

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

AGIS SOFTWARE DEVELOPMENT, LLC	§	CASE NO. 2:17-cv-514-JRG
	§	(Lead Case)
Plaintiff,	§	
	§	
v.	§	JURY TRIAL DEMANDED
	§	
HTC CORPORATION, et al.	§	
	§	
Defendant.	§	

AGIS SOFTWARE DEVELOPMENT, LLC	§	CASE NO. 2:17-CV-515-JRG
	§	(Member Case)
	§	
Plaintiff,	§	JURY TRIAL DEMANDED
	§	
LG ELECTRONICS INC.	§	
	§	
Defendant.	§	

**LG ELECTRONICS INC.’S PROPOSED PRELIMINARY JURY INSTRUCTIONS AND
PROPOSED FINAL JURY INSTRUCTIONS**

Pursuant to the 4th Amended Docket Control Order (D.I. 141) and Joint Motion to Amend Docket Control Order (D.I. 171), Defendant LG Electronics Inc. hereby submits to the Court its Proposed Preliminary Jury Instruction and Proposed Final Jury Instructions. The parties will continue to meet and confer to attempt to reach further agreement regarding their competing versions of these filings and limit the areas of dispute for the Court. Defendant reserves the right to amend, supplement, or otherwise modify any of these materials leading up to and during trial. Defendant does not waive any objections relating to the court’s claim construction order and expressly preserves any arguments in its claim construction briefing. (*See* Case No. 17-cv-00513, D.I. 174, 175, 194, 205; Case No. 17-cv-00514, D.I. 93.) By providing

these proposed instructions, Defendant does not waive any argument and reserves its rights to contend that an issue is not properly part of the case and/or should go to the jury.

Dated: February 19, 2019

Respectfully submitted,

By: /s/ Michael Berta

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic services are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on February 19, 2019.

/s/ Michael Berta

Preliminary Jury Instructions

I. General Preliminary Instructions¹

I now have some preliminary instructions that I want to give you before we start with the opening statements from the attorneys and then get on to the evidence.

You have now been sworn as the jurors in this case. As the jury, you are the judges of the facts, and as such, you will decide and determine all facts in this case. As the Judge, I will give you instructions on the law, decide any questions of law that arise during the trial, handle matters regarding evidence and procedure. And I'm also responsible for the management of the flow of the trial and the maintenance of the decorum of the Court. At the end of the evidence, I'll give you detailed instructions about the law to apply in deciding this case, and I'll give you a list of questions that you are then to answer. This list of questions is called the verdict form. Your answers to the questions will need to be unanimous, and those answers will constitute the verdict in this case.

II. What A Patent Is and How One Is Obtained²

This case involves a dispute over four United States patents. Before summarizing the positions of the parties and the legal issues involved in the dispute, I want to explain what a patent is and how one is obtained. The United States Constitution grants Congress the powers to enact laws "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Using this power, Congress enacted the patent laws.

¹ Adapted from *Hitachi Consumer Elecs. v. Top Victory Elecs.*, No. 2:10-cv-260-JRG, Jury Instructions Dkt. 343, Tr. at 24-25 (April 8, 2013).

² Nat'l Jury Instruction Project, *Model Patent Jury Instructions*, (June 17, 2009), Instruction No. 1.1; *Ambato Media, LLC v. Clarion Co., Ltd. et. al.*, 2:09-CV-242-JRG, Final Preliminary Jury Instructions, Dkt. 373 at 2-4 (July 6, 2012).

Patents are granted by the United States Patent and Trademark Office (sometimes called “the PTO”). A valid United States patent gives the patent holder certain rights for up to 20 years from the date the patent application was filed. The patent holder may prevent others from making, using, offering to sell, or selling the patented invention within the United States, or from importing it into the United States without the patent holder’s permission. A violation of the patent holder’s rights is called infringement. The patent holder may try to enforce a patent against persons believed to be infringers by a lawsuit filed in federal court.

The process of obtaining a patent is called patent prosecution. To obtain a patent, one must file an application with the PTO. The PTO is an agency of the federal government and employs examiners who review applications for patents. The application includes a section called the “specification,” which must contain a written description of the claimed invention telling what the invention is, how it works, and how to make and use it, in such full, clear, concise, and exact terms so that others skilled in the field will know how to make and use it. The specification concludes with one or more numbered sentences. These are the patent “claims.” If the patent is eventually granted by the PTO, the claims define the boundaries of its protection and give notice to the public of those boundaries. Claims can be independent or dependent. An independent claim is self-contained. A dependent claim refers back to an earlier claim and includes the requirements of the earlier claim.

After the applicant files a patent application, a PTO patent examiner reviews it to determine whether the claims are patentable and whether the specification adequately describes the invention claimed. In examining a patent application, the patent examiner may review certain information about the state of the technology at the time the application was filed. The PTO patent examiner may search for and review information that is publicly available or that is

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