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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ASETEK DANMARK A/S,
Plaintiff,
v.
CMI USA, INC. fka COOLER MASTER USA,
INC.,
Defendant.

CASE NO. 3:13-CV-00457-JST
FINAL JURY INSTRUCTIONS

**FINAL INSTRUCTION NO. 1 RE
DUTY OF JURY**

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2 Members of the Jury: Now that you have heard all of the evidence, it is my duty to instruct
3 you as to the law of the case.

4 A copy of these instructions will be sent with you to the jury room when you deliberate.

5 You must not infer from these instructions or from anything I may say or do as indicating
6 that I have an opinion regarding the evidence or what your verdict should be.

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

12 In following my instructions, you must follow all of them and not single out some and ignore
13 others; they are all important.

**FINAL INSTRUCTION NO. 2 RE
SUMMARY OF CONTENTIONS**

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2 I will first give you a summary of each side's contentions in this case. I will then tell you
3 what each party must prove to win on each of its contentions.

4 As I previously told you, Asetek filed suit in this court seeking money damages from CMI
5 USA for allegedly infringing the '362 or '764 patent by using, selling, offering for sale, and
6 importing products and practicing methods that Asetek argues are covered by claims 14, 15 and 17-
7 19 of the '362 patent and claims 1-15, and 17-18 of the '764 patent. Asetek also argues that CMI
8 USA has contributed to the infringement of claims 17-19 of the '362 patent by others. The CMI
9 USA products that are alleged to infringe are as follows:

- 10 (1) Cooler Master Seidon 120M, Cooler Master Seidon 120XL, and Cooler
11 Master Seidon 240M;
12 (2) Cooler Master Seidon 120V;
13 (3) Cooler Master Glacier 240L; and
14 (4) Cooler Master Nepton 140XL and 280L (collectively "Nepton").

15 CMI USA denies that it has infringed Asetek's '362 patent and argues that, in addition, the
16 claims of both patents are invalid.

17 Your job is to decide whether claims 14, 15 and 17-19 of the '362 patent and claims 1-15,
18 and 17-18 of the '764 patent have been infringed and also whether those claims are invalid. If you
19 decide that any claim of either patent has been infringed and is not invalid, you will then need to
20 decide any money damages to be awarded to Asetek to compensate it for the infringement.

**FINAL INSTRUCTION NO. 3 RE
INTERPRETATION OF CLAIMS**

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2 Before you decide whether CMI USA has infringed the claims of the patents or whether the
3 asserted claims of the patents are invalid, you will need to understand the patent claims. As I
4 mentioned, the patent claims are numbered sentences at the end of the patent that describes the
5 boundaries of the patent's protection. It is my job as judge to explain to you the meaning of any
6 language in the claims that needs interpretation.

7 I have interpreted the meaning of some of the language in the patent claims involved in this
8 case. You must accept those interpretations as correct. My interpretation of the language should not
9 be taken as an indication that I have a view regarding the issues of infringement and invalidity. The
10 decisions regarding infringement and invalidity are yours to make.

U.S. Patent Numbers 8,240,362 and 8,245,764

11
12 Several terms are common to both Asetek patents and I have construed them in the same
13 way, as follows:

14 (1) The term "reservoir" means "a receptacle or chamber for holding a liquid or fluid."

15 (2) The term "fluidly coupled" in the '362 patent or "coupled" in the '764 patent means
16 "fluidly connected."

17 (3) The term "vertically displaced chambers" in the '362 patent or "vertically spaced
18 apart" in the '764 patent means "vertically arranged (with reference to each other and the heat
19 exchanging interface) chambers."

20 (4) The term "horizontally spaced apart" in the '362 patent means "spaced apart in the
21 horizontal direction (with reference to the vertically displaced/spaced apart chambers)."
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**FINAL INSTRUCTION NO. 4 RE
INFRINGEMENT – BURDEN OF PROOF**

I will now instruct you on the rules you must follow in deciding whether Asetek has proven that CMI USA has infringed one or more of the asserted claims of Asetek’s patents. To prove infringement of any claim, Asetek must persuade you that it is more likely than not that CMI USA has infringed that claim.

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**FINAL INSTRUCTION NO. 5 RE
WHAT IS EVIDENCE**

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The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which are received into evidence; and
- (3) any facts to which the lawyers have agreed.

**FINAL INSTRUCTION NO. 6 RE
WHAT IS NOT EVIDENCE**

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2 In reaching your verdict, you may consider only the testimony and exhibits received into
3 evidence. Certain things are not evidence, and you may not consider them in deciding what the facts
4 are. I will list them for you:

5 (1) Arguments and statements by lawyers are not evidence. The lawyers are not
6 witnesses. What they have said in their opening statements, will say in their closing arguments, and
7 at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you
8 remember them differ from the way the lawyers have stated them, your memory of them controls.

9 (2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their
10 clients to object when they believe a question is improper under the rules of evidence. You should
11 not be influenced by the objection or by the court's ruling on it.

12 (3) Testimony that has been excluded or stricken, or that you have been instructed to
13 disregard, is not evidence and must not be considered. In addition sometimes testimony and exhibits
14 are received only for a limited purpose; when I have given a limiting instruction, you must follow it.

15 (4) Anything you may have seen or heard when the court was not in session is not
16 evidence. You are to decide the case solely on the evidence received at the trial.

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**FINAL INSTRUCTION NO. 7 RE
EVIDENCE FOR LIMITED PURPOSE**

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Some evidence may be admitted for a limited purpose only.

When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

**FINAL INSTRUCTION NO. 8 RE
DIRECT AND CIRCUMSTANTIAL EVIDENCE**

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

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**FINAL INSTRUCTION NO. 9 RE
RULING ON OBJECTIONS**

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There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer might have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence that I told you to disregard.

**FINAL INSTRUCTION NO. 10 RE
CREDIBILITY OF WITNESS**

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2 In deciding the facts in this case, you may have to decide which testimony to believe and
3 which testimony not to believe. You may believe everything a witness says, or part of it, or none of
4 it. Proof of a fact does not necessarily depend on the number of witnesses who testify about it.

5 In considering the testimony of any witness, you may take into account:

- 6 (1) the opportunity and ability of the witness to see or hear or know the things testified
7 to;
- 8 (2) the witness's memory;
- 9 (3) the witness's manner while testifying;
- 10 (4) the witness's interest in the outcome of the case and any bias or prejudice;
- 11 (5) whether other evidence contradicted the witness's testimony;
- 12 (6) the reasonableness of the witness's testimony in light of all the evidence; and
- 13 (7) any other factors that bear on believability.

14 The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who
15 testify about it.

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**FINAL INSTRUCTION NO. 11 RE
CONDUCT OF JURY**

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I will now say a few words about your conduct as jurors.

First, keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case. Second, because you must decide this case based only on the evidence received in the case and on my instructions as to the law that applies, you must not be exposed to any other information about the case or to the issues it involves during the course of your jury duty. Thus, until the end of the case or unless I tell you otherwise:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via e-mail, text messaging, or any Internet chat room, blog, Web site or other feature, including posting on Facebook or Twitter. This applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone else including your family members, your employer, the media or press, and the people involved in the trial, although you may notify your family and your employer that you have been seated as a juror in the case. But, if you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Because you will receive all the evidence and legal instruction you properly may consider to return a verdict: do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire trial process to start over. If any juror is exposed to any outside information, please notify the court immediately.

**FINAL INSTRUCTION NO. 12 RE
NOTES**

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Whether or not you have taken notes during the presentation of the case, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors. Your notes will be destroyed at the end of the case.

**FINAL INSTRUCTION NO. 13 RE
BENCH CONFERENCES AND RECESSES**

1
2 From time to time during the trial, it became necessary for me to talk with the attorneys out
3 of the hearing of the jury, either by having a conference at the bench when the jury was present in
4 the courtroom, or by calling a recess. Please understand that while you were waiting, we were
5 working. The purpose of these conferences is not to keep relevant information from you, but to
6 decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and
7 error.

8 Of course, we did what we could to keep the number and length of these conferences to a
9 minimum. I did not always grant an attorney's request for a conference. Do not consider my granting
10 or denying a request for a conference as any indication of my opinion of the case or of what your
11 verdict should be.

**FINAL INSTRUCTION NO. 14 RE
STIPULATIONS OF FACT**

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As I advised you during the trial, the parties have agreed to certain facts in a stipulation which I read to you during the trial, and which has been included in your juror notebooks. You should treat these facts as having been proved.

**FINAL INSTRUCTION NO. 15 RE
DEPOSITION IN LIEU OF LIVE TESTIMONY**

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2 A deposition is the sworn testimony of a witness taken before trial. The witness is placed
3 under oath to tell the truth and lawyers for each party may ask questions. The questions and answers
4 are recorded.

5 The deposition of Danny Chen was taken on November 18, 2014. The deposition of Jonathan
6 Loo was taken on June 6, 2014. The deposition of Howard Lin was taken on June 12, 2014 and June
7 13, 2014. Videos portions of these depositions were played during trial in lieu of live testimony.

8 You should consider the deposition testimony, presented to you in court in lieu of live
9 testimony, insofar as possible, in the same way as if those witnesses had provided the deposition
10 testimony in court.

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**FINAL INSTRUCTION NO. 16 RE
EXPERT OPINION**

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Some witnesses, because of education or experience, are permitted to state expert opinions and the reasons for those opinions.

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

**FINAL INSTRUCTION NO. 17 RE
DIRECT INFRINGEMENT**

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2 A patent's claims define what is covered by the patent. A product or method directly
3 infringes a patent if it is covered by at least one claim of the patent.

4 Deciding whether a claim has been directly infringed is a two-step process. The first step is
5 to decide the meaning of the patent claim. I have already made this decision for certain claim terms,
6 and I have already instructed you as to the meaning of the some of the asserted patent claim terms.
7 The second step is to decide whether CMI USA has used, sold, offered for sale, or imported within
8 the United States a product or practiced a method covered by a claim of the Asetek patents. You, the
9 jury, make this decision.

10 With one exception, you must consider each of the asserted claims of the patent individually,
11 and decide whether the alleged direct infringer's product or method infringes that claim. The one
12 exception to considering claims individually concerns dependent claims. A dependent claim
13 includes all of the requirements of a particular independent claim, plus additional requirements of its
14 own. As a result, if you find that an independent claim is not infringed, you must also find that its
15 dependent claims are not infringed. On the other hand, if you find that an independent claim has
16 been infringed, you must still separately decide whether the additional requirements of its dependent
17 claims have also been infringed.

18 You have heard evidence about CMI USA's and Asetek's products. However, in deciding
19 the issue of infringement you may not compare CMI USA's accused product to Asetek's commercial
20 product. Rather, you must compare the accused product to the claims of the asserted patent when
21 making your decision regarding infringement.

22 Whether or not an alleged infringer knew its product infringed or even knew of the patent
23 does not matter in determining direct infringement.

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**FINAL INSTRUCTION NO. 18 RE
LITERAL INFRINGEMENT**

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3 To decide whether CMI USA's product or method literally infringes a claim of Asetek's
4 patents, you must compare that product or method with the patent claim and determine whether
5 every requirement of the claim is included in that product or method. If so, CMI USA's product or
6 method literally infringes that claim. If, however, CMI USA's product or method does not have
7 every requirement in the patent claim, CMI USA's product or method does not literally infringe that
8 claim. You must decide literal infringement for each asserted claim separately.

9 If the patent claim uses the term "comprising," that patent claim is to be understood as an
10 open claim. An open claim is infringed as long as every requirement in the claim is present in
11 alleged infringer's product or method. The fact that CMI USA's product or method also includes
12 other parts or steps will not avoid infringement, as long as it has every requirement in the patent
13 claim.

**FINAL INSTRUCTION NO. 19 RE
CONTRIBUTORY INFRINGEMENT**

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2 Asetek also argues that CMI USA has contributed to infringement by another. Contributory
3 infringement may arise when someone supplies something that is used to infringe one or more of the
4 patent claims.

5 In order for there to be contributory infringement by CMI USA, someone other than CMI
6 USA must directly infringe a claim of the '362 patent; if there is no direct infringement by anyone,
7 there can be no contributory infringement. In proving that someone other than CMI USA directly
8 infringed a claim of the '362 patent, Asetek must either prove that the accused CMI USA products
9 have no practical use other than in an infringing manner and/or by a category of direct infringers in
10 an infringing manner, or prove acts of direct infringement by others to which CMI USA made a
11 substantial contribution.

12 If you find someone has directly infringed a claim of the '362 patent, then contributory
13 infringement exists if:

14 (1) CMI USA supplied an important component of the infringing part of the product or
15 method;

16 (2) The component is not a common component suitable for non-infringing use; and

17 (3) CMI USA supplied the component with the knowledge of the '362 patent and
18 knowledge that the component was especially made or adapted for use in an infringing manner.

19 A "common component suitable for non-infringing use" is a component that has uses other
20 than as a component of the patented product or other than in the patented method, and those other
21 uses are not occasional, farfetched, impractical, experimental, or hypothetical.

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**FINAL INSTRUCTION NO. 20 RE
INVALIDITY – BURDEN OF PROOF**

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2 I will now instruct you on the rules you must follow in deciding whether CMI USA has
3 proven that any claims of the asserted patents are invalid. Before discussing the specific rules, I
4 want to remind you about the standard of proof that applies to this defense. To prove invalidity of
5 any patent claim, CMI USA must persuade you that it is highly probable that the claim is invalid.

6 During this case, CMI USA has presented evidence regarding some prior art that was not
7 considered by the United States Patent and Trademark Office (PTO) during the prosecution of the
8 asserted patents. CMI USA contends that such prior art invalidates certain claims of the asserted
9 patents. In deciding the issue of invalidity, you may take into account the fact that some of the prior
10 art was not considered by the PTO when it issued the asserted patents. Prior art that differs from the
11 prior art considered by the PTO may carry more weight than the prior art that was considered and
12 may make the CMI USA's burden of showing that it is highly probable that a patent claim is invalid
13 easier to sustain.

**FINAL INSTRUCTION NO. 21 RE
ANTICIPATION**

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2 A patent claim is invalid if the claimed invention is not new. For the claim to be invalid
3 because it is not new, all of its requirements must have existed in a single device or method that
4 predates the claimed invention, or must have been described in a single previous publication or
5 patent that predates the claimed invention. In patent law, these previous devices, methods,
6 publications or patents are called “prior art references.” If a patent claim is not new we say it is
7 “anticipated” by a prior art reference.

8 The description in the written reference does not have to be in the same words as the claim,
9 but all of the requirements of the claim must be there, either stated or necessarily implied, so that
10 someone of ordinary skill in the field of computer liquid cooling systems looking at that one
11 reference would be able to make and use the claimed invention.

12 A party asserting invalidity can show that a patent claim was not new if the claimed
13 invention was already patented or described in a printed publication anywhere in the world before
14 the following dates:

- 15 • The '362 Patent: November 7, 2003.
 - 16 • The '764 Patent: May 6, 2005.
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**FINAL INSTRUCTION NO. 22 RE
OBVIOUSNESS**

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2 Not all innovations are patentable. A patent claim is invalid if the claimed invention would
3 have been obvious to a person of ordinary skill in the field at the time the application was filed. The
4 court, however, is charged with the responsibility of making the determination as to whether a patent
5 claim was obvious based upon your determination of several factual questions.

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

- 9 (1) the levels of education and experience of persons working in the field;
10 (2) the types of problems encountered in the field; and
11 (3) the sophistication of the technology.

12 Asetek contends that the level of ordinary skill in the field was someone who has completed
13 college level course work in thermodynamics, fluid mechanics, and heat transfer, and would have
14 two or more years of experience in designing liquid cooling systems for computers.

15 CMI USA contends that the level of ordinary skill in the field was someone who has
16 completed several college level classes covering thermal and conductive properties of materials and
17 fundamental mechanical engineering component design, or has several years of hands-on industry
18 experience working with liquid cooling devices for computers or very similar technology. One with
19 a more advanced degree may have had less practical experience.

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

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

26 Finally, you must determine which, if any, of the following factors have been established by
27 the evidence:

- 28 (1) commercial success of a product due to the merits of the claimed invention;

- 1 (2) a long felt need for the solution provided by the claimed invention;
- 2 (3) unsuccessful attempts by others to find the solution provided by the claimed
- 3 invention;
- 4 (4) copying of the claimed invention by others;
- 5 (5) unexpected and superior results from the claimed invention;
- 6 (6) acceptance by others of the claimed invention as shown by praise from others in the
- 7 field or from the licensing of the claimed invention;
- 8 (7) other evidence tending to show non-obviousness; and
- 9 (8) other evidence tending to show obviousness.

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**FINAL INSTRUCTION NO. 23 RE
DAMAGES – BURDEN OF PROOF**

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2 I will instruct you about the measure of damages. CMI USA has stipulated to infringement
3 of the asserted claims of the '764 patent, and I have ruled as a matter of law that claim 4 of the '764
4 patent is not anticipated, but otherwise, it is for you to determine whether any asserted claim of the
5 '362 patent has been infringed or whether any other asserted claim of the '764 is anticipated. Other
6 than what I have just stated with respect to claim 4 of the '764 patent, by instructing you on
7 damages, I am not suggesting which party should win on any other issue, including whether claim 4
8 is obvious to a person of ordinary skill and how you should respond to questions 7(a), (b), (c), and
9 (d) on the verdict form.

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

16 Asetek has the burden to persuade you of the amount of its damages. You should award only
17 those damages that Asetek more likely than not suffered. While Asetek is not required to prove its
18 damages with mathematical precision, it must prove them with reasonable certainty. Asetek is not
19 entitled to damages that are remote or speculative.
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**FINAL INSTRUCTION NO. 24 RE
REASONABLE ROYALTY – DEFINITION**

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

11 One way to calculate a royalty is to determine what is called an “ongoing royalty.” To
12 calculate an ongoing royalty, you must first determine the “base,” that is, the product on which the
13 infringer is to pay. You then need to multiply the revenue the defendant obtained from that base by
14 the “rate” or percentage that you find would have resulted from the hypothetical negotiation. For
15 example, if the patent covers a nail, and the nail sells for \$1, and the licensee sold 200 nails, the base
16 revenue would be \$200. If the rate you find would have resulted from the hypothetical negotiation is
17 1%, then the royalty would be \$2, or the rate of 0.01 times the base revenue of \$200. By contrast, if
18 you find the rate to be 5%, the royalty would be \$10, or the rate of 0.05 times the base revenue of
19 \$200. These numbers are only examples, and are not intended to suggest the appropriate royalty rate.

20 If the patent covers only part of the product that the infringer sells, then the base would
21 normally be only that feature or component. For example, if you find that for a \$100 car, the
22 patented feature is the tires which sell for \$5, the base revenue would be \$5. However, in a
23 circumstance in which the patented feature is the reason customers buy the whole product, the base
24 revenue could be the value of the whole product.

25 This is just an example of how a reasonable royalty might be determined. Whatever methodology
26 is employed to calculate damages, the reasonable royalty must reflect business realities to ensure that the
27 damages awarded are adequate to compensate the patent owner for the infringement. Accordingly, a
28 reasonable royalty rate need not be based solely on sales revenue. Instead, depending on the

1 circumstances, the parties to the hypothetical negotiation may base a reasonable royalty in whole or part
2 on other measures of value, including profits or non-monetary benefits. The testimony of experts may
3 assist you in determining not only the amount of damages that are adequate to compensate for the
4 infringement, but also how those damages should be estimated. But it is up to you, based on the
5 evidence, to decide the royalty that is appropriate in this case.

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**FINAL INSTRUCTION NO. 25 RE
DATE OF COMMENCEMENT - PRODUCTS**

Damages that Asetek may be awarded by you commence on the date that CMI USA has both infringed and been notified of the patent being infringed.

Asetek and CMI USA agree that date was November 28, 2012.

1 **FINAL INSTRUCTION NO. 26 RE**
2 **CALCULATING DAMAGES IN CASES OF CONTRIBUTORY INFRINGEMENT**

3 In order to recover damages for contributory infringement, Asetek must prove either that an
4 accused CMI USA product is an important component that has no practical use other than use an
5 infringing manner, or prove acts of direct infringement by others to which CMI USA made a
6 substantial contribution.

7 More specifically, Asetek may recover damages for contributory infringement if:

8 (1) Asetek proves that use of an accused CMI USA product has no practical use other
9 than use in a manner that infringes the '362 patent; or

10 (2) Asetek proves direct infringement by a category of users to which CMI USA made a
11 substantial contribution, and seeks damages from that entire category.

12 Asetek may prove either of these by circumstantial evidence. Damages for contributory
13 infringement are not limited to any proven number instances of actual infringing use, nor are they
14 limited to specific instances of infringement proven with direct evidence.

**FINAL INSTRUCTION NO. 27 RE
DUTY TO DELIBERATE**

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2 When you begin your deliberations, you should elect one member of the jury as your
3 presiding juror. That person will preside over the deliberations and speak for you here in court.

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

6 Each of you must decide the case for yourself, but you should do so only after you have
7 considered all of the evidence, discussed it fully with the other jurors, and listened to the views of
8 your fellow jurors.

9 You should use your common sense in weighing the evidence. Consider it in light of your
10 everyday experience with people and events, and give it whatever weight you believe it deserves.

11 Do not hesitate to change your opinion if the discussion persuades you that you should. Do
12 not come to a decision simply because other jurors think it is right.

13 It is important that you attempt to reach a unanimous verdict but, of course, only if each of
14 you can do so after having made your own conscientious decision. Do not change an honest belief
15 about the weight and effect of the evidence simply to reach a verdict.
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**FINAL INSTRUCTION NO. 28 RE
CONSIDERATION OF EVIDENCE – CONDUCT OF THE JURY**

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2 Because you must base your verdict only on the evidence received in the case and on these
3 instructions, I remind you that you must not be exposed to any other information about the case or to
4 the issues it involves. Except for discussing the case with your fellow jurors during your
5 deliberations:

6 Do not communicate with anyone in any way and do not let anyone else communicate with
7 you in any way about the merits of the case or anything to do with it. This includes discussing the
8 case in person, in writing, by phone or electronic means, via email, text messaging, or any Internet
9 chat room, blog, website or other feature. This applies to communicating with your family members,
10 your employer, the media or press, and the people involved in the trial. If you are asked or
11 approached in any way about your jury service or anything about this case, you must respond that
12 you have been ordered not to discuss the matter and to report the contact to the court.

13 Do not read, watch, or listen to any news or media accounts or commentary about the case or
14 anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet
15 or using other reference materials; and do not make any investigation or in any other way try to learn
16 about the case on your own.

17 The law requires these restrictions to ensure the parties have a fair trial based on the same
18 evidence that each party has had an opportunity to address. A juror who violates these restrictions
19 jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire
20 trial process to start over. If any juror is exposed to any outside information, please notify the court
21 immediately.

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**FINAL INSTRUCTION NO. 29 RE
COMMUNICATION WITH THE COURT**

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If it becomes necessary during your deliberations to communicate with me, you may send a note through the marshal, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

**FINAL INSTRUCTION NO. 30 RE
RETURN OF VERDICT**

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A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your presiding juror will fill in the form that has been given to you, sign and date it, and advise the court that you are ready to return to the courtroom.