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

STI HOLDINGS, INC., f/k/a STOUGHTON TRAILERS, INC.,

Plaintiff,

v.

GREAT DANE LIMITED PARTNERSHIP,

Defendant.

JURY INSTRUCTIONS ON DAMAGES

09-cv-570-slc

DAMAGES

Now that you have heard the evidence and the arguments on the issue of damages, I will give you the instructions that will govern your deliberations in the jury room for this final phase of the trial. Again, it is my job to decide what rules of law apply to the case and to explain those rules to you. It is your job to follow the rules, even if you disagree with them or don't understand the reasons for them. You must follow all of the rules; you may not follow some and ignore others. All of the jury instructions that I gave you earlier in this case still apply to your deliberations and you may rely on them during this phase of the trial.

General

The damages portion of this case is being submitted to you in the form of a special verdict consisting of 1 question. In answering the question, you should consider only the evidence that has been received at this trial. Your decision on each question

must be unanimous. Your deliberations will be secret. You will never have to explain your verdict to anyone. If you have formed any idea that I have an opinion about this phase of the case, disregard that idea. It is your job, not mine, to decide how to answer the question on damages.

Stoughton has the burden of proving the amount of damages to which it is entitled by a preponderance of the evidence, which means it must prove that it is more probable than not that its version of the facts and analysis is correct when it comes to determining what amount is adequate to compensate Stoughton for the infringement.

Because determining damages involves the consideration of many different factors that cannot be measured precisely, Stoughton need not produce evidence of the proper amount of damages with mathematical precision. In determining the damages you must base your answer on evidence that reasonably supports your determination of damages under all of the circumstances of the case. You should award as damages the amount of money that you find fairly and reasonably compensates Stoughton for its injuries. You should not award damages that are remote or speculative.

Do not measure damages by what the lawyers ask for in their arguments. Their opinions as to what damages should be awarded should not influence you unless you find that their opinions are supported by the evidence. It is your job to determine the amount of the damages sustained from the evidence you have seen and heard. Examine that evidence carefully and impartially. Do not add to the damage award or subtract anything from it because of sympathy to one side or because of hostility to one side.

Value of Entire Product

When a product contains both patented and non-patented features, a plaintiff is entitled to recover damages based on the value of the entire product containing several features only if the patented features constitute the basis for customer demand. To recover damages based on the entire composite trailer, Stoughton must prove that customers purchased the product because of the patented features. You should consider whether there is evidence that the patented features are the basis for customer demand for the product as a whole. If you find that Stoughton has shown that the patented features are the basis of consumer demand for the product as a whole, then Stoughton is entitled to recover damages based on the entire product.

The Date that Damages Begin

The date that Stoughton first gave notice to Great Dane of its claim of patent infringement is the date on which patent damages begin to be calculated. The parties dispute the date on which Stoughton provided notice to Great Dane, so it is up to you to determine what that date is. Stoughton must prove by a preponderance of the evidence the date that it gave notice.

Stoughton can give notice in two ways. The first way is to give notice to the public in general. Stoughton can do this by placing the word "patent" or the

abbreviation "PAT" with the number of the patent on substantially all of the products it sold that included the patented invention. If you find that Stoughton provided this type of notice, then this notice is effective from the date that Stoughton began to mark substantially all of its products that use the patented invention with the patent number. If Stoughton did not mark substantially all of its products that use the patented invention with the patent number, then Stoughton did not provide notice in this way. In no event may you find that damages began any earlier than September 17, 2003.

A second way that Stoughton can provide notice of its patents is to communicate to Great Dane a specific charge that Great Dane's trailers infringed the '564 and '902 patents. This type of notice is effective from the date it is given. Here, that date would be the filing of the lawsuit. If you find that Stoughton, before filing this lawsuit, did not properly mark its products, then Stoughton can only recover damages for infringement that occurred after it sued Great Dane on September 17, 2009.

Reasonable Royalty

Stoughton is seeking damages in the amount of a reasonable royalty. The reasonable royalty is the minimum amount of damages that Stoughton may recover for infringement.

A royalty is a payment made to a patent holder in exchange for the right to make, use, or sell the claimed invention. A reasonable royalty is the amount of royalty

payment that a patent holder and the infringer would have agreed to in a hypothetical negotiation taking place at the time when the infringement first began. In considering this hypothetical negotiation, you should focus on what the expectations of Stoughton and Great Dane would have been had they entered into an agreement at that time.

To decide this question, you must assume that both parties to the hypothetical negotiation believe the patent is valid and infringed, act reasonably in their negotiations and are willing to enter into an agreement. Your role is to determine what that agreement would have been. You are to measure damages on the basis of the royalty that would have resulted from the hypothetical negotiation, not on what either party would have preferred the outcome to be.

In determining the reasonable royalty, you should consider all the facts known and available to the parties at the time the infringement began and other facts that may have affected the hypothetical negotiation. Some of the kinds of factors that you may consider in making your determination are:

- licensing practices in the relevant industry at the time;
- licensing history of the parties;
- licenses or offers to license the patents at issue in this case;
- licenses involving comparable patents;
- whether the patent holder had an established policy of granting licenses freely, under limited conditions, or not at all;

- the relationship between the patent holder and the licensee, such as whether they were competitors;

- the duration of the patent and the license, as well as the terms and scope of the license;

- the size of the anticipated market for the invention at the time the infringement began;

- the extent to which the infringer used the invention and any evidence probative of the value of such use;

- the established profitability of the patented product, its commercial success and its popularity at the time;

- the portion of the profits that should be credited to the invention as distinguished from nonpatented elements, the manufacturing process, business risks or significant features or improvements added by the infringer;

- alternatives to the patented technology and advantages provided by the patented technology relative to the alternatives;

- any actual profits the infringer made from products using the patented elements, to the extent those profits were foreseeable at the time infringement began;

- any other factor that a normally prudent businessperson would, under similar circumstances, take into consideration in negotiating the hypothetical license.

No one factor is dispositive and you can and should consider the evidence that has been presented to you in this case on each of these factors.

Communication with the Judge; Verdict

Once you are in the jury room, if you need to communicate with me, the presiding juror will send a written message to me. However, do not tell me how you stand as to your verdict.

As I have mentioned before, the decision you reach must be unanimous; you must all agree.

When you have reached a decision, the presiding juror will sign the verdict form, put a date on it, and all of you will return with the verdict into the court.