

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Misuse of Internet Protocol (IP) Captioned) CG Docket No. 13-24
Telephone Service)
)
Telecommunications Relay Services and) CG Docket No. 03-123
Speech-to-Speech Services for)
Individuals with Hearing and Speech)
Disabilities)
)
Petition for Declaratory Ruling of Sorenson)
Communications, Inc. and CaptionCall, LLC)
to Ensure Competition in Internet Protocol)
Captioned Telephone Service)

**REPLY COMMENTS OF SORENSON COMMUNICATIONS, INC., AND
CAPTIONCALL, LLC**

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January 13, 2015

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**REPLY COMMENTS OF SORENSON COMMUNICATIONS, INC., AND
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I. Introduction and Summary

In response to Sorenson Communications, Inc., and CaptionCall LLC’s (collectively “CaptionCall”) Petition for Declaratory Ruling,¹ Ultratec, Inc., (“Ultratec”) urges the Commission not to intervene “in the private patent litigation between Ultratec and Sorenson.”² In essence, Ultratec asserts that CaptionCall and Ultratec are involved in garden-variety “private” patent litigation, and that the Commission is a disinterested bystander that should avoid intermeddling. That is simply untrue. CaptionCall’s Petition does not ask the Commission to intervene in a routine district court proceeding in which it has no interest. To the contrary, the

¹ Petition for Declaratory Ruling of Sorenson Communications, Inc., and CaptionCall, LLC, CG Docket Nos. 13-24; 03-123 (Nov. 19, 2014) (“Petition”).

² Comments of Ultratec, Inc. and CapTel, Inc., CG Docket Nos. 13-24; 03-13, at iii (Dec. 29, 2014) (“Ultratec”).

Petition asks the Commission to reiterate and enforce the obligation *that the Commission itself imposed* on Ultratec: to license its proprietary technology at reasonable rates. The Commission’s oversight of publicly funded telecommunications relay services (“TRS”), including the Internet Protocol Captioned Telephone Service (“IP CTS”) at issue here, is a core function of the FCC.³

The Americans with Disabilities Act (“ADA”) expressly requires the Commission to ensure that deaf and hard-of-hearing consumers have access to TRS that is functionally equivalent to the communications services available to fully hearing persons.⁴ The Commission compensates TRS providers from the TRS Fund, to which all users of telecommunications contribute. When crafting the rules required by the ADA, the Commission has significant discretion to determine whether, and on what conditions, IP CTS providers may receive Fund compensation.

Exercising that discretion, the Commission has determined that competition helps drive providers to offer functionally equivalent services. Accordingly, the Commission has certified multiple providers of each form of TRS—including IP CTS. When multiple providers must compete for customers, providers have incentives to conduct outreach, innovate, and provide superior customer service. As discussed in CaptionCall’s Petition, the benefits of IP CTS competition led a prominent hard-of-hearing consumer group to declare that “[f]inally people with hearing loss are getting access to the phones they need.”⁵

³ Indeed, the Commission has previously exercised this authority to require that TRS providers pass through their customer’s telephone number on each call. 47 C.F.R. § 64.604(b)(6). Though Sorenson holds patents on VRS pass-through technology, Sorenson has never pursued litigation against any VRS provider that complies with this rule.

⁴ See 47 U.S.C. §§ 225(a)(3), (b)(1), (d)(1).

⁵ See Petition at 7.

To ensure IP CTS competition, the Commission has already been obliged to address Ultratec’s patents. In 2005 and 2006, while the Commission was considering whether to approve IP CTS for Fund compensation, multiple commenters expressed serious concerns about Ultratec’s captioned telephone service monopoly.⁶ The Commission echoed these concerns in approving IP CTS for compensation, clearly stating its expectation that IP CTS “will not be a service under the control of one vendor or provider.”⁷ The Commission implemented this expectation by requiring Ultratec to “license its captioned telephone technologies, including technologies relating to IP CTS, at reasonable rates.”⁸

Notwithstanding the Commission’s 2006 and 2007 efforts to ensure IP CTS competition and to prevent Ultratec from remaining a single-source provider, Ultratec enjoyed near-monopoly status until CaptionCall’s launch in 2011. Against that backdrop, it is unsurprising that Ultratec is fighting fiercely to reestablish its monopoly. Ultratec now makes clear that it never intended for the licensing obligation imposed by the Commission to generate meaningful competition. Ultratec instead maintains that its distribution of a single, homogeneous CapTel platform through its chosen vendors—where Ultratec retains complete control of all aspects of the technology—constitutes “licensing.”⁹ But everyone from the district court to Ultratec’s own distributors disagrees.¹⁰ And, indeed, if Ultratec were correct that such arrangements satisfy

⁶ *Id.* at 11-12.

⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, FCC 06-182, 22 FCC Rcd. 389 ¶ 24 (2007) (“2007 IP CTS Order”).

⁸ *Id.*

⁹ *See infra* at 14-16 (discussing Ultratec’s failure to comply with its licensing obligation).

¹⁰ *See infra* at 14 (discussing the district court’s conclusion and Hamilton’s comments that Ultratec’s resale arrangements are not licenses).

Ultratec’s licensing obligation, then IP CTS would remain “under the control of one vendor or provider,” directly contradicting the Commission’s earlier ruling.

The need for the Commission to reaffirm Ultratec’s licensing obligation has become abundantly clear in the wake of the patent litigation that Ultratec has pursued—and continues to escalate through the recent filing of a third lawsuit—against CaptionCall. If Ultratec’s existing and future patents—which cover basic features like allowing consumers to activate captions—survive administrative and judicial review, no provider will be able to offer an IP CTS product or service, other than one that conforms precisely to Ultratec’s specifications, and the provision of which Ultratec controls on a day-to-day basis. Despite insisting here that non-infringing technologies exist, Ultratec, during the district court trial, presented expert testimony that CaptionCall has “no alternatives” to technology that allegedly infringes Ultratec’s patents.¹¹ And Ultratec, through its aggressive pursuit of patent-infringement litigation, has made clear that it will use its broad patent claims to exclude any meaningful competitor from the IP CTS market. In other words, Ultratec seeks to gain complete control over IP CTS.

Moreover, at trial, Ultratec contended that \$0.47 to \$0.51 per minute constitutes a “reasonable rate” for a patent license to a subset of its patents. Based on that testimony, the jury awarded Ultratec a royalty of approximately \$0.35/minute for past alleged infringement. At the jury’s rate, a competing provider like CaptionCall would have to divert nearly 20% of its TRS Fund compensation to Ultratec,¹² making it virtually impossible, without a substantial increase in the compensation rate, for anyone to operate an alternative IP CTS system that could provide

¹¹ See *infra* at 12 (discussing testimony of Ultratec’s expert).

¹² See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, DA 14-946, 29 FCC Rcd. 8044, 8044 ¶ 2 (CGB 2014) (establishing IP CTS compensation rate of \$1.8205 per minute).

meaningful competition to CapTel. Given its legitimate interest in the cost of IP CTS, the Commission should have significant concerns with Ultratec’s exorbitant royalty demands.¹³

In its Petition, CaptionCall does not ask the Commission to examine the validity of Ultratec’s patents. The parties will fight those battles in the federal courts and before the Patent Trial and Appeal Board (“PTAB”). Rather, CaptionCall asks only that, to the extent Ultratec’s patents survive appellate review and the scrutiny currently undertaken by the PTAB, the Commission affirm Ultratec’s obligation to license those patents at reasonable rates to providers that offer IP CTS without using the CapTel platform. Because it will likely be years before the validity and infringement issues regarding the Ultratec patents are fully resolved—and because in the interim Ultratec explicitly seeks to preclude CaptionCall’s participation in the IP CTS market through injunction, exorbitant royalties, or both—CaptionCall respectfully urges the FCC to act expeditiously.

Ultratec has made clear that, without Commission action, the only “licensing” relationships it will entertain are (1) agreements to resell existing CapTel-branded technology and captioning services, or (2) bare patent licenses at rates equivalent to those rates paid by resellers who receive and resell turnkey CapTel service using Ultratec’s CapTel platform.¹⁴

¹³ After trial, as part of its request for a so-called “limited” injunction against CaptionCall, Ultratec now claims that an ongoing royalty rate of *\$1.07 per minute* to serve the existing CaptionCall customer base would be reasonable. Motion for Permanent Injunction, *Ultratec, Inc. v. Sorenson Communications, Inc.*, No. 3:13-cv-00346-bbc (W.D. Wisc. Nov. 7, 2014) (Dkt. No. 700) (seeking an ongoing royalty equal to three times the jury’s rate). If that rate were applied, CaptionCall would have to pay 60% of its per-minute reimbursement to Ultratec, while continuing to supply IP CTS services using CaptionCall support, outreach, call centers, and equipment. It would be impossible for CaptionCall or any other competing vendor to supply IP CTS at anything like current reimbursement rates.

¹⁴ Because of confidentiality restrictions put in place in the litigation, CaptionCall is not at liberty to disclose the terms of CapTel’s agreements with its distributors. The Commission may request that Ultratec supply those agreements for its review.

Neither scenario will allow meaningful competition with Ultratec's CapTel technologies and services—they will only result in additional arms of the CapTel business. To protect both IP CTS consumers and the integrity of the publicly funded TRS Fund, it is accordingly imperative that the Commission confirm Ultratec's obligation to license its technologies to competing providers at reasonable rates.

Below, CaptionCall expands on these points and responds to the misdirection and inaccuracy that permeates Ultratec's comments.

II. CaptionCall Did Not Copy Ultratec's Technology nor Did It Knowingly Infringe Ultratec's Patents, and Ultratec Did Not Offer to License Its Patents Prior to Filing Suit.

Ultratec attempts to tar CaptionCall with accusations of willful patent infringement. The district court, however, has already concluded that CaptionCall did not willfully infringe Ultratec's patents.¹⁵ And unlike Ultratec's licensing obligation, which the Commission is best positioned to address, the federal courts *are* the proper venue if Ultratec would like to relitigate the willful-infringement issue. Here, Ultratec's accusations have absolutely no bearing on the core issue in this proceeding: Ultratec's obligation to license its IP CTS technologies at reasonable rates.

Nevertheless, CaptionCall would like to correct the record by addressing Ultratec's incorrect, misleading, and contradictory comments here. On one hand, Ultratec asserts that "Sorenson chose to simply ignore" Ultratec's patents.¹⁶ CaptionCall, however, built its *own* IP CTS platform from the ground up, rather than copying Ultratec's. CaptionCall did not focus on

¹⁵ Order Granting Defendants' Motion for Judgment for No Willful Infringement, *Ultratec, Inc. v. Sorenson Communications, Inc.*, No. 3:13-cv-00346-bbc (W.D. Wisc. Oct. 23, 2014) (Dkt. No. 656) ("Willful Infringement Order").

¹⁶ Ultratec at 15.

Ultratec’s patents. Instead, CaptionCall focused on developing its own innovative service. On the other hand, Ultratec claims “not only that Sorenson infringed its patents, but that Sorenson did so intentionally and in disregard of Ultratec’s intellectual property rights.”¹⁷ This is simply false.

In reality, Sorenson leveraged its own proprietary VRS and IP Relay technologies to build the CaptionCall IP CTS platform from the ground up.¹⁸ Because of this approach, Sorenson was unaware of the details of Ultratec’s patents prior to reading the complaint Ultratec filed in the Western District of Wisconsin.¹⁹ Moreover, to the extent that Sorenson knew of the Ultratec patents at all, it did not believe that valid patents could possibly preclude the provision of any and all re-voicing or IP-based provision of CTS products and services.²⁰ Accordingly, the district court correctly concluded that CaptionCall did not willfully infringe Ultratec’s patents.²¹

¹⁷ *Id.* at 12.

¹⁸ Trial Transcript, *Ultratec, Inc. v. Sorenson Communications, Inc.*, No. 3:13-cv-00346-bbc, at 20–43 (W.D. Wisc. Oct. 20, 2014) (Testimony of Brian Chevrier) (attached hereto as Exhibit 1); Trial Transcript, *Ultratec, Inc. v. Sorenson Communications, Inc.*, No. 3:13-cv-00346-bbc, at 125–129 (W.D. Wisc. Oct. 17, 2014) (Testimony of Shane Roylance) (attached hereto as Exhibit 2); Trial Transcript, *Ultratec, Inc. v. Sorenson Communications, Inc.*, No. 3:13-cv-00346-bbc, at 46-54, 57-58 (W.D. Wisc. Oct. 17, 2014) (Testimony of Pat Nola) (attached hereto as Exhibit 3); Declaration of Michael D. Maddix, *Ultratec, Inc. v. Sorenson Communications, Inc.*, No. 3:13-cv-00346-bbc (W.D. Wisc. Apr. 16, 2014) (Dkt. No. 105) (declaring Sorenson’s belief that it did not need to license anyone else’s IP CTS technology (“Maddix Decl.”)).

¹⁹ Order on Motion for Partial Summary Judgment, *Ultratec, Inc. v. Sorenson Communications, Inc.*, No. 3:13-cv-00346-bbc, at 16, 78-81 (W.D. Wisc. Aug. 28, 2014) (Dkt. No. 351) (discussing Sorenson employee testimony reflecting that Sorenson did not know the substance of Ultratec’s patents).

²⁰ The Patent Trial and Appeals Board long ago instituted petitions for *inter partes* review on this very basis. Those proceedings have been argued and await decision, which is currently due in early March. *See* discussion *infra* at 8.

²¹ Willful Infringement Order.

It is also incorrect to describe the relief requested by CaptionCall’s Petition as a “substantial overreach” because CaptionCall did not seek a license before launching its service.²² In developing its own competing service, CaptionCall did not believe that it had infringed any legitimate Ultratec patent. At the same time, however, CaptionCall was well aware of Ultratec’s licensing obligation and assumed that if CaptionCall’s service were found to somehow infringe an Ultratec patent, Ultratec would comply with its obligation and offer a license at reasonable rates.²³ But Ultratec made no attempt to negotiate a license with CaptionCall, and it never offered CaptionCall a license prior to filing its complaint in federal court.²⁴ Ultratec tried to push CaptionCall out of the market through its aggressive litigation strategy, instead of doing what it promised in 2006: offer a license at reasonable rates to promote the competition that the Commission desired.

CaptionCall first learned the substance of Ultratec’s patents when Ultratec sued. Even then, however, CaptionCall believed the patents were invalid and filed *inter partes* reviews (“IPR”) at the PTAB, seeking to invalidate the relevant claims of each patent. The PTAB confirmed the reasonableness of CaptionCall’s belief when it initiated IPR proceedings on each patent, which it can do only if a panel, consisting of three technically trained administrative judges, determines there is a “reasonable likelihood that the petitioner [will] prevail,”²⁵ *i.e.*, that the patent claims will be invalidated. Thus, with a good-faith belief that Ultratec’s patents were invalid, CaptionCall still had no need to seek a license from Ultratec.

²² Ultratec at 20.

²³ See Maddix Decl. (discussing Sorenson’s reliance on Ultratec’s licensing obligation).

²⁴ See Defendants’ Motion for Partial Summary Judgment, *Ultratec, Inc. v. Sorenson Communications, Inc.*, No. 3:13-cv-00346-bbc, at 4 (W.D. Wisc. Apr. 17, 2014) (Dkt. No. 112) (discussing Ultratec’s failure to contact Sorenson prior to filing suit).

²⁵ 35 U.S.C. § 314(a).

Ultratec claims it offered a “license” to CaptionCall during the litigation, but Ultratec admits that the proffered “license” was “substantially similar to the license that Ultratec has agreed to with other licensees of its IP CTS technology.”²⁶ As discussed in the Petition²⁷ and further below, Ultratec’s agreements with its distributors are reseller supply agreements, not traditional patent licenses. They do not satisfy Ultratec’s licensing obligation, which the Commission explicitly designed so that Ultratec’s CapTel service would face meaningful competition. Ultratec has yet to make any good-faith effort to comply with its licensing obligation. CaptionCall had no obligation to accept Ultratec’s unreasonable offer, which would have compelled it to pay the same price that CapTel resellers pay for the turnkey CapTel platform for far less in return—*i.e.*, a bare patent license that would permit CaptionCall to offer its own IP CTS platform and service.

III. Even with Independently Developed IP CTS Platforms, Providers Cannot Offer Functionally Equivalent IP CTS without Infringing Ultratec’s Patents.

In its comments, Ultratec repeatedly claims that providers can offer IP CTS without infringing Ultratec’s patents as construed in the Wisconsin litigation. Ultratec is well aware that its position before the Commission is disingenuous and contradictory, since it has previously claimed that only functionalities like re-voicing or two-line configurations, which it claims to have patented, are both commercially feasible and satisfy the functional equivalence mandate.

At closing argument in the recent trial, Ultratec told the jury:

You can’t successfully sell captioned telephones if the captions are 60 words a minute [*i.e.*, typing speed] as opposed to 150 to 200 words per minute [*i.e.*, revoicing speed]. And you can’t achieve truly functionally equivalent captioned telephone without the [patented] two-line configuration. To use an analogy, the patented features of the CapTel service at issue in this case serve as the engine, the wheels, and the brakes of a car. Without these key functionalities, you don’t have

²⁶ Ultratec at 21.

²⁷ Petition at 15-17.

a car that works. Without re-voicing, text and voice to the assisted user, for example, CapTel service simply doesn't work.²⁸

Against this backdrop, Ultratec now blithely asserts that providers can avoid infringing Ultratec's patents by typing captions instead of re-voicing what the hearing party says.²⁹ But, as Ultratec's CEO testified, typing is "very slow" and causes the captioning to "get way behind very fast."³⁰ In other words, Ultratec has admitted that its only cited example of a non-infringing technology is available only at the expense of functional equivalence.

Furthermore, generating captions is not the only function IP CTS providers must develop. Ultratec's comments ignore other features—such as two-line configurations—that allegedly infringe Ultratec's patents, and that Ultratec has claimed are necessary for functional equivalence. Two-line configurations allow IP CTS customers to use their existing telephone service for the voice component of a call, while a separate broadband Internet connection between the provider and the customer delivers captions. Without the ability to use a two-line configuration, IP CTS providers—other than the vendors of Ultratec's proprietary service—must become voice providers and offer voice and captioning services over a single connection, replacing rather than supplementing the consumer's existing voice service. Restricting competing IP CTS providers to one-line service would, by requiring IP CTS providers to become voice-service providers, not only make competitive entry far more difficult and costly, but also fundamentally undermine functional equivalence, as customers of any IP CTS provider other

²⁸ Trial Transcript, *Ultratec, Inc. v. Sorenson Communications, Inc.*, No. 3:13-cv-00346-bbc, at 79–80 (W.D. Wisc. Oct. 22, 2014) (Ultratec closing argument) (attached hereto as Exhibit 4).

²⁹ Ultratec at 23.

³⁰ Trial Transcript, *Ultratec, Inc. v. Sorenson Communications, Inc.*, No. 3:13-cv-00346-bbc, at 59 (W.D. Wisc. Oct. 14, 2014) (testimony of Robert Engelke) (attached hereto as Exhibit 5).

than a CapTel reseller would lose the ability to buy telephone service bundled with video or Internet services.

Moreover, Ultratec believes its patents are so broad that they cover the most basic IP CTS features, such as a customer’s ability to turn captions on and off, both before and during a call.³¹ To avoid litigation over this issue, providers would need to violate the Commission’s requirement that consumers be able to activate captions during a call.³²

Though Ultratec claims the Commission’s *2007 IP CTS Order* acknowledged the existence of non-infringing alternatives, Ultratec’s description of that order is highly misleading. In the *2007 IP CTS Order*, the Commission declined to require that providers offer a specific IP CTS technology in order to be eligible for compensation from the TRS Fund.³³ But the Commission never addressed whether any of the various IP CTS technology configurations violated Ultratec’s expansive interpretation of its patents. Indeed, because it required Ultratec to license all certified providers, the Commission did not need to evaluate all potential non-infringing alternatives, as would have been necessary if the Commission sought to adopt the narrow licensing condition that Ultratec now says it offered.³⁴

³¹ See Ultratec at 8 n. 18 (citing litigation related to “specific ways to initiate IP CTS captioning”); Letter from John T. Nakahata, Counsel to CaptionCall, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123, 13-24 (Dec. 29, 2014) (summarizing Ultratec’s patents and patent applications related to the initiation of captions).

³² Though Ultratec insists otherwise, Ultratec’s interpretation of the scope of its patents is highly relevant. Patent litigation—even when the claims are meritless—is an expensive distraction that carries significant risk, and Ultratec has proven itself to be an active litigant. Thus, when developing IP CTS technologies, providers must be mindful of Ultratec’s views of what violates its patents.

³³ *2007 IP CTS Order* ¶ 22.

³⁴ More telling still is the fact that Ultratec itself represented to the FCC that there were multiple generic configurations of IP CTS that did not require using the CapTel platform. That *ex parte* filing notably did not address whether any of those “generic” configurations

As discussed above, Ultratec claims that its patents cover fundamental IP CTS elements—such as turning captions on and off—that are absolutely necessary to provide functionally equivalent IP CTS while protecting the Fund. Accordingly, it is impossible for any provider to offer IP CTS without running afoul of Ultratec’s expansive view of its patents. Indeed, at trial, Ultratec’s own expert testified that there are “no alternatives that [he] was aware of that CaptionCall could look to in lieu of taking a license [to Ultratec’s patents],”³⁵ critical testimony that Ultratec omitted from its comments.

IV. The Commission Sought to Avoid a Single-Provider IP CTS Market When It Approved IP CTS for TRS Fund Compensation.

As discussed at length in CaptionCall’s Petition, the existence of Ultratec’s patents, combined with parties’ concern about Ultratec’s dominance over captioned telephone service, led the Commission to take steps to ensure that IP CTS “will not be a service under the control of one vendor or provider.”³⁶ To ensure a competitive market, the Commission conditioned its approval on Ultratec’s commitment to “license its captioned telephone technologies, including technologies relating to IP CTS, at reasonable rates.”³⁷

The FCC’s press release and Chairman Martin’s separate statement make clear the full Commission’s understanding that the *2007 IP CTS Order* was intended to require Ultratec to

would infringe Ultratec’s patents, and it is now clear that Ultratec contends *any* functionally equivalent configuration infringes its patents. *See 2007 IP CTS Order* ¶ 22 n. 67.

³⁵ Trial Transcript, *Ultratec, Inc. v. Sorenson Communications, Inc.*, No. 3:13-cv-00346-bbc, at 10 (W.D. Wisc. Oct. 24, 2014) (Testimony of Bruce McFarlane) (“I looked at a number of what I understood to be potential alternatives that would be available to Sorenson in lieu of taking a license from CapTel, and what I learned from my research was that none of those appeared to be either technically viable, commercially acceptable, or even avoiding the patents. So essentially there were no alternatives that I was aware of that CaptionCall could look to in lieu of taking a license [to Ultratec’s patents].”) (attached hereto as Exhibit 6).

³⁶ *2007 IP CTS Order* ¶ 24.

³⁷ *Id.*

license its technology to *all providers*.³⁸ Ultratec’s story has changed remarkably on this point. Indeed, Ultratec first argued that a call from Ultratec’s counsel caused the Commission to eliminate Ultratec’s obligation to license to “all providers.”³⁹ However, record evidence contradicts Ultratec’s contention. As discussed in the Petition, the evidence, at best, supports the idea that Ultratec’s counsel called the Commission to ensure that Ultratec would be required to license only other certified TRS providers—and not other companies, such as CPE manufacturers.⁴⁰ Ultratec does not dispute those facts here, and has apparently abandoned its contention that the Commission made any fundamental modification to the *2007 IP CTS Order* between the time it was adopted in December 2006 and the time it was released in January 2007. Thus, there can be no inconsistency among the order, the press release, and Chairman Martin’s separate statement. Together, they make clear that the Commission intended to ensure that a single provider did not control IP CTS by requiring Ultratec to license its technology to *all certified TRS providers at reasonable rates*. It is not a “retroactive” change⁴¹ for the Commission to enforce the obligation it established in 2007.

Seeking to escape this obligation, Ultratec relies heavily on the district court’s pre-trial opinion granting summary judgment on certain claims.⁴² Federal agencies, however, receive

³⁸ See Petition at 13-15 (discussing the Commission’s press release and Chairman Martin’s supporting statement).

³⁹ See Plaintiffs’ Brief in Support of Motion for Partial Summary Judgment, *Ultratec, Inc. v. Sorenson Communications, Inc.*, No. 3:13-cv-00346-bbc (W.D. Wisc. Apr. 20, 2014) (Dkt. No. 116).

⁴⁰ See Petition at 14-15.

⁴¹ Ultratec at 16.

⁴² *Id.* at 16-17.

substantial deference when interpreting their own rules.⁴³ Yet, Ultratec suggests the *Commission* should give deference to the *district court*'s interpretation of a *Commission order*. That is entirely backwards. The Commission should disregard Ultratec's meritless argument and take this opportunity to correct the record on the scope of the licensing condition that the Commission imposed in 2007.

V. Ultratec Has Not Complied with Its Licensing Obligation.

Ultratec “puts form over substance, and is misleading at best”⁴⁴ with respect to its “license” agreements. Ultratec ignores that one of its own distributors, Hamilton, has explicitly stated that it does *not license* anything from Ultratec, and merely has a *wholesale* arrangement with Ultratec.⁴⁵ Moreover, Ultratec only tangentially acknowledges the district court's similar conclusion that Ultratec's agreements with Sprint and Hamilton in effect at the time of the *2007 IP CTS Order* were not licenses.⁴⁶ Indeed, as discussed in the Petition, Ultratec and its vendors distribute a single service that relies on a homogeneous CapTel platform developed by Ultratec and supplied as part of a turnkey system to Sprint and Hamilton.⁴⁷ By requiring vendors to

⁴³ See *Paralyzed Veterans of Am. v. D.C. Arena L.P.*, 117 F.3d 579, 584 (D.C. Cir. 1997) (“Agency interpretations of their own regulations have been afforded deference by federal reviewing courts for a very long time and are sustained unless ‘plainly erroneous or inconsistent’ with the regulation”).

⁴⁴ See Ultratec at 6 n.13.

⁴⁵ Comments of Hamilton Relay, Inc. at 1 n.2, CG Docket No. 03-123 (Dec. 30, 2005) (Hamilton “is not licensing captioned telephone technology from Ultratec, Inc. as suggested in the Petition. Rather, Hamilton has entered into a wholesale arrangement to purchase captioned telephone service from Ultratec, Inc. and resell it to various State TRS programs”).

⁴⁶ See Ultratec at 6 n.13 (admitting that “the Court found that the agreements as of 2006 were not technically ‘licenses’...”).

⁴⁷ Petition at 15-17.

license improvements back to CapTel, which then makes the technology available to all other CapTel vendors,⁴⁸ Ultratec ensures that CapTel vendors distribute a homogeneous technology.⁴⁹

Regardless of how Ultratec twists the definition of “license,”⁵⁰ it is beyond dispute that, when the FCC imposed the licensing obligation, the Commission intended to ensure that IP CTS was not under the control of “one vendor or provider.”⁵¹ To give that provision any meaning, Ultratec must license its technology to someone other than a CapTel reseller. Otherwise, the licensing condition would do nothing to support the entry of vendors and providers that compete with CapTel, and would only promote the single-source provider situation that the Commission sought to avoid.

To make matters worse, when Ultratec did finally offer a “license” to CaptionCall during the course of litigation, Ultratec offered only a bare patent license at the *same rate* that Sprint and Hamilton pay for the fully-developed and functioning CapTel platform and service. Under those turnkey, reseller arrangements, Sprint and Hamilton do not develop IP CTS service; they do not develop or manufacture the phone; they do not develop their own call center methods or equipment; they do not develop their own proprietary protocols and training materials; and they do not provide customer support. Instead, they rely on Ultratec’s equipment, obtain marketing support from Ultratec, and can utilize Ultratec’s call centers and communications assistants.

With Ultratec’s offer, CaptionCall would have to incur all of those costs *in addition* to paying

⁴⁸ Amended Complaint for Patent Infringement and Declaratory Judgment at 6 ¶ 25, *Ultratec, Inc. v. CaptionCall, LLC*, No. 3:13-cv-00346-bbc (W.D. Wisc. Jul. 31, 2013) (Dkt. No. 33).

⁴⁹ Ultratec’s claim that Sprint and Hamilton compete with one another in any meaningful way is false. The “license back” provisions of their agreements explicitly discourage independent development of improvements and new features.

⁵⁰ *See* Ultratec at 6 n. 13.

⁵¹ *2007 IP CTS Order* ¶ 24.

Ultratec exorbitant royalties on the patents. Such an offer does not comply with Ultratec’s obligation to license its IP CTS *technology* at “reasonable rates.” Indeed, the Commission should make clear that a “reasonable” rate must bear some connection with what the licensee receives in exchange. Ultratec cannot charge the same rate for a license that simply enables CaptionCall to develop its own platform without fear of interference from Ultratec in the form of patent infringement litigation, as it charges Sprint and Hamilton for a comprehensive suite of goods and services.

In sum, because Ultratec has not “licensed” its technology to anyone—it has only entered into wholesale supply agreements with CapTel resellers—it cannot credibly argue that it has complied with the licensing condition the Commission adopted. Instead, Ultratec urges a self-serving post hoc definition of “license” that is inconsistent with the Commission’s intent to give consumers the benefits of a competitive IP CTS market.⁵² Though Ultratec claims a willingness to license its technology, it is willing to do so only at unreasonable rates and on terms similar to those in its agreements with Sprint and Hamilton.⁵³ This is not a good-faith effort to comply with the Commission’s condition, which was designed to allow providers to offer IP CTS without being under Ultratec’s thumb.

⁵² Ultratec, without any justification, claims that Sprint and Hamilton “compete with one another in obtaining and providing service to IP CTS users.” Ultratec at 7. Ultratec provides no explanation as to how these two companies “compete” when they offer identical CapTel telephones and service at identical rates.

⁵³ Ultratec at 21.

VI. The Commission Has Jurisdiction and Is Capable of Enforcing Its Own Order.

Ultratec suggests that the Commission lacks jurisdiction to enforce the *2007 IP CTS Order*'s licensing condition.⁵⁴ It would represent a remarkable lack of candor for Ultratec to make a commitment to the Commission, and then claim that the Commission lacks jurisdiction to enforce that commitment. In any event, the Commission can and should enforce its licensing condition.

The Commission unquestionably has not only jurisdiction but an affirmative duty to “ensure” that “functionally equivalent” TRS—including IP CTS, of course—is made available “in the most efficient manner.”⁵⁵ Unreasonably high license royalties would prevent the Commission from carrying out its statutory responsibilities by either (1) obliging providers to undercut functional equivalence by diverting money from essential improvements in things like speed-of-answer, captioning accuracy, captioning latency, and customer service; or (2) forcing the FCC to increase IP CTS rates, and by extension the contribution factor, which is inefficient because it does nothing more than enrich Ultratec. The Commission has authority to instead advance the statutory goals by ensuring that multiple providers *compete* in the provision of IP CTS—thus improving the customer experience—by preventing IP CTS providers from having to pay unreasonably high royalty rates.

That enforcement of its licensing requirement would affect both Ultratec and the IP CTS market does not in any way undermine the Commission's authority over IP CTS. As Judge Tatel

⁵⁴ *Id.* at 18 n. 54 (“It is somewhat unusual for the Commission to condition an order on a representation by an entity that does not hold a Commission authorization and over which the Commission does not have direct jurisdiction”), 31 n. 84 (“[I]t is not clear what jurisdiction the Commission would cite to impose a licensing requirement on Ultratec, which is not a certified IP CTS provider”).

⁵⁵ 47 U.S.C. §§ 225(a)(3), (b)(1).

wrote for a panel of the D.C. Circuit in the *Cable & Wireless P.L.C.* opinion, Commission action *within* its acknowledged regulatory sphere may well have the “practical effect” of regulating activity that would, on its own, fall *outside* the Commission’s jurisdiction.⁵⁶ For example, the Commission can regulate the settlement rates that domestic telecommunications carriers pay to international telecommunications carriers, even though the “practical effect” of that regulation is to reduce the settlement rates that international carriers charge.⁵⁷ That does not mean the Commission unlawfully exerts jurisdiction over foreign carriers—rather, it lawfully exerts jurisdiction over domestic carriers, and that lawful exercise of jurisdiction has “practical effect[s]” elsewhere. Similarly, the Environmental Protection Agency does not improperly regulate the automotive industry when it establishes ambient air-quality standards.⁵⁸

The Commission likewise need not heed Ultratec’s saber-rattling about “abrogating” the rights of patent holders.⁵⁹ As discussed above, the Commission oversees the TRS Fund, and it is the Commission that determines whether providers can be compensated from the Fund. The Commission is comfortably within its jurisdiction when it makes rules fostering competition, which in turn provides incentives for providers to offer more functionally equivalent services. Ultratec is free to develop and protect whatever IP interests it wants to develop and protect, but it must comply with the Commission’s rules if it wants to benefit from the TRS Fund.

Furthermore, the Commission has vast experience determining reasonable rates, terms, and conditions for communications services. Indeed, this is the core of the Communications

⁵⁶ *Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224, 1230 (D.C. Cir. 1999).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Ultratec at 21.

Act,⁶⁰ and it is simply meritless for Ultratec to suggest that the Commission lacks the competence to apply these principles in the IP CTS context. If dispute-resolution resources—for issues such as what constitutes a reasonable rate—are a concern, the Commission has numerous options at its disposal, including ordering the parties to submit to binding arbitration, or referring disputes to a court of competent jurisdiction. But in no way should these issues preclude the Commission from declaring that it meant what it said in 2007.

VII. The Commission Can Impose a Forward-Looking Licensing Condition.

In its comments, Ultratec cobbles together a legal standard that, it asserts, precludes the alternative, forward-looking relief CaptionCall seeks.⁶¹ This standard is not supported by any authority Ultratec cites. Moreover, Ultratec does not cite a single precedent where the patent holder sought to receive benefits from an FCC-administered fund. As discussed above, the Commission has broad authority to set the rules regarding Fund compensation. Those issues notwithstanding, the facts here fit the standard that Ultratec has invented:

Element 1: “The Commission has adopted a specific, formal technology standard.” The Commission has required that captions be “delivered via an IP network to the user fast enough so that they keep up with the speed of the other party’s speech,”⁶² and voice and captions must be delivered “nearly simultaneously.”⁶³ In addition, all IP CTS equipment “shall include a button, icon, or other comparable feature that is easily operable and requires only one step for the consumer to turn on captioning.”⁶⁴ These are specific, formal requirements that the Commission

⁶⁰ See 47 U.S.C. § 201.

⁶¹ See Ultratec at 27.

⁶² 2007 IP CTS Order ¶ 22.

⁶³ *Id.* ¶ 23.

⁶⁴ 47 C.F.R. § 64.604(c)(10).

has adopted for IP CTS and ones that cannot be attained without a license from Ultratec according to Ultratec’s understanding of its patents.

Element 2: “A patent holder’s intellectual property is a necessary component of the standard.” Again, it would be essentially impossible for any provider to satisfy the Commission’s requirements for the provision of IP CTS without a license from Ultratec and without becoming involved in patent litigation with Ultratec. Thus, if Ultratec’s patents survive, Ultratec’s “intellectual property” will be a “necessary component” for providers to offer IP CTS.

Element 3: “The patent holder has refused to license its patents pursuant to reasonable rates and terms.” Ultratec will not agree to actual technology licenses at all—it will agree only to allow other providers to *resell* its technology, which does not comport with the *2007 IP CTS Order*. As a result, Ultratec has not offered licenses “pursuant to reasonable rates and terms.” Accordingly, Ultratec’s own standard dictates that Ultratec license its IP CTS technologies at reasonable rates.

More broadly, it absolutely serves the public interest for the Commission to ensure that Ultratec licenses any technology subject to valid patents at reasonable rates. Otherwise, Ultratec will be able to deny consumers the benefits of IP CTS competition. Thus, there is ample justification for a prospective licensing requirement.

VIII. The Commission Should Disregard Ultratec’s Spurious Claims that CaptionCall Is Ineligible to Offer IP CTS.

Ultratec claims that CaptionCall has not complied with the verbatim captioning requirement, and cites a letter Ultratec submitted on December 23, 2014.⁶⁵ This claim is frivolous. CaptionCall will respond to Ultratec’s letter in more detail under separate cover, but

⁶⁵ Ultratec at 32.

in short, Ultratec can prove its claim only by defining “verbatim” as “100% accuracy,” a standard that no IP CTS service—including CapTel—meets. If Ultratec’s view of the world is correct, then absent massive leaps in technology, no provider should be eligible for IP CTS certification.

Ultratec then puzzlingly cites a litany of old press releases and unsubstantiated competitor filings that have nothing to do with CaptionCall’s IP CTS.⁶⁶ Ultratec makes no attempt to explain why these citations are remotely relevant to CaptionCall’s compliance with IP CTS minimum standards.

CaptionCall offers best-in-class IP CTS, as demonstrated by the many thousands of customers who have chosen to use CaptionCall’s service. CaptionCall meets or, in key areas such as speed-of-answer, exceeds all of the Commission’s minimum standards. Ultratec has offered no legitimate claim to the contrary. Thus, there is no reason that CaptionCall could not be a licensee of any technology that requires a license.

IX. An Injunction Would Return IP CTS to the Control of a Single Provider.

Ultratec repeatedly claims that it has sought a “limited” injunction that applies only to CaptionCall’s prospective customers.⁶⁷ If Ultratec does not license its technology to CaptionCall in a way that allows CaptionCall to add new customers, and at reasonable rates, then the impact of such an injunction will be devastating.

With respect to the need for CaptionCall to add new customers, IP CTS users tend to be elderly and churn away from the service much more quickly than ordinary telephone users. Without the ability to replace those customers, CaptionCall’s service ultimately will no longer be

⁶⁶ *Id.* n. 87.

⁶⁷ *See, e.g., id.* at 10, 11.

viable. Moreover, the injunction would eliminate CaptionCall as a competitive constraint on CapTel. If CaptionCall cannot add new customers, then CapTel customers cannot switch services, new users have no real choice, and CapTel no longer has incentives to innovate in order to protect its market share.

With respect to the need for the Commission to ensure Ultratec charges reasonable royalty rates, Ultratec, as discussed above, wants CaptionCall to pay a \$1.07 per minute royalty, simply for CaptionCall to continue operating. That rate—almost 60% of CaptionCall’s TRS Fund compensation—is unsustainable, and it would force CaptionCall to shut down its service.

Thus, Ultratec’s characterization of its injunction request as “limited” is charitably described as misleading. For all intents and purposes, the injunction would give Ultratec total control over the IP CTS market. That is what Ultratec has sought in the litigation from the outset. As a result, if Ultratec’s patents survive review in the Court of Appeals and the PTAB, it is critical that Ultratec be required to adhere to its obligation to license its technology at reasonable rates. More importantly, even if CaptionCall ultimately succeeds in its effort to invalidate the Ultratec patents, if Ultratec can either prevent CaptionCall from adding new customers or charge prohibitively high royalty rates, that victory will come too late.

X. Conclusion

For the reasons stated in the Petition and in these reply comments, the Commission should issue a declaratory ruling that affirms Ultratec’s obligation to license its IP CTS technologies to competing providers at reasonable rates. Alternatively, the Commission should declare prospectively that Ultratec has such a duty.

Respectfully submitted,

/s/ Christopher J. Wright

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January 13, 2015

*Counsel for Sorenson Communications, Inc.
and CaptionCall, LLC.*

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

ULTRATEC, INC.
and CAPTEL, INC.,

Plaintiffs,

-vs-

Case No. 13-CV-346

SORENSEN COMMUNICATIONS,
INC. and CAPTIONCALL, LLC,

Madison, Wisconsin
October 20, 2014
8:15 a.m.

Defendants.

* * * * *

STENOGRAPHIC TRANSCRIPT OF FIFTH DAY OF JURY TRIAL
MORNING SESSION
HELD BEFORE DISTRICT JUDGE BARBARA B. CRABB, and a jury,

APPEARANCES:

For the Plaintiffs:

Quarles & Brady
BY: ANTHONY TOMASELLI
KRISTIN GRAHAM NOEL
MATTHEW DUCHEMIN
MARTHA SNYDER
STEPHEN GARDNER
JOSEPHINE BENKERS
STACY ALEXEJUN
TREVOR JOIKE
33 East Main Street, Ste. 900
Madison, Wisconsin 53703

Also present: Robert Engelke - President & CEO
Captel/Ultratec
Chris Conlin - IT personnel

Lynette Swenson RMR, CRR, CBC
U.S. District Court Federal Reporter
United States District Court
120 North Henry Street, Rm. 520
Madison, Wisconsin 53703
608-255-3821

1 environment was they use Java.

2 Q They being Blackberry?

3 A That's correct.

4 Q How long did you work on that?

5 A About a year before we did the first release.

6 Q What did you do after that?

7 A We started looking at other ideas. I was -- but we
8 continued -- we actually continued work on that for a
9 couple years actually. But we also looked at some other
10 possibilities. We started looking at CaptionCall
11 basically soon thereafter.

12 Q CaptionCall being what?

13 A A way to help deaf or I mean hard-of-hearing people
14 get captioning for phone calls.

15 Q Were you involved in the design of the endpoint
16 device?

17 A Yeah, that's my responsibility. So I was involved
18 in the software, architecture, design, how it interacted
19 with the other systems, even helped out with the way it
20 looks, the way it works. Pretty much anything that
21 would touch the user I tried to get my fingers in just
22 to make sure I understood how the complete picture would
23 work.

24 Q Were you involved in every aspect of the design of
25 that -- endpoint device means the CaptionCall phone,

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1 doesn't it?

2 A That's correct.

3 Q Were you involved in every aspect of the design of
4 that instrument?

5 A I was involved in pretty much most of the meetings,
6 yeah.

7 Q Did you write the software for that instrument?

8 A Yes.

9 Q How long did it take you to, from the time you
10 began until the time that the project was actually
11 released to the public, to design and then build and
12 then distribute for the first time the CaptionCall
13 phones? Do you recall?

14 A Well, we started with a prototype when we first
15 started doing it. We actually did something we called
16 *CaptionCall Skype*. The idea was that we would use
17 Skype. Skype had a way to get the audio from it.

18 Q What is Skype?

19 A It is a software program that allows people to make
20 phone calls on their computer.

21 Q Okay.

22 A And they had an interface to allow us to get the
23 audio that was coming in and out, and so we actually
24 created a prototype application to test out our theories
25 on how things would work and what would be the best way

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1 to get things to go. We started that in 2007 and we
2 released our phone in 2010. So somewhere around three
3 years I would suspect.

4 Q Did you work on that project full time for those
5 three years?

6 A It was my responsibility for the whole time, but
7 some -- I worked on some other projects during that time
8 as well because I was managing multiple projects.

9 Q Were you managing the project of developing and
10 programming for the CaptionCall phone?

11 A I was.

12 Q I got up there and forgot to memorize the exhibit
13 number. Talk into the microphone so everybody can hear
14 you. Okay?

15 A Okay. My bad.

16 Q Okay. Mr. Chevrier, you have in front of you
17 what's been marked Exhibit 1929 and Exhibit 854. What
18 is Exhibit 1929?

19 A That is a 57Tx.

20 Q What is Exhibit 854?

21 A That is a 57T.

22 Q Are those the only two CaptionCall phone models
23 that have been produced to date?

24 A That is correct.

25 MR. BOREN: Your Honor, at this time we offer
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1 Exhibits 854 and 1929 in evidence.

2 MS. BENKERS: No objection.

3 THE COURT: Received.

4 BY MR. BOREN:

5 Q Mr. Chevrier, just tell us what features that you
6 developed to put into the first model, the 57T. First
7 if you would, hold the 57T up so that the jury can see
8 it.

9 A (Witness complies)

10 Q Okay.

11 A So one of the first things we wanted to do, we
12 thought really hard about this, we were trying to think
13 about the target audience. We've kind of figured it
14 would be some people somewhere between 50/70ish, that
15 kind of thing. So we kind of thought a lot about like
16 our parents or grandparents, and kind of how they would
17 handle something like this.

18 So what we did was we went out, we actually looked
19 to see what other things were doing like competitors,
20 whatever, and we tried to see what other products were
21 that were doing similar kinds of things where text was
22 coming up on a screen and you had to read it. So we'd
23 look at IM. We looked at whatever. Okay?

24 Q Let's start with the text display itself. What
25 programming did you do? What did you bring to the text

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1 display of the 57T?

2 A Basically all the other things that we looked at,
3 whenever the text would show up, it always jerks up. So
4 to me -- so if you've ever used like an instant
5 messenger or whatever or anything where people are --
6 you see text coming in, it always seems to, like, it
7 fills in this line, then jerks up; it fills in the line
8 below it, it jerks up; fills in the line, jerks up. We
9 kind of thought that would be really hard to do while
10 you're on the phone. You're a little older, you're not
11 really feeling comfortable with technology, and this
12 thing -- you're trying to understand what somebody is
13 saying. Sorry. I keep moving way from the mic. You're
14 trying to understand what somebody is saying and then
15 the text is jumping around and so your eyes are moving
16 all the time.

17 Q So what did you do?

18 A We made it so it moved really smoothly up the
19 screen basically.

20 Q How did you do that? And again, you don't need to
21 give a lot of detail, but I think it's helpful to
22 understand the programming that went into that.

23 A Sure. So basically what we would do is -- actually
24 I did the programming, so what I did was this screen is
25 filled with what we called *pixels*. They're little

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1 elements. This particular one has 800 this direction,
2 480 this direction. And what you end up having to do is
3 you just move the pixels from the screen up a little bit
4 and then now you have empty space at the bottom and then
5 you just fill in the empty space at the bottom. So
6 maybe move up three or four pixels, you fill in the
7 three or four pixels at the bottom, but you do this like
8 24 or 25 times a second.

9 Q A second?

10 A Yes.

11 Q Why that speed?

12 A Because then it visually looks like it's just
13 smoothly going up the screen kind of like a video. A
14 video actually, VRS, like I was talking about earlier,
15 that's a big thing in our company and we typically try
16 to get 24 frames a second with that. Just basically
17 video.

18 Q So can you describe for the jury now what the text
19 moving up the screen looks like?

20 A So we used to actually think about -- I don't know
21 if any of you have seen Star Wars, but at the beginning
22 of Star Wars where they have the little captions at the
23 beginning telling you about what happened before, and it
24 just kind of slowly moves up the screen and you can read
25 it the whole time instead of, you know, it's just going

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1 so fast you can't tell what's going on.

2 The one thing we didn't do is with Star Wars, it
3 kind of narrows at the top of the screen, and we didn't
4 do all that. But it just goes straight up and it just
5 really smoothly shows you what's happening and your eyes
6 don't have to jump around and you don't, you know, it's
7 not one more complication while you're trying to talk on
8 the phone.

9 Q So does the text scroll up?

10 A It does.

11 Q And it's not jerky?

12 A No.

13 Q How big is the screen on the CaptionCall 57T?

14 A So we have a seven-inch screen.

15 Q And why did you choose to have a seven-inch screen?

16 A Well, we thought the more space the better
17 actually. Typically people in that age group don't just
18 have hearing problems but, you know, like me, they can't
19 see really without glasses, and so we wanted to be able
20 to put the screen as big as possible and make it -- but
21 still have a lot of lines of text. Because if you only
22 had two or three lines on here, it would be really hard
23 to keep context with the conversation.

24 Q How does the -- how does the user interface with
25 the device? I don't see any buttons on the front of it.

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1 A Well, that was one of the things we tried to do
2 with this design. We actually hired a company called
3 Astro.

4 Q A company called what?

5 A Astro.

6 Q Astro. All right.

7 A They actually helped us with the design. But the
8 whole idea here was let's don't confuse people with all
9 the buttons. They called this design a pebble.

10 Q Who's *they*?

11 A Astro did.

12 Q Okay. Explain that.

13 A So if you see some of the pictures and stuff, they
14 see here is the pebble design. But the idea was it's
15 kind of like --

16 THE COURT: I'm sorry, they call it a pebble?

17 THE WITNESS: Pebble.

18 THE COURT: P-e-b-b-l-e?

19 THE WITNESS: Yes.

20 BY MR. BOREN:

21 Q Why don't you explain -- that comes from a culture
22 and a particular art. Why don't you explain that.

23 A Yeah. So their idea was kind of like an Asian
24 garden kind of thing with maybe the right sand, and then
25 you just see like a rock kind of sticking up on top of

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1 it. Or like, you know, like a pond or something, what's
2 really smooth with just a little rock sticking up. And
3 this was supposed to be the pebble.

4 Q So you mean like literally pebble?

5 A Yes, like a rock.

6 Q Okay.

7 A And it's just this thing sticking out. And the
8 idea was let's just make it totally clear, smooth, nice
9 looking. You know, some of the other stuff we had seen
10 looked very medical, to be honest. You looked at it and
11 it screamed I have a disability, and we didn't want to
12 do that.

13 Q Why did you choose the color black?

14 A Because it's nice. We like it. So I guess it's
15 personal opinions, but...

16 Q Right. What about the form factor? Can you raise
17 it? Lower it?

18 A Yeah. So one of the things with a touch screen --
19 we've got a touch screen on the front by the way -- and
20 we wanted to be able to handle a touch screen. So if
21 you have -- you want to be able to read it, but you have
22 to have enough support so that you can, when you -- this
23 lever here -- we actually took quite a bit of time
24 coming up with this because we kept trying different
25 things and it didn't work as well as we had hoped. But

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1 when you push, you don't want the phone to move; right?
2 Now this is on paper, so it's going to move more. But
3 we've got little rubber stoppers on the bottom to keep
4 that from happening, if I get this thing set right.

5 Q Do you want to turn that around so the jury can see
6 it, please?

7 A Okay. I could just see it fine. So the idea was
8 if you push it, it's not going to move too much because
9 you wouldn't want it falling over every time because you
10 do have a touch screen and sometimes people do touch
11 them a little harder than they need to. We actually
12 tried to make this touch screen so that you didn't have
13 to touch it very hard, but, you know, different people.

14 Q And what did your design -- did you write the code
15 for the touch screen functions?

16 A So the touch screen functions on this one, somebody
17 -- we had another company called Ocular. They're the
18 ones that actually supplied the touch screen to us.
19 They wrote the driver for it.

20 Q Did you pay Ocular for that technology?

21 A We did, yes.

22 Q Okay. What did you envision the user using the
23 touch screen for?

24 A So one of the things we thought of is we kind of
25 thought the age group would be a little on the

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1 technophobic side, so what we tried to do is we tried to
2 make it so they didn't have to do anything on the
3 computer side. Because this is basically hooked into a
4 computer. And what we tried to do is we tried to make
5 it so that all -- that age group, they're used to
6 picking up a phone, dialing a number, talking to
7 somebody on the phone; right?

8 So what we wanted to do is let them do the same
9 thing. So if they're a little scared of the computer
10 side, they can do things the way they've always done it.
11 The only difference would be that they'd see captioning
12 in the window, which they didn't see on their other
13 phones. But -- however, if they were a little -- if
14 they didn't have an issue with computers or, you know,
15 they weren't as afraid of them as others, we'd put in
16 stuff to let them store contacts, recent calls, get a
17 list of all the recent calls they had. They could
18 change how bright the screen was. They could change how
19 big the text was.

20 Q And this is during what time frame that you're
21 building these features into the phone?

22 A This would have been summer probably in the
23 2008/2009 time frame.

24 Q Did you consider where the phone might be placed in
25 a home and what might be needed to do that?

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1 A Yeah. So one of the things with this phone is it
2 does require internet to work -- to get captioning
3 anyway. It doesn't require it to work. I mean it will
4 make phone calls if you plug it into any phone line.
5 But if you want captioning, you have to have internet.
6 And one of the things we thought of anyway was a lot of
7 the people in this target audience, they're not going to
8 have an ethernet cable connection sitting right by their
9 phone necessarily. As a matter of fact, they probably
10 don't even know what that is.

11 Q Well, I'm not sure I do. Explain to us what you
12 mean by ethernet cable.

13 A So typically when people are going to get internet,
14 they either have a cable that hooks them into the
15 internet or they use Wi-Fi to get them into the
16 internet. So that's what I meant. The cable I'm
17 talking about for the ethernet, that's what I meant.

18 Q Okay. What does Wi-Fi allow the user to do with
19 the phone?

20 A Yeah. So what we did here was we decided since
21 they probably don't have an ethernet cable near their
22 phone jack, we would give them Wi-Fi so that they could
23 put it anywhere a phone jack is.

24 Q What is Wi-Fi?

25 A Wi-Fi is a way to get internet over the radio
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1 signals.

2 Q Like you might have on a laptop computer at
3 Starbucks or something like that?

4 A Or on your phone. Most phones have Wi-Fi nowadays,
5 at least the higher-end phones do.

6 Q At the time you introduced the CaptionCall phone,
7 did any competitors have Wi-Fi on their phones?

8 A No.

9 MS. BENKERS: Objection. Foundation.

10 THE COURT: Overruled.

11 BY MR. BOREN:

12 Q At the time you introduced 57T, did competitors
13 have a screen as large as seven inches?

14 A No.

15 Q At the time you introduced the CaptionCall 57T, did
16 any competitors have a black phone?

17 A No.

18 Q Did you do anything on the phone, in the
19 programming of the phone, to make errors in captioning
20 more understandable?

21 A Yes.

22 Q What did you do?

23 A Here again we looked at what was out there,
24 including some of our own products with our IP relay.
25 But what we noticed was typically, and honestly the same
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1 thing kind of happens on instant messaging, but
2 typically what will happen is if somebody makes a
3 mistake in typing, either they'll have to put some text
4 at the end and say hey, this is what I really meant to
5 say in that spot. But what we would notice is sometimes
6 it wasn't very evident where the context of that change
7 was because unless you exactly -- it's hard to say what
8 this -- where in this part this new text came -- I'm not
9 saying that very well -- where this new text went in
10 this conversation that you were just reading. So
11 sometimes you can figure it out, sometimes you can't.
12 So what we thought was that didn't make a lot of sense,
13 because here again, we're trying to make it as easy as
14 possible for this age group to be on the phone and
15 trying to read at the same time and listen to the
16 conversation.

17 So we wanted to keep the confusion down as much as
18 possible, and so we thought the best way to do that
19 would be to actually replace the text into the spot
20 where it really belonged. So instead of just putting it
21 at the end of the sentence, we actually put it in
22 context right back where it should be and then we would
23 mark it a little bit with a color.

24 Q Different color from the rest of the text?

25 A Yeah. So that way as they're reading, they could
BRIAN CHEVRIER - DIRECT

1 actually visually see oh, something changed. They could
2 let their eyes go back up, reset their context because
3 now they understood the exact words that were being
4 used, and then they could go back to where they were
5 reading.

6 Q And that would happen with the screen even as it
7 was scrolling smoothly up?

8 A That is correct.

9 Q At the time the CaptionCall 57T phone was released,
10 did any competitors have that smooth scrolling feature?

11 MS. BENKERS: Objection. Foundation.

12 Q To your knowledge.

13 A No.

14 Q At the time that the 57T was released, to your
15 knowledge did any of the competitors have the ability to
16 do those corrections in line?

17 MS. BENKERS: Objection. Foundation.

18 MR. BOREN: I asked to the witness's knowledge,
19 Your Honor.

20 THE COURT: Overruled. Just as far as you have
21 personal knowledge.

22 THE WITNESS: I have not seen it before.

23 BY MR. BOREN:

24 Q You did look at and your team did look at the
25 features, for example, of the CaptionCall phone?

BRIAN CHEVRIER - DIRECT

1 A Yes.

2 Q Did the CaptionCall phone have that feature?

3 A Not to my knowledge. I didn't see it.

4 Q There was earlier testimony about contacts with
5 audiologists. Do you know what an audiologist is?

6 A Yes.

7 Q What is an audiogram?

8 A So a hard-of-hearing individual will go to an
9 audiologist to get their hearing tested and --

10 MS. BENKERS: Objection. Foundation.
11 Undisclosed employee expert.

12 BY MR. BOREN:

13 Q What is your understanding of what an audiologist
14 is?

15 A Okay. So my understanding of what an audiologist
16 is is somebody who checks your hearing. They can
17 actually run some tests. They will give you a chart
18 they call an audiogram that has different frequencies on
19 it, and then basically --

20 MS. BENKERS: Objection. Can we have a
21 sidebar?

22 THE COURT: No. Is it just on --

23 MS. BENKERS: Same objection. Foundation.

24 THE COURT: Overruled.

25 BY MR. BOREN:

BRIAN CHEVRIER - DIRECT

1 Q Go ahead, Mr. Chevrier.

2 A They will give you an audiogram that has different
3 frequencies on it and tell you which frequencies you are
4 having problems with.

5 Q What is a frequency?

6 MS. BENKERS: Same objections.

7 THE COURT: Overruled.

8 THE WITNESS: Frequency. So low frequencies
9 are like low --

10 BY MR. BOREN:

11 Q Like bass?

12 A Like bass. Thank you. And high frequencies would
13 be like treble kind of stuff.

14 Q So like an equalizer?

15 A It is an equalize -- I'm sorry. Our feature is
16 kind of like an equalizer, but yes.

17 Q What is the feature that you're talking about?

18 A So we added -- we thought if our customers would
19 have audiograms, then it would be really nice to grab
20 that audiogram, look at the way it looks, come on to our
21 phone, basically change -- it's an upside down equalizer
22 to be honest, but it's like an equalizer.

23 Q What is an equalizer?

24 A Basically it's a way to boost or lower the volume
25 of certain frequencies.

BRIAN CHEVRIER - DIRECT

1 Q Like on your stereo or your car stereo that has
2 those vertical bars?

3 A Exactly.

4 Q Okay. Go ahead.

5 A So we created a feature we call audiogram, and we
6 actually have some things in there where you can get
7 some precept values like often people with -- in their
8 older -- older people will have higher frequency
9 issues --

10 MS. BENKERS: Objection. Foundation. An
11 undisclosed employee expert. And hearsay.

12 THE COURT: I'm sorry, what?

13 MS. BENKERS: Hearsay.

14 THE COURT: Overruled.

15 BY MR. BOREN:

16 Q Go ahead, Mr. Chevrier.

17 A They will have high frequency issues, and so we put
18 in some precept values that would allow certain
19 frequencies. But then we also had a custom one where
20 they could go in and they could actually adjust the
21 frequencies that we boost or play less as loud. Based
22 on their audiogram they could just go to that.

23 Q When you say *they*, do you mean the user?

24 A The user, yes.

25 Q Was the interface the kind of interface that the
BRIAN CHEVRIER - DIRECT

1 user, him or herself, could compare the audiogram to and
2 adjust it?

3 A Yeah. It basically has about five lines going up
4 for the different frequencies and then it has little
5 dots on them and you could go put your finger on the dot
6 and move it around.

7 Q At the end of that process, what does the audiogram
8 programmability do for the user?

9 A It basically makes it so that the user can hear
10 better.

11 Q And how is that?

12 A Because we line it up with the frequencies. If
13 they have a hard time hearing, they can be boosted and
14 then they can hear those frequencies now.

15 Q Is it your understanding that that varies from
16 person to person?

17 A Yes.

18 Q Does the -- did the phone allow any other
19 adjustments with respect to volume?

20 A It has a volume button that gets quite loud.

21 Q And how does that volume -- you say a volume
22 button. Is it an actual button? How does that work?

23 A It's right under here. There's a plus and a minus
24 sign at the top of the keypad, which I'm sure nobody can
25 see but me. But the plus will make the volume go up and

BRIAN CHEVRIER - DIRECT

1 the minus will make it go down.

2 Q At the time you released the --

3 THE COURT: Can you speak into the microphone?

4 You're kind of turning and --

5 THE WITNESS: I'm sorry. Thank you.

6 Q At the time you released the 57T, did your
7 competitors have the audiogram programmability?

8 A No.

9 MS. BENKERS: Objection. Foundation.

10 BY MR. BOREN:

11 Q Let me ask the question up more directly. At the
12 time you released the 57T, did the CapTel phone have
13 audiogram programmability?

14 MS. BENKERS: Objection. Foundation. Can we
15 have a sidebar?

16 THE COURT: You can't have a sidebar, but you
17 can rephrase the question, Mr. Boren.

18 BY MR. BOREN:

19 Q Mr. Chevrier, were you aware of the competitors'
20 phones that were in the marketplace when you released
21 your 57T?

22 A Yes.

23 Q Do you know whether any of those phones had
24 audiogram programmability at that time?

25 A I didn't see it on any of them.
BRIAN CHEVRIER - DIRECT

1 Q Did you look at everything that was out there?

2 A I did.

3 Q You'll need to speak up again.

4 A I'm sorry.

5 Q That's all right. That's all right. When was the
6 57T released?

7 A We released it to the public in November of 2010, I
8 believe.

9 Q What is the difference between the 57T, the first
10 one that you released, and 57Tx? And if you can --
11 well, you can just compare them there for the jury.

12 A That's fine. It would be kind of hard to see some
13 of the differences anyway.

14 Q You can describe them.

15 A So on this one, we actually changed the touch
16 screen. You can't really tell from a distance, but we
17 put glass in here. This is all molded plastic, bound to
18 the touch screen that's underneath it. It's nice and
19 smooth and everything, but it was -- the manufacturing
20 process was a little hard.

21 Q What do you mean?

22 A Well, we had a lot of parts that wouldn't work
23 because it was -- there was a high percentage that would
24 fail when they tried to create them.

25 This one here, actually the touch screen is a
BRIAN CHEVRIER - DIRECT

1 little cheaper. It inexpensive, I guess, but it's
2 actually a nicer touch screen we think. But you can
3 actually see an edge right around here in the design
4 which we actually talked to Astro about to make sure
5 that they didn't have a big problem with it. But they
6 approved it, so we went forward. But anyway, that's
7 different.

8 Obviously there's some memory changes, some
9 hardware changes, that kind of stuff to cheaper parts
10 because over time some of the things we were using
11 before were more expensive.

12 Q Did you purchase the parts that are inside the 57T
13 and 57Tx from third parties?

14 A Yes.

15 Q Can you just give us an overview of some of the
16 components that are inside that phone?

17 A Well, both of these phones actually, they have a
18 telephony board that basically is to run the phone.
19 It's got a processor on there, and then it communicates
20 with the rest of the system. And we also have a
21 motherboard or the main board that has a CPU on there
22 and the memory and that kind of stuff.

23 Q What is CPU?

24 A Central processing unit.

25 Q What CPU do you have inside that phone? Is it the
BRIAN CHEVRIER - DIRECT

1 same one in both of them?

2 A Yes.

3 Q What is it?

4 A It's a DaVinci chip. I think it's a 6446.

5 Q Who makes that chip, do you know?

6 A Texas Instruments.

7 Q And you say you have memory in the phone?

8 A Yes.

9 Q Tell the jury what memory is.

10 A So there's two types of memory in here. There's
11 RAM, which is random access memory. Basically it's
12 volatile, so if you turn the phone off, anything inside
13 a RAM goes away typically. And the other kind is called
14 *flash*, which is similar to stuff you have maybe on
15 phones or cameras nowadays where you can store things on
16 a flash chip.

17 Q And if you turn it off, the contents of the memory
18 stay?

19 A Yes.

20 Q Is that sometimes called *nonvolatile memory*?

21 A Yes.

22 Q Mr. Chevrier, has anybody been more involved in the
23 development and the production of the CaptionCall 57T
24 and 57Tx than you?

25 MS. BENKERS: Objection. Foundation.
BRIAN CHEVRIER - DIRECT

1 MR. BOREN: Let me just ask you a different
2 question.

3 THE COURT: Overruled.

4 BY MR. BOREN:

5 Q Are you proud of the work you did on this phone?

6 A Yes. I am very proud.

7 Q Are you invested in it?

8 A I am.

9 Q Are you still working on it continuing to improve
10 it?

11 A We are.

12 MR. BOREN: Pass the witness. (9:10 a.m.)

13 THE COURT: Ms. Benkers.

14 CROSS-EXAMINATION

15 BY MR. BOREN:

16 Q Mr. Chevrier, you just testified that -- about some
17 differences between the 57T and the 57Tx. I just want
18 to make sure that everything is clear. Both the 57T and
19 the 57Tx hook up to the CaptionCall relay and function
20 the same way as far as providing captions to an assisted
21 user; correct?

22 A Correct.

23 Q Now you testified about the fact that there's Wi-Fi
24 capability.

25 A Yes.

BRIAN CHEVRIER - CROSS

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

ULTRATEC, INC.
and CAPTEL, INC.,

Plaintiffs,

-vs-

Case No. 13-CV-346

SORENSEN COMMUNICATIONS,
INC. and CAPTIONCALL, LLC,

Madison, Wisconsin
October 17, 2014
12:45 p.m.

Defendants.

* * * * *

STENOGRAPHIC TRANSCRIPT OF FOURTH DAY OF JURY TRIAL
AFTERNOON SESSION
HELD BEFORE DISTRICT JUDGE BARBARA B. CRABB, and a jury,

APPEARANCES:

For the Plaintiffs:

Quarles & Brady
BY: ANTHONY TOMASELLI
KRISTIN GRAHAM NOEL
MATTHEW DUCHEMIN
MARTHA SNYDER
STEPHEN GARDNER
JOSEPHINE BENKERS
STACY ALEXEJUN
TREVOR JOIKE
33 East Main Street, Ste. 900
Madison, Wisconsin 53703

Also present: Robert Engelke - President & CEO
Captel/Ultratec
Chris Conlin - IT Personnel

Lynette Swenson RMR, CRR, CBC
U.S. District Court Federal Reporter
United States District Court
120 North Henry Street, Rm. 520
Madison, Wisconsin 53703
608-255-3821

1 A That is correct, yes.

2 Q Were you also in charge or were you involved in the
3 adaptation of that product into the CaptionCall product?

4 A Yes. I was the lead developer when we were
5 building the CaptionCall system.

6 Q When you built the CaptionCall system, what did you
7 look to in order to determine how to build the call
8 assistant workstation software?

9 A Well, we leveraged a lot of -- really a lot of the
10 code that we used for our IP relay business, including
11 the call assistants' application that they used.

12 Q Did you take the work that you had previously done
13 on the SIPRelay product and use that?

14 A Yes, we did.

15 Q How did you do that?

16 A Well, we -- the SIPRelay software that we were
17 using for the call centers was very similar to what we
18 needed for our CaptionCall call centers. So we took
19 that software and we just modified it to do more what we
20 needed it to do for the CaptionCall systems and took
21 some of the functionality away that we didn't need, the
22 IP relay needed.

23 Q What is some of the functionality you took away?

24 A Well, for instance IP relay needed a telephone
25 connection so they could make the telephone connection

SHANE ROYLANCE - DIRECT

1 to the hearing user, and in CaptionCall we didn't need
2 that telephone connection anymore.

3 Q Did you also participate in writing software that
4 would send information back and forth to the CaptionCall
5 phone?

6 A Yes. We implemented a communication protocol. We
7 used SIP, which is session initiation protocol which is
8 already a way to send messages back and forth, and
9 utilized that, but we built the architecture to make
10 that work for CaptionCall so that the call center
11 application could talk to our 57T or 57Tx device.

12 Q When you first -- what is 57T and 57Tx device?

13 A That would be the CaptionCall endpoint on a
14 CaptionCall phone. Endpoint.

15 Q What's the difference between those two?

16 A The difference between which two?

17 Q The 57T and the 57Tx.

18 A I don't know all the differences there are. It's
19 -- the functionality is the same, but there's different
20 components in them.

21 Q Does the CaptionCall phone today look the way it
22 did when it was first introduced?

23 A Pretty much the same. I think there's a few slight
24 changes in the look -- in look of the phone.

25 Q Now who was involved in the design of the software
SHANE ROYLANCE - DIRECT

1 that actually interacted with the user on the phone?

2 A For the most part, the engineer in charge of that
3 was Brian Chevrier.

4 Q Did you yourself do any programming relating to
5 reducing latency at the phone or the appearance of
6 latency to customers?

7 A We did develop software in the call center to try
8 to reduce latency in getting the text to the phone.

9 Q What did you do?

10 A One of the things that we did was we started using
11 hypothesis text, which is -- deserves a great
12 explanation. Hypothesis text is something that the
13 Dragon NaturallySpeaking engine --

14 MS. BENKERS: Objection. Can we have a
15 sidebar?

16 THE COURT: Do you think this is going beyond
17 the scope -- I don't think he needs to get into this, do
18 you?

19 MR. BOREN: Your Honor, counsel brought up the
20 very fact of latency in her examination and I would like
21 this witness to explain how that works in the context
22 actually of the CaptionCall product. It will be a short
23 explanation.

24 MS. BENKERS: Your Honor, I think that this is
25 undisclosed employee expert testimony.

SHANE ROYLANCE - DIRECT

1 MR. BOREN: All I wanted to do is say what he
2 did in a way that is understandable, and we'll move on.

3 THE COURT: All right. The objection is
4 overruled.

5 THE WITNESS: So hypothesis text basically is
6 what Dragon will release before it releases -- it
7 recognizes little bits and pieces. So if I was to say
8 my name is Shane, then Dragon would recognize "my," and
9 then "name," and then "is Shane." And so it would spit
10 those first ones out as a hypothesis, but it's not sure
11 if that's exactly what you said yet. So it waits until
12 you're done with your phrase before it generates the
13 entire phrase, which is called the *final phrase*
14 *recognition*. And if you wait for that, then you have to
15 wait a long time for it to spit it out. So we started
16 using the hypothesis text so it would come out faster.

17 BY MR. BOREN:

18 Q Mr. Roylance, at any time during the period of time
19 when you were developing either the SIPRelay product or
20 then later on the CaptionCall product, did you use, look
21 at, see, were you aware of any Ultratec code of any
22 kind?

23 A No, I was not.

24 Q Do you have personal knowledge of that?

25 A Yes, I do.

SHANE ROYLANCE - DIRECT

1 Q Why?

2 A Because I didn't do it.

3 Q Okay. When you finished your product, your
4 SIPRelay product, did it work?

5 A Yes, it did.

6 Q And when you finished your CaptionCall product, did
7 it work?

8 A Yes, it did.

9 Q Does it work today?

10 A Yes, it does.

11 Q Mr. Roylance, are you proud of your work?

12 A I am.

13 MR. BOREN: Pass the witness. (4:24 p.m.)

14 THE COURT: Ms. Benkers.

15 CROSS-EXAMINATION

16 BY MS. BENKERS:

17 Q Mr. Roylance, sorry to have to ask you some more
18 questions. We talked about the CaptionCall system a
19 little bit the other day.

20 A Yes.

21 Q And we walked through it and I'll try not to be too
22 repetitive.

23 A Okay.

24 Q First of all, you personally did not come up with
25 the idea of using voice recognition software --

SHANE ROYLANCE - CROSS

EXHIBIT 3

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

ULTRATEC, INC. and CAPTEL, INC.,

Plaintiffs,

Case No. 13-CV-346-BBC

vs.

SORENSEN COMMUNICATIONS, INC.,
and CAPTIONCALL, LLC,

Madison, Wisconsin
October 17, 2014
8:30 a.m.

Defendants.

* * * * *

STENOGRAPHIC TRANSCRIPT OF FOURTH DAY OF JURY TRIAL
MORNING SESSION
HELD BEFORE THE HONORABLE BARBARA B. CRABB

APPEARANCES:

For the Plaintiffs:

Quarles & Brady, LLP
BY: KRISTIN GRAHAM NOEL
STEPHEN J. GARDNER
ANTHONY A. TOMASELLI
MATTHEW J. DUCHEMIN
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P.O. Box 2113
33 East Main Street, Suite 900
Madison, Wisconsin 53701

Also Present: Chris Conlin (*Litigation Support*)

CHERYL A. SEEMAN, RMR, CRR
Federal Court Reporter
United States District Court
120 North Henry Street
Madison, Wisconsin 53703
1-608-255-3821

1 it. We designed the ASIC for that, which is the brain
2 power for the video phone. We designed the software.

3 Q. What does ASIC stand for; do you know; do you
4 remember?

5 A. No, I don't remember.

6 Q. Say what it is.

7 A. It's a specialty processor chip that does certain --
8 processes certain algorithms really quickly, so like
9 video. It would process video really quickly. It's a
10 dedicated chip for certain tasks.

11 Q. And so how did that fit into the overall product?

12 A. Well, we built that. We designed that product, you
13 know, pretty much from the ground up, all the elements of
14 that product.

15 Q. At some point after you joined Sorenson, did
16 Sorenson get into products and services for the deaf and
17 hard of hearing?

18 A. We did.

19 Q. What is the first Sorenson product and how did you
20 get into it?

21 A. It was in 2003 was when we first offered the
22 service. We started developing probably in 2001 or 2002
23 and it was video relay service. It's a similar service
24 as what we're talking about here except you have a deaf
25 person rather than a hard-of-hearing person. And they

PATRICK NOLA - DIRECT

1 communicate, you know, with sign language. And to do
2 that, you need a video phone. And so they talk to an
3 interpreter, which is I think -- I've heard the term
4 *caller assistant*. We call them *communication assistants*.
5 In this case the communication assistant was an
6 interpreter.

7 So if you were deaf and you were trying to call me,
8 as a hearing person, you would call an interpreter, have
9 a video phone in front of you, sign back and forth, and
10 then the interpreter would voice that message and relay
11 it to the hearing person.

12 Q. How did you come to get into that business from the
13 television business or the video phone business?

14 A. We had -- I had a deaf employee who was -- we
15 weren't the first in that business. There was other
16 competitors. And he knew about the service and he
17 brought the idea to me.

18 Q. So he brought the idea to you. What did you do?

19 A. I looked at the market and determined it was an area
20 we could effectively compete in and made a recommendation
21 to the Sorenson family and put together a plan to pursue
22 the video relay service business.

23 Q. Were you the CEO of Sorenson at the time?

24 A. No. I was the chief operating officer.

25 Q. What does the chief operator officer do?

PATRICK NOLA - DIRECT

1 A. I ran the day-to-day operations of the company, so
2 each of the departments reported to me.

3 Q. And then you were the chief operating officer until
4 you became the chief executive officer?

5 A. Yes, sir.

6 Q. And by this time it is Sorenson Communications?

7 A. It was Sorenson Communications by 2002 or 2003,
8 somewhere in that time frame.

9 Q. Is Sorenson Communications still in the video phone
10 business?

11 A. Yes.

12 Q. Is it still in the video relay service business?

13 A. Yes, we are.

14 Q. Did -- after Sorenson got into the video relay
15 service business, was the business successful?

16 A. We were very successful.

17 Q. What are some of the techniques that you employed --
18 that your company employed in order to market the VRS
19 service?

20 A. So we trained hundreds of deaf trainers across the
21 country to go into folks' homes, make it easy to install
22 for a deaf individual. We would install it for them. We
23 would spend a lot of time training them on how to use the
24 system and --

25 Q. Why did that make a difference?

PATRICK NOLA - DIRECT

1 A. Well, you have to have the full service compliment.
2 We had the product. We had a great product. It was a
3 video phone. I felt it was the best in the industry.
4 And in order to deliver the service, you need great
5 interpreters, but you also had to have a good experience
6 with the customer so that they could use the system that
7 you put in front of them, so we spent a lot of time
8 training them.

9 Q. Did Sorenson -- let's see. When did Sorenson launch
10 their product, when did you say?

11 A. In 2003 we launched the video relay service
12 business.

13 Q. Were there other competitors in the video relay
14 service when you got into it?

15 A. Yes.

16 Q. How did Sorenson do in comparison to its
17 competitors?

18 A. Well, we started with none of the market -- and I
19 think there was maybe five competitors before us: AT&T
20 and Sprint and Hamilton, a couple other competitors,
21 CSD -- and within about two years we became the leading
22 video relay service provider in the industry.

23 Q. After you launched VRS, what is the next product
24 that Sorenson launched?

25 A. It was called *IP relay*.

PATRICK NOLA - DIRECT

1 Q. What does IP relay mean?

2 A. IP, Internet protocol, relay. It was similar to the
3 business we're talking about now where you had a
4 hard-of-hearing person. We marketed that to a
5 hard-of-hearing person. A deaf person uses sign language
6 to communicate primarily if they're culturally deaf. In
7 this business, IP really was still geared toward
8 culturally deaf who didn't have the broadband or Internet
9 speed in their home, so they could just have enough speed
10 to communicate with text. So it was text from the deaf
11 person into a communication assistant that would then get
12 voiced to a hearing person.

13 Q. And then the IP relay was different how?

14 A. Well, it was different in that video relay service
15 used video and IP relay used text.

16 Q. And IP stands for *Internet protocol*?

17 A. Yes.

18 Q. Did the Sorenson IP relay service use Internet to
19 transmit information?

20 A. Yes, we did.

21 Q. How did the call assistant transcribe the text in
22 the IP relay originally?

23 A. They would type with the person. The hearing
24 person's voice would come in, they had a headset on, and
25 they would type those words into a computer.

PATRICK NOLA - DIRECT

1 Q. Did -- at some point after that Sorenson began to
2 incorporate voice recognition software into their IP
3 relay product?

4 A. Yes, we did.

5 Q. Did you buy the rights to that voice recognition
6 software?

7 A. Yes, we did.

8 Q. From whom did you buy it?

9 A. It was a company called Nuance. Sometimes it's
10 called *Dragon NaturallySpeaking*. But that's the product
11 I think their license agreement is with, Nuance.

12 Q. Do you know what *off the shelf* means?

13 A. Yes.

14 Q. What does it mean?

15 A. It means it's commercially available. We didn't
16 develop it ourselves. They sell it to multiple different
17 people, probably hundreds or thousands or more people in
18 the industry.

19 Q. Mr. Nola, in your IP relay service, your Sorenson IP
20 relay service, you used Internet, you used voice
21 recognition software. Was the voice recognition software
22 trained to the voice of the call assistant?

23 A. Yeah. That came with the package. You trained it.

24 Q. What do you mean, it "came with the package?"

25 A. It was part of a solution that Nuance had. The

PATRICK NOLA - DIRECT

1 package has been around for quite some time. And you use
2 it, you speak words into the training package to improve
3 the accuracy of the communication assistant.

4 Q. And did you pay a license fee? Do you continue to
5 pay a license fee for the right to use the Nuance
6 products?

7 A. We have and we do.

8 Q. Do you still have the SIPRelay product?

9 A. We do not.

10 Q. What was the next product that you developed?

11 A. It was what we call *CaptionCall*.

12 Q. Now, moving from the Sorenson IP relay product, the
13 SIPRelay product, is the Sorenson IP relay product
14 accused in this case?

15 A. The Sorenson IP relay product is not accused.

16 Q. So now we're going to move over to the *CaptionCall*
17 product, okay?

18 A. Yes.

19 Q. When did you begin developing the *CaptionCall* phone?

20 A. We started that in 2008, maybe 2009.

21 Q. What -- did you have any technologies that were
22 already extent or existing in Sorenson Technologies --
23 excuse me, Sorenson Communications that you used in
24 developing your *CaptionCall* product?

25 A. Yes.

PATRICK NOLA - DIRECT

1 Q. What were some of those technologies?

2 A. Well, I mean, the whole system. We had developed a
3 whole system already, so we had the data centers, we had
4 a video phone that used a chip in it. So we had a video
5 phone that goes with your TV. It had a processing chip
6 in it. And that processing chip came from TI. In fact
7 we took about the whole board design from that video
8 phone and put it into the captioning device. It was
9 easier, quicker for us to design the system using what we
10 already had.

11 Q. Now, why now did you begin to consider offering a
12 captioned telephone service?

13 A. Well, we were already serving the deaf community and
14 we were in a business that was regulated by the FCC and
15 this was another business that became available. I think
16 the funding for it from the FCC -- you're paid for it by
17 the government. So on your phone bill each month there's
18 a little amount, you know, that gets withdrawn for the
19 service. And I think that was approved in 2006.

20 Q. And it was after that time that Sorenson developed
21 its CaptionCall product and service?

22 A. Yes.

23 Q. When did CaptionCall or Sorenson -- let me ask you,
24 is CaptionCall a company that's related to Sorenson?

25 A. It's a subsidiary of Sorenson.

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1 Q. What's the official name of Sorenson today?

2 A. Sorenson Communications, Inc.

3 Q. What's the official name of CaptionCall today?

4 A. CaptionCall, LLC.

5 Q. Did -- when was the CaptionCall product officially
6 launched?

7 A. It was in January of 2011.

8 Q. Did -- was the CaptionCall product successful?

9 A. It was very successful.

10 Q. Explain what you mean.

11 A. Well, similar to the video relay service base, it
12 took us about two years to become the leader in that
13 market. We weren't the first, as you're aware, into the
14 captioning space. And within about two years we became
15 the market leader in that space, too.

16 Q. How did you do that?

17 A. With a similar strategy that we used for video relay
18 service. We had, you know, a great group of
19 communication assistants from IP relay. We had what I
20 believe was the best product that has really, you know,
21 great features in it. We gave one-to-one training
22 assistance to our customers. Those are all elements that
23 we were familiar with from the forum. We used them
24 again.

25 Q. What are some of the features that CaptionCall

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1 innovated in its products?

2 MS. NOEL: Your Honor, may we have a quick side
3 bar?

4 THE COURT: You may.

5 (At side bar.)

6 MS. NOEL: Your Honor, from the opening
7 statement, my working inference is that Mr. Nola is going
8 to explain the drivers of sales allegedly as opposed to
9 the patented features. My working assumption is that
10 defendants intend to argue this is relevant to secondary
11 considerations. We don't believe that defendants' sales
12 are necessarily relevant to secondary considerations.
13 Our sales are relevant to secondary considerations. But
14 more to the point of the request for a side bar, we just
15 want to confirm that if they go into this line of
16 questioning that we are free to explore other drivers of
17 success of the accused products.

18 THE COURT: Such as?

19 MS. NOEL: Such as the fact that they give away
20 free phones, such as the fact that they give \$50 for
21 referrals. And these are all facts, Your Honor, that the
22 FCC has taken issue with. And we intend to introduce
23 that evidence.

24 MR. BOREN: Your Honor, that's the very evidence
25 that the Court said was off limits, is anything that the

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1 FCC has done with respect to Sorenson is not part of this
2 case. We're moving right along here. He's going to
3 summarize the features and then I'm going to put other
4 witnesses on to talk about the product.

5 THE COURT: So what is your point in asking why
6 the Sorenson product sold so well?

7 MR. BOREN: It's just background. I'm not going
8 any further into that at all.

9 THE COURT: If you're not asking any more
10 questions, that's fine, on that line.

11 MR. BOREN: Okay. Im not. Thank you, Your
12 Honor.

13 (End of side bar.)

14 BY MR. BOREN:

15 Q. Mr. Nola, what are some of the features, the
16 innovative features, of the CaptionCall phone?

17 MS. NOEL: Your Honor, objection on the same
18 basis.

19 THE COURT: It seems to be bordering on that.

20 MR. BOREN: This is the product-in-suit, Your
21 Honor.

22 THE COURT: If you're talking simply about the
23 features of the phone itself --

24 MR. BOREN: I am.

25 THE COURT: -- then you can ask.

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1 MS. NOEL: Your Honor, if I may, then we believe
2 that clearly opens the door.

3 THE COURT: I don't, but we can talk about that
4 at more length. We're not going to have another side bar
5 right now.

6 MS. NOEL: Thank you, Your Honor.

7 BY MR. BOREN:

8 Q. Mr. Nola, what are some of the innovative features
9 of the phone?

10 A. Well, we were the first ones in the market that had
11 a touch screen. And when you put a touch screen, just
12 like when Apple came out with a touch screen, you have to
13 do more than just put a touch screen on it. You have to
14 redesign a user interface with the software that you use
15 with it to work with touch, and so we did that.

16 I felt our phone was the coolest-looking phone. We
17 spent a lot of time and effort doing industrial design.
18 I think you saw our two phones before. We had a
19 different look about our phone. We put in --

20 THE COURT: I'm sorry. I thought that we were
21 going to be talking about technical features of the
22 phone. I think this is beyond what we should be getting
23 into.

24 MR. BOREN: Thank you, Your Honor.

25

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1 BY MR. BOREN:

2 Q. Why did it take nearly three years from the
3 beginning of the development of the phone to launch it?

4 A. That's how long the development took to develop the
5 hardware and the software and the back end to finish
6 that.

7 MS. NOEL: Your Honor, we object on relevance
8 for the liability portion of the trial on this exhibit.

9 MR. BOREN: May we approach, Your Honor?

10 THE COURT: Can you give me the number of the
11 exhibit?

12 MR. BOREN: It's 1393, but this has likely
13 changed because we have removed some irrelevant pages
14 from it.

15 THE COURT: All right.

16 (At side bar.)

17 MR. BOREN: Your Honor, all this document shows
18 is it shows the -- this is the CaptionCall product. It
19 shows the revenue -- not the revenue, but actually the
20 number of minutes of the CaptionCall product from the
21 time it was launched up until January of 2014.

22 The relevance of this is what we had presented in
23 our opening statement, which is to show the growth of the
24 CaptionCall service in order to rebut the plaintiffs'
25 claim that the growth of the service is due to patented

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EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

ULTRATEC, INC.
and CAPTEL, INC.,

Plaintiffs,

-vs-

Case No. 13-CV-346

SORENSEN COMMUNICATIONS,
INC. and CAPTIONCALL, LLC,

Madison, Wisconsin
October 22, 2014
8:55 a.m.

Defendants.

* * * * *

STENOGRAPHIC TRANSCRIPT OF SEVENTH DAY OF JURY TRIAL
HELD BEFORE DISTRICT JUDGE BARBARA B. CRABB, and a jury,

APPEARANCES:

For the Plaintiffs:

Quarles & Brady
BY: ANTHONY TOMASELLI
KRISTIN GRAHAM NOEL
MATTHEW DUCHEMIN
MARTHA SNYDER
STEPHEN GARDNER
JOSEPHINE BENKERS
STACY ALEXEJUN
TREVOR JOIKE
33 East Main Street, Ste. 900
Madison, Wisconsin 53703

Also present: Robert Engelke - President & CEO
Captel/Ultratec
Chris Conlin - IT personnel

Lynette Swenson RMR, CRR, CBC
U.S. District Court Federal Reporter
United States District Court
120 North Henry Street, Rm. 520
Madison, Wisconsin 53703
608-255-3821

1 With respect to copying, it's clear Sorenson sat
2 down, reviewed the CapTel phone, reviewed all the
3 literature they could find, reviewed the service, and
4 copied the patented features of re-voicing, delivery of
5 voice and text, and the two-line configuration. They
6 cannot run away from what is in black and white in their
7 own documents.

8 You also heard about the praise and awards on the
9 inventions.

10 Finally, you've heard how nearly everyone, but
11 Sorenson, has either signed up for a license to the
12 patents or is currently negotiating a license.
13 Licensees include AT&T, Sprint, Hamilton, MCI and
14 others. The success of the CapTel service is due to the
15 patented features of the service. The CapTel service is
16 successful because of the three key functionalities
17 you've heard so much about the last week.

18 I think the one thing that Pat Nola and Rob Engelke
19 probably agree upon is you can't successfully sell
20 captioned telephones if you don't deliver voice and
21 text. You can't successfully sell captioned telephones
22 if the captions are 60 words a minute as opposed to 150
23 to 200 words per minute. And you can't achieve truly
24 functionally equivalent captioned telephone without the
25 two-line configuration.

1 To use an analogy, the patented features of the
2 CapTel service at issue in this case serve as the
3 engine, the wheels, and the brakes of a car. Without
4 these key functionalities, you don't have a car that
5 works. Without re-voicing, text and voice to the
6 assisted user, for example, CapTel service simply
7 doesn't work. But rather than focus on the engine and
8 the brakes and the wheels of the car, defendants have
9 focused on the color of their car, the sleekness of
10 their car, and an internal touch screen on their car's
11 dash. Defendants simply ignore that they would not have
12 all those installs or minutes if their car didn't have
13 the patented features of an engine or wheels or brakes.
14 The fact that CaptionCall, in fact, uses re-voicing,
15 delivers voice and text to the assisted user, has the
16 CapTel two-line configuration, that's what drove the
17 sales and minutes, along of course with giving phones
18 away for free and paying customers and audiologists to
19 get more phones in other people's homes. Without the
20 patented features, those wouldn't even be captioned
21 telephones.

22 What the factors show in light of the evidence that
23 has been presented at trial is that these patented
24 features could not have been simply obvious, as
25 defendants claim. If that was true, surely someone else

EXHIBIT 5

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

ULTRATEC, INC.
and CAPTEL, INC.,

Plaintiffs,

-vs-

Case No. 13-CV-346

SORENSEN COMMUNICATIONS,
INC. and CAPTIONCALL, LLC,

Madison, Wisconsin
October 14, 2014
1:10 p.m.

Defendants.

* * * * *

STENOGRAPHIC TRANSCRIPT OF FIRST DAY OF JURY TRIAL
AFTERNOON SESSION
HELD BEFORE DISTRICT JUDGE BARBARA B. CRABB, and a jury,

APPEARANCES:

For the Plaintiffs:

Quarles & Brady
BY: ANTHONY TOMASELLI
KRISTIN GRAHAM NOEL
MATTHEW DUCHEMIN
MARTHA SNYDER
STEPHEN GARDNER
JOSEPHINE BENKERS
STACY ALEXEJUN
TREVOR JOIKE
33 East Main Street, Ste. 900
Madison, Wisconsin 53703

Also present: Robert Engelke - President & CEO
Captel/Ultratec
Chris Conlin - IT personnel

Lynette Swenson RMR, CRR, CBC
U.S. District Court Federal Reporter
United States District Court
120 North Henry Street, Rm. 520
Madison, Wisconsin 53703
608-255-3821

1 now, I'm probably speaking at about 190 to 200 words a
2 minute. So it's clear that if I were having a
3 conversation with someone and someone was trying to type
4 it on a typewriter, they'd get way behind very fast.
5 They would be very slow.

6 So what we did is we said look, there's got to be a
7 better way to convert what somebody is saying in voice
8 into text so that the relay, you know, speeds up, and
9 basically they don't have these big lag times where
10 people are just waiting around for the CA to type all
11 this information.

12 And so we had been looking at voice recognition for
13 a long time. I used to give a seminar at the University
14 on voice rec -- it wasn't on voice recognition, but I
15 always mentioned it because I had been working on some
16 very, very simple voice recognition applications at the
17 psychology department back in the 1960s, late 60s. I
18 mean we could recognize words like yes or no and that
19 was it. I mean -- and that was hard enough.

20 Voice recognition was clearly something on the
21 horizon. And as the years went along, more and more
22 people got better and better at it. There were very
23 limited systems that would only recognize very, very
24 small vocabularies. There used to be something Ma Bell
25 was working on where you could dial by voice and it

ROBERT ENGELKE - DIRECT

EXHIBIT 6

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

ULTRATEC, INC.
and CAPTEL, INC.,

Plaintiffs,

DAMAGES

-vs-

Case No. 13-CV-346

SORENSEN COMMUNICATIONS,
INC. and CAPTIONCALL, LLC,

Madison, Wisconsin
October 24, 2014
1:05 p.m.

Defendants.

* * * * *

STENOGRAPHIC TRANSCRIPT OF NINTH DAY OF JURY TRIAL
AFTERNOON SESSION
HELD BEFORE DISTRICT JUDGE BARBARA B. CRABB, and a jury,

APPEARANCES:

For the Plaintiffs:

Quarles & Brady
BY: ANTHONY TOMASELLI
KRISTIN GRAHAM NOEL
MATTHEW DUCHEMIN
MARTHA SNYDER
STEPHEN GARDNER
JOSEPHINE BENKERS
STACY ALEXEJUN
TREVOR JOIKE
33 East Main Street, Ste. 900
Madison, Wisconsin 53703

Also present: Robert Engelke - President & CEO
Captel/Ultratec
Chris Conlin - IT personnel

Lynette Swenson RMR, CRR, CBC
U.S. District Court Federal Reporter
United States District Court
120 North Henry Street, Rm. 520
Madison, Wisconsin 53703
608-255-3821

1 A I was not.

2 Q Why not?

3 A I looked at a number of what I understood to be
4 potential alternatives that would be available to
5 Sorenson in lieu of taking a license from CapTel, and
6 what I learned from my research was that none of those
7 appeared to be either technically viable, commercially
8 acceptable, or even avoiding the patents. So
9 essentially there were no alternatives that I was aware
10 of that CaptionCall could look to in lieu of taking a
11 license. So the cost approach isn't applicable in this
12 case.

BRUCE MCFARLANE - DIRECT