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PROCEEDINGS

(Proceedings commenced in the courtroom beginning at 9:25 a.m.)

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THE COURT: All right. We made changes. We did not make the stylistic changes you requested, but I believe we made the important substantive changes that you requested in the jury instructions. Go ahead and take a minute to look those over, although at this point we've made copies for the jury, so hopefully we're okay.

The only issues I want to discuss at this point are issues that have to do with the opening statements. If it does not have to do with the opening statements, we will stop as soon as all the jurors show up. We've got one juror. I don't want to hold them up for issues that don't necessarily have to be addressed right away.

Yes, sir?

MR. HANNEMANN: Your Honor, Mark Hannemann for plaintiff, Bosch.

Just one question on the edits to the preliminary jury instructions.

The Court deleted, at Pylon's request, the instruction that the Court had originally written that the '947 patent had been found to be infringed. That's a



determination that's in the case and I think we need to tell 1 2 the jury that for context so that they understand why there 3 are three patents, but we're only talking about infringement 4 of two of them. 5 THE COURT: You can. I just chose not to. 6 MR. HANNEMANN: But I'm allowed to mention that? 7 That's all I wanted to clarify, your Honor. 8 And then there was one, I think, agreed issue. 9 The Court's order recently issued, Docket No. 290, talked 10 about allowing Swanepoel to testify and allowing theories on derivation relating to the '905 patent and '434 patent as 11 well as the '947. I think that was text that came out of 12 1.3 our motion in limine that was filed before the summary 14 I think probably what the Court intended was just 15 to talk about the '947 patent there. That's agreed by both 16 side. 17 THE COURT: All right. Thank you. 18 MR. HANNEMANN: Thank you, your Honor. 19 THE COURT: All right. Any issues from counsel 20 for Pylon? MR. HILLYER: Your Honor, just briefly 21 22 responding to Mr. Hannemann's point about mentioning the 23 infringement of the '947 patent. We had submitted some authority in our footnote 24 25 to the Court which was pursuant to the motion in limine



which was made in that case on the ground of unfair prejudice to preclude any mention of it, and we ask the Court to preclude them from getting into it, the lack of relevance, the extreme potential prejudice, informing the jury of the fact it's not an issue.

THE COURT: Well, if there's not extreme

prejudice, it seems to me as though a mention that infringement is not at issue for the '947 is fine. If you want me to mention it once to set the table, that's fine. If you want me to do it, you're the one that suggested I didn't do it. It has to be mentioned someplace.

MR. HILLYER: Just for purposes of being clear, are you permitting them to say infringement of the '947 is not an issue in this case?

THE COURT: That is what should be said as opposed to -- well, I think that's what we've said in the past.

MR. HILLYER: Okay. Thank you. That was my point of clarification. Thank you.

MR. HORWITZ: Your Honor, I know this came up in a slightly different context in our last trial, where the parties had agreed that there was infringement. For the jury to understand why they're being asked to discuss the invalidity, they have to know that there has been some determination whether it is among the parties or from the



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