IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TOSHIBA CORPORATION,

Plaintiff,

v.

IMATION CORP., *et al.*,

Defendants.

INTRODUCTORY JURY INSTRUCTIONS

09-cv-305-slc

March 27, 2013 court draft

I. INTRODUCTORY JURY INSTRUCTIONS

We are about to begin the trial of the case. Before it begins, I will give you some instructions to help you understand how the trial will proceed, how you should evaluate the evidence, and how you should conduct yourselves during the trial.

The party who begins the lawsuit is called the plaintiff. In this action, the plaintiff is Toshiba Corporation, which we will usually refer to as "Toshiba." The parties against whom the suit is brought are called the defendants. In this action, the defendants are:

- Imation Corp.
- Moser Baer India, Ltd., which the parties may refer to as "MBI."
- Glyphics Media, Inc.
- CMC Magnetics Corp.
- Hotan Corp.
- KHypermedia Corp.
- Ritek Corp.
- Advanced Media, Inc., which the parties may refer to as "AMI."

This is a patent case. It involves U.S. Patent numbers 5,892,751 and 5,831,966. Patents often are referred to by their last three digits, so we will be calling these patents the '751 patent and the '966 patent. These two patents are what we call the "patents-in-suit" in this case.

The '751 patent concerns optical disks with a certain lead-in area, data area, lead-out area, and a certain test pattern written on them. The '966 patent concerns recording media containing certain information identifying the structure of the recording media. During the trial, the parties will present evidence to familiarize you with the technology.

Plaintiff contends that the defendants directly infringed, induced others' infringement, and/or contributed to the infringement of these patents-in-suit by making, using or selling certain types of recordable and rewritable DVD discs. Plaintiff contends it is entitled to recover damages caused by this infringement.

The defendants deny these allegations and contend that they are not liable and that the patents-in-suit are invalid and unenforceable.

I will explain these contentions to you in further detail later in these instructions.

Now, I will explain how this case will proceed:

First, One of plaintiff's lawyers will make an opening statement outlining plaintiff's case. Immediately after plaintiff's statement, one of the defendants' lawyers will make an opening statement outlining defendants' case. What is said in opening statements is not evidence; it is simply a guide to help you understand what each party expects the evidence to show.

Second, after the opening statements, plaintiff will introduce evidence in support of its claim. At the conclusion of the plaintiff's case, defendants may introduce evidence. Defendants are not required to introduce any evidence or to call any witnesses. If defendants introduce evidence, plaintiff may then introduce rebuttal evidence.

Third, after the evidence is presented, the parties will make closing arguments explaining what they believe the evidence has shown and what inferences you should draw from the evidence. What is said in closing argument is not evidence. Plaintiff has the right to give the first closing argument and to make a short rebuttal argument after defendants' closing argument.

Fourth, I will instruct you on the law that you are to apply in reaching your verdict.

Fifth, you will retire to the jury room and begin your deliberations.

The trial day usually will run from about 9:00 a.m. until 5:00 p.m. Usually we will take a morning break, a lunch break and an afternoon break.

During recesses you should keep in mind the following instructions:

First, do not discuss the case either among yourselves or with anyone else during the course of the trial. The parties to this lawsuit have a right to expect from you that you will keep an open mind throughout the trial. You should not reach a conclusion until you have heard all of the evidence and you have heard the lawyers' closing arguments and my instructions to you on the law, and have retired to deliberate with the other members of the jury. I must warn you, in particular, against commenting about the trial by means of an e-mail, Facebook, Twitter, or a blog. There have been news accounts recently about cases that have had to be re-tried because a member of the jury communicated electronically about the case during the trial. You can imagine what this would mean in the cost of a re-trial, the inconvenience to your fellow jurors whose work would have gone for nothing and the stress experienced by the parties.

Second, do not permit any third person to discuss the case in your presence. If anyone tries to talk to you despite your telling him not to, report that fact to the court as soon as you are able. Do not discuss the event with your fellow jurors or discuss with them any other fact that you believe you should bring to the attention of the court.

Third, although it is a normal human tendency to converse with people with whom one is thrown in contact, please do not talk to any of the parties or their attorneys or witnesses. By this I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all parties be assured of the absolute impartiality they are entitled to expect from you as jurors.

Fourth, do not read about the case in the newspapers, or listen to radio or television broadcasts about the trial. If a newspaper headline catches your eye, do not examine the article further. Media accounts may be inaccurate and may contain matters that are not proper for your consideration. You must base your verdict solely on the evidence produced in court.

Fifth, no matter how interested you may become in the facts of the case, you must not do any independent research, investigation or experimentation. Do not look up materials on the internet or in other sources. Again, you must base your verdict solely on the evidence produced in court.

Notetaking

If you want to take notes, there are notepads and pencils for taking notes next to the jury bench. This does not mean you have to take notes; take them only if you want to and if you think they will help you to recall the evidence during your deliberations. Do not let notetaking interfere with your important duties of listening carefully to all of the evidence and of evaluating the credibility of the witnesses. Keep in mind that just because you have written something down it does not mean that the written note is more accurate than another juror's mental recollection of the same thing. No one of you is the "secretary" for the jury, charged with the responsibility of recording evidence. Each of you is responsible for recalling the testimony and other evidence.

Although you can see that the trial is being reported, you should not expect to be able to use trial transcripts in your deliberations. You will have to rely on your own memories.

Objections

During the trial, you will hear the parties and the lawyers make objections to certain questions or to certain answers of the witnesses. When they do so, it is because they believe the question or answer is legally improper and they want me to rule on it. Do not try to guess why the objection is being made or what the answer would have been if the witness had been allowed to answer it.

If I tell you not to consider a particular statement that has already been made, put that statement out of your mind and remember that you may not refer to it during your deliberations.

Questions

During the trial, I might ask witnesses questions. Do not assume from this that I have any opinion about the subject matter of my questions.

If you wish to ask a question about something you do not understand, write it down on a separate slip of paper. If, when the lawyers have finished all of their questioning of the witness, the question is still unanswered to your satisfaction, raise your hand, and I will take the written question from you, show it to counsel, and decide whether it is a question that can be asked. If it cannot, I will tell you that. I will try to remember to ask about questions after each witness has testified.

Bench Conferences

At times during the trial it may be necessary for me to talk with the lawyers here at the bench out of your hearing, or by calling a recess. We meet because often during a trial something comes up that doesn't involve the jury.

We will, of course, do what we can to keep the number and length of these conferences to a minimum, but you should remember the importance of the matter you are here to determine and should be patient even though the case may seem to go slowly.

Burden of Proof

You will hear the term "burden of proof" used during this trial. In simple terms, the phrase "burden of proof" means that the party who makes a claim has the obligation of proving that claim. At the end of the trial, I will instruct you on the proper burden of proof to be applied in this case.

Evidence

Evidence at a trial includes the sworn testimony of the witnesses, exhibits admitted into the record, facts judicially noticed, and facts stipulated by counsel. You may consider only evidence that is admitted into the record.

In deciding the facts of this case, you are not to consider the following as evidence: statements and arguments of the lawyers, questions and objections of the lawyers, testimony that I instruct you to disregard, and anything you may see or hear when the court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

Evidence may be either direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness said or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction

between the weight to be given to either direct or circumstantial evidence. You are to decide how much weight to give any evidence.

Drawing Inferences

You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw from facts you find to have been proved such reasonable conclusions as seem justified in the light of your own experience and common sense.

Credibility of Witnesses

In deciding the facts, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, part of it, or none of it. In considering the testimony of any witness, you may take into account many factors, including the witness's opportunity and ability to see or hear or know the things the witness testified about; the quality of the witness's memory; the witness's appearance and manner while testifying; the witness's interest in the outcome of the case; any bias or prejudice the witness may have; other evidence that may have contradicted the witness's testimony; and the reasonableness of the witness's testimony in light of all the evidence. The weight of the evidence does not necessarily depend upon the number of witnesses who testify.

Impartiality of Jury

Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Translated Language

Languages other than English may be used during this trial. Witnesses who do not speak English or who are more proficient in another language testify through a sworn interpreter. You should consider only the evidence provided through the interpreter. Although some of you may know Japanese or Mandarin Chinese, it is important that all jurors consider the same evidence. Therefore, you must base your decision on the evidence presented in the English translation. You must not make any assumptions about a witness or a party based solely upon the use of an interpreter to assist that witness or party.

Contradictory or Impeaching Evidence

A witness may be discredited by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

If you believe any witness has been discredited, it is up to you to decide how much of the testimony of that witness you believe.

If a witness is shown to have given false testimony knowingly, that is, voluntarily and intentionally, about any important matter, you have a right to distrust the witness's testimony about other matters. You may reject all the testimony of that witness or you may choose to believe some or all of it.

The general rule is that if you find that a witness said something before the trial that is different from what the witness said at trial you are to consider the earlier statements only as an aid in evaluating the truthfulness of the witness's testimony at trial. You cannot consider as evidence in this trial what was said earlier before the trial began.

There is an exception to this general rule for witnesses who are the actual parties in the case, which includes the agents of a party that is a corporation. If you find that

any of the parties made statements before the trial began that are different from the statements they made at trial, you may consider as evidence in the case whichever statement you find more believable.

Another exception to the general rule is deposition testimony, which is explained in the next instruction.

Depositions

During trial the parties and lawyers may refer to and read from or play video clips of depositions. A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. You should give a witness's deposition testimony the same consideration and you should judge that testimony in the same way as if the witness had been present to testify in person.

Use of Discovery Responses of a Party

Evidence may be presented to you in the form of written answers of one of the parties to written discovery submitted by the other side. These answers were given in writing and under oath before this trial in response to written questions that were submitted under established court procedures.

You must give the answers the same consideration as if the answers were made from the witness stand.

Experts

A person's training and experience may make him or her a true expert in a technical field. The law allows that person to state an opinion here about matters in that particular field. It is up to you to decide whether you believe the expert's testimony and choose to rely upon it. Part of that decision will depend on your judgment about

whether the expert's background of training and experience is sufficient for him or her to give the expert opinion that you heard, and whether the expert's opinions are based on sound reasons, judgment, and information.

During the trial, an expert witness may be asked a question based on assumptions that certain facts are true and then asked for his or her opinion based upon that assumption. Such an opinion is of use to you only if the opinion is based on assumed facts that are proven later. If you find that the assumptions stated in the question have not been proven, then you should not give any weight to the answer the expert gave to the question.

Video on the Patent System

At this juncture, I will ask that you turn your attention to the monitors in the jury box so that you can watch a video that explains the basics of the U.S. patent system, the parts of a patent, and how a person obtains a patent. [*Court plays the video*.]