UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

RAI STRATEGIC HOLDINGS, INC. AND R.J. REYNOLDS VAPOR COMPANY Plaintiffs and Counterclaim Defendants, v. ALTRIA CLIENT SERVICES LLC; PHILIP MORRIS USA INC.; and PHILIP MORRIS PRODUCTS S.A. Defendants and Counterclaim Plaintiffs.	Case No. 1:20-cv-00393-LO-TCB

REYNOLDS'S ADDITIONAL PROPOSED FINAL JURY INSTRUCTIONS

20. Direct Infringement

To determine whether there has been an act of direct infringement, you must compare the accused product with each asserted claim.

Direct infringement of an asserted claim occurs when the patent holder proves by a preponderance of the evidence that an accused product includes all the elements of that claim. If an accused product did not contain one or more elements recited in a claim, that product does not infringe that claim.

A party can directly infringe a patent without knowing of the patent or without knowing that the party's conduct constitutes patent infringement.

For dependent claims, if you find that a claim to which a dependent claim refers is not infringed, there cannot be infringement of that dependent claim. On the other hand, if you find that an independent claim has been infringed, you must still decide, separately, whether the product meets the additional requirements of any claims that depend from the independent claim to determine whether those dependent claims have also been infringed. A dependent claim includes all the requirements of any of the claims to which it refers plus additional requirements of its own.

Authorities:

TecSec, Inc. v. Adobe, Inc., No. 10-cv-115, Dkt. 1351 at 24 (E.D. Va. Dec. 19, 2018) (as modified to fit the facts of this case); AIPLA Model Instruction No. V.3.1 (as modified to fit the facts of this case); *FCBA Model Patent Jury Instructions, No. 3.1a (2020)*; 35 U.S.C. § 271(a); *Commil USA, LLC v. Cisco Sys., Inc.*, 135 S. Ct. 1920 (2015); *Medtronic, Inc. v. Mirowski Family Ventures, LLC*, 571 U.S. 191 (2014); *Global-Tech Appliances, Inc. v. SEB, S.A.*, 563 U.S. 754, 760-61 n.2 (2011); *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 35 (1997); *SmithKline Diagnostics, Inc. v. Helena Labs. Corp.*, 859 F.2d 878, 889 (Fed. Cir. 1988).

47. Damages – Lump Sum vs. Running Royalty

A reasonable royalty can be paid either in the form of a one-time lump sum payment or as a "running royalty." Either method is designed to compensate the patent holder based on the infringer's use of the patented technology. It is up to you, based on the evidence, to decide what type of royalty is appropriate in this case. Certain fundamental differences exist between lump-sum agreements and running-royalty agreements.

Reasonable royalty awards can take the form of a lump sum payment. A lump sum payment is equal to an amount that the alleged infringer would have paid at the time of a hypothetical negotiation for a license covering all sales of the licensed product, both past and future. When a lump sum is paid, the infringer pays a single price for a license covering both past and future infringing sales.

Reasonable royalty awards may also take the form of a running royalty based on the revenue from or the volume of sales of licensed products. A running royalty can be calculated, for example, by multiplying a royalty base by a royalty rate, or by multiplying the number of infringing products or product units sold by a royalty amount per unit.

Authorities:

FCBA Model Patent Jury Instructions, No. 5.7 (2020); *Enplas Display Device Corp. v. Seoul Semiconductor Co., Ltd.*, 909 F.3d 398, 410 (Fed. Cir. 2018).