged. So what the plaintiff really comes down to I think in their response to our motion is they say that there should be jurisdiction under an agency theory, and we don't believe that they have even made out a prima facie case that there is an agency relationship between the Alcatel parent and the U.S. subsidiary.

THE COURT: What are the elements of that theory? Agency?

MR. SINDER: Well, the elements of that theory would require that the parent who they're trying to get in effects controls the day-to-day activities of the subsidiary. We put in a declaration from Alcatel USA indicating that it has a separate management team, it files separate financial statements, it files separate tax returns, it funds its own activities.

THE COURT: Is there an officer that the entities share in common?

8

MR. SINDER: There is.

THE COURT: Or two?

MR. SINDER: There is one officer of the subsidiary who is part of the executive team of the parent but not an employee of the parent. There is only five employees of the parent, and there is one member of the executive team of the parent who sits on the board of the sub. So that is the only overlap.

In our view, in our view if that was sufficient, virtually any foreign company that has a subsidiary in Delaware would be subject to jurisdiction in Delaware. We think in most cases you would have a situation where there is some cooperation between manage- ment teams so you'd have somebody on a subsidiary who would consult with the parent management team and vice-versa and we think that would be a common occurrence.

So I think the situation here is much clearer for no holding of jurisdiction than it is in a numbers of the cases in this district. The couple of cases involving the Guidant Corporation in which there were many more contacts and in which this Court found that there was not sufficient basis for jurisdiction here. There basically aren't any contacts except for that small overlap in executive function but otherwise the companies operate completely independently.

9

Now, the other theory which the plaintiff is proposes is Rule 4(k)(2) of the federal rules.

THE COURT: Right.

MR. SINDER: And that's the rule, as Your Honor knows, that was promulgated to plug a loophole really in the federal rules: a situation where a company had extensive contacts with the country as a whole which would have been sufficient for jurisdiction but because they were spread so thinly, there wasn't sufficient contact with any one state for any one state to exercise jurisdiction. So, in effect, the rule was, well, if that is the case and no one state can exercise jurisdiction, but there are continuous and systematic contacts with the country as a whole, you can, a federal court can exercise jurisdiction.

But for all the reasons I just mentioned, Alcatel doesn't have contacts with any other state either. In other words, it couldn't. The contacts with Delaware which really don't exist, they don't exist anywhere in the United States so it really doesn't have contacts sufficient with the country as a whole for 4(k)(2) to be implicated.

I should note that there is also no showing that the second prong of the test required for jurisdiction under 4(k)(2) has been met, which is that Alcatel isn't subject to jurisdiction anywhere. I mean I can't tell you whether that is the case, whether there might be some jurisdiction where,

10

when all the facts came out, it was possible that there was sufficient contacts based on whatever the cause of action was. And I don't think there has been a showing by the plaintiff that Alcatel isn't subject to jurisdiction anywhere, but I don't think it really matters because they haven't really met the other prong which is sufficient systematic and regular contacts with the United States in order to exercise jurisdiction and wouldn't survive a due process challenge.

We also wanted to bring to Your Honor's attention that we really in a way do not understand why the plaintiff persists in trying to obtain jurisdiction over the parent, and we think that is either because they have some sort of ulterior motive to perhaps create some burden on the parent to prompt a settlement -- the U.S. Supreme Court has specifically indicated that the Court should be very vigilant in considering that as a possible issue.

And the second possibility is that -- and we suspect that the plaintiff really didn't do a sufficient prefiling investigation as required under Rule 11. Their justification seems to be in their papers that they didn't know who to sue. It's too confusing. Well, our reply brief indicates that is just not a credible position, especially for this plaintiff. This plaintiff probably knows more about the telecommunications industry and the players.

11

THE COURT: You are getting into my next question, and that is fine, which is how would you respond, how do you respond to their contention it would be premature for the Court to rule, given the current state of the record. Go ahead.

MR. SINDER: All right.

THE COURT: There is a discovery request.

MR. SINDER: There is a discovery request. It's pretty well settled in order for there to be jurisdictional discovery, there has to be some prima facie case made as to some factual basis on which they believe that the discovery would demonstrate a basis for jurisdiction. We don't believe they have shown that.

There is a recent case I should mention in which because it came from this court, went up to the Federal Circuit in which jurisdictional discovery was ordered but that's very distinguishable for two reasons. That was a stream of commerce theory in which the parent admittedly made, the foreign parent made the product, put it into the stream of commerce in the U.S. and there was some issue because of the divided U.S. Supreme Court as to did that really pass the test? Because there were two tests and you couldn't tell, unless there were more facts, whether it met the minimum test that some of the judges espoused or not.

This situation, Alcatel is not a parent.

12

Alcatel SA is not putting anything into the stream of commerce. It doesn't manufacture or sell any products at all. The other thing that distinguishes that case and I think underscores our not understanding why the plaintiff is pushing to have the parent in, other than the reasons I mentioned, is because they have in front of the Court the company that sells the products they're accusing. That is Alcatel USA. It's answered the complaint. It's not fighting jurisdiction.

And by the way, that was not the case in the Supreme Court, the Federal Circuit case I was mentioning. There a dismissal. It would have resulted in a denial of a remedy for the plaintiff. That is certainly not the case here because all the products sold in the United States through any of the Alcatel companies are sold through Alcatel USA.

THE COURT: Thank you, counsel.

Who is going to respond?

MR. BURLEY: Your Honor, Don Burley. And you did take me aback with this.

THE COURT: Sorry about that.

MR. BURLEY: So Mr. Rainey has kindly given me his notebook with our reply brief in it.

Telcordia's basic position here is that while Mr. Sinder says that Alcatel SA is a holding company and

does nothing neither with respect to manufacturing the equipment at issue, nor with respect to selling it, what we really have to prove that is Mr. Sinder's word.

The Alcatel SA website which is cited extensively both in connection with our moving brief, our initial motion and in our reply brief is extensive in talking about Alcatel SA's operations in the United States. It's very clear from the Alcatel SA, the parent website, that in fact Alcatel is a worldwide corporation that has an extensive business in the U.S. That it's in fact, if not the most important market in the world for Alcatel, is one of the most important markets in the world and there is simply no way for us to know now, on the state of the record, even following this briefing, that in fact SA is simply a holding company and that all of the products at issue are manufactured and sold by Alcatel USA Inc.

In fact, just with respect to a couple of relatively basic but I would think critical or at least fundamental facts, how many employees does Alcatel SA have, the moving papers of Alcatel indicate that SA has five employees. The website I believe identifies 15 members of what are called Alcatel's management team as well as 12 additional people identified as eight directors. So we now have at least by my count, 27 people who are upper management at Alcatel SA.

So I mean I think at a minimum, it's safe to say that at this stage of the record, either it's clear that Alcatel SA operates in the U.S. through some subsidiary agent, some agency relationship of Alcatel USA or that some sort of discovery is absolutely needed to determine exactly what the relationship is.

Now, when Mr. Sinder talks about motive, why have we done this, it's certainly not simply to be difficult. It is to make sure that we have, as defendants in the case, the people who are properly responsible for the activities that we allege are infringing activities. We don't know, and certainly did not know when we filed this suit, and do not know on the basis of the record now, that we have in fact the people who are the infringers.

And beyond that, as we point out on page 14, footnote 14, while Mr. Sinder, and I believe Alcatel in its opposition brief, said that Alcatel USA would certainly be financially secure enough to satisfy any potential judgment, that is not -- again, that is the statement of Alcatel SA in its papers but there is no indication that that in fact is true.

We attached as Exhibit 13 to the brief and quote some of the points from the Dunn & Bradstreet report that is attached as Exhibit 13 the fact that the Dunn & Bradstreet report concerning Alcatel USA says that Alcatel USA has a

high risks of severe payment delinquency over the next 12 months because of slow payments. Payment experiences involve past due payments and evidence of open liens. So it's not at all clear that we do in fact have a financially secure party, much less the actual and only party that is a possible infringer in this case.

And I think the final point I would like to make is dealing with Rule 4(k)(2), as I understood Mr. Sinder initially, his argument for why there is no jurisdiction and can't be any jurisdiction in the U.S. is that Alcatel SA is a holding company. Well, that would apply obviously in -- that same argument would apply in any state. Rule 4(k)(2) imposes due process in a situation where there is no jurisdiction of any individual state and says as long as jurisdiction over the foreign company would comport with due process with the U.S. Constitution, jurisdiction can be founded on Rule 4(k)(2).

So we believe that that clearly applies in this situation. Either there is jurisdiction under the general long-arm statute or there is jurisdiction under Rule 4(k)(2).

THE COURT: Well, what do you say to the point made in one of Alcatel's submissions in its reply brief at 17 to its contention there is an extensive relationship, has been an extensive relationship between Telcordia and Alcatel

and Telcordia well knows just who Alcatel is and what it is?

MR. BURLEY: Your Honor, this is actually something we spent -- and this isn't in the papers but I'm perfectly willing to explain my understanding of the situation. We spent literally hundreds of hours I think trying to make sure that we were suing the right entities, and meaning properly suing, only the companies that were subject to jurisdiction in this court.

We were, my law firm was negotiating with Alcatel in another case over a different matter and I talked to the attorneys involved in that case and I talked to the people at Telcordia that have had dealings with Alcatel. When Alcatel deals with people, they deal with people as Alcatel, which I take from Mr. Sinder's papers certainly means Alcatel SA, the parent corporation.

What they have said in fact is that when you say that they actually criticized us, and I wasn't quite sure where that particular point was going but they criticized us for calling Alcatel SA "Alcatel SA" rather than simply Alcatel. Alcatel is the parent company. It is the same as I understand it legally as Alcatel SA which is a French word which I would, or two words, "Societie" something, which I would bungle if I tried to pronounce it. But it means, as I understand it, basically, the SA is the organizational structure, the legal organization under

French law that Alcatel is organized according to.

There is simply no support and in fact it is not true that Telcordia understands the internal structure of Alcatel and that it has any basis for knowing or concluding that Alcatel SA is purely a holding company that neither manufactures nor sells product. Again, we spent hundreds of hours trying to make that determination and I do not know to this day that that is correct.

THE COURT: Okay. Mr. Sinder, your reply.

MR. SINDER: Yes. Just on a couple of points, Your Honor. The point about financial ability to pay for Alcatel USA I think is really one that doesn't have any support. Our reply brief had a declaration from the Chief Financial Officer of Alcatel USA indicating its current asset value is over $7 billion. And the Dunn & Bradstreet report, just decided in the year 2002, which was the depths of the depression in the telecom industry, indicated Alcatel averaged nine days beyond terms in payment but that the industry average was 12 days. I mean to me -- and that was three years ago.

It is true that like most multinational companies, Alcatel promotes itself without the specifics of each separate corporate entity. It calls itself Alcatel but if you go on the website and you want to find out what is happening in the United States, it appears right on the page

itself that it's Alcatel USA and the agreements that Alcatel USA has with its customers are agreements that don't say Alcatel, they say Alcatel USA Inc. which is the name of the company. Everybody who deals with them knows that. Nobody is confused.

This is not an instance of consumer confusion because Alcatel sells infrastructure equipment to large carriers in effect. So we're dealing with large corporations. Everybody knows who they are dealing with.

And Mr. Burley really doesn't give accurate or sufficient credit to the relationship between the companies which goes back, as our papers indicate, 13 years. And they are the Canadian subsidiary which manufactures some of these products. There is a license agreement between that company and Telcordia on a different patent, the one that they didn't assert against Alcatel but they did assert against Cisco. There is correspondence on the patent they sued Alcatel on between the companies that goes back into the early nineties and it's addressed to the appropriate entity.

So they know who they're dealing with here. It's really I don't believe credible that they spent hundreds of hours and couldn't figure out who to sue. They've been dealing with these companies, have had meetings with them, have tried to induce Alcatel to take a license

under the patents in suit, you know, for years and years.

As to the website, once again, sure, there is a single website. You wouldn't expect each subsidiary of a multinational company to have its own website. But there are cases in this district which say, well, you can't. The fact there is website accessibility in the United States, which is literally every website that exists is accessible from the United States, that isn't sufficient to result in a finding of jurisdiction just because you can access it here.

I think on balance, there hasn't been any showing by the plaintiff of a need -- and Mr. Burley really hasn't articulated one -- of a need for a parent company that -- I mean it does only have five officers. Whether its management team is also made up of officers of some of its subsidiaries may be the case but we're talking about a company with, in terms of a lawsuit of this nature for patent infringement, only a handful of employees vs. Alcatel USA which has over 5,000 employees here in the United States. And there doesn't seem to be any basis that has been articulated why Telcordia needs that parent company in the lawsuit.

THE COURT: Okay. Well, the discussion has been helpful. I've taken, as I've indicated, more than a preliminary look at the papers. I'm going to not announce a decision today but will shortly. I don't think that

whichever way I go on that, at this time it's going to prevent us from entering upon a schedule and doing the other work that we have to do here today. Everyone I'm sure will agree with that. Is there anyone who dissents from that view?

MR. SINDER: No, I think that is accurate.

THE COURT: All right. I think we can go ahead and do our schedule. But the discussion, I thought I would take advantage of having you here.

MR. SINDER: If I may, Your Honor.

THE COURT: Sure.

MR. SINDER: Since we don't believe that there has been any showing sufficient to find jurisdiction or to justify discovery, if the case went forward and you were to dismiss Alcatel SA and in the discovery process, through Alcatel USA, which they're obviously going to conduct, they find information that suggests that Alcatel SA in fact is performing activities that would subject it to jurisdiction, you know, that's something they can address at that time and if they can justify the fact that they couldn't have known that earlier. We don't believe they're going to find that, so I think it's a nonissue. You know, they could always move to join them.

THE COURT: Well, and that is a fair point and they could move the Court to reconsider, if it were to deny

21

or to dismiss and deny the motion for discovery, the Court reconsider those rulings.

So, okay, thank you. Let's then talk about what we have to talk about. We have two patents being asserted in this case; right? The '306 and the '633.

MR. BLUMENFELD: Two against Cisco and one against the other two defendants.

THE COURT: Yes. And I suspect at this point we don't have a good understanding of how many elements are in dispute, how many claims are being asserted. It's a little early.

MR. CHERNEY: They haven't identified any specific claims yet.

THE COURT: All right. Let's talk about another legal issue, and that occurs at page three. And that's the parties' positions on the claim construction that has gone on heretofore in the Fore Systems Inc. case, both by Judge Farnan and by the Federal Circuit. And I believe it's the defendants' view that this court need not engage in additional, further claim construction on those matters. Do I have it?

MR. CHERNEY: That's plaintiffs.

THE COURT: I have it exactly the opposite. Okay. So let's hear from Telcordia first.

MR. RAINEY: Your Honor, Richard Rainey for

22

Telcordia.

Essentially, Your Honor, it's one of the patents that is asserted in this case that was considered by Judge Farnan and by the Federal Circuit in the prior Fore Systems case that is the '306 patent which is common to all three of the defendants in this case. And Judge Farnan had issued an initial claim construction in that case which on the '306 patent resulted in a stipulated judgment of noninfringement against Telcordia. That went up to the Federal Circuit and the Federal Circuit reversed the claim constructions on the '306 patent.

It then was remanded back to Judge Farnan who considered an additional term in the patent which was also disputed that the Federal Circuit declined to reach in the appeal and Judge Farnan ruled in favor of Telcordia on that claim construction as well. The case then settled so there was not actually a full trial on that case.

But we believe that the issues as to the claim terms that were addressed by Judge Farnan and by the Federal Circuit certainly have been fully vetted and certainly the Federal Circuit's rulings on that as a Court of Appeals on a pure issue of law should be binding on any future proceeding. We believe that is consistent with what the Supreme Court was talking about when it issued its Markman decision where it talked about uniformity and consistency in

23

deciding that the issue of claim construction was a pure issue of law, much like parties would be bound if the Court of Appeals for the Third Circuit were to rule on a statutory construction issue. We believe it's an analogous situation here.

THE COURT: Okay. And defendants believe that Telcordia is bound but you are not. Who is going to take this?

MR. CHERNEY: I will.

THE COURT: Okay.

MR. CHERNEY: Obviously, the reason we believe Telcordia is bound is because they got to litigate the issues. They put forth claim constructions. They litigated the claim constructions. So we, our view is they're collateral estopped because they went up.

It doesn't sound like they're disagreeing with it because they sound like they're happy with what happened in terms of the claim construction in front of Judge Farnan and the Federal Circuit. Our perspective as to us, in contradiction to Telcordia, is take the example of, for example, say I come up with something from the prosecution history or argument from the specification. Or some other argument in light of perhaps the Philips case coming out. I didn't get a chance to argue this, nor did the Alcatel people, nor did the Cisco people at that time. We didn't

24

have a chance to be heard on the claim construction point.

I'm not saying the Fore System lawyers didn't do a good job, I just don't know. They put their best foot forward given what is important to them. I don't know why they argued the way they argued, whether things, more things were important to them in terms of prior art, in terms of infringement. They made the case they did and Telcordia litigated with them and that worked out the way it did but I didn't get to be heard and I didn't get to make the argument and there may be arguments that I make or the Cisco people or the Alcatel make that you say are all right.

THE COURT: That's an interesting argument.

MR. CHERNEY: Judge Farnan's decisions are out there. Obviously, the Federal Circuit decisions are out there. They're not going to be out of the way, although the Federal Circuit expressed it's non precedential, so in some respects I'm not sure they can cite it as binding precedent in this case. They ruled the way they ruled that said it was nonprecedential.

So I mean I didn't get to go up in front of the Federal Circuit and say, you know, one of the judges says okay. What is your answer to this question? You know, maybe I would have answered a different way, a more persuasive way. It's one of those things whereas always with collateral estoppel the people that get to participate

25

are estopped but the people who don't get to participate shouldn't be stuck because otherwise that would give a company like Telcordia an incentive to go sue someone like Fore Systems, perhaps knock them off and then come after people like Alcatel, Cisco, Lucent and say, okay, you are stuck with what Fore Systems did on this budget and based on what they thought was important to them.

MR. RAINEY: Your Honor, on the issue of the nonprecedential decision, actually the Federal Circuit has expressly addressed that and said despite the fact that they have labeled a prior decision on a claim construction as nonprecedential does not bar that case from being cited and considered in subsequent decisions, so the Court has actually expressly addressed that very point.

THE COURT: But it's authoritative, not binding, is that correct?

MR. RAINEY: Well, I think --

THE COURT: Or is that incorrect?

MR. RAINEY: I think stare decisis is the principle of law that would apply to a nonparty in the proceedings.

In any event, the issue of collateral estoppel, I think Mr. Cherney is correct in articulating that the theory, we would be bound by it. We obviously are happy with the decision with Judge Farnan and subsequent ruling

26

and by the Federal Circuit in its appeal, so we're not going to be advocating that those rulings should be different. Whether collateral estoppel is the right theory or whether we're just simply happy with those rulings is a matter we can address.

THE COURT: Do you resist their contention that they should be able to raise anew, or raise arguments that were not advanced or actually argue claim construction to this Court?

MR. RAINEY: I think as to the issues at the very least decided by the Federal Circuit, I think that is the law of the land as far as those claims are concerned. To me, Markman doesn't make a lot of sense if, in every subsequent case, the arguments Mr. Cherney makes are applicable in every single patent case. There is nothing unique about this situation that is different from any other situation. Markman from the Supreme Court is going to have no force or effect if a party can simply say you can disregard what the Federal Circuit has done on this pure issue of law simply because we found an argument that we think is more persuasive than the argument the parties made. I mean that, in our view, that just eviscerates what the Supreme Court was trying to talk about in trying to come up with an uniform, consistent approach in dealing with.

THE COURT: So there is a tension between a

27

finality and a new party that was a nonparty about its ability to advance its theory based upon a new theory and/or perhaps adducing new evidence.

MR. RAINEY: I think that this is not a simple issue that has a simple answer to it, but --

THE COURT: Okay.

MR. RAINEY: We believe that at the very least what the Federal Circuit has said should be the end of it as to those issues.

THE COURT: So for purposes of our schedule and setting up a Markman process, what are the parties and the Court should do, Mr. Cherney.

MR. CHERNEY: I have to take a look back at the schedule.

THE COURT: Well, there is a process.

MR. CHERNEY: I mean right now we have a schedule that seems to contemplate that both sides will brief Markman issues.

THE COURT: It does. But I want, since it was noted for, brought to my attention in your joint status report.

MR. CHERNEY: It seems what we could do is that each side should follow the process set forth here; and if Telcordia wants to raise as some type of bar to us deviating from that, they should raise it in the papers and cite

28

whatever support they have and we should argue to the contrary just like anyone would in terms of support. Essentially what they're saying in support of our claim construction positions, they should be bound. "I hereby cite the Federal Circuit's decision and I want to make some type of argument based on Markman" and we will respond to that at the time, but it seems as far as contemplating a full Markman schedule and they're free to make this argument at that time and we're free to respond.

THE COURT: Do you agree?

MR. RAINEY: Yes, Your Honor. I think that is fine. And I would also add that the Markman schedule that we have that talked about in this case contemplates patents beyond the '306 patent which is the only patent that was considered in the Fore Systems case that is now presently in these cases. So we're still going to need a Markman procedure to deal with the '633 patent and we have advised the defendants we're planning to add additional patents in this case and those patents will have to be addressed down the road as well.

THE COURT: Okay.

MR. CHERNEY: And we have to talk about that.

I don't know if we're at the point yet in talking about status report, about talking about adding other patents and obviously that is something we'll have to

29

deal with right now in terms of being asserted. There is only one patent asserted against Lucent and one patent against Alcatel and the claim construction process that is outlined obviously contemplated applying that process to the '306 patent.

And so it sounds to me like we're in agreement that Telcordia will make whatever arguments it wants to make in terms of why it believes the Court and the parties are bound by whatever occurred in the Federal Circuit and Judge Farnan and we'll respond to it. It's premature to deal with it at this point, it seems to me.

MR. RAINEY: We did not put this in the scheduling order for the purpose of saying the parties should be barred from addressing it.

THE COURT: That's fine.

MR. RAINEY: If they want to make their argument, fine.

THE COURT: That's fine. I just wanted to be sure we were clear on process.

MR. RAINEY: Absolutely, Your Honor.

THE COURT: It seems that the parties agree impliedly or implicitly that this should be a consolidated process up through at least probably the pretrial conference, but I don't know that it's clear, I don't recall that it's made clear in the joint status report that there

30

is an interest in consolidating these matters for trial.

MR. REINES: Your Honor, I think the way everyone has been operating is really cooperating and there has been good coordination and we can enter into a scheduling order going forward without the formality level of a consolidation.

THE COURT: Counsel, give me a name.

MR. REINES: Sure. Ed Reines from Weil Gotshal on behalf of Cisco.

THE COURT: All right.

MR. REINES: Going to the actual level of consolidating for purposes of discovery may have an appeal until it becomes an impediment to the cooperation process. I think it's the sense of the overall group, let's just keep coordinating in an effective way and which we have been and do that before we start changing case numbers and things like that.

MR. RAINEY: I think our position is there is no reason not to consolidate the cases for purposes of discovery. I don't think we disagree at all. At this point, it's premature to address consolidation for trial.

THE COURT: Why wouldn't the Court enter a formal order consolidating the matters for discovery and other pretrial purposes?

MR. REINES: Yes. I mean the way we structured

31

the entire statements so far is that assuming they wouldn't be consolidated. So, for example, there is a reference to the numerical limits that are done by case and so, for example, each of the defendants has a number by virtue of its being an independent case. So there is a disruption quotient to what we've done. I'm not sure of the value of moving to the formal consolidation order. Until that is an impediment, I guess I would proceed the way everybody proceeded.

THE COURT: I don't have a problem. If it becomes later an issue, then we can address it. Okay. That's fine.

The next issue that I see is there is a difference of view as to amending and joining. Am I correct in that?

MR. RAINEY: Yes, Your Honor. Your Honor, I think that is one of the largest concerns that the defendants have as a group is on this specter of new patents coming in as much as a year plus after the case started. I think Mr. Sinder is going to address that.

MR. SINDER: Yes. Your Honor, this is in addition to what I indicated before about the plaintiff knowing a lot about these defendants because it's basically been corresponding or meeting with them over the years so it knows a lot of what they do. This case has been pending for

32

nine months and our feeling is there comes a time when the plaintiff ought to decide what patents it wants to assert. They want to have until November, another, what, seven or eight months of discovery in order to add patents. We think they should decide now. In other words, if they haven't asserted a patent against one of the defendants, we think it should be basically too late.

One of the reasons for that has to do with fairness and burden in discovery. We've gotten extensive discovery requests from them. The parties have exchanged some initial discovery requests after we filed the joint status report.

At least from an Alcatel standpoint, we have a variety of facilities around the United States and there are prior art issues that are overseas and what not. We're going to have to send people, search for documents, interview potential witnesses and four or five months from now or seven months from now, I don't want to have to do that again with a whole new patent. I think that is really prejudicial.

And I think based on the timetable that we've seen here, we think they should decide -- they should have decided already but we think they should decide now, before we start the discovery process, whether they're going to sue us on anything else.

MR. REINES: And, Your Honor, just one thing to add a background on Mr. Sinder's point about the length of this interactions between the parties and Telcordia. These discussions go back well into the 1990s involving the patents in suit. So there are laches arguments and other things which we don't need to discuss now. But the licensing negotiations at the portfolio level I think Mr. Sinder mentioned to me earlier today started in 1991 between Alcatel and Telcordia. In our case, it was more the 1997-1998 time period. I don't know Lucent.

So it's been an ongoing discussion for many, many years. To say now that they need more information or whatever else nine months into the case, it would appear to us that it's time for the parties to put a schedule together and discovery limits based on what has been developed to date.

MR. CHERNEY: And I just want to raise one anecdote in terms of how does this come up practically in this case so far.

As Mr. Sinder, Mr. Reines said, we were sued all together nine months ago. Telcordia asserted two patents against Cisco, one patent against Alcatel, one patent against Lucent. At that point, we said, well, we never heard of this other patent that they're asserting against Cisco. They never mentioned it to us. We got together in

settlement conversations. Since then, they don't bring it up. We don't spend the last nine months focusing on that patent or any other patent. They know how our products work. They apparently know how our products work enough to assert one patent against us.

We get into the joint status report conference and the people at Telcordia are kind enough to send us a draft of what they think the joint status report should look like. And it says we are contemplating asserting the other patent from the Cisco case against Lucent and Alcatel and it also has a portion in there that says we would like until November 18th to add other things.

So I say to the people at Telcordia a couple things. First of all, why am I hearing this for the first time about this patent? There has been no discovery. Why am I hearing this for the first time after nine months and many years into it, you contacting me. I could be using these nine months to prepare. And I don't really get an answer as to that.

And I said, are there other patents that you have, when you say you are contemplating? Because it would be very helpful both in terms of this patent that they're asserting against Cisco and any other patents, in terms of doing the joint status report because we're trying to set discovery limits and the schedules and all that. Or is this

just a catchall you are trying to put in? And the quote that came from Telcordia was it's just a catchall in case we want to add some patents.

Just about the time we ended the joint status report, and as the joint status report reflects, no other patents were added as of that time so we went forward again on the basis of one patent being asserted against Lucent after this nine month process.

Immediately thereafter, a lawyer, an in-house house lawyer from Florida called Ms. Drager, who is an in-house lawyer at Lucent, and said, well, looks like we're leaning towards asserting the patent we asserted against Cisco against you guys. And, of course, now we're past having drafted this document which we drafted in part based on only having one patent in suit. Okay? And we're past obviously the nine months we could have done anything. And, you know, from a business perspective, a legal perspective, of course, that is somewhat troublesome. This is about a week ago.

A couple days ago, the same lawyer called Ms. Drager up and said we're thinking about, it looks like we're going to add in another patent, a patent called the Lao (phonetic) patent. It's a patent that is going to expire in three years. It's about 15 years old. So all these patents are old patents, they're not new patents, just issues.

They've been out there.

And Ms. Drager says, Where did this come from? Nothing has changed in the last nine months. There has been no discovery. This is just happening now after this whole process. And I think Ms. Drager, she didn't really get an answer as to that.

And she said, Okay. What else? And he says, well, there might be other patents. And she goes, What patents? Well, I'm not allowed to tell you that. I said, What products? I've been told I'm not allowed to tell you that either.

So in some respects what I'm concerned about obviously is the level of prejudice hearing about this for the first time after nine months and after we have gone through the process trying to cooperate with the schedule. And I'm not asserting -- I've known Mr. Rainey for a long time. We used to be partners at Fish & Neave but there is a level of prejudice here where nothing has changed over the last nine months or year. It's not like, well, we got discovery and we found out that you now infringe the patent we asserted against Cisco nine months ago or the law meant.

And now, it just seems like one of two things is happening: Either they had a basis to assert those patents nine months ago and didn't, and I don't know why they didn't, okay? Or they did have a basis, and I can't figure

out why they didn't have a basis now because nothing has changed in the last nine months.

And so what I'm concerned about also is that this is going to render, this proceeding before you now, somewhat superfluous and we'll have to redo this again. Because I don't, for the life of me, have any sense of what's the scope of this case. When they say that they talked to us about adding patents, it's what I just told you about. No one has come to me from the lawyer side and said we're adding. They can't do it as a right anymore because there has been responsive pleadings so no one came to me saying they will accede to adding patents in.

So here is the situation that we're at: If they're talking about adding other patents in now, what we have is a situation where we have to work-up defenses, take a certain amount of time, you know, to respond, hopefully obviously more than 20 days to try to figure this all out. Then we've got to talk about the schedule while we've already got a discovery schedule, and then we're talking about a case, then we're talking about issues of consolidation.

I, for the life of me, don't know which patents are being asserted against who anymore so I don't know how we can talk about issues of consolidation, what the scope of the case is, what the scope of the trial should be, okay?

And I feel like when I asked specifically, what, put your cards out on the table so we can make this joint status report somewhat productive in terms of trying to tailor this to the case at hand, not to the case that will exist, you know the answer I got was: I don't have anything in mind. I'm just trying to put catchalls in there to protect my client if I want to ever assert something.

But, you know, that is not the case right now. One day after that, two patents -- or a few days after that, two more patents have come up. I don't have any idea of their status. Cisco hasn't been contacted so I don't know if they're planning to assert the Lau patent against Cisco or Alcatel or any of those. So I feel like we're in a position now where we can't productively try to work all this together to come up with a comprehensive plan that takes into account the scope of the case.

Within the least week, according to Telcordia, this case has just tripled in size in terms of patents and these are not related patents. It's not like three patents in the same chain. This case from their perspective, for nine months it has been one patent, the '306 patent that expires in 2007. Now, as of last week, it's three patents, and with no assurance that that is all that is on their mind and no explanation why we're hearing about this for the first time in nine months.

THE COURT: Any response, Mr. Rainey?

MR. RAINEY: Sure. If we can just back up a second. The proposal that is on the table from the defendants is that the plaintiffs have no right at all to even file a motion to ask Your Honor to consider whether it would be appropriate to add a patent.

THE COURT: Well, that is probably a nonstarter.

MR. RAINEY: And all of these arguments that we are hearing all have responses on an individual basis and the question is, or the issue then is if we file a motion to amend, which I think we probably will do at some point in time in the very near future.

THE COURT: I would very much like to avoid the need for that if we can arrive at some accord today, but go ahead.

MR. RAINEY: We talked about nine months. I mean, Your Honor, we, Telcordia filed the suit and did not serve the complaint for the full 120-day period or nearly the full 120-day period with an effort to try and resolve not only the issues with respect to the patents that were asserted but a resolution globally with the defendants. That was not satisfactory.

We served complaints. There has been some extensions of time but absolutely no discovery has taken place thus far in the case. So to argue that somehow the

defendants have been prejudiced by the fact that we haven't moved to amend at this point in time doesn't seem to make a lot of sense to me.

THE COURT: Well, I think they feel prejudiced. At least from what I understand, they feel they're prejudiced. They feel they're looking at a moving target, as it were. That they essentially have gotten communication from Telcordia, one or more of the defendants has, that would suggest there may be additional patents that are going to be asserted and that we really do need to get about the business of pinning that down. The question for the Court is how much time should you be allotted further, how much additional time you should be allotted to answer that question. And I can tell you that November is also a nonstarter for the Court. Okay? So let's talk about it from there.

MR. RAINEY: The November date, your Honor, was a date that we, the parties had agreed upon for a date for amending the pleadings generally.

THE COURT: That is not acceptable. Let me tell you, this case is a lot longer in the tooth than I would like it to be and it's going to get a lot longer unfortunately because of the Court's schedule.

As much as I would have liked to have compressed the schedule that the parties had proposed, I didn't see

41

that it made a lot of sense, given the earliest time that I could probably do it, given what I had in front of me, looking at the joint status report. And I'm open to discussing an earlier trial date, but right now I have 4/16/07. That's really beyond, way beyond where I wanted to be with this case. But looking at the increments, the time lines that are proposed to get things done, and knowing, for instance, on summary case dispositive motions or issue dispositive motions, should they be permitted to be filed, how much time I will need to resolve them, we end up out there. So go ahead.

MR. RAINEY: I guess the question is how much time does Telcordia need to determine what patents to bring into this case. I would submit it has taken Telcordia quite a bit of time to do the analysis of the products to get to the situation that it is in at this point. Notwithstanding the allegation that it has known, it has been all knowing for all these many years, that just simply isn't the case, certainly not all knowing in the sense that we felt comfortable filing a complaint for patent infringement. There is a difference.

The rule requires us to do a certain amount of investigation. We have filed, we have only gone forward on the patents that the lawyers have completed their due diligence on. And when the due diligence is completed on

42

additional patents, to the extent it makes sense to bring them into the case, we would seek leave to do that at that time. There has been no delay. Nobody has been sitting on the situation from our end.

MR. CHERNEY: Your Honor, from our perspective, I mean I hear that. I understand there is a level of diligence. I understand we've been sitting here for nine months. There isn't a lot of time for diligence but when things happen the day after we filed, we complete the joint status report, when they happen two days after, when my client is being called by Telcordia saying, okay, now we're going to assert this patent against you, now we're going to assert this patent against you, either they completed their diligence and they're making those calls because they have a reason to make those calls because they feel like they've done their diligence or they haven't.

What I would like -- I mean I assume the people at Cisco and Alcatel feel the same way but I can't speak for them -- is for Telcordia to put their cards on the table and say here is what you know is our view, right now, based on. If they want to later down the road bring a motion to amend based on something that they learned later, didn't know about, that's different. At that point, they can then explain why they couldn't have done it earlier. They can say, look, we didn't know about it. We only found out now.

43

But no discovery has occurred as Mr. Rainey has said and new patents are being added kind of sub rosa by calls from Telcordia to Lucent.

THE COURT: So you want to propose, Mr. Cherney, and perhaps your colleagues as well, a cutoff for the plaintiff to, as a matter of right, amend. Is that what you are saying?

MR. CHERNEY: Well, not at a matter of right. What I would like them to do is put their cards on the table as table on what they know now and then later on, if they want, if they feel like they want to add something within some short period of time. Obviously, November is a nonstarter at that point. If they want to do it, part of the process will be saying why they couldn't have done it back when in, you know, nine months ago or some time in that period.

THE COURT: And file a motion.

MR. CHERNEY: And, okay, file a motion or explain to us, maybe we could agree. But to say, look, Steve, we've now got the '936 patent. We didn't put that in because we didn't know you would do X. And if it's believable, we'll, you know, hopefully we'll be able to work things out, but right now it sounds to me they've got enough that they're calling my client and saying, the day after we file a joint status report based upon one patent, we're

44

going to start tripling the amount of patents, well, either they got the support for that -- and, you know, like I said, my view is that I don't know what changed. Mr. Rainey said they've been doing an analysis. I'm not going to gainsay him on that point. What I'm saying is put your cards on the table. We're here nine months into the process. Put your cards on the table.

THE COURT: Now, Mr. Sinder wants it done today.

MR. SINDER: Well --

THE COURT: Mr. Rainey is going to resist that.

MR. SINDER: Your Honor, I didn't mean to imply if they said okay, in 10 days we'll file our motion, that I was going to say the Court shouldn't permit them to do that. I mean we're just embarking on discovery. It's going to be extremely prejudicial to Alcatel I think in particular but I think all the defendants to have to go through the process of responding to that a second or a third time as patents get added. I think that should be taken into consideration very heavily.

The second thing is I get the impression that what the plaintiff wants to do is to serve broad discovery requests which they have and the scope of them covering everything the company makes basically and go on a fishing expedition and see of they can find anything else we do which might come within the scope of some patent in their

45

portfolio.
THE COURT: So what would you like to propose?
MR. SINDER: Well, I frankly believe the Court should say to them they've been studying these, they've sorted of admitted they're now doing their due diligence. You know, give them ten days or two weeks to decide what they want to add. Let them move to add those patents. We might -- depending on what they are, maybe we wouldn't oppose it if they come to us and can justify why it is they didn't move sooner but I don't really think they should have any substantial period of time after that to add patents because of the prejudice and because it so effects the schedule in this case.
THE COURT: Well, that is --
MR. CHERNEY: That is part of the problem.
THE COURT: -- a principal concern.
MR. CHERNEY: That was one of the main concerns from my perspective was that we worked out together a joint status report based on one regime and the regime has changed even in a week from then. And I don't want to move too far down the road both with the other side and with the Court that we can't then make a schedule, a status report and a regime that reflects the actual scope of the case, not the scope of the case as it existed for the last nine months.
MR. RAINEY: Can I? If I might, Your Honor.

46

We specifically mentioned the prospect of adding patents in the case during the course of the Rule 26 conference to most of the lawyers and we specifically didn't negotiate a shorter schedule or a more aggressive schedule with the single patent defendants with the express notion that the Cisco schedule, which does involve two patents already, was a lengthy schedule with additional discovery and et cetera, et cetera with the idea that we would take a little bit of a longer view with the Lucent and Alcatel defendants to accommodate a single schedule for all three defendants.
So I don't think there this constant discussion about shock and surprise that we might be adding patents to a lawsuit is really all that credible. Moreover, this is a patent infringement case and it is not all that uncommon that a plaintiff might find an additional patent during the course of the litigation that it want to add into the case. These are sophisticated patent attorneys.
THE COURT: The question is just how much time is reasonable.
MR. RAINEY: Certainly. And certainly 10-to-14 days, we're not going to have any documents.
THE COURT: I don't have a problem with your argument there. You need to make a counter-proposal.
MR. RAINEY: I was thinking. The proposal is

47

six months out.
THE COURT: Right.
MR. RAINEY: I think in four months, we can get discovery from the defendants and we can get some depositions taken and that would be a good outside window.
THE COURT: I'm going to give you 60 days.
MR. RAINEY: That's fine, Your Honor.
THE COURT: I'm going to give you 60 days. I'm going to have you prepare the stipulated schedule as the plaintiff, if you would, Mr. Bailey.
MR. BALICK: I'll be happy to, your Honor. Thank you.
THE COURT: And whatever that date is -- do we have April's calendar? Yes. What is 60 days out? We should announce the dates so we're all in agreement.
MR. RAINEY: Your Honor, just for clarification, is that 60 days? What is the cutoff for amending the complaint?
THE COURT: Yes.
MR. RAINEY: That is going to be applicable to both sides in the case?
THE COURT: Everything that we're going to set here today.
MR. RAINEY: Thank you, Your Honor. That's fine.

48

MR. CHERNEY: Your Honor, I want to make sure I understand. For example, there is two situations here. Obviously if we take the deposition of one of their inventors after that date and he says, yep, I knew about this reference, I deliberately didn't put it in front of the Patent Office, I assume they're not going to argue it is coming to you and asking for a motion to amend on inequitable conduct.
THE COURT: I would hope not.
MR. CHERNEY: I wanted to make sure.
THE COURT: Because that is going to generate additional time that none of us should be spending.
MR. RAINEY: And likewise, if we're not given adequate discovery and suddenly something pops up nine months from now and its makes a clear case, it goes both ways.
THE COURT: I agree with both of those. Everything goes both ways here. And should it come to pass that the Court becomes concerned that the parties aren't acting in good faith, there are remedies for that.
MR. RAINEY: Absolutely, Your Honor.
THE COURT: Okay. June 14th is the cutoff, okay, '05.
MR. RAINEY: Yes. Thank you, Your Honor.
MR. CHERNEY: Thank you for clarifying that.

49

Your Honor.

THE COURT: All right. Then what about joining parties? July 15 is what I believe the defendants proposed and additional parties should be joined on or before July 15.

MR. RAINEY: Yes. There again, it was just, we had talked about an amendment of the pleadings date of November and they proposed an earlier amendment date of July I think now.

THE COURT: Do you want to make it the same date?

MR. RAINEY: I think that is logical.

MR. CHERNEY: That's fine.

MR. SINDER: (Nodding yes.)

THE COURT: The next yellow marks I have. Oh. At page 11 in paragraph C, that's the next point that I have. If I miss something, you should call it to my attention as we work through this document.

MR. RAINEY: Your Honor, on page nine, I think this is one dispute you might have passed over.

THE COURT: I missed one?

MR. RAINEY: Having to do with the defendants' date by which time they have to elect to rely on advice of counsel.

THE COURT: Yes, yes, yes. Okay. Let's talk

50

about it.

MR. CHERNEY: Ed.

MR. REINES: Yes. Our thinking on that is the issue is when should we have to take a position on whether we're disclosing a willfulness opinion or not and our view is that the logical time period for that is after the Court issues its claim construction order.

THE COURT: And I think that Telcordia asked, well, why? What does that have to do with anything?

MR. REINES: And what that has to do with -- there is a host of reasons but one is, as Your Honor could imagine, might be that willfulness opinion has, as a premise, a claim construction that is inconsistent with what the Court ultimately rules and that might make it so prejudicial to. I mean one would want to know whether that is true before making the decision. It's highly material to that strategic decision. That is an important and difficult decision and there is no cost. There will be sufficient time for willfulness discovery from, let's say, April '06 to April '07. That's a year. And somehow the parties will be able to manage to do the very limited scope of willfulness discovery, should the parties wish.

THE COURT: Well, here. Let's put some flesh on these bones. Markman is going to take place on March 22, at 10:00 o'clock. That is in '06. Okay? At 10:00 o'clock.

51

Given what you have proposed to me as the regime for the exchange, the meet and confer, the exchange of claim charts, and the briefing, the Court would like approximately 30 days with the briefs before the Markman hearing. So you proposed a completion of briefing date of February 17, so I tried to come within that 30-day time window that we have found out, over experience, gives us adequate time to digest your Markman briefs.

While we're at this paragraph at page 13, paragraph C, you should make provision; and perhaps this was on your minds when you wrote the language that you wrote; for the submission of a final claim chart to the Court prior to the submission of briefs. And those are going to be the positions obviously as well as the briefing positions that you will be locked into. The chart should have references to the intrinsic record so that we can more easily navigate our way, my clerk and I, around the record.

All briefing should contemplate the provision of an original and two, okay?

MR. CHERNEY: Okay.

THE COURT: So with that in mind, counsel, why don't you finish up your thoughts.

MR. REINES: Your Honor, just one other thought on that.

THE COURT: Yes.

52

MR. REINES: An original and two, we can do. Something that also might make sense in the case of this complexity is for the parties to deliver a binder set that is organized the way we would have our status organized for us; and I'm sure the parties can agree on this globally; and then deliver those in whatever duplicate copies you want so it's all in one and it's tabbed nicely and everything else.

THE COURT: Yes.

MR. REINES: Is that a good idea?

THE COURT: Yes, I think it is a good idea.

MR. RAINEY: That's fine, Your Honor.

MR. REINES: So the issue is, on willfulness, obviously as the Court knows, the plaintiff can assert willfulness quite easily without much diligence at all and that puts the defendant in a very difficult position as to whether to waive the attorney-client advice they have which would normally be confidential. And as the Federal Circuit has noted, that puts, that requires particular concern by the trial judge to insure that they're minimizing the prejudice to the defendant as a result of that difficult choice.

And different courts have done it different ways. In the Northern District of California, we do it one way. That is just a model. That is not the way it is every way. But the thought is after claim construction issues,

53

everyone knows the lay of the land, knows what the issues are going to be for trial that's so much of a richer record for the people to make the decision as to whether they want to choose.

THE COURT: I don't have difficulty with that proposal. Mr. Rainey, do you feel a prejudice as a result of? Your Markman is going to be, you will get it within your order, within 30 days, more or less, of the March 22 Markman date. Okay? So you want to propose some period thereafter?

MR. REINES: That's fine. However, a month, 60 days of discovery on willfulness issues thereafter is fine by us. The concern we have with pulling the issue of reliance of advice of counsel on discovery, if they elect to rely on advice of counsel, out of the discovery period and creating a satellite discovery process.

THE COURT: It's a stage. It's staged discovery.

MR. RAINEY: But presumably by the time Markman comes out, fact discovery will have closed.

THE COURT: Right.

MR. RAINEY: And we're going to be then into expert discovery, and I'm not sure what -- the concern I have is I don't know what additional discovery is going to be implicated by the decision to waive privilege on an

54

opinion of counsel. I just don't know what that is going to implicate. So the only concern is we have may have taken a deposition and then need to retake the deposition again. For example, if there is some waiver of privilege. I'm just concerned about creating a satellite discovery proceeding.

THE COURT: I understand.

MR. REINES: That's our risk. We're the ones with the witnesses on the willfulness issue. That's not their witnesses. So it would be a focused willfulness discovery if people waive. If people don't waive, there is no discovery period, obviously. And if there is a discovery period, then we'll make people available and cooperate like we're doing and intend to do so.

MR. RAINEY: Your Honor, as long as there is not going to be any pressure against us.

THE COURT: Should it come to pass that one or more of the parties needs a feeling to come to the Court and request that it reopen fact discovery, you can do that, but I suggest to you that if you're careful in how you frame your discovery in the willfulness phase, it shouldn't be a problem but.

MR. REINES: Agreed.

THE COURT: I do understand. I don't hear you to resist exactly the reasons that the defendants seek what they seek in terms of the timing and I understand you have

55

articulated your position.

MR. RAINEY: Yes.

THE COURT: I think we can account for that.

MR. RAINEY: In terms of the proposal of making the decision four weeks, I mean that's a -- you know, if we're going to create this period, you know we can do it reasonably expeditiously within that time period.

THE COURT: That's fine. You can agree on a date after I leave. Whatever you agree upon. I think you said 60 days.

MR. REINES: Sixty days of discovery, that would be fine.

THE COURT: So April 22nd.

MR. REINES: That's fine.

THE COURT: That is what you want to tag it on to that is.

MR. CHERNEY: That's fine.

MR. REINES: That's fine.

THE COURT: Look at your calendar.

MR. RAINEY: That is going to be 60 days from your decision --

THE COURT: What were you proposing?

MR. RAINEY: -- or their decision.

MR. REINES: My understanding is, I mean I think we need to think it out carefully. If we assume the

56

decision comes out on April 22nd, we should have at least two weeks to make the decision, and then we can do 60 days of discovery from the date that we make the decision one way or the other.

MR. RAINEY: The point is 60 days from the point they elect to rely on opinion of counsel.

MR. CHERNEY: Right.

THE COURT: Is that acceptable, Mr. Rainey?

MR. RAINEY: I want to make sure I understand what the proposal was, yes.

THE COURT: So whatever that is, you can pull your calendars, at the time.

THE DEPUTY CLERK: July 10th.

MR. RAINEY: That's fine, Your Honor.

MR. SINDER: Your Honor?

THE COURT: Yes.

MR. SINDER: You had invited us to mention if there was something we wanted to raise that we passed by.

THE COURT: Yes.

MR. SINDER: I wanted to bring the Court's attention to on page six, it's paragraph 4-B, the first sentence.

THE COURT: I have it highlighted. I just did not --

MR. SINDER: Alcatel has an agreement with

Telcordia.

THE COURT: Yes, but I'm not going to give you a chance to file an early motion on that. I'm not going to do it. I'm not going to do it.

MR. SINDER: Even though this is --

THE COURT: No, I'm not going to jump that motion up in the queue in front of other matters that I currently have. I'm just not going to do it. Okay?

MR. SINDER: I understand, Your Honor.

THE COURT: Okay.

MR. SINDER: You've been pretty emphatic on that.

THE COURT: Okay. Great. Let's move on.

I think we were at C on 11 where it appears that the parties are in agreement that information and materials from other litigation will be able to be used and will be produced in this litigation; is that correct?

MR. RAINEY: The only -- absolutely, we are going to produce the Telcordia production to the defendants in this case. The only issue in, with respect to giving the defendants access to every single sheet of paper that was generated in that case is going to be the protective order that existed in that case and confidentiality concerns of Fore Systems. I haven't even looked into that but Fore Systems produced confidential information to Telcordia in

that case pursuant to a protective order which included an "outside counsel eyes only" designation.

THE COURT: I just don't want to have a discovery dispute over that. Mr. Cherney, do you want to?

MR. CHERNEY: I'm happy to try to work this out with Mr. Rainey in the first instance. The stuff you don't have a concern with, you will send to us expeditiously.

MR. RAINEY: Yes.

MR. CHERNEY: So there is that and we will talk and work out a protective order that will cover that and I guess also get the people from the Fore Systems involved, but it just seems there is a large corpus out there. It didn't make sense to wait for discovery responses. Let's get that exchange as soon as possible, to the extent that you feel as you can without, you know, getting a prior protective order of Judge Farnan.

MR. RAINEY: I think as I said before, we'd be happy to do that.

MR. CHERNEY: I'll talk to you afterwards about a schedule.

MR. RAINEY: That's fine.

THE COURT: Okay. Let me circle back and say I think it's worth taking the time to say a word about the discovery disputes. It just strikes me there is a high potential for them in this case. I will entertain them to

a point. After I arrive at the point that I feel they're vexatious to me and my staff, I'm going to send you off to a discovery master, okay? And you are going to have to pay for that. Your clients will have to pay for that. And I've got to believe that, there is in-house counsel here, you are not going to be real happy about that. So get your lawyers to behave themselves, okay? And we'll get along just fine. We'll get along just fine.

But in this district, the district judges handle in the main the discovery disputes. We only have one magistrate judge, unlike the Northern District of California which is rich with magistrate judges. And in spite of the fact that we are on a per judge basis the busiest district court in the country handling patent matters, we still can't get another magistrate judge. It's my mind boggling.

In any event, a word to the wise. Let's keep the noise down to a dull roar on discovery disputes.

And discovery matters, not just disputes but matters that affect the schedule should be raised in the same fashion as so-called discovery disputes. Please don't file motions if you can't agree on an extension of some thing and therefore file a stipulation. And by the way, any stipulations that you agree to, I need an explanation as to why there is a stipulated agreement between and among the parties. But don't just willy-nilly run off a motion. Dial

up chambers if you have a question. Is this something the judge would rather handle by teleconference or by motion? Call and ask for us if you have a question, okay? Thanks.

Well, let's talk about, there is a jury demand in each of these cases so these will be jury trials.

MR. RAINEY: Yes, Your Honor.

THE COURT: There is I think a joint request for two weeks per trial. Normally, I would be disinclined to grant two weeks for a one patent case and so therein lies at least part of the need to put to bed. How many patents are we going to have in suit here? So at this stage, I'm going to accede to the request for two weeks on each matter anticipating because it's easier for me to contract than expand the schedule, anticipating that there may well likely be additional patents that will be brought in this case. So that is what I'm going to do.

Is there anyone in the room today who believes that you need more than two weeks to try these matters?

MR. CHERNEY: Certainly based on what we currently know, we have no basis to ask for more than two weeks.

THE COURT: All right. I'm glad to see that the parties agree that you should include a referral to the magistrate judge in the scheduling order. Is that still the case?

MR. RAINEY: Yes, Your Honor.
MR. REINES: Yes, Your Honor.
MR. CHERNEY: Sure.
THE COURT: Okay. That should be in there.
We set Markman for a 3/22 at 10:00 o'clock. I'm just going to block off the day. I don't think we should be longer than a day but I'll block it off. And hopefully we won't need a day if the current numbers of patents -- you want to say something?
MR. CHERNEY: No, no. I was about to echo what you were saying is based what we currently know, there is no basis to do that, obviously in large part depends on what the scope of the case is at that point.
THE COURT: Right. I'm going to set 9/18 at 10:00 o'clock, this is in '06, as the date for the teleconference to consider letter briefs seeking summary judgment.
The Court, if not specifically, at least impliedly intends to implicate or state by implication that the time intervals for briefing and the like, to the extent they deviate from the local rule, are acceptable.
I've set the trial down far enough out that I think we can give you those time intervals and still decide any motions that are permitted.
And, unless I comment on a date, the dates that

you have set down in this joint status report are acceptable to the Court.
Your pretrial order is going to be due by the close of business on February 16, '07.
Pretrial conference will be March 15, '07, here in this room, beginning at 10:00 o'clock.
I'd like the schedule, the stipulated schedule back to chambers, well, filed electronically, what is today? By next Friday. Is that nearly enough?
MR. CHERNEY: That's fine.
MR. RAINEY: That's fine, Your Honor.
THE COURT: I don't see anything else that I have highlighted. Hold on. Well, yes, there is another. There is an 8/11 date for submission of a joint agenda letter identifying Daubert issues. I'm going to set a September teleconference date for that. We'll get back to you on that.
There is another issue and that's set out in paragraph K at page 14. This is an issue of the disagreement over numbers of depositions and links the depositions. I got to tell you I'm not inclined to get involved in that. I'm just not. You are going to have to work that out.
MR. REINES: I think that makes sense. We'll live under the --

THE COURT: I think the federal rules are well set up to.
MR. CHERNEY: We'll work it out.
THE COURT: Okay. Anything that I have missed or anything else that you want to talk about?
Okay. Ms. McDavid is going to come back with a date for the Daubert telephone conference. I'm going to leave you, wish you safe travels and good day.
(Conference ends at 3:25 p.m.)

'
'05 [1] - 48:23
'06 [3] - 50:20, 50:25, 61:15
'07 [3] - 50:20, 62:4, 62:5
'306 [7] - 21:5, 22:5, 22:7, 22:11, 28:14, 29:5, 38:21
'633 [2] - 21:5, 28:17
'936 [1] - 43:20

0

04-874 [1] - 1:8
04-875 [1] - 1:13
04-876 [1] - 1:18

1

10 [1] - 44:12
10-to-14 [1] - 46:21
10:00 [5] - 50:25, 61:5, 61:15, 62:6
10th [1] - 56:13
11 [3] - 10:20, 49:16, 57:14
12 [3] - 13:22, 15:1, 17:19
120-day [2] - 39:18, 39:19
13 [4] - 14:22, 14:24, 18:12, 51:9
14 [4] - 1:21, 14:15, 14:16, 62:19
14th [1] - 48:22
15 [5] - 13:21, 35:24, 49:3, 49:5, 62:5
16 [1] - 62:4
16(2)(b [1] - 4:4
16.2(b [1] - 1:21
17 [2] - 15:24, 51:5
18th [1] - 34:12
1990s [1] - 33:4
1991 [1] - 33:8
1997-1998 [1] - 33:10

2

20 [1] - 37:17
2002 [1] - 17:16
2005 [1] - 1:21
2007 [1] - 38:22
22 [2] - 50:24, 53:8
22nd [2] - 55:13, 56:1
26 [1] - 46:2
27 [1] - 13:24
2:00 [2] - 1:21, 4:6

3

3/22 [1] - 61:5
30 [2] - 51:4, 53:8
30-day [1] - 51:6
3:25 [1] - 63:9

4

4(k)(2 [7] - 9:2, 9:20, 9:23, 15:8, 15:12, 15:17, 15:21
4-b [1] - 56:21
4/16/07 [1] - 41:5

5

5,000 [1] - 19:18

6

60 [5] - 47:6, 47:8, 47:14, 47:17, 53:11, 55:10, 55:20, 56:2, 56:5

7

7 [1] - 17:15

8

8/11 [1] - 62:14

9

9/18 [1] - 61:14

A

aback [1] - 12:20
ability [2] - 17:11, 27:2
able [4] - 26:7, 43:22, 50:21, 57:16
absolutely [3] - 14:5, 39:24, 57:18
Absolutely [2] - 29:20, 48:21
accede [2] - 37:12, 60:12
acceptable [4] - 40:20, 56:8, 61:21, 62:1
access [2] - 19:9, 57:21
accessibility [1] - 19:6
accessible [1] - 19:7
accommodate [2] - 4:12, 46:10
accord [1] - 39:14
according [2] - 17:1, 38:17
account [2] - 38:16, 55:3
accurate [2] - 18:10, 20:6
accused [1] - 6:13
accusing [1] - 12:7
acting [1] - 48:20
action [2] - 7:2, 10:2
Action [1] - 1:4
activities [5] - 6:17, 7:19, 7:23, 14:11, 20:18
actual [3] - 15:5, 30:11, 45:23
add [13] - 28:12, 28:18, 32:4, 33:2, 34:12, 35:3, 35:22, 39:6, 43:11, 45:7, 45:11, 46:17
added [3] - 35:6, 43:2, 44:18
adding [7] - 26:24, 37:8, 37:10, 37:12, 37:14, 46:1, 46:13
addition [1] - 31:22
additional [13] - 13:23, 21:20, 22:13, 28:18, 40:9, 40:13, 42:1, 46:7, 46:16, 48:12, 49:4, 53:24, 60:15
address [5] - 20:19, 26:5, 30:21, 31:11, 31:20
addressed [5] - 18:19, 22:19, 25:10, 25:14, 28:19
addressing [1] - 29:14
adducing [1] - 27:3
adequate [2] - 48:14, 51:7
admitted [1] - 45:5
admittedly [1] - 11:18
advance [1] - 27:2
advanced [1] - 26:8
advantage [1] - 20:9
advice [4] - 49:23, 52:16, 53:14, 53:15
advised [1] - 28:17
advocating [1] - 26:2
affect [1] - 59:19
afternoon [9] - 4:7, 4:8, 4:23, 4:24, 5:8, 5:12, 5:15, 5:17, 5:20
afterwards [1] - 58:19
agency [3] - 7:11, 7:13, 14:4
Agency [1] - 7:16
agenda [1] - 62:14
agent [1] - 14:4
aggressive [1] - 46:4
ago [7] - 17:20, 33:21, 35:19, 35:20, 36:21, 36:24, 43:15
agree [11] - 20:4, 28:10, 29:21, 43:19, 48:17, 52:5, 55:8, 55:9, 59:21, 59:23, 60:23
Agreed [1] - 54:22
agreed [1] - 40:18
agreement [6] - 18:14, 29:6, 47:15, 56:25, 57:15, 59:24
agreements [2] - 18:1, 18:2
ahead [4] - 11:5, 20:7, 39:15, 41:11
Alcatel [84] - 1:7, 2:15, 2:17, 2:18, 5:10, 5:24, 6:7, 6:11, 6:21, 7:4, 7:13, 7:20, 9:16, 9:23, 10:4, 11:25, 12:1, 12:8, 12:15, 12:16, 12:25, 13:4, 13:7, 13:8, 13:9, 13:11, 13:16, 13:19, 13:20, 13:25, 14:3, 14:4, 14:16, 14:17, 14:19, 14:25, 15:10, 15:25, 16:1, 16:10, 16:12, 16:13, 16:14, 16:15, 16:19, 16:20, 16:21, 17:1, 17:4, 17:5, 17:12, 17:14, 17:17, 17:22, 17:23, 18:1, 18:3, 18:7, 18:16, 18:18, 18:25, 19:17, 20:15, 20:16, 20:17, 23:24, 24:11, 25:5, 29:3, 32:13, 33:9, 33:22, 34:10, 38:13, 42:18, 44:15, 46:9, 56:25
Alcatel's [2] - 13:22, 15:23
allegation [1] - 41:17
allege [1] - 14:11
alleged [2] - 7:6, 7:8
allotted [2] - 40:12, 40:13
allowed [2] - 36:9, 36:10
alone [1] - 4:19
amend [5] - 39:11, 40:2, 42:21, 43:6, 48:7
amending [3] - 31:14, 40:19, 47:17
amendment [2] - 49:7, 49:8
amount [3] - 37:16, 41:22, 44:1
analogous [1] - 23:4
analysis [2] - 41:15, 44:4
anecdote [1] - 33:18
anew [1] - 26:7
announce [2] - 19:24, 47:15
answer [6] - 24:22, 27:5, 34:19, 36:6, 38:5, 40:13
answered [2] - 12:8, 24:23
anticipating [2] - 60:13, 60:14
ants [1] - 31:18
appeal [3] - 22:15, 26:1, 30:12
Appeals [2] - 22:21, 23:3
appear [1] - 33:13
Appearances [2] - 2:1, 3:1
applicable [2] - 26:15, 47:20
applies [1] - 15:18
apply [3] - 15:11, 15:12, 25:20
applying [1] - 29:4
approach [1] - 26:24
appropriate [2] - 18:19, 39:6
April [6] - 1:21, 50:20, 55:13, 56:1
Aprils [1] - 47:14
argue [5] - 23:24, 26:8, 28:1, 39:25, 48:6
argued [2] - 24:5
argument [12] - 15:9, 15:12, 23:22, 23:23, 24:9, 24:12, 26:20, 26:21, 28:6, 28:8, 29:17, 46:24
arguments [6] - 24:10, 26:7, 26:14, 29:7, 33:5, 39:8
arise [1] - 7:2
arm [2] - 6:25, 15:20
arrive [2] - 39:14, 59:1
Arsht [1] - 3:9
art [2] - 24:6, 32:15
articulated [3] - 19:12, 19:20, 55:1
articulating [1] - 25:23
Ashby [1] - 2:2

assert [10] - 18:16, 32:2, 34:5, 36:23, 38:7, 38:12, 42:12, 42:13, 52:13
asserted [13] - 21:4, 21:10, 22:3, 29:1, 29:2, 32:6, 33:21, 35:7, 35:12, 36:21, 37:23, 39:21, 40:10
asserting [5] - 33:24, 34:9, 34:23, 35:12, 36:16
asset [1] - 17:15
assume [3] - 42:17, 48:6, 55:25
assuming [2] - 4:13, 31:1
assurance [1] - 38:23
attached [2] - 14:22, 14:24
attention [4] - 10:11, 27:20, 49:18, 56:21
attorney [1] - 52:16
attorney-client [1] - 52:16
attorneys [2] - 16:11, 46:18
Attorneys [1] - 4:8
authoritative [1] - 25:15
available [1] - 54:12
average [1] - 17:19
averaged [1] - 17:18
avoid [1] - 39:13

B

background [1] - 33:2
Bailey [1] - 47:10
balance [1] - 19:10
Balick [6] - 2:3, 4:15, 4:18, 4:20, 4:25, 47:11
bar [2] - 25:12, 27:24
barred [1] - 29:14
based [13] - 10:2, 25:6, 27:2, 28:6, 32:21, 33:15, 35:14, 42:20, 42:22, 43:25, 45:19, 60:19, 61:11
basic [2] - 12:24, 13:18
basis [14] - 8:22, 11:11, 11:12, 14:13, 17:4, 19:19, 35:7, 36:23, 36:25, 37:1, 39:9, 59:13, 60:20, 61:12
becomes [3] - 30:13, 31:11, 48:19
bed [1] - 60:10
beginning [2] - 4:5, 62:6
behalf [3] - 2:7, 4:20, 30:9
behave [1] - 59:7
believable [1] - 43:22
believes [2] - 29:8, 60:17
Ben [1] - 5:11
Benjamin [1] - 2:13
Berres [2] - 2:16, 5:13
best [1] - 24:3
between [10] - 7:13, 8:13, 15:25, 18:11, 18:14, 18:18, 26:25, 33:3, 33:8, 59:24
beyond [5] - 14:15, 17:18, 28:14, 41:5
billion [1] - 17:15
binder [1] - 52:3
binding [3] - 22:22, 24:17, 25:15
bit [3] - 6:3, 41:15, 46:9
block [2] - 61:6, 61:7
Blumenfeld [4] - 3:10, 5:16, 5:17, 21:6
board [1] - 8:7
boggling [1] - 59:15
bones [1] - 50:24
bound [6] - 23:2, 23:7, 23:12, 25:24, 28:4, 29:9
Bradstreet [3] - 14:23, 14:24, 17:15
Brian [1] - 3:20
brief [9] - 10:22, 12:23, 13:5, 13:6, 14:17, 14:22, 15:23, 17:13, 27:18
briefing [6] - 13:14, 51:3, 51:5, 51:14, 51:18, 61:20
briefs [4] - 51:4, 51:8, 51:13, 61:18
bring [6] - 10:10, 34:1, 41:13, 42:1, 42:21, 56:20
broad [1] - 44:21
brought [2] - 27:20, 60:15
budget [1] - 25:6
bungle [1] - 16:23
burden [2] - 10:14, 32:9
Burley [6] - 2:6, 4:22, 12:19, 12:22, 16:2, 18:10, 19:11
busiest [1] - 59:13
business [4] - 13:10, 35:17, 40:11, 62:4

C

calendar [2] - 47:14, 55:19
calendars [1] - 56:12
California [4] - 3:13, 5:19, 52:23, 59:11
Canadian [1] - 18:13
cards [5] - 38:2, 42:19, 43:9, 44:5, 44:7
careful [1] - 54:19
carefully [1] - 55:25
carriers [1] - 18:8
case [78] - 6:22, 7:3, 7:12, 9:11, 9:25, 11:10, 11:14, 12:3, 12:10, 12:11, 12:13, 14:10, 15:6, 16:10, 16:11, 19:15, 20:14, 21:5, 21:17, 22:3, 22:5, 22:6, 22:7, 22:16, 22:17, 23:23, 24:7, 24:18, 25:12, 26:14, 26:15, 28:13, 28:15, 28:19, 30:16, 31:3, 31:5, 31:19, 31:25, 33:9, 33:13, 33:19, 34:10, 35:2, 37:7, 37:20, 37:25, 38:4, 38:8, 38:16, 38:18, 38:20, 39:25, 40:21, 41:6, 41:8, 41:14, 41:18, 42:2, 45:13, 45:23, 45:24, 46:2, 46:15, 46:17, 47:21, 48:15, 52:2, 57:20, 57:22, 57:23, 58:1, 58:25, 60:9, 60:15, 60:25, 61:13
cases [7] - 8:12, 8:19, 19:5, 28:16, 30:19, 60:5
catchall [2] - 35:1, 35:2
catchalls [1] - 38:6
catching [1] - 6:2
certain [2] - 37:16, 41:22
certainly [9] - 12:13, 14:8, 14:12, 14:17, 16:14, 22:20, 41:19, 46:21
Certainly [2] - 46:21, 60:19
cetera [2] - 46:8
chain [1] - 38:20
challenge [1] - 10:9
chambers [2] - 60:1, 62:8
chance [3] - 23:24, 24:1, 57:3
changed [5] - 36:3, 36:18, 37:2, 44:3, 45:19
changing [1] - 30:16
chart [2] - 51:12, 51:15
charts [1] - 51:3
Cherney [41] - 2:22, 4:17, 5:4, 5:5, 21:12, 21:22, 23:9, 23:11, 24:13, 25:23, 26:14, 27:12, 27:13, 27:16, 27:22, 28:22, 33:17, 42:5, 43:4, 43:8, 43:18, 45:15, 45:17, 48:1, 48:10, 48:25, 49:13, 50:2, 51:20, 55:17, 56:7, 58:4, 58:5, 58:9, 58:19, 60:19, 61:3, 61:10, 62:10, 63:3
Chicago [1] - 3:3
Chief [1] - 17:13
choice [1] - 52:21
choose [1] - 53:4
circle [1] - 58:22
Circuit [20] - 11:16, 12:11, 21:18, 22:4, 22:9, 22:10, 22:14, 22:20, 23:3, 23:19, 24:14, 24:16, 24:21, 25:9, 26:1, 26:11, 26:19, 27:8, 29:9, 52:17
Circuits [2] - 22:21, 28:5
Cisco [16] - 1:17, 3:17, 5:16, 18:17, 21:6, 23:25, 24:10, 25:5, 30:9, 33:22, 33:25, 34:10, 34:23, 35:13, 36:21, 38:11, 38:12, 42:18, 46:6
cite [3] - 24:17, 27:25, 28:5
cited [2] - 13:4, 25:12
Civil [1] - 1:4
claim [20] - 21:16, 21:20, 22:7, 22:10, 22:16, 22:18, 23:1, 23:13, 23:14, 23:18, 24:1, 25:11, 26:8, 28:3, 29:3, 50:7, 50:13, 51:2, 51:12, 52:25
claims [3] - 21:10, 21:13, 26:12
clarification [1] - 47:16
clarifying [1] - 48:25
clear [7] - 13:6, 14:2, 15:4, 29:19, 29:24, 29:25, 48:15
clearer [1] - 8:17
clearly [1] - 15:18
Clerk [1] - 56:13
clerk [1] - 51:17
client [4] - 38:7, 42:11, 43:24, 52:16
clients [1] - 59:4
close [1] - 62:4
closed [1] - 53:20
collateral [4] - 23:15, 24:25, 25:22, 26:3
colleagues [1] - 43:5
Columbia [1] - 2:6
comfortable [1] - 41:20
coming [3] - 23:23, 31:19, 48:7
comment [1] - 61:25
commerce [3] - 11:18, 11:20, 12:2
common [3] - 7:25, 8:16, 22:5
communication [1] - 40:7
companies [8] - 6:11, 8:24, 12:15, 16:7, 17:22, 18:11, 18:18, 18:24
company [21] - 6:12, 6:14, 6:17, 6:20, 8:10, 9:6, 12:7, 12:25, 13:15, 15:11, 15:15, 16:20, 17:5, 18:4, 18:15, 19:4, 19:12, 19:16, 19:20, 25:3, 44:23
complaint [4] - 12:8, 39:18, 41:20, 47:18
complaints [1] - 39:23
complete [1] - 42:9
completed [3] - 41:24, 41:25, 42:13
completely [2] - 6:5, 8:25
completion [1] - 51:5
complexity [1] - 52:3
comport [1] - 15:15
comprehensive [2] - 5:22, 38:15
compressed [1] - 40:24
Coriaway [2] - 2:9,

2:19
concern [6] - 45:16, 52:18, 53:13, 53:23, 54:2, 58:7
concerned [5] - 26:12, 36:12, 37:3, 48:19, 54:5
concerning [1] - 14:25
concerns [3] - 31:17, 45:17, 57:23
concluding [1] - 17:4
conduct [2] - 20:16, 48:8
confer [1] - 51:2
conference [6] - 4:11, 29:24, 34:6, 46:3, 62:5, 63:7
Conference [2] - 1:21, 63:9
confidential [2] - 52:17, 57:25
confidentiality [1] - 57:23
confused [1] - 18:5
confusing [1] - 10:22
confusion [1] - 18:6
connection [2] - 7:5, 13:5
consider [2] - 39:5, 61:16
consideration [1] - 44:18
considered [4] - 22:3, 22:13, 25:13, 28:15
considering [1] - 10:17
consistency [1] - 22:25
consistent [2] - 22:23, 26:24
consolidate [1] - 30:19
consolidated [2] - 29:22, 31:2
consolidating [3] - 30:1, 30:12, 30:23
consolidation [5] - 30:6, 30:21, 31:7, 37:21, 37:24
constant [1] - 46:12
Constitution [1] - 15:16
construction [15] - 21:16, 21:20, 22:7, 22:16, 23:1, 23:4, 23:18, 24:1, 25:11, 26:8, 28:4, 29:3, 50:7, 50:13, 52:25
constructions [3] - 22:10, 23:13, 23:14
consult [1] - 8:14
consumer [1] - 18:6
contact [2] - 7:3, 9:9
contacted [1] - 38:11
contacting [1] - 34:17
contacts [11] - 7:1, 7:8, 8:21, 8:23, 9:7, 9:13, 9:16, 9:17, 9:19, 10:2, 10:7
contemplate [2] - 27:17, 51:18
contemplated [1] - 29:4
contemplates [1] - 28:13
contemplating [3] - 28:7, 34:9, 34:21
contention [3] - 11:3, 15:24, 26:6
Continued [1] - 3:1
continuous [2] - 7:7, 9:12
contract [1] - 60:13
contradiction [1] - 23:20
contrary [1] - 28:2
controls [1] - 7:19
conversations [1] - 34:1
cooperate [2] - 36:15, 54:12
cooperating [1] - 30:3
cooperation [2] - 8:13, 30:13
coordinating [1] - 30:15
coordination [1] - 30:4
copies [1] - 52:6
corporate [1] - 17:23
corporation [2] - 13:9, 16:15
Corporation [1] - 8:20
corporations [1] - 18:9
corpus [1] - 58:12
correct [5] - 17:8, 25:16, 25:23, 31:14, 57:17
correspondence [1] - 18:17
corresponding [1] - 31:24
cost [1] - 50:18
Counsel [7] - 2:7, 2:16, 2:17, 3:6, 3:7, 3:17, 30:7
counsel [9] - 12:17, 49:24, 51:21, 53:14, 53:15, 54:1, 56:6, 58:2, 59:5
count [1] - 13:24
counter [1] - 46:24
counter-proposal [1] - 46:24
country [5] - 6:19, 9:7, 9:13, 9:20, 59:14
couple [5] - 8:19, 13:17, 17:10, 34:13, 35:20
course [4] - 35:13, 35:18, 46:2, 46:17
court [6] - 4:5, 9:14, 11:15, 16:8, 21:19, 59:14
Court [148] - 1:1, 3:20, 4:7, 4:10, 4:17, 4:19, 4:23, 5:3, 5:8, 5:12, 5:15, 5:20, 6:9, 6:15, 7:15, 7:24, 8:2, 8:21, 9:3, 10:15, 10:16, 11:1, 11:4, 11:7, 11:21, 12:6, 12:11, 12:17, 12:21, 15:22, 17:9, 19:22, 20:7, 20:11, 20:24, 20:25, 21:1, 21:8, 21:14, 21:23, 22:21, 22:24, 23:2, 23:6, 23:10, 24:12, 25:13, 25:15, 25:18, 26:6, 26:9, 26:17, 26:23, 26:25, 27:6, 27:10, 27:12, 27:15, 27:19, 28:10, 28:21, 29:8, 29:15, 29:18, 29:21, 30:7, 30:10, 30:22, 31:10, 39:1, 39:7, 39:13, 40:4, 40:11, 40:15, 40:20, 43:4, 43:17, 44:8, 44:10, 44:13, 45:2, 45:3, 45:14, 45:16, 45:21, 46:19, 46:23, 47:2, 47:6, 47:8, 47:13, 47:19, 47:22, 48:9, 48:11, 48:17, 48:19, 48:22, 49:2, 49:10, 49:15, 49:21, 49:25, 50:6, 50:8, 50:14, 50:23, 51:3, 51:12, 51:21, 51:25, 52:8, 52:10, 52:13, 53:5, 53:17, 53:21, 54:6, 54:16, 54:17, 54:23, 55:3, 55:8, 55:13, 55:15, 55:19, 55:22, 56:8, 56:11, 56:16, 56:19, 56:23, 57:2, 57:6, 57:10, 57:13, 58:3, 58:22, 60:7, 60:22, 61:4, 61:14, 61:18, 62:2, 62:12, 63:1, 63:4
Courts [2] - 40:23, 56:20
courts [1] - 52:22
cover [1] - 58:10
covering [1] - 44:22
create [2] - 10:14, 55:6
creating [2] - 53:16, 54:5
credible [3] - 10:23, 18:22, 46:14
credit [1] - 18:11
critical [1] - 13:18
criticized [2] - 16:17, 16:18
current [3] - 11:4, 17:14, 61:8
customers [1] - 18:2
cutoff [3] - 43:5, 47:17, 48:22

D

date [20] - 33:16, 40:17, 40:18, 41:4, 47:13, 48:4, 49:7, 49:8, 49:11, 49:23, 51:5, 53:9, 55:9, 56:3, 61:15, 61:25, 62:14, 62:16, 63:7
dates [2] - 47:15, 61:25
Daubert [2] - 62:15, 63:7
Davis [2] - 3:15, 5:19
day-to-day [1] - 7:19
days [21] - 17:18, 17:19, 35:20, 37:17, 38:9, 42:10, 44:12, 45:6, 46:22, 47:6, 47:8, 47:14, 47:17, 51:4, 53:8, 53:12, 55:10, 55:11, 55:20, 56:2, 56:5
deal [4] - 16:13, 28:17, 29:1, 29:10
dealing [6] - 15:8, 18:8, 18:9, 18:21, 18:24, 26:24
dealings [1] - 16:12
deals [2] - 16:13, 18:4
decide [6] - 32:2, 32:5, 32:22, 32:23, 45:6, 61:23
decided [3] - 17:16, 26:11, 32:23
deciding [1] - 23:1
decision [17] - 19:25, 22:25, 25:9, 25:11, 25:25, 28:5, 50:16, 50:17, 50:18, 53:3, 53:25, 55:5, 55:21, 55:23, 56:1, 56:2, 56:3
decisions [3] - 24:13, 24:14, 25:13
decisis [1] - 25:19
declaration [2] - 7:20, 17:13
declined [1] - 22:14
defend [1] - 31:17
defendant [2] - 52:15, 52:20
Defendant [2] - 1:13, 1:18
defendants [22] - 6:12, 14:9, 21:7, 22:6, 23:6, 26:18, 31:4, 31:23, 32:6, 39:4, 39:21, 40:1, 40:8, 44:16, 46:5, 46:10, 46:11, 47:4, 49:3, 54:24, 57:19, 57:21
Defendants [1] - 1:8
defendants' [2] - 21:19, 49:22
defenses [1] - 37:15
Delaware [8] - 1:2, 1:20, 6:19, 6:25, 7:3, 8:11, 9:17
delay [1] - 42:3
deliberately [1] - 48:5
delinquency [1] - 15:1
deliver [2] - 52:3, 52:6
demand [1] - 60:4
demonstrate [1] - 11:12
denial [1] - 12:12
deny [2] - 20:25, 21:1
deposition [3] - 48:3, 54:3
depositions [3] - 47:5, 62:20, 62:21
depression [1] - 17:17
depths [1] - 17:16
Deputy [2] - 5:14, 56:13
designation [1] - 58:2
despite [1] - 25:10
determination [1] - 17:7
determine [2] - 14:5, 41:13
developed [1] - 33:15
deviate [1] - 61:21
deviating [1] - 27:24

Dial [1] - 59:25
difference [2] - 31:14, 41:21
different [5] - 16:10, 18:15, 24:23, 26:2, 26:16, 42:23, 52:22
difficult [4] - 14:9, 50:18, 52:15, 52:20
difficulty [1] - 53:5
digest [1] - 51:7
diligence [6] - 41:25, 42:7, 42:8, 42:14, 42:16, 45:5, 52:14
Director [1] - 5:14
directors [1] - 13:23
disagree [1] - 30:20
disagreeing [1] - 23:16
disagreement [1] - 62:20
disclosing [1] - 50:5
discovery [56] - 11:7, 11:8, 11:10, 11:11, 11:16, 14:5, 20:14, 20:15, 21:1, 30:12, 30:20, 30:23, 32:4, 32:9, 32:10, 32:11, 32:24, 33:15, 34:15, 34:25, 36:4, 36:20, 37:19, 39:24, 43:1, 44:14, 44:21, 46:7, 47:4, 48:14, 50:19, 50:22, 53:12, 53:14, 53:15, 53:16, 53:18, 53:20, 53:23, 53:24, 54:5, 54:10, 54:11, 54:18, 54:20, 55:11, 56:3, 58:4, 58:13, 58:24, 59:3, 59:10, 59:17, 59:18, 59:20
discuss [1] - 33:6
discussing [1] - 41:4
discussion [4] - 19:22, 20:8, 33:11, 46:12
discussions [1] - 33:4
disinclined [1] - 60:8
dismiss [3] - 5:24, 20:15, 21:1
dismissal [1] - 12:12
dispositive [2] - 41:8, 41:9
dispute [3] - 21:10, 49:20, 58:4
disputed [1] - 22:14
disputes [5] - 58:24, 59:10, 59:17, 59:18, 59:20
disregard [1] - 26:19
disruption [1] - 31:5
dissents [1] - 20:4
distinct [1] - 6:4
distinguishable [1] - 11:17
distinguishes [1] - 12:3
District [5] - 1:1, 1:2, 2:6, 52:23, 59:11
district [5] - 8:19, 19:5, 59:9, 59:13
divided [1] - 11:21
document [2] - 35:14, 49:18
documents [2] - 32:16, 46:22
Don [3] - 2:6, 4:22, 12:19
done [11] - 14:8, 26:19, 31:3, 31:6, 35:16, 41:7, 42:16, 42:24, 43:14, 44:8, 52:22
down [8] - 7:9, 28:19, 40:11, 42:21, 45:21, 59:17, 61:22, 62:1
draft [1] - 34:8
drafted [2] - 35:14
Drager [6] - 3:6, 5:7, 35:10, 35:21, 36:2, 36:5
due [8] - 10:8, 15:3, 15:13, 15:15, 41:24, 41:25, 45:5, 62:3
dull [1] - 59:17
Dunn [3] - 14:23, 14:24, 17:15
Dunner [2] - 2:5, 4:25
duplicate [1] - 52:6
during [2] - 46:2, 46:16

E

earliest [1] - 41:1
early [3] - 18:19, 21:11, 57:3
easier [1] - 60:13
easily [2] - 51:16, 52:14
echo [1] - 61:10
Ed [3] - 5:18, 30:8, 50:2
Edward [1] - 3:12
effect [3] - 9:10, 18:8, 26:18
effective [1] - 30:15
effects [2] - 7:19, 45:12
effort [1] - 39:19
eight [2] - 13:23, 32:4
Either [2] - 15:19, 38:23
either [6] - 9:16, 10:13, 14:2, 36:11, 42:13, 44:1
Elaine [2] - 3:6, 5:6
elect [3] - 49:23, 53:14, 56:6
electronically [1] - 62:8
elements [3] - 7:15, 7:17, 21:9
embarking [1] - 44:14
emphatic [1] - 57:11
employee [1] - 8:5
employees [5] - 8:6, 13:19, 13:21, 19:17, 19:18
end [3] - 27:6, 41:10, 42:4
ended [1] - 35:4
ends [1] - 63:9
engage [1] - 21:19
enter [2] - 30:4, 30:22
entering [1] - 20:2
entertain [1] - 58:25
entire [1] - 31:1
entities [2] - 7:25, 16:6
entity [2] - 17:23, 18:20
equipment [2] - 13:2, 18:7
especially [1] - 10:23
espoused [1] - 11:24
Esq [14] - 2:3, 2:5, 2:6, 2:10, 2:12, 2:13, 2:16, 2:20, 2:22, 3:3, 3:6, 3:10, 3:12, 3:15
essentially [1] - 40:7
Essentially [2] - 22:2, 28:3
estopped [2] - 23:15, 25:1
estoppel [3] - 24:25, 25:22, 26:3
et [2] - 46:8
event [2] - 25:22, 59:16
evidence [2] - 15:3, 27:3
eviscerates [1] - 26:22
exactly [3] - 14:5, 21:23, 54:24
example [6] - 23:20, 23:21, 31:2, 31:4, 48:2, 54:4
except [1] - 8:23
exchange [3] - 51:2, 58:14
exchanged [1] - 32:10
executive [3] - 8:4, 8:7, 8:24
exercise [5] - 6:23, 9:10, 9:12, 9:14, 10:8
Exhibit [2] - 14:22, 14:24
exist [3] - 9:18, 38:4
existed [2] - 45:24, 57:23
exists [1] - 19:7
expand [1] - 60:14
expect [1] - 19:3
expedition [1] - 44:24
expeditiously [2] - 55:7, 58:7
experience [1] - 51:7
experiences [1] - 15:2
expert [1] - 53:23
expire [1] - 35:23
expires [1] - 38:22
explain [3] - 16:4, 42:24, 43:19
explanation [2] - 38:24, 59:23
express [1] - 46:5
expressed [1] - 24:16
expressly [2] - 25:10, 25:14
extension [1] - 59:21
extensions [1] - 39:24
extensive [6] - 9:6, 13:6, 13:10, 15:24, 15:25, 32:9
extensively [1] - 13:5
extent [3] - 42:1, 58:14, 61:20
extremely [1] - 44:15
eyes [1] - 58:2

F

facie [2] - 7:12, 11:10
facilities [1] - 32:14
fact [18] - 13:9, 13:10, 13:14, 13:17, 14:14, 14:20, 14:24, 15:4, 16:16, 17:2, 19:6, 20:17, 20:20, 25:10, 40:1, 53:20, 54:18, 59:13
facts [3] - 10:1, 11:23, 13:19
factual [1] - 11:11
fair [1] - 20:24
fairness [1] - 32:9
faith [1] - 48:20
far [7] - 26:12, 28:7, 31:1, 33:19, 39:25, 45:20, 61:22
Farabow [1] - 2:5
Farnan [10] - 21:18, 22:4, 22:8, 22:12, 22:15, 22:19, 23:18, 25:25, 29:10, 58:16
Farnis [1] - 24:13
fashion [1] - 59:20
favor [1] - 22:15
February [2] - 51:5, 62:4
Federal [21] - 11:15, 12:11, 21:18, 22:4, 22:9, 22:10, 22:14, 22:19, 22:21, 23:19, 24:14, 24:16, 24:21, 25:9, 26:1, 26:11, 26:19, 27:8, 28:5, 29:9, 52:17
federal [4] - 9:2, 9:6, 9:14, 63:1
felt [1] - 41:19
few [1] - 38:9
fighting [1] - 12:9
figure [3] - 18:23, 36:25, 37:17
file [9] - 39:5, 39:10, 43:17, 43:18, 43:25, 44:12, 57:3, 59:21, 59:22
filed [7] - 14:12, 32:11, 39:17, 41:9, 41:23, 42:9, 62:8
files [2] - 7:21, 7:22
filing [1] - 41:20
final [2] - 15:7, 51:12
finality [1] - 27:1
Financial [1] - 17:14
financial [2] - 7:22, 17:11
financially [2] - 14:18, 15:4
fine [24] - 5:3, 11:2, 28:12, 29:15, 29:17, 29:18, 31:12, 47:7, 47:25, 49:13, 52:11, 53:11, 53:12, 55:8, 55:12, 55:14, 55:17, 55:18, 56:14, 58:21, 59:7, 59:8, 62:10, 62:11
finish [1] - 51:22
Finnegan [2] - 2:5, 4:21
firm [2] - 4:21, 16:9
First [1] - 34:14
first [8] - 5:23, 21:24, 34:14, 34:16, 36:14, 38:25, 56:21, 58:6
Fish [1] - 36:17

fishing [1] - 44:23
five [4] - 8:5, 13:20, 19:13, 32:17
flesh [1] - 50:23
Florida [1] - 35:10
focused [1] - 54:9
focusing [1] - 34:2
follow [1] - 27:23
following [2] - 4:4, 13:14
foot [1] - 24:3
footnote [1] - 14:16
force [1] - 26:18
Fore [9] - 21:17, 22:4, 24:2, 25:4, 25:6, 28:15, 57:24, 58:11
foreign [4] - 6:14, 8:10, 11:19, 15:15
formal [2] - 30:23, 31:7
formality [1] - 30:5
forth [2] - 23:13, 27:23
forward [5] - 5:1, 20:14, 24:4, 30:5, 35:6, 41:23
founded [1] - 15:17
four [3] - 32:17, 47:3, 55:5
frame [1] - 54:19
frankly [1] - 45:3
free [2] - 28:8, 28:9
French [3] - 6:14, 16:21, 17:1
Friday [1] - 62:9
front [5] - 12:6, 23:18, 24:20, 41:2, 48:5, 57:7
full [4] - 22:17, 26:8, 39:18, 39:19
fully [1] - 22:20
function [1] - 8:24
fundamental [1] - 13:19
funds [1] - 7:23
future [2] - 22:22, 39:12

G

Gaffigan [1] - 3:20
gainsay [1] - 44:4
Garrett [1] - 2:5
Geddes [1] - 2:2
general [1] - 15:19
General [1] - 7:7
generally [1] - 40:19
generate [1] - 48:11
generated [1] - 57:22
Given [1] - 51:1
given [6] - 11:4, 12:22, 24:4, 41:1, 41:2, 48:13
glad [1] - 60:22
globally [2] - 39:21, 52:5
Gms [3] - 1:8, 1:13, 1:18
Gotshal [5] - 3:12, 3:15, 5:18, 5:19, 30:8
grant [1] - 60:9
Great [1] - 57:13
Gregory [1] - 1:23
group [2] - 30:14, 31:18
guess [4] - 5:23, 31:8, 41:12, 58:11
Guidant [1] - 8:20
guys [1] - 35:13

H

hand [1] - 38:4
handful [1] - 19:17
handle [2] - 59:9, 60:2
handling [1] - 59:14
happy [7] - 23:17, 25:24, 26:4, 47:11, 58:5, 58:18, 59:6
hear [4] - 6:3, 21:24, 42:6, 54:23
heard [4] - 6:5, 24:1, 24:9, 33:24
hearing [7] - 4:5, 34:14, 34:16, 36:13, 38:24, 39:9, 51:4
heavily [1] - 44:19
held [1] - 4:5
Hello [1] - 4:17
helpful [2] - 19:23, 34:22
Henderson [2] - 2:5, 4:21
hereby [1] - 28:4
heretofore [1] - 21:17
Hershkowitz [2] - 2:13, 5:11
high [2] - 15:1, 58:24
highlighted [2] - 56:23, 62:13
highly [1] - 50:16
history [1] - 23:22
Hold [1] - 62:13
holding [7] - 6:14, 6:17, 8:18, 12:25, 13:15, 15:11, 17:5
holds [1] - 6:21
Honor [49] - 4:9, 4:15, 4:20, 4:24, 4:25, 5:17, 6:8, 9:4, 12:19, 16:2, 17:11, 20:10, 21:25, 22:2, 25:8, 28:11, 29:20, 30:2, 31:16, 31:21, 33:1, 39:5, 39:17, 40:17, 42:5, 44:11, 45:25, 47:7, 47:11, 47:16, 47:24, 48:1, 48:21, 48:24, 49:1, 49:19, 50:11, 51:23, 52:11, 54:14, 56:14, 56:15, 57:9, 60:6, 61:1, 61:2, 62:11
Honor's [1] - 10:10
Honorable [1] - 1:23
hope [1] - 48:9
hopefully [3] - 37:16, 43:22, 61:7
host [1] - 50:11
hours [3] - 16:5, 17:7, 18:23
house [6] - 2:16, 3:6, 35:9, 35:10, 35:11, 59:5
hundreds [3] - 16:5, 17:6, 18:23

I

idea [4] - 38:10, 46:8, 52:9, 52:10
identified [2] - 13:23, 21:12
identifies [1] - 13:21
identifying [1] - 62:15
Illinois [1] - 3:3
imagine [1] - 50:12
immediately [1] - 35:9
impediment [2] - 30:13, 31:8
implicate [2] - 54:2, 61:19
implicated [2] - 9:20, 53:25
implication [1] - 61:19
implicitly [1] - 29:22
impliedly [2] - 29:22, 61:19
imply [1] - 44:11
important [6] - 13:11, 13:12, 24:4, 24:6, 25:7, 50:17
imposes [1] - 15:13
impression [1] - 44:20
in-house [2] - 2:16, 3:6
in-house [3] - 35:9, 35:11, 59:5
Inc [15] - 1:4, 1:7, 1:9, 1:12, 1:14, 1:17, 2:8, 2:15, 2:18, 3:5, 3:8, 3:17, 13:16, 18:3, 21:17
incentive [1] - 25:3
inclination [1] - 6:4
inclined [1] - 62:21
include [1] - 60:23
included [1] - 58:1
inconsistent [1] - 50:13
incorrect [1] - 25:18
increments [1] - 41:6
independent [1] - 31:5
independently [1] - 8:25
indicate [3] - 6:16, 13:20, 18:12
indicated [4] - 10:16, 17:17, 19:23, 31:22
indicates [1] - 10:23
indicating [2] - 7:21, 17:14
indication [1] - 14:20
individual [2] - 15:14, 39:9
induce [1] - 18:25
industry [3] - 10:25, 17:17, 17:19
inequitable [1] - 48:8
informal [1] - 4:10
information [4] - 20:17, 33:12, 57:15, 57:25
infrastructure [1] - 18:7
infringe [1] - 38:20
infringement [5] - 7:4, 19:17, 24:7, 41:20, 46:15
infringer [1] - 15:6
infringers [1] - 14:14
infringing [1] - 14:11
Ingersoll [1] - 2:10
initial [3] - 13:6, 22:7, 32:11
inside [1] - 4:12
instance [3] - 18:6, 41:8, 58:6
insufficient [1] - 7:1
insure [1] - 52:19
intellectual [1] - 5:14
intend [1] - 54:13
intends [1] - 61:19
interactions [1] - 33:3
interest [1] - 30:1
interesting [1] - 24:12
internal [1] - 17:3
intervals [2] - 61:20, 61:23
interview [1] - 32:17
intrinsic [1] - 51:16
inventors [1] - 48:4
investigation [2] - 10:20, 41:23
investment [1] - 6:20
invited [1] - 56:17
involve [2] - 15:3, 46:6
involved [3] - 16:11, 58:11, 62:22
involving [2] - 8:19, 33:4
Israel [1] - 3:3
issue [24] - 10:17, 11:20, 13:2, 13:16, 21:15, 22:22, 23:1, 23:2, 23:4, 25:8, 25:22, 26:20, 27:5, 31:11, 31:13, 39:10, 41:8, 50:4, 52:12, 53:13, 54:8, 57:20, 62:18, 62:19
issued [2] - 22:6, 22:24
issues [15] - 22:18, 23:13, 26:10, 27:9, 27:18, 32:15, 35:25, 37:20, 37:24, 39:20, 50:7, 52:25, 53:1, 53:12, 62:15
itself [3] - 17:22, 17:23, 18:1

J

Jessica [2] - 3:15, 5:19
job [1] - 24:3
John [5] - 2:16, 2:20, 3:10, 5:6, 5:13
join [1] - 20:23
joined [1] - 49:4
joining [2] - 31:14, 49:2
joint [17] - 5:22, 27:20, 29:25, 32:11, 34:6, 34:8, 34:24, 35:4, 35:5, 38:2, 41:3, 42:9, 43:25, 45:18, 60:7, 62:1, 62:14
Josy [1] - 2:10
judge [8] - 52:19, 59:11, 59:13, 59:15, 60:2, 60:24
Judge [11] - 21:17, 22:3, 22:6, 22:12, 22:15, 22:19, 23:18, 24:13, 25:25, 29:9, 58:16
judges [4] - 11:24, 24:21, 59:9, 59:12

judgment [3] - 14:18, 22:8, 61:17
July [4] - 49:3, 49:4, 49:8, 56:13
jump [1] - 57:6
June [1] - 48:22
jurisdiction [31] - 5:25, 6:24, 7:1, 7:7, 7:11, 8:11, 8:18, 8:22, 9:8, 9:10, 9:12, 9:14, 9:22, 9:24, 9:25, 10:4, 10:8, 10:12, 11:12, 12:9, 15:9, 15:10, 15:14, 15:15, 15:16, 15:19, 15:20, 16:8, 19:9, 20:13, 20:18
jurisdictional [2] - 11:9, 11:16
jury [2] - 60:4, 60:5
justification [1] - 10:21
justify [3] - 20:14, 20:20, 45:9

K

keep [2] - 30:14, 59:16
Kenyon [4] - 2:12, 5:11
kind [2] - 34:7, 43:2
kindly [1] - 12:22
knock [1] - 25:4
knowing [5] - 17:4, 31:23, 41:7, 41:17, 41:19
known [3] - 20:20, 36:16, 41:17
knows [3] - 9:5, 10:24, 16:1, 18:4, 18:9, 31:25, 52:13, 53:1

L

labeled [1] - 25:11
laches [1] - 33:5
lack [1] - 5:25
land [2] - 26:12, 53:1
language [1] - 51:11
Lau [1] - 35:22
large [4] - 18:7, 18:8, 58:12, 61:12
largest [1] - 31:17
last [6] - 34:2, 36:3, 36:19, 37:2, 38:22, 45:24
late [1] - 32:7
Latham [3] - 2:22, 3:2, 5:6
Lau [1] - 38:12
law [8] - 16:9, 17:1, 22:22, 23:2, 25:20, 26:12, 26:20, 36:21
lawsuit [3] - 19:16, 19:21, 46:14
lawyer [5] - 35:9, 35:10, 35:11, 35:20, 37:9
lawyers [5] - 4:13, 24:2, 41:24, 46:3, 59:6
lay [1] - 53:1
leaning [1] - 35:12
learned [1] - 42:22
least [11] - 13:18, 13:24, 26:11, 27:7, 29:23, 32:13, 38:17, 40:5, 56:1, 60:10, 61:18
leave [4] - 4:19, 42:2, 55:9, 63:8
legal [3] - 16:25, 21:15, 35:17
legally [1] - 16:21
length [1] - 33:2
lengthy [1] - 46:7
less [2] - 15:5, 53:8
letter [2] - 61:16, 62:15
level [6] - 30:5, 30:11, 33:7, 36:13, 36:18, 42:6
license [2] - 18:14, 18:25
licensing [1] - 33:7
liens [1] - 15:3
lies [1] - 60:9
life [2] - 37:6, 37:22
light [1] - 23:23
likely [1] - 60:14
likewise [1] - 48:13
limited [1] - 50:21
limits [3] - 31:3, 33:15, 34:25
lines [1] - 41:7
links [1] - 62:20
listen [1] - 6:6
literally [2] - 16:5, 19:7
litigate [1] - 23:12
litigated [2] - 23:13, 24:8
litigation [3] - 46:17, 57:16, 57:17
live [1] - 62:25
Lip [5] - 2:5, 2:22, 3:2, 3:12, 3:15
local [1] - 61:21
locked [1] - 51:15
logical [2] - 49:12, 50:6
long-arm [2] - 6:25, 15:20
look [5] - 19:24, 27:13, 34:8, 42:25, 43:19
Look [1] - 55:19
looked [1] - 57:24
looking [4] - 5:1, 40:6, 41:3, 41:6
looks [2] - 35:11, 35:21
loophole [1] - 9:5
Lucent [14] - 1:12, 3:5, 3:7, 5:6, 5:7, 25:5, 29:2, 33:10, 33:23, 34:10, 35:7, 35:11, 43:3, 46:9

M

magistrate [4] - 59:11, 59:12, 59:15, 60:24
main [2] - 45:17, 59:10
manage [2] - 8:13, 50:21
management [5] - 7:21, 8:15, 13:22, 13:25, 19:14
Manges [2] - 3:12, 3:15
manufacture [2] - 6:18, 12:2
manufactured [1] - 13:16
manufactures [2] - 17:6, 18:13
manufacturing [1] - 13:1
March [3] - 50:24, 53:6, 62:5
market [1] - 13:11
markets [1] - 13:12
Markman [16] - 22:24, 26:13, 26:17, 27:11, 27:18, 28:6, 28:8, 28:12, 28:16, 50:24, 51:4, 51:8, 53:7, 53:9, 53:19, 61:5
marks [1] - 49:15
master [1] - 59:3
material [1] - 50:16
materials [1] - 57:15
matter [5] - 16:10, 26:4, 43:6, 43:8, 60:12
matters [9] - 10:5, 21:20, 30:1, 30:23, 57:7, 59:14, 59:18, 59:19, 60:18
Mayergoyz [2] - 3:3, 5:5
Mcdavid [1] - 63:6
mean [16] - 9:24, 14:1, 17:19, 19:13, 24:20, 26:22, 27:16, 30:25, 39:17, 42:6, 42:17, 44:11, 44:14, 50:15, 55:5, 55:24
meaning [1] - 16:7
means [2] - 16:15, 16:24
meant [1] - 36:21
meet [1] - 51:2
meeting [1] - 31:24
meetings [1] - 16:24
member [1] - 8:6
members [1] - 13:21
ment [1] - 8:13
mention [2] - 11:14, 58:17
mentioned [5] - 9:15, 12:6, 33:8, 33:25, 46:1
mentioning [1] - 12:11
met [3] - 9:23, 10:6, 11:23
might [11] - 9:25, 36:8, 44:25, 45:8, 45:25, 46:13, 46:16, 49:20, 50:12, 50:14, 52:2
mind [4] - 38:5, 38:23, 51:21, 59:15
minds [1] - 51:11
minimizing [1] - 52:19
minimum [2] - 11:24, 14:1
miss [1] - 49:17
missed [2] - 49:21, 63:4
model [1] - 52:24
month [2] - 35:8, 53:11
months [27] - 15:2, 32:1, 32:4, 32:17, 32:18, 33:13, 33:21, 34:2, 34:16, 34:18, 35:16, 36:3, 36:14, 36:19, 36:21, 36:24, 37:2, 38:21, 38:25, 39:16, 42:8, 43:15, 44:6, 45:24, 47:1, 47:3, 48:15
Moreover [1] - 46:14
Morris [1] - 3:9
most [5] - 8:12, 13:11, 13:12, 17:21, 46:3
motion [17] - 5:24, 6:7, 6:11, 7:10, 13:6, 21:1, 39:5, 39:10, 42:21, 43:17, 43:18, 44:12, 48:7, 57:3, 57:7, 59:25, 60:2
motions [4] - 41:8, 41:9, 59:21, 61:24
motive [2] - 10:14, 14:7
move [6] - 20:23, 20:25, 45:7, 45:10, 45:20, 57:13
moved [1] - 40:2
moving [4] - 13:5, 13:20, 31:7, 40:6
multinational [2] - 17:21, 19:4

N

name [2] - 18:3, 30:7
named [1] - 6:12
nature [2] - 6:20, 19:16
navigate [1] - 51:16
near [1] - 39:12
nearly [2] - 39:18, 62:9
Neave [1] - 36:17
need [17] - 19:11, 19:12, 21:19, 26:16, 33:6, 33:12, 39:14, 40:10, 41:10, 41:13, 46:24, 54:3, 55:25, 59:23, 60:10, 60:18, 61:8
needed [1] - 14:5
needs [2] - 19:20, 54:17
negotiate [1] - 46:4
negotiating [1] - 16:9
negotiations [1] - 33:7
never [2] - 33:23, 33:25
new [7] - 27:1, 27:2, 27:3, 31:18, 32:19, 35:25, 43:1
New [7] - 2:13, 2:23, 3:16, 5:19
next [8] - 11:1, 15:1, 31:13, 49:15, 49:16, 62:9
nicely [1] - 52:7
Nichols [1] - 3:9
nilly [1] - 59:25
nine [24] - 17:18, 32:1, 33:13, 33:21, 34:2, 34:16, 34:18, 35:8, 35:16, 36:3, 36:14, 36:19, 36:21, 36:24, 37:2, 38:21, 38:25, 39:16, 42:7, 43:15, 44:8, 45:24, 48:14, 49:19
nineties [1] - 18:19
Nobody [2] - 18:4,

42:3
noise [1] - 59:17
non [1] - 24:16
none [1] - 48:12
noninfringement [1] - 22:8
nonissue [1] - 20:22
nonparty [2] - 25:20, 27:1
nonprecedential [3] - 24:19, 25:9, 25:12
nonstarter [3] - 39:7, 40:15, 43:13
Normally [1] - 60:8
normally [1] - 52:17
Northern [2] - 52:23, 59:11
note [1] - 9:21
Note [1] - 4:4
notebook [1] - 12:23
noted [2] - 27:20, 52:18
Nothing [1] - 36:3
nothing [4] - 13:1, 26:15, 36:18, 37:1
notion [1] - 46:5
Notwithstanding [1] - 41:16
November [6] - 32:3, 34:12, 40:14, 40:17, 43:12, 49:8
number [1] - 31:4
numbers [5] - 4:11, 8:18, 30:16, 61:8, 62:20
numerical [1] - 31:3

O

o'clock [5] - 50:25, 61:5, 61:15, 62:6
obtain [1] - 10:12
obviously [12] - 15:11, 20:16, 25:24, 28:25, 29:4, 35:16, 36:13, 37:17, 51:14, 52:13, 54:11, 61:12
Obviously [4] - 23:11, 24:14, 43:12, 48:3
occurred [2] - 29:9, 43:1
occurrence [1] - 8:16
occurs [1] - 21:15
office [1] - 4:10
Office [1] - 48:6
Officer [1] - 17:14
officer [2] - 7:24, 8:3
officers [2] - 19:13, 19:14
Official [1] - 3:20
old [2] - 35:24, 35:25
once [1] - 19:2
One [3] - 6:12, 32:8, 38:9
one [45] - 8:3, 8:6, 9:9, 9:10, 9:11, 13:11, 15:23, 17:12, 18:15, 19:12, 21:6, 22:2, 24:21, 24:24, 29:2, 31:17, 32:6, 33:1, 33:17, 33:22, 34:5, 35:7, 35:15, 36:22, 37:9, 37:11, 38:21, 40:8, 43:25, 45:17, 45:19, 48:3, 49:20, 49:21, 50:11, 50:15, 51:23, 52:7, 52:23, 54:16, 56:3, 59:10, 60:9
ones [1] - 54:7
ongoing [1] - 33:11
ooo [1] - 4:2
open [3] - 4:5, 15:3, 41:3
operate [1] - 8:24
operates [1] - 14:3
operating [1] - 30:3
operations [1] - 13:7
opinion [4] - 50:5, 50:12, 54:1, 56:6
oppose [1] - 45:9
opposite [1] - 21:23
opposition [1] - 14:17
order [15] - 10:8, 11:9, 29:13, 30:5, 30:23, 31:7, 32:4, 50:7, 53:8, 57:22, 58:1, 58:10, 58:16, 60:24, 62:3
ordered [1] - 11:16
organization [1] - 16:25
organizational [1] - 16:25
organized [3] - 17:1, 52:4
original [2] - 51:19, 52:1
otherwise [2] - 8:24, 25:2
ought [1] - 32:2
outgunned [1] - 4:13
outlined [1] - 29:4
outside [2] - 47:5, 58:2
overall [1] - 30:14
overlap [2] - 8:8, 8:23
overseas [1] - 32:15
own [2] - 7:23, 19:4

P

page [3] - 5:24, 14:15, 17:25, 21:15, 49:16, 49:19, 51:9, 56:21, 62:19
paper [2] - 6:5, 57:21
papers [10] - 6:16, 6:23, 10:21, 13:20, 14:20, 16:3, 16:14, 18:12, 19:24, 27:25
paragraph [5] - 49:16, 51:9, 51:10, 56:21, 62:19
parent [20] - 6:14, 6:24, 7:13, 7:18, 8:4, 8:5, 8:6, 8:7, 8:14, 10:13, 10:15, 11:18, 11:19, 11:25, 12:5, 13:8, 16:15, 16:20, 19:12, 19:20
part [6] - 8:4, 35:14, 43:13, 45:15, 60:10, 61:12
participate [2] - 24:25, 25:1
particular [3] - 16:18, 44:15, 52:18
parties [22] - 23:2, 26:21, 27:11, 29:8, 29:13, 29:21, 32:10, 33:3, 33:14, 40:18, 40:25, 48:19, 49:3, 49:4, 50:21, 50:22, 52:3, 52:5, 54:17, 57:15, 59:25, 60:23
parties' [1] - 21:16
partners [1] - 36:17
party [4] - 15:5, 26:18, 27:1
pass [3] - 11:22, 48:18, 54:16
passed [2] - 49:20, 56:18
past [3] - 15:3, 35:13, 35:15
patent [50] - 7:3, 18:15, 18:17, 19:17, 22:5, 22:8, 22:11, 22:13, 26:15, 28:14, 28:17, 29:2, 29:5, 32:6, 32:19, 33:22, 33:24, 34:3, 34:5, 34:10, 34:15, 34:22, 35:7, 35:12, 35:15, 35:22, 35:23, 36:20, 38:12, 38:21, 39:6, 41:20, 42:12, 42:13, 43:20, 43:25, 44:25, 46:5, 46:15, 46:16, 46:18, 59:14, 60:9
Patent [1] - 48:6
patents [48] - 19:1, 21:4, 22:2, 28:13, 28:18, 28:19, 28:25, 31:18, 32:2, 32:4, 33:5, 33:21, 34:20, 34:23, 35:3, 35:6, 35:24, 35:25, 36:8, 36:9, 36:23, 37:8, 37:12, 37:14, 37:22, 38:9, 38:10, 38:18, 38:19, 38:22, 39:20, 40:9, 41:13, 41:24, 42:1, 43:2, 44:1, 44:17, 45:7, 45:11, 46:2, 46:6, 46:13, 60:10, 60:15, 61:8
pay [3] - 17:11, 59:3, 59:4
payment [2] - 15:1, 17:18
Payment [1] - 15:2
payments [2] - 15:2, 15:3
pending [1] - 31:25
people [22] - 13:23, 13:24, 14:10, 14:14, 16:12, 16:13, 23:25, 24:10, 24:25, 25:1, 25:5, 32:16, 34:7, 34:13, 42:17, 53:3, 54:10, 54:12, 58:11
per [2] - 59:13, 60:8
perfectly [1] - 16:4
performing [1] - 20:18
perhaps [6] - 10:14, 23:23, 25:4, 27:3, 43:5, 51:10
period [13] - 33:10, 39:18, 39:19, 43:12, 43:16, 45:11, 50:6, 53:9, 53:15, 54:11, 54:12, 55:6, 55:7
permit [1] - 44:13
permitted [2] - 41:9, 61:24
persists [1] - 10:12
personal [2] - 5:25, 6:24
perspective [6] - 23:19, 35:17, 38:20, 42:5, 45:18
persuasive [2] - 24:24, 26:21
phase [1] - 54:20
Philips [1] - 23:23
phonetic [1] - 35:23
pinning [1] - 40:11
place [2] - 39:25, 50:24
plaintiff [16] - 4:13, 7:9, 9:1, 10:4, 10:12, 10:19, 10:24, 12:4, 12:13, 19:11, 31:22, 32:2, 43:6, 44:21, 46:16, 47:10, 52:13
Plaintiff [3] - 1:5, 1:10, 1:15
plaintiffs [2] - 21:22, 39:4
plan [1] - 38:15
planning [3] - 4:25, 28:18, 38:12
players [1] - 10:25
pleadings [3] - 37:11, 40:19, 49:7
plug [1] - 9:5
plus [1] - 31:19
Pm [3] - 1:21, 4:6, 63:9
point [26] - 14:15, 15:7, 15:22, 16:18, 17:11, 20:24, 21:8, 24:1, 25:14, 28:23, 29:11, 30:21, 33:2, 33:23, 39:11, 40:2, 41:16, 42:23, 43:13, 44:5, 49:16, 56:5, 59:1, 61:13
points [2] - 14:23, 17:10
pops [1] - 48:14
portfolio [2] - 33:7, 45:1
portion [1] - 34:11
position [7] - 10:23, 12:24, 30:18, 38:14, 50:4, 52:15, 55:1
positions [5] - 6:3, 21:16, 28:4, 51:14
possibility [1] - 10:18
possible [4] - 10:1, 10:17, 15:6, 58:14
potential [3] - 14:18, 32:17, 58:25
practically [1] - 33:18
precedent [1] - 24:17
precedential [1] - 24:16
prefiling [1] - 10:20
prejudice [5] - 36:13, 36:18, 45:12, 52:20, 53:6
prejudiced [3] - 40:1, 40:4, 40:6
prejudicial [3] - 32:20, 44:15, 50:15
preliminary [1] - 19:24
premature [3] - 11:3, 29:10, 30:21

premise [1] - 50:13
prepare [2] - 34:18, 47:9
prepared [2] - 6:1, 6:3
presently [1] - 28:15
President [1] - 5:13
pressure [1] - 54:15
presumably [1] - 53:19
Pretrial [1] - 62:5
pretrial [3] - 29:23, 30:24, 62:3
pretty [2] - 11:9, 57:11
prevent [1] - 20:2
prima [2] - 7:12, 11:10
principal [1] - 45:16
principle [1] - 25:20
privilege [2] - 53:25, 54:4
problem [4] - 31:10, 45:15, 46:23, 54:21
procedure [1] - 28:17
proceed [1] - 31:6
proceeded [1] - 31:9
proceeding [3] - 22:23, 37:4, 54:5
proceedings [1] - 25:21
process [20] - 10:9, 15:13, 15:16, 20:15, 27:11, 27:15, 27:23, 29:3, 29:4, 29:19, 29:23, 30:13, 32:24, 35:8, 36:5, 36:15, 43:14, 44:6, 44:16, 53:16
produce [1] - 57:19
produced [2] - 57:17, 57:25
product [3] - 7:5, 11:19, 17:8
production [1] - 57:19
productive [1] - 38:3
productively [1] - 38:14
products [12] - 6:13, 6:18, 6:19, 12:2, 12:7, 12:14, 13:15, 18:14, 34:3, 34:4, 36:10, 41:15
promotes [1] - 17:22
prompt [1] - 10:15
promulgated [1] - 9:5
prong [2] - 9:22, 10:6
pronounce [1] - 16:23
properly [2] - 14:10, 16:7
Properties [1] - 5:14
proposal [6] - 39:3, 46:24, 46:25, 53:6, 55:4, 56:10
propose [3] - 43:4, 45:2, 53:9
proposed [6] - 40:25, 41:7, 49:3, 49:8, 51:1, 51:5
proposes [1] - 9:2
proposing [1] - 55:22
prosecution [1] - 23:21
prospect [1] - 46:1
protect [1] - 38:6
protective [4] - 57:22, 58:1, 58:10, 58:16
prove [1] - 13:3
provision [2] - 51:10, 51:18
pull [1] - 56:11
pulling [1] - 53:13
pure [3] - 22:22, 23:1, 26:19
purely [1] - 17:5
purpose [1] - 29:13
purposes [4] - 27:10, 30:12, 30:19, 30:24
pursuant [1] - 58:1
pushing [1] - 12:5
Put [1] - 44:6
put [17] - 6:5, 7:20, 11:19, 23:13, 24:3, 29:12, 33:14, 35:1, 38:1, 38:6, 42:19, 43:9, 43:20, 44:5, 48:5, 50:23, 60:10
puts [2] - 52:15, 52:18
putting [1] - 12:1

Q

queue [1] - 57:7
quickly [1] - 6:11
quite [4] - 5:22, 16:17, 41:14, 52:14
quote [2] - 14:22, 35:1
quotient [1] - 31:6

R

Rainey [64] - 2:5, 4:22, 4:24, 12:22, 21:25, 25:8, 25:17, 25:19, 26:10, 27:4, 27:7, 28:11, 29:12, 29:16, 29:20, 30:18, 31:16, 36:16, 39:1, 39:2, 39:8, 39:16, 40:17, 41:12, 43:1, 44:3, 44:10, 45:25, 46:21, 46:25, 47:3, 47:7, 47:16, 47:20, 47:24, 48:13, 48:21, 48:24, 49:6, 49:12, 49:19, 49:22, 52:11, 53:6, 53:19, 53:22, 54:14, 55:2, 55:4, 55:20, 55:23, 56:5, 56:8, 56:9, 56:14, 57:18, 58:6, 58:8, 58:17, 58:21, 60:6, 61:1, 62:11
raise [6] - 26:7, 27:24, 27:25, 33:17, 56:18
raised [1] - 59:19
rather [2] - 16:19, 60:2
reach [1] - 22:14
real [1] - 59:6
really [24] - 7:6, 7:8, 7:9, 9:5, 9:18, 9:19, 10:5, 10:6, 10:11, 10:19, 11:22, 13:3, 17:12, 18:10, 18:22, 19:11, 30:3, 32:19, 34:18, 36:5, 40:10, 41:5, 45:10, 48:14
reason [3] - 23:11, 30:19, 42:15
reasonable [1] - 46:20
reasonably [1] - 55:7
reasons [6] - 9:15, 11:17, 12:5, 32:8, 50:11, 54:24
recent [1] - 11:14
reconsider [2] - 20:25, 21:2
record [7] - 11:5, 13:14, 14:2, 14:13, 51:16, 51:17, 53:2
redo [1] - 37:5
Redwood [1] - 3:13
reference [2] - 31:2, 48:5
references [1] - 51:15
referral [1] - 60:23
reflects [2] - 35:5, 45:23
regime [4] - 45:19, 45:23, 51:1
regrets [1] - 5:2
regular [1] - 10:7
Reines [24] - 3:12, 5:18, 30:2, 30:8, 30:11, 30:25, 33:1, 33:20, 50:3, 50:10, 51:23, 52:1, 52:9, 52:12, 53:11, 54:7, 54:22, 55:11, 55:14, 55:18, 55:24, 61:2, 62:24
related [1] - 38:19
relationship [6] - 7:13, 14:4, 14:6, 15:24, 15:25, 18:11
relatively [1] - 13:18
reliance [1] - 53:14
rely [3] - 49:23, 53:15, 56:6
remanded [1] - 22:12
remedies [1] - 48:20
remedy [1] - 12:13
render [1] - 37:4
reopen [1] - 54:18
reply [5] - 10:22, 12:23, 13:6, 15:23, 17:9, 17:13
report [20] - 5:23, 14:23, 14:25, 17:16, 27:21, 28:24, 29:25, 32:12, 34:6, 34:8, 34:24, 35:5, 38:3, 41:3, 42:10, 43:25, 45:19, 45:22, 62:1
Reporter [1] - 3:20
Reporters [1] - 4:4
request [5] - 11:7, 11:8, 54:18, 60:7, 60:12
requests [3] - 32:10, 32:11, 44:22
require [4] - 7:2, 7:4, 7:7, 7:18
required [2] - 9:22, 10:20
requirements [1] - 6:25
requires [2] - 41:22, 52:18
resist [3] - 26:6, 44:10, 54:24
resolution [1] - 39:21
resolve [2] - 39:19, 41:10
respect [5] - 13:1, 13:2, 13:17, 39:20, 57:20
respects [2] - 24:17, 36:12
respond [8] - 4:8, 11:2, 11:3, 12:18, 28:6, 28:9, 29:10, 37:16
responding [1] - 44:17
response [2] - 7:10, 39:1
responses [2] - 39:9, 58:13
responsible [1] - 14:10
responsive [1] - 37:11
result [3] - 19:8, 52:20, 53:6
resulted [2] - 12:12, 22:8
retake [1] - 54:3
returns [1] - 7:23
reversed [1] - 22:10
rich [1] - 59:12
Richard [3] - 2:5, 4:22, 21:25
richer [1] - 53:2
risk [1] - 54:7
risks [1] - 15:1
road [3] - 28:20, 42:21, 45:21
roar [1] - 59:17
room [2] - 60:17, 62:6
rosa [1] - 43:2
rule [8] - 9:4, 9:11, 11:4, 23:3, 41:22, 61:21
Rules [8] - 1:21, 9:2, 10:20, 15:8, 15:12, 15:17, 15:20, 46:2
ruled [3] - 22:15, 24:18
rules [4] - 9:2, 9:6, 50:14, 63:1
ruling [1] - 25:25
rulings [4] - 21:2, 22:21, 26:2, 26:4
run [1] - 59:25

S

Sa [22] - 1:7, 2:17, 7:4, 12:1, 12:25, 13:4, 13:8, 13:14, 13:19, 13:20, 13:25, 14:3, 14:19, 15:10, 16:15, 16:19, 16:21, 16:24, 17:5, 20:15, 20:17
Sa's [1] - 13:7
safe [2] - 14:1, 63:8
Sasha [2] - 3:3, 5:5
satellite [2] - 53:16, 54:5
satisfactory [1] - 39:22
satisfy [1] - 14:18
schedule [28] - 20:2, 20:8, 27:10, 27:14, 27:17, 28:8, 28:12, 33:14, 36:15, 37:18, 37:19, 40:23, 40:25, 45:13, 45:22, 46:4, 46:6, 46:7, 46:10, 47:9, 58:20, 59:19, 60:14, 62:7
schedules [1] - 34:25
scheduling [4] - 4:5,

29:13, 30:5, 60:24
scope [10] - 37:7, 37:24, 37:25, 38:16, 44:22, 44:25, 45:23, 45:24, 50:21, 61:13
search [1] - 32:16
second [5] - 9:22, 10:18, 39:3, 44:17, 44:20
secure [2] - 14:18, 15:5
see [5] - 31:13, 40:25, 44:24, 60:22, 62:12
seek [3] - 42:2, 54:24, 54:25
seeking [1] - 61:16
seem [2] - 19:19, 40:2
sell [2] - 6:18, 12:2
selling [2] - 7:5, 13:2
sells [4] - 6:13, 12:7, 17:6, 18:7
send [4] - 32:16, 34:7, 58:7, 59:2
sends [1] - 5:2
sense [10] - 26:13, 30:14, 37:6, 40:3, 41:1, 41:19, 42:1, 52:2, 58:13, 62:24
sentence [1] - 56:22
separate [4] - 7:21, 7:22, 17:23
September [1] - 62:16
serve [2] - 39:18, 44:21
served [1] - 39:23
set [11] - 27:23, 34:24, 47:22, 52:3, 61:5, 61:14, 61:22, 62:1, 62:15, 62:18, 63:2
setting [1] - 27:11
settled [2] - 11:9, 22:16
settlement [2] - 10:15, 34:1
seven [2] - 32:3, 32:18
severe [1] - 15:1
share [1] - 7:25
Shaw [5] - 2:20, 5:6, 5:9, 5:10, 5:13
sheet [1] - 57:21
shock [1] - 46:13
Shores [1] - 3:13
short [1] - 43:12
shorter [1] - 46:4
shortly [1] - 19:25
showing [4] - 9:21, 10:3, 19:11, 20:13
shown [1] - 11:13
side [4] - 4:16, 27:23, 37:9, 45:21
sides [2] - 27:17, 47:21
simple [2] - 27:4, 27:5
simply [3] - 13:13, 13:15, 14:8, 16:19, 17:2, 26:4, 26:18, 26:20, 41:18
Sinder [36] - 2:12, 5:11, 6:8, 6:10, 6:16, 7:17, 8:1, 8:3, 9:4, 11:6, 11:8, 12:25, 14:7, 14:16, 15:8, 17:9, 17:10, 20:6, 20:10, 20:12, 31:20, 31:21, 33:8, 33:20, 44:8, 44:9, 44:11, 45:3, 49:14, 56:15, 56:17, 56:20, 56:25, 57:5, 57:9, 57:11
Sinder's [3] - 13:3, 16:14, 33:2
single [5] - 19:3, 26:15, 46:5, 46:10, 57:21
sits [1] - 8:7
sitting [2] - 42:3, 42:7
situation [14] - 8:12, 8:17, 9:6, 11:25, 15:13, 15:19, 16:5, 23:4, 26:16, 26:17, 37:13, 37:15, 41:16, 42:4
situations [1] - 48:2
six [2] - 47:1, 56:21
Sixty [1] - 55:11
size [1] - 38:18
Sleet [1] - 1:23
slow [1] - 15:2
small [1] - 8:23
so-called [1] - 59:20
Societe [1] - 16:22
sold [3] - 12:14, 12:15, 13:16
someone [1] - 25:3
somewhat [3] - 35:18, 37:5, 38:3
soon [1] - 58:14
sooner [1] - 45:10
sophisticated [1] - 46:18
Sorry [1] - 12:21
sort [2] - 10:14, 14:5
sorted [1] - 45:5
sound [2] - 23:16, 23:17
sounds [2] - 29:6, 43:23
space [1] - 4:12
specific [2] - 7:1, 21:13
specifically [5] - 10:16, 38:1, 46:1, 46:3, 61:16
specification [1] - 23:22
specifics [1] - 17:22
specter [1] - 31:18
spend [1] - 34:2
spending [1] - 48:12
spent [4] - 16:3, 16:5, 17:6, 18:22
spite [1] - 59:12
spread [1] - 9:8
staff [1] - 59:2
stage [3] - 14:2, 53:17, 60:11
staged [1] - 53:17
standpoint [1] - 32:13
stare [1] - 25:19
Stargatt [2] - 2:9, 2:19
start [5] - 4:12, 5:4, 30:16, 32:24, 44:1
started [2] - 31:19, 33:8
state [9] - 9:9, 9:10, 9:11, 9:16, 11:4, 13:13, 15:12, 15:14, 61:19
statement [2] - 6:2, 14:19
statements [2] - 7:22, 31:1
States [11] - 1:1, 6:17, 9:19, 10:7, 12:14, 13:7, 17:25, 19:6, 19:8, 19:19, 32:14
status [19] - 5:22, 27:20, 28:24, 29:25, 32:12, 34:6, 34:8, 34:24, 35:4, 35:5, 38:2, 38:11, 41:3, 42:10, 43:25, 45:19, 45:22, 52:4, 62:1
statute [2] - 6:25, 15:20
statutory [1] - 23:3
steps [1] - 7:5
Steve [2] - 5:5, 43:20
Steven [2] - 2:3, 2:22
still [4] - 28:16, 59:14, 60:24, 61:23
stipulated [4] - 22:8, 47:9, 59:24, 62:7
stipulation [1] - 59:22
stipulations [1] - 59:23
strategic [1] - 50:17
stream [3] - 11:18, 11:20, 12:1
strikes [1] - 58:24
structure [2] - 16:25, 17:3
structured [1] - 30:25
Stuart [2] - 2:12, 5:11
stuck [2] - 25:2, 25:6
studying [1] - 45:4
stuff [1] - 58:6
sub [2] - 8:8, 43:2
subject [5] - 8:11, 9:23, 10:4, 16:8, 20:18
submission [3] - 51:12, 51:13, 62:14
submissions [1] - 15:23
submit [1] - 41:14
subsequent [3] - 25:13, 25:25, 26:14
subsidiaries [2] - 6:21, 19:15
subsidiary [8] - 7:14, 7:20, 8:4, 8:10, 8:14, 14:3, 18:13, 19:3
substantial [1] - 45:11
suddenly [1] - 48:14
sue [4] - 10:22, 18:23, 25:3, 32:24
sued [2] - 18:18, 33:20
sufficient [12] - 8:9, 8:22, 9:8, 9:9, 9:19, 10:2, 10:6, 10:19, 18:11, 19:8, 20:13, 50:19
suggest [2] - 40:9, 54:19
suggests [1] - 20:17
suing [2] - 16:6, 16:7
suit [6] - 14:13, 19:1, 33:5, 35:15, 39:17, 60:11
summarize [1] - 6:10
summary [2] - 41:8, 61:16
superfluous [1] - 37:5
support [7] - 6:23, 17:2, 17:13, 28:1, 28:2, 28:3, 44:2
Supreme [6] - 10:15, 11:21, 12:11, 22:24, 26:17, 26:23
surprise [1] - 46:13
survive [1] - 10:8
suspect [2] - 10:19, 21:8
System [1] - 24:2
systematic [3] - 7:8, 9:13, 10:7
Systems [10] - 1:17, 3:17, 21:17, 22:4, 25:4, 25:6, 28:15, 57:24, 57:25, 58:11

T

tabbed [1] - 52:7
table [7] - 38:2, 39:3, 42:19, 43:9, 43:10, 44:6, 44:7
tag [1] - 55:15
tailor [1] - 38:3
talks [1] - 14:7
target [1] - 40:6
tax [1] - 7:22
Taylor [2] - 2:9, 2:19
team [6] - 7:21, 8:4, 8:7, 8:15, 13:22, 19:14
teams [1] - 8:13
Technologies [3] - 1:4, 1:9, 1:12, 1:14, 2:8, 3:5, 3:8, 5:7
Telcordia [41] - 1:4, 1:9, 1:14, 2:7, 4:21, 6:23, 15:25, 16:1, 16:12, 17:3, 18:15, 19:20, 21:24, 22:1, 22:9, 22:15, 23:7, 23:12, 23:20, 24:7, 25:3, 27:24, 29:7, 33:3, 33:9, 33:21, 34:7, 34:13, 35:2, 38:17, 39:17, 40:8, 41:13, 41:14, 42:11, 42:19, 43:3, 50:8, 57:1, 57:19, 57:25
Telcordia's [1] - 12:24
telecom [1] - 17:17
telecommunications [1] - 10:25
teleconference [3] - 60:2, 61:16, 62:16
telephone [1] - 63:7
ten [1] - 45:6
tension [1] - 26:25
term [1] - 22:13
terms [16] - 17:18, 19:16, 22:19, 23:18, 24:6, 28:2, 29:1, 29:8, 33:18, 34:22, 34:23, 38:3, 38:18, 54:25, 55:4
test [3] - 9:22, 11:22, 11:24
tests [1] - 11:22
themselves [1] - 59:7
theory [9] - 7:11, 7:16, 7:18, 9:1, 11:18, 25:24, 26:3, 27:2
thereafter [3] - 35:9, 53:10, 53:12

therefore [1] - 59:22
therein [1] - 60:9
They've [2] - 18:24, 36:1
they've [5] - 42:15, 43:23, 44:4, 45:4
thinking [3] - 35:21, 46:25, 50:3
thinly [1] - 9:9
Third [1] - 23:3
third [1] - 44:17
thoughts [1] - 51:22
three [7] - 17:20, 21:15, 22:5, 35:24, 38:19, 38:22, 46:10
Thursday [1] - 1:21
timetable [1] - 32:21
timing [1] - 54:25
today [9] - 4:18, 19:25, 20:3, 33:8, 39:14, 44:8, 47:23, 60:17, 62:8
together [5] - 33:14, 33:21, 33:25, 38:15, 45:18
tooth [1] - 40:21
towards [1] - 35:12
travels [1] - 63:8
trial [9] - 22:17, 30:1, 30:21, 37:25, 41:4, 52:19, 53:2, 60:8, 61:22
trials [1] - 60:5
tried [3] - 16:23, 18:25, 51:6
tripled [1] - 38:18
tripling [1] - 44:1
troublesome [1] - 35:18
true [5] - 4:18, 14:21, 17:3, 17:21, 50:16
try [5] - 37:17, 38:14, 39:19, 58:5, 60:18
trying [11] - 7:18, 10:12, 16:6, 17:7, 26:23, 34:24, 35:1, 36:15, 38:3, 38:6
Tunnell [1] - 3:9
two [24] - 5:24, 6:11, 8:2, 11:17, 11:22, 16:22, 21:4, 21:7, 33:21, 36:22, 38:9, 38:10, 42:10, 45:6, 46:6, 48:2, 51:19, 52:1, 56:2, 60:8, 60:9, 60:12, 60:18, 60:20
Two [1] - 21:6
type [2] - 27:24, 28:6

U

ulterior [1] - 10:14
ultimate [1] - 6:13
ultimately [1] - 50:14
unawares [1] - 6:2
uncommon [1] - 46:15
under [8] - 7:11, 9:22, 10:20, 15:19, 15:20, 16:25, 19:1, 62:25
underscores [1] - 12:4
understood [1] - 15:8
unexpectedly [1] - 5:1
unfortunately [1] - 40:23
uniform [1] - 26:24
uniformity [1] - 22:25
unique [1] - 26:16
United [11] - 1:1, 6:17, 9:19, 10:7, 12:14, 13:7, 17:25, 19:6, 19:8, 19:18, 32:14
unless [2] - 11:23, 61:25
unlike [1] - 59:11
up [22] - 11:15, 19:14, 22:9, 23:15, 23:21, 24:20, 26:23, 27:11, 29:23, 33:18, 34:2, 35:21, 37:15, 38:10, 38:15, 39:2, 41:10, 48:14, 51:22, 57:7, 60:1, 63:2
upper [1] - 13:24
Usa [16] - 1:7, 2:15, 2:18, 7:20, 12:8, 12:16, 13:16, 14:4, 14:17, 14:25, 17:12, 17:14, 18:1, 18:2, 18:3, 19:18, 20:16
Usa's [1] - 5:24
Usdc [1] - 1:23

V

value [2] - 17:15, 31:6
variety [1] - 32:14
various [1] - 6:21
versa [1] - 8:15
vetted [1] - 22:20
vexatious [1] - 59:2
vice [1] - 8:15
Vice [1] - 5:13
vice-versa [1] - 8:15
view [11] - 8:9, 20:5, 21:19, 23:14, 26:22, 31:14, 42:20, 44:3, 46:9, 50:5
vigilant [1] - 10:17
virtually [1] - 8:10
virtue [1] - 31:4
vs [1] - 19:17

W

wait [1] - 58:13
waive [4] - 52:16, 53:25, 54:10
waiver [1] - 54:4
wants [5] - 27:24, 29:7, 32:2, 44:8, 44:21
Washington [1] - 2:6
Watkins [3] - 2:22, 3:2, 5:6
ways [3] - 48:16, 48:18, 52:23
website [9] - 13:4, 13:8, 13:21, 17:24, 19:2, 19:3, 19:4, 19:6, 19:7
week [4] - 35:19, 38:17, 38:22, 45:20
weeks [8] - 45:6, 55:5, 56:2, 60:8, 60:9, 60:12, 60:18, 60:21
Well [5] - 3:12, 3:15, 5:18, 5:19, 30:8
whereas [1] - 24:24
whichever [1] - 20:1
whole [5] - 9:7, 9:13, 9:20, 32:19, 36:4
willfulness [10] - 50:5, 50:12, 50:19, 50:22, 52:12, 52:14, 53:12, 54:8, 54:9, 54:20
willing [2] - 6:5, 16:4
willy [1] - 59:25
willy-nilly [1] - 59:25
Wilmington [1] - 1:20
window [2] - 47:5, 51:6
wise [1] - 59:16
wish [2] - 50:22, 63:8
witnesses [3] - 32:17, 54:8, 54:9
word [4] - 13:3, 16:22, 58:23, 59:16
words [3] - 9:17, 16:22, 32:5
work-up [1] - 37:15
world [2] - 13:11, 13:12
worldwide [1] - 13:9
worth [1] - 58:23
wrote [2] - 51:11

Y

year [4] - 17:16, 31:19, 36:19, 50:20
years [10] - 17:20, 18:12, 19:1, 31:24, 33:12, 34:17, 35:24, 41:18
yellow [1] - 49:15
York [7] - 2:13, 2:23, 3:16, 5:19
Young [2] - 2:9, 2:19