

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE WESTERN DISTRICT OF TEXAS

3 WACO DIVISION

4 JIAXING SUPER LIGHTING) (

5 ELECTRIC APPLIANCE CO., LTD.,) (CIVIL ACTION NO.

6 AND OBERT, INC.,) (6:20-CV-18-ADA

7 PLAINTIFFS,) (

8 VS.) (

9 CH LIGHTING TECHNOLOGY CO.,) (NOVEMBER 3, 2021

10 LTD., ELLIOTT ELECTRIC SUPPLY,) (1:33 P.M.

11 INC., AND SHAOXING RUISING) (

12 LIGHTING CO., LTD.,) (

13 DEFENDANTS.) (

14 JURY TRIAL TRANSCRIPT

15 BEFORE THE HONORABLE ALAN D ALBRIGHT

16 UNITED STATES DISTRICT JUDGE

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(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Thank you. You may be seated.

If one of you-all can hand me a copy of the charge and where it's at, I'm happy to take up any issues quickly. Just something where I can see what the dispute is.

MR. BERNSTEIN: Your Honor, I can -- I can start. It's pretty simple.

THE COURT: Oh, sure.

MR. BERNSTEIN: While they track one down.

THE COURT: Oh, sure. Go ahead.

MR. BERNSTEIN: One relates to whether the, I guess, phrase "presumption of validity" should be in the charge. Plaintiffs obviously want that in there since it's the law. I think the Defendants are objecting to that.

THE COURT: I think I've put it in in every other charge, have I not?

MR. BERNSTEIN: I believe so, Your Honor.

THE COURT: Yeah, that's going to stay in. That's in every charge. I think that's right.

MR. BERNSTEIN: And I -- and I think at least one other issue is we have the stipulation or the agreement on the infringing products.

THE COURT: Uh-huh.

1 MR. BERNSTEIN: And the language references
2 "existing" products, and we would prefer "past" or
3 "present." I'm not sure exactly what "existing" means.

4 MR. HILL: Your Honor, we would want to go with
5 the stipulation that the parties agreed to.

6 THE COURT: Okay. I don't know --

7 MR. HILL: It just says "existing" -- I'm sorry,
8 the parties' stipulation use the word "existing," so that's
9 what we would prefer.

10 THE COURT: What was the intent of -- I'll start
11 with you, Mr. Bernstein.

12 What was the intent of the stipulation? What
13 products did it intend to cover?

14 MR. BERNSTEIN: Everything. Everything that was
15 in existence, past, present, and future will be handled by
16 affirmative injunction.

17 THE COURT: Counsel? Did you -- and I hate to
18 keep asking you this, were you the lawyer that negotiated
19 this?

20 MR. HILL: Yes, in this case we were, Your Honor.

21 THE COURT: Okay.

22 MR. HILL: But this is -- in the preliminary
23 instructions as well --

24 THE COURT: But let me ask you this, they're not
25 going to be handling the injunction. I am.

1 MR. BERNSTEIN: Right. I just want to make
2 sure -- I guess on the record is fine -- that there's no
3 dispute this is covering everything.

4 THE COURT: This -- this -- my injunction, if you
5 win and if they don't win, will be any -- any product that
6 you say is -- was in the case or acts in a substantially
7 similar fashion that would be infringing. That's what my
8 injunction will cover.

9 MR. BERNSTEIN: Okay. We're okay with the current
10 language then, Your Honor.

11 THE COURT: Okay. Anything else?

12 MR. HILL: With respect to -- there's some
13 additional language that Plaintiffs suggest. In other
14 words, you should not consider what a person of ordinary
15 skill in the art would know now or has been learned from
16 the teaching of the Super Lighting patents.

17 Plaintiffs propose the "what has been learned from
18 the teaching of the Super Lighting patents." We don't
19 think that that's proper because it reads as though
20 something is taught in the asserted patents.

21 The same teaching in another patent cannot be used
22 to invalidate it. Because that's not the law to avoid
23 confusion Defendants derive their proposed instruction
24 directly from the Court's recent instructions in the
25 Freshub v. Amazon case.

1 THE COURT: I'm going to go with that one. I'm
2 going to go with the one that I've used in the past.

3 Anything else?

4 MR. HILL: One more, Your Honor.

5 THE COURT: Okay.

6 MR. HILL: With respect to the date of
7 commencement of damages, No. 32, the -- the dispute is if
8 you find that the patents were granted after any infringing
9 products were on the market, damages should be calculated,
10 et cetera. We believe that that's correct. Infringement
11 can only begin once the initial patent issued. The wording
12 from the Plaintiff --

13 THE COURT: I'm -- and what --

14 MR. BERNSTEIN: I know. And this is new language
15 to add. We don't have any -- that's what everyone knows,
16 and that's what the experts have said. That's fine.

17 THE COURT: So what --

18 MR. BERNSTEIN: I don't think there's -- and this
19 was some newer language that they added recently.

20 THE COURT: And you have no problem with it?

21 MR. BERNSTEIN: I don't have any problem with it.

22 THE COURT: Okay. Anything else?

23 MR. HILL: Nothing more on the instructions.

24 MR. BERNSTEIN: So we -- we still are -- we
25 just -- we've been exchanging this morning revisions to the

1 verdict form. I think we've made significant progress.

2 We're very close on that.

3 THE COURT: Okay. So let's do this, you-all have
4 like 700 lawyers each. Which I'm happy for each of you. I
5 wish I'd been on either team, not -- not that either firm
6 would have had me, but -- but I need one of you, whoever is
7 doing -- whoever is the least responsible for doing
8 something in court to get my clerk a finished copy of the
9 charge so that we can be printing it and we can be ready to
10 go.

11 So -- I don't care who does it, I'm just saying
12 someone on one of your two teams needs to get us a charge
13 that both sides agree is ready to be given because we're
14 going to take that charge, we're going to print it up, and
15 each juror will have a copy of it as I read it.

16 MR. BERNSTEIN: And they'll take the charge back
17 into the --

18 THE COURT: They'll take the charge back in, and
19 they'll take -- they'll have one verdict form, just one,
20 which the foreperson will sign.

21 MR. BERNSTEIN: Thank you, Your Honor.

22 THE COURT: Anything -- and so we can take up --
23 that -- that's pretty quick. I mean, so that's not a hard
24 deal to do. And I don't read the verdict form, so it
25 doesn't even have to be done today. I don't read the

1 verdict form.

2 MR. BERNSTEIN: Yeah, we'd like to finalize it
3 today so it's ready --

4 THE COURT: No, I get that. I'm just saying in
5 terms of the mechanics of getting things done, I'm not
6 going to be reading it. And --

7 MR. BERNSTEIN: Understood.

8 THE COURT: And so -- and they're not going to be
9 hearing -- even if I read the charge today, they're not
10 going to be deliberating until tomorrow after you do your
11 opening -- closing arguments. So we'll be good on the
12 verdict charge -- on the verdict form.

13 Anything else we need to take up?

14 MR. BERNSTEIN: Nothing from Plaintiff, Your
15 Honor.

16 THE COURT: If the expert would take the stand,
17 I'll bring the jury --

18 MR. HILL: Your Honor?

19 THE COURT: Yes, sir?

20 MR. HILL: Would this be a good time to do the
21 brief offer of proof or at a later time?

22 THE COURT: Just -- because they've been waiting
23 so long, let's do it -- but don't let me forget. Like when
24 I send them out on the break, let's -- you know, let's go
25 ahead and get it -- I want to make sure I protect you, but

1 they've been waiting for about a half hour to start.

2 MR. BERNSTEIN: So our JMOL, Your Honor, I'm
3 assuming based on that comment, we're not going to stop and
4 so --

5 THE COURT: If you-all -- we'll have the same deal
6 we had before. I'll keep going with the -- understanding
7 that Defendant -- from the Defendant that you are not
8 waving your right to make an argument for a directed
9 verdict at the end of their case, if -- unless we take a
10 break. And then whenever we do take a break --

11 MR. BERNSTEIN: Yeah, and we -- we have some
12 issues that I think impacts the last rebuttal witness. But
13 if that's how you want to do it, that's okay, Your Honor.

14 THE COURT: No, no. If -- no, I --

15 MR. BERNSTEIN: We would prefer to do it after our
16 case rests.

17 THE COURT: So we have left -- that may work out
18 just fine. We'll do it -- if you think that's the best way
19 to do it, I'm happy to do it.

20 MR. BERNSTEIN: Thank you, Your Honor.

21 THE COURT: Very good.

22 COURT SECURITY OFFICER: All rise.

23 (Recess.)

24 COURT SECURITY OFFICER: All rise.

25 THE COURT: Please remain standing for the jury.

1 (Jury in.)

2 THE COURT: Counsel, you may resume your direct.

3 DREW MOONEY, DEFENDANTS' WITNESS, SWORN

4 DIRECT EXAMINATION (CONTINUED)

5 BY MS. STAHA:

6 Q. Hello, Mr. Mooney.

7 A. Hi.

8 Q. Yesterday we were talking about your reasonable royalty
9 analysis, and we stopped off at your discussion of the
10 causes of CH's profitability not being due to the -- being
11 due to factors outside of any alleged infringement.

12 Do you have anything else to discuss under the
13 business and financial factors of your reasonable royalty
14 analysis?

15 A. No, I think we've covered everything under that
16 category.

17 Q. Yesterday, you heard Ms. Kindler talk about the
18 overlapping customers between CH and Super Lighting. Did
19 you also analyze sales by customers?

20 A. Yes, I did. So we have the sales data broken down by
21 customer for the parties so we can see who they sell to,
22 and they do sell to the same types of customers and the
23 same categories of customers over the entire damages
24 period.

25 But what Ms. Kindler showed you -- the statistics

1 she showed you are if at any point in time over the damages
2 period one company made a sale to that entity and at any
3 point in time another company made a sale to that entity,
4 that's what she's counting as an overlapping customer.

5 I would expect the overlapping customers to be a
6 good number because this is not a market at the retail
7 level that we're talking about here. This is not the -- a
8 market where there's millions of customers. This is not
9 you and I going into Lowe's and buying light bulbs or going
10 into Home Depot where there's millions of individual
11 customers. These are sold to a limited number of
12 customers.

13 So the way this market works, there's going to be
14 overlapping customers because of the nature of the market,
15 that there's a limited number of customers available to
16 these companies.

17 Q. Let's move on to the next category of the factors,
18 which is benefits and use.

19 What factors do you think are relevant under this
20 category?

21 A. So I think all four of these factors under benefits and
22 use are relevant. We usually talk about 9 and 10 together
23 and 11 and 13 together. And this goes to the nature of the
24 products and what's driving sales of the products. Are the
25 sales successful because of the patented functionality

1 that's asserted in this case or because of other reasons?

2 So those are the types of things we're going to
3 talk about under this category.

4 Q. Let's first talk about the nature of the products.

5 What does that have to do with your reasonable
6 royalty analysis?

7 A. So when we talk about the nature of the products, I
8 want to understand from a layperson's perspective, which is
9 me, not a scientist, not a technical person, but understand
10 what's really driving the sales of these products? Why are
11 people buying these products? That's what I want to
12 understand when I talk about the nature of the products.

13 Q. Uh-huh.

14 And let's move on to this next slide.

15 So what type of products are these? How do they
16 see these in the marketplace?

17 A. So we're talking about the LED tube lamp products here,
18 and this is a quote from the deposition of Mr. Baheti. I
19 think we heard this testimony read into the record
20 yesterday. He's a vice president of MaxLite, which is a
21 customer of both CH and Super Lighting. And he was asked:
22 From the customer's perspective, do they know if they --
23 who's manufacturing the product?

24 And he said: No, they don't. The answer is:
25 That is correct. Because the question was they see it as a

1 MaxLite product, they don't know whether it's made by CH or
2 Super Lighting.

3 And then he said: I mean, these are commodity
4 products, as long as the part is 4 foot long and it
5 produces a certain amount of -- a certain amount of lumen
6 output, certain wattage. Those are the basic things you
7 look at in a product.

8 So he's saying there -- when he says "commodity
9 products," as an economist what I interpret that to mean is
10 products that can be interchanged with each other. Like if
11 you have a fixture that needs a certain type of LED tube
12 lamp, you can put any tube lamp that's 4 feet long, for
13 example, that he says there that will fit in that spot, you
14 could use that product if it meets the -- the
15 characteristics of it.

16 And when he talks about lumen output and wattage,
17 what we heard yesterday is this is not something covered by
18 the patent. Lumen -- lumen output, wattage, color
19 temperature, like when you see the bulbs as warm white or
20 cool white, those aren't features that are taught by the
21 patent, is my understanding, but those are features that
22 are important to people that purchase the products. They
23 care about that, but those are not inventions of these
24 patents, is my understanding.

25 Q. And what else do you consider under the benefits and

1 use factors?

2 A. So we also consider what contributions did CH make to
3 generating its sales. Those are the sales at issue here,
4 CH's sales.

5 So I looked for documents that talk about what
6 does CH do when they sell the products? What do they bring
7 to the table, and what role do they play in the success of
8 their products?

9 And this slide that we're looking at here is from
10 a CH presentation that was made in the normal course of
11 business, and it's titled "Advantage of CH Lighting." And
12 you'll see the parts that I've highlighted, it's -- the
13 first part says: Well-understood the U.S. market, never
14 compete with our customers in end market directly, never
15 set up office and warehouse in USA, which means we won't do
16 business with retailer directly.

17 So if you look at that step chart we looked at
18 yesterday, they're not selling directly to end users.

19 And then second on this list: Good reputation in
20 the market, fully understood customer requirements both on
21 marketing and products.

22 So I understand -- we've seen -- I've read
23 testimony from witnesses that talk about CH's relationship
24 with customers, the loyalty of their customers, the ability
25 to reach customers from their sales people as a

1 differentiator for CH. They have a strong ability to reach
2 customers.

3 Q. Are there any other advantages to CH Lighting's
4 products that you saw?

5 A. Yes, there are other advantages.

6 The -- if we go to the next slide.

7 Before we talk about other contributions by CH, I
8 also looked at, you know, how does CH compare to Super
9 Lighting in terms of the strength of their sales force?
10 And this is a Super Lighting document. This is Super
11 Lighting's own assessment of its sales force, its sales
12 staff.

13 And if you look at the lower left quadrant that
14 I've highlighted, under unfavorable, it says the sales
15 staff are not competent in disciplining new customers.

16 So that's a big difference that I see from Super
17 Lighting's assessment of its sales staff versus
18 CH Lighting's assessment of what it brings to the market.

19 Q. Excellent.

20 And what else did you consider under this factor?

21 A. So if we go to the next slide, this is a page from --
22 another CH Lighting presentation specific to a product.
23 This is a Type A T8 product. And these are things that
24 they're emphasizing related to the product, and I've
25 highlighted these.

1 And again, I'm a layperson, I'm not a technical
2 expert, but I don't believe these are associated with the
3 asserted patents, as benefits of the asserted patents.

4 So under No. 1, you'll see aluminum end caps.
5 That's one feature that they're highlighting, if you will.

6 Under No. 2, with aluminum PCB, with better heat
7 release, and no risk on fire. And then it says: So we can
8 save four pieces thermal fuses if necessary, please be
9 noted that all flexible PCB will have a risk of arcing and
10 fire at end of life or after two to three years of
11 operation, this couldn't -- couldn't be stopped by the
12 thermal fuse.

13 So what I see there is CH is comparing what they
14 use, this aluminum PCB, to the flexible PCB and pointing
15 out a difference there that they think is superior with the
16 aluminum PCB.

17 And then there's some other features on here, as
18 well. We have PET coating under No. 4, which performs as
19 4 feet height shatter-proof. No arcing defect since
20 February 2014. Plastic end cap is an option as well.

21 So these are all features that they're
22 emphasizing. And, again, on this product, these features,
23 they're highlighted here, I understand are not taught by
24 the asserted patents in this case.

25 Q. Were there any other contributions that you saw?

1 A. Could we -- if we could go to the next slide.

2 No, that was -- that was the last contribution
3 that we're going to talk about.

4 Q. Sorry.

5 So is this next factor our final factor that we
6 discuss under this analysis?

7 A. Yes, this is the last category. This is the "General"
8 category.

9 So No. 14 is the opinion of qualified experts.
10 You've heard a lot of testimony from those exerts. I spoke
11 with the technical experts in this case and read the
12 reports of the technical experts in this case.

13 But what we're going to talk about here is
14 Factor 15, the last factor, the hypothetical negotiation,
15 which is really what is the outcome of this hypothetical
16 negotiation, what do we think the parties would agree to?

17 Q. Can you discuss the timing of the hypothetical
18 negotiation in relation to the timing of the reasonable
19 royalty examples that we saw earlier?

20 A. Sure. And I put this timeline together on this slide
21 just to put everything together on one timeline.

22 So what we have in the center in the big red box
23 is where we sit at the hypothetical negotiation. That's
24 taking place in April 2018. That's when the parties would
25 sit down in this room and work out a deal. They have to

1 get a deal done.

2 So if we look at what they know at that point in
3 time, they know the Lunera agreement, because that was
4 signed in November 2016.

5 They know about the Signify licensing program that
6 we talked about yesterday because those rates in that
7 program have been around since 2008.

8 And then after the hypothetical negotiation, three
9 years after, in May 2021, is when the TCP agreement was
10 signed. And, again, that is both three years after the
11 hypothetical negotiation and more than a year after the
12 lawsuit in this case was filed. So it's among this lawsuit
13 going on.

14 So that's the timeline we're looking at trying to
15 figure out what the parties would agree to at the
16 hypothetical negotiation in April 2018.

17 Q. Can you summarize some key takeaways of what we
18 discussed yesterday from the potential reasonable royalty
19 starting points?

20 A. Yes. So I put together this slide to summarize the
21 potential starting points for a royalty. So we're going to
22 talk about the starting points, and then we'll talk about
23 how we get to the result.

24 So we talked about the Lunera agreement. That was
25 executed prior to the hypothetical negotiation in April

1 2018. So the parties would know about that.

2 It is a percent of revenue structure. It's -- the
3 royalty rate in that agreement is 5 percent of sales.

4 And the rights that are granted to Lunera by Super
5 Lighting are rights to the entire Super Lighting portfolio.
6 It covers worldwide territory. They can sell anywhere in
7 the world that they want.

8 The Signify agreement was also -- or Signify
9 licensing program, I should say, has also been around since
10 2008. So it would have been known prior to the
11 hypothetical negotiation. It is structured as a percentage
12 of revenue.

13 The rate in that ranges from 3 to 5 percent. The
14 5 percent rate is really the rate for retrofit bulbs. It's
15 probably the more relevant rate here. It covers the entire
16 Signify patent portfolio, which is over 2,000, and it also
17 grants worldwide rights.

18 And then we have the TCP agreement, which is the
19 only one that comes after the hypothetical negotiation, and
20 it came three years after. It's the only one with a fixed
21 rate structure, and it has a 30-cent royalty rate per-unit
22 structure in it.

23 And I wanted to know how that compares to these
24 percentage of revenue rates, but we don't know that
25 information. Because if you recall, I showed you the TCP

1 agreement that has an Exhibit A attached to it that says it
2 will outline the licensed products, but there are no --
3 there is no Exhibit A. There is no list of products.

4 Now, another thing to note under the TCP agreement
5 is it has what's called a royalty reporting provision which
6 means TCP is required to tell Super Lighting how many units
7 it's sold in a given period that are -- that it should pay
8 this 30-cent rate on.

9 Super Lighting has not produced any royalty
10 reports in this case as we sit here today. There's no
11 indication that TCP has paid 30 cents a rate -- 30 cents a
12 unit on any sales. I don't know whether they have or not
13 because we haven't seen a royalty report.

14 But -- and remember the TCP agreement only covers
15 products that TCP manufactures itself or has another party
16 manufacture for it. If TCP buys products from Super
17 Lighting, it doesn't pay a royalty on those, it just buys
18 the products.

19 And that's really what Super Lighting wants. They
20 want them to buy the products. Super Lighting makes more
21 from a sale to TCP than they do on a license to TCP.

22 So it could be that TCP is buying their products
23 from Super Lighting, not doing it themselves, and that's
24 why they're not paying a 30-cent royalty. We just don't
25 know if they've paid the 30-cent royalty and what price

1 point they're paying that on. We don't know what products,
2 if they did pay that rate, how much of the products that
3 they've paid that on in terms of a price.

4 But we do have one data point which is TCP sold
5 some products to Elliott, one of the Defendants in this
6 case, and it's not a lot of products. It's about a hundred
7 units over a year, and it's prior to this license. So they
8 would not be royalty-bearing products.

9 But if they were under this license, they would be
10 royalty-bearing. TCP would pay the 30-cent rate back to
11 Super Lighting if they were manufactured by TCP or somebody
12 on TCP's behalf.

13 And we know what Elliott paid TCP for these
14 products. And if you do the math on that effective rate,
15 it's 3.9 percent. So that's one data point. And it's
16 limited because it's only a hundred units, and it's only
17 one product, but that's the only thing I have so far to be
18 able to compare this 30-cent rate to the other rates that
19 are in the percentage of revenue structure.

20 So if you think of it that way, we have data
21 points in the 5 percent range under Lunera, 3 to 5 under
22 Signify, really the 5 percent under Signify is the most
23 relevant, and then 3.9 percent under TCP.

24 And then also TCP, the license rights are for the
25 entire Super Lighting portfolio and for a territory that

1 includes U.S. and China.

2 So these are our potential starting points for a
3 hypothetical negotiation.

4 Q. And based on your analysis of the potential starting
5 points and the factors that we just -- just discussed,
6 what's your opinion of the outcome of the hypothetical
7 negotiation?

8 A. So I made the -- the following slide summarizes what I
9 think are the key factors that would influence the outcome
10 of the negotiation. So we're going to start with what
11 would the parties do for structure.

12 I think the percent of revenue structure makes the
13 most sense in this case, and they would choose that
14 structure.

15 This starting point would be no more than
16 5 percent. And then we need to figure out do we need to
17 adjust that for the differences between the starting points
18 that get us at 5 and what's going to happen that's
19 different from that starting point.

20 So, again, we have to adjust for the fact that
21 there's rights to only three patents, so that's a downward
22 adjustment from 5 percent. We need to adjust for the fact
23 that CH and Elliott only need U.S. rights, not worldwide
24 rights or not U.S. and China. That is a downward
25 adjustment.

1 We talked about CH Lighting's contributions, what
2 they bring to the table. That is a downward adjustment
3 because CH Lighting plays a big role in the success of
4 their products.

5 And we talked about the nature of the products.
6 Are the patents really driving the sales of these products
7 or is other -- other things driving the sales of these
8 products? I think that's a downward adjustment.

9 And then we talked about would Super Lighting be
10 willing to license? Yes, they're going to be willing to
11 license, that's -- that's assumed, and they would want to
12 get a license done in this situation where they're sitting
13 down at a table.

14 And then we've heard some -- a lot of talk about
15 competition. And so what I want to know is do we need to
16 adjust this -- this upward for this level of competition
17 because they're direct competitors? And I don't think we
18 need to, and here's why. All of these -- these starting
19 points of Lunera and TCP are allowing these companies to
20 compete, as well. Those licenses with TCP and Lunera allow
21 them to manufacture these products, LED tube products.
22 That is in competition with Super Lighting manufacturing
23 those products. Super Lighting is letting them
24 manufacture.

25 That's the same right we would be getting,

1 CH Lighting would be getting in a negotiation.

2 Now, CH Lighting is more successful in the
3 marketplace than TCP and Lunera. They have a bigger market
4 share, but that's because of what CH Lighting brings to the
5 table.

6 CH Lighting, Lunera, and TCP would all have the
7 same starting point, they all have rights to the patents.
8 CH and Elliott actually have less rights because they're
9 only getting rights to three patents, not the entire Super
10 Lighting portfolio.

11 But if they all have rights to the patents and
12 CH Lighting is more successful in the market and generates
13 a higher market share, that has to be attributable to
14 things they are doing, and that is not something that
15 should be paid back to Super Lighting. Super Lighting is
16 not entitled to an additional royalty or an upward
17 adjustment for what CH Lighting does that makes CH Lighting
18 successful in the marketplace.

19 So I don't think we need an upward adjustment for
20 competition because that is inherent in the starting
21 points.

22 So I think if you look at all this together, it is
23 not a formulaic math equation, where you start with 5 and
24 you give a certain percentage amount to each of these
25 adjustments. You look at it all together, all the

1 information that we've talked about. And I think the
2 parties would sit down and say: If we start with no more
3 than 5 percent, after accounting for these differences,
4 they would come out with an, in conclusion, of a 2 percent
5 royalty rate applied to sales revenue.

6 Q. So now that we've come to your conclusion on the
7 royalty rate, what's the next key damages question?

8 A. So the next key damages question -- we're almost
9 done -- is royalty base. What royalty base should the
10 royalty rate apply to?

11 And I have a slide that shows the royalty base.
12 This is the -- the math of how much was sold that would get
13 a royalty.

14 For CH Lighting, that's \$99,782,410; and for
15 Elliott, it's \$4,952,696.

16 Q. And do you agree with Ms. Kindler on this amount?

17 A. Yes. Ms. Kindler and I -- she does a royalty based off
18 of units, and I do it off of revenue. But we're at the
19 same place in terms of what products are going into the
20 royalty base.

21 Q. And what's the final key damages question?

22 A. So the last question is how much is the total royalty.
23 So this -- this is the math of multiplying the rate times
24 the base.

25 So in -- this is my final slide here. So you'll

1 see the royalty base that we just talked about in the top
2 row. You multiply that number by the 2 percent royalty
3 rate, and that results in a reasonable royalty for
4 CH Lighting of \$1,995,648 and a reasonable royalty for
5 Elliott of 99 thousand -- or, excuse me, \$99,054.

6 MS. STAHA: Defendants now move to admit DTX-18,
7 DTX-163, DTX-164, DTX-165. These are all exhibits which
8 the parties have agreed to as pre-admitted.

9 THE COURT: They'll be admitted.

10 MS. STAHA: And then Defendants also move to admit
11 into evidence DTX-169.

12 MS. WANG: Objection, Your Honor.

13 So the parties met and conferred about the
14 demonstratives, but the parties never agreed to admission
15 into evidence of the underlying exhibits.

16 So, for example, DTX-169 doesn't have a sponsoring
17 witness; therefore, Plaintiffs object to the admission of
18 those exhibits.

19 MS. STAHA: What's the basis for your...

20 Your Honor, the jury has already seen this and any
21 objection has been waived.

22 THE COURT: It hasn't been waived.

23 MS. STAHA: Okay.

24 THE COURT: You shouldn't have shown it to them if
25 it wasn't admitted.

1 So is there a sponsoring witness for it?

2 MS. STAHA: Just under Rule 703 based on it being
3 reasonable for experts to rely on it.

4 THE COURT: They can rely on whatever they want as
5 long as it's admissible evidence.

6 Was there a sponsoring witness for it?

7 MS. STAHA: No, Your Honor, besides the expert who
8 reasonably relied on it.

9 THE COURT: Was there someone who authenticated
10 the doc -- is there someone who can sponsor and tell the
11 jury that it -- what it is?

12 MS. STAHA: So as far as authentication,
13 authentication was admitted under Rule -- Local Rule 26(d)
14 because it was not objected to as to authentication.

15 THE COURT: Was it produced by the Plaintiff?

16 MS. STAHA: Yes, it was produced by the
17 Plaintiffs, and it's Plaintiffs' document that is an email
18 from their system.

19 THE COURT: I'll overrule the objection.

20 MS. STAHA: Pass the witness.

21 MS. WANG: Your Honor, may I approach the witness?

22 THE COURT: Of course.

23 THE WITNESS: Thank you.

24 CROSS-EXAMINATION

25 BY MS. WANG:

1 Q. Good afternoon, Mr. Mooney.

2 A. Good afternoon, Ms. Wang.

3 Q. You interviewed Dr. Zane, Dr. Lebby, and Mr. Flores in
4 forming your damages calculations, right?

5 A. Yes, those are the three interviews that I had in
6 preparation of my expert report.

7 Q. You did not interview anybody at CH about your damages
8 analysis?

9 A. I relied on deposition testimony from CH witnesses.

10 Q. You and Ms. Kindler used the same number of accused
11 CH Lighting products in your calculations, right?

12 A. That's correct, we agree on the royalty base.

13 Q. You and Ms. Kindler both agree that the TCP and Lunera
14 licenses are technologically relevant?

15 A. Yes, we agree on the technological comparability of
16 those two licenses.

17 Q. So your only disagreement with Ms. Kindler is her
18 royalty rate is too high?

19 A. I would characterize it differently. I -- I disagree
20 with the way Ms. Kindler uses those agreements from an
21 economic standpoint in terms of how she applies them.

22 Q. Mr. Mooney, you talked at length on direct about the
23 Georgia-Pacific factors, the factors you have to consider
24 when evaluating reasonable royalty. And one of these
25 factors is Factor 5, the relationship between the parties.

1 Now you're telling the jury that Super Lighting
2 would treat CH the same as TCP. That's your opinion?

3 A. Well, like I said, we're -- we need to see where
4 competition is adjusted for --

5 THE COURT: Wait, wait. She asked you a question
6 that you can answer with a yes or -- a direct answer.

7 If the question -- if you're unable to answer the
8 question directly, you're free not to, let her know. But
9 the jury will benefit from having you directly answer a
10 question. Your lawyer, if you need to explain something,
11 will be able to do that on redirect.

12 Would you ask the question again, please?

13 MS. WANG: Yes.

14 Q. (By Ms. Wang) So, Mr. Mooney, you talked at length
15 about the -- at your direct about the Georgia-Pacific
16 factors. And one of those factors is Factor 5, the
17 relationship between the parties.

18 Are you telling the jury that Super Lighting would
19 treat CH Lighting the same way as TCP?

20 A. From the standpoint of manufactured sales, yes.

21 Q. Mr. Mooney, you have been here the entire trial?

22 A. Yes, I have.

23 Q. No Super Lighting executives have jumped ship to TCP
24 that we know of, right?

25 A. I don't recall hearing testimony on -- of -- of that

1 effect.

2 Q. Is that a no?

3 A. I'm not aware of any that have changed to TCP.

4 Q. None of Super Lighting's confidential documents have
5 ended up in TCP's files that we know of, right?

6 A. I don't know about that, one way or the other.

7 Q. We haven't seen any evidence TCP copied Super
8 Lighting's patented technology?

9 A. I don't know about that, one way or the other.

10 Q. TCP did not end up with Super Lighting's customer lists
11 like CH Lighting did, right?

12 A. I don't know what TCP received from Super Lighting.

13 MS. WANG: Corey, please pull PTX-43 that was
14 shown to Dr. Lebby yesterday.

15 Q. (By Ms. Wang) Mr. Mooney, do you recall seeing this
16 document yesterday?

17 A. Yes, this looks like a document that was shown
18 yesterday.

19 Q. This is a side-by-side comparison that CH did of its
20 product that's Super Lighting's product, right?

21 A. I'll take your representation of that.

22 Q. Upon learning of the patents-in-suit, CH Lighting never
23 stopped selling the infringing products?

24 A. So CH Lighting has sold the products prior to the
25 patent issuing from -- and from -- since then.

1 Q. Sir, that was not my question.

2 Upon learning of the patents-in-suit, CH Lighting
3 never stopped selling the infringing products, right?

4 A. CH continued to sell products throughout the damages
5 period.

6 Q. You saw how CH tried to dodge service and avoid facing
7 the merits of this case for as long as possible?

8 A. That was not part of my analysis, no.

9 Q. You know that, as of now, CH Lighting is still selling
10 products that infringe the patents-in-suit, right?

11 A. It's my understanding that they continue to sell
12 products.

13 Q. But it's your opinion that just by all of these things,
14 Super Lighting should still charge CH Lighting, its direct
15 competitor, a lower royalty than it charges TCP, its own
16 good customer?

17 A. The rate I'm opining to is lower than the stated rate
18 in the TCP agreement for the reasons we discussed in my
19 direct.

20 Q. So that was yes?

21 A. I would say, again, the rate is lower.

22 Q. Mr. Mooney, you told the jury about the Signify
23 license, but you didn't tell them everything about that
24 license, did you?

25 A. I'm sorry, I think I summarized the Signify portfolio

1 in my direct.

2 Q. That license is for a pool of patents, and the Signify
3 license does not change its royalty rate when the number of
4 patents in the pool increases, right?

5 A. That's not entirely accurate, no. The starting point
6 is for a pool of patents, but Signify will and has accepted
7 lower rates.

8 Q. So, in fact, every time a new patent gets added to the
9 Signify pool, the patent royalty goes down, right?

10 A. If you were to do the math, yes, that would be the
11 result.

12 Q. You also didn't tell the jury about the per-unit
13 royalty information in the Signify license, right?

14 A. I talked about the Signify license in the same context
15 that Ms. Kindler analyzed it, the percentage of revenue.

16 Q. Sir, let me try again.

17 You did not tell the jury about the per-unit
18 royalty information in the Signify license, did you?

19 A. We talked about the percentage of revenue structure of
20 the Signify license, which is how it's structured and led
21 in the marketplace.

22 Q. The Signify license charges a minimum of 25 cents,
23 Euro, per unit for each licensed product.

24 You're aware of that?

25 A. I do recall there being a minimum in it.

1 Q. So that translates to about 30 cents, U.S. dollars, per
2 unit?

3 A. I'll represent your foreign currency translation on
4 that.

5 Q. Thanks.

6 So, Mr. Mooney, you did not bring it up to the
7 members of the jury the non-infringing alternatives.

8 You considered non-infringing alternatives in your
9 calculation of the 2 percent royalty rate calculation,
10 right?

11 A. Well, we -- we heard about non-infringing alternatives
12 from the technical experts, so I did not repeat that.

13 Q. But you did consider this factor as your calculation of
14 the 2 percent royalty rate?

15 A. Yes, it is one of the Georgia-Pacific factors.

16 Q. Thank you, Your Honor -- thank you, Mr. Mooney.

17 MS. WANG: So, Corey, please pull PTX-61.

18 Q. (By Ms. Wang) This is CH Lighting's interrogatory
19 response that was read into the record, and this exhibit
20 was pre-admitted.

21 MS. WANG: So, Your Honor, Plaintiffs move to
22 admit PTX-61 into evidence.

23 THE COURT: It'll be admitted.

24 Q. (By Ms. Wang) Mr. Mooney, CH Lighting did not identify
25 any non-infringing alternatives in its discovery response?

1 A. Well, this is a partial response that you've
2 highlighted. And the portion -- portion that you've
3 highlighted, they did not identify, but they continue their
4 response to say it's ongoing.

5 Q. Well, we're at trial, sir, discovery was over.

6 A. Non-infringing alternatives came in through the
7 technical expert reports.

8 Q. Right. So we'll talk about the technical experts.

9 So Dr. Zane testified yesterday that the Philips
10 and Cree tubes are non-infringing alternatives to the '140
11 patent. But if you recall, yesterday, my colleague,
12 Mr. Reid, showed that Philips and Cree have their own LED
13 tube lamp patents.

14 You remember that?

15 A. Yes, I recall that.

16 Q. So if CH Lighting uses Philips and Cree's technology to
17 design around, doesn't CH Lighting have to pay Philips and
18 Cree instead?

19 A. That was not my understanding of the context of the
20 design-arounds that the technical experts opined to.

21 Q. Mr. Lebby also testified that CH could make changes to
22 design around the '125 and the '540 patents, but you never
23 analyzed how much it would have cost CH Lighting to
24 implement the design-around, right?

25 A. Correct. I did not use a cost basis for my method,

1 which would be what you're suggesting there. I'm using the
2 Georgia-Pacific analysis.

3 Q. Thank you, sir.

4 So it would -- if it would have cost 60 cents per
5 tube for CH Lighting to make this change, this would have
6 supported even a higher reasonable royalty than Super
7 Lighting is asking for here?

8 A. I'm sorry, you're -- you said if it would cost 60
9 cents?

10 Q. Yes.

11 A. Well, I have not seen that. So under your
12 hypothetical, if it were to cost 60 cents, the -- that
13 might be something we would factor in. I would need to see
14 what that is based off of and how that's calculated.

15 Q. So to your knowledge, CH has not actually implemented
16 any of the design-arounds the expert talked about, correct?

17 A. No, they have not implemented the alternatives as we
18 sit here today.

19 Q. In fact, CH Lighting is still selling the infringing
20 products right now?

21 A. I understand CH Lighting is still selling the products
22 that they were selling, before and after the hypothetical
23 negotiation, when the patent issued.

24 Q. So, Mr. Mooney, this was one of the slides that you
25 displayed to the jury, correct?

1 A. Yes.

2 Q. And this is Slide 26, where you calculated the
3 effective rate?

4 A. Yes, it is.

5 Q. So the three red bars correspond to your conversion of
6 the rate percentages based on Ms. Kindler's per-unit rate
7 calculation, right?

8 A. This is the math of what Ms. Kindler's per-unit rate
9 represents as a percentage of revenue, and I believe she
10 agrees with this math.

11 Q. Thank you.

12 So if these three bars correspond to 30, 35, and
13 45 cents per unit -- based on Ms. Kindler's calculation,
14 right?

15 A. Those are her per-unit values, I agree.

16 Q. So this is one of the demonstratives Ms. Kindler showed
17 us yesterday, which is PDX-318. And Ms. Kindler calculated
18 Lunera's implied per-unit royalty rate to be about 35 to 45
19 cents in 2021 and about 50 to 75 cents around 2016, right?

20 A. That is the math if you use retail prices.

21 Q. Right. But she still clarified that even if you
22 reduced the 30 percent mark-up, that would still be about
23 35 percents per unit.

24 Do you remember her testimony?

25 A. I don't recall that testimony. I'm happy to look at it

1 if you want me to.

2 Q. Okay. So let's use the 35 cents per-unit royalty.

3 So I would have it right here about 30 cents and
4 have it right here 45 cents. So let's put about 35 cents
5 here.

6 And we talk about the Signify minimum per-unit
7 rate to be at 30 cents per unit, right?

8 Do you remember that, Mr. Mooney?

9 A. You represented that you've seen that and that -- yes.

10 Q. So I'll go ahead and mark this as a demonstrative,
11 PDX-800.

12 MS. WANG: And move into evidence, Your Honor.

13 THE COURT: You don't move demonstratives into
14 evidence.

15 MS. WANG: Thank you.

16 Q. (By Ms. Wang) Mr. Mooney, your model is CH pays a
17 percentage as a royalty. So you said that's to compensate
18 as prices decrease, right?

19 A. The percentage of revenue structure will vary the
20 actual royalty dollars paid based on the price, if the
21 price changes.

22 Q. So if CH charges less for its products, the payment to
23 Super Lighting goes down, right?

24 A. Yes, they would pay relative to the dollars they're
25 receiving from the sale --

1 Q. Is that a yes, sir?

2 THE COURT: Ma'am, let him finish his question.
3 Don't interrupt him.

4 MS. WANG: Okay.

5 THE COURT: Were you done with your answer?

6 THE WITNESS: Yes, sir.

7 Q. (By Ms. Wang) So -- but there's a problem I saw here,
8 sir.

9 So you know from the testimonies in this trial
10 that CH is already cutting Super Lighting on price and
11 competing directly.

12 So your model actually encourages CH to drop its
13 price, and then it would get the sale and pay less to Super
14 Lighting; is that right?

15 A. What you said is inaccurate. We did hear testimony
16 that there's undercutting on price, but that is not
17 actually happening. The average sales price for
18 CH Lighting is higher than the average sales price for
19 Super Lighting. It is not -- over the damages period, the
20 average sales price does not show undercutting of price by
21 CH Lighting.

22 Q. But you've heard testimony about CH Lighting
23 undercutting sales by Super Lighting, did you?

24 A. I've heard testimony that witnesses thought that was
25 happening. But I have the actual data that shows what the

1 prices were, and CH Lighting was not undercutting Super
2 Lighting on price over the damages period.

3 Q. So, Mr. Mooney, I'm showing you Exhibit 12 of your
4 supplemental report.

5 And here you calculated the incremental profits
6 per unit for each of the accused CH products, right?

7 A. Correct, that's in the column that you're highlighting
8 now.

9 Q. So if we go through this number, it seems that the
10 lowest profit per unit is 60 cents, right?

11 A. I believe that's correct.

12 Q. And it seems like the highest profit per unit is 2.93?

13 A. Yes, I believe that's correct.

14 Q. And the 60 cents per unit, which is the lowest for CH,
15 is about the average unit profit for Super Lighting, right?

16 A. Well, the cost structures for these companies are
17 different, but I believe the end percentage you're talking
18 about is -- is roughly the same -- I believe it's 61 --

19 Q. So --

20 A. -- for Super Lighting. Sorry.

21 Q. -- you also calculated the average incremental profit
22 per unit, which is \$1.08?

23 A. Yes, ma'am.

24 MS. WANG: So I will go ahead and mark this as a
25 trial exhibit and move into evidence, Your Honor.

1 MS. STAHA: Your Honor, the highlighted version is
2 for demonstrative purposes only, but we would agree to move
3 the unhighlighted version in as evidence.

4 THE COURT: That's what we'll do.

5 MS. WANG: And I will mark the unhighlighted
6 version to be PTX-421.

7 Corey, please display the Kindler Demonstrative
8 PDX-330.

9 Q. (By Ms. Wang) So, Mr. Mooney, Ms. Kindler also
10 calculated CH's average incremental profits to be \$1.80 per
11 unit?

12 A. I believe it's \$1.08.

13 Q. I'm sorry. It's \$1.08 per unit?

14 A. Yes, I think we calculated the same number there.

15 Q. That means if CH pays Super Lighting 45 cents per unit,
16 CH Lighting would make about 63 cents per unit?

17 A. If you use the average, that is the case. For some of
18 these products, like the example you showed me with the
19 60-cent per unit, Ms. Kindler's 45-cent rate would take 75
20 percent of those profits away from CH Lighting and give
21 them to Super Lighting.

22 Q. Okay.

23 A. But on average -- if you want to go on average. But
24 that's the problem with the per-unit structure, is some of
25 these products -- that's why I don't think they would agree

1 to pay on a per-unit structure because the prices and the
2 profits of these products vary.

3 THE COURT: Let's just answer the -- let's just
4 answer the question directly. Sorry.

5 If you want to give the extra stuff, your lawyer
6 can ask you to add that.

7 Q. (By Ms. Wang) So, Mr. Mooney, you talk about the
8 average. The lowest is 60, but if you look at the
9 1152-42W-FA8 product, for this particular product,
10 CH Lighting sold over eight -- 800,000 units to the United
11 States and the -- the actual incremental profit for this
12 product is \$2.50, right?

13 A. That's correct, for that particular product.

14 Q. You never confirmed with CH Lighting that they wouldn't
15 pay 45 cents per unit?

16 A. Well, I'm doing the independent analysis of the
17 royalty. CH Lighting doesn't get to -- to dictate what
18 they would do. I'm doing it independently.

19 Q. So actually, Mr. Jack Jiang has been here all week, and
20 it would have been easy to ask him, right?

21 A. Again, I'm doing an independent analysis. I'm not
22 going to let CH Lighting tell me, you know, this is what
23 the number needs to be.

24 Q. Thank you.

25 MS. WANG: I'll pass the witness.

1 MS. STAHA: Your Honor, before I get started on
2 redirect, I just have a quick housekeeping matter. Is
3 Defendants' DTX-169, that -- where you overruled the
4 objection, entered into evidence?

5 THE COURT: Yes.

6 MS. STAHA: Okay.

7 REDIRECT EXAMINATION

8 BY MS. STAHA:

9 Q. Mr. Mooney, I just have a few questions for you.

10 So for the TCP and Lunera agreement, what is their
11 relationship -- what is TCP and Lunera's relationship to
12 Super for any products sold under the royalty structure?

13 A. So under the licenses between TCP and Lunera and Super
14 Lighting, that only covers when they manufacture products.

15 If they buy products from Super Lighting as a
16 supplier, that's totally separate agreement. That's a
17 totally separate income stream. And Super Lighting is
18 compensated for that if they buy a product. So that's why
19 these are apples to apples in terms of these agreements
20 being level set on competition.

21 Like I said in my direct, all three of these
22 agreements, the TCP, Lunera, and the hypothetical
23 negotiation here would be granting all these parties the
24 ability to manufacture products under here. Nobody's
25 obligated to buy anything as part of those agreements from

1 Super Lighting. And that's why they're all at an even
2 playing field to produce and manufacture products if they
3 were to get these licenses.

4 And that's why I don't think we need to upward
5 adjust for competition, because like I said, if CH is a
6 bigger player in the market, more successful in the market,
7 that is because of other things CH did to help make their
8 products successful in the market.

9 MS. STAHA: No further questions, Your Honor.

10 MS. WANG: No further questions, Your Honor.

11 THE COURT: You may be dismissed. Thank you for
12 being here, sir.

13 Do the Defendants have any other witnesses?

14 MR. HILL: No, Your Honor. Should we do motions
15 outside the presence, or are we okay to do a break?

16 THE COURT: No, no. We'll --

17 Ladies and gentlemen, we're going to take a short
18 break. We'll take a 10-minute break, and then we'll come
19 back.

20 COURT SECURITY OFFICER: All rise.

21 (Jury out.)

22 THE COURT: Thank you. You may be seated.

23 So let's assume that the Plaintiffs' expert takes
24 another hour, all-in. That puts us at 3:30. What I would
25 suggest we do is I'll do the jury charge then and then let

1 them go home rather than you-all doing the closing
2 arguments tonight and then having them go home.

3 But if you-all think you would rather do the
4 closing arguments tonight, I'm -- you know, I want to do
5 whichever way you-all think is best for you.

6 Mr. Bernstein?

7 MR. BERNSTEIN: I would strongly prefer closing
8 arguments tomorrow morning, Your Honor.

9 MR. HILL: We agree, Your Honor.

10 THE COURT: Okay. Then that's what we'll do.

11 So -- does anyone have a motion to -- so,
12 you're -- I'm sorry. Mr. Hill, Defendant is finished,
13 correct?

14 MR. HILL: We would like to offer a JMOL, as well
15 as a tube offer of proof.

16 THE COURT: Well, I'm going to -- oh, yes, let's
17 go ahead and put your evidence in that you needed to put
18 in. And then -- and then you can close. And I'm going to
19 have you do that again in front of the jury, but you can
20 close so that Mr. Bernstein, or whoever, can make whatever
21 motions they're going to make.

22 MR. HILL: Just -- just to be clear, Your Honor,
23 so I'll do my offer of proof and --

24 THE COURT: Please.

25 MR. HILL: -- my JMOL now.

1 THE COURT: Yes.

2 MR. HILL: Thank you, sir.

3 THE COURT: Well, you're doing your offer of proof
4 at the moment. And then Plaintiff is going to do their
5 motion, and then I'll have you do your motion.

6 MR. HILL: Thank you, Your Honor.

7 This relates to the tubes we spoke about
8 yesterday. Do you want the tubes physically in the room
9 for any reason?

10 THE COURT: I don't need them.

11 MR. HILL: And this should go quite quick.

12 Defendants offer four physical tubes, an intact
13 Cree tube as Defendants' Exhibit 19, a disassembled Cree
14 tube as Defendants' Exhibit 20, a disassembled MaxLite tube
15 as Defendants' Exhibit 25, and a disassembled Philips tube
16 as Defendants' Exhibit 28 into evidence.

17 These exhibits are physical prior art products.
18 It is admissible evidence because there are no genuine
19 objections to the authenticity of these exhibits.

20 And additionally, they are self-authenticating as
21 an item containing trade inscriptions and the like under
22 Federal Rule of Evidence 907.

23 Additionally, these tubes are the exact prior art
24 products Defendants' expert Dr. Michael Lebby reviewed
25 photographs of while drafting his report. Dr. Lebby could

1 confirm this through testimony that these tubes are, in
2 fact, the same tubes depicted in the photographs he
3 reviewed for his analysis and included in his expert
4 report.

5 These exhibits are offered to show that the
6 inventions claimed in the '125 and '540 patents asserted in
7 this litigation were in public use, on sale, or otherwise
8 publicly available -- or otherwise available to the public
9 in the United States prior to the priority date of the '125
10 and '540 patents.

11 This evidence is relevant in support of the
12 Defendants' invalidity defense because they tend to show
13 that the asserted claims of the patents-in-suit are invalid
14 under 35 U.S.C. Section 102 and 103.

15 If -- if those are excluded, Defendants
16 respectfully object to the exclusion of Defendants'
17 Exhibits 19, 20, 25, and 28.

18 And just confirming, Your Honor, those are
19 excluded?

20 THE COURT: They're excluded.

21 MR. HILL: Thank you.

22 This concludes our offer of proof.

23 THE COURT: Okay. Mr. Reid?

24 MR. REID: I have nothing to add, Your Honor,
25 other than we addressed those through Dr. Lebby's voir dire

1 and -- and other things.

2 THE COURT: No, I know. I've already ruled on
3 that.

4 MR. REID: We're good.

5 THE COURT: Yeah, that was just an offer of proof.
6 I'm assuming one of you has a motion for directed
7 verdict in their case.

8 MR. BERNSTEIN: Good afternoon, Your Honor.

9 Plaintiff has a motion for judgment on the matter
10 of law, first, on the issue of the validity of Claim 1 of
11 the '125 patent and Claims 1, 4, 5, 24, 28, 31 of the '140
12 patent, and Claims 13 and 14 of the '540 patent.

13 Also, a judgment of matter of law on the issues of
14 infringement of Claims 1, 4, 5, 24, 28, and 31 of the '140
15 patent, the issue of willful infringement and damages.

16 And I wanted to speak first specifically about
17 validity and more specifically about the validity as it
18 relates to the physical tube products, the prior art
19 products.

20 There is entirely no evidence -- literally no
21 evidence that has been introduced into the record. There
22 are no physical tubes. There is nothing actually proving
23 up any of this stuff as prior art. There's no sales
24 record. There's nothing -- there's no documentation --

25 THE COURT: There was testimony from one of the

1 experts on -- and I don't know which claims -- but there
2 was testimony that there were copyrights from 2014,
3 correct?

4 I thought that was -- the only evidence I heard
5 of -- establishing when the -- when the allegedly
6 invalidating products existed was a copyright that was on
7 the product or box and the second technical expert
8 testified about.

9 MR. BERNSTEIN: On -- even assuming if that's
10 true, I think it was not specific as to what tube. But
11 there's -- there's -- the jury is going to be deliberating.
12 Again, Your Honor, there's no tube. There's no
13 documentation. There's nothing. I --

14 THE COURT: But he was looking at photographs.

15 MR. BERNSTEIN: There's no -- there's -- the
16 photographs are not in evidence. Those are demonstratives.
17 There's -- there's nothing -- the jury is going to be -- I
18 don't know where the room is --

19 THE COURT: No, you're right. They are not in
20 evidence.

21 MR. BERNSTEIN: Yeah.

22 THE COURT: And so -- and so essentially, your
23 argument is -- let me make sure I'm following it.

24 With respect to what I'll call the evidence put on
25 by the second technical expert that there's no -- there's

1 no there, there. There's no evidence in the record that
2 supports -- that establishes that the Cree and other art or
3 products existed prior -- by the date they needed to exist.
4 There's no evidence in the record.

5 MR. BERNSTEIN: That -- that is true. There's
6 also no actual tubes in the record, as well.

7 THE COURT: Yeah, I've got that.

8 MR. BERNSTEIN: There's nothing. It's not just
9 Mr. Lebby. There's --

10 THE COURT: Right.

11 MR. BERNSTEIN: There's nothing from anybody. And
12 no reasonable jury could conclude invalidity on any of
13 those tubes based on this record. And we believe we're
14 entitled to judgment as a matter of law.

15 THE COURT: Let me hear from -- let me hear from
16 Mr. Hill.

17 What evidence is in the record?

18 MR. HILL: We disagree, Your Honor.

19 THE COURT: You need -- you need to come up.

20 MR. HILL: We disagree, Your Honor. At minimum,
21 there's Dr. Lebby's testimony.

22 There's also additional evidence with respect --

23 THE COURT: Well, there's Doctor -- his -- there's
24 his testimony that he saw something in a photo that's not
25 in evidence.

1 MR. HILL: His testimony was that he saw photos,
2 other materials that he is allowed as an expert to base his
3 opinion on regardless of --

4 THE COURT: You're right, he can base his opinion
5 on it. But there's no evidence in the record to support
6 it.

7 MR. HILL: Again, Your Honor, Dr. Lebby's own
8 testimony and -- and the statements that he made.

9 THE COURT: But the photos -- there's no evidence.
10 It's -- it's like the murder weapon isn't here. Someone
11 can say, I saw a knife -- saw a picture of a knife, but the
12 knife isn't in evidence or -- or the pictures.

13 I mean, I had assumed you were going to put the
14 pictures into evidence, and you didn't. They were only --
15 they were only demonstratives. So there's nothing in
16 evidence that supports what he testified about.

17 MR. HILL: Your Honor, there's also the
18 corroborating admissions of other Plaintiff witnesses,
19 other technical witnesses from the Plaintiff.

20 THE COURT: And what was that?

21 MR. HILL: In terms of elements that were known
22 and available prior to the --

23 THE COURT: No, no, I'm just talking about those
24 products.

25 What evidence is in the record about those

1 products?

2 MR. HILL: Again, Your Honor, I would point to
3 Dr. Lebby's testimony.

4 THE COURT: Other than that.

5 MR. HILL: Under the current evidentiary rulings,
6 I believe that is it.

7 THE COURT: Well, I'm going to sustain
8 Mr. Bernstein's motion, then. There's no -- I -- I thought
9 you were putting those photos into evidence yesterday.

10 MR. BERNSTEIN: Your Honor --

11 THE COURT: And I don't -- I'm not sure why you
12 didn't.

13 MR. HILL: Your Honor, I --

14 THE COURT: I excluded the -- I excluded the
15 tubes, but I did not exclude the photos of the tubes.

16 MR. HILL: Your Honor, we have not released
17 Dr. Lebby, and we could offer him to provide those --

18 THE COURT: No, you've -- you've closed your case.
19 That -- you've -- that was why I -- you know, you don't --
20 you're done. Your -- your case is done on invalidity.

21 MR. HILL: Thank you, Your Honor.

22 THE COURT: And so --

23 MR. HILL: Well, again, the -- there were other --
24 the prior art tubes are not the only invalidity evidence
25 against two of the other patents.

1 THE COURT: I'm -- we're not talk -- I'm -- I get
2 that.

3 What I'm saying -- let me make it as clear as I
4 can. I excluded the tubes because the tubes had not been
5 produced, but I -- it's been a long three days for me, but
6 I think I remember specifically saying that you could -- I
7 think I said three or four times that you could use the
8 photos that were in the report and that he relied on,
9 meaning you needed to introduce the photos into evidence,
10 and you -- I know I said that. I mean, correct me if I'm
11 wrong, but I'm pretty certain that was the basis for me
12 excluding the tubes was that you had provided the photos of
13 the tubes.

14 In fact, we had the colloquy where you -- you
15 literally said from the stand, we could prove all this up
16 through the photos.

17 And I said, well, that's good then, because in my
18 balancing effort, even if we keep the tubes out, you will
19 have -- be able to put the photos into evidence, and
20 you'll -- it's the same thing.

21 I -- I know I said that. I know we had that
22 colloquy.

23 And I don't know why you didn't put it into --
24 into evidence, but if it's not -- those photos are not in
25 evidence, there is no evidence to support the testimony.

1 And I'm going to exclude that art and any -- I'm going to
2 grant a directed verdict in favor of the Plaintiff with
3 respect to any argument -- any contentions of invalidity
4 that rely on those tube -- on either photos or whatever the
5 products were for the second guy.

6 MR. BERNSTEIN: And so for the record, Your Honor,
7 that would be the -- all three grounds of invalidity on the
8 '125 patent, and one of the two grounds on the '540 patent.

9 THE COURT: I'm granting that.

10 MR. BERNSTEIN: Okay. Your Honor, I next want to
11 just briefly discuss obviousness.

12 As Your Honor knows, kind of the starting point
13 for obviousness is the Graham factors. Graham Factor A or
14 the first one, determine the scope of any contents of the
15 prior art.

16 There was no mention or discussion of that
17 anywhere by Defendants' experts. There's also no
18 discussion of --

19 THE COURT: Okay. Let me -- let me -- let me have
20 Mr. Hill -- I'll do better if I hear one at a time.

21 MR. BERNSTEIN: Your Honor, can I just -- just --
22 also, no mention of the level of ordinary skill in the art.
23 So he can handle both.

24 THE COURT: Okay. Thank you. And I didn't mean
25 to interrupt you. I just -- I can only do so much at one

1 time.

2 MR. HILL: I'm sorry, Your Honor. I'm just making
3 sure I understand the pending objection.

4 THE COURT: The pending objection?

5 MR. BERNSTEIN: No objection.

6 THE COURT: Okay.

7 MR. HILL: Your Honor, we don't believe that
8 that's a basis for any kind of summary proceeding. It
9 was --

10 THE COURT: Well, I think -- I'm sorry to
11 interrupt you.

12 But I think what Mr. Bernstein said was that
13 there's no evidence. And that -- right, Mr. Bernstein?

14 MR. BERNSTEIN: Absolutely, Your Honor.

15 THE COURT: And so this is your turn to say,
16 Judge, there is evidence, and this is what the evidence is.

17 MR. HILL: Judge, there is evidence in part
18 because the experts identified their own credentials and
19 applied the claim constructions of the Court, which are
20 written from the perspective of a person of ordinary skill
21 in the art.

22 THE COURT: I don't remember anyone ever
23 discussing what the level of skill in the art was. I
24 don't -- I remember one of the witnesses said -- I think it
25 was the first one, he -- he may -- he did say something

1 like at the time of this art, I was already a person
2 skilled in the art.

3 MR. HILL: Yes, Your Honor.

4 THE COURT: But I don't remember anyone saying
5 what that level was.

6 MR. HILL: We believe that that's sufficient, Your
7 Honor.

8 So Dr. Zane testified with respect to a POSITA, as
9 did Dr. Lebby, as did Li-Qin Li. So we believe that there
10 is adequate record support for that.

11 THE COURT: Mr. Bernstein?

12 MR. BERNSTEIN: There was also the first -- any
13 testimony about determining the scope and contents of the
14 prior art.

15 THE COURT: Mr. Hill?

16 MR. HILL: There's a lot of discussion of
17 background technology in all the expert discussions,
18 including -- including what was long known. Both Dr. Lebby
19 and Dr. Zane talked a great deal about that.

20 THE COURT: Mr. Bernstein?

21 MR. BERNSTEIN: Yeah, I mean, there was some
22 general discussion. I'm not sure exactly what he's
23 referring to, but...

24 THE COURT: So specifically, what is your motion,
25 Mr. Bernstein?

1 MR. BERNSTEIN: It's that there was -- Graham
2 Factor No. 1 is that there needs to be an analysis -- you
3 have to look at the scope of the prior art and compare
4 that -- or you just have to discuss the contents in the
5 scope of the prior art so you can put the obviousness
6 analysis into context before you actually compare specific
7 references to the patent, and that was not done.

8 THE COURT: Mr. Hill?

9 Are you-all getting a daily transcript?

10 MR. HILL: We are, Your Honor.

11 MR. BERNSTEIN: Yes, Your Honor.

12 THE COURT: So, Mr. Hill, this is a moment where
13 if you can point to something that one of your experts
14 said. And if you would like, we can take a break and you
15 can find it.

16 MR. HILL: Well, Your Honor, I would like a break
17 at this time.

18 THE COURT: Okay. Mr. Bernstein, do you have any
19 other motions?

20 MR. BERNSTEIN: I do, Your Honor, or a
21 continuation of more subparts.

22 Next is no reasonable jury could find anything but
23 infringement on the asserted claims of the L -- of the '140
24 patent.

25 Here, their expert -- their technical expert

1 failed to provide an expert opinion on the issue of
2 infringement. Their experts said, quote, put in simple
3 terms, you know, my role in this case on infringement is
4 that of an independent peer-review that Dr. D'Andrade had
5 highlighted as being important. He provides his analysis
6 in detail for infringement and his opinion in the analysis
7 supporting that opinion.

8 That was at Page 233, Lines 8 through 12.

9 And then what he said is, he just raised red flags
10 with respect to elements, but didn't provide any
11 independent analysis.

12 THE COURT: Mr. Hill?

13 MR. HILL: We believe that what he's provided is
14 sufficient, Your Honor.

15 THE COURT: Perhaps you could favor me with an
16 example.

17 MR. HILL: Again, Your Honor, it would be helpful
18 if we could have a momentary break given the specificity of
19 these motions and that we didn't have them in advance.

20 THE COURT: Okay.

21 MR. BERNSTEIN: One -- one more, Your Honor.

22 THE COURT: Sure.

23 MR. BERNSTEIN: This is willful infringement.

24 First of all, there's an order that Defendants --
25 I mean, the facts of the case, as Your Honor knows, is that

1 Defendants did something upon learning of the patents for
2 nearly two years, and they only did something in November
3 2020. There is evidence that's been introduced, that's
4 PTX-326, that shows that CH actually did know about the
5 Texas litigation since January 2020, and they actively
6 sought to avoid litigation merits by avoiding service. We
7 saw that yesterday, as did the jury.

8 THE COURT: Let me ask you something,
9 Mr. Bernstein, that I think applies to this case. I think
10 you have established that. I think you did establish there
11 was -- it was a quantum of time where they were not doing
12 what they probably should have.

13 I don't know that I've ever dealt with this
14 before. Is there a way to break down how long willfulness
15 is? And what I mean by that is at some point they did
16 engage counsel. They have put on an invalidity defense,
17 which typically means -- and so if someone acts for a
18 period of time willfully, what do I -- what do I --

19 MR. BERNSTEIN: Your Honor, the problem for them
20 is there's -- there's so much going on because, you know,
21 maybe for a certain period of time they, you know, didn't
22 know anything, didn't do anything. But they are -- we also
23 have the other agreement, Your Honor, where they agreed
24 that they infringe, and they continue to sell these
25 products.

1 THE COURT: But they have a -- yeah, but they've
2 had an invalidity defense that they -- I mean, and which
3 you may not think a lot of. But, I mean, they've come to
4 court, they've put on two experts on invalidity, and so to
5 me, that's -- that's not willful -- I get that they have
6 said we -- we infringe, but they are -- but I'm certain
7 that what I heard during opening is we can't infringe an
8 invalid patent.

9 MR. BERNSTEIN: Yeah, so there's additional
10 evidence. There's un -- uncontroverted or undisputed
11 evidence of copying now.

12 Mr. Jiang was here. There's a document in the
13 record, which, you know, it was showed actually to -- I
14 think it's PTX-43; is that right?

15 MS. GARDNER: Yes.

16 MR. BERNSTEIN: PTX-43 which is a side-by-side
17 comparison where they, you know, took our products and
18 they -- you know, it's -- it's -- they're looking at our
19 products. They're comparing our products. They're copying
20 our products. Mr. Jiang could have explained that away.
21 The only evidence in the record is this, you know, document
22 showing that there's copying.

23 There's also undisputed evidence that they had --
24 their client -- they -- Defendants had our technical
25 documents, our highly confidential technical documents.

1 So I don't -- I don't know how to answer your
2 question, Your Honor, other than this is egregious conduct
3 from the beginning.

4 THE COURT: And let me ask you a second question,
5 which is do I -- if I were to submit to the jury do you
6 find willfulness, and they said no -- I don't know what
7 they would say, but if they said no, am I able to -- am I
8 able if I think there was willfulness to do anything about
9 that?

10 MR. BERNSTEIN: I think you are as --

11 THE COURT: So why would I not submit it to the
12 jury and see what they say just as an advisory function to
13 me?

14 MR. BERNSTEIN: So I think the -- I'll just go
15 back to the generic JMOL law. No reasonable jury under
16 these facts, Your Honor, can find anything but willfulness.

17 I mean, this -- this jury saw Mr. Jiang say one
18 thing to them, and then -- I mean, it was a flat-out lie,
19 and he was caught lying on the stand. And so, again, I
20 don't know how any reasonable jury could find anything
21 that -- other than willfulness here.

22 THE COURT: Mr. Hill?

23 MR. HILL: Well, first of all, Your Honor, there
24 hasn't --

25 THE COURT: Mr. Hill, you need to come to the

1 podium.

2 MR. HILL: Yes, sir.

3 First of all, there isn't any evidence of copying.
4 There hasn't been any connection as to the timeline --

5 THE COURT: Just -- just focus on the willfulness.

6 You -- tell me -- there's no question your client
7 acted improperly for at least a year, and so what -- what
8 do I do with that? Do I find willful -- do I find it -- do
9 I submit to the jury -- you haven't -- you haven't tried to
10 contradict that evidence. I think actually your witness
11 tried to, but he was impeached.

12 And so what do I do? I mean, I have clear
13 evidence that your -- your folks intentionally tried to
14 avoid the litigation, push it back, not be involved, and it
15 was only once they had -- were forced to be involved that
16 they hired lawyers and -- and got to the point, but that
17 seems pretty appropriate -- especially with competitors.
18 It seems not in good faith to me.

19 MR. HILL: Your Honor, I would -- I would focus
20 the Court's attention with respect to willfulness being an
21 aspect of -- of patent infringement, not a more generalized
22 issue related to bad conduct of --

23 THE COURT: No, but the conduct had to do with --
24 they knew they were being accused of infringing, and they
25 tried to put off as long as possible having to defend

1 against the infringement -- I mean, defend against that
2 claim.

3 You know, they weren't being accused -- they
4 weren't being accused of an insurance bad faith. They were
5 being accused of patent infringement.

6 MR. HILL: So my understanding is that there was
7 a -- a genuine attempt to use alternate service of process
8 for a portion. I can't speak to that directly, Your Honor.

9 I can certainly say that after they hired counsel
10 at the time per the stipulation, from that point forward,
11 they were defending a litigation in good faith.

12 THE COURT: I don't know that I agree with that
13 either, having had the dealings I had -- again, nothing to
14 do with your firm.

15 But that's really my -- I mean, you have an entire
16 period where -- where until they hired counsel, they were
17 not acting -- they were acting willfully.

18 MR. HILL: Well, Your Honor, at this point, I
19 would just -- so the Court has heard many discussions about
20 certain Chinese opinion of counsel issues which are not
21 being raised as an invalidity defense. They -- or a
22 willfulness defense.

23 It is something that -- it did -- it did exist.
24 We'll just, you know, say for the purpose of the Court,
25 they did do some things behind the scenes.

1 THE COURT: Was there -- is there any evidence of
2 that in the record --

3 MR. BERNSTEIN: There -- there's not, Your Honor.

4 THE COURT: -- Mr. Bernstein?

5 Is there any evidence of that in the record?

6 MR. HILL: No, no, Your Honor.

7 THE COURT: Okay. So it doesn't count.

8 And so -- okay. Here's what I'm -- Mr. Bernstein,
9 did you have anything -- any other issues besides the one
10 you've raised?

11 MR. BERNSTEIN: I just have one possible
12 resolution. I mean, JMOL could be entered for willfulness,
13 and this could be dealt with from an enhancement
14 standpoint, Your Honor.

15 But to address -- we also think, the issue of
16 damages, that no reasonable jury could find anything other
17 than what Ms. --

18 THE COURT: I'll overrule that one.

19 MR. BERNSTEIN: Okay.

20 THE COURT: So here's what I'm going to do, we'll
21 take a 10-minute break to give the Defendant an opportunity
22 to find something in the record to respond to the issues
23 you've raised on your motion. I'll come back out. I'll
24 hear from Defendant, and then -- and then I will also rule
25 on the willfulness issue.

1 Yes, sir.

2 MR. HILL: No, I'm just standing.

3 MR. BERNSTEIN: Your Honor, the -- there's
4 certain -- we heard Defendants' expert talk about certain
5 prior art references. I don't know if it's going to be
6 weird for the jury that our expert now is obviously not
7 going to testify about those.

8 THE COURT: I don't know if it's weird or not, but
9 they're not going to be getting a question on it.

10 MR. BERNSTEIN: Okay. Okay. Thank you. I'm the
11 weird one, Your Honor. It's just in my head.

12 THE COURT: I don't want to hurt your feelings,
13 but my guess is when the seven go back, after they have
14 heard it, they won't really fully realize that he didn't
15 talk about those issues.

16 MR. BERNSTEIN: I -- I'll have to talk to my
17 technical expert about that and see how he feels.

18 THE COURT: I might be wrong, but that would be my
19 best guess.

20 MR. BERNSTEIN: Okay. Thank you, Your Honor.

21 COURT SECURITY OFFICER: All rise.

22 (Recess.)

23 (Jury out.)

24 COURT SECURITY OFFICER: All rise.

25 THE COURT: Thank you. You may be seated.

1 Mr. Hill, if you would respond to what
2 Mr. Bernstein said in his argument.

3 MR. HILL: Yes, Your Honor. We have several
4 things to respond to.

5 The first is: We would like to have a motion for
6 reconsideration with respect to the judgment as a matter of
7 law on invalidity.

8 We understood the order yesterday at 279, 13 --
9 Page 279: If you want to use the photos as demonstratives,
10 you can do so, was the Court's ruling.

11 Under Rule 702, expert testimony is evidence,
12 which a jury is permitted to rely on.

13 Under Rule 70 -- 703, it is permissible for a jury
14 to rely on expert testimony regarding facts or data that is
15 otherwise inadmissible if it is heard by the jury.

16 So we move to reconsider on those points.

17 With respect to the level of ordinary skill in the
18 art, with regard to -- as an initial matter, we don't
19 believe that that's a proper basis for a JMOL, but we do
20 note that Dr. Zane specifically testified: I've used the
21 term "skilled person." That is a term when we're
22 considering modifications or obviousness of a claim term.

23 And in this case, that would be, for example,
24 someone with an undergraduate degree in electrical
25 engineering or a similar field and 2 to 4 years of

1 experience in this field.

2 That was expressly described in expert testimony
3 during that period.

4 One moment, Your Honor.

5 Furthermore, with regard to Zane on
6 non-infringement, that is Dr. Zane, infringement is Super
7 Lighting's burden.

8 Dr. Zane looked at Dr. D'Andrade's analysis and
9 concluded that Dr. D'Andrade has not met this burden. He
10 specifically states that: Dr. D'Andrade's testing shows
11 that the LT2600 does not have the claimed pulse
12 generating --

13 THE COURT: Mr. Hill, if you're going to read to
14 me, you're going to need to slow down.

15 MR. HILL: Sorry about that, Your Honor.

16 Again, with respect -- how much would you like me
17 to read to you, sir? Just the last bit?

18 So with respect to -- so let me just -- let me
19 just recap.

20 Motion for reconsideration with respect to the
21 photo -- photos issues, since the Court's order overruled
22 the objection only with respect to using it for
23 demonstratives, it was used as demonstratives under 702 and
24 703. That is proper evidence, that is Dr. Lebby's
25 associated testimony is evidence that the jury can

1 consider.

2 With respect to Dr. Zane and the issue of a level
3 of ordinary skill in the art, he expressly stated that as
4 part of his direct testimony. Furthermore, we don't
5 believe that that is a proper basis for a JMOL.

6 And with respect to Dr. Zane and non-infringement,
7 infringement is Super Lighting's burden. Dr. Zane looked
8 at Dr. D'Andrade's analysis and concluded that
9 Dr. D'Andrade has not met his burden.

10 He specifically states that Dr. D'Andrade's
11 testing shows that the LT2600, which is the relevant
12 component of the products for which infringement is
13 disputed, do not have the claimed pulse generating circuit
14 of the '140 patent.

15 And there are cites including transcript at 234:6
16 through 235:19. And it goes on from there, Your Honor.

17 I believe that responds to what's currently
18 pending.

19 THE COURT: And did you have a motion you wanted
20 to make, as well?

21 MR. HILL: We do, Your Honor.

22 At this time, Your Honor, Defendants move for
23 judgment as a matter of law on the following grounds:
24 Invalidity. There are clear and convincing -- there is --
25 there are -- excuse me.

1 The clear and convincing evidence established that
2 asserted claims of the asserted patents are invalid as
3 anticipated under 35 U.S.C. Section 102.

4 In particular, the evidence established that Claim
5 1 of the '125 patent is anticipated by the MaxLite G Series
6 L18T8DF440-G tubes.

7 Claim 1 of the '125 patent is anticipated by the
8 Cree LED T84821L40K tubes.

9 And Claim 1 of the '140 patent is anticipated by
10 Publication No. WO2012-066822A1, also known as the Ono
11 reference.

12 The clear and convincing evidence also established
13 that asserted claims of the asserted patents are invalid as
14 obvious under 35 U.S.C. 103.

15 In particular, the evidence established that Claim
16 1 of the '125 patent is rendered obvious by the Philips
17 InstantFit LED T816.5W/3500.

18 Claim 13 of the '540 patent is rendered obvious in
19 view of U.S. Patent No. 9,970,640, also known as the Zhao
20 reference, Z-h-a-o, in combination with U.S. Patent
21 No. 8,360,599, also known as the Ivey II reference.

22 Claim 14 of the '540 patent is rendered obvious by
23 U.S. Patent No. 9,970,640, Zhao, in combination with
24 U.S. Patent No. 8,360,599, Ivey II.

25 Claim 13 of the '540 patent is rendered obvious by

1 the MaxLite G series L18T8DF440-G tubes.

2 Claim 14 of the '540 patent is rendered obvious by
3 the MaxLite G series L18T8DF440-G tubes.

4 Claim 4 of the '140 patent is rendered obvious by
5 U.S. Patent Application No. 2014/0015345, Ivey I.

6 Claim 5 of the '140 patent is rendered obvious by
7 U.S. Patent Application No. 2014/0015345, Ivey I.

8 Claim 24 of the '140 patent is rendered obvious by
9 U.S. Patent No. 2014/0015345, Ivey I.

10 Claim 28 of the '140 patent is rendered obvious by
11 U.S. Patent Application No. 2014/0015345, also known as the
12 Ivey I.

13 Claim 31 of the '140 patent is rendered obvious by
14 U.S. Patent Application No. 2014/0015345, Ivey I.

15 Claim 1 of the '140 patent is rendered obvious by
16 U.S. Patent Application No. 2014/0015345, Ivey I, in view
17 of Publication No. WO2015/066566, Sadwick.

18 Claim 4 of the '140 patent is rendered obvious by
19 U.S. Patent Application No. 2014/0015345, Ivey I, and
20 Publication No. WO2015/066566, Sadwick.

21 Claim 5 of the '140 patent is rendered obvious by
22 U.S. Patent Application No. 2014/0015345, Ivey I, in
23 combination with Publication WO2015/066566, Sadwick.

24 Claim 24 of the '140 patent is rendered obvious by
25 U.S. Patent Application No. 2014/0015345, Ivey I, in

1 combination with Publication WO2015/066566, Sadwick.

2 Claim 28 of the '140 patent is rendered obvious by
3 U.S. Patent Application No. 2014/0015345, Ivey I, in
4 combination with Publication WO2015/066566, Sadwick.

5 Claim 31 of the '140 patent is rendered obvious by
6 U.S. Patent Application No. 2014/0015345, Ivey I, in
7 combination with Publication WO2015/066566, Sadwick.

8 Defendants, therefore, seek judgment as a matter
9 of law that the asserted claims of the asserted patents are
10 invalid. A reasonable juror could not arrive at a contrary
11 conclusion based on the evidence presented at trial.

12 We also want to address reasonable royalty very
13 briefly.

14 There is insufficient evidence to establish that
15 Plaintiffs are entitled to a reasonable royalty of 30 cents
16 to 45 cents per unit.

17 In particular, the evidence established that 30 to
18 45 cents per unit is improperly inflated by Super
19 Lighting's damages expert, who improperly considered the
20 TCP/Super Lighting agreement in the context of only a
21 customer relationship when TCP and Plaintiffs are
22 competitors.

23 Further, Super Lighting's damages expert takes the
24 5 percent of revenue-stated royalty rate from the Lunera
25 agreement and improperly converts it to 35 to 45 cents per

1 unit by multiplying 5 percent times 7 to \$9, which are 2021
2 retail prices offered by a third-party website and bear no
3 economic link to a hypothetical negotiation between the
4 parties in April 2018.

5 Defendants, therefore, seek summary judgment as a
6 matter of law. And if Plaintiffs are to be awarded a
7 reasonable royalty, it be limited only to a nominal amount.

8 For these reasons, Defendants respectfully request
9 judgment as a matter of law on both invalidity and damages.

10 THE COURT: I'm going to overrule both motions.

11 Mr. Bernstein, if you'd like to respond to what
12 Mr. Hill said in response to your motions.

13 MR. BERNSTEIN: So with respect to invalidity,
14 Your Honor, our expert hasn't testified yet, so there's --
15 there's that.

16 And there's also --

17 THE COURT: Oh, I've overruled his motions.

18 MR. BERNSTEIN: Oh, okay.

19 THE COURT: I wanted to hear -- he started with
20 responses to your motions, where he cited stuff from the
21 record, and I wanted you to respond to that.

22 MR. BERNSTEIN: So I have no further response,
23 Your Honor, to the -- you're talking about the two issues
24 of obviousness that I reference?

25 THE COURT: Yes.

1 MR. BERNSTEIN: Nothing further, Your Honor, on
2 that.

3 THE COURT: Mr. Bernstein, why would it not be
4 sufficient evidence -- I was thinking about this on the
5 break -- if the jury was shown the demonstratives and heard
6 the testimony of the expert about that, why would that not
7 be some evidence to support their claims?

8 MR. BERNSTEIN: So it's not -- so I guess I need
9 to clarify what the evidence is. You're talking about
10 the --

11 THE COURT: The photographs.

12 MR. BERNSTEIN: So the photograph -- the
13 photographs are not evidence that the jury will have.

14 THE COURT: But they -- they were shown a
15 demonstrative and with -- and without objection, their
16 expert testified about what was in the photographs. So
17 that is in the record.

18 MR. BERNSTEIN: So, again, the jury will be --
19 there's conclusory -- there's -- there's -- there's expert
20 testimony talking about something. There's no -- there's
21 no -- so your analogy was, I think, a murder weapon.

22 THE COURT: Murder weapon.

23 MR. BERNSTEIN: There was a murder weapon --
24 there's no murder weapon. There's no -- I mean, and for
25 the jury, there's -- basically, there's someone on the

1 stand saying: There was murder --

2 THE COURT: But wasn't -- he was showing the
3 photos, right?

4 MR. BERNSTEIN: He -- he -- the photos were shown,
5 but, I mean, there's no testimony -- so I don't think
6 that's enough when the jury has -- again, there's no --
7 there's no tubes. There's no -- and I think this is maybe
8 the point. There's no evidence that anything was on sale.
9 The photographs don't prove that things were on sale.

10 THE COURT: So that -- okay. Yeah, that's -- and
11 now that's a different issue --

12 MR. BERNSTEIN: Yeah.

13 THE COURT: -- I wanted to raise, as well.

14 MR. BERNSTEIN: I mean, I guess in response, Your
15 Honor, I don't think any reasonable juror who is sitting in
16 that room can come to the conclusion that there could be
17 invalidity.

18 THE COURT: Mr. Hill, I haven't heard you offer
19 any rebuttal to Mr. Bernstein's argument that there was no
20 proof that these were on sale.

21 I mean, there was -- all I heard was that there
22 was a copyright of a date, but that doesn't mean that they
23 were on sale.

24 MR. HILL: Your Honor, so --

25 THE COURT: If you'll come to the podium, please.

1 MR. HILL: So, first off, by analogy, even in
2 murder cases, things can be proven without a murder
3 weapon --

4 THE COURT: I'm focusing on -- tell me what
5 evidence you had that the products your second expert
6 talked about actually were on sale and available to the
7 public in 2014.

8 MR. HILL: Dr. Lebby testified that his opinion
9 was that they were based on the materials that he'd seen
10 and reviewed.

11 THE COURT: Tell me what it was he saw and
12 reviewed.

13 MR. HILL: He testified that he saw
14 specifications.

15 THE COURT: No, no. Specification -- I want
16 something that shows that it was on sale.

17 MR. HILL: On sale, well, for example, Your
18 Honor --

19 THE COURT: Or public and available.

20 MR. HILL: For example, the DX-41 document that we
21 talked about throughout this trial shows that prior art
22 tube products were on sale.

23 THE COURT: These specific products?

24 MR. HILL: Certainly, the series and, in one
25 case -- our expert believed it was the same product, yes,

1 Your Honor.

2 And he had -- he had comparisons ready -- ready to
3 go when -- before DX-41 was -- was excluded, showing --

4 THE COURT: Was that in his report?

5 MR. HILL: Yes, Your Honor, it was. The DX-41
6 document was in his report.

7 THE COURT: Mr. Bernstein?

8 MR. BERNSTEIN: Your Honor, I mean, that document
9 was excluded. That document was used in the report for
10 inequitable conduct.

11 THE COURT: Okay.

12 MR. BERNSTEIN: It was not -- it was not --

13 THE COURT: I got it.

14 MR. BERNSTEIN: -- used for what he's saying it's
15 being used.

16 THE COURT: Okay. So, Mr. Hill, I'm going to
17 go -- I'm going to give you one more time to tell me what
18 the evidence is that the products that your second expert
19 relied on were public or available at the time they needed
20 to be in 2014.

21 MR. HILL: Again, Your Honor, the DX-41 document
22 showed multiple things, the expert analyzed it within his
23 report for substantive purposes, as well.

24 And, again, Dr. Lebby did testify that he reviewed
25 other materials, specification sheets, and other things

1 that supported his opinions.

2 And, again, that's why we go back to --

3 THE COURT: And that's why I'm saying, were those
4 specifications identified in the report?

5 MR. HILL: Oh, yes. Within his report? Within
6 his report, yes.

7 THE COURT: And did you put that evidence on here?

8 MR. HILL: Your Honor, the specifications, we
9 understand, were part of the exclusion because of the no
10 sponsoring witness point.

11 But, again, Your Honor, this is why we continue to
12 come back to 702 and 703, which regardless of the
13 admissibility of the underlying material, the expert report
14 sits above that in a different -- that is, the expert
15 testimony sits as its own independent evidence. They can
16 rely on such materials as part of their expertise.

17 THE COURT: As long as it's -- as long as it's
18 admitted, as long as the evidence is in the record.

19 MR. HILL: Your Honor, it -- 703 and other things
20 expressly say that -- that is, Federal Rule 703, basis of
21 an expert opinion's testimony, that: An expert may base an
22 opinion on facts or data in the case that the expert has
23 been made aware of or personally observed.

24 And it goes on to say that: If experts in the
25 particular field would reasonably rely on those kinds of

1 facts or data in forming an opinion on the subject, they
2 need not be admissible for the opinion to be admitted.

3 And there's been plenty of testimony --

4 THE COURT: That means -- that -- that allows them
5 to deal with hearsay, like, if I'm relying on what someone
6 told me. And there's no evidence to...

7 MR. BERNSTEIN: Your Honor, may I be heard for one
8 second?

9 THE COURT: Sure.

10 MR. BERNSTEIN: There's -- there's not a single
11 piece of evidence in the record about these products being
12 on sale. There's no deposition testimony, there's no fact
13 witness testimony, there's nothing in the record at all.
14 There's no documents. There's nothing -- there's
15 absolutely nothing in the record.

16 THE COURT: Let me ask you this: Does it have to
17 be that it's on sale or just that it was available?

18 MR. BERNSTEIN: There's nothing. They have
19 nothing that proves that anything was on sale, publicly
20 available, or anything else in 2014 or any other time for
21 that matter, Your Honor.

22 THE COURT: Mr. Hill, anything else?

23 MR. HILL: I would just say, again, Your Honor,
24 this is why we think, amongst other things, that DX-41,
25 which shows that tubes of two of the three prior art

1 products were in the possession of Super Lighting, not for
2 any purpose related to inequitable conduct with respect to
3 this, but it does show that the tubes were publicly
4 available because Super Lighting didn't make or design
5 those tubes and yet had detailed technical drawings and
6 detailed pictures of the actual tube components themselves.

7 Those tube components themselves are relevant to
8 the claims in this case. Dr. Lebby has in his report
9 specifically addressed these issues, as well. And this is
10 another reason why, the physical tubes and other things,
11 they all -- they all corroborate each other.

12 And by the Plaintiffs' own document, which has
13 been produced and there's no authenticity problem under the
14 local rules -- again, it's their own document -- it shows
15 that at least two of the three prior art tubes had to have
16 been available at the 2014 time frame because the document
17 is clearly labeled that.

18 THE COURT: Mr. Bernstein?

19 MR. BERNSTEIN: There's -- there's no -- again,
20 DX- -- DTX-41 or whatever the number is, I mean, it was --
21 it was excluded a long time ago. Their case is over.

22 I don't remember if they ever made an offer of
23 proof on that document or not. I don't remember them doing
24 so, but maybe they did. There's no testimony on that
25 document. There's no testimony on anything. Their case is

1 closed.

2 That document -- I don't know why I'm arguing
3 about it again, Your Honor, but it was excluded for the
4 reasons why you excluded it, and it was not part of this
5 case. And their case is closed, and they're effectively
6 asking for a do-over.

7 Quite frankly, Your Honor, I don't know if you've
8 been seeing this coming for a long time, but I have,
9 because when you try to prove up product prior art, as Your
10 Honor remembers from private practice, it's hard.

11 You have to get third parties to actually, you
12 know, sit for a deposition and say: This is what it is.
13 This is when it was sold. This is, you know, 10 other
14 things.

15 And they did none of this. And, you know, for the
16 last two months, they tried to add Mr. Marsh as a witness
17 at the last minute. They've been trying all these
18 back-door ways. And they have no evidence -- they have no
19 evidence now that their case is closed, not a shred of
20 evidence in the record that proves that this was on sale,
21 public, anything else. The tubes aren't in evidence.

22 No reasonable jury sitting back there, Your Honor,
23 could come to the conclusion of anything other than these
24 patents are valid over those references.

25 THE COURT: Mr. Hill?

1 MR. HILL: So there's expert testimony that proves
2 that products were manufactured and provided to the public
3 at that time. At minimum, it tends to prove that.

4 The expert showed demonstrative photos. Those
5 photos included dates of products that were marked with
6 2014. The jury saw the date of 2014 --

7 THE COURT: That doesn't mean that they were
8 public. That -- I get that the date's on there, but
9 that -- that doesn't show that they're public.

10 MR. HILL: And, again, Your Honor, that's why we
11 go back to DX- --

12 THE COURT: It's not coming -- I have lost enough
13 of my life talking about that document. I excluded it.
14 It's not in evidence. So I want to know what is in
15 evidence.

16 And I'm about to bring the jury back in, so we
17 need to get this wrapped up.

18 MR. HILL: And, again, Your Honor, I would point
19 back to 702/703, Dr. Lebby's testimony. The products were
20 available prior to the --

21 THE COURT: He had no personal knowledge that they
22 were -- that -- that -- there's no evidence that they were
23 available other than he said the number -- the date is on
24 them, which doesn't mean that they were publicly available.

25 MR. HILL: Again, Your Honor, I would say that

1 702/703 don't require the expert to have the personal
2 knowledge if it's the kind of information that they would
3 rely upon --

4 THE COURT: But they need to have something that
5 they're relying on, and he has nothing.

6 MR. HILL: He did testify that he looked at the
7 specification sheets and other materials, including
8 materials that Dr. D'Andrade indicated were the kind that
9 an expert would rely on.

10 THE COURT: Sure, but -- okay.

11 MR. HILL: So, for example, in the questioning:
12 As of 2014, were other companies developing LED
13 tubes?

14 There should be others.

15 As of 2014, were other competitors using adhesives
16 to adhere --

17 THE COURT: These tubes, the tubes that are your
18 prior art, where is the proof that these tubes were extant?

19 MR. HILL: Again, Your Honor, we would point back
20 to the expert's testimony and 702/703.

21 THE COURT: I'm going to exclude them. I don't
22 think there's any evidence in the record that shows that
23 these products were publicly available in 2014.

24 MR. BERNSTEIN: So by excluding, you mean the
25 motion is granted, Your Honor?

1 THE COURT: The motion is granted.

2 MR. BERNSTEIN: Thank you, Your Honor.

3 THE COURT: I just wanted to articulate why.

4 And with regard to willfulness, I'm not going to
5 -- I'm not going to grant the motion on willfulness. I'll
6 ask the jury, and then I'll take it up after the jury comes
7 back.

8 Anything else we need to take up I haven't ruled
9 on?

10 MR. BERNSTEIN: Nothing from Plaintiff, Your
11 Honor.

12 THE COURT: Mr. Hill?

13 MR. HILL: Nothing from Defendants, Your Honor.

14 THE COURT: Mr. Bernstein, do you need a moment to
15 let your expert know what he's going to be testifying
16 about, or can we just move forward and call your expert?

17 MR. BERNSTEIN: Oh, yeah, no, he's here.

18 THE COURT: No, I'm saying, I think -- I think --

19 MR. BERNSTEIN: Oh, no, no, we -- based on your
20 initial ruling, we've talked to him.

21 THE COURT: Okay.

22 MR. DAY: And, Your Honor, I'll be presenting the
23 witness. So we understand that we simply will not refer to
24 the '125 patent in the course of his testimony.

25 THE COURT: Right.

1 Yes, sir?

2 MR. HILL: Your Honor, may I get a ruling on my
3 motion for reconsideration?

4 THE COURT: It's denied.

5 Well, your motion for reconsideration is subsumed
6 by the fact that I just granted -- if I'm following things,
7 my granting of Mr. Bernstein's motion was subsumed in your
8 motion for reconsideration. I essentially regranted it and
9 confirmed that, but I -- for a reason that I didn't
10 articulate before.

11 So, yes, your -- your -- your motion for
12 reconsideration is denied.

13 I'm going to go back, and in about three minutes,
14 we'll come back out, we'll bring the jury out, and the --
15 and then I need to make sure -- the Defendant needs to rest
16 in front of the jury, and then I'll ask the Plaintiff to
17 call any witnesses, if they have any.

18 COURT SECURITY OFFICER: All rise.

19 (Recess.)

20 COURT SECURITY OFFICER: All rise.

21 THE COURT: You may be seated.

22 It's my understanding the Defendant wants to put
23 on additional evidence.

24 Let me make it as clear as I can. Defendant
25 rested. You rested before we took up the motions. Your

1 case is done. That's -- you don't get to rest and then
2 hear the motion, and then say, I'd like to add something.

3 And so let me put on the record, the Defendants'
4 case is closed.

5 MR. HILL: Your Honor, so -- so we understand that
6 we're -- you're refusing to allow us to make an offer of
7 proof; is that correct?

8 THE COURT: I'm refusing to allow you to put in
9 more evidence because you have rested. It's not an offer
10 of proof situation. It is the fact that you closed your
11 case, which you do before I ask for a directed verdict. So
12 it's not an offer of proof situation. You-all were --
13 you-all closed your case.

14 MR. HILL: We -- Your Honor, we -- we haven't
15 rested on the record, that's why we want to make that
16 motion.

17 THE COURT: You did rest on the record. That was
18 why we took up these issues. I'm going to have you rest in
19 front of the jury.

20 MR. HILL: Understood, Your Honor.

21 THE COURT: And so I -- I made it clear that your
22 case was done, or I wouldn't have taken up the motions.

23 Bring the jury in.

24 COURT SECURITY OFFICER: Yes, sir.

25 (Jury in.)

1 THE COURT: Thank you. You may be seated.

2 Does the Defendant have any other witnesses to
3 call?

4 MR. HILL: No, Your Honor. We rest.

5 THE COURT: Mr. Bernstein?

6 MR. BERNSTEIN: Your Honor, Plaintiffs call
7 Dr. Josh Phinney in their rebuttal case.

8 COURTROOM DEPUTY: Go ahead. You've got a lot.

9 (Witness sworn.)

10 MR. DAY: And I'll be shorter this time. Evan Day
11 for the Plaintiffs.

12 JOSHUA PHINNEY, PH.D., PLAINTIFFS' WITNESS, SWORN

13 DIRECT EXAMINATION

14 BY MR. DAY:

15 Q. Good afternoon, Dr. Phinney.

16 A. Good afternoon.

17 Q. Can you please introduce yourself to the jury?

18 A. My name is Josh Phinney. I'm an electrical engineer.

19 Q. And what do you do when you're not looking at
20 electrical circuits?

21 A. Well, you know, my -- my wife and I, we have five
22 daughters. So I'm a parent. They're ages 1 to 13. So,
23 you know, coming to a trial here in Waco is really a
24 vacation from any free time I might have.

25 Q. So that's every type of parenting at once.

1 A. Yes.

2 Q. So you may be the last witness to the trial. What are
3 you here to talk about?

4 A. I'm here to talk about the validity of the asserted
5 patents.

6 Q. Have you prepared any demonstratives to assist in your
7 testimony today?

8 A. I have.

9 MR. DAY: And, Corey, could you please bring up
10 Dr. Phinney's slides?

11 And, Your Honor, I'd ask permission to display
12 Dr. Phinney's slides to the jury?

13 THE COURT: Okay.

14 Q. (By Mr. Day) Dr. Phinney, can you please explain for
15 the jury your education?

16 A. Yeah, so after Wheaton College, which is in
17 engineering, I went to the University of Illinois at
18 Chicago, and I got a bachelor's degree in electrical
19 engineering in 1999.

20 Then after that, I went to the Massachusetts
21 Institute of Technology where I got -- in what's called
22 Course 6, so, again, in electrical engineering, I got a
23 master's and a Ph.D. in 2001 and 2005 respectively.

24 Q. We're not going to talk about ancient and classical
25 languages today, are we?

1 A. No, unfortunately.

2 Q. Can you explain what you've been doing in your
3 professional career since you got your Ph.D. from MIT?

4 A. Well, in 2005, I joined Exponent, which is my current
5 employer, so I've been with them for 16 years.

6 Q. What do you do at Exponent?

7 A. At Exponent, I do about -- my time is divided basically
8 down the middle. 50 percent of the time, I do something
9 called failure analysis, and about 50 percent of the time
10 I'm involved in some sort of legal matter where there's a
11 dispute over liability or patent infringement.

12 Q. Can you explain for the jury more about what you mean
13 by failure analysis?

14 A. Failure analysis is just determining why something
15 broke, doesn't work, it's determining the root cause of
16 failure. And so that can be either in a product or it
17 could be in a more disaster-style situation.

18 Q. And you mentioned that you work for Exponent, and I
19 believe the jury may have heard about Exponent during
20 Dr. D'Andrade's testimony.

21 Now, do you work with -- is Dr. D'Andrade a
22 colleague of yours at Exponent?

23 A. He's a colleague. He -- we're in the same practice,
24 but he's in a different office, and we -- we work
25 independently.

1 Q. Do you have any teaching positions?

2 A. Yeah, so at Hofstra University, I've been sort of a
3 substitute teacher almost over -- over the years, so I
4 do -- I'm an instructor in various courses for a laboratory
5 circuits course, an advanced circuits course. So I teach
6 that irregularly, but some years when there's a sabbatical,
7 that type of thing.

8 Q. Are you the author of any publications?

9 A. I am. Some of them are -- are in -- in a sort of
10 physics kind of experiment. But most of them are in power
11 electronics, in that field.

12 Q. Can you explain more what you mean by power
13 electronics?

14 A. Yes. So power electronics is -- includes the
15 electronics circuitry for controlling the flow of power as
16 it goes to different loads and converting power from one
17 form to another.

18 Q. Have you received any awards for your publications?

19 A. I have. I've received two Prize Paper Awards, and
20 those were for publications in power electronics.

21 Q. Can you explain how your professional background and
22 your education and experience relate to the subject matter
23 of this case?

24 A. Well, it will be in -- in several aspects of power
25 electronics. So one is we've been hearing about, like, the

1 switches that are sometimes in LED replacement tubes, the
2 control of that kind of semiconductor switch and when it
3 turns on. So this is not the switch like on a wall. But
4 when the semiconductor switch in the -- in the tube
5 actually can provide power to the load. And also, for
6 instance, how the LEDs are even cooled when they're in --
7 in that type of load. Those are power electronics kinds of
8 issues.

9 MR. DAY: Your Honor, at this time, Plaintiffs ask
10 that Dr. Phinney be recognized as an expert in the field of
11 electrical engineering.

12 MR. HILL: No objections.

13 THE COURT: He'll be admitted.

14 Q. (By Mr. Day) Dr. Phinney, yesterday, the jury heard
15 some hours of testimony from two of CH's experts who
16 offered opinions that the Patent Trademark -- the Patent
17 and Trademark Office of the United States got it wrong or
18 missed something and that Super Lighting's asserted patents
19 are invalid. Do you agree with them?

20 A. I do not.

21 Q. Now, you mentioned that you had prepared your own
22 slides. Are there any other demonstrative aids that might
23 be helpful to use in your testimony today?

24 A. Yes, also the -- the slides of Dr. Zane and Dr. Lebby.
25 You know, I had thoughts when I looked at them in the

1 courtroom.

2 Q. All right. Since Dr. Zane testified first yesterday,
3 why don't we start with Dr. Zane's opinions on the '140
4 patent?

5 And I am showing on the document camera Dr. Zane's
6 Slide 7.

7 Do you agree with the opinions that Dr. Zane has
8 put forth in this slide?

9 A. I do not.

10 Q. All right. And can we talk about that in a little bit
11 more detail?

12 A. Sure.

13 Q. All right. I'm showing you Dr. Zane's Slide 20 with
14 respect to the -- the Ono reference.

15 Can you explain why you disagree with Dr. Zane
16 about this claim element?

17 A. Sure. Ono -- Ono does things in -- in sort of the old
18 way with respect to shock protection. To -- to tell you
19 more about what I mean, if there's -- if there's a
20 condition where turning on a tube lamp can create a
21 potentially hazardous condition, Ono does really the
22 opposite of what the '140 patent does.

23 So, first, it detects if the -- if the
24 installation is proper. And, second, if the installation
25 is proper, if no hazard would exist, then it turns on the

1 light. And that's really the opposite of what the '140
2 patent does.

3 The '140 patent goes right ahead and turns on the
4 light first and then determines if there's a proper
5 installation.

6 Q. All right. And I see that Dr. Zane on this slide has
7 colored something in red that he's pointing to as the pulse
8 generating circuit.

9 In your opinion, Dr. Phinney, does the element
10 that Dr. Zane identified as the pulse generating circuit
11 control turning on and off of a switch circuit in the Ono
12 reference?

13 A. No, it doesn't. It's -- it's providing pulses that
14 are -- are -- are used to sort of query or -- or sort of
15 detect the impedance that -- of the -- of the installation.
16 But it's really the -- the -- the response of that pulse.
17 So it's whether or not it is lower or exceeds a threshold.
18 It is the detection result that determines whether or not
19 the switch turns on.

20 So it's like -- it's like you first check if it's
21 okay. If -- if the installation is okay, then you turn on
22 the switch. That is the old way of doing things.

23 Q. Dr. Phinney, in your opinion, does the Ono reference
24 teach a switch circuit coupled to the pulse generating
25 circuit wherein the one or more pulse signals control

1 turning off of the switch circuit?

2 A. No, it does not.

3 Q. Can we cross that off on Dr. Zane's slide?

4 A. Yes, that would reflect my opinion.

5 Q. Now, you've identified a limitation that's not present
6 in your opinion in the Ono reference. And I believe
7 Dr. Zane only talked -- testified about Ono with respect to
8 one claim.

9 Is that enough to cross off Ono?

10 A. It is. When you have anticipation, that means if one
11 element of this recipe, one ingredient is missing, the --
12 the -- the reference cannot anticipate the claim. So, yes,
13 we could -- we could cross it off.

14 Q. And since Dr. Zane doesn't rely on Ono for any other
15 claims, do we need to talk about Ono anymore?

16 A. No, we don't.

17 Q. All right. And we'll talk about the Ivey reference
18 next.

19 And since CH Lighting actually talked about two
20 Iveys, we'll talk about what they referred to as Ivey I.

21 So Dr. Zane offered the opinion that Ivey I
22 discloses an LED tube lamp. Do you agree?

23 A. I -- I don't. You know, the word "tube," the word
24 "tube lamp" is not in this reference. It's referring to --
25 to compact fluorescent and LED replacements for

1 incandescent lights. But it doesn't describe their shape.

2 Q. So I'm showing you Dr. Zane's -- the -- an excerpt from
3 Ivey that Dr. Zane relied on where it says that -- he's
4 highlighted some text. Does any of that text describe the
5 shape of light?

6 A. It does not.

7 Q. And I'm showing you Dr. Zane's Slide 37, which is
8 another slide that Dr. Zane relied on for this limitation.

9 Does -- and I believe that's referring to
10 Paragraph 5 of the Ivey I reference.

11 Does any of the text that Dr. Zane has highlighted
12 on this slide describe the shape of the light?

13 A. No, it does not.

14 Q. Now, Dr. Phinney, I think Dr. Zane may have said that
15 if you have a reference that says in one paragraph that you
16 could have an LED and then in the next paragraph it goes on
17 to say that that LED light could have a double-ended
18 connection, why doesn't that teach you it's a tube lamp?

19 A. Well, because there are other types of lights that have
20 a double-ended connection.

21 So, I mean, if -- if you could actually just put
22 that last slide up just quickly.

23 Just to be clear, this picture that's shown here
24 to the right, that's -- that's what -- that's what Dr. Zane
25 put there next to the -- next to the text. That's not

1 actually in the reference.

2 Q. All right. I'm showing you what is Dr. Zane's Slide 42
3 or probably 99 percent of it. We had a little bit of a
4 printing error, so I had to figure out the -- the exact
5 pages.

6 But assuming I have my pages right, Dr. Zane's
7 Slide 42 talks about the -- I believe the element you just
8 talked about. Do you agree with Dr. Zane that Ivey I
9 teaches a switch circuit coupled to the pulse generating
10 circuit, wherein the one or more pulse signals control
11 turning on and off the switch circuit?

12 A. No -- no, I don't. The -- I'm showing here the
13 pulse -- or Dr. Zane is showing the pulse generating
14 circuit that he identified, so that's in red.

15 And then all the way to the right, that 175, that
16 is the switch circuit that he's identified.

17 Q. What is the element that -- how does Ivey I describe
18 the Element 130 that Dr. Zane has highlighted in red?

19 A. It -- it's called the oscillator. And it's there to
20 control a different switch, 135, that's right next to that
21 oscillator.

22 Q. Does that oscillator 130 control that switch on the
23 right-hand side of the image that Dr. Zane has highlighted?

24 A. No, it's there to control the turning on and off of
25 this switch 135, which is a test load switch. Again, this

1 is the old way of doing things. You first determine if the
2 installation is correct, and if you determine that it's
3 correct, then you turn on the light, the old way.

4 This is sort of like in that shower analogy, this
5 is kind of like installing a little temperature gauge or
6 something in the shower. So like if you want to turn on
7 the shower, you first look at temperature, and you say,
8 well, I think the temperature is going to be okay, and so,
9 therefore, I'll turn on the -- turn on the valve.

10 And the '140 patent is the opposite. You just go
11 ahead and turn on the valve, and you check quickly if the
12 temperature is okay.

13 Q. In your opinion, has Dr. Zane met his burden to teach
14 that switch circuit coupled to the pulse generating
15 circuit, wherein the one or more pulse signals control
16 turning on and off the switch circuit?

17 A. No, there's just so much intervening structure and
18 function. It's really represented by all the circuitry we
19 see between the -- the pulse generating circuit that
20 Dr. Zane has identified and the switch circuit, the 175 all
21 the way on the other side of the figure.

22 So talk about this pulse generating circuit
23 control turning it on and off this thing all the way on the
24 other side, that's just -- it -- it's just -- it's just
25 ignoring the fact that what actually determines whether or

1 not that switch turns off is a detection result, not the
2 pulse.

3 Q. So can we cross off that element?

4 A. Yes.

5 Q. And I believe that slide of Dr. Zane is referring to
6 Claim 4 in the '140 patent -- or Claim 4 in the '140
7 patent, and I'm showing you that language highlighted on
8 the right side of the screen from the patent itself.

9 Did you see that same claim language in any other
10 claims of the '140 patent?

11 A. Yes. So we see that one highlighting. It starts a
12 switch circuit coupled to the pulse generating circuit,
13 that is on the right side. On the left column is the same
14 language in Claim 1.

15 Q. Now, has Dr. Zane met his burden to show that Claim 4
16 is obvious over Ivey?

17 A. No, he has not.

18 Q. So looking again at Claim 4 of the '140 patent -- I'll
19 zoom that in a little bit -- were there any other elements
20 that you disagreed with Dr. Zane about?

21 A. There -- there were. It's this lower highlighting.
22 It's in a greenish color. Where it says "a detection
23 result latching circuit." So that language is -- is also
24 absent.

25 Q. All right. Well, I'm going to show you one of

1 Dr. Zane's demonstratives about that detection result
2 latching circuit.

3 And I'm showing you Dr. Zane's Slide 59.

4 Do you agree with -- with what Dr. Zane is showing
5 here?

6 A. I -- I don't. There's several reasons and -- several
7 reasons that he's ignoring the -- the disclosure of Ivey I
8 in -- in reaching his conclusion here.

9 Q. So, for example, Dr. Zane, if I recall, relied on this
10 Element 315 in Ivey. What is that -- that -- that box?

11 A. Well, that's a shut-off circuit, and it's there as a --
12 as a protection mechanism, that if something is wrong with
13 the installation, it turns off the light in the present and
14 the future. It's designed to shut everything down if
15 there's something wrong with the installation.

16 Q. Now, I see that there's a couple of figures here, you
17 know, where Dr. Zane has highlighted -- pulled up a figure
18 from Ivey and put it next to a figure from the '140 patent.

19 Are those two -- are those two figures showing
20 circuits that are doing the same thing?

21 A. No, they're not. And this is where it's really
22 important to just realize, just because there's a --
23 there's a dashed box and then this other box inside, these
24 are doing different things. And so this is part of --
25 what's different about these is Dr. Zane ignored.

1 Q. Okay. And I see that you've highlighted the -- there's
2 an excerpt here which I believe is the Court's claim
3 construction. Does that Box 315 from Ivey satisfy that
4 construction in the lower -- in the lower left side of --
5 of Dr. Zane's demonstrative?

6 A. Yes, that is -- that is -- that is close to the Court's
7 claim construction. It's a little altered, but, yes, that
8 is basically --

9 Q. You mean the excerpt is close to the Court's claim
10 construction --

11 A. The excerpt, that lower left text, yes, that is -- that
12 is --

13 Q. Does -- does -- excuse me. Does that Box 315 in Ivey
14 satisfy that construction?

15 A. No, it does not. I mean, in the first place, it's --
16 it's -- it's a shut-off circuit. It's not -- it's not for
17 turning on and off. And it also does not respond to a
18 pulse signal in order to turn the switch on and off.

19 Q. So Dr. Zane talked about possibly connecting the
20 oscillator that we showed in the previous slide to that
21 Element 315. Would that result in the -- this claim
22 element in the '140 patent, as Dr. Zane said yesterday?

23 A. No. And so what you're referring to -- and if I could
24 orient us here. It's this little -- this red dotted line
25 that's going up to 315. This is one of Dr. Zane's -- where

1 he's -- he's -- he's indicating that there's this
2 connection that's indicated. And that does not indicate
3 that there is a pulse circuit that is changing the result
4 of the switch. That dashed line, that dotted line is a
5 synchronizing pulse.

6 And this is sort of like the beat of a drum in a
7 band or something where it's not controlling the output,
8 but it is providing a window of time in which the output
9 can change. It is not controlling the output.

10 So it's like -- it's like, you know, saying you
11 have to be synchronized at certain times does not have this
12 limitation from the Court's claim construction that the --
13 the -- that -- that the -- the latching circuit outputs a
14 high logic value when the pulse signal output has a high
15 logic value.

16 Q. And I see here that Dr. Zane is relying on that
17 disclosure for the detection result latching circuit in
18 Claims 4, 5, 24, 28, and 31 of Ivey.

19 Does Ivey teach the detection result latching
20 circuit in those claims?

21 A. Yeah, it -- it's -- it's not there, according to the --
22 the Court's claim construction in -- in those claims either
23 for the reasons I've stated.

24 Q. Can we cross that off?

25 A. Yes.

1 Q. Now, Dr. Zane also talked about some modifications that
2 he thought a person of ordinary skill in the art would make
3 to the Ivey reference, and I'm showing you, again, if we
4 have our accounting right, Dr. Zane's Slide 58.

5 What's the modification or modifications to Ivey
6 that Dr. Zane is trying to show here?

7 A. Well, there are going to be many of them, but -- but
8 one modification right off the bat is, you know, deleting
9 what the switches that the oscillator actually controls.
10 So deleting the test load switch and the test load. So
11 that's how Ivey describes how installation -- a proper
12 installation is detected. So Step 1 is to delete that.

13 Q. So just to make clear what we're talking about, you're
14 referring -- is the test load switch 135 and the test load
15 140, is that -- that what you're referring to deleting?

16 A. Correct.

17 Q. All right. And I see that Dr. Zane has shown some --
18 has shown a dotted line path from the pulse generating
19 circuit to the -- or what he has labeled as the pulse
20 generating circuit, that oscillator, to that -- that
21 Box 315.

22 Now, does -- do you have any concerns with the
23 path that Dr. Zane is showing here?

24 A. I -- I do. So the -- as you can see, this -- this --
25 this dotted line is sort of put over another line, and --

1 and that that line, however, is a ground, and you don't --
2 you don't pass signals, you know, over a ground.

3 So, you know, he's sort of drawn this in a way to
4 make it look a little bit like part of the circuit, but
5 it's -- it's actually part of the circuitry that's not
6 shown.

7 Q. So -- but I believe Dr. Zane testified that this Ivey
8 reference does have some suggestion of connecting his --
9 his red box to that -- that Element 315. I mean, would you
10 have to draw another path here somewhere?

11 A. Yeah, that's -- that's really my only point there is
12 that if you do make that connection, it's -- first of all,
13 it's for synchronization. It's not for controlling, you
14 know, the switch, and turning it on and off. But you --
15 yeah, you'd have to draw it in through some different path.

16 Q. Okay. And I've drawn a line through another path
17 between those two.

18 Does Ivey itself suggest any reason to make those
19 modifications that Dr. Jane -- Dr. Zane is proposing?

20 A. So are you talking about 315 in the latch?

21 Q. Or Dr. Zane's proposed modification to this.

22 A. No, it doesn't -- it doesn't suggest -- you know, make
23 those modifications.

24 Ivey I has its own way of doing things, that is --
25 as I've talked about sort of that -- is that old way where

1 you first check using, in this case, the test load and the
2 test switch. That's kind of like the temperature gauge
3 idea. And then when everything is okay with that, then you
4 can turn on the -- the main switch. But that's not
5 suggested in Ivey.

6 Q. Are there any other consequences for the circuit to the
7 modification that Dr. Zane is proposing?

8 A. Yeah, the -- the consequences are that you have to
9 figure out a way now to resolve the conflicting signals
10 that come from the -- a pulse generating circuit that
11 Zane -- Dr. Zane has identified and the detection result
12 that he's identified here.

13 So that's -- that's, again, something that's not
14 taught by Ivey, and it is required by the claims and the
15 Court's claim construction.

16 Q. So is there still some uncertainty about how this
17 modification would work right around this element -- this
18 Box 315?

19 A. There is. This is exactly the same element that we
20 were looking at before. When we were zoomed in, and we
21 were looking at that dotted line going to it. So yes,
22 there's a lot of details that are effectively ignored by
23 Dr. Zane about how that -- that -- that circuitry, you
24 know, should -- should operate and why that would be
25 obvious.

1 Q. So in your opinion, Dr. Phinney, does -- and I'll only
2 read part of the claim language this time.

3 Does this Ivey reference render obvious that
4 detection result latching circuit element in Claim 4?

5 A. No, it does not.

6 Q. And I see that Dr. Zane has relied on the same
7 disclosure for some other claim elements, including 4, 5,
8 24, 28, and 31 with that same element. Does Ivey render
9 this -- that claim element obvious in those claims?

10 A. No, for the reasons I've stated.

11 Q. So going back to Dr. Zane's summary, can we cross off
12 Ivey then?

13 A. Yes, we could. That reflects my opinion.

14 Q. And I think you actually gave a couple of different
15 reasons why we can cross off Ivey; is that right?

16 A. Yeah, that's right. I would say, there would be
17 multiple -- multiple reasons.

18 Q. Okay. So now it looks like we have one more
19 combination of references that Dr. Zane proposed for the
20 '140 patent.

21 MR. DAY: Corey, can you please bring up DTX-68
22 and Page 4 of the '140 patent?

23 Q. (By Mr. Day) What are we seeing here?

24 A. So this is the -- the so-called Sadwick reference,
25 where we see the -- you know, its identification as an

1 international patent application, that -- that WO
2 designator.

3 And that's also shown, though, on the left as
4 being part of the prosecution -- or considered during
5 prosecution in the '140 patent. So it was in front of the
6 examiner.

7 Q. And I think we -- that we had some testimony about
8 the -- really some of the details of the file history
9 yesterday during Dr. Zane's cross-examination.

10 Do we need to go over that again?

11 A. I don't think we do. I think all these same points
12 were brought out in that -- in that examination.

13 Q. Dr. Zane talked to the jury a little bit about a
14 motivation to combine. I'd like you to explain more.

15 In your opinion, what does it mean for there to be
16 a motivation to combine prior art references?

17 A. Yes, so the way I understand this is that we can't use
18 hindsight to combine references. So one thing that is
19 improper is to use the -- the asserted claims themselves as
20 a roadmap to -- to combine two pieces of prior art.

21 So you can't just use the recipe that's been
22 published and say: Ah, I need this one, and I can go get
23 that ingredient from this reference. And, ah-ha, I need
24 this ingredient, so I'll go get that from another
25 reference.

1 That's this idea of hindsight.

2 So with -- you know, the real inquiry should be to
3 put ourselves in the shoes of a person of ordinary skill,
4 like this engineer at the time of the invention, and try to
5 articulate a reason, a motivation to combine references so
6 that -- that would render the claim obvious.

7 Q. So let's look at some of the issues with whether a
8 person of ordinary skill at the art at the time as opposed
9 to someone reading the '140 patent now would have had that
10 motivation to combine.

11 MR. DAY: And, Corey, I'd like you to please bring
12 up Page 5 of DTX-65, which is the Ivey reference.

13 And I've see that you've already highlighted the
14 first sentence of each of Paragraphs 3 through 5.

15 Q. (By Mr. Day) What sort of power supply is this Ivey
16 reference talking about here?

17 A. This is the kind of power supply that we see in the
18 wall, you know, in a plug. This refers to, for instance,
19 compact fluorescent and LED replacement -- replacements for
20 incandescent light bulbs.

21 So this would be the 120-volt AC that you see in a
22 light fixture, for instance.

23 MR. DAY: All right. Now, Corey, can you please
24 bring up the first page of DTX-68, which is the Sadwick
25 reference?

1 And I see you've already highlighted the second
2 sentence of the abstract of Sadwick.

3 Q. (By Mr. Day) What sort of power supply is Sadwick
4 talking about?

5 A. So in Sadwick, we see what's a much higher voltage and
6 higher frequency power supply called a ballast. And so
7 this is used to drive fluorescent -- fluorescent lamps.

8 Q. And I think you were here when Dr. D'Andrade talked a
9 little bit about the differences in those types of power
10 supplies in the beginning of his testimony on Monday.

11 Can you explain more for the jury how the -- how
12 circuitry is designed to use those two different types of
13 power supplies compares?

14 A. Well, it can be a different electrical environment.
15 There could be different available fault current from the
16 source, you know, different concerns from a safety
17 standpoint in those cases.

18 So I think this is, right away, a reason that the
19 references wouldn't be combined because they're in sort of
20 different -- different areas.

21 Q. So in your opinion, would a person of ordinary skill in
22 the art be motivated to combine the -- the Ivey I and
23 Sadwick references?

24 A. No, for -- this is one reason why.

25 MR. DAY: Corey, can you please highlight the last

1 element of Claim 4 of the '140 patent at -- I believe
2 that's Column 60, Lines 45 to 61?

3 Q. (By Mr. Day) So I think you -- you already testified
4 about the problems with whether Ivey teaches this element.

5 In your opinion, Dr. Phinney, does Sadwick teach
6 the claim element that I've highlighted?

7 A. It doesn't. Dr. Zane touched on this a little bit. He
8 said that the, you know, latch -- this idea of latching
9 circuit was mentioned by Sadwick, but it didn't provide
10 details.

11 And so, again, with this element, we're dealing
12 with a very -- you know, a specific Court -- construction
13 from the Court. So it does include a lot of requirements.
14 And, again, those are really ignored by Dr. Zane.

15 Q. All right. So let's look at what Sadwick does teach
16 about latching in a little bit more detail.

17 MR. DAY: Corey, can you please bring up Paragraph
18 61 of Sadwick on Page -- in DTX-68 and highlight the term
19 "latching," please?

20 And please also bring up Paragraph 82 of Sadwick
21 and highlight the reference to latching here.

22 Q. (By Mr. Day) Dr. Phinney, are there any other places
23 in Sadwick that talk about latches or latching?

24 A. There is one other place, but it's related to
25 overvoltage protection. So I don't think it's relevant

1 here.

2 Q. Do either of these mentions of latching or latches in
3 Sadwick teach the specific detection result latching
4 circuit that's required by the claims of the '140 patent?

5 A. No, they don't. At most what is described here is,
6 again, like a shut-down circuit, a turn-off circuit that
7 will stop everything if -- if there's a problem with an
8 installation.

9 Q. Does Sadwick fix any of the problems with Ivey that you
10 were talking about earlier?

11 A. No, it does not. You know, it doesn't have that way of
12 combining a detection result and the pulse from the pulse
13 generating circuit as required by the Court's claim
14 construction.

15 MR. DAY: And, Corey, can you please bring up
16 Dr. Phinney's Slide 435?

17 Q. (By Mr. Day) So I see here you've shown the full
18 Court's construction on the left.

19 Does Sadwick teach a detection result latching
20 circuit according to this claim construction?

21 A. No, it does not.

22 Q. Are any of the asserted claims obvious over the
23 combination of Ivey and Sadwick?

24 A. No, they are not.

25 MR. DAY: And, Corey, we have the electronic

1 version of Dr. Zane's Slide 7?

2 Q. (By Mr. Day) So can we cross off the combination of
3 Ivey and Sadwick?

4 A. Yes, that would reflect my opinion here -- yeah, we're
5 kind of adding back the other ones that we've done
6 previously.

7 But, yeah, that -- that reflects my opinion.

8 Q. Have we crossed off all of Dr. Zane's invalidity
9 opinions?

10 A. Yes, for -- for the '140 patent.

11 Q. Has Dr. Zane showed that any of the asserted claims of
12 the '140 patent are anticipated or obvious?

13 A. No, he's not.

14 Q. What do you conclude with respect to the validity of
15 the '140 patent?

16 A. I conclude that it is valid and that the -- the
17 Defendants haven't shown otherwise.

18 Q. All right. Can we move on to the '540 patent?

19 A. Sure.

20 MR. DAY: So, Corey, if you can, can you please
21 bring up Claim 13 of the '540 patent?

22 Q. (By Mr. Day) Are there any particular elements of
23 the -- of Claim 13 of the '540 patent that you'd like to
24 talk about?

25 A. Yes, it's -- it's really this one here, where there's a

1 LED light strip disposed on an inner circumferential
2 surface.

3 Q. Okay. And now, were you here during Mr. Tao Jiang's
4 testimony on Monday?

5 A. I was.

6 Q. And did you see any --

7 MR. DAY: And I refer to Dr. Phinney's Slide 407.

8 Q. (By Mr. Day) Did you see any Super Lighting-internal
9 documents that relate to that feature of having the light
10 strip disposed on an inner circumferential surface of a
11 tube that you just referred to?

12 A. Yes. These 3D CAD drawings that we see here on the
13 left, the -- you can see the tube coating, and that's
14 showing the tube structure here.

15 And the LED light strip is labeled here as the
16 light source substrate, and that is -- that is disposed on
17 an inner circumferential surface of the tube.

18 Q. Did you also see that feature in the description of the
19 '540 patent?

20 A. I did. Here on the right is Figure 2 from the '540
21 patent, where we see this Element 2, the LED light strip,
22 and there's a corresponding adhesive.

23 And so basically this means that you can put the
24 adhesive on the bottom of the LED light strip and put that
25 on the bottom of the -- the tube.

1 Q. All right. So let's talk about Dr. Lebby's opinions
2 with respect to the '540 patent and his combination of Zhao
3 and Ivey.

4 So I'm showing you what -- I believe this is
5 Dr. Lebby's Slide 62, citing Figure 4 of Zhao.

6 Has Dr. Lebby shown a light strip disposed on an
7 inner circumferential surface in this picture?

8 A. No, he has not. This is -- you know, first of all, is
9 an exploded view, and it doesn't show how the parts fit
10 together.

11 But -- but -- yeah, it just doesn't -- it doesn't
12 show what -- what Dr. Lebby purported this shows.

13 Q. And I see that Dr. Lebby has also quoted some language
14 from -- from the Zhao reference with "specifically located
15 inside the tube body," quoted it a couple of times and
16 noted in blue.

17 Is that sufficient to show the -- this -- this
18 element?

19 A. No, it is not. This is -- you know, being inside
20 something, it's not -- it's not telling a person of
21 ordinary skill that is disposed on an inner circumferential
22 surface.

23 Q. All right. Can we cross out that element, then?

24 A. Yeah, that -- that reflects my opinion.

25 Q. Okay. Were there any other issues with the combination

1 of Zhao and Ivey that Dr. Lebby had proposed?

2 A. Yeah, there -- there are things -- considerations that
3 go back to that idea of motivation to combine that I think
4 are also relevant here.

5 Q. Okay.

6 MR. DAY: Corey, can you please bring up
7 Dr. Phinney's Slides 417 and 418 side-by-side? And -- and
8 enlarge parts of the images on those two slides.

9 Q. (By Mr. Day) Dr. Phinney, can you explain why there's
10 a problem with trying to combine the Zhao and -- the
11 structures of the Zhao and Ivey references?

12 A. Yeah, on the left, we see the circuitry in Zhao and how
13 it's constructed. And if we think of that end cap that we
14 see there that's called this 110A and then the circuitry
15 sort of fits into that, almost like it's at the bottom of a
16 cup. That's why it's got this -- that's 120A. And that's
17 why it has this sort of circular shape, and it's actually
18 fitting down inside there.

19 That means that the circuitry -- that that board
20 is perpendicular to the axis of the tube.

21 In Ivey II, which is shown on the -- Figure 9 of
22 which is shown on the right, the driving circuitry -- it's
23 called 46 -- and there it's just arranged a different way.
24 It's -- it's parallel to the axis of the tube.

25 Q. Okay. And, I mean, you were present during Dr. Lebby's

1 testimony yesterday, correct?

2 A. Correct.

3 MR. DAY: Corey, can you please bring up
4 yesterday's transcript at Page 305, Lines 10 through 20?

5 Q. (By Mr. Day) So this is Dr. Lebby's statement about
6 motivation to combine.

7 Do you -- Dr. Phinney, in your opinion, is this
8 sufficient to show that a person of ordinary skill in the
9 art would have combined the -- the Zhao and Ivey
10 references?

11 A. I don't think so. This is -- I really disagree with
12 him here because he's taking one element and essentially --
13 again, it's this hindsight idea. He needed sort of a
14 different orientation -- he needed a diffusion film,
15 basically, and said: Well, you'd be motivated to look at
16 this reference. You're solving this same problem, and then
17 you take the diffusion film from that reference.

18 But, you know, combining references is about more
19 than just, you know, looking for the element that you need
20 to -- to come up with an invalidity chart.

21 MR. DAY: All right. And, Corey, can you please
22 bring up Dr. Phinney's Slide 413?

23 Q. (By Mr. Day) Did you find any other problems with
24 Dr. Lebby's proposed combination of Zhao and Ivey?

25 A. I did. This goes back to really the same type of

1 problem I had noted with Ivey I and Sadwick, where -- on
2 the left, we see Zhao, where that -- that includes
3 incandescent lamp replacements, whereas, on the right for
4 Ivey II, we see that -- that that is directed to
5 replacements for, you know, ballast-driven fluorescent --
6 fluorescent tubes.

7 Q. All right. And -- and you were here yesterday during
8 the discussion in Dr. Lebby's testimony about how Ivey II
9 was cited by the examiner during examination of the '540
10 patent.

11 Do we need to go over that again?

12 A. No, I think that we hit all the highlights there. It
13 was before the examiner. It was considered.

14 Q. All right.

15 MR. DAY: Your Honor, just one moment.

16 Q. (By Mr. Day) Dr. Phinney, what is your ultimate
17 conclusion about whether Defendants have proven any claims
18 of the '140 or '540 patents to be invalid?

19 A. Well, I think the examiners in this case got it right.
20 I think the patents are -- are valid and that the
21 Defendants haven't shown otherwise.

22 Q. All right. Thank you, Dr. Phinney.

23 MR. DAY: Pass the witness.

24 THE WITNESS: Thank you.

25 CROSS-EXAMINATION

1 BY MR. HILL:

2 Q. Hello, Dr. Phinney.

3 A. Hello.

4 Q. So just to clarify for the jury, you're an expert for
5 the Plaintiff, Super Lighting, correct?

6 A. Correct.

7 Q. I ask because Dr. D'Andrade went on Monday and you are
8 going today, but you are both testifying on behalf of the
9 Plaintiffs here, right?

10 A. Correct.

11 Q. But you didn't work together with Dr. D'Andrade; is
12 that right?

13 A. Correct.

14 Q. So your opinions were prepared separately?

15 A. Correct.

16 Q. You consider yourself to be a person of skill in the
17 art in late 2014 and early 2015, right?

18 A. Correct.

19 Q. Super Lighting didn't invent the idea of LED tube
20 lamps, right?

21 A. That is correct.

22 Q. In fact, LED tube lamps were commercially available as
23 of late 2014/early 2015, correct?

24 A. I think that is right.

25 Q. Those LED tube lamps had some form of shock protection,

1 correct?

2 A. I -- I think they would have, yes.

3 Q. So you worked with a team to develop your opinions,
4 right?

5 A. Correct. Well, I worked with a team. I formed my
6 opinions. I should put it that way.

7 Q. When we spoke in July, you said that you and your team
8 had been paid about \$250,000 to put together your expert
9 report, correct?

10 A. Correct. And also look at, you know, look at all the
11 references and consider the reports of -- that -- you know,
12 the production at that time.

13 Q. You are an employee of a company called Exponent; is
14 that right?

15 A. Correct.

16 Q. Dr. D'Andrade, who testified for Plaintiffs on Monday,
17 he's also an employee of Exponent; is that right?

18 A. That is correct.

19 Q. And Dr. D'Andrade's work on this case is a different
20 project within Exponent; is that right?

21 A. That is -- that's correct.

22 Q. You agree that it is common industry practice to review
23 competitor products, correct?

24 A. I -- I do.

25 Q. Dr. Phinney, what priority date did you use for the

1 '125 patent in your expert report for this case?

2 A. I -- I think we --

3 MR. DAY: Objection, Your Honor, in view of the
4 Court's prior ruling. The objection is relevance.

5 THE COURT: Overruled.

6 Q. (By Mr. Hill) Dr. Phinney, what priority date did you
7 use for the '125 patent in your expert report for this
8 case?

9 A. If you could maybe direct me to something in my binder
10 or show me something, I think we could --

11 Q. Certainly.

12 Sir, you're now being shown your report. And I
13 would like to direct your attention to Page 42, Paragraph
14 179.

15 MR. DAY: Your Honor, can we have a continuing
16 objection based on the JMOL ruling?

17 THE COURT: You can.

18 Q. (By Mr. Hill) So, sir, does this refresh your
19 recollection as to what priority date you used for the '125
20 patent in your expert report?

21 A. I'm going to presume from what you're showing me that
22 it was this September 28th, 2014.

23 Q. Do you understand that Super Lighting has now
24 stipulated that the priority date of the '125 patent is not
25 September 28th, 2014?

1 A. I don't think I know one way or another.

2 Q. Do you know that Super Lighting has stipulated that the
3 priority date of the '125 patent is the later date of
4 February 12th, 2015?

5 MR. DAY: Your Honor, can we approach the bench,
6 please?

7 THE COURT: Say again?

8 MR. DAY: Your Honor, can we approach the bench to
9 discuss this issue?

10 THE COURT: Sure.

11 (Bench conference.)

12 MR. BERNSTEIN: This patent is not in the case
13 anymore based on your ruling. He's talking about the
14 patent that is -- because there's no references left.
15 There's no invalidity case left. He's asking questions
16 about a patent that has no relevance to the case.

17 THE COURT: How far are you going?

18 MR. HILL: Your Honor, I believe it's relevant for
19 preserving the record. I mean, he says his opinion's based
20 on a different -- different time to --

21 MR. BERNSTEIN: He has the '54- --

22 THE COURT: It's out of the case. It's not part
23 of the case.

24 MR. HILL: All right, Your Honor.

25 THE COURT: I mean, if you want to do something

1 outside of their presence to make your record, you can do
2 that, but it's -- it's not relevant.

3 MR. HILL: I'll move on, Your Honor.

4 THE COURT: You do whatever you want, but that
5 patent is not in the case. I granted a motion on that.

6 MR. HILL: Yes, Your Honor.

7 THE COURT: Now, with respect to the date, I mean,
8 they don't -- there's no -- they don't have any idea what
9 you're talking about.

10 But with respect to the -- this patent is gone --
11 I mean, this reference is gone.

12 MR. HILL: Yes, Your Honor.

13 MR. BERNSTEIN: Your Honor, for the record, I just
14 want to say, this is the second time you've made a very
15 clear ruling, and then there's been -- Defendants have just
16 basically put in the record something that they shouldn't
17 put in the record based on a ruling.

18 I just want to -- I just want that on the record.

19 THE COURT: I hear you.

20 MR. DAY: While we're up here, Your Honor,
21 (inaudible) explanation, or we going to be able to
22 clarify --

23 MR. BERNSTEIN: Just -- just move on. We just
24 want to move on.

25 MR. HILL: Thank you, Your Honor.

1 (Bench conference concluded.)

2 Q. (By Mr. Hill) Dr. Phinney, please turn in your binder
3 to DX-65, which has already been admitted, or you can look
4 at your screen, as well.

5 A. Okay. Thank you.

6 Q. Ivey I discloses connecting the pulse generator circuit
7 to the latch; is that correct?

8 A. Are you -- are you talking about the Oscillator 130 to
9 the latch, the shut-off circuit?

10 Q. Yes, I'm talking about Oscillator 130.

11 MR. HILL: Okay. Let's -- if we could look at
12 Figure 3.

13 A. And are you saying to the Shut-Off Circuit 315?

14 Q. (By Mr. Hill) Yes, focus your attention on Shut-Off
15 Latch 315.

16 A. As I said, that connection is something that's
17 discussed in the text for synchronization, but it is not
18 depicted in any of the figures. So it's not -- it's not
19 shown in Figure 3, for instance.

20 Q. Dr. Phinney, please turn to Paragraph 43 -- actually,
21 I'll move on.

22 During the prosecution of the '540 patent, the
23 Patent Office didn't consider the Zhao reference, right,
24 Z-h-a-o?

25 A. I believe that is correct.

1 Q. During the prosecution of the '140 patent, the Patent
2 Office did not consider Ivey I in combination with Sadwick,
3 correct?

4 A. I believe that is correct.

5 MR. HILL: Now, for the -- for the witness only,
6 can we please bring up Paragraph 65 of Ivey on the screen
7 and highlight the last sentence of that paragraph?

8 Q. (By Mr. Hill) Dr. Phinney, does this -- does this
9 passage refresh your recollection as to the relationship
10 between the Shut-Off Latch 315 and its connection to
11 Oscillator 130 or the Detection Validation Timer 210?

12 A. Yes, this is what I said. And what I recalled also is
13 that there is a connection that is discussed in the -- in
14 the specification.

15 Here, we see it in Paragraph 43, that's showing
16 that that can be a connection for synchronization, which is
17 described further in Paragraph 44.

18 Q. Thank you.

19 MR. HILL: No further questions.

20 MR. DAY: Nothing further from Plaintiffs, Your
21 Honor.

22 THE COURT: You may step down.

23 THE WITNESS: Thank you.

24 THE COURT: Any other witnesses?

25 MR. BERNSTEIN: Nothing further from Plaintiff.

1 THE COURT: Does the Plaintiff rest?

2 MR. BERNSTEIN: Plaintiff rests, Your Honor.

3 THE COURT: Very good.

4 Ladies and gentlemen of the jury, we're done with
5 the evidentiary part of the trial.

6 I'm going to dismiss you just for about five
7 minutes or so. I know. I just got to smile. I said that
8 last time and it was longer, I know.

9 But my plan, which I plan to stick to, is to
10 dismiss you for just a couple minutes and make sure there's
11 nothing we have to take up.

12 And then when we bring you back in, what we're
13 going to do is, I've got to read you this charge. And --
14 and when I finish that, I'm going to send you home. And
15 then we're going to come back tomorrow morning at 8:30, and
16 the lawyers will give their closing argument, and you'll
17 begin to deliberate.

18 So I'll do my very best, I promise, to try and
19 hold it to just five minutes.

20 COURT SECURITY OFFICER: All rise.

21 (Jury out.)

22 THE COURT: You may be seated.

23 Is it my understanding that, because of the JMOL
24 ruling, there are things that need to be taken out of the
25 instructions I'm giving?

1 MR. BERNSTEIN: Yeah, there's reference to the
2 '125 patent, that's -- for invalidity. And then there
3 would be an identification of -- in the invalidity section
4 of prior art references for both the '125 and the '540, one
5 of the two combinations.

6 MR. HILL: That's -- that -- that's fine, Your
7 Honor, but we would like to move for judgment as a matter
8 of law on a re-urged basis now.

9 THE COURT: On -- for the same reasons you moved
10 earlier?

11 MR. HILL: Yes, Your Honor.

12 THE COURT: I'll overrule that motion.

13 So how quickly can you work with Regan to get
14 those changes made?

15 MS. STAHA: Yes, Your Honor.

16 THE COURT: Why don't we do this: Why don't we
17 have someone from each side work with Regan to -- to do the
18 editing and make sure that you agree with what needs to be
19 edited and taken out, and then we can print it.

20 LAW CLERK: Plaintiffs say that they've given me
21 what we need.

22 THE COURT: Oh, the Plaintiffs have given Regan a
23 copy of what is the correct version with the -- with
24 that --

25 MS. GARDNER: We ran red lines to remove

1 references of validity for the '125 patent. And with
2 respect to the other patents, we cut references to the
3 physical tubes.

4 MR. BERNSTEIN: Yes, I think there's -- there's --
5 I haven't looked at it because I was here, Your Honor. But
6 I think one of the issues in my head is they have to -- the
7 jury has to award damages on the '125 patent now based on
8 the rulings.

9 I don't know if that is clear in the charge or
10 not. I suspect it's not.

11 THE COURT: I think you can just say that. I
12 think you in your closing argument can just say that.

13 MR. BERNSTEIN: Yeah, or can I have someone go
14 back with Regan or talk to Regan? Just -- I would strongly
15 prefer just to have at least a line in there somewhere
16 saying you have to award damages on the --

17 THE COURT: They don't have to award damages. I
18 mean, they can find infringement. But I -- and I get that
19 you're entitled to a reasonable royalty.

20 MR. BERNSTEIN: Right.

21 THE COURT: But I'm -- I'm not going to say
22 something that they have to award damages.

23 MR. BERNSTEIN: So they have to answer the
24 question with respect to the '125, the damages question.

25 THE COURT: That is -- that is -- yes. I mean, I

1 think the way you can -- but that will be on the verdict
2 form. We can take care of that on the verdict form.

3 MR. BERNSTEIN: Okay.

4 THE COURT: Because we can make it so on the
5 verdict form, it's -- whatever the arrows go --

6 MR. BERNSTEIN: Okay. If it's --

7 THE COURT: That page can say, regardless of
8 everything else you've done, you have to answer this one --
9 or we'll put it in somewhere.

10 But that can -- your -- that deal -- because I'm
11 not going to tell them they have to award you anything, but
12 they do have to answer that question.

13 MR. BERNSTEIN: Understood. That makes sense.

14 THE COURT: And so we can do that by just
15 having -- correcting it in the verdict form.

16 MR. BERNSTEIN: Okay.

17 THE COURT: Okay?

18 MR. BERNSTEIN: Thank you, Your Honor.

19 THE COURT: So -- and they won't get that today,
20 and they won't know about that today.

21 So I'm going back now.

22 Do we have a copy that your -- that Plaintiffs say
23 is correct based on what you want removed? Do we have a --
24 does the Court have a copy that is correct?

25 MS. GARDNER: We just sent those to Regan, Your

1 Honor.

2 THE COURT: Okay. And have the Defendants seen
3 what you -- what the Plaintiffs say is correct?

4 MS. STAHA: We just received it, so we're
5 reviewing it right now, Your Honor.

6 THE COURT: Okay. Well, then you-all review it.
7 As soon as you give Regan -- I'm going -- no one's
8 leaving -- well, no one who is sitting in front of the bar
9 is leaving, and -- until you tell Regan that we're ready to
10 go. I am going to leave, though. I am going to go back.
11 And as soon as you-all tell me -- tell Regan it's okay,
12 he's going to print out copies, and we'll hand them out to
13 the jury. And then I'll read it.

14 MR. HILL: Your Honor, we are good with it.

15 THE COURT: What?

16 MR. HILL: We have confirmed.

17 THE COURT: You're okay with it?

18 MR. HILL: We are good with it. We are.

19 THE COURT: Okay. Regan, if you'll print the
20 copies. And then I would say it will take us, what, maybe
21 10 minutes to run the copies.

22 So it is -- if you-all will be in here at 4:45,
23 we'll be ready to go.

24 COURT SECURITY OFFICER: All rise.

25 (Recess.)

1 COURT SECURITY OFFICER: All rise.

2 THE COURT: Please remain standing for the jury.
3 (Jury in.)

4 THE COURT: Thank you. You may be seated.

5 Ladies and gentlemen of the jury -- Regan, if you
6 would hand those out, please.

7 Members of the jury, it is my duty and
8 responsibility to instruct you on the law that you are to
9 apply in this case. The law contained in these
10 instructions is the only law that you may follow. It is
11 your duty to follow what I instruct you the law is
12 regardless of any opinion that you might have as to what
13 the law ought to be.

14 If I have given the impression during trial that I
15 favor either party, you must disregard that impression. If
16 I have given you the impression during trial I have an
17 opinion about the facts of this case, you must disregard
18 that impression. You are the sole jury -- you are the sole
19 judges of the facts of this case. Other than my
20 instructions to you on the law, you should disregard
21 anything I may have said or done during the trial in
22 arriving at your verdict.

23 You should consider all of the instructions about
24 the law as a whole and regard each instruction along with
25 the others without isolating a particular statement or

1 paragraph.

2 The testimony of the witnesses and exhibits
3 introduced by the parties constitute the evidence. The
4 statements of counsel are not evidence, they are only
5 arguments. It is important for you to distinguish between
6 the arguments of counsel and the evidence on which those
7 arguments rest.

8 What the lawyers say is not evidence. You may,
9 however, consider their arguments in light of the evidence
10 that has been admitted and determine whether the evidence
11 admitted in this trial supports the arguments. You must
12 determine the facts from all evidence and testimony that
13 you have heard and the other evidence submitted. You are
14 the judges of the facts. But in finding those facts, you
15 must apply the law as I instruct you.

16 You are required by the law to decide the case in
17 a fair, impartial, and unbiased manner based entirely on
18 the law and on the evidence presented to you in the
19 courtroom. You may not be influenced by passion,
20 prejudice, or sympathy that you might have for the
21 Plaintiff or the Defendant in arriving at your verdict.

22 Evidence.

23 The evidence that you are to consider consists of
24 the testimony of the witnesses here at trial, the witnesses
25 testifying live by video, or the witnesses testifying at a

1 deposition that has been presented to you. The documents
2 and other exhibits admitted into evidence, stipulations to
3 which lawyers have agreed, and any fair inferences and
4 reasonable conclusions that you can draw from the facts and
5 circumstances that have been proven.

6 Nothing else is evidence. The lawyers' statements
7 and arguments are not evidence. The lawyers' questions and
8 objections are not evidence. My legal rulings are not
9 evidence. My comments and questions are not evidence. The
10 notes taken by any juror are not evidence.

11 During the trial, I may not have let you hear the
12 answers to some of the questions the lawyers asked. I may
13 also have ruled that you cannot see the names of the
14 exhibits that the lawyers wanted you to see. Further,
15 sometimes I may have ordered you to disregard things that
16 you saw or heard or struck things from the record. You
17 must follow my rulings and completely ignore all of the --
18 thank you -- all of those things. Do not speculate about
19 what a witness might have said or what an exhibit might
20 have shown. Those things are not evidence, and you are
21 bound by your oath not to let them influence your decision
22 in any way.

23 There are two types of evidence. One is direct,
24 such as the testimony of an eyewitness. The other is
25 indirect or circumstantial. Circumstantial evidence is

1 evidence that proves a fact from which you can logically
2 conclude another fact exists. As a general rule, the law
3 makes no distinction between direct and circumstantial
4 evidence. It simply requires that you find facts from all
5 the evidence in the case, whether direct, circumstantial,
6 or a combination of the two. In judging the facts, you
7 should consider all the evidence, both direct and
8 circumstantial. Give it the weight you believe it
9 deserves.

10 You must not conduct any independent research or
11 investigation. You must make your decision based only on
12 the evidence that I have defined here and nothing else.

13 You alone are to determine the questions of
14 credibility or truthfulness of the witness. In weighing
15 the testimony of the witnesses, you may consider the
16 witness's manner and demeanor on the witness stand, any
17 feelings or interest in the case, or any prejudice or bias
18 about the case that he or she may have had, the consistency
19 or inconsistency of his or her testimony considered in the
20 light of the circumstances. For instance, has the witness
21 been contradicted by other credible evidence? Has she --
22 he or she made statements at other times and places
23 contrary to those made here on the witness stand? You must
24 give the testimony of each witness the credibility you
25 think it deserves.

1 Even though a witness may be a party to the action
2 and therefore interested in its outcome, the testimony may
3 be accepted if it is not contradicted by direct evidence or
4 by any inference that may be drawn from the evidence if you
5 believe that testimony.

6 You are not to decide this case by counting the
7 number of witnesses who have testified on the opposing
8 sides. Witness testimony is weighed. Witnesses are not
9 counted. The test is not the relative number of witnesses
10 but the relative convincing force of the evidence. The
11 testimony of a single witness is sufficient to prove any
12 fact, even if a greater number of witnesses testified to
13 the contrary if after considering all of the other
14 evidence, you believe that witness.

15 In determining the weight to give to the testimony
16 of a witness, consider whether there was evidence at some
17 other time the witness said or did something or failed to
18 say or do something, that was different from the testimony
19 given at trial.

20 A simple mistake by a witness does not necessarily
21 mean that the witness did not tell the truth as he or she
22 remembers it. People may forget some things or remember
23 things inaccurately. If a witness made a misstatement,
24 consider whether that misstatement was an intentional
25 falsehood or simply an innocent mistake. The significance

1 of that may depend on whether it has to do with an
2 important fact or with only an unimportant detail. This
3 instruction applies to the testimony of all witnesses.

4 Expert testimony is testimony from a person who
5 has special skill or knowledge in some science, profession,
6 or business. This skill or knowledge is not common to the
7 average person, but has been acquired by the expert through
8 special study or experience.

9 In weighing expert testimony, you may consider
10 their qualifications, the reasons for their opinions, and
11 the source and reliability of the information supporting
12 their opinions, as well as the factors I previously
13 mentioned for weighing testimony of any other witness.

14 Expert testimony should receive whatever weight
15 and credit you think appropriate, given all the other
16 evidence in the case. You are not required to accept the
17 opinion of any expert, rather, you are free to accept or
18 reject the testimony of experts just as with any other
19 witness.

20 Certain testimony has been presented to you
21 through a deposition. A deposition contains the sworn
22 recorded answers to questions a witness was asked in
23 advance of trial. Under the circumstances -- or some
24 circumstances if a witness cannot be present to testify
25 from the witness stand, that witness's testimony may be

1 presented under oath to you in the form of a deposition.
2 Sometime before the trial, attorneys representing the
3 parties in this case questioned the witness under oath. A
4 court reporter was present and recorded that testimony.
5 The questions and answers have either been read or shown to
6 you or perhaps both. This deposition testimony is entitled
7 to the same consideration and weighed and otherwise
8 considered by you in the same way as if the witness had
9 been present and had testified from the witness stand in
10 this court.

11 In this trial, Plaintiffs Super Lighting and
12 Obert, and the Defendants CH Lighting, Ruising, and Elliott
13 each designated some of their employees as their Rule
14 30(b)(6) witnesses. These witnesses then testified on
15 behalf of their companies on certain subjects and about
16 information that is known or reasonably available to their
17 companies. These witnesses for Super Lighting are Aiming
18 Xiong, Tao Jiang, Li-Qin Li, Barry Qin, for Obert and Ryan
19 Lu, for CH Lighting, and are Jack Jiang, Jizhong Pu,
20 Shengjun Cao, Jun Yang, Pengxin Guo, Caiying Gan for
21 Ruising. And, again, Jack Jiang, Jizhong Pu, Shengjun Cao,
22 Jun Yang, Pengxin Guo, Caiying Gan, and for Elliott, and
23 they are Bill Elliott and Robert Flores.

24 Each company is bound by the testimony of its Rule
25 30(b)(6) witnesses but only with respect to the specific

1 testimony that is responsive to one of the subjects for
2 which that witness specifically was designated. Their
3 testimony is the same thing as the testimony by the company
4 itself regarding those topics for which the witness was
5 designated. Such witnesses may also testify in their
6 personal capacity as fact witnesses; in that capacity,
7 their testimony is only binding on themselves, and they
8 should be treated as you would treat any other witness.

9 Evidence has been presented to you in the form of
10 answers of one of the parties to written interrogatories
11 submitted by the other side. These answers were given in
12 writing under oath before the trial began in response to
13 questions that were submitted under established court
14 procedures. You should consider the answers insofar as
15 possible in the same way as if they were made from the
16 witness stand.

17 A "stipulation" is something that the attorneys
18 agree is accurate. When there's no dispute about certain
19 testimony or facts, the attorneys may agree or stipulate to
20 that testimony or fact.

21 Stipulated testimony or facts must be considered
22 in the same way as if the testimony had been received or
23 that fact had been proven here in court.

24 The parties stipulate that CH Lighting and Ruising
25 imported into and sold in the United States the following

1 product series: CH1118, CH1128, CH1152S, CH1152-42W-FA8,
2 CH1152AS, CH1152SD, CH1155C, CH1156, CH1157, CH1157S,
3 CH1157AS, CH1157SD, CH1180, CH1198, CH1198D, LV1118,
4 LV1153DA, LV1155, LV1151NA, and LV1156. The products
5 imported and sold in the United States by CH and Ruising
6 include products within the foregoing series manufactured
7 by CH Lighting and Ruising for sale under different brand
8 names.

9 The parties stipulate that Defendant Elliott has
10 sold within the United States the following products:
11 Keystone tube lamps manufactured by CH Lighting and
12 Ruising, KT-LED10.5T8-48G-835-DX2, KT-LED7T8-24GC-840-DX2,
13 Ushio LED Tube 12.5W LED T8, UNIV 5000K 48, and length,
14 wattage, and color temperature variations thereof. MaxLite
15 lamps manufactured by CH Lighting and Ruising ESL Vision
16 GDT series, ESL Vision PBC series, GE Current BDT series.

17 The parties stipulate that all existing versions
18 of all accused -- all products accused of infringing the
19 '540 patent infringe Claims 13 and 14 of the '540 patent,
20 including the following products: CH1118, CH1128, CH1152,
21 CH1152S, CH1152-42-F8A [sic], CH1152AS, CH1152SD, CH1155C,
22 CH1156, CH1157, CH1157S, CH1157AS, CH1157SD, CH1180,
23 CH1198, CH1198D, LV1118, LV1153DA, LV1155, LV1155NA,
24 LV1156, ESL Vision GDT series, ESL Vision PBC series, GE
25 Current BDT series, LED14BDT -- LED14BDT8/G4/840.

1 The infringing products include products within
2 the foregoing series manufactured by CH Lighting and
3 Ruising for sale under different brand names. For example,
4 the CH1152S series, including the Keystone-branded
5 KT-LED7T8-24GC-840-DX2, others in that series, the
6 MaxLite-branded L11.5T8DE440-CG4, and others in that
7 series.

8 The parties stipulate that all existing versions
9 of all products accused of infringing the '125 patent
10 infringe Claim 1 of the '125 patent, including all the
11 following product series: CH1118, CH1128, CH1152S,
12 CH1152-42W-FA8, CH1152AS, CH1152SD, CH1155C, CH1156,
13 CH1157S, CH1157AS, CH1157SD, CH1180, CH1180AX, CH1198,
14 CH1198D, LV1118, LV1153DA, LV1155, LV1155NA, LV1156, Vision
15 GTD series, ESL Vision PBC series, GE Current BDT series,
16 EGLED14BDT8/G4/840.

17 The infringing products include products within
18 the foregoing series manufactured by CH Lighting and
19 Ruising for sale under different brand names, for example,
20 the CH1152S series, including the Keystone-branded
21 KT-LED78-24GC-840-DX2, others in that series, the
22 MaxLite-branded L11.5T8DE440-CG4, and others in the series.

23 The parties stipulate the following products
24 accused of infringing the '140 patent infringe Claims 1, 4,
25 5, 24, 28, and 31 of the '140 patent: CH1152S,

1 CH1152-42W-FA8, CH1152AS, CH1157S, CH1157AS, CH1152SD,
2 CH1115 -- 1115 -- let me start over. CH1157SD, CH1198D,
3 ESL Vision GDT series, ESL Vision PBC series, GE Current
4 BDT series, LED4BDT8/G4/840 [sic]. This excludes such
5 products sold within the LT2600 integrated circuit which
6 remains disputed.

7 The infringing products include products within
8 the foregoing series manufactured by CH Lighting and
9 Ruising for sale under different brand names; for example,
10 the CH1152 series, including the Keystone-branded
11 KT-LED7T8-24GC-840-DX2, others in that series, the
12 MaxLite-branded L11.5T8DE440-CG4, and others in that
13 series.

14 When testimony or an exhibit is admitted for a
15 limited purpose, you may consider that testimony or exhibit
16 only for the specific limited purpose for which it was
17 admitted.

18 Certain charts and summaries have been shown to
19 you solely to help explain or summarize the facts disclosed
20 by the books, records, and other documents that are in
21 evidence. These charts and summaries are not evidence or
22 proof of any fact unless I specifically admit a chart or
23 summary into evidence. You should determine the facts from
24 the evidence.

25 Certain exhibits shown to you are illustrations of

1 the evidence but are not themselves evidence. We call
2 these types of exhibits "demonstrative exhibits."
3 Demonstrative exhibits are a parties' description, picture,
4 or model used to describe something involved in this trial.
5 If your recollection of the evidence differs from the
6 demonstrative exhibit, rely on your recollection.

7 Do not let bias, prejudice, or sympathy play any
8 part in your deliberations. A corporation and all other
9 persons are equal before the law. They must be treated as
10 equals in this court of justice. Likewise, this case
11 involves companies and witnesses from China, and these
12 parties and witnesses are equal before the law and must be
13 treated as equals in this court of justice.

14 In any legal action, the facts must be proved by a
15 required amount of evidence known as the "burden of proof."
16 This case involves two different burdens of proof. One is
17 "preponderance of the evidence." One is "clear and
18 convincing evidence." The burden of proof in this case is
19 on Super Lighting, the Plaintiff, on some issues, and
20 CH Lighting, Ruising, and Elliott, the Defendants, for
21 other issues.

22 The burden of proof in this case is on Super
23 Lighting for purposes of showing infringement. If Super
24 Lighting successfully proves infringement, it also has the
25 burden of proof on the issue of willful infringement and

1 the amount of any damages to which it claims it is
2 entitled.

3 In this case, Super Lighting contends that
4 CH Lighting, Ruising, and Elliott infringe U.S. Patent
5 No. 10,295,125, Claim 1; U.S. Patent No. 10,352,540,
6 Claims 13 and 14; U.S. Patent No. 9,939,140, Claims 1, 4,
7 5, 24, 28, and 31.

8 Super Lighting has the burden of proving patent
9 infringement by a preponderance of the evidence. It also
10 contends that CH Lighting, Ruising, and Elliott's
11 infringement was willful. It must prove willful
12 infringement by a preponderance of the evidence.

13 Finally, Super Lighting contends that it is
14 entitled to damages for CH Lighting, Ruising, and Elliott's
15 alleged infringement. If Super Lighting proves
16 infringement, it also has the burden of proving the amount
17 of any damages for patent infringement by a preponderance
18 of the evidence.

19 A preponderance of the evidence means evidence
20 that persuades you that a claim is more probably true than
21 not true. Sometimes this is talked about as being the
22 greater weight and degree of credible testimony.

23 Invalidity is clear and convincing evidence. The
24 burden of proof in this case is on CH Lighting, Ruising,
25 and Elliott for purposes of showing their case for

1 invalidity. CH Lighting, Ruising, and Elliott must prove
2 invalidity by clear and convincing evidence. Clear and
3 convincing evidence means that it is highly probable that
4 the fact is true. Although proof to an absolute certainty
5 is not required, the standard does require a greater degree
6 of persuasion than is necessary for the preponderance of
7 the evidence standard.

8 You might think as -- of the "preponderance of the
9 evidence" standard as slightly greater than 50 percent.
10 This is different from the criminal law standard of beyond
11 a reasonable doubt. You may think of "beyond a reasonable
12 doubt" standard as approaching certainty without reasonable
13 doubt. The clear and convincing standard is between those
14 two standards of proof.

15 The first issue you'll be asked to decide are
16 whether the Defendants' products that contain a LT2600
17 integrated circuit infringe the '140 patent, Claims 1, 4,
18 5, 24, 28, and 31. To prove infringement of these claims,
19 Plaintiff must prove by a preponderance of the evidence
20 that Defendants meet or perform every element of the
21 asserted claims when they make, sell, offer for sale, use,
22 or import their LED tube lamp products. These are the only
23 infringement issues you will need to decide because of the
24 parties' stipulation on the other patents and products as
25 previously explained. In other words, you should treat

1 infringement as having already been proven for the '125
2 patent and '540 patent and for the '140 patent on products
3 other than those containing the LT2600 integrated circuit.

4 Another issue you will be asked to decide is
5 willful infringement. For Defendants' infringement that
6 has either been stipulated or proved by Super Lighting, you
7 will be asked whether it's proven by a preponderance of the
8 evidence that the infringement was willful or, in other
9 words, done intentionally, deliberately, or in deliberate
10 disregard to Plaintiffs' patent rights. I will instruct
11 you more later on willful infringement. If you decide any
12 infringement was willful, that decision should not affect
13 any damage award you make. It is up to me to take
14 willfulness into account later.

15 Another issue you may -- you may be asked to
16 decide is whether the asserted claims are valid. A patent
17 claim may be invalid if the Defendants prove by clear and
18 convincing evidence that every element of a claim is shown
19 or sufficiently described in a single piece of "prior art."
20 That is known as anticipation. A patent claim may also be
21 invalid even if a single piece of prior art does not show
22 or describe every element of the claim if the Defendants
23 can prove by clear and convincing evidence that the claim
24 would have been obvious to a person of ordinary skill in
25 the field of the technology of the patent at the relevant

1 time.

2 If you decide that any claim of the asserted
3 patents have been infringed and are not invalid, then and
4 only then will you need to decide any money damages to be
5 awarded to the Plaintiff to compensate it for the
6 infringement. A damages award should put Super Lighting in
7 approximately the same financial position that it would
8 have been in had the infringement not occurred.

9 Super Lighting is seeking damages in the form of a
10 reasonable royalty. I will instruct you later about what
11 this means, but in no event may the damages award be less
12 than what Super Lighting would have received had it been
13 paid a reasonable royalty. The damages you award are meant
14 to compensate Plaintiff and not punish Defendants. You may
15 not include in your award any additional amount as a fine
16 or penalty above what is necessary to compensate Super
17 Lighting for the infringement in order to punish the
18 Defendants. I will give you more detailed instructions on
19 the calculations of damages in a moment.

20 Before you can decide many of the issues in this
21 case, you need to understand the role of patent claims.
22 The patent claims are the numbered sentences at the end of
23 each patent. The claims are important because it is the
24 words of the claims that define what a patent covers. The
25 figures and text in the rest of the patent are intended to

1 provide a description and/or examples of the invention and
2 provide a context for the claims, but it is the claims that
3 define the breadth of the patent's coverage.

4 Each claim sets forth its requirements in a single
5 sentence. The individual requirements of a claim are often
6 referred to as "claim elements" or "claim limitations."
7 The coverage of a patent is assessed claim-by-claim.

8 When a thing, such as a product or method, meets
9 all of the requirements of a claim, the claim is said to
10 "cover" that thing, and that thing is said to "fall" within
11 the scope of that claim. In other words, a claim covers a
12 method or product where each of the claim elements or
13 limitations is found to be present in that product or
14 method.

15 You will first need to understand what each claim
16 covers to decide whether there is infringement of the claim
17 and decide whether the claim is invalid. The first step is
18 to understand the meaning of the words used in the patent
19 claim.

20 The law says that it is my role to define the
21 terms of the claim. It is your role to apply my definition
22 to the issues that you are asked to decide in this case.
23 Therefore, as I explained to you at the start of the case,
24 I've determined the meaning of the claims, and I will
25 provide to you my definition of certain claim terms. You

1 must accept my definitions of these words in the claims as
2 being correct.

3 It is your job to take these definitions and apply
4 them to the issues that you are deciding, including the
5 issues of infringement and validity.

6 The beginning portion, also known as the preamble,
7 of a claim sometimes uses the word "comprising." The word
8 "comprising," when used in a preamble, means "including but
9 not limited to" or "containing but not limited to."

10 When "comprising" is used in the preamble, if you
11 decide that an accused product includes all the elements or
12 limitations in that claim, it's infringed. This is true
13 even if the accused process contains additional elements or
14 does other things.

15 The same is true with respect to invalidity. When
16 "comprising" is used in the preamble, if you decide that a
17 prior art reference includes all the elements or
18 limitations in that claim, then the claim is invalid. This
19 is true even if the prior art references contain additional
20 elements or does other things.

21 For any word in the claim for which I have not
22 provided you with a definition, you should apply the
23 ordinary meaning of those terms in the field of the patent.
24 You should not take my definition of the language of the
25 claims as an indication that I have a view regarding how

1 you should decide the issues you'll be asked to decide,
2 such as infringement and invalidity. Those issues are for
3 you to decide.

4 This case involves two types of patent claims:
5 Independent claims and dependent claims. An independent
6 claim does not refer to any other claim of the patent. An
7 independent claim sets forth all the requirements that must
8 be met in order to be covered by that claim. Thus, it is
9 not necessary to look at any other claim to determine what
10 an independent claim covers.

11 A dependent claim does not itself recite all the
12 requirements of the claim but refers to another claim for
13 some of its requirements. In this way, the claim depends
14 on another claim. A dependent claim incorporates all of
15 the requirements of the claims to which it refers. The
16 dependent claim then adds its own additional requirements.

17 To determine what a dependent claim covers, it is
18 necessary to look at both the dependent claim and any other
19 claims to which it refers. A product that meets all the
20 requirements both the dependent claim and the claims to
21 which it refers is covered by the dependent claim.

22 As an example, Claim 4 of the '140 patent is an
23 independent claim and Claim 5 of the '140 patent is an
24 dependent claim.

25 You know Claim 4 is independent because it

1 mentions no other claims. Accordingly, the words of Claim
2 4 of the '140 patent are read by themselves in order to
3 determine what Claim 4 covers.

4 You know Claim 5, on the other hand, is a
5 dependent claim because it refers back to Independent Claim
6 4. Accordingly, the words of Claim 4 and 5 are read
7 together in order to determine what Claim 5 of the '140
8 patent covers.

9 The independent and dependent claims asserted in
10 this case are as follows:

11 '125 -- the '125 patent: Claim 1 is independent;

12 '540 patent: Claim 13 is independent. 14 is
13 dependent;

14 '140 patent: Claims 1, 4, and 24 are independent.
15 Claims 5, 28, and 31 are dependent.

16 I will now explain to you the meaning of some of
17 the words of the claims in this case. In doing so, I will
18 explain some of the requirements of the claims.

19 As I have previously instructed, you must accept
20 my definition of these words as correct. For any words in
21 the claims for which I have not provided you with a
22 definition, you should apply the plain and ordinary meaning
23 to one of skill in the art at the time of the invention.

24 You should not take my definition of the language
25 of the claim as an indication that I have a view regarding

1 how you should decide the issues that you're being asked to
2 decide, such as infringement. These issues are yours to
3 decide.

4 The Court has found:

5 "Properly installed" in the '140 patent, Claims 1,
6 4, and 24, will have its plain and ordinary meaning, e.g.,
7 both ends of the LED tube lamp are correctly connected to
8 conductive terminals of the lamp socket.

9 "Sampling signal" in the '140 patent, Claims 1, 4,
10 and 24, will mean: A signal that is based on the
11 measurement -- or a measurement of the power loop at a
12 specific time.

13 "Detection determining circuit" in the '140
14 patent, Claims 1, 4, and 24, means: Detects a sampling
15 signal on the power loop and generates a signal based on
16 a -- on whether the sampling signal is higher or lower than
17 a reference value.

18 "Detection result latching circuit," '140 patent,
19 Claims 4, 5, 24, and 31, means: Circuit that stores the
20 detected result and outputs a high logic value when either
21 the stored detected result or the pulse signal output
22 terminal, e.g., Inputs 2541 or 2741 in Figures 15E and 15I,
23 has a high logic value.

24 I will now instruct you how to decide whether or
25 not the Defendants having the LT -- products having the

1 LT2600 infringe the asserted claim of the '140 patent.

2 Infringement is assessed on a claim-by-claim
3 basis. Therefore, there may be infringement as to one
4 claim but not infringement as to another.

5 A patent owner has the right to stop others from
6 using the invention covered by his or her patent claims in
7 the United States during the life of that patent.

8 If any person makes, uses, sells, or offers to
9 sell within the United States or imports in the United
10 States what is covered by the patent claims without the
11 patent owner's permission, that person is said to infringe
12 the patent.

13 In reaching your decision on infringement, keep in
14 mind that only the claims of a patent can be infringed.
15 You must compare the asserted patent claims, as I define
16 them, to the accused products or methods and must determine
17 whether or not there is infringement.

18 You should not compare the accused product or
19 method with any specific example set out in the patent or
20 with the prior art in reaching your decision on
21 infringement.

22 The only correct comparison is with the language
23 of the claim itself, as I have explained the meaning to
24 you. You must reach your decision as to each assertion of
25 infringement based on my instructions about the meaning and

1 scope of the claims, the legal requirements for
2 infringement, and the evidence presented to you by the
3 parties.

4 As explained further in the following instruction,
5 direct infringement results if the accused product is
6 covered by at least one claim of the patent.

7 In this case, Super Lighting asserts the
8 Defendants' products having the LT2600 have directly
9 infringed the asserted claims of the '140 patent.

10 The Defendants are liable for directly infringing
11 the asserted patents if you find that Super Lighting has
12 proved that it is more likely than not that Defendants
13 made, used, imported, offered to sell or sold the invention
14 defined in at least one claim of Super Lighting's patents.

15 A party can directly infringe a patent without
16 knowing of the patent, without knowing that what the party
17 is doing is patent infringement.

18 To prove direct infringement by -- to prove direct
19 infringement by literal infringement, Super Lighting must
20 prove by a preponderance of the evidence, that is, more
21 likely than not, that the Defendants have made, used,
22 offered -- made, used, imported, offered to sell or sold in
23 the United States a product that meets all the requirements
24 of the asserted claim and did so without the permission of
25 Super Lighting during the time the asserted patents were in

1 force. You must compare the product, method, or process
2 with each and every one of the requirements of a claim to
3 determine whether all the requirements of the claim are
4 met.

5 If you find that the accused products or method
6 include each element of the asserted claims, then that
7 product literally infringes the claims.

8 Infringement does not require proof that anyone
9 copied the patent. However, if an accused product omits
10 any requirement recited in one of the asserted claims, that
11 product does not literally infringe that claim.

12 You must determine separately for each asserted
13 claim whether or not there is infringement with one
14 exception. If you find that a claim on which other claims
15 depends is not infringed, there cannot be infringement of
16 any dependent claim that refers directly or indirectly to
17 that independent claim.

18 On the other hand, if you find that an independent
19 claim has been infringed, you must still decide separately
20 whether the product, method, or process meets the
21 additional requirements of any claims that depend from the
22 independent claim, thus, whether those claims also have
23 been infringed.

24 A dependent claim includes all the requirements of
25 any claims to which it refers plus additional requirements

1 of its own.

2 In this case, Super Lighting argues that the
3 Defendants willfully infringed the asserted patents. For
4 each act of infringement that has been stipulated by the
5 parties or proven by the Plaintiff, you must address the
6 additional issue of whether or not the infringement was
7 willful.

8 Willfulness requires you to determine whether
9 Plaintiff proved that it was more likely than not that
10 CH Lighting, Ruising, and Elliott knew of the '540 patent,
11 the '125 patent, and the '140 patent and that the
12 infringement by the Defendants was intentional.

13 You may not -- you may not determine that the
14 infringement was willful just because you find that the
15 Defendants were aware of the patents, the '540, the '125,
16 or the '140, and infringed it.

17 Instead, you must also find that CH Lighting,
18 Ruising, and Elliott deliberately infringed the '540
19 patent, the '125 patent, and/or the '140 patent.

20 To determine whether CH Lighting, Ruising, and
21 Elliott acted willfully, consider all facts and assess
22 CH Lighting, Ruising, and Elliott's knowledge at the time
23 of the challenged conduct.

24 Facts that may be considered include, but are not
25 limited to:

1 Whether or not CH Lighting, Ruising, and Elliott
2 acted consistently with the standards of behavior for this
3 industry;

4 Whether or not they intentionally copied a product
5 of Super Lighting that's covered by these patents;

6 Whether or not they reasonably believed it did not
7 infringe or that the patent was invalid;

8 Whether they made a good-faith effort to avoid
9 infringing the patents, for example, whether they attempted
10 to design around the patents; and

11 Finally, whether or not they tried to cover up
12 their infringement.

13 You must also consider the following facts as
14 having already been proven:

15 CH Lighting and Ruising first learned about the
16 asserted patent, the '140 patent, on February 16th, 2019,
17 and first learned of the asserted '540 and '125 patents in
18 July of 2019.

19 Upon learning of the asserted patents, Defendant
20 took no action other than to retain litigation counsel for
21 this case on or about November 12th, 2020.

22 I will now instruct you on the rules that you must
23 follow in deciding whether or not the Defendants have
24 proven that the asserted claims of the '540 patent or the
25 '140 patent are invalid.

1 A patent is presumed to be valid. The burden of
2 establishing invalidity of a patent or any claim rests
3 solely on CH Lighting, Ruising, and Elliott as the party
4 asserting invalidity.

5 To prove that any claim of a patent is invalid,
6 Defendants must persuade you by clear and convincing
7 evidence, that is, you must be left with a clear conviction
8 that the claim is invalid.

9 Even though the Patent Office examiners have
10 allowed the asserted claims, you have the responsibility
11 for deciding whether or not Defendants have met their
12 burden of proof by clear and convincing evidence that the
13 claims of the patents are invalid.

14 In order for someone to be entitled to a patent,
15 the claimed invention must actually be new. That means not
16 obvious over what came before, which is referred to as
17 prior art.

18 Prior art is considered in determining whether
19 claims of the patent are anticipated or obvious. Prior art
20 may include items that were publicly known or that have
21 been used or offered for sale or references, such as
22 publication or patents, that disclose the claimed invention
23 or elements of the claimed invention.

24 In this case, the parties agree that some but not
25 all of the references constitute prior art to the

1 Plaintiffs' patents, but the parties dispute whether those
2 references contain all of the elements and limitations of
3 the asserted claims of the asserted patents.

4 The parties do not dispute that the following
5 references are prior art:

6 Patent Application 2014/0015345, Ivey I;

7 Patent 8,360,599, Ivey II;

8 Patent 9,970,640, Zhao;

9 Publication No. WO2015/066566, Sadwick;

10 Publication No. WO2012/066822A1, Ono.

11 CH Lighting, Ruising, and Elliott contend that the
12 above references are prior art because they were publicly
13 known or used, on sale, or otherwise made available to the
14 public before the relative priority date of the '540 patent
15 discussed in more detail below.

16 An invention is known when the information about
17 it was reasonably accessible to the public on that date.
18 An invention was publicly used when it was either
19 accessible to the public or commercially exploited.

20 An invention was sold or offered for sale when it
21 was offered commercially and what was ready -- what was
22 offered was ready to be patented, i.e., it was reduced to
23 practice or it had been described such that a person having
24 ordinary skill in the field of that technology could have
25 made and used the claimed invention, even if it had not yet

1 been reduced to practice or publicly disclosed.

2 The parties agree that the priority date for
3 Claims 13 and 14 of the '540 patent is February 12, 2015.

4 In this case, the Defendants contend the following
5 claim of the asserted patent is invalid and anticipated by
6 the following references:

7 The '140 patent, Claim 1, Ono.

8 Anticipation must be determined on a
9 claim-by-claim basis. CH Lighting, Ruising, and Elliott
10 must prove by clear and convincing evidence that all of the
11 requirements of a claim are present in a single piece of
12 art.

13 To anticipate the invention, the prior art does
14 not have to be used in the same words as the claim, but all
15 of the requirements of the claim must have been disclosed
16 and arranged as in the claim.

17 The claim requirements may either be disclosed
18 expressly or inherently, that is, necessarily implied, such
19 that a person having ordinary skill in the art of the
20 technology of the invention looking at that single or one
21 reference could make and use the claimed invention.

22 Regardless of whether a particular prior art
23 reference was considered by the patent examiner during the
24 prosecution of the application that matured into the '140
25 patent and the '540 patent, Defendants must prove by clear

1 and convincing evidence that the challenged claims are
2 invalid.

3 The burden of proof on CH Lighting, Ruising, and
4 Elliott never changes regardless of whether the patent
5 examiner considered the reference. However, where
6 Defendants are relying on prior art that was not considered
7 by the PTO during examination, you may consider whether the
8 prior art is significantly different and, therefore, more
9 relevant than the prior art that the PTO did consider.

10 If you decide it is different and more relevant,
11 you may weigh that prior art more heavily when considering
12 whether the challenger has carried its clear and convincing
13 burden to prove invalidity.

14 You must determine separately for each claim
15 whether or not Defendants have proven the claim is
16 anticipated. Even if an independent claim is invalid, that
17 does not mean that the dependent claim that depends from it
18 are automatically invalid also.

19 In order to prove that a dependent claim is
20 anticipated, the Defendants must prove that the reference
21 discloses all elements of an independent claim from which
22 the dependent claim depends, as well as any additional
23 elements of the dependent claim.

24 For example, Claim 5 of the '140 patent depends
25 from Claim 4.

1 You may not find that a reference anticipates
2 Claim 5 of the '140 patent unless that reference also
3 discloses all of the elements of Claim 1 of the '140
4 patent.

5 Conversely, if a dependent claim is anticipated by
6 prior art, then the claim or claims from which it depends
7 are necessarily anticipated, as well.

8 Defendants contend in this case that the asserted
9 claims of the Super Lighting patents are invalid as being
10 obvious.

11 CH Lighting, Ruising, and Elliott contend the
12 following claims of the asserted patents are rendered
13 obvious by the following references or combinations of
14 references:

15 The '540 Patent Claim 13: U.S. Patent
16 No. 9,990,640, Zhao, and U.S. Patent No. 8,360,599, Ivey
17 II;

18 '540 Patent Claim 14: No. 9,970,640, Zhao,
19 combined with U.S. Patent No. 8,360,599, Ivey II;

20 '140 Patent Claim 4 would be -- according to
21 Defendants, is invalid over U.S. Patent Application
22 2014/0015345, Ivey I;

23 '140 Patent Claim 5 is invalid over Patent
24 Application 2014/0015345, Ivey I;

25 '140 Patent Claim No. 24 is invalid over the same

1 art;

2 '140 Patent Claim 28 is invalid over the same art;

3 '140 Patent Claim 31, invalid over the same art;

4 '140 Patent Claim 1, is invalid over Patent

5 Application 2014/0015345, Ivey I, and Publication

6 No. WO2015/066566, Sadwick;

7 '140 Patent Claim 4, invalid over the same art;

8 '140 Patent Claim 5, invalid over the same art;

9 '140 Patent Claim 24, invalid over the same art;

10 '140 Patent Claim 28, invalid over the same art;

11 '140 Patent Claim 31, invalid over the same art.

12 Even though an invention may not have been
13 identically disclosed or described in a single prior art
14 reference before it was made by an inventor, the invention
15 may have been obvious to a person of ordinary skill in the
16 field of technology of the patent before the filing date of
17 the patent.

18 Defendants may establish a patent claim is invalid
19 by proving that the claimed invention would have been
20 obvious to persons having ordinary skill in the art at the
21 time of the invention in the field of the invention.
22 Defendants bear the burden of establishing obviousness by
23 clear and convincing evidence.

24 Defendants contend the above-listed references and
25 combination of references render the asserted patents

1 obvious.

2 In considering whether a claimed invention is
3 obvious, you must consider the scope and content of the
4 prior art, any differences between the prior art and the
5 claimed invention, the level of ordinary skill in the art.
6 Do not use hindsight; consider only what was known at the
7 time of the invention.

8 The existence of each and every element of the
9 claimed invention in the prior art does not necessarily
10 prove obviousness. Most, if not all, inventions rely on
11 building blocks of prior art.

12 In considering whether a claimed invention is
13 obvious, you must consider whether or not -- whether as of
14 the priority date of the asserted patents there was a
15 reason that would have prompted a person of ordinary skill
16 in the field to combine those known elements in a way that
17 the claimed invention does, taking into account the
18 following facts:

19 Whether the claimed invention was merely the
20 predictable result of using prior art elements according to
21 their known functions;

22 Whether the claimed invention provides an obvious
23 solution to a known problem in the relevant field;

24 Whether the prior art teaches or suggests the
25 desirability of combining elements claimed in the

1 invention;

2 Whether the prior art teaches away from combining
3 elements in the claimed invention;

4 Whether it would have been obvious to try the
5 combinations of elements, such as when there is a design
6 incentive or market pressure to solve the problem that
7 there are a finite number of identified, predictable
8 solutions.

9 To find it rendered the claimed invention obvious,
10 you must find that the prior art provided a reasonable
11 expectation of success.

12 In making these assessments, you must also take
13 into account any objective evidence, sometimes called
14 secondary considerations, that may have existed at the time
15 of the invention and afterwards that shed light on the
16 evidence.

17 These include:

18 Whether the claimed invention was commercially
19 successful as a result of the merits of the claimed
20 invention, rather than the results of design needs or
21 market pressure, advertising or similar activities;

22 Whether the claimed invention satisfied a
23 long-felt need;

24 Whether others had tried and failed to make the
25 claimed invention;

1 Whether others invented the claimed inventions at
2 roughly the same time;

3 Whether others copied the claimed invention;

4 Whether there were changes or related technologies
5 or market needs contemporaneous with the claimed invention;

6 Whether the claimed invention achieved unexpected
7 results;

8 Whether others in the field praised the claimed
9 invention;

10 Whether persons having ordinary skill in the art
11 of the invention expressed surprise or disbelief regarding
12 the claimed invention;

13 Whether others sought or obtained rights to the
14 patent from the patent owner; and

15 Whether the inventor proceeded contrary to
16 accepted wisdom in the field.

17 In order to show a dependent claim is obvious,
18 Defendants must show by clear and convincing evidence that
19 the prior art teaches or suggests each element of an
20 independent claim or claims from which the dependent claim
21 depends.

22 For example, in order to show that Claim 5 of the
23 '140 patent is obvious, Defendants must show that the prior
24 art teaches or suggests each element of Claim 4 of the '140
25 patent.

1 Conversely, if a dependent claim is obvious, then
2 the claim from which it depends are necessarily obvious, as
3 well.

4 The question of invalidity of a patent claim is
5 determined from the perspective of a person of ordinary
6 skill in the art in the field of the asserted invention as
7 of the priority date of each asserted patent.

8 In deciding the level of ordinary skill, you
9 should consider all the evidence introduced at trial,
10 including:

11 The levels of education and experience of persons
12 working in the field;

13 The types of problems encountered in the field;
14 and,

15 The sophistication of the technology.

16 Plaintiffs contend that the level of ordinary
17 skill in the field would require at least a bachelor's
18 degree in electrical engineering or comparable field and
19 three years of experience designing lighting fixtures or
20 systems or the equivalents.

21 Defendants contend that the level of ordinary
22 skill in the field would require a B.S. degree in
23 electrical engineering or an equivalent field, as well as 2
24 to 4 years of academic or industry experience in lighting
25 design, including knowledge of LEDs and related technology

1 for driving LEDs.

2 I'll now instruct you about patent damages. But
3 by instructing you about patent damages, I'm not suggesting
4 which party should win this case.

5 If you find that the Defendants infringe at least
6 one claim of an asserted patent, and you did not find that
7 claim invalid, you must then determine the amount of
8 damages to be awarded to Super Lighting to compensate it
9 for that infringement.

10 If you find that CH Lighting, Ruising, and Elliott
11 have not infringed any claim of the patents, then Super
12 Lighting is not entitled to any damages.

13 Similarly, if you find all claims of the Super
14 Lighting patents invalid, then Super Lighting is not
15 entitled to any damages.

16 If you award damages, they can only be adequate to
17 compensate Super Lighting for any infringement you find.
18 You must not award Plaintiff more damages than are adequate
19 to compensate for the infringement nor should you include
20 any additional amount for the purpose of punishing
21 CH Lighting, Ruising, or Elliott.

22 Damages are not meant to punish an infringer to
23 set an example. Your damages award, if you reach the
24 issue, should put Super Lighting in approximately the same
25 financial position that it would have been in had the

1 infringement not occurred.

2 While Super Lighting is not required to prove the
3 amount of damages it seeks with mathematical precision, it
4 must prove them with reasonable certainty. You may not
5 award damages if they are speculative, damages that are
6 only possible, or damages based merely on guesswork.

7 Plaintiff is seeking damages in the form of a
8 reasonable royalty. You must award reasonable royalty
9 damages if you find infringement and do not find that the
10 patents are invalid. You must be careful to ensure that
11 the award is no more than the value of the patented
12 invention.

13 A royalty is a payment made to a patentholder in
14 exchange for the right to make, use, or sell the claimed
15 invention. A reasonable royalty can take several forms.
16 It could be a lump sum. It could be a running royalty. It
17 could be a combination. A reasonable royalty is the amount
18 of royalty payment that Plaintiff and Defendants would have
19 agreed to in a hypothetical negotiation taking place at the
20 time prior to when Super Lighting alleges infringement
21 first began in April of 2018, at the time of issuance of
22 the '140 patent.

23 If you determine that the alleged claims of the
24 '140 patent are valid, the reasonable royalty rate damages
25 begin at the issuance date of the first patent with a claim

1 that you determine is valid and is infringed. A reasonable
2 royalty can take different forms, a lump sum payment, a
3 reasonable royalty, or some combination.

4 In considering the hypothetical negotiation, you
5 should focus on what the expectations of the two parties
6 would have been had they entered into an agreement at that
7 time and had they acted reasonably in their negotiations.
8 Unlike in a real-world negotiation, all parties to the
9 hypothetical negotiation are presumed to believe the patent
10 was valid and infringed and that all parties were willing
11 to enter into an agreement. The reasonable royalty you
12 determine must be a royalty that would have resulted from
13 the hypothetical negotiation and not simply a royalty
14 either party would have preferred. Evidence of things that
15 happened after the infringement first began can be
16 considered in evaluating the reasonable royalty only to the
17 extent that the evidence aids in assessing what royalty
18 would have resulted from a hypothetical negotiation at the
19 time just prior to the first infringement. Although
20 evidence of actual profits and an alleged infringer made
21 may be used to determine anticipated profits at the time of
22 the hypothetical negotiation, the royalty may not be
23 limited to or increased by the actual profits that the
24 alleged infringer made.

25 The reasonable royalty award must be based on the

1 incremental value that the patented invention adds to the
2 accused system or process. When the infringing systems or
3 methods have both patented and unpatented features,
4 measuring this value requires the determination of the
5 value added specifically by the patented features. An
6 appropriate combination of royalty base and royalty rate
7 must reflect the value attributable to the infringing
8 features, if any, of the accused technology and processes,
9 and no more.

10 In deciding what a reasonable royalty rate would
11 have been or would have resulted from the hypothetical
12 negotiation, you may consider several factors the parties
13 would have likely considered during the hypothetical
14 negotiation. They include:

15 Royalties received by the patentee for the
16 licensing of the patent-in-suit, proving to tend -- proving
17 or tending to prove an established royalty.

18 The rates paid by the licensee for the use of
19 other patents comparable to the patent-in-suit.

20 The nature and scope of the license, or
21 exclusive -- as exclusive or nonexclusive, or as restricted
22 or nonrestricted in terms of territory or with respect to
23 whom the manufactured product may be sold.

24 The licensor's established policy and marketing
25 program to maintain his or her patent monopoly by not

1 licensing others to use the inventions or by granting
2 licenses under special conditions designed to preserve that
3 monopoly.

4 The commercial relationship between the licensor
5 and licensee, such as whether they're competitors in the
6 same territory in the same line of business, or whether
7 they are inventor and promoter.

8 The effect of selling the patented specialty in
9 promoting sales of other products of the licensee, the
10 existing value of the inventions of the licensor as a
11 generator of sales of non-patented items, and the extent of
12 such derivative or convoyed sales.

13 The duration of the patent and the term of the
14 license.

15 The established profitability of the products made
16 under the patents, its commercial success, and its current
17 popularity.

18 The utility and advantages of the patented
19 property over the old modes or devices, if any, that have
20 been used for working out similar results.

21 The nature of the patented invention, the
22 character of the commercial embodiment of it as owned and
23 produced by the licensor and the benefits to those who have
24 used the invention.

25 The extent to which the inventor or infringer --

1 excuse me -- the infringer has made use of the invention
2 and any evidence probative of the value of that case.

3 The portion of the profit or the selling price
4 that may be customary in the particular business or in
5 comparable businesses to allow for the use of the invention
6 or analogous inventions.

7 The portion of the realizable profit that should
8 be credited to the invention as distinguished from
9 non-patented elements, the manufacturing process, business
10 risks, or significant features or improvements added by the
11 infringer.

12 The opinion and testimony of qualified experts.

13 The amount that a licensor, such as the patentee,
14 and a licensee, such as the infringer, would have agreed
15 upon at the time the infringement began if both had been
16 reasonably and voluntarily trying to reach an agreement;
17 that is, the amount which a prudent licensee who desired as
18 a business proposition to obtain a license to manufacture
19 and sell a particular article embodying the patented
20 invention would have been willing to pay as a royalty and
21 yet be able to make a reasonable profit and which amount
22 would have been acceptable by a prudent patentee who is
23 willing to grant a license.

24 No one factor is dispositive, and you can and
25 should consider the evidence that has been presented to you

1 in this case on each of these factors. You may also
2 consider any other factors which in your mind would have
3 increased or decreased the royalty CH Lighting, Ruising,
4 and Elliott would have been willing to pay and Super
5 Lighting would have been willing to accept, acting as
6 normally prudent business people.

7 The amount you find as damages must be based on
8 the value attributable to the patented technology as
9 distinct from other unpatented features of the accused
10 products or the factors such as marketing or advertising
11 Super Lighting's market -- size or market position. A
12 royalty compensating the patentholder for damages must
13 reflect the value attributable to the infringing features
14 of the product and no more.

15 In determining the appropriate royalty base and
16 the appropriate royalty rate, the ultimate combination of
17 both royalty rate and the royalty base must reflect the
18 value attributable to the patented technology. The process
19 of separating the value of the allegedly infringing
20 features from the value of all other features is called
21 apportionment.

22 When the accused infringing products have both
23 patented and unpatented features, your award must be
24 apportioned so that it is based on only the value of the
25 patented features and no more.

1 In other words, the royalty base must be closely
2 tied to the patented invention. When damages must be
3 apportioned, the amount you find as damages must be based
4 on the value attributable to the patented invention. It is
5 not sufficient to use a royalty base that is too high and
6 then adjust the damages downward by applying a lower rate.
7 Similarly, it is not appropriate to select a royalty base
8 that is too low and then adjust it upward by applying a
9 higher royalty rate. Rather, you must determine an
10 appropriate royalty rate and an appropriate royalty base
11 that reflect the value attributable to the patented
12 invention alone.

13 Damages are not based on a hindsight evaluation of
14 what happened, but on what the parties to the hypothetical
15 license negotiation would have agreed upon. Nevertheless,
16 evidence relevant to the negotiation is not necessarily
17 limited to the facts that occurred on or before the date of
18 the hypothetical negotiation. You may also consider
19 information the parties would have foreseen or estimated
20 during the hypothetical negotiation which may under certain
21 circumstances include evidence of usage after infringement
22 started, license agreements entered into after the date of
23 the hypothetical negotiation, profits earned by the
24 infringer and non-infringing alternatives. An acceptable
25 substitute must be a product that is licensed under the

1 patent or does not infringe the patent and that is equally
2 acceptable to customers.

3 Damages begin on the first day that an infringing
4 product was sold after the issuance of the patent. If you
5 find that the patents were granted before the infringing
6 activity began, damages should be calculated as of the date
7 you determine the infringing activity began. If you find
8 that the patents were granted after any infringing products
9 were on the market, damages should be calculated as of the
10 dates the patent issued; that is, April 10th, 2018 for the
11 '140 patent, July 16th, 2019 for the '540 patent, and
12 May 21st, 2019 for the '125 patent.

13 It is now your duty to consult with each other to
14 reach a verdict -- or it will be starting tomorrow. Each
15 of you must decide the case for yourself, but only after an
16 impartial consideration of the evidence with your fellow
17 jurors. During your deliberations, do not hesitate to
18 re-examine your own positions and opinions and change your
19 mind if you are convinced that you were wrong, but do not
20 give up your honest beliefs because other jurors differ
21 from you, or just to finish the case.

22 At all times, you are the judges of the facts.
23 You've been allowed to take notes during the trial. Any
24 notes that you took during the trial are only aids to your
25 memory. If your memory differs from your notes, rely on

1 your memory, not your notes. Your notes are not evidence.
2 If you did not take notes, rely on your independent
3 recollection of the evidence. Do not be unduly influenced
4 by notes of others. Notes are entitled to no greater
5 weight than the recollection or impression each juror has
6 about the testimony.

7 When you go into the jury room to deliberate, you
8 may take with you a copy of this charge, the exhibits that
9 I've admitted into evidence, and your notes.

10 Let's see, okay. I'm going to wing the rest of
11 this just to get you-all out of here.

12 So a couple of things. The very first thing
13 you're going to do when you get back tomorrow is after --
14 you're going to hear closing arguments. The very first
15 thing you do when you get back into the jury room will be
16 to select a foreperson. There'll be a pad of note paper
17 back there. Whoever the foreperson is will write down
18 their name and who they are, hand it to one of the CSOs.
19 And I'll let the lawyers know who has been selected as the
20 foreperson.

21 The foreperson's job is primarily -- if you-all
22 have a question that you want me to answer, the foreperson
23 writes it down, signs it, hands the note to the CSO, and
24 they bring it out to me, and I read it to the lawyers, I
25 tell them what you've asked, and then I come up with an

1 answer, and I return it to you. Usually pretty quickly.

2 Your verdict has to be unanimous. As you're going
3 along, the jury foreperson is the one who fills out the
4 verdict form as you're answering the questions.

5 At the end of it, once you are finished with the
6 verdict form, the foreperson will sign it, and date it,
7 hand it to us, I'll bring you back in the courtroom, and we
8 will read the verdict.

9 Remember, answer each question in the verdict form
10 from the facts as you find them. Do not decide who should
11 win and answer the questions to get that result.

12 After you've -- I'll talk about what you can talk
13 about after you finish your service.

14 Again, have your jury foreperson fill out on a
15 note if you need -- need me to hear anything.

16 This is the last time you're going to hear me say
17 these following things, because tomorrow when we part,
18 you're going to be deliberating. But for tonight, you
19 cannot discuss the case with each other or anyone. You
20 cannot do any independent research, and you cannot go on
21 social media and discuss anything about the case.

22 We've had a pretty good three days, long days.
23 I've watched. You guys have done a great job of paying
24 attention. I know the lawyers very much appreciate -- you
25 have no idea how much time both sides put into preparing

1 for this case, how much they've invested in their own soul
2 and treasure and everything like that, and I think you-all
3 have rewarded them by paying close attention.

4 I'll say one more thing. The evidence is in.
5 What you're going to hear tomorrow from the lawyers is
6 simply their closing argument. They're going to do their
7 best to do a couple of things. One is to persuade you.
8 Another is to summarize the evidence in -- in the manner
9 that they think is most beneficial to their client.

10 But whatever you hear tomorrow is simply argument.
11 You have now heard and seen all of the evidence that you're
12 going to see in this case.

13 So if you-all will be so kind as to be back here
14 by 8:15 tomorrow, we will -- closing arguments will take
15 place at 8:30. And as soon as closing arguments finish,
16 you-all will begin deliberations.

17 COURT SECURITY OFFICER: All rise.

18 (Jury out.)

19 THE COURT: Thank you. You may be seated.

20 Okay. Couple of things. Tomorrow, I'll be here
21 by 8:00 if there are issues about what you have on each
22 other's slides that we need to take up.

23 Here's what I would like to have done. I want the
24 issues -- I want the slides exchanged tonight. I know it's
25 already 6:00 o'clock. But what have you-all been doing in

1 terms of exchanging the slides that you're going to use --
2 what is the deadline that y'all have been using?

3 MR. BERNSTEIN: It was 7:00 o'clock, but just for
4 the witnesses and opening. We didn't have an agreement on
5 the -- for --

6 THE COURT: So here's what I'm going to do. You
7 need to exchange whatever slides you're going to use
8 tomorrow by 9:00 p.m. tonight, and then get to us by
9 10:00 p.m. tonight any objections. Get with each other
10 before you do this and try and work things out.

11 But, we -- you know, we need to have -- I want to
12 have by 10:00 tonight any objections that you-all have not
13 been able to resolve so I can look at them in the morning
14 and be prepared to take them up in the morning.

15 Here's the way I see things in terms of objecting
16 during closing argument. Like all judges, it's obviously
17 very disfavored. It's not -- it's not good. But it's
18 you-all's case.

19 And I'll pick on Mr. Hill here just because. If
20 Mr. Hill is doing his closing argument and Mr. Bernstein
21 here thinks -- if you think Mr. Hill said something that
22 requires you to object to for me to rule on, feel free to
23 make the objection. But understand this, if you make an
24 objection, you -- it really -- you better win, because if
25 you make an objection and it's not well-taken, I will

1 probably not be happy.

2 So I'm not telling you you can't object, but -- in
3 fact, in the last trial, we had an objection, and it was
4 sustained. That's why I don't tell people they can't
5 object. It's rare that it happens, and it should be rare,
6 but it's -- you-all have to protect your client's interest,
7 and if you feel like you need to object by something that's
8 said by the opposing counsel, make your objection. Just
9 understand that it's a very high standard because, you
10 know, it is, after all, just argument.

11 So is there anything we need to take up?

12 MR. BERNSTEIN: Nothing from Plaintiffs, Your
13 Honor.

14 MR. HILL: Nothing from Defendants, Your Honor.

15 THE COURT: Okay. Are the time limits I've given
16 you to get the slides to each other, can you-all get that
17 done? Is that reasonable?

18 MR. BERNSTEIN: A little bit more time would be
19 great.

20 THE COURT: Well, then why don't -- why don't we
21 give -- I'll give you-all until 10:00 tonight. Just by --
22 get it to Regan by midnight, any issues that you have.

23 MR. BERNSTEIN: Thank you, Your Honor.

24 THE COURT: Now, let me ask you this -- and let
25 me -- and let me say one more thing. If for some reason --

1 I'll pick on Mr. Hill again, if for some reason Mr. Hill
2 realizes at 11:00 tonight he needs one more slide, I'm
3 not -- this is not draconian. If he wants to say -- if he
4 needs to put in a slide that says the burden of proof is X,
5 that is highly not objectionable, then I'm going to let you
6 use it.

7 The point of this is I don't want -- I don't want
8 Mr. Bernstein to say on a slide X person lied, which
9 probably would be -- and that -- that won't come in.

10 But if you-all realize there's something extra you
11 need on slides, the point here is to get as much done of
12 anything that someone might object to so that I -- I have
13 time to look at it.

14 MR. BERNSTEIN: The admitted exhibits are really
15 good so I don't think there's going to be an issue.

16 THE COURT: Okay. So, you know -- and so -- okay.

17 You-all have a good evening, and I will see you in
18 the morning.

19 COURT SECURITY OFFICER: All rise.

20 (Court adjourned 6:11 p.m.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
CERTIFIED SHORTHAND REPORTER
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11/3/2021
Date