

Nortel Networks –Allocation Trial –Summary of June 19th, 2014

On the 18th day of the allocation trial, the parties heard from two expert witnesses of the US interests: Raymond Zenkich and Laureen Ryan.

Raymond Zenkich appeared in Wilmington on behalf of the US Debtors. Mr. Zenkich provided an expert report addressing questions relating to patents. He opined that the assigned end markets and the levels of interests that were assigned are reasonable. Mr. Zenkich concluded that none of the 31 families of patents and applications that are solely filed outside of the US and have no US counterparts are of a great value of interest than patents in the portfolio designated as highest interest patents. Finally, Mr. Zenkich found that in 2009-2010, the market would have generally ascribed little to no value to the Chinese patents on the open market. Mr. Zenkich was cross-examined by the EMEA Debtors regarding his qualifications to opine on the value of the Chinese patents and the type of review that was completed to reach his various conclusions. The UK pension claimants (UKPC) also cross-examined Mr. Zenkich regarding his assessment of the value of patents. The Canadian Debtor and Monitor cross-examined Mr. Zenkich regarding the sources he relied on for his conclusions.

Laureen Ryan appeared in Toronto on behalf of the US Debtors. Ms. Ryan did not provide an initial expert report but was retained by the US Debtors to respond to the EMEA Debtor's expert Paul Huffard and the Contribution Theory he opines on. Ms. Ryan criticized the Huffard report in that it does not consider the total research and development (R&D) contribution funded by each debtor group. In her report, she argued that through a cost sharing and transfer pricing regime that was in place from at least 1989 to the Petition Date, US Debtor not only paid directly for R&D within its own territory, but also funded a significant portion of the R&D performed in the Canadian and EMEA Debtors' geographic territories. Ms. Ryan opines in order for the Contribution Approach to properly assess each Debtor Group's contribution, the amount of R&D spend needs to be adjusted for the R&D amounts that NNI effectively paid for on behalf of the Canadian and EMEA Debtors. Based on her opinion, the proceeds of sale should be allocated with the Canadian Debtors receiving 20.2%, the US Debtors receiving 66.7%, and the EMEA Debtors receiving 13.1%. The EMEA Debtors cross-examined Ms. Ryan with respect to transfer pricing amounts she used for R&D and whether costs such as restructuring costs were included. The UKPC also cross-examined Ms. Ryan regarding the assumptions she used to calculate the total R&D contribution amounts. Ms. Ryan was also cross-examined by the CCC regarding the assumptions she used to calculate the contribution of the US debtors and whether it included the benefit that might have been received by NNI (one of the US Debtors) for compensation that was paid to NNL (one of the Canadian Debtors).

The US Debtor's witnesses will continue tomorrow, with Catherine Tucker providing evidence in Wilmington.

As a result of longer depositions of expert witnesses than previously expected, the trial will now continue Monday and Tuesday of next week with the courts hearing evidence from the remaining three expert witnesses from the US interests.