

EXHIBIT A-2

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ACCELERATION BAY LLC,) C.A. No. 16-453 (RGA)
)
Plaintiff,)
)
v.)
)
ACTIVISION BLIZZARD, INC.,)
)
Defendant.)
_____)

FINAL JURY INSTRUCTIONS

1. INTRODUCTION¹

Members of the jury, now it is time for me to instruct you about the law that you must follow in deciding this case.

Each of you has been provided a copy of these instructions. If you prefer, you may read along as I deliver them; however, I would encourage you to focus your attention on me while the instructions are being read. You will be able to take your copies with you into your deliberations and refer to them at any time, if necessary.

I will start by explaining your duties and the general rules that apply in every civil case. Then I will explain some rules that you must use in evaluating particular testimony and evidence. Then I will explain the positions of the parties and the law you will apply in this case. And last, I will explain the rules that you must follow during your deliberations in the jury room, and the possible verdicts that you may return.

Please listen very carefully to everything I say. Some of these instructions are similar to those I read at the beginning of trial. But it may be helpful to hear them again as a refresher.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law but must consider the instructions as a whole. You should not be concerned with the wisdom of any rule that I state. Regardless of any opinion that you may have as to what the law may be—or ought to be—it would violate your sworn duty to base a verdict upon any view of the law other than that which I give you.

You will have a written copy of these instructions with you in the jury room for your reference during your deliberations. You will also have a verdict form, which will list the questions that you must answer to decide this case.

¹ 1993 Delaware Instructions; *AVM Techs., LLC v. Intel Corp.*, C.A. No. 15-33-RGA-MPT, D.I. 707 (Proposed Jury Instructions) (D. Del. May 6, 2017) (“AVM 2”); *D&M Holdings Inc. d/b/a The D+M Group and D&M Holdings U.S. Inc v. Sonos, Inc.*, C.A. No. 16-141 (RGA), D.I. 304 (Proposed Jury Instructions) (D. Del. Feb. 20, 2018) (“D&M”).

2. JURORS' DUTIES²

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you saw and heard here in court. Deciding what the facts are is your job, not mine, and nothing that I have said or done during this trial was meant to influence your decision about the facts in any way.

Your second duty is to take the law that I give you, apply it to the facts, and decide which party should prevail on the issues presented. I will instruct you about the burden of proof shortly. It is my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial, and these instructions. All the instructions are important, and you should consider them together as a whole.

Perform these duties fairly. Do not let any bias, sympathy, or prejudice that you may feel toward one side or the other influence your decision in any way.

² AVM 2; D&M; 1993 Delaware Instructions.

3. **BURDENS OF PROOF**³

Acceleration Bay has the burden of proving patent infringement by what is called a preponderance of the evidence. That means Acceleration Bay has to produce evidence which, when considered in light of all of the facts, leads you to believe that what Acceleration Bay claims is more likely true than not. To put it differently, if you were to put the plaintiff's and the defendant's evidence on the opposite sides of a scale, the evidence supporting the plaintiff's claims would have to make the scales tip somewhat on his side.

In this case, Activision contends that the Asserted Patents are invalid. Activision has the burden of proving invalidity by clear and convincing evidence. Clear and convincing evidence is evidence that produces an abiding conviction that the truth of a factual contention is highly probable. Proof by clear and convincing evidence is thus a higher burden than proof by a preponderance of the evidence.

Those of you who are familiar with criminal cases will have heard the term "proof beyond a reasonable doubt." That burden does not apply in a civil case and you should, therefore, put it out of your mind in considering whether or not the plaintiff or defendant has met its burden of proof.

³ AVM 2; D&M; 1993 Delaware Instructions.

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