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Case IPR2014-00746
U.S. Patent No. 5,563,883

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARRIS GROUP, INC.

Petitioner

v.

C-CATION TECHNOLOGIES, LLC

Patent Owner

CASE IPR2014-00746
Patent 5,563,883

CONFERENCE CALL

Thursday, June 26, 2014

3:00 p.m.

Reported by:

ROBIN NUNEZ

JOB NO. 81630

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2 THE COURT: So I think I heard from
3 the point in which you were citing the
4 trial practice guide.

5 MR. POPOVSKI: Yes, ma'am, so we've
6 identified some evidence here that would,
7 we believe, show that one can reasonably
8 believe that Arris had at the very least
9 the opportunity and the contractual
10 obligation to control the portion of that
11 previous litigation that relates to the use
12 of Arris's products by Comcast. Two pieces,
13 first, Arris has stated terms and
14 conditions of sale that it publishes on its
15 website. Those terms and conditions show
16 that Arris, at the time of the filing of
17 the complaint and through the entire
18 damages period, is contractually obligated
19 to indemnify customers only where, and this
20 is a critical portion of this, "customer
21 gives Arris reasonable assistance and sole
22 control and defense of all negotiations
23 towards settlement or compromise."

24 We believe that type of document is
25 very critical, and again, according to the

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2 guide, is common, as evidentiary support
3 for a claim of privity.

4 Second, from Arris's SEC
5 disclosures, we know that Comcast was in
6 fact indemnified by Arris, as those
7 disclosures state. Arris agreed to pay
8 Comcast a settlement indemnification claim
9 related to that lawsuit, related to the
10 claims being asserted on Comcast's use of
11 Arris's products.

12 THE COURT: I'm sorry, counsel. Can
13 you repeat that? They agreed to pay what?

14 MR. POPOVSKI: The SEC disclosure
15 states that Arris agreed to pay Comcast to
16 settle indemnification claims related to
17 the Comcast use of Arris products in the
18 Texas litigation. The quote is "Arris
19 agreed to pay Comcast settled
20 indemnification claims."

21 THE COURT: And you said your
22 standard terms and conditions found in the
23 website offers the terms that Arris would
24 indemnify?

25 MR. POPOVSKI: Under paragraph 22 of

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2 the document that's published on the
3 website, it says Arris will indemnify and
4 hold customer harmless against damages,
5 liabilities, cost, and then it goes on.
6 And then as a condition of that, it says
7 that it requires that, quote, "customer
8 give Arris reasonable assistance in and
9 sole control of the defense and all
10 negotiations for its settlement or
11 compromise."

12 That's a precondition to
13 indemnification.

14 THE COURT: Okay.

15 MR. POPOVSKI: So we wanted to
16 confirm our understanding of the exact
17 nature of the relationship between Comcast
18 and Arris at the time, so we did. We served
19 upon them a very, very narrow document
20 request, a single document request that
21 requests one thing, and one thing only, we
22 are seeking the agreements between Arris
23 and Comcast, that include provisions to
24 asserting Arris's ability to control the
25 defense of claims asserted against it,

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