

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

OMEGA PATENTS, LLC,

Plaintiff,

v.

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

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.

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 issues:

1. Whether Omega has proved by a preponderance of the evidence that CalAmp induced the infringement of Claims 1, 3-5, 14, and 16 of the '876 patent by CalAmp's customers;

2. Whether Omega has proved by a preponderance of the evidence that CalAmp's customers' use of the CalAmp devices infringes claims 1-3, 12, and 14 of the '885 patent and, if so, whether CalAmp induced any such infringement;

3. Whether Omega has proved by a preponderance of the evidence that CalAmp directly infringed claims 1-6, 8, 11-14, 16, 18, 19, and 21 of the '278 patent;

4. Whether Omega has proven by a preponderance of the evidence that CalAmp's infringement of claim 1 of the '727 patent, and any other infringement you find of the other asserted patents, was willful.

5. What amount of damages Omega has proved by a preponderance of the evidence.

JURY INSTRUCTION NO. 7

Before you decide the open issues related to whether CalAmp has infringed the claims of the asserted patents, you will have to understand the patent claims. The patent claims involved here are claims 1, 3-5, 14, and 16 of the '876 patent, 1-3, 12, and 14 of the '885 patent, 1 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.

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 system) 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 system where each of the claim elements or limitations is present in that product or system.

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

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. 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
Vehicle device	Electrical or electronic component in a vehicle that can be controlled and/or the status thereof read. In the context of the asserted claims, the accused LMUs and VPODs are not vehicle devices but the Engine Control Unit or ECU is a vehicle device.

JURY INSTRUCTION NO. 9(a)

In determining the proper construction of a claim, one should look first to the intrinsic evidence of the record; that is, the patent itself, including the claims, the specification and, if in evidence, the prosecution history. Intrinsic evidence is the most significant source of the legally operative meaning of disputed claim language.

First, look to the words of the claims themselves to define the scope of the patented invention. Words in a claim are generally given their ordinary and customary meaning. A technical term used in a patent document is interpreted as having the meaning that it would be given by persons experienced in the field of the invention, unless it is apparent from the patent and the prosecution history that the inventor used the term with a different meaning.

Second, it is necessary to review the specification to determine whether the inventor has used any terms in a manner inconsistent with their ordinary meaning. The specification acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication. Thus, claims must be read in view of the specification of which they are a part.

Third, one may consider the prosecution history of the patent, if in evidence. This history contains the complete record of all the proceedings before the Patent and Trademark Office, including any express representations made by the applicant regarding the scope of the claims.

In most situations, an analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term. In such circumstances, it is improper to rely on extrinsic evidence. In instances in which intrinsic evidence is insufficient to enable one to determine the meaning of the asserted claims, extrinsic evidence may be considered. Extrinsic evidence is that evidence which is external to the patent and file history, such as expert testimony, inventor testimony, dictionaries, and technical treatises and articles. However, extrinsic evidence in general, and expert testimony, may be used only to help come to the proper understanding of the claims, it may not be used to vary or contradict the claim language.

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 by (1) inducing infringement of the asserted claims of the '885 and '876 patents, and (2) by directly infringing the asserted claims of the '278 patent. As I have told you previously, it has been determined that a portion of CalAmp's accused devices programmed to use vehicle speed data from the data bus to send a speed exceedance notification directly infringe claim 1 of the '727 patent and that CalAmp's customers directly infringed '876.

In deciding the remaining issues 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.

JURY INSTRUCTION NO. 11

In this case, Omega asserts that CalAmp has directly infringed the '278 and, as part of its inducement claim against CalAmp, that CalAmp's customers directly infringe the '885 patent. CalAmp is liable for directly infringing Omega's '278 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. If you find CalAmp's customers directly infringe the '885 patent, you will next have to determine if CalAmp induced that infringement.

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 direct 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 directly infringed only if a product or system includes each and every element in that patent claim. If CalAmp's products, or systems incorporating those products, do not contain one or more elements recited in a claim, there is no direct infringement of that claim. You must determine whether there is direct infringement by CalAmp with respect to each asserted patent claim of the '278 patent individually, and, as part of Omega's inducement claim, whether there is direct infringement by CalAmp's customers with respect to each asserted patent claim of the '885 patent individually.

In determining direct infringement, the accused product, or system including 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 or system may satisfy more than one element of a claim.

JURY INSTRUCTION NO. 13

Omega alleges that CalAmp is liable for infringement by actively inducing its customers to directly infringe the '885 and '876 patents. As with direct infringement, you must determine whether there has been active inducement on a claim-by-claim basis. CalAmp is liable for active inducement of a claim only if Omega proves by a preponderance of the evidence: (1) that the acts are actually carried out by CalAmp's customers and directly infringe that claim; (2) that CalAmp took action during the time the '885 and '876 patents were in force intending to cause the infringing acts by CalAmp's customers; and (3) that CalAmp was aware of the '885 and '876 patents and knew that the acts, if taken, would constitute infringement of that patent. It has previously been determined that CalAmp's customers directly infringe the asserted claims of the '876 patent.

If you find that CalAmp was aware of the '885 and '876 patents, but believed that the acts it encouraged did not infringe the patents, CalAmp cannot be liable for inducement. In order to establish active inducement of infringement, it is not sufficient that CalAmp's customers themselves directly infringe the claim, nor is it sufficient that CalAmp may have been aware of the act(s) by its customers that allegedly constitute the direct infringement. Rather, in order to find active inducement of infringement, you must find that

CalAmp specifically intended its customers to infringe the '885 and/or '876 patents. The mere fact, if true, that CalAmp knew or should have known that there was a substantial risk that its customer's acts would infringe the '885 and '876 patents would not be sufficient for active inducement of infringement.

A good faith belief that a patent is invalid is not a defense to inducement. However, a good faith belief CalAmp's customers do not infringe is a defense to inducement.

JURY INSTRUCTION NO. 14

There are two different types of claims in a 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 infringement of a dependent claim, Omega must show that it is more likely than not that the CalAmp's products or systems including those products 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 infringed, then you must find that the dependent claim is also not infringed.

JURY INSTRUCTION NO. 15

In this case, Omega argues both that CalAmp infringed and, further, that CalAmp infringed willfully. Willfulness requires you to determine whether Omega proved that it is more likely than not that infringement of the '727 patent and any other infringement by CalAmp, if you determine that there was any, was especially worthy of punishment. You may not determine that the infringement was willful just because CalAmp knew of the '278, '885, '876, and/or '727 patent and infringed. Instead, willful infringement is reserved for only the most egregious behavior, such as where the infringement is malicious, deliberate, consciously wrongful, or done in bad faith.

To determine whether CalAmp acted willfully, consider all facts. These may include, but are not limited, to:

(1) Whether or not CalAmp acted consistently with the standards of behavior for its industry;

(2) Whether or not CalAmp intentionally copied a product of Omega that is covered by the '278, '885, '876, and/or '727 patent;

(3) Whether or not CalAmp reasonably believed it did not infringe or that the patent was invalid;

(4) Whether or not CalAmp made a good-faith effort to avoid infringing the asserted patents, for example, whether CalAmp attempted to design around the asserted patents; and

(5) Whether or not CalAmp tried to cover up its infringement.

CalAmp argues it did not act willfully because, among other things, it relied on legal opinions that advised CalAmp either (1) that the accused products did not infringe the asserted patents and/or (2) that the asserted patents were invalid. You must evaluate whether the opinions were of a quality that reliance on their conclusions was reasonable.

CalAmp may contend that it did not willfully infringe the patents because, among other things, it believed the patents were invalid. Such testimony or evidence may only be considered on the issue of willfulness, because the patents-at-issue have been found to be valid. However, the fact that the patents were found to be valid after the commencement of this litigation may not be considered as evidence the CalAmp acted willfully. In determining whether Omega has proven that CalAmp's infringement was willful, you must consider all of the circumstances and assess CalAmp's state of mind at the time any infringement commenced.

JURY INSTRUCTION NO. 16

For any of the claims of the asserted patents that are infringed by CalAmp, you must determine the amount of damages to be awarded to Omega for the infringement of each asserted patent claim. On the other hand, if you find that an asserted patent claim is not infringed, then you should not consider damages for that claim in your deliberations. As I instructed previously, it was previously determined that a portion of CalAmp's accused devices programmed to use vehicle speed data from the data bus to send speed exceedance notification directly infringes claim 1 of the '727 patent. You must determine the number of units of CalAmp's device that infringed claim 1 of the '727 patent.

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 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.

JURY INSTRUCTION NO. 17

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 CalAmp actually was notified of the claim for patent infringement as of the date alleged by Omega.

JURY INSTRUCTION NO. 18

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 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. 19

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 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 any patent determined to be valid and infringed was known to be valid and infringed at the time of the hypothetical negotiation, and that both parties were willing to enter into a license. You should also presume that the parties had full knowledge of the facts and circumstances surrounding any infringement at the time of the hypothetical negotiation.

JURY INSTRUCTION NO. 20

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 patents-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. 21

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. 22

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. 23

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 on the issues you have been asked to decide 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. 24

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.