CAUSE NO. 22-0762

KONINKLIJKE KPN N.V.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
V.	§	
	§	
SAMSUNG ELECTRONICS CO., LTD.	§	
	§	
Defendant.	§	
	§	
	§	71st JUDICIAL DISTRICT

FILED
AT 1:00 O'CLOCK P M.
Feb. 23, 2024
SHERRY GRIFFIS
CLERK DISTRICT COURT
HARRISON COUNTY, TEXAS
BY
DEPUTY CLERK

Charge of the Court

MEMBERS OF THE JURY:

Now that you have heard from both sides, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

TRUE AND CORRECT COPY

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.

2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. Statements made by the lawyers are not evidence. The questions asked by the attorney are not evidence. Evidence consists of the testimony of the witnesses and material admitted into evidence.

4. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

5. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

6. All the questions and answers are important. No one should say that any question or answer is not important.

7. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

8. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

9. Do not answer questions by drawing straws or by any method of chance.

10. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

11. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

12. Unless otherwise instructed, the answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

TRUE AND CORRECT COPY

13. The term "Plaintiff" or "KPN" refers to Koninklijke KPN N.V.

14. The term "Defendant" or "Samsung" refers to Samsung Electronics Co., Ltd.

15. The term "2016 Agreement" refers to the Settlement, License and Non-Assertion Agreement between Samsung Electronics Co., Ltd. and Koninklijke KPN N.V., dated August 17, 2016.

16. The term "2021 Agreement" refers to the Settlement and License Agreement between Samsung Electronics Co., Ltd. and Sisvel International S.A., dated July 1, 2021, that provided rights to the patents of 3G Licensing S.A., Sisvel S.p.A, Sisvel International S.A., and Wilus Inc.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

TRUE AND CORRECT COPY

QUESTION 1

Did Samsung take a license from a Patent Pool, as that term is defined below, when it entered into the 2021 Agreement?

You are instructed that Patent Pool means a patent pool or a joint licensing program for a standard, and wherein at least one KPN Non-Asserted Patent is evaluated and found to be essential by an independent evaluator, and which joint license program or patent pool is offered by several patent owners, and managed jointly by the patent owners or by a joint licensing agent, and is consisting of their patents declared or, evaluated and found, to be essential for a standard.

You are further instructed that KPN Non-Asserted Patents means all patents and patent applications, anywhere in the world, owned, licensable or otherwise controlled by KPN or its Affiliated Companies during the period from August 17, 2016 until December 31, 2024, with the exception of (i) the KPN Licensed Patents to which Samsung was granted a license in the 2016 Agreement, and (ii) the patents, patent applications, utility models and divisional applications listed in Annex 2 of the 2016 Agreement.

Answer "Yes" or "No."

Answer: YES

TRUE AND CORRECT COPY

If you have answered "Yes" to Question 1, then answer the following question. Otherwise, do not answer the following question and instead proceed to Question 4:

QUESTION 2

Did Samsung breach Section 2.3.1 of the 2016 Agreement?

Section 2.3.1 provides as follows:

"Except as otherwise provided in [the License and Covenant Not to Sue by KPN], the liability, liabilities or damages in the form of royalties or otherwise, if any, shall not accrue for Samsung Products made, Have Made, used, distributed, sold, offered for sale, rented, leased, kept in stock, imported or otherwise disposed of during the Term of the Agreement (the "Waived Damages").

In the event that Samsung takes a license from a Patent Pool, KPN shall have the right, as an exception to the foregoing, to receive the KPN share of any Patent Pool Payment made by Samsung to that Patent Pool during the Term of the Agreement."

In determining whether Samsung breached, you are further instructed that within every contract is an implied covenant of good faith and fair dealing. The implied covenant embraces a pledge that neither party shall do anything that will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. Even if a party is not in breach of its express contractual obligations, it may be in breach of its implied covenant of good faith and fair dealing when it exercises a contractual right as part of a scheme to realize gains that the contract explicitly denies or to deprive the other party of the benefit of its bargain.

The covenant encompasses any promises that a reasonable person in the position of the promisee would be justified in understanding were included. However, the obligations imposed by an implied covenant of good faith and fair dealing are limited to obligations in aid and furtherance of the explicit terms of the parties' agreement. The covenant cannot be construed so broadly as to nullify the express terms of a contract, or to create independent contractual rights.

Answer "Yes" or "No."

Answer: YES

TRUE AND CORRECT COPY

If you have answered "Yes" to Question 1 and Question 2, then answer the following question. Otherwise, do not answer the following question and instead proceed to Question 4:

QUESTION 3

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate KPN for Samsung's breach that you found in response to Question 2?

The basic principle of damages in a contract action is to leave the injured party in as good a position as he or she would have been if the contract had been fully performed. In other words, so far as possible, the law attempts to secure to the injured party the benefit of that party's bargain.
It is equally fundamental that the injured party should not recover more from the breach than the party would have gained had the contract been fully performed.

KPN must establish a causal relationship between the breach of contract and the damages. KPN must show actual damages and must lay a basis for a reasonable estimate of the extent of the harm. Damages are measured as of the time of the breach.

Do not add any amount for interest on damages, if any.

Answer in dollars and cents, if any.

Answer: $ 287 000 000

TRUE AND CORRECT COPY

If you have answered "No" to Question 1 or 2, then answer the following question. Otherwise, do not answer either of the remaining questions.

QUESTION 4

Was Samsung unjustly enriched when it entered into the 2021 Settlement Agreement without taking a license to KPN's patents?

You are instructed that unjust enrichment occurs when one person has obtained a benefit from another by fraud, duress, or the taking of an undue advantage. Phrased differently, unjust enrichment occurs when one person has wrongfully secured a benefit or has passively received one which it would be unconscionable to retain. Unjust enrichment does not occur merely because it might appear expedient or generally fair to compensate someone for an unfortunate loss or because the benefits to the other party amount to a windfall. Unjust enrichment requires finding that the defendant unjustly profited at the plaintiff's expense, and that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered.

You are instructed that fraud is defined as (1) a material misrepresentation, (2) made with knowledge of its falsity or asserted without knowledge of it truth, (3) made with the intention that it should be acted on by the other party, (4) which the other party relied on and (5) which caused injury.

You are instructed that undue advantage involves a relationship of trust that causes someone to act to their detriment.

You are instructed that duress is defined as mental, physical, or economic coercion, causing the plaintiff to act contrary to his free will and interest.

Answer "Yes" or "No."

Answer: _____

TRUE AND CORRECT COPY

If you have answered "Yes" to Question 4, then answer the following question. Otherwise, do not answer the following question:

QUESTION 5

What sum of money, if any, would fairly and reasonably compensate KPN for Samsung's unjust enrichment that you found in response to **Question 4**?

The purpose of unjust enrichment damages is to disgorge the benefits that would be unjust for the defendant to retain. You will determine the value, if any, of the benefit based on the evidence you have heard.

Do not add any amount for interest on damages, if any.

Answer in dollars and cents, if any.

Answer: _____

TRUE AND CORRECT COPY

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:

   a. have the complete charge read aloud if it will be helpful to your deliberations;

   b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;

   c. give written questions or comments to the bailiff who will give them to the judge;

   d. write down the answers you agree on;

   e. get the signatures for the verdict certificate; and

   f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

JUDGE PRESIDING

A TRUE COPY
of the Original hereof, I certify
Sherry Griffis
District Court Clerk
Harrison County, Texas
By _____
Deputy Clerk

Instructions for Signing the Verdict Certificate:

1. You may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.

2. If ten jurors agree on every answer, those ten jurors sign the verdict.

   If eleven jurors agree on every answer, those eleven jurors sign the verdict.

   If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.

Do you understand the instructions? If you do not, please tell me now.

JUDGE PRESIDING

A TRUE COPY
of the Original hereof, I certify
Sherry Griffis
District Court Clerk
Harrison County, Texas
By _____
Deputy Clerk

Verdict Certificate:

Check one:

_____ Our verdict is unanimous. All 12 of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 of us.

[redacted]

Signature of Presiding Juror Printed Name of Presiding Juror

_____ Our verdict is not unanimous. Ten/Eleven of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE: PRINTED NAME:

1. [redacted]
2.
3.
4.
5.
6.
7.
8.
9.
10.
11.
12. _____ _____

TRUE AND CORRECT COPY