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- VOLUME B -

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

- - -

ROBERT BOSCH LLC, : CIVIL ACTION
 :
 Plaintiff, :
 :
 vs. :
 :
 PYLON MANUFACTURING :
 CORPORATION, :
 :
 Defendant. : NO. 08-542 (SLR)

- - -

Wilmington, Delaware
Thursday, April 15, 2010
9:25 o'clock, a.m.

- - -

BEFORE: HONORABLE SUE L. ROBINSON, U.S.D.C.J., and a jury

- - -

APPEARANCES:

POTTER, ANDERSON & CORROON
BY: RICHARD L. HORWITZ, ESQ.

-and-

Valerie J. Gunning
Kevin Maurer
Official Court Reporters

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APPEARANCES (Continued):

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BY: JEFFREY S. GINSBERG, ESQ. and
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FELDMAN GALE, P.A.
BY: GREGORY L. HILLYER, ESQ.,
JEFFREY FELDMAN, ESQ. and
JAVIER SOBRADO, ESQ.
(Bethesda, Maryland)

Counsel for Defendant

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P R O C E E D I N G S

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

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

1 determination that's in the case and I think we need to tell
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
11 derivation relating to the '905 patent and '434 patent as
12 well as the '947. I think that was text that came out of
13 our motion in limine that was filed before the summary
14 judgment. 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?

21 MR. HILLYER: Your Honor, just briefly
22 responding to Mr. Hannemann's point about mentioning the
23 infringement of the '947 patent.

24 We had submitted some authority in our footnote
25 to the Court which was pursuant to the motion in limine

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

6 THE COURT: Well, if there's not extreme
7 prejudice, it seems to me as though a mention that
8 infringement is not at issue for the '947 is fine. If you
9 want me to mention it once to set the table, that's fine.
10 If you want me to do it, you're the one that suggested I
11 didn't do it. It has to be mentioned someplace.

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

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

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

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

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