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BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARUBA NETWORKS, INC., HEWLETT PACKARD ENTERPRISE
COMPANY, AND HP INC., AND ARRIS GROUP, INC.
Petitioner

v.

MOBILE TELECOMMUNICATIONS TECHNOLOGIES, LLC
Patent Owner

Case IPR2016-00768
Patent 5,659,891

**PATENT OWNER'S CORRECTED RESPONSE TO DECISION TO
INITIATE TRIAL FOR *INTER PARTES* REVIEW**

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CASES

<i>Advanced Display Sys. Inc. v. Kent State Univ.</i> , 212 F.3d 1272 (Fed. Cir. 2000)	40
<i>Ex parte Papst-Motoren</i> , 1 USPQ2d 1655 (Bd. Pat. App. & Inter. 1986)	7
<i>In re Morris</i> , 127 F.3d 1048, 44 USPQ2d 1023 (Fed. Cir. 1997)	7
<i>In re Nuvasive, Inc.</i> , No. 15-1670 (Fed. Cir. December 7, 2016)	63
<i>In re Royka</i> , 490 F.2d 981 (CCPA 1974)	60
<i>Net MoneyIN, Inc. v. VeriSign, Inc.</i> , 545 F.3d 1359 (Fed. Cir. 2008).....	40
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005)	passim
<i>Pitney Bowes, Inc. v. Hewlett-Packard Co.</i> , 182 F.3d 1298 (Fed. Cir. 1999).....	8
<i>Vitrionics Corp. v. Conceptoronic</i> , 90 F.3d 1576 (Fed. Cir. 1996).....	7
<i>Xerox Corp. v. 3Com Corp.</i> , 458 F.3d 1310 (Fed. Cir. 2006).....	40

OTHER AUTHORITIES

35 United States Code § 103	60
37 C.F.R. § 42.100	1
Manual of Patent Examining Procedure § 2111.01	7
Manual of Patent Examining Procedure § 2558	6

PATENT OWNER UPDATED EXHIBIT LIST

2001. Declaration of Dr. Jay P. Kesan.
2002. Application note from Silicon Labs that demonstrates the compliance of Si446x RFICs with the regulatory requirements of FCC Part 90 in the 450-470 MHz band.
2003. Tutorial from Electronic Design magazine on understanding modern digital modulation techniques.
2004. Tutorial from www.complextoreal.com on understanding frequency shift keying (FSK) and more.
2005. Declaration of Hostile Expert Paul S. Min, Ph.D., Regarding the Constructions of Certain Claim Limitations of U.S. Patent Nos. 5,659,891 and 5,809,428.
2006. Deposition of William Hays in *MTel v. Apple Inc.* (CASE NO. 2:13-cv-258-JRG-RSP) on Apr. 1, 2014.
2007. Deposition of Dr. Rade Petrovic in *MTel v. Apple Inc.* (CASE NO. 2:13-cv-258-JRG-RSP) on May 1, 2014.
2008. Deposition of Dr. Rade Petrovic in *MTel v. Leap* (CASE NO. 2:13-cv-00885-JRG-RSP) on Apr. 3, 2015.
2009. Deposition of Dr. Rade Petrovic in *MTel v. AT&T* (CASE NO. 2:14-cv-00897-RSP) on Oct 22, 2015.
2010. Exhibit 2 of Deposition of Dr. Kesan in *MTel v. Samsung* (CASE NO. 2:15-cv-00183-JRG-RSP) Sep. 4, 2015 (annotated Figure 3B from the '891 Patent).
2011. Second Declaration of Dr. Jay P. Kesan.
2012. Transcript of the deposition of Dr. Apostolos Kakaes on December 15, 2016.
2013. Transcript of the deposition of Dr. Apostolos Kakaes on December 16, 2016.

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