

Conference Call with Patent Trial & Appeal Board

Docket No. IPR2024-00344/IPR2024-00498

Moderated by Honorable Michael Zecher

Monday, June 10, 2024

1:02 p.m.

Telephonic Conference Call

Washington, D.C. 20005

(866) 917-2932

Reported by: Priscilla Gibbs

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Page 2 1 A P P E A R A N C E S 2 List of Attendees: 3 W. Cook Alciati, Esquire - UMBRA 4 Gregory Gardella, Esquire - UMBRA 5 Joseph Powers, Esquire - Cisco/Petitioner 6 Patrick D. McPherson, Esquire - Cisco/Petitioner 7 Patrick C. Muldoon, Esquire - Cisco/Petitioner 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Page 4 1 acted on that yet. Let me just check with Petitioner 2 Cisco real quick to see if they oppose that. 3 Mr. Powers, do you have any opposition 4 to Mr. Alciati representing Patent Owner today? 5 MR. POWERS: We do not. 6 THE COURT: Okay. Great, we'll just 7 proceed with Mr. Alciati making the arguments on 8 behalf of Patent Owner. And before we begin, I want 9 to check with the parties to see if they've arranged 10 for a court reporter today. 11 Mr. Powers, did you guys arrange for a 12 court reporter today? 13 MR. POWERS: We have not. And we do 14 not need one, we do not think. Thank you. 15 THE COURT: Okay. And Mr. Alciati, 16 what about Patent Owner? 17 MR. ALCIATI: Yes, Your Honor. And 18 thank you for allowing me to proceed. We did retain a 19 court reporter. She's on the line. And we would, of 20 course, file the transcript as an exhibit following 21 the call. 22 THE COURT: Great. Thank you very
Page 3 1 P R O C E E D I N G S 2 THE COURT: ...00344 and IPR2024-00498. 3 Let's begin by taking a roll call to see who's online. 4 Let's start with Petitioner Cisco, please. 5 MR. MCPHERSON: Yes, your honor, this 6 is Pat McPherson from Duane Morris representing the 7 Petitioner Cisco. I have with me on the phone Joseph 8 Powers and Patrick Muldoon. Joseph Powers will be 9 making the presentation this afternoon. Thank you. 10 THE COURT: Thanks for that 11 clarification. Appreciate it. 12 From Patent Owner, UMBRA Technologies 13 Limited, who's on the call for you guys? 14 MR. GARDELLA: I am Greg Gardella, 15 representing Patent Owner, UMBRA. Also on the line is 16 Cook Alciati. And he, with the Board's permission, 17 will be making our presentation today. 18 THE COURT: Just a point of 19 clarification. Mr. Alciati's got a pro hac vice 20 motion pending. Is that correct? 21 MR. GARDELLA: Correct. 22 THE COURT: Yeah. I don't think we've	Page 5 1 much. Yes, if possible, please file the transcript as 2 an exhibit in both cases. Before you do so, please 3 share that with Mr. Powers and Petitioner, just so 4 they have an opportunity to review it before you file 5 it. But that would be helpful just to document the 6 call here. Thank you. 7 MR. ALCIATI: Yes, thanks, Your Honor. 8 THE COURT: All right. So let's turn 9 the floor over to Petitioner. Mr. Powers, you guys 10 sent us an email. It looks like it was dated Monday, 11 June 3rd, requesting additional briefing in these two 12 cases. Let's kind of separate the arguments by case. 13 So let's begin with IPR2024-00344. Can you start with 14 that one real quick and tell us what the issue is? 15 And then we can give Patent Owner a quick opportunity 16 to respond. 17 MR. POWERS: Yes, Your Honor. This is 18 Joe Powers for Petitioner Cisco. We indeed did 19 request authorization to file a reply to address claim 20 construction positions by Patent Owner in its 21 Preliminary Response that Cisco could not have 22 anticipated, specifically with respect to the term

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Page 6 1 "data beacon." We request seven pages in ten days and 2 Patent Owner did not oppose this request. 3 Good cause exists for Cisco's request. 4 The only independent claim of the 632 patent is 5 directed to "a network system for providing data 6 beacons comprising." In its POPR, Patent Owner 7 construes the term "data beacon" to mean "a signal 8 delivered via a one-way casting or one-way 9 multicasting." That can be found at the POPR at 11. 10 To support this construction, Patent 11 Owner reaches into the specification and relies on the 12 specification's description of "data beacon pulsers" 13 that are powered by technology the patent calls 14 "information slingshot." Petitioner could not have 15 anticipated this claim construction position for two 16 reasons. 17 First, with respect to the term "data 18 beacon," that term is only used in the preamble of the 19 claim, followed by the transitional term "comprising." 20 The preamble clearly recites only the intended use for 21 the claim network system. That is a network system 22 for providing data beacon. The body of the claim does	Page 8 1 So in conclusion, Your Honor, Cisco 2 submits it could not have anticipated this claim 3 construction position on "data beacon" now taken by 4 Patent Owner. And good cause exists for the requested 5 reply. 6 THE COURT: Okay. Thank you, Mr. 7 Powers. 8 Mr. Alciati, at least in the email it 9 indicated you guys don't oppose this additional 10 briefing at the preliminary stage in the 344 case. Is 11 that correct? 12 MR. ALCIATI: That is, Your Honor. 13 With the specific caveat that we believe a sur-reply 14 is appropriate and I don't believe Petitioner opposes 15 that. But Your Honor is correct. 16 THE COURT: Okay. Is it still the case 17 that you guys think you need seven pages in ten days? 18 I know you sent this request last Monday. So we've 19 had at least a week that elapsed since then. Would 20 you be amenable to a shorter time period for briefing 21 and maybe less pages, possibly five? 22 Let's start with Mr. Powers.
Page 7 1 not refer back to the term "data beacon." 2 And in this situation, the law is clear 3 that the claim body itself defines any limits on the 4 network system. And if we were to look at the claim 5 body and the limitations there, it recites a very 6 specific nodal structure for the network system. That 7 nodal system consists of read and write queues and a 8 parallel file system. 9 And then it recites only the writing 10 and reading of "first data" within that node 11 structure. Period, full stop. It does not place 12 limitations of the nature of that first data other 13 than from where it is written and read from. 14 And second, in the claim chart for the 15 632 patent that was attached to the complaint against 16 Cisco in the related litigation, the Patent Owner did 17 not ascribe the meaning it now proposes in its 18 Preliminary Response for the term "data beacon." 19 Rather, as shown in that claim chart, which is 20 Exhibit 1006 to the Petition, the Patent Owner only 21 alleged that reading and writing of data to a storage 22 volume evidence the presence of that data beacon.	Page 9 1 MR. POWERS: I think we can make that 2 work, Your Honor. 3 THE COURT: Mr. Alciati, in the 4 sur-reply, would that be amenable to you? 5 MR. ALCIATI: Yes, Your Honor. 6 THE COURT: Okay. Thank you. 7 All right. Let's move on to the 498 8 case. I don't think we had a really good idea of the 9 issues the parties wanted to address in the 10 preliminary briefing there. So let's turn the floor 11 over to Mr. Powers to explain why he thinks there's 12 good cause for this additional briefing. 13 MR. POWERS: Yes, thank you, Your 14 Honor. This is Joseph Powers. The issue is with 15 respect to two terms that were used in the claims. 16 "Access point server" being the first and "perimeter" 17 being the second. And the claim construction 18 positions that Patent Owner took in its Preliminary 19 Response and the application of those constructions 20 with respect to the Shay [ph] reference, which is the 21 primary reference. 22 So if we were to address the term

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Page 10 1 "access point server" first and maybe by way of some 2 context. Each claim is directed to a multi-perimeter 3 firewall system located in a cloud and forming a part 4 of a global virtual network, and then recites in 5 series an egress-ingress point device, a first access 6 point server, a second access point server, and an 7 endpoint device. 8 And the claims also require a first 9 perimeter firewall in communication with the first 10 access point server and a second perimeter firewall in 11 communication with the second access point server. So 12 with respect to the access point server, the Patent 13 Owner breaks it down into two components and says that 14 an access point is a device that gives another device 15 an entry point to a network. 16 And a server is a device that responds 17 to and provides services to another device on the 18 network, usually called a "client device." And then 19 it combines those two into its proposed construction 20 for access point server, which is "a device that 21 responds to other devices and provides services 22 including an entry point to a network to other	Page 12 1 to other devices. To the extent the Patent Owner is 2 asserting that the access point servers must be some 3 physical entry point to a network, we believe the 4 Patent Owner is ignoring that the network also 5 includes an ingress-egress point device that would 6 provide that functionality or that point. 7 And indeed the access point servers of 8 the claims are part of a cloud deployment of a global 9 virtual network, which certainly parallels the 10 disclosure of Shay [ph] security processing modules 11 being part of a cloud deployment. And also, even if 12 PO is correct on this point, that the security 13 processing modules do not meet a -- oh, excuse me. 14 And even if PO is correct on this point 15 that the access point server has to be some physical 16 entry point to a network, we believe Shay [ph] also 17 discloses that these modules can communicate directly 18 from the cloud with a destination device, which would 19 be located in a separate local area network as 20 disclosed in Shay [ph]. 21 And then turning to the perimeter 22 issue, the perimeter is used -- the word "perimeter"
Page 11 1 devices." 2 So first, with respect to the server 3 aspect of Patent Owner's construction, the Petition 4 associates these modules called "security processing 5 modules" of the Shay [ph] reference to the access 6 point servers. And Shay [ph] discloses that these 7 security processing modules are embodied as virtual 8 machines running on servers in the cloud. So they're 9 servers. 10 And further, Shay [ph] also discloses 11 that the security processing module can provide VPN 12 services, which include formation of tunnels. And 13 this is a parallel disclosure to the 482 patent, which 14 provides tunnels as part of a global virtual network. 15 And the things in the 482 patent that provide those 16 tunnels, those are the disclosed access point servers. 17 So the Shay [ph] reference is very much a parallel 18 description to the access point servers of the 19 482 patent. 20 And second, turning to the Patent 21 Owner's construction's requirement that the access 22 point servers must provide an entry point to a network	Page 13 1 is used in two places in the claim. There's the 2 preamble's recitation of a multiperimeter firewall 3 system. And then the body of claims all refer to 4 first and second perimeter firewalls. And Patent 5 Owner makes two points with respect to this term. 6 So first, Patent Owner asserts that 7 Shay's [ph] service processing modules -- and that's 8 not to be confused with the security processing 9 modules that I just mentioned in connection with the 10 access point servers. The patent owner asserts that 11 the service processing modules do not form multiple 12 perimeters. 13 And they also assert that Shay [ph] 14 does not disclose multiple perimeters that would be 15 associated with access point servers, respective 16 access point servers. Now Patent Owner doesn't 17 propose a specific construction for a perimeter. But 18 it appears that what they're saying is that the proper 19 interpretation of the claims requires some sort of 20 physical perimeter and not a logical or a processing 21 perimeter. 22 And we think any such interpretation

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Page 14 1 would be inconsistent with the claims, which recite, 2 again, a cloud deployment of firewalls as part of a 3 virtual network that is delineated with logical 4 perimeters through which packets pass for different 5 levels of processing. 6 But even if Patent Owner were correct 7 that the perimeter must delineate some physical 8 boundary, we think the patent owner is ignoring 9 Shay's [ph] disclosure in this regard. For example, 10 Shay [ph] discloses that its distributed firewall 11 architecture could consist of different processing 12 modules that can be in different networks or even in 13 different locations. 14 And somewhat inconsistently, I think, 15 Patent Owner appears to concede that Shay's [ph] 16 security processing module operating with one of these 17 security processing modules would create at least one 18 perimeter. But they imply that Shay's [ph] disclosure 19 is limited to allowing a given packet flow to only be 20 processed by one of these security processing modules 21 and thus only one perimeter would exist. 22 But again, Patent Owner is ignoring	Page 16 1 clarity. 2 All right. Mr. Alciati, can we just 3 split this up on the 498? Can you start with the 4 access -- do dispute both of the claim construction 5 issues? Both access point server and perimeter? Or 6 is it just one or the other? 7 MR. ALCIATI: Both, Your Honor. 8 THE COURT: Okay. So take them in turn 9 then, please. 10 MR. ALCIATI: Yes, so starting with 11 access point server. And thank you, Your Honor. I 12 don't think we heard other than the very tail end of 13 the presentation from Mr. Powers an assertion as to 14 what could not have been anticipated. And I think 15 that's the question. 16 There was a lot of arguments on the 17 merits and -- but I guess the terms was "parallels" 18 between the 482 patent and the Shay [ph] reference. 19 But I think the question is what could not have been 20 anticipated. And with respect to "access point 21 server," Patent Owner adopted the plain meaning of 22 that term.
Page 15 1 Shay's [ph] disclosure that packets can pass through 2 multiple ones of these security processing modules 3 serially. And then even go from one of these security 4 processing modules outside of the cloud to the 5 ultimate destination device. 6 So in sum, Your Honor, there are claim 7 construction positions that we could not have 8 anticipated with respect to the "access point server" 9 term and the perimeter requirements of the claims as 10 recited as part of the multiperimeter firewall system 11 and first and second perimeter firewalls. 12 Thank you, Your Honor. 13 THE COURT: Thank you, Mr. Powers. I 14 do have one quick follow-up question. Were access 15 point server perimeter claim terms at issue in the 16 district court litigation? 17 MR. POWERS: We have not reached that 18 point yet in the district court litigation, Your 19 Honor. We have the complaint and infringement 20 contentions that's not even conserved. And indeed the 21 case is stayed presently. 22 THE COURT: Okay. Thank you for that	Page 17 1 And at pages 5 to 6 of the Preliminary 2 Response, it -- Patent Owner offered a construction 3 that is based on just the plain meaning of those 4 words. In fact, citing to Exhibit 2002 and 2005, 5 which are Cisco Petitioner publications on the 6 understanding of those terms for one skilled in the 7 art. 8 And so without diving into the merits 9 of the dispute, it's our position that Patent Owner 10 articulated a plain meaning. Petitioner purported to 11 premise its Petition on the plain meaning. And it 12 sounds to me like the focus on the parallels between 13 482 and the Shay [ph] reference is really revealing 14 that Petitioner wants to argue why it thinks Patent 15 Owner is wrong about its own interpretation of the 16 reference. 17 And we believe that that's an issue 18 that the Board could easily sort out. This isn't a 19 situation where Patent Owner pulled a construction 20 that wouldn't have been sort of apparent from the face 21 of the plain language of the claims. And so given 22 that, we think that the construction was reasonably

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Page 18 1 foreseeable and the this is an attempt to, 2 respectfully to Petitioner, fill some holes in the 3 Petition with respect to the disclosure, or the 4 alleged disclosure, of an access point server. 5 Any questions on that, Your Honor, 6 before I handle perimeter, which is, you know, to 7 foreshadow a similar argument that I am intent to 8 make. 9 THE COURT: Yeah, I guess I do have a 10 follow-up question. I did have an opportunity to read 11 through your Patent Owner Preliminary Response and I 12 did notice that there was a lot of extrinsic evidence 13 introduced to support your so-called proposed 14 construction. Some Microsoft computer dictionary 15 definitions and some other documents from Cisco. 16 Do you think that Petitioner could have 17 anticipated the introduction of that extrinsic 18 evidence? Because I don't see a lot of arguments that 19 are really focused more on the intrinsic evidence. 20 That's just a specification in the claims and how that 21 access point server should be construed in light of 22 those two things.	Page 20 1 just allow the briefing yet. But I just wanted to put 2 that on the plate there. Because it is a little odd 3 to me when I do see parties come in and rely primarily 4 on extrinsic evidence to get to the construction of a 5 term without spending much time on the intrinsic 6 record. So I'll just -- 7 MR. GARDELLA: -- Your Honor -- 8 THE COURT: -- leave that as a note -- 9 MR. GARDELLA: -- I'm sorry. 10 THE COURT: And then, go ahead, Mr. 11 Alciati [sic]. 12 MR. GARDELLA: This is Greg Gardella. 13 So with your permission, I would offer an observation 14 on that. But again, with your permission, because 15 Mr. Alciati is the one designated to present our 16 argument during this call, so. 17 THE COURT: Go ahead, Mr. Gardella. 18 MR. GARDELLA: So I would just offer 19 that the term "access point server" is, I don't 20 believe, further discussed in the specifications. 21 It's a, you know, pretty basic term used in the art. 22 So I don't think there's going to be much in terms of
Page 19 1 MR. ALCIATI: So, Your Honor, the 2 extrinsic evidence we view as sort of confirming the 3 plain meaning. And so I'm not sure I'm going to try 4 to convince Your Honor today that the exact documents 5 that were cited Petitioner should have found and dealt 6 with. But we viewed those as more confirming the 7 plain meaning of the words themselves. 8 And so I think that our position is 9 that the construction itself could have been 10 anticipated. And to the extent Petitioner is seeking 11 the limited ability to respond to those extrinsic 12 evidence publications, I think that would be a 13 different request than what I understand to be on the 14 table. 15 THE COURT: Well, my understanding is 16 they were trying to brief the claim construction 17 issue, which would include intrinsic or extrinsic. 18 But I think you guys are all familiar with the 19 Phillips case. We really only consider the extrinsic 20 evidence if there's some ambiguity in the intrinsic 21 record. And so I'm just going to point that out. 22 I'm not going to say we're going to	Page 21 1 intrinsic evidence, you know, for Your Honors to look 2 at. It's, you know, kind of like the word "server." 3 You know, this case, like many, you 4 know, the specification doesn't go into any further 5 discussion as to what the server means. So consistent 6 with what Mr. Alciati was saying, to my way of 7 thinking these are, you know, pretty basic computer 8 terms, computer networking terms. And the question 9 just becomes, "Okay, what is an access point server?" 10 Again, it's not a super complicated 11 term and again, relatively commonly used nowadays. So 12 I would just offer that additional context. So that I 13 think in that context, using a dictionary to help us 14 assess, "Okay, what exactly does access point server 15 mean," would be in our view the proper way to tackle 16 it. So but coming back -- 17 THE COURT: -- appreciate -- 18 MR. GARDELLA: -- to what Mr. Alciati 19 said. 20 Yeah, all right. Go ahead. 21 THE COURT: Mr. Gardella, I appreciate 22 that point, but I also don't see that argument in your

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Page 22 1 Patent Owner Preliminary Response. So I mean, it's 2 kind of cutting against you in a way because we did 3 authorize briefing here and you could explain that and 4 flush it out more in your in your sur-reply. So, in 5 any event, let's move on to the second term, 6 "perimeter." Mr. Alciati, do you got anything to say 7 about that? 8 MR. ALCIATI: Yes, Your Honor, briefly. 9 Unlike access point server, there wasn't an express 10 construction identified. And to be candid, I 11 wasn't -- it wasn't clear to me that Petitioner was 12 seeking a briefing on the term "perimeter." But I 13 think the same thing would apply here. 14 Especially because there was no 15 specific articulation of the plain meaning of the 16 term, it's hard for Patent Owner to understand why 17 Petitioner couldn't have identified this sooner. And 18 again we heard, I believe, some alleged parallels 19 between the 482 patent and Shy [sic]. 20 And it sounds to me like this a request 21 for an opportunity to try to, respectfully to 22 Petitioner, backfill some of the deficiencies we	Page 24 1 Mr. Powers. 2 Mr. Alciati, any last words? 3 MR. ALCIATI: No, Your Honor. I think 4 the issues have been well presented to Your Honor. 5 THE COURT: Okay. Can you -- I'm going 6 to go ahead and put the parties on hold here and 7 deliberate with my colleague quickly. I'll be back in 8 a few minutes. Please hold the line and we'll return 9 shortly. Thank you. 10 MR. ALCIATI: Thank you. 11 MR. POWERS: Thank you. 12 (Discussion held off the record.) 13 THE COURT: All right. This is 14 Judge Zecher. I'm back. Let me just verify the 15 parties are still on the call. 16 Let's start with Mr. Powers for 17 Petitioner Cisco. 18 MR. POWERS: I am, Your Honor. 19 THE COURT: And then Mr. Alciati for 20 Patent Owner UMBRA. 21 MR. ALCIATI: Yes, Your Honor. 22 THE COURT: Okay. Great, thank you.
Page 23 1 identified in the Petition, which we would submit was 2 not a basis for a finding of good cause. 3 THE COURT: All right. Thank you , 4 Mr. Alciati. 5 MR. Powers, do you have a quick 6 response to add? 7 MR. POWERS: Just on that last point, 8 Your Honor, I think what is not anticipated here is 9 that again, the claim's directed to a cloud deployment 10 for providing a global virtual network and you have 11 multiple processing points in that that are associated 12 with these perimeters. And the art shows a 13 cloud-deployed firewall system that is part -- and has 14 again multiple processing points, logical processing 15 points through which packets flow. 16 And we could not have anticipated that 17 they would try and take a position that those 18 perimeters needed to be, you know, physical locations 19 and boundaries given the nature of the disclosure of 20 the 482 patent and how it's claimed as being part of 21 the cloud deployment in a global virtual network. 22 THE COURT: Okay. Thank you,	Page 25 1 So we believe that good cause has been 2 shown today to give this additional briefing. We're 3 going to expedite the briefing schedule. So we're 4 going to authorize additional briefing in both cases, 5 the 344 and the 498. We're going to go ahead and give 6 each party five pages. So Petitioner Cisco will get 7 five pages in the 344 and five pages in the 498. You 8 have five business days to complete your briefing. So 9 we'd like to see that brief filed by next Tuesday, 10 which I believe is June 18th -- excuse me, June 17th. 11 My apologies. And then Patent Owner -- 12 MR. POWERS: -- I'm sorry, June 18th is 13 the Tuesday, so the -- 14 THE COURT: -- no, my apologies. It 15 will be Monday, June 17th. By close of business on 16 Monday, June 17th. 17 MR. POWERS: Thank you. 18 THE COURT: Patent Owner, Mr. Alciati, 19 we're going ahead and give you -- authorize you guys 20 to file a sur-reply in each case. You'll get five 21 business days as well. But we're going to note that 22 there is a federal holiday that falls within your time

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Page 26 1 period. It's June 19th, which is Juneteenth for us. 2 And so we're going to bump your sur- 3 reply out just a day. So your sur-replies are going 4 to be due on Tuesday, June 25th. So we're going to 5 document all this in an order that we're going to 6 issue in both cases. 7 But we wanted to go ahead and give the 8 parties notice that we are granting the additional 9 briefings. So you can get started. The order 10 probably won't be entered here for a day or two, just 11 to give us time to draft it up and circulate it and 12 approve it and mail it. So that's our ruling at this 13 point. 14 I'll go ahead and ask if Mr. Powers has 15 any questions? 16 MR. POWERS: I do not. Thank you, Your 17 Honor. 18 THE COURT: Mr. Alciati, any questions 19 from you? 20 MR. ALCIATI: No, Your Honor. Thank 21 you for your time today. 22 THE COURT: All right. Thank you,	Page 28 1 CERTIFICATE 2 I, PRISCILLA GIBBS, the officer before whom 3 the foregoing proceedings were taken, do hereby 4 certify that any witness(es) in the foregoing 5 proceedings, prior to testifying, were duly sworn; 6 that the proceedings were recorded by me and 7 thereafter reduced to typewriting by a qualified 8 transcriptionist; that said digital audio recording of 9 said proceedings are a true and accurate record to the 10 best of my knowledge, skills, and ability; that I am 11 neither counsel for, related to, nor employed by any 12 of the parties to the action in which this was taken; 13 and, further, that I am not a relative or employee of 14 any counsel or attorney employed by the parties 15 hereto, nor financially or otherwise interested in the 16 outcome of this act:  17 PRISCILLA GIBBS 18 Notary Public in and for the 19 State of Michigan 20 21 22
Page 27 1 guys. And as just a quick reminder for the Patent 2 Owner, please go ahead and share the transcript of 3 this call with the Petitioner and file the transcript 4 as a separate exhibit in each proceeding. We would 5 appreciate that. 6 Thanks again. And this call is 7 adjourned. 8 (Whereupon, the meeting concluded at 9 1:31 p.m.) 10 11 12 13 14 15 16 17 18 19 20 21 22	Page 29 1 CERTIFICATE OF TRANSCRIBER 2 I, WENDY ROBINSON, do hereby certify that 3 this transcript was prepared from the digital audio 4 recording of the foregoing proceeding, that said 5 transcript is a true and accurate record of the 6 proceedings to the best of my knowledge, skills, and 7 ability; that I am neither counsel for, related to, 8 nor employed by any of the parties to the action in 9 which this was taken; and, further, that I am not a 10 relative or employee of any counsel or attorney 11 employed by the parties hereto, nor financially or 12 otherwise interested in the outcome of this action. 13 14  15 WENDY ROBINSON 16 17 18 19 20 21 22

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