

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

OMEGA PATENTS, LLC,

Plaintiff,

v.

Case No: 6:13-cv-1950-Orl-40DAB

CALAMP CORP.,

Defendant.

_____ /

COURT'S INSTRUCTIONS TO THE JURY

Members of the jury:

It's my duty to instruct you on the rules of law that you must use in deciding this case. When I have finished you will go to the jury room and begin your discussions, sometimes called deliberations.

JURY INSTRUCTION NO. 1

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and isn't binding on you.

You shouldn't assume from anything I've said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You shouldn't be concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact.

There's no legal difference in the weight you may give to either direct or circumstantial evidence.

JURY INSTRUCTION NO. 2

When I say you must consider all the evidence, I don't mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

- Did the witness impress you as one who was telling the truth?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome of the case?
- Did the witness seem to have a good memory?
- Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
- Did the witness appear to understand the questions clearly and answer them directly?
- Did the witness's testimony differ from other testimony or other evidence?

JURY INSTRUCTION NO. 3

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. Also ask yourself whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

JURY INSTRUCTION NO. 4

When scientific, technical or other specialized knowledge might be helpful, a person who has special training or experience in that field is allowed to state an opinion about the matter.

But that doesn't mean you must accept the witness's opinion. As with any other witness's testimony, you must decide for yourself whether to rely upon the opinion.

When a witness is being paid for reviewing and testifying concerning the evidence, you may consider the possibility of bias and should view with caution the testimony of such witness where court testimony is given with regularity and represents a significant portion of the witness's income.

JURY INSTRUCTION NO. 5

In this case it is the responsibility of Omega to prove every essential part of its infringement allegation by a "preponderance of the evidence." This is sometimes called the "burden of proof" or the "burden of persuasion."

A "preponderance of the evidence" simply means an amount of evidence that is enough to persuade you that Omega's allegations are more likely true than not true.

If the proof fails to establish any essential part of an allegation or contention by a preponderance of the evidence, you should find against Omega.

In deciding whether any fact has been proved by a preponderance of the evidence, you may consider the testimony of all of the witnesses, regardless of who may have called them, and all of the exhibits received in evidence, regardless of who may have produced them.

If the proof fails to establish any essential part of Omega's allegations by a preponderance of the evidence, you should find for CalAmp as to that claim.

Even if Omega proves its claim of infringement by a preponderance of the evidence, CalAmp can prevail in this case if it proves its allegations of invalidity by clear and convincing evidence. This is a higher standard of proof than proof by a preponderance of the evidence. It means the evidence must persuade you that the allegation or defense is highly probable or reasonably certain. The Court will tell you when to apply this standard.

JURY INSTRUCTION NO. 6

I will now summarize the issues that you must decide and for which I will provide instructions to guide your deliberations. You must decide the following three issues:

1. Whether Omega has proved by a preponderance of the evidence that CalAmp infringed claims 1, 3-5, 12, 14, and 16 of the '876 patent, 1-3, 12, and 14 of the '885 patent, 1, 10, and 11 of the '727 patent, and claims 1-6, 8, 11-14, 16, 18, 19, and 21 of the '278 patent. These are known as the "asserted claims."
2. Whether CalAmp has proved by clear and convincing evidence that the asserted claims were obvious in light of multiple pieces of prior art.
3. What amount of damages, if any, Omega has proved.

JURY INSTRUCTION NO. 7

Before you decide whether CalAmp has infringed the claims of the patents or whether the patent claims are invalid, you will have to understand the patent claims. The patent claims involved here are claims 1, 3-5, 12, 14, and 16 of the '876 patent, 1-3, 12, and 14 of the '885 patent, 1, 10, and 11 of the '727 patent, and claims 1-6, 8, 11-14, 16, 18, 19, and 21 of the '278 patent, found at the end of the patents, which are exhibits in evidence. The claims are intended to define, in words, the boundaries of the inventor's rights. Only the claims of the patent can be infringed. Neither the written description, nor the drawings of a patent can be infringed. Each of the claims must be considered individually. You must use the same claim meaning for both your decision on infringement and your decision on invalidity.

JURY INSTRUCTION NO. 8

Before you can decide many of the issues in this case, you will need to understand the role of patent "claims." The patent claims are the numbered sentences at the end of each patent. The claims are important because it is the words of the claims that define what a patent covers. A claim sets forth, in words, a set of requirements. Each claim sets forth its requirements in a single sentence. If a device or a method satisfies each of these requirements, then it is covered by the claim.

The figures and text in the rest of the patent provide a description and/or examples of the invention and provide a context for the claims, but it is the claims that define the breadth of the patent's coverage. Each claim is effectively treated as if it were a separate patent, and each claim may cover more or less than another claim. Therefore, what a patent covers depends, in turn, on what each of its claims covers.

The coverage of a patent is assessed claim-by-claim. In patent law, the requirements of a claim are often referred to as "claim elements" or "claim limitations." When a thing (such as a product or a process) meets all of the requirements of a claim, the claim is said to "cover" that thing, and that thing is said to "fall" within the scope of that claim. In other words, a claim covers a product or process where each of the claim elements or limitations is present in that product or process.

You will first need to understand what each claim covers in order to decide whether or not there is infringement of the claim and to decide whether or not the

claim is invalid. The law says that it is my role to define the terms of the claims and it is your role to apply my definitions to the issues that you are asked to decide in this case. Therefore, as I explained to you at the start of the case, I have determined the meaning of the claims and I will provide to you my definitions of certain claim terms. You must accept my definitions of these words in the claims as being correct. It is your job to take these definitions and apply them to the issues that you are deciding, including the issues of infringement and validity.

JURY INSTRUCTION NO. 9

It is my job as judge to provide to you the meaning of any claim language that must be interpreted. You must accept the meanings I give you and use them when you decide whether any claim has been infringed and whether any claim is invalid. I will now tell you the meanings of the following words and groups of words from the patent claims. For any words in the claim for which I have not provided you with a definition, you should apply their plain and ordinary meaning.

CLAIM TERM	COURT'S CONSTRUCTION
Transmitter	Radio frequency transmitter
Receiver	Radio frequency receiver
Controller	Electronic circuitry that performs one or more control functions
Data communication bus	Wired connection for communication of digital messages among vehicle devices, with each message including one or more device addresses
Multi-vehicle compatible controller	Electronic circuitry that performs one or more control functions, and can operate with more than one vehicle
Command signal	Signal generated on the data communications bus for operating a vehicle device
Device codes	Signal from a vehicle device
Enabling data	Data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller
Programming instructions	Code which instructs the controller to perform an operation

JURY INSTRUCTION NO. 10

I will now instruct you as to the rules you must follow when deciding whether Omega has proven that CalAmp infringed any of the claims of the Omega patents.

Patent law gives the owner of a valid patent the right to exclude others from importing, making, using, offering to sell, or selling the patented invention within the United States during the term of the patent. Any person or business entity that has engaged in any of those acts without the patent owner's permission infringes the patent. Here, Omega alleges that CalAmp's LMU-3000, LMU-3030, LMU-3050, vpod, and vpod2 infringe the asserted claims of the Omega patents.

In deciding the issue of infringement, you must compare the CalAmp accused products to the claims of the Omega patents.

A patent may be infringed directly or indirectly. As explained further in the following instructions, direct infringement results if the accused product is covered by at least one claim of the patent. Indirect infringement results if the defendant induces another to infringe a patent or contributes to the infringement of a patent by another.

JURY INSTRUCTION NO. 11

In this case, Omega asserts that CalAmp has directly infringed the patent. CalAmp is liable for directly infringing Omega's patent if you find that Omega has proven that it is more likely than not that CalAmp made, used, imported, offered to sell, or sold the invention defined in at least one claim of Omega's patent.

Someone can directly infringe a patent without knowing of the patent or without knowing that what they are doing is an infringement of the patent. They also may directly infringe a patent even though they believe in good faith that what they are doing does not infringe a patent or if they believe in good faith that the patent is invalid.

JURY INSTRUCTION NO. 12

To determine literal infringement, you must compare the accused products with each claim that Omega asserts is infringed, using my instructions as to the meaning of the patent claims.

A patent claim is literally infringed only if CalAmp's products include each and every element in that patent claim. If CalAmp's products do not contain one or more elements recited in a claim, CalAmp does not literally infringe that claim.

You must determine literal infringement with respect to each patent claim of the '876, '885, '727 and '278 patents individually.

The accused product should be compared to the invention described in each patent claim it is alleged to infringe. The same element of the accused product may satisfy more than one element of a claim.

JURY INSTRUCTION NO. 13

In this case, CalAmp is accused of actively inducing its customers to directly infringe Omega's patent. To find that CalAmp actively induced infringement, it is not necessary to show that CalAmp personally infringed, provided: (a) a single actor is responsible for direct infringement, namely, all of the components or steps of the product or method accused of infringing the patent; and (2) CalAmp actively induced these acts of infringement by its another entity. If you do not find that there is direct infringement by a single actor, or if you do not find that CalAmp actively induced these acts, you must find that CalAmp did not induce infringement of the patents.

To prove active infringement, Omega must establish it is more likely than not that:

1. CalAmp aided, instructed, or otherwise acted with the intent to cause acts by CalAmp's customers that would constitute direct infringement of the patent;
2. CalAmp knew of the patent, or showed willful blindness to the existence of the patent, at that time;
3. CalAmp knew, or showed willful blindness that it consciously ignored the possibility that CalAmp's customers would infringe at least one claim of the patent; and
4. CalAmp's customers infringed at least one patent claim.

To find willful blindness: (1) CalAmp must have subjectively believed that there was a high probability that a patent existed covering the accused CalAmp

products and (2) CalAmp must have taken deliberate actions to avoid learning of the patent.

JURY INSTRUCTION NO. 14

There are two different types of claims in the patent. One type is called an independent claim. The other is called a dependent claim.

An independent claim does not refer to any other claim of the patent. An independent claim must be read separately from the other claims to determine the scope of the claim. An "independent claim" sets forth all of the requirements that must be met in order to be covered by that claim.

A dependent claim is a claim that refers to at least one other claim in the patent. A dependent claim includes all of the elements of the claim to which the dependent claim refers, as well as the elements recited in the dependent claim itself.

To establish literal infringement of a dependent claim, Omega must show that it is more likely than not that the CalAmp's products or methods include each and every element of the independent claim and the dependent claim.

If you find that the independent claim from which the dependent claim depends is not literally infringed, then you must find that the dependent claim is also not literally infringed.

JURY INSTRUCTION NO. 15

CalAmp contends that the asserted claims of the patents-in-suit are invalid. CalAmp must prove by clear and convincing evidence that each asserted claim is invalid.

Claims of an issued patent may be found to be invalid. Thus, you must determine whether each of Omega's claims is invalid.

CalAmp contends that the patents-in-suit are invalid as obvious in light of prior art such as products, publications, and/or patents publicly known or available prior to the asserted patents.

I will now instruct you in more detail why CalAmp alleges that the asserted claims of Omega's patents are invalid.

JURY INSTRUCTION NO. 16

Prior art includes any of the following items received into evidence during trial:

1. any product or method that was publicly known or used by others in the United States before the patented invention was made;
2. patents that issued more than one year before the filing date of the patent, or before the invention was made;
3. publications having a date more than one year before the filing date of the patent, or before the invention was made;
4. any product or method that was in public use or on sale in the United States more than one year before the patent was filed;
5. any product or method that was made by anyone before the named inventors created the patented product or method where the product or method was not abandoned, suppressed, or concealed.

JURY INSTRUCTION NO. 17

This case involves two types of patent claims: independent claims and dependent claims.

An independent claim does not refer to any other claim of the patent. An independent claim must be read separately from the other claims to determine the scope of the claim. An "independent claim" sets forth all of the requirements that must be met in order to be covered by that claim.

A dependent claim is a claim that refers to at least one other claim in the patent. A dependent claim includes all of the elements of the claim to which the dependent claim refers, as well as the elements recited in the dependent claim itself.

In this case, claim 1 of the '876 patent; claim 1 of the '885 patent; claim 1 of the '727 patent; and claims 1, 13, and 18 of the '278 patent are each independent claims.

You must evaluate the invalidity of each asserted claim separately. Even if an independent claim is invalid, this does not mean that the dependent claims that depend from it are automatically invalid. Rather, you must consider the validity of each claim, separately. You must decide this issue of validity on a claim-by-claim basis. However, if you find that a dependent claim is invalid, then you must find that the independent claim from which it depends is also invalid. The dependent claim includes all of the elements of the independent claim from which it depends.

JURY INSTRUCTION NO. 18

The question of invalidity of a patent claim is determined from the perspective of a person of ordinary skill in the art in the field of the asserted invention.

You must determine the level of ordinary skill in the field of the invention. The higher the level of ordinary skill, the easier it may be to establish that an invention would have been obvious. Persons having a greater level of education, training, or experience in the field will more readily appreciate technical details that may be more challenging for persons having a lower level of skill. On the other hand, persons having a lower level of skill may not perceive as obvious technical details that would be apparent to persons having greater skill. In order to determine the obviousness of the invention you will be asked to determine what the ordinary level of skill was in the field of the invention. Regardless whether you decide to articulate in your verdict what you believe was the level of ordinary skill in the field of the invention, you must consider and assess this factor before reaching your conclusion in this case.

JURY INSTRUCTION NO. 19

In order to qualify as prior art, a printed publication must have been maintained in some tangible form, such as printed pages, typewritten pages, magnetic tape, microfilm, photographs, internet publication, photocopies, and must have been sufficiently accessible to persons interested in the subject matter of its contents.

Information is publicly accessible if it was distributed or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter exercising reasonable diligence can locate it. It is not necessary for the printed publication to have been available to every member of the public. An issued patent is a printed publication. A published patent application is a printed publication as of its publication date.

The disclosure of the claimed invention in the printed publication must be complete enough to enable one of ordinary skill in the art to use the invention without undue experimentation. In determining whether the disclosure is enabling, you should take into account what would have been within the knowledge of a person of ordinary skill in the art one year before the application for the patent was filed, and you may consider evidence that sheds light on the knowledge such a person would have had.

JURY INSTRUCTION NO. 20

CalAmp contends the asserted claims of the Omega's patents are invalid as "obvious."

A claimed invention is invalid as "obvious" if it would have been obvious to a person of ordinary skill in the art of the claimed invention at the time the invention was made. Unlike anticipation, which allows consideration of only one item of prior art, obviousness may be shown by considering more than one item of prior art.

In deciding obviousness, you must avoid using hindsight; that is, you should not consider what is known today or what was learned from the teachings of the patent. You should not use the patent as a road map for selecting and combining items of prior art. You must put yourself in the place of a person of ordinary skill in the art at the time the invention was made.

The following factors must be evaluated to determine whether CalAmp has established that the claimed invention(s) is obvious:

1. the scope and content of the prior art relied upon by CalAmp;
2. the difference or differences, if any, between each claim of the patents that CalAmp contends is obvious and the prior art;
3. the level of ordinary skill in the art at the time the invention of the patent was made; and
4. additional considerations, if any, that indicate that the invention was obvious or not obvious.

Each of these factors must be evaluated, although they may be analyzed in any order, and you must perform a separate analysis for each of the claims.

CalAmp must prove by clear and convincing evidence that the invention would have been obviousness.

I will now explain each of the four factors in more detail.

JURY INSTRUCTION NO. 21

You must determine what is the prior art that may be considered in determining whether any claim of the Omega patents is obvious. A prior art reference may be considered if it discloses information designed to solve any problem or need addressed by the patent or if the reference discloses information that has obvious uses beyond its main purpose that a person of ordinary skill in the art would reasonably examine to solve any problem or need addressed by the patent.

JURY INSTRUCTION NO. 22

You should analyze whether there are any relevant differences between the prior art and the claimed invention from the view of a person of ordinary skill in the art at the time of the invention. Your analysis must determine the impact, if any, of such differences on the obviousness or nonobviousness of the invention as a whole, and not merely some portion of it.

In analyzing the relevance of the differences between the claimed invention and the prior art, you do not need to look for precise teaching in the prior art directed to the subject matter of the claimed invention. You may take into account the inferences and creative steps that a person of ordinary skill in the art would have employed in reviewing the prior art at the time of the invention. For example, if the claimed invention combined elements known in the prior art and the combination yielded results that were predictable to a person of ordinary skill in the art at the time of the invention, then this evidence would make it more likely that the claim was obvious. On the other hand, if the combination of known elements yielded unexpected or unpredictable results, or if the prior art teaches away from combining the known elements, then this evidence would make it more likely that the claim that successfully combined those elements was not obvious.

Importantly, a claim is not proved obvious merely by demonstrating that each of the elements was independently known in the prior art. Most, if not all, inventions rely on building blocks long known, and claimed discoveries almost of necessity will likely be combinations of what is already known. Therefore, you should consider whether a reason existed at the time of the invention that would

have prompted a person of ordinary skill in the art in the relevant field to combine the known elements in the way the claimed invention does. The reason could come from the prior art, the background knowledge of one of ordinary skill in the art, the nature of any problem or need to be addressed, market demand, or common sense. You may also consider whether the problem or need was known, the possible approaches to solving the problem or addressing the need were known and finite, and the solution was predictable through use of a known option.

If you find that a reason existed at the time of the invention to combine the elements of the prior art to arrive at the claimed invention, this evidence would make it more likely that the claimed invention was obvious. Again, you must undertake this analysis separately for each claim that CalAmp contends is obvious.

JURY INSTRUCTION NO. 23

The determination of whether a claimed invention is obvious is based on the perspective of a person of ordinary skill in the art. The person of ordinary skill is presumed to know all prior art that you have determined to be reasonably relevant. The person of ordinary skill is also a person of ordinary creativity that can use common sense to solve problems.

When determining the level of ordinary skill in the art, you should consider all the evidence submitted by the parties, including evidence of:

1. the level of education and experience of persons actively working in the field at the time of the invention, including the inventor;
2. the types of problems encountered in the art at the time of the invention; and
3. the sophistication of the technology in the art at the time of the invention, including the rapidity with which innovations were made in the art at the time of the invention.

JURY INSTRUCTION NO. 24

Before deciding the issue of obviousness, you must also consider certain factors, which may help to determine whether or not the invention would not have been obvious. No factor alone is dispositive, and you must consider the obviousness or nonobviousness of the invention as a whole.

1. Were accused products covered by the claim commercially successful due to the merits of the claimed invention rather than due to advertising, promotion, salesmanship, or features of the product other than those found in the claim?
2. Was there long felt need for a solution to the problem facing the inventors, which was satisfied by the claimed invention?
3. Did others try, but fail, to solve the problem solved by the claimed invention?
4. Did others copy the claimed invention?
5. Did the claimed invention achieve unexpectedly superior results over the closest prior art?
6. Did others in the field, praise the claimed invention or express surprise at the making of the claimed invention?
7. Did others accept licenses under patents because of the merits of the claimed invention?

Answering all, or some, of these questions "yes" may suggest that the claim was not obvious. Answering all, or some, of these questions "no" may suggest that the claims would have been obvious. These factors are relevant only if there is a connection, or nexus, between the factor and the invention covered by the patent claims. Even if you conclude that some of the above indicators have been established, those factors should be considered along with all the other evidence

in the case in determining whether CalAmp has proven that the claimed invention would have been obvious.

JURY INSTRUCTION NO. 25

If you find that the accused device infringes any of the claims of the Omega patents, and that those claims are not invalid, you must determine the amount of damages to be awarded Omega for the infringement. On the other hand, if you find that each of the asserted patent claims is either invalid or is not infringed, then you need not consider damages in your deliberations.

Omega must prove each element of its damages – including the amount of the damages – by a preponderance of the evidence which means more likely true than not.

If proven by the Omega, damages must be in an amount adequate to compensate Omega for the infringement. The purpose of a damage award is to put Omega in about the same financial position it would have been in if the infringement had not happened. But, the damage award cannot be less than a reasonable royalty. You may not add anything to the amount of damages to punish an accused infringer or to set an example. You also may not add anything to the amount of damages for interest.

The fact that I am instructing you on damages does not mean that the Court believes that one party or the other should win in this case. My instructions about damages are for your guidance only in the event you find in favor of Omega. You will need to decide the issue of damages only if you find that one or more of the asserted claims are both not invalid and infringed.

JURY INSTRUCTION NO. 26

The date that Omega first notified CalAmp of its claim for patent infringement is the date for the start of damages. The parties do not agree on that date, and it is up to you to determine what that date is. Omega must prove that it is more likely than not that the CalAmp actually was notified of the claim for patent infringement as of the date alleged by Omega.

JURY INSTRUCTION NO. 27

The patent law provides that the amount of damages that CalAmp should pay Omega for infringing Omega's patents must be enough to compensate for the infringement, but may not be less than a reasonable royalty for the use of Omega's invention.

You must award Omega a reasonable royalty in the amount that the Omega has proved. A royalty is a payment made to a patent owner by someone else in exchange for the rights to make, use, sell, or import a patented product.

The reasonable royalty award must be based on the incremental value that the patented invention adds to the end product. When the infringing products have both patented and unpatented features, measuring this value requires a determination of the value added by the patented features. The ultimate combination of royalty base and royalty rate must reflect the value attributable to the infringing features of the product, and no more.

JURY INSTRUCTION NO. 28

A reasonable royalty is the royalty that would have resulted from a hypothetical license negotiation between Omega and CalAmp. Of course, we know that they did not agree to a license and royalty payment. But, in order to decide on the amount of reasonable royalty damages, you should assume that that the parties did negotiate a license just before the infringement began. This is why it is called a "hypothetical" license negotiation. You should assume that both parties to the hypothetical negotiation understood that the patent was valid and infringed and both were willing to enter into a license. You should also presume that the parties had full knowledge of the facts and circumstances surrounding the infringement at the time of the hypothetical negotiation.

JURY INSTRUCTION NO. 29

In determining the amount of a reasonable royalty, you may consider evidence on any of the following factors, in addition to any other evidence presented by the parties on the economic value of the patent:

1. Any royalties received by the licensor for the licensing of the patent-in-suit, proving or tending to prove an established royalty.
2. The rates paid by CalAmp to license other patents comparable to the patents in suit.
3. The nature and scope of the license, as exclusive or non-exclusive, or as restricted or non-restricted in terms of its territory or with respect to whom the manufactured product may be sold.
4. The licensor's established policy and marketing program to maintain its right to exclude others from using the patented invention by not licensing others to use the invention, or by granting licenses under special conditions designed to preserve that exclusivity.
5. The commercial relationship between the licensor and the licensee, such as whether or not they are competitors in the same territory in the same line of business.
6. The effect of selling the patented product in promoting sales of other products of the licensee; the existing value of the invention to the licensor as a generator of sales of its non-patented items; and the extent of such collateral sales.
7. The duration of the patents and the term of the license.
8. The established profitability of the product made under the patents in suit; its commercial success; and its current popularity.
9. The utility and advantages of the patented invention over the old modes or devices, if any that had been used for achieving similar results.
10. The nature of the patented invention; the character of the commercial embodiment of it as owned and produced by the licensor; and the benefits to those who have used the invention.

11. The extent to which CalAmp has made use of the invention; and any evidence that shows the value of that use.
12. The portion of the profit or of the selling price that may be customary in the particular business or in comparable businesses to allow for the use of the invention or analogous inventions.
13. The portion of the profit that arises from the patented invention itself as opposed to profit arising from unpatented features, such as the manufacturing process, business risks, or significant features or improvements added by the accused infringer.
14. The opinion testimony of qualified experts.
15. The amount that a licensor and a licensee (such as CalAmp) would have agreed upon (at the time the infringement began) if both sides had been reasonably and voluntarily trying to reach an agreement; that is, the amount which a prudent licensee—who desired, as a business proposition, to obtain a license to manufacture and sell a particular article embodying the patented invention—would have been willing to pay as a royalty and yet be able to make a reasonable profit and which amount would have been acceptable by a patentee who was willing to grant a license.
16. Any other economic factor that a normally prudent business person would, under similar circumstances, take into consideration in negotiating the hypothetical license.

JURY INSTRUCTION NO. 30

Although the relevant date for the hypothetical license negotiation is just before the infringement began, you may consider evidence relating to events after the infringement began, any actual profits made by CalAmp due to its infringement and any commercial success of the patented invention or the infringing products after that date.

JURY INSTRUCTION NO. 31

When determining a reasonable royalty, you may consider evidence concerning the amounts that other parties have paid for rights to the patents in question, or for rights to similar technologies. A license agreement must not be perfectly comparable to a hypothetical license that would be negotiated between Omega and CalAmp in order for you to consider it. However, if you choose to rely upon evidence from any other license agreements, you must account for any differences between those licenses and the hypothetically negotiated license between Omega and CalAmp, in terms of the technologies and economic circumstances of the contracting parties, when you make your reasonable royalty determination.

JURY INSTRUCTION NO. 32

If you find that it is more likely than not that CalAmp infringed Omega's patent, then you must also determine whether or not CalAmp's infringement was willful. In contrast to proving that infringement is more likely than not, Omega must prove willfulness by clear and convincing evidence. Willfulness requires clear and convincing evidence that:

1. CalAmp acted despite an objectively high likelihood that its actions infringed a valid patent, and
2. This objectively high likelihood of infringement was either known or so obvious that it should have been known to CalAmp.

In making the determination of whether CalAmp acted despite an objectively high likelihood that its actions infringed a valid patent, you are to consider what a reasonable person would have believed and are not to consider CalAmp's actual state of mind.

In determining whether CalAmp knew of the objectively high likelihood of infringement or whether the likelihood was so obvious that CalAmp should have known of that likelihood, you must consider the totality of the circumstances. The totality of the circumstances comprises a number of factors, which include, but are not limited to, whether CalAmp intentionally copied the claimed invention or a product covered by patent, whether CalAmp relied on competent legal advice, and whether CalAmp presented a substantial defense to infringement, including the defense that the patent is invalid.

JURY INSTRUCTION NO. 33

Of course, the fact that I have given you instructions concerning the issue of Omega's damages should not be interpreted in any way as an indication that I believe that the Omega should, or should not, prevail in this case.

Your verdict must be unanimous—in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you're judges—judges of the facts. Your only interest is to seek the truth from the evidence in the case.

JURY INSTRUCTION NO. 34

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and speak for you in court.

A verdict form has been prepared for your convenience.

[Explain verdict]

Take the verdict form with you to the jury room. When you've all agreed on the verdict, your foreperson must fill in the form, sign it and date it. Then you'll return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the court security officer. The court security officer will bring it to me and I'll respond as promptly as possible – either in writing or by talking to you in the courtroom. Please understand that I may have to talk to the lawyers and the parties before I respond to your question or message, so you should be patient as you await my response. But I caution you not to tell me how many jurors have voted one way or the other at that time. That type of information should remain in the jury room and not be shared with anyone, including me, in your note or question.