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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FRANCE TELECOM S.A.,  
Plaintiff,  
v.  
MARVELL SEMICONDUCTOR INC.,  
Defendant.

Case No. 12-cv-04967-WHO

**ORDER REGARDING TENTATIVE  
FINAL JURY INSTRUCTIONS**

Re: Dkt. No. 188

The parties have filed proposed opening and final jury instructions. Dkt. No. 188. I previously issued an order regarding the opening instructions. *See* Dkt. No. 207. The parties agree on proposed final jury instructions 1-20, 22, 31, 39, and 46. The parties disagree on the remaining final jury instructions. Subject to any argument offered by the parties at the final pretrial conference, the Court intends to adopt the versions of the disputed final jury instructions listed below.

Per my prior order on the parties' motions *in limine*, France Telecom is precluded from presenting testimony, argument, or evidence on the doctrine of equivalents. *See* Dkt. No. 213 at 5-8. Accordingly, the jury will not be instructed on the doctrine of equivalents in either the preliminary or final jury instructions.

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<sup>1</sup> The instructions are numbered according to the numbers assigned by the parties in their joint submission. If necessary, the instructions will be renumbered to correct for any gaps resulting from instructions not given or given in a different order than what was requested.

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**FINAL JURY INSTRUCTION NO. 21**

**SUMMARY OF CONTENTIONS**

I will now again summarize for you each side’s contentions in this case. I will then tell you what each side must prove to win on each of its contentions.

As I previously told you, France Telecom seeks money damages from Marvell Semiconductor for allegedly infringing the ‘747 patent by using a method within the United States that France Telecom argues are covered by claims 1 and 10 of the patent. These are the asserted claims of the ‘747 patent. France Telecom also argues that Marvell Semiconductor has actively induced infringement of these claims of the ‘747 patent by others and contributed to the infringement of these claims of the ‘747 patent by others. The methods that are alleged to infringe are turbo coding methods used for channel coding by certain Marvell Semiconductor communication processor chips that are incorporated into third party devices such as smart phones.

Marvell Semiconductor denies that it has infringed the asserted claims of the ‘747 patent and argues that, in addition, the asserted claims are invalid. Invalidity is a defense to infringement. Marvell Semiconductor also contends that France Telecom unreasonably and inexcusably delayed in filing this lawsuit, and in doing so prejudiced Marvell Semiconductor. This defense is known as laches.

Your job is to decide whether the asserted claims of the ‘747 patent have been infringed and whether any of the asserted claims of the ‘747 patent are invalid. If you decide that any claim of the patent has been infringed and is not invalid, you will then need to decide any money damages to be awarded to France Telecom to compensate it for the infringement. You will also need to make a finding as to whether the infringement was willful. If you decide that any infringement was willful, that decision should not affect any damage award you give. I will take willfulness into account later. Finally, you will also be asked to make a finding as to whether France Telecom unreasonably and inexcusably delayed in filing this lawsuit and in doing so prejudiced Marvell Semiconductor.

**Court’s analysis:**

The Court adopts Marvell’s proposed instruction. This instruction closely follows the Model Patent Jury Instructions for the Northern District of California. As discussed in my order regarding the opening jury instructions, France Telecom’s proposed instruction recites an improper standard for infringement of method claims.

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