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ENTERPRISES, LLC; VERIZON)
SERVICES CORP., and ARRIS)
GROUP, INC.,)
)
)
Petitioner,) IPR 2016-01020
) IPR 2016-01021
-vs-)
)
TQ DELTA, LLC,)
)
Patent Owner.)

TRANSCRIPT OF PROCEEDINGS had of the
telephonic conference call of the
above-entitled matter on the 6th of July, 2017,
at the hour of 1:00 o'clock p.m. CST.

BEFORE: HONORABLE TREVOR JEFFERSON
HONORABLE KALYAN DESHPANDE
HONORABLE SALLY MEDLEY

1 APPEARANCES:
 2 HAYNES & BOONE, LLP.
 3 BY: MR. DAVID L. McCOMBS
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 5 and
 6 MR. THEODORE M. FOSTER
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 11 On behalf of the Petitioner Cisco
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 On behalf of the Patent Owner.

1 JUDGE JEFFERSON: Good afternoon. Let's
 2 start with appearances from Patent Owner
 3 counsel today.
 4 MR. McANDREWS: This is Peter McAndrews for
 5 Patent Owner Delta.
 6 MR. KARP: This is Andrew Karp from Patent
 7 Owner, along with Tom Wimbiscus and Ragendra
 8 Chiplunkar.
 9 JUDGE JEFFERSON: Thank you. And for
 10 Petitioner.
 11 MR. McCOMBS: This is David McCombs and
 12 Theo Foster for Petitioner Cisco.
 13 JUDGE JEFFERSON: Are there any other
 14 parties on the line?
 15 Which party requested the court
 16 reporter?
 17 MR. McANDREWS: Patent Owner.
 18 JUDGE JEFFERSON: Thank you, Patent Owner.
 19 For the court reporter's aid, we will try to
 20 identify ourselves before speaking.
 21 We're here today for IPRs
 22 2016-1020 and 2016-1021.
 23 Is there someone else on the line
 24 that I did not identify -- did not identify

1 themselves?
 2 Okay. We'll get started. We
 3 received this because Patent Owner requested a
 4 call seeking routine, and in the alternative,
 5 additional discovery related to, I believe, the
 6 cross-examination of Petitioner's expert.
 7 So we'll start with the Patent
 8 Owner and hoping the Patent Owner will
 9 specifically address what type of discovery
 10 they are seeking and the basis for that
 11 discovery as succinctly as possible. Thank
 12 you.
 13 MR. McANDREWS: Yes, your Honor, this is
 14 Peter McAndrews for Patent Owner.
 15 As we briefly summarized in the
 16 email, Petitioner's expert, Dr. Tellado,
 17 prepared a MATLAB program to simulate the
 18 purported operation of the primary prior art
 19 reference. We'll call it Shively, prior art
 20 reference.
 21 He performed two simulations.
 22 One was for an 18,000-foot DSL line. The
 23 second simulation was for a 12,000-foot DSL
 24 line.

1 The MATLAB script that he had
 2 written and the results for the 12,000-foot
 3 line were provided to the Patent Owner, along
 4 with the Petitioner's reply declaration.
 5 The MATLAB script and the results
 6 for the 18,000-foot line, however, were not
 7 provided.
 8 When asked during
 9 cross-examination --
 10 JUDGE JEFFERSON: Okay. Just to clarify,
 11 this is cross -- you discovered the 18,000-foot
 12 line simulations from a deposition of Dr.
 13 Tellado --
 14 MR. McANDREWS: I'm sorry. I'm sorry. So
 15 the 12,000 -- the MATLAB script and the results
 16 for the 12,000-foot line had been provided with
 17 the reply declaration.
 18 On cross-examination, however, we
 19 learned that he had performed -- had written a
 20 MATLAB script and performed what he described
 21 as a preliminary simulation for an 18,000-foot
 22 line; however, on cross-examination, he was
 23 unable to remember certain details of that
 24 simulation.

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1 And the reason why we believe
 2 that his memory is a bit foggy on that
 3 simulation is because that simulation would, in
 4 fact, support Patent Owner's expert's opinion
 5 about the 18,000-foot line.
 6 Dr. Tellado was unable to recall
 7 the extent to which he had maintained records
 8 of that simulation.
 9 He was unable to recall the
 10 extent to which records were kept initially.
 11 He was unable to recall whether
 12 that script and the results -- and the results
 13 will typically be -- generate an array of
 14 numbers and then some graphs would be the
 15 result of the MATLAB simulation.
 16 He wasn't able to recall whether
 17 those were shared with anyone, including
 18 Petitioner's counsel.
 19 The reason why Patent Owner
 20 believes that this routine discovery is -- as a
 21 starting point, as I mentioned, we believe that
 22 script and the results would be contrary to
 23 positions taken by Petitioner and their expert.
 24 Additionally, Dr. Tellado

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1 testified in his reply declaration that it is
 2 only a line simulation using a script like -- a
 3 simulation like his MATLAB script that will
 4 provide an accurate and useful estimation of
 5 the behavior of the 18,000-foot cell line.
 6 And therefore we believe that it is routine
 7 discovery.
 8 We also believe in the
 9 alternative, it would satisfy the Interest of
 10 Justice standard for additional discovery.
 11 JUDGE JEFFERSON: Thank you. One
 12 clarifying question. So the 18,000-foot line
 13 issue was uncovered during cross-examination,
 14 correct?
 15 MR. McANDREWS: Yes, your Honor. And, in
 16 fact -- I'm sorry.
 17 JUDGE JEFFERSON: No, go ahead. I'll let
 18 you finish.
 19 MR. McANDREWS: I'm sorry. I was just
 20 going to say, and when it came up, you know,
 21 the witness was asked questions about where the
 22 records were, and during the deposition, a
 23 request was made of Petitioner's counsel to
 24 provide a copy. We followed up with

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1 correspondence. And Petitioner's counsel has
 2 so far refused to provide any record or to, in
 3 fact, indicate whether or not records still
 4 exist.
 5 JUDGE JEFFERSON: Understood. That was
 6 going to be my next question. Was there some
 7 meeting or conferring between the counsel with
 8 respect to providing those records at the time?
 9 Were there any representations made by counsel
 10 that you recall?
 11 MR. McANDREWS: Yes. So during the
 12 deposition, Petitioner's counsel refused to
 13 confirm that those records will be provided and
 14 denied that they were -- that those records
 15 were in any event discoverable under any rule
 16 of the Board.
 17 Subsequently, there was
 18 correspondence on the topic, and Petitioner
 19 maintained that same position.
 20 JUDGE JEFFERSON: Okay.
 21 Secondly, is it your position that
 22 Dr. Tellado's reply declaration relied on the
 23 18,000-foot line simulation as part of its
 24 analysis?

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1 MR. McANDREWS: Yes, yes. It's both -- I'm
 2 sorry. Yes, so it's both his reply
 3 testimony -- so the reason why the 12,000-foot
 4 line comes up is Patent Owner's expert had
 5 provided testimony about the behavior of a
 6 Shively reference on an 18,000-foot line,
 7 because an 18,000-foot line or longer is
 8 referenced as the problem that Shively is
 9 attempting to solve.
 10 Petitioner came back and said two
 11 things. One, they said that why not do a
 12 12,000-foot loop, so they took the 12,000-foot
 13 loop to task. But at the same time, they take
 14 the position in their reply, and also their
 15 expert in the reply declaration takes the
 16 position, that Patent Owner's expert's analysis
 17 is flawed, and they use some other superlatives
 18 to describe how wrong it is, in fact, the
 19 Patent Owner's simulation -- that the Patent
 20 Owner's analysis of the 18,000-foot line.
 21 We believe that the 18,000-foot
 22 simulation performed by Dr. Tellado will be
 23 very much in line with the conclusions of Dr.
 24 Short. However -- well, let me add one other

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1 thing. And this is actually something the
2 Petitioner has raised with us.
3 So the MATLAB script was provided
4 to us. And, of course, we can take that script
5 and plug in the right numbers ourselves. Have
6 our own expert plug in the numbers and run that
7 18,000-foot simulation, and we would get the
8 results that we believe -- you know, and we
9 have done it by the way, and we've gotten
10 results that show that, in fact, Dr. Short's
11 analysis was correct, and, in fact, the prior
12 art doesn't have this problem that Petitioner
13 claims.
14 But in any event, we don't have
15 the ability to get that into evidence now.
16 So instead what we were hoping to
17 show from discovery from Petitioner is that
18 their own expert has, in fact, confirmed our
19 expert's conclusions.
20 JUDGE JEFFERSON: Understood.
21 Let's turn to the Petitioner's
22 counsel, Mr. McCombs, I believe.
23 MR. McCOMBS: I'm going to turn this over
24 to Mr. Foster.

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1 JUDGE JEFFERSON: Mr. Foster, my first
2 question is, same to you, which is, why isn't
3 this, in your opinion, routine or additional
4 discovery? And more importantly, why -- what
5 is the basis for determining that you would not
6 provide the 18,000-foot simulation information?
7 MR. FOSTER: Thank you, Judge Jefferson.
8 This is Mr. Foster.
9 The Petitioner believes this is
10 not an appropriate discovery request first and
11 foremost because it's clear from Dr. Tellado's
12 second declaration that was filed with
13 Petitioner's reply that he did not rely on a
14 simulation of an 18,000-foot scenario in
15 expressing any of the opinions in his
16 declaration.
17 Regarding his analysis for why
18 Patent Owner's expert used a -- an analysis of
19 an 18,000-foot example, and in particular
20 Patent Owner's expert use of what was called a
21 Gaussian approximation is inappropriate.
22 Dr. Tellado sets forth in great
23 detail in paragraphs 16 to 29 of his
24 declaration why he believes that analysis by

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1 Patent Owner's expert is faulty and not
2 reliable.
3 In that analysis in his
4 declaration, he does not use or reference any
5 simulation.
6 His analysis is purely based on a
7 math and logic, for example.
8 And so we don't believe there's
9 -- and then turning to the cross-examination
10 testimony, nowhere in that did Dr. Tellado
11 state that he relied on an 18,000-foot
12 simulation to come to any of the conclusions
13 that he reached in this case, either expressed
14 in his declaration or otherwise.
15 And so because Dr. Tellado's not
16 been shown to rely on what he termed a quick
17 estimate that he ran, we don't believe that
18 there's any need for discovery into that.
19 And then picking up on the second
20 point that Patent Owner --
21 JUDGE JEFFERSON: Before we move on, let me
22 ask some clarifying questions.
23 When was the MATLAB simulation of
24 the 12,000-foot line provided to Patent Owner's

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1 counsel? Was it part of the reply declaration?
2 I'm confused.
3 You're making it sound like there
4 is no simulation basis at all, yet clearly some
5 information has been exchanged between the
6 parties.
7 MR. FOSTER: Yes, Judge. Let me clarify
8 that.
9 With Petitioner's reply, Dr.
10 Tellado did provide a simulation for a
11 12,000-foot scenario.
12 The source code for that
13 simulation was provided in Exhibit 1034 to
14 Patent Owner's counsel.
15 And the graph resulting from
16 running Exhibit 1034 was included in Dr.
17 Tellado's second declaration, which was Exhibit
18 1026.
19 JUDGE JEFFERSON: So the declaration relies
20 on one of these MATLAB simulations?
21 MR. FOSTER: Yes.
22 JUDGE JEFFERSON: And during the
23 cross-examination, there was some discussion on
24 the 18,000-foot simulation. Clearly the

1 parties are differing. Although I would
2 implore you to close the gap yourselves, you're
3 basically saying that you don't think he was --
4 it was brought up in the context that would
5 indicate that he's relied on it or used it to
6 reach any conclusions that he testified to?

7 MR. FOSTER: He relied on the 12,000-foot
8 example where source code was provided.

9 JUDGE JEFFERSON: Specifically the 18,000
10 is what I'm talking about.

11 The 18,000-foot was -- questions
12 arose about it during the deposition, the
13 cross-examination, and it's your position that
14 that doesn't amount to a -- any reliance on his
15 part for the past testimony or the testimony he
16 gave at the deposition, right?

17 MR. FOSTER: Correct. His declaration does
18 not discuss any simulation of an 18,000-foot --

19 JUDGE JEFFERSON: And your position is that
20 his deposition does not discuss the 18,000-foot
21 example in a way that -- or scenario in a way
22 that shows that he's relied on it to reach his
23 opinion?

24 MR. FOSTER: That's correct. He did not

1 forward, because I can tell you, at least on
2 the first pass, there does seem to be
3 some -- an open factual issue, which, I think,
4 we might need to resolve before we can move
5 forward.

6 So, yes, Respondent. And I also
7 want to hear a quick discussion about
8 additional discovery, Mr. McAndrews, about why
9 this should also fall under additional
10 discovery.

11 MR. McANDREWS: Yes, your Honor. Let me
12 address the two final points made in reverse
13 order.

14 The last point made was that Dr.
15 Tellado had testified to everything that he had
16 remembered about the 18,000-foot loop that he
17 called a quick estimate.

18 It became painfully clear that he
19 remembered a great deal about these simulations
20 that had been performed just a few weeks prior,
21 when we were talking about the 12,000-foot
22 loop, but remembered very little about the
23 18,000-foot loop.

24 Let me just read a very short

1 rely on that 18,000-foot simulation in his
2 declaration.

3 JUDGE JEFFERSON: Continue.

4 MR. FOSTER: And regarding his deposition
5 testimony, he provided answers to all Patent
6 Owner's questions about what he remembered with
7 what that 18,000-foot simulation had showed.
8 And there was -- there's no testimony that any
9 of what that showed was inconsistent with his
10 conclusions that Dr. Short used an
11 approximation that was appropriate.

12 JUDGE JEFFERSON: Okay. Let's turn back to
13 Patent Owner. Counsel, briefly.

14 MR. McANDREWS: Yes. Thank you, your
15 Honor.

16 JUDGE JEFFERSON: And as brief as you can.
17 I think we've honed in here. I understand we
18 have the 18,000-foot scenario simulation. It
19 was discussed without diving into the details
20 in the deposition, which I confess to not
21 having done. I've looked enough to know -- I
22 think I understand the issues as you both
23 presented them.

24 I'm trying to figure out a way

1 section of his testimony --

2 JUDGE JEFFERSON: I want to stop you there.
3 I'm going to stop you, because I mean I don't
4 think I'm going to be able to bridge the gap
5 between the parties.

6 If we need to read it, I'm sure I
7 can read it. Judge Deshpande and Judge Medley
8 and I will read it in a brief sometime soon, if
9 we get that far.

10 But I'm trying to at least
11 understand -- that's the crystalized dispute
12 here. You claim that the parties had
13 clearly -- Dr. Tellado relied on the 18,000, or
14 at least performed it, relied on it, and to the
15 extent that it's contrary, you would argue it
16 falls under routine discovery, even if not
17 contrary to positions held by Petitioner, and
18 testimony from Dr. Tellado you would argue it's
19 additional discovery given the discussion that
20 was raised in the cross-examination deposition.
21 Is that fairly accurate or something else I
22 need to --

23 MR. McANDREWS: That states it perfectly,
24 your Honor. Thank you.

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