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DISTRICT OF NEVADA
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HALO ELECTRONICS, INC.,

Plaintiff,

v.

PULSE ELECTRONICS, INC. and
PULSE ELECTRONICS
CORPORATION,

Defendants.

2:07-cv-00331-PMP-PAL

JURY INSTRUCTIONS

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law which applies to this case.

It is your duty to find the facts from all the evidence in the case. To those facts you must apply the law as I give it to you. You must follow the law as I give it to you in these Instructions whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathy. That means that you must decide the case solely on the evidence before you and according to the law as given to you in these Instructions. You will recall that you took an oath promising to do so at the beginning of the case.

1 In following my Instructions, you must follow all of them and not single
2 out some and ignore others; they are all equally important. And you must not read
3 into these Instructions or into anything I may have said or done as any suggestion as
4 to what verdict you should return--that is a matter entirely for you to decide.

5 The evidence from which you are to decide what the facts are consists of
6 (1) the sworn testimony of witnesses, both on direct and cross-examination,
7 regardless of who called the witness; (2) any testimony from depositions which have
8 been read or videotaped into evidence; (3) the exhibits which have been received
9 into evidence; and (4) any facts to which the lawyers have agreed or stipulated.

10 There are two kinds of evidence, direct and circumstantial. Direct
11 evidence is direct proof of a fact, such as testimony of an eyewitness.
12 Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from
13 which you could find that another fact exists, even though it has not been proved
14 directly. You are entitled to consider both kinds of evidence. The law permits you
15 to give equal weight to both, but it is for you to decide how much weight to give to
16 any evidence.

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1 In reaching your verdict you may consider only the evidence in this case.
2 Certain things are not evidence and you may not consider them in deciding what the
3 facts are. I will list them for you:

- 4 1. Arguments and statements by lawyers are not evidence. The lawyers
5 are not witnesses. What they say in their opening statements, closing
6 arguments and at other times is intended to help you interpret the
7 evidence, but it is not evidence. If the facts as you remember them
8 differ from the way the lawyers have stated the facts, your memory of
9 the facts controls.
- 10 2. Questions and objections by lawyers are not evidence. Attorneys have
11 a duty to their clients to object when they believe a question is improper
12 under the rules of evidence. You should not be influenced by the
13 objection or by the court's ruling on it.
- 14 3. Testimony that has been excluded or stricken, or that you have been
15 instructed to disregard, is not evidence and must not be considered. In
16 addition, if testimony or exhibits have been received only for a limited
17 purpose, you must follow the limiting instructions I have given.
- 18 4. Anything you may have seen or heard when the court was not in session
19 is not evidence. You are to decide the case solely on the evidence
20 received at the trial.

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Charts and Summaries

Certain charts and summaries not received in evidence have been shown to you to help explain the contents of books, records, documents, or other evidence in the case. The charts and summaries are not themselves evidence or proof of any facts. If the charts and summaries do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

A few charts and summaries have been received into evidence to illustrate information brought out in the trial. Again, charts and summaries are only as good as the underlying evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

1 Some witnesses, because of education or experience, have been permitted
2 to state opinions and the reasons for those opinions.

3 Opinion testimony should be judged just like any other testimony. You
4 may accept it or reject it, and give it as much weight as you think it deserves,
5 considering the witness's education and experience, the reasons given for the
6 opinion, and all the other evidence in the case.

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1 In deciding what the facts are, you must consider all the evidence. In
2 doing this, you must decide which testimony to believe and which testimony not to
3 believe. You may believe everything a witness says, or part of, or none of it. In
4 making that decision, you may take into account a number of factors including the
5 following:

- 6 1. Was the witness able to see, or hear, or know those things about which
7 that witness testified?
- 8 2. How well was the witness able to recall and describe those things?
- 9 3. What was the witness's manner while testifying?
- 10 4. Did the witness have an interest in the outcome of this case or any bias
11 or prejudice concerning any party or any matter involved in the case?
- 12 5. How reasonable was the witness's testimony considered in light of all
13 the evidence in the case?
- 14 6. Was the witness's testimony contradicted by what that witness has said
15 or done at another time, or by the testimony of other witnesses, or by
16 other evidence?
- 17 7. Any other factors that bear on believability.

18 In deciding whether or not to believe a witness, keep in mind that people
19 sometimes forget things. You need to consider therefore whether a contradiction is
20 an innocent lapse of memory or an intentional falsehood, and that may depend on
21 whether it has to do with an important fact or with only a small detail.

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You may consider exhibits 413 and 414 only for the purpose of deciding whether they show a bias or interest affecting the credibility of T.K. Luk and how much weight to give to his testimony, and for no other purpose.

The Parties

The parties in this case are:

Plaintiff:

1. Halo Electronics, Inc.

Defendants:

1. Pulse Electronics, Inc., and
2. Pulse Electronics Corporation

All parties are equal before the law and a corporation is entitled to the same fair and conscientious consideration by you as any party.

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1 This patent infringement action involves three United States patents. Halo
2 is the holder of these patents. The parties have referred to the patents as the '985,
3 '720, and '785 patents. The patents relate to products called surface mount
4 transformers, which are small electrical components that are eventually incorporated
5 into computers and other larger electronic products.

6 Halo contends that Pulse infringed the '985, '720, and '785 patents by
7 importing, using, selling, and offering for sale products in the United States that
8 Halo argues are covered by claims of the '985, '720, and '785 patents. Halo also
9 contends that Pulse actively induced infringement of the patents by others. Further,
10 Halo contends that Pulse's infringement was willful.

11 Pulse contends that the '985, '720, and '785 patents are invalid. Pulse also
12 contends that is does not infringe or induce infringement of any Halo patent. Halo
13 contends that the '985, '720, and '785 patents are valid.

14 If you determine that one or more of the Halo patents is infringed and not
15 invalid, then you also will need to determine the amount of damages that are
16 adequate to compensate Halo for Pulse's infringement. Halo is seeking damages in
17 the form of a reasonable royalty. If you determine that the Halo patents are invalid,
18 then Halo is not entitled to any damages from Pulse.

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Role of Patent Claims

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Before you can decide many of the issues in this case, you will need to understand the role of patent “claims.” The patent claims are the numbered sentences at the end of each patent. The claims are important because it is the words of the claims that define what a patent covers. The figures and text in the rest of the patent provide a description and/or examples of the invention and provide a context for the claims, but it is the claims that define the breadth of the patent’s coverage. Each claim is effectively treated as if it were a separate patent, and each claim may cover more or less than another claim. Therefore, what a patent covers depends on what each of its claims covers. You will first need to understand what each claim covers to decide whether there is infringement of the claim, and to decide whether the claim is invalid.

1 I will now explain how a claim defines what it covers.

2 A claim sets forth, in words, a set of requirements. Each claim sets forth
3 its requirements in a single sentence. If a product satisfies each of these
4 requirements, then it is covered by the claim.

5 There can be several claims in a patent. Each claim may be narrower or
6 broader than another claim by setting forth more or fewer requirements. The
7 coverage of a patent is assessed claim-by-claim. In patent law, the requirements of a
8 claim are often referred to as “claim elements” or “claim limitations.” When a
9 product meets all of the requirements of a claim, the claim is said to “cover” that
10 product, and that product is said to “fall” within the scope of that claim. In other
11 words, a claim covers a product where each of the claim elements or limitations is
12 present in that product.

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Independent Claims and Dependent Claims

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

An “independent claim” sets forth all of the requirements that must be met to be covered by that claim. Thus, it is not necessary to look at any other claim to determine what an independent claim covers. In this case, claims 6, 8, and 16 of the ’985 patent; claims 1 and 6 of the ’720 patent; and claims 40 and 48 of the ’785 patent are each independent claims.

Claim 7 of the ’985 patent is a “dependent claim.” A dependent claim does not itself recite all of the requirements of the claim but refers to another claim for some of its requirements. In this way, the claim “depends” on another claim. A dependent claim incorporates all of the requirements of the claim to which it refers. The dependent claim then adds its own additional requirements. To determine what a dependent claim covers, it is necessary to look at both the dependent claim and any other claim to which it refers. A product that meets all of the requirements of both the dependent claim and the claim to which it refers is covered by that dependent claim. In this case, claim 7 depends on claim 6 of the ’985 patent.

Interpretation of Claims

The law says that it is my role to define the terms of the claims and it is your role to apply my definitions to the issues that you are asked to decide in this case. Therefore, I have determined the meaning of the claims. You must accept my definitions of these words in the claims as being correct. It is your job to take these definitions and apply them to the issues that you are deciding, including the issues of infringement and validity. You must accept those interpretations as correct. My interpretation of the language should not be taken as an indication that I have a view regarding the issues of infringement and invalidity. The decisions regarding infringement and invalidity are yours to make.

I will now read to you the definitions of the terms I have defined.

The Claim Term . . .	Means . . .
“soft silicone material”	“a silicone material that is resilient so as to allow expansion of the toroid when heated”
“by/in a soft silicone material”	“retained inside the package by a soft silicone material”
“standoff/safe guard”	“a portion of the package designed to rest in contact with the printed circuit board after mounting in order to prevent the solder posts from contacting the printed circuit board”
“hour-glass shaped notch”	“a notch formed by two mirrored indentations on opposite vertical edges of the solder post”
“in gull wing fashion”	“extending outwardly from the case, then extending in a downward fashion away from the case, and then extending outwardly from the case”

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Infringement-Burden of Proof

I will now instruct you on the rules you must follow in deciding whether Halo has proven by a preponderance of the evidence that Pulse has infringed one or more of the asserted claims of the patents. To prove infringement of any claim, Halo must persuade you that it is more likely than not that Pulse has infringed that claim.

You should base your decision on all of the evidence, regardless of which party presented it.

Direct Infringement

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3 A product directly infringes a patent if that product is covered by at least one
4 claim of the patent. Deciding whether a claim was directly infringed by a product is
5 a two-step process. The first step is to decide the meaning of the patent claim. I
6 have already made this decision, and I have already instructed you as to the meaning
7 of the asserted patent claims. The second step is to decide whether Pulse made,
8 used, sold, offered for sale or imported within the United States one or more
9 products covered by the claims of the three Halo patents. If Pulse did, Pulse directly
10 infringed. You, the jury, make this decision.

11 The parties have jointly selected the following eight Pulse products as
12 “representative products”: H0022, H0009, H1260, H1305, H1174, H0026, H0019,
13 and 23Z110SMNL.

14 With one exception, you must consider each of the asserted claims of the
15 patents individually, and decide whether each of Pulse’s representative products
16 directly infringes each claim. The one exception to considering claims individually
17 concerns claim 7 of the ’985 patent, which depends on claim 6 of the ’985 patent.
18 Claim 7 of the ’985 patent includes all of the requirements of claim 6 of the ’985
19 patent, plus additional requirements of its own. As a result, if you find that claim 6
20 of the ’985 patent is not directly infringed, you must also find that claim 7 of the
21 ’985 patent is not directly infringed. On the other hand, if you find that claim 6 of
22 the ’985 patent is directly infringed, you still must separately decide whether the
23 additional requirements of claim 7 of the ’985 are also directly infringed.

24 You have heard evidence about both Halo’s commercial products and Pulse’s
25 representative products. However, in deciding direct infringement you may not
26 compare Pulse’s representative products to Halo’s commercial products. Rather,

1 you must compare each of Pulse's representative products to each of the asserted
2 claims of the Halo patents when making your decision regarding direct
3 infringement.

4 To decide whether one of Pulse's representative products directly infringed a
5 claim of the '985, '720, or '785 patents, you must compare that product with the
6 patent claim and determine whether every requirement of the claim is included in
7 that representative product. If so, Pulse's representative product directly infringed
8 that claim. If, however, Pulse's representative product does not have every
9 requirement in the patent claim, Pulse's representative product does not directly
10 infringe that claim. You must decide direct infringement for each asserted claim
11 separately.

12 Whether Pulse knew its products infringed or even knew of the patent does
13 not matter in determining direct infringement.

14 If the patent claim uses the term "comprising," that patent claim is to be
15 understood as an open claim. An open claim is directly infringed as long as every
16 requirement in the claim is present in Pulse's representative product. The fact that
17 Pulse's representative product also includes other components will not avoid direct
18 infringement, as long as the product has every requirement in the patent claim.

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1 **Induced Infringement**

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3 Halo argues that Pulse has actively induced a third party to infringe the patent.
4 For Pulse to have induced infringement, someone else must have directly infringed a
5 claim of the patent. If there was no direct infringement by anyone, there was no
6 induced infringement. To be liable for inducement of infringement, Pulse must:

- 7 1. Have intentionally taken action that actually induced direct infringement
8 by a third party;
9 2. Have known of the existence of the patent; and
10 3. Have known that the third party's acts it was causing were infringing.

11 If Pulse did not know (i) of the existence of the patent or (ii) that the third
12 party's acts it was causing were infringing, it cannot be liable for inducement unless
13 it actually believed that it was highly probable its actions would encourage
14 infringement by a third party of a patent and it took intentional acts to avoid learning
15 the truth. An act to avoid learning the truth is intentional if Pulse was presented
16 with facts that it was particularly likely that Pulse was inducing infringement, and
17 yet Pulse intentionally failed to investigate those facts. It is not enough that Pulse
18 was merely indifferent to the possibility that it might encourage infringement of a
19 patent.

20 If you find that Pulse was aware of the patents, but believed that the acts it
21 encouraged did not infringe the patents, or that the patents were invalid, Pulse
22 cannot be liable for inducement.

1 **Willful Infringement**

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3 In this case, Halo argues that Pulse willfully infringed Halo's patents.
4 To prove willful infringement, Halo must first persuade you that Pulse infringed a
5 valid claim of Halo's patent. The requirements for proving Pulse infringed were
6 discussed in my prior instructions.

7 In addition, Halo must prove willful infringement by clear and convincing
8 evidence. This means Halo must persuade you that it is highly probable that prior to
9 the filing date of the complaint, Pulse acted with reckless disregard of the claims of
10 Halo's patents.

11 To demonstrate such "reckless disregard," Halo must persuade you that Pulse
12 actually knew, or it was so obvious that Pulse should have known, that Pulse's
13 actions constituted infringement of a valid patent.

14 In deciding whether Pulse acted with reckless disregard for Halo's patents,
15 you should consider all of the facts surrounding the alleged infringement including,
16 but not limited to, whether Pulse acted in a manner consistent with the standards of
17 commerce for its industry.

18 You should base your decision on the issue of willful infringement on all of
19 the evidence, regardless of which party presented it.
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Invalidity Defenses

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I will now instruct you on the rules you must follow in deciding whether Pulse has proven by clear and convincing evidence that the asserted claims of the Halo patents are invalid. This means that to prove invalidity of any patent claim, Pulse must persuade you that it is highly probable that the claim is invalid.

During this case, Pulse has introduced evidence of art that was not considered by the United States Patent and Trademark Office (PTO) during the prosecution of the Halo patents. Pulse contends that such prior art invalidates certain claims of the Halo patents. In deciding the issue of invalidity, you may take into account the fact that the PTO did not consider the prior art when it issued the Halo patents. You also may take into account any differences or similarities between the prior art that the PTO did not consider and the prior art that the PTO did consider.

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Prior Art Defined

Prior art may include items that were publicly known or that have been used or offered for sale, or patents that disclose the claimed invention or elements of the claimed invention. To be prior art in this case, the item or reference must have been made, known, used, or patented either before the invention was made or more than one year before the filing date of Halo's patent applications.

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Submission of Prior Art During Reexamination

The United States Patent & Trademark Office (“PTO”) conducted a reexamination of the patents at issue in this case. The PTO is prohibited by law from considering prior art other than “patents or printed publications,” or admissions by the holder of the patent, when evaluating the validity of a patent in reexamination. The Rockwell, Western Electric, and Valor drawings and related documents that Pulse has presented in this case are not “patents or printed publications,” or admissions by Halo.

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Obviousness

A patent claim is invalid if the claimed invention would have been obvious to a person of ordinary skill in the field at the time of invention. This means that even if all of the requirements of the claim cannot be found in a single prior art reference that would anticipate the claim, a person of ordinary skill in the field who knew about all this prior art would have come up with the claimed invention.

The ultimate conclusion of whether a claim is obvious should be based upon your determination of several factual decisions.

First, based on the evidence presented at this trial, you must decide the level of ordinary skill in the field that someone would have had at the time the claimed invention was made. In deciding the level of ordinary skill, you should consider all the evidence introduced at trial, including:

1. The levels of education and experience of persons working in the field;
2. The types of problems encountered in the field; and
3. The sophistication of the technology.

Second, you must decide the scope and content of the prior art. To be considered as prior art to the patent, these references must be reasonably related to the claimed invention of that patent. A reference is reasonably related if it is in the same field as the claimed invention or is from another field to which a person of ordinary skill in the field would look to solve a known problem.

Third, you must decide what differences, if any, existed between the claimed invention and the prior art.

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1 Finally, you must consider any of the following factors that you find have
2 been shown by the evidence:

- 3 1. Commercial success of a product due to the merits of the claimed
4 invention.
- 5 2. A long felt need for the solution provided by the claimed invention.
- 6 3. Unsuccessful attempts by others to find the solution provided by the
7 claimed invention.
- 8 4. Copying of the claimed invention by others.
- 9 5. Unexpected and superior results from the claimed invention.
- 10 6. Acceptance by others of the claimed invention as shown by praise from
11 others in the field or from the licensing of the claimed invention.
- 12 7. Initial skepticism of others toward the invention.
- 13 8. Proceeding contrary to conventional wisdom.
- 14 9. Other evidence tending to show nonobviousness.
- 15 10. Independent invention of the claimed invention by others before or at
16 about the same time as the named inventor thought of it.
- 17 11. Other evidence tending to show obviousness.

18 The presence of any of factors 1-9 above may be considered by you as an
19 indication that the claimed invention would not have been obvious at the time the
20 claimed invention was made. The presence of the factors 10 and 11 may be
21 considered by you as an indication that the claimed invention would have been
22 obvious at such time. Although you should consider all evidence of these factors,
23 the relevance and importance of any of them to your decision on whether the
24 claimed invention would have been obvious is for you to decide.

25 A patent claim composed of several elements is not proved obvious merely by
26 demonstrating that each of its elements was independently known in the prior art. In

1 evaluating whether such a claim would have been obvious, you may consider
2 whether Pulse has identified a reason that would have prompted a person of ordinary
3 skill in the field to combine the elements or concepts from the prior art in the same
4 way as in the claimed invention. There is no single way to define the line between
5 true inventiveness on the one hand (which is patentable), and the application of
6 common sense and ordinary skill to solve a problem on the other hand (which is not
7 patentable). For example, market forces or other design incentives may be what
8 produced a change, rather than true inventiveness. You may consider whether the
9 change was merely the predictable result of using prior art elements according to
10 their known functions, or whether it was the result of true inventiveness.

11 You also may consider whether there is some teaching or suggestion in the
12 prior art to make the modification or combination of elements claimed in the patent.
13 Also, you may consider whether the innovation applies a known technique that had
14 been used to improve a similar device or method in a similar way. You also may
15 consider whether it would have been obvious to try the combination of elements,
16 such as when there is a design need or market pressure to solve a problem and there
17 are a finite number of identified, predictable solutions with a reasonable expectation
18 of success by those skilled in the art.

19 However, you must be careful not to determine obviousness using the benefit
20 of hindsight; many true inventions might seem obvious after the fact. You should
21 put yourself in the position of a person of ordinary skill in the field at the time the
22 claimed invention was made and you should not consider what is known today or
23 what is learned from the teaching of the patent.

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Inventorship

Pulse can meet its burden of proving that a patent is invalid by showing by clear and convincing evidence that the patent fails to name all the actual inventors and only the actual inventors. This is known as the “inventorship” requirement.

To be an inventor, one must make a significant contribution to the conception of one or more claims of the patent. Persons may be inventors even though they do not physically work together or make the same type or amount of contribution, or contribute to the subject matter of each claim of the patent. However, merely helping with experimentation by carrying out the actual inventor’s instructions or explaining the actual inventor’s well-known concepts or the current state of the art does not make someone an inventor.

A party seeking to prove prior inventorship through a witness’s oral testimony must provide evidence that corroborates that testimony.

1 Damages

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3 I will now instruct you about the measure of damages. By instructing you on
4 damages, I am not suggesting what your verdict should be on the issues of
5 infringement or invalidity. If you find that Pulse infringed any valid claim of the
6 Halo patents, you then must determine the amount of money damages to be awarded
7 to Halo to compensate it for the infringement.

8 The amount of those damages must be adequate to compensate Halo for the
9 infringement. A damages award should put Halo in approximately the financial
10 position it would have been in had the infringement not occurred, but in no event
11 may the damages award be less than a reasonable royalty. You should keep in mind
12 that the damages you award are meant to compensate the patent holder and not to
13 punish an infringer.

14 Halo has the burden to persuade you of the amount of its damages by a
15 preponderance of the evidence. Therefore, you should award only those damages
16 that Halo more likely than not suffered. While Halo is not required to prove its
17 damages with mathematical precision, it must prove them with reasonable certainty.
18 Halo is not entitled to damages that are remote or speculative.

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Royalty Rate

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3 A royalty is a payment made to a patent holder in exchange for the right to
4 make, use, or sell the claimed invention. This right is called a “license.” A
5 reasonable royalty is the payment for the license that would have resulted from a
6 hypothetical negotiation between the patent holder and the infringer taking place at
7 the time when the infringing activity first began. In considering the nature of this
8 negotiation, you must assume that the patent holder and the infringer would have
9 acted reasonably and would have entered into a license agreement. You also must
10 assume that both parties believed the patent was valid and infringed. Your role is to
11 determine what the result of that negotiation would have been. The test for damages
12 is what royalty would have resulted from the hypothetical negotiation and not
13 simply what either party would have preferred.

14 A royalty can be calculated in several different ways. In this case, you will be
15 asked to determine what is called an “ongoing royalty.” To calculate an ongoing
16 royalty, you first must determine the “base,” that is, the product on which the
17 infringer is to pay. You then need to multiply the revenue the defendant obtained
18 from that base by the “rate” or percentage that you find would have resulted from
19 the hypothetical negotiation. For example, if the patent covers a nail, and the nail
20 sells for \$1, and the licensee sold 200 nails, the base revenue would be \$200. If the
21 rate you find would have resulted from the hypothetical negotiation is 1%, then the
22 royalty would be \$2, or the rate of .01 times the base revenue of \$200.

23 It is up to you, based on the evidence, to decide what royalty, if any, is
24 appropriate in this case.
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1 In determining the reasonable royalty, you should consider all the facts known
2 and available to the parties at the time the infringement began. Some of the factors
3 you may consider in making your determination are:

- 4 1. The royalties received by Halo for the licensing of the patents-in-suit,
5 proving or tending to prove an established royalty.
- 6 2. The rates paid by Pulse for the use of other patents comparable to the
7 patent-in-suit.
- 8 3. The nature and scope of the license, as exclusive or nonexclusive, or as
9 restricted or nonrestricted in terms of territory or with respect to whom the
10 manufactured product may be sold.
- 11 4. Halo's established policy and marketing program to maintain its patent
12 monopoly by not licensing others to use the invention or by granting
13 licenses under special conditions designed to preserve that monopoly.
- 14 5. The commercial relationship between Halo and Pulse, such as whether
15 they are competitors in the same territory in the same line of business, or
16 whether they are inventor and promoter.
- 17 6. The effect of selling the patented specialty in promoting sales of other
18 products of Pulse, the existing value of the invention to Halo as a generator
19 of sales of its nonpatented items, and the extent of such derivative or
20 conveyed sales.
- 21 7. The duration of the patent and the term of the license.
- 22 8. The established profitability of the product made under the patents, its
23 commercial success, and its current popularity.
- 24 9. The utility and advantages of the patented property over the old modes or
25 devices, if any, that had been used for working out similar results.

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- 1 10. The nature of the patented invention, the character of the commercial
2 embodiment of it as owned and produced by Halo, and the benefits to
3 those who have used the invention.
- 4 11. The extent to which Pulse has made use of the invention and any
5 evidence probative of the value of that use.
- 6 12. The portion of the profit or of the selling price that may be customary in
7 the particular business or in comparable business to allow for the use of
8 the invention or analogous inventions.
- 9 13. The portion of the realizable profits that should be credited to the
10 invention as distinguished from nonpatented elements, the manufacturing
11 process, business risks, or significant features or improvements added by
12 Halo.
- 13 14. The opinion and testimony of qualified experts.
- 14 15. The amount that Halo and Pulse would have agreed upon (at the time the
15 infringement began) if both had been reasonably and voluntarily trying to
16 reach an agreement; that is, the amount which a prudent licensee—who
17 desired, as a business proposition, to obtain a license to manufacture and
18 sell a particular article embodying the patented invention—would have
19 been willing to pay as a royalty and yet be able to make a reasonable
20 profit and which amount would have been acceptable by a prudent
21 patentee who was willing to grant a license.

22 No one factor is dispositive and you should consider all the evidence that has
23 been presented to you in this case on each of these factors. You also may consider
24 any other factors which in your mind would have increased or decreased the royalty
25 the infringer would have been willing to pay and the patent holder would have been
26 willing to accept, acting as normally prudent business people. The final factor

1 establishes the framework which you should use in determining a reasonable
2 royalty, that is, the payment that would have resulted from a negotiation between
3 Halo and Pulse taking place at a time prior to when the infringement began.

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Damages Period

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In determining the amount of damages, you must determine when the damages began. Damages commence on the date that Pulse has both infringed and been notified of the alleged infringement of the Halo patents.

You must determine when Halo began “marking” its products or the packaging of its products with the patent numbers. “Marking” is placing either the word “patent” or the abbreviation “pat.” with the patent’s number on substantially all of the products or the packaging of the products that include the patented invention. Halo has the burden of establishing by a preponderance of the evidence that it substantially complied with the marking requirement. This means Halo must show that it marked substantially all of the products or their packaging it made, offered for sale, or sold under the patents, and that Halo made reasonable efforts prior to March 15, 2007, to ensure that its licensees who made, offered for sale, or sold products under its patents marked the products. If you find that Halo started marking substantially all of its products covered by the patents with the patent numbers on some date before March 15, 2007, and you determine that the infringement already had begun, then damages begin on that date.

In any event, the damages period begins no later than March 15, 2007.

Closing Instruction

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When you retire, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note through the Marshal, signed by your foreperson or by one or more members of the jury. No member of the jury should attempt to communicate with me by any means other than a signed writing, and I will not communicate with any member of the jury on any subject touching the merits of the case other than in writing, or orally here in open Court.

You will note from the oath about to be taken by the Marshal that he too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

After you have reached unanimous agreement on a verdict, your foreperson will sign and date the verdict form and advise the Marshal outside the jury room that you are ready to return to the Courtroom to deliver your verdict.