

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

AQUA CONNECT, INC. a Nevada corporation,
and STRATEGIC TECHNOLOGY PARTNERS,
LLC, a Nevada limited liability company,

Plaintiffs,

v.

TEAMVIEWER US, INC.,

Defendant.

C.A. No. 18-01572-MN

LEAD CASE

AQUA CONNECT, INC., a Nevada corporation,
and STRATEGIC TECHNOLOGY PARTNERS,
LLC, a Nevada limited liability company,

Plaintiffs,

v.

TEAMVIEWER GERMANY GMBH,

Defendant.

C.A. No. 19-2286-MN

JOINT PROPOSED FINAL JURY INSTRUCTIONS

Pursuant to Local Rules 51.1 and this Court's Scheduling Order (D.I. 23), the parties respectfully submit the following Joint Proposed Final Jury Instructions.

Dated: July 25, 2022

STAMOULIS & WEINBLATT LLC

/s/ Richard C. Weinblatt

Stamatios Stamoulis (DE Bar No. 4606)
Richard C. Weinblatt (DE Bar No. 5080)
800 N. West Street, Third Floor

Wilmington, DE 19809

DLA PIPER LLP (US)

/s/ Brian A. Biggs

Brian A. Biggs (DE Bar No. 5591)
Erin E. Larson (DE Bar No. 6616)
1201 North Market Street, Suite 2100
Wilmington, DE 19801
Tel: (302) 468-5700

Tel: (302) 999-1540
stamoulis@swdelaw.com
weinblatt@swdelaw.com

HATCH LAW, PC

Ryan E. Hatch (admitted pro hac vice)
13323 Washington Blvd., Suite 302
Los Angeles, CA 90066
Tel: 310-279-5076
ryan@hatchlaw.com

**GLASER WEIL FINK HOWARD
AVCHEN & SHAPIRO LLP**

Lawrence M. Hadley (admitted *pro hac vice*)
Stephen Underwood (admitted *pro hac vice*)
10250 Constellation Blvd., 19th Floor
Los Angeles, CA 90067
Tel: 310.553.3000
lhadley@glaserweil.com
sunderwood@glaserweil.com

*Attorneys for Plaintiff Aqua Connect, Inc.,
and Strategic Technology Partners, LLC*

brian.biggs@dlapiper.com
erin.larson@dlapiper.com

*Attorneys for TeamViewer TeamViewer
US, Inc. and TeamViewer Germany GmbH*

OF COUNSEL:

Michael Jay (admitted *Pro Hac Vice*)
DLA Piper LLP (US)
2000 Avenue of the Stars
Suite 400 North Tower
Los Angeles, California 90067-4704
Telephone: (310) 595-3000
Facsimile: (310) 595-3300
michael.jay@us.dlapiper.com

Paul Steadman (admitted *Pro Hac Vice*)
DLA PIPER LLP (US)
West Lake Street, Suite 900
Chicago, IL 60606-0089
Telephone: (312) 368-2135
Facsimile: (312) 251-2850
paul.steadman@us.dlapiper.com

William L. Bartow (admitted *Pro Hac Vice*)
DLA Piper LLP (US)
1650 Market Street, Suite 4900
Philadelphia, PA 19103
Telephone: (215) 665-3300
william.bartow@us.dlapiper.com

Gianni Minutoli (admitted *Pro Hac Vice*)
DLA PIPER LLP (US)
11911 Freedom Dr., Suite 300
Reston, VA 20190
Telephone: (703) 773-4045
Facsimile: (703) 773-5019
gianni.minutoli@us.dlapiper.com

Benjamin Mueller (admitted *Pro Hac Vice*)
DLA PIPER LLP (US)
444 West Lake Street, Suite 900
Chicago, IL 60606-0089
Telephone: (312) 368-4008
benjamin.mueller@us.dlapiper.com

*Attorneys for Defendants TeamViewer US,
Inc. and TeamViewer Germany GmbH*

TABLE OF CONTENTS

1. GENERAL INSTRUCTIONS 3

 1.1 INTRODUCTION 3

 1.2 JURORS’ DUTIES 4

 1.3 EVIDENCE DEFINED 5

 1.4 DIRECT AND CIRCUMSTANTIAL EVIDENCE 6

 1.5 CONSIDERATION OF EVIDENCE 7

 1.6 STATEMENTS OF COUNSEL 8

 1.7 CREDIBILITY OF WITNESSES 9

 1.8 EXPERT WITNESSES 10

 1.9 DEPOSITION TESTIMONY 11

 1.10 USE OF NOTES 12

 1.11 BURDENS OF PROOF 13

2. THE PARTIES AND THEIR CONTENTIONS 15

 2.1 THE PARTIES 15

 2.2 THE PARTIES’ CONTENTIONS 16

3. PATENT INFRINGEMENT CLAIMS 17

 3.1 THE PATENT LAWS 17

 3.2 CLAIM CONSTRUCTION 18

 3.3 PATENT INFRINGEMENT GENERALLY 19

 3.4 DIRECT INFRINGEMENT 20

 3.5 INDIRECT INFRINGEMENT—ACTIVE INDUCEMENT 21

 3.6 INDIRECT INFRINGEMENT—CONTRIBUTORY INFRINGEMENT 24

 3.7 WILLFUL INFRINGEMENT 27

4. PATENT EXHAUSTION 29

5. INVALIDITY 32

 5.1 INVALIDITY—BURDEN OF PROOF 32

 5.2 INVALIDITY—PERSPECTIVE OF ONE OF ORDINARY SKILL IN THE ART 33

 5.3 INVALIDITY—PRIOR ART 34

 5.4 INVALIDITY—[DEFENDANTS’ PROPOSAL: INVENTION [PLAINTIFFS’ PROPOSAL: EARLIEST PRIORITY] DATE 36

 5.5 INVALIDITY—ANTICIPATION 38

TABLE OF CONTENTS

(continued)

	Page
5.6 INVALIDITY—OBVIOUSNESS.....	40
6. DAMAGES.....	46
6.1 DAMAGES GENERALLY	46
6.2 DAMAGES--REASONABLE ROYALTY DEFINITION—USING THE “HYPOTHETICAL NEGOTIATION” METHOD	47
6.3 DAMAGES-- RELEVANT FACTORS UNDER THE HYPOTHETICAL NEGOTIATION METHOD	48
6.4 DAMAGES-- COMPARABLE AGREEMENTS	51
6.5 DAMAGES-- DATE OF COMMENCEMENT OF DAMAGES	53
6.6 DAMAGES-- ATTRIBUTION/APPORTIONMENT	54
6.7 DAMAGES – AVAILABILITY OF NON-INFRINGEMENT ALTERNATIVES.....	55
7. DELIBERATION AND VERDICT	57
7.1 INTRODUCTION	57
7.2 UNANIMOUS VERDICT.....	58
7.3 DUTY TO DELIBERATE	59
7.4 SOCIAL MEDIA	60
7.5 COURT HAS NO OPINION.....	61

1. GENERAL INSTRUCTIONS

1.1 INTRODUCTION

Members of the jury, now it is time for me to instruct you about the law that you must follow in deciding this case. Each of you has been provided a copy of these instructions. You may read along as I deliver them if you prefer.

I will start by explaining your duties and the general rules that apply in every civil case. Then I will explain some rules that you must use in evaluating particular testimony and evidence. Then I will explain the positions of the parties and the law you will apply in this case. And last, I will explain the rules that you must follow during your deliberations in the jury room, and the possible verdicts that you may return.

Please listen very carefully to everything I say.

You will have a written copy of these instructions with you in the jury room for your reference during your deliberations. You will also have a verdict form, which will list the questions that you must answer to decide this case.

Authority:

International Business Machines Corp. v. Groupon, Inc., C.A. No. 16-122-LPS, D.I. 386, Final Jury Instr. 1.1 (D. Del. 7/25/2018).

1.2 JURORS' DUTIES

You have two main duties as jurors. The first is to decide what the facts are from the evidence that you saw and heard in court. Deciding what the facts are is your job, not mine, and nothing that I have said or done during this trial was meant to influence your decision about the facts in any way. You are the sole judges of the facts.

Your second duty is to take the law that I give you, apply it to the facts, and decide under the appropriate burden of proof which party should prevail on any given issue. It is my job to instruct you about the law, and you are bound by the oath you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial, and these instructions. All of the instructions are important, and you should consider them together as a whole.

Perform these duties fairly. Do not guess or speculate, and do not let any bias, sympathy, or prejudice you may feel toward one side or the other influence your decision in any way.

Authority:

International Business Machines Corp. v. Groupon, Inc., C.A. No. 16-122-LPS, D.I. 386, Final Jury Instr. 1.2 (D. Del. 7/25/2018).

1.3 EVIDENCE DEFINED

You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying under oath, including deposition transcript testimony that has been played by video or read to you, the exhibits that I allowed into evidence, and the stipulations to which the lawyers agreed.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. The arguments of the lawyers are offered solely as an aid to help you in your determination of the facts. Their questions and objections are not evidence. My legal rulings are not evidence. You should not be influenced by a lawyer's objection or by my ruling on that objection. Any of my comments and questions are not evidence.

During the trial I may have not let you hear the answers to some of the questions that the lawyers asked. I also may have ruled that you could not see some of the exhibits that the lawyers wanted you to see. And, sometimes I may have ordered you to disregard things that you saw or heard, or that I struck from the record. You must completely ignore all of these things. Do not speculate about what a witness might have said or what an exhibit might have shown. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way. Make your decision based only on the evidence, as I have defined it here, and nothing else.

Authority:

International Business Machines Corp. v. Groupon, Inc., C.A. No. 16-122-LPS, D.I. 386, Final Jury Instr. 1.3 (D. Del. 7/25/2018).

1.4 DIRECT AND CIRCUMSTANTIAL EVIDENCE

During the preliminary instructions, I told you about “direct evidence” and “circumstantial evidence.” I will now remind you what each means.

Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believe him, that would be direct evidence that it was raining.

Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence.

The law makes no distinction between the weight that you should give to either one, nor does it say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

Authority:

International Business Machines Corp. v. Groupon, Inc., C.A. No. 16-122-LPS, D.I. 386, Final Jury Instr. 1.4 (D. Del. 7/25/2018).

1.5 CONSIDERATION OF EVIDENCE

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

Authority:

International Business Machines Corp. v. Groupon, Inc., C.A. No. 16-122-LPS, D.I. 386, Final Jury Instr. 1.5 (D. Del. 7/25/2018).

1.6 STATEMENTS OF COUNSEL

A further word about statements of counsel and arguments of counsel. The attorneys' statements and arguments are not evidence. Instead, their statements and arguments are intended to help you review the evidence presented.

If you remember the evidence differently from the way it was described by the attorneys, you should rely on your own recollection.

Authority:

International Business Machines Corp. v. Groupon, Inc., C.A. No. 16-122-LPS, D.I. 386, Final Jury Instr. 1.6 (D. Del. 7/25/2018).

1.7 CREDIBILITY OF WITNESSES

You are the sole judges of each witness's credibility. You may believe everything a witness says, or part of it, or none of it. You should consider each witness's means of knowledge; strength of memory; opportunity to observe; how reasonable or unreasonable the testimony is; whether it is consistent or inconsistent; whether it has been contradicted; the witness's biases, prejudices, or interests; the witnesses' manner or demeanor on the witness stand; and all circumstances that, according to the evidence, could affect the credibility of the testimony.

In determining the weight to give to the testimony of a witness, you should ask yourself whether there is evidence tending to prove that the witness testified falsely about some important fact or whether there was evidence that at some other time the witness said or did something, or failed to say or do something, that was different from the testimony he or she gave at the trial in person or by deposition testimony played by video or read to you. You have the right to distrust such witness's testimony and you may reject all or some of the testimony of that witness or give it such credibility as you may think it deserves.

Authority:

International Business Machines Corp. v. Groupon, Inc., C.A. No. 16-122-LPS, D.I. 386, Final Jury Instr. 1.7 (D. Del. 7/25/2018).

1.8 EXPERT WITNESSES

Expert testimony is testimony from a person who has a special skill or knowledge in some science, profession, or business. This skill or knowledge is not common to the average person but has been acquired by the expert through special study or experience.

In weighing expert testimony, you may consider the expert's qualifications, the reasons for the expert's opinions, and the reliability of the information supporting the expert's opinions, as well as the factors I have previously mentioned for weighing testimony of any other witness. Expert testimony should receive whatever weight and credit you think appropriate, given all the other evidence in the case.

Authority:

International Business Machines Corp. v. Groupon, Inc., C.A. No. 16-122-LPS, D.I. 386, Final Jury Instr. 1.8 (D. Del. 7/25/2018).

1.9 DEPOSITION TESTIMONY

During the trial, certain testimony was presented to you by the playing of video excerpts from a deposition. The deposition testimony may have been edited or cut to exclude irrelevant testimony as the parties have only a limited amount of time to present you with evidence. You should not attribute any significance to the fact that the deposition videos may appear to have been edited.

Deposition testimony is out of court testimony given under oath and is entitled to the same consideration you would give it had the witnesses personally appeared in court.

Authority:

International Business Machines Corp. v. Groupon, Inc., C.A. No. 16-122-LPS, D.I. 386, Final Jury Instr. 1.9 (D. Del. 7/25/2018).

1.10 USE OF NOTES

You may have taken notes during trial to assist your memory. As I instructed you at the beginning of the case, you should use caution in consulting your notes. There is generally a tendency I think to attach undue importance to matters which one has written down. Some testimony which is considered unimportant at the time presented, and thus not written down, takes on greater importance later in the trial in light of all the evidence presented. Therefore, your notes are only a tool to aid your own individual memory, and you should not compare notes with other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence, and are by no means a complete outline of the proceedings or a list of the highlights of the trial.

Above all, your memory should be the greatest asset when it comes time to deliberate and render a decision in this case.

Authority:

International Business Machines Corp. v. Groupon, Inc., C.A. No. 16-122-LPS, D.I. 386, Final Jury Instr. 1.12 (D. Del. 7/25/2018).

1.11 BURDENS OF PROOF

In any legal action, facts must be proven by a required standard of evidence, known as the “burden of proof.” In a patent case such as this, there are two different burdens of proof that are used. The first is called “preponderance of the evidence.” The second is called “clear and convincing evidence.” I told you about these two standards of proof during my preliminary instructions to you and I will now remind you what they mean.

Aqua Connect asserts that TeamViewer infringes the ’386 and ’502 patents. Aqua Connect also asserts that any patent infringement was willful. Aqua Connect seeks money damages for the asserted infringement.

Aqua Connect has the burden of proving its claims and the amount of its money damages by a “preponderance of the evidence.” That means Aqua Connect had to prove to you, in light of all the evidence, that what it claims is more likely true than not. To say it differently, if you were to put the evidence of Aqua Connect and the evidence of TeamViewer on opposite sides of a scale, the evidence supporting Aqua Connect’s claims would have to make the scales tip somewhat on its side in each instance. If the scale should remain equal or tip in favor of TeamViewer, you must find for TeamViewer.

[Defendants’ Proposal: Aqua Connect also had the burden to establish the amount of damages it seeks by a preponderance of the evidence.]

In addition to denying Aqua Connect’s claims that they infringe, TeamViewer asserts that the patents-in-suit are invalid. [Plaintiffs’ Proposal]: The patents-in-suit, however, are presumed to be valid based on the presumption that the United States Patent and Trademark Office acted correctly in issuing the patents.] TeamViewer has the burden of proving that the asserted claims are invalid and has to do so by clear and convincing evidence. Clear and convincing evidence is evidence that [Plaintiffs’ Proposal]: produces an abiding conviction that the truth of a factual

contention] [Defendants' Proposal: persuades you that what TeamViewer seeks to prove] is highly probable. Proof by clear and convincing evidence is, thus, a higher burden than proof by a preponderance of the evidence.

You may have heard of the “beyond a reasonable doubt” burden of proof from criminal cases. That requirement is the highest burden of proof. It does not apply to civil cases and, therefore, you should put it out of your mind.

Authority:

International Business Machines Corp. v. Groupon, Inc., C.A. No. 16-122-LPS, D.I. 386, Final Jury Instr. 1.13 (D. Del. 7/25/2018).

2. THE PARTIES AND THEIR CONTENTIONS

2.1 THE PARTIES

I will now review for you the parties in this action, and the positions of the parties that you will have to consider in reaching your verdict.

As I have previously told you, the plaintiffs in this case are Aqua Connect, Inc. and Strategic Technology Partners, LLC. We have referred to the plaintiffs as “Aqua Connect” in this case. The defendants in this case are TeamViewer US, LLC and TeamViewer Germany GMBH. We have referred to defendants as “TeamViewer” in this case.

Aqua Connect is the owner of U.S. Patent Number RE46,386 and U.S. Patent Number 8,924,502. During this case, we have referred to these patents individually by their last three digits, namely the '386 patent and the '502 patent, and the patents collectively as the “patents-in-suit” or “Aqua Connect’s patents.”

2.2 THE PARTIES' CONTENTIONS

You must decide the following issues in this case according to the instructions that I give you:

1. Whether Aqua Connect has proven by a preponderance of the evidence that TeamViewer directly or indirectly infringes claim 25 and 27 of the '386 patent and claims 25 and 27 of the '502 patent;
2. [Plaintiffs' Proposal]: Whether Aqua Connect has proven by a preponderance of the evidence that TeamViewer willfully infringed the '386 patent and the '502 patent.]
3. Whether TeamViewer has proven by clear and convincing evidence that one or more of the asserted claims of the '386 and '502 patents are invalid; and
4. Whether TeamViewer has proven by a preponderance of the evidence that Aqua Connect's patent rights have been exhausted with respect to the iOS versions of the TeamViewer software due to Aqua Connect's license to Apple.

If you decide that TeamViewer infringes any claim of the patents-in-suit that is not invalid, you will also need to decide any money damages to be awarded to compensate Aqua Connect for that infringement.

Authority:

FCBA Model Rules No. B.1; N.D. Cal. Model Patent Jury Instrs. B.1; *Complete Genomics, Inc. v. Illumina, Inc.*, No. 19-970-MN, D.I. 404 (D. Del. May 5, 2022), Final Jury Instructions.

3. PATENT INFRINGEMENT CLAIMS

3.1 THE PATENT LAWS

At the beginning of the trial, I gave you some general information about patents and the patent system and a brief overview of the patent laws relevant to this case. I will now give you more detailed instructions about the patent laws that specifically relate to this case. If you would like to review my instructions at any time during your deliberations, you will have your copy available to you in the jury room.

3.2 CLAIM CONSTRUCTION

I have already determined the meaning of certain terms in the Asserted Claims of the '386 and '502 patents. I have provided you a document reflecting those meanings. For a claim term for which I have not provided you with a definition, you should apply the ordinary meaning of that term in the field of the patent. You are to apply my definitions of the terms I have construed and the ordinary meaning in the field of the patent for the remaining terms. However, my interpretation of the language of the claims should not be taken as an indication that I have a view regarding issues such as infringement and invalidity. Those issues are yours to decide.

I have construed two terms in the Asserted Claims, as follows:

The term “Mach-derived” means “derived from an operating system kernel developed at Carnegie Mellon University (CMU) from 1985 to 1994. [Defendants’ Proposal: To be clear, this does not include Windows-based systems, which the patentee disclaimed during prosecution. DOS and Unix-based systems are also excluded from the scope of the claims, as those were disclaimed during prosecution as well.]”]

The term “Mach context or contexts” means “context or contexts running on a Mach-derived operating system.”

The parties have also agreed that, as used in the patents-in-suit, the term “undated” is a typographical error and means “updated.”

Authority:

Source: FCBA No. A.3 Patent at Issue; Claim Construction Order, D.I. 72.

3.3 PATENT INFRINGEMENT GENERALLY

I will now instruct you how to decide whether Aqua Connect has proven that TeamViewer infringed any of the claims of the '386 and '502 patents.

In this case, there are three possible ways that the asserted claims may be infringed. The three types of infringement are called: (1) direct infringement; (2) active inducement; and, (3) contributory infringement. Active inducement and contributory infringement are referred to as indirect infringement. There cannot be indirect infringement without someone else engaging in direct infringement. In this case, Aqua Connect has alleged that TeamViewer directly infringes the '386 and '502 patents. In addition, Aqua Connect has alleged that customers of the MacOS and iOS versions of TeamViewer's remote connection products directly infringe the '386 and '502 patent, and that TeamViewer is liable for actively inducing or contributing to that direct infringement by its customers.

In order to prove infringement, Aqua Connect must prove that the requirements for direct and indirect infringement are met by a preponderance of the evidence, that is, that it is more likely than not that all of the requirements of direct and indirect infringement have been proved. Infringement is assessed on a claim-by-claim basis. Therefore, you, the jury, must determine infringement for each asserted claim separately.

I will now explain each of these types of infringement in more detail.

Authority:

FCBA No. B.3.1 Infringement Generally; AIPLA Model Patent Jury Instructions, 3.0, Infringement—Generally

3.4 DIRECT INFRINGEMENT

In order to prove direct infringement, Aqua Connect must prove by a preponderance of the evidence, i.e., that it is more likely than not, that TeamViewer made, used, sold, offered for sale within, or imported into the United States a product, or that TeamViewer performed a method, that meets all of the requirements of the asserted claim, and did so without the permission of Aqua Connect during the time the '386 and '502 patents were in force.

You must determine, separately for each asserted claim, whether or not there is infringement. To determine infringement, you must compare the accused products or methods with each and every one of the requirements of a claim to determine whether all of the requirements of that claim are met. There is no direct infringement if the accused product, or methods [Defendants' Proposal: performed by users of the accused product], do not meet [Defendants' Proposal: each and] every element of a claim.

Authority:

FCBA No. B.3.1a Direct Infringement By "Literal Infringement." AIPLA Model Patent Jury Instructions, 3.1-3.2. *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 576 F.3d 1348, 1359 (Fed. Cir. 2009) ("A method claim is directly infringed when someone practices every step of the patented method"); *MicroStrategy Inc. v. Bus. Objects, S.A.*, 429 F.3d 1344, 1352-53 (Fed. Cir. 2005) (no literal infringement where accused product did not contain every element of the claim)

3.5 INDIRECT INFRINGEMENT—ACTIVE INDUCEMENT

Plaintiffs' Proposed Instruction:

Aqua Connect alleges that TeamViewer is liable for infringement by actively inducing TeamViewer's customers to directly infringe the '386 and '502 patents.

For TeamViewer to have induced infringement, TeamViewer must have induced another to directly infringe a claim of the '386 and '502 patents; if there is no direct infringement by anyone, there can be no induced infringement. As with direct infringement, you must determine whether there has been active inducement on a claim-by-claim basis.

In order to be liable for inducing infringement, Aqua Connect must prove by a preponderance of the evidence that:

- (1) TeamViewer took action during the time the '386 and '502 patents were in force that was intended to cause and led to the infringing acts by TeamViewer's customers;
- (2) TeamViewer was aware of the '386 and '502 patents; and,
- (3) TeamViewer knew that the acts it was causing would infringe the patents.

TeamViewer may be considered to have known that the acts it was causing would infringe the '386 and '502 patents if it subjectively believed there was a high probability that the accused product or method was patented and nevertheless deliberately took steps to avoid learning that fact, in other words, willfully blinded itself to the infringing nature of the direct infringer's acts.

Authority:

FCBA No. B.3.2—Indirect Infringement—Active Inducement; N.D. Cal. Model Patent Jury Instr. No. 3.7; 35 U.S.C. § 271(b); *Commil USA, LLC v. Cisco Systems, Inc.*, 135 S.Ct. 1920, 1928-31 (2015); *Global-Tech Appliances, Inc. et. al. v. SEB S.A.*, 131 S.Ct. 2060, 2070-71 (2011).

Defendants' Proposed Instruction:

Aqua Connect alleges that TeamViewer is liable for infringement by actively inducing TeamViewer's customers to directly infringe the '386 and '502 patents.

For TeamViewer to have induced infringement of an asserted claim, Aqua Connect must prove that TeamViewer induced a customer to directly infringe that claim. If there is no direct infringement by anyone, there can be no induced infringement. As with direct infringement, you must determine whether there has been active inducement on a claim-by-claim basis.

To prove active inducement, Aqua Connect must prove by a preponderance of the evidence that:

- (1) TeamViewer aided, instructed, or otherwise acted with the specific intent to cause acts by TeamViewer customers that would constitute direct infringement of the asserted claims;
- (2) TeamViewer was aware of the '386 and '502 patents;
- (3) TeamViewer knew that the acts it was causing would infringe the patents; and
- (4) TeamViewer's customers directly infringed the asserted claims.

If you find that TeamViewer was aware of the patents, but had a good-faith, reasonable belief that the acts it encouraged did not infringe the asserted patents, you may find that TeamViewer lacked the required intent for induced infringement and thus is not liable for induced infringement.

Actively inducing infringement cannot occur unintentionally. In order to establish active inducement of infringement, it is not sufficient that users of the accused products themselves directly infringe the claim. Nor is it sufficient that TeamViewer was aware of the act(s) by users of the accused products that allegedly constitute the direct infringement. Rather, in order to find active inducement of infringement, you must find that TeamViewer specifically intended users

of the accused products to infringe the asserted patents. The mere fact, if true, that TeamViewer knew or should have known that there was a substantial risk that the acts of users of the accused products would infringe the asserted patents would not be sufficient for active inducement of infringement. Aqua Connect must prove that TeamViewer knew of the asserted patents, and that TeamViewer actively and knowingly aided and abetted direct infringement by the users of the accused products.

Authority:

FCBA No. B.3.2—Indirect Infringement—Active Inducement; N.D. Cal. Model Patent Jury Instr. No. 3.7; 35 U.S.C. § 271(b); *Commil USA, LLC v. Cisco Systems, Inc.*, 135 S.Ct. 1920, 1928-31 (2015); *Global-Tech Appliances, Inc. et. al. v. SEB S.A.*, 131 S.Ct. 2060, 2070-71 (2011); *DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1304-06 (Fed. Cir. 2006) (en banc) (quoting *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 936-37 (2005)) (“As a result, if an entity offers a product with the object of promoting its use to infringe, as shown by clear expression or other affirmative steps taken to foster infringement, it is then liable for the resulting acts of infringement by third parties.”) (“The inducement rule . . . premises liability on purposeful, culpable expression and conduct”); *DSU*, 471 F.3d at 1306 (“[I]nducement requires that the alleged infringer knowingly induced infringement and possessed specific intent to encourage another’s infringement.”) (citation and internal quotation marks omitted); *Id.* at 1305 (“To establish liability under section 271(b), a patent holder must prove that once the defendants knew of the patent, they ‘actively and knowingly aid[ed] and abett[ed] another’s direct infringement.’”)(citing *Water Technologies Corp v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed.Cir.1988) (emphasis in original)); *Intellectual Ventures II LLC v. Toshiba Corp.*, No. 13-453-SLR (D. Del.), Doc. # 604, Final Jury Instructions at 25; *Emblaze Ltd. v. Apple Inc.*, No. 5:11-cv-01079-PSG (N.D. Cal.), Doc # 603, Final Revised Jury Instructions No. 7.

3.6 INDIRECT INFRINGEMENT—CONTRIBUTORY INFRINGEMENT

Plaintiffs' Proposed Instruction:

Aqua Connect also argues that TeamViewer has contributed to infringement by another. Contributory infringement may arise when someone supplies something that is used to infringe one or more of the patent claims. As with direct infringement, you must determine contributory infringement on a claim-by-claim basis.

In order for there to be contributory infringement by TeamViewer, someone other than TeamViewer must directly infringe a claim of the '386 and '502 patents; if there is no direct infringement by anyone, there can be no contributory infringement.

If you find someone has directly infringed the '386 and '502 patents, then contributory infringement exists if:

(1) TeamViewer supplied an important component of the infringing part of the accused remote access products and methods;

(2) The component is not a common component suitable for non-infringing use; and

(3) TeamViewer supplied the component with knowledge of the '386 and '502 patents and knowledge that the component was especially made or adapted for use in an infringing manner.

A “common component suitable for non-infringing use” is a component that has uses other than as a component of the patented product or other than for use in the patented method, and those other uses are not occasional, farfetched, impractical, experimental, or hypothetical.

Authority:

FCBA No. B.3.3--Indirect Infringement—Contributory Infringement; N.D. Cal. Model Patent Jury Instr. No. 3.6; 35 U.S.C. § 271(c); *PharmaStem Therapeutics, Inc. v. ViaCell, Inc.*, 491 F.3d 1342, 1356-58 (Fed. Cir. 2007); *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 377

U.S. 476 (1964); *DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1303 (Fed. Cir. 2006); *Mentor H/S, Inc. v. Med. Device Alliance, Inc.*, 244 F.3d 1365 (Fed. Cir. 2001); *Hewlett-Packard Co. v. Bausch & Lomb, Inc.*, 909 F.2d 1464, 1469 (Fed. Cir. 1990); *Preemption Devices, Inc. v. Minn. Mining & Mfr. Co.*, 803 F.2d 1170, 1174 (Fed. Cir. 1986)

Defendants' Proposed Instruction:

Aqua Connect also argues that TeamViewer is liable for contributory infringement by contributing to the direct infringement of the '386 and '502 patents by others. As with direct infringement, you must determine contributory infringement on a claim-by-claim basis.

In order for there to be contributory infringement by TeamViewer, someone other than TeamViewer must directly infringe a claim of the '386 and '502 patents; if there is no direct infringement by anyone, there can be no contributory infringement.

To establish contributory infringement, Aqua Connect must prove that it is more likely than not that TeamViewer had knowledge of both the asserted patents and direct infringement of the asserted patents. Aqua Connect must prove that each of the following is more likely than not:

(1) someone other than TeamViewer has directly infringed the asserted claims of the '386 and '502 patents;

(2) TeamViewer sold, offered for sale, or imported within the United States a component of the infringing product or a component for use in the infringing method;

(3) the component is not a staple article or commodity of commerce capable of substantial non-infringing use;

(4) the component constitutes a material part of the claimed invention; and

(5) TeamViewer knew that the component was especially made or adapted for use in an infringing method.

A “staple article or commodity of commerce capable of substantial non-infringing use” is something that has uses other than as a part or component of the patented product or in the patented method, and those other uses are not occasional, farfetched, impractical, experimental, or hypothetical. All of these things must be proven by direct or circumstantial evidence before you may find contributory infringement.

Authority:

FCBA No. B.3.3--Indirect Infringement—Contributory Infringement; N.D. Cal. Model Patent Jury Instr. No. 3.6; 35 U.S.C. § 271(c); *PharmaStem Therapeutics, Inc. v. ViaCell, Inc.*, 491 F.3d 1342, 1356-58 (Fed. Cir. 2007); *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 377 U.S. 476 (1964); *DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1303 (Fed. Cir. 2006); *Mentor H/S, Inc. v. Med. Device Alliance, Inc.*, 244 F.3d 1365 (Fed. Cir. 2001); *Hewlett-Packard Co. v. Bausch & Lomb, Inc.*, 909 F.2d 1464, 1469 (Fed. Cir. 1990); *Preemption Devices, Inc. v. Minn. Mining & Mfr. Co.*, 803 F.2d 1170, 1174 (Fed. Cir. 1986)

3.7 WILLFUL INFRINGEMENT¹

Plaintiff's Proposed Instruction:

In this case, Aqua Connect argues that TeamViewer willfully infringed the patents-in-suit.

To prove willful infringement, Aqua Connect must first persuade you that TeamViewer has infringed a valid claim of one or more of Aqua Connect's patents. The requirements for proving such infringement were discussed in my prior instructions.

In addition, to prove willful infringement of a patent, Aqua Connect must persuade you that it is more likely true than not true that TeamViewer intentionally ignored or recklessly disregarded its infringement of that patent. You must base your decision on TeamViewer's knowledge and actions at the time of infringement. Evidence that TeamViewer had knowledge of the patent at the time of infringement by itself is not sufficient to show willfulness. Rather, to show willfulness, you must find that TeamViewer engaged in additional conduct evidencing deliberate or reckless disregard of Aqua Connect's patent rights.

In deciding whether TeamViewer willfully infringed, you should consider all of the facts surrounding the infringement including: whether TeamViewer intentionally copied Aqua Connect's patented designs in developing the accused products; whether TeamViewer knew, or should have known, that its conduct involved an unreasonable risk of infringement; or whether TeamViewer had a reasonable belief that at the time of infringement that its products did not infringe the asserted patent.

Authority:

¹ TeamViewer objects to the inclusion of a jury instruction on willful infringement. Aqua Connect has not alleged facts sufficient to support a finding of willful infringement under *Halo Electronics, Inc. v. Pulse Electronics*, 136 S. Ct. 1923 (2016).

N.D. Cal. Model Patent Jury Instr. B.3.8 (updated Dec. 2018); 35 U.S.C. § 284; *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923 (2016).

Defendants' Proposed Instruction:

In this case, Aqua Connect argues that TeamViewer willfully infringed the patents-in-suit.

To prove willful infringement, Aqua Connect must prove by a preponderance of the evidence that TeamViewer knew of Aqua Connect's patents and intentionally infringed at least one asserted claim of the patents. For example, you may consider whether TeamViewer's behavior was malicious, wanton, deliberate, consciously wrongful, flagrant, or in bad faith. However, you may not find that TeamViewer's infringement was willful merely because TeamViewer knew about the patent, without more. In determining whether Aqua Connect has proven that TeamViewer's infringement was willful, you must consider all of the circumstances and assess TeamViewer's knowledge at the time the challenged conduct occurred.

If you determine that any infringement was willful, you may not allow that decision to affect the amount of any damages award you give for infringement.

Authority:

N.D. Cal. Model Patent Jury Instr. B.3.8 (updated Dec. 2018); 35 U.S.C. § 284; *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923 (2016); AIPLA Model Patent Jury Instructions, 11.0, Willful Infringement—Generally.

4. PATENT EXHAUSTION

Plaintiffs' Proposed Instruction:

I will now instruct you on how to decide TeamViewer's defense of patent exhaustion. TeamViewer contends that Aqua Connect is barred from enforcing the asserted patents against TeamViewer's QuickSupport software running on the Apple iOS operating system, because that software makes use of the ReplayKit framework included with Apple iOS, and Aqua Connect previously licensed Apple to sell Apple-branded iOS devices under the asserted patents.

To prevail on the defense of patent exhaustion, TeamViewer must prove the following by a preponderance of the evidence:

First, that Apple was authorized to sell, and did sell, iOS devices with the ReplayKit framework to TeamViewer and TeamViewer's end-users under the license agreement between Aqua Connect and Apple. In deciding this issue, you should consider the language of the Aqua Connect – Apple license agreement as a whole, including all relevant terms and limitations; and

Second, that the iOS devices with the ReplayKit framework, as sold by Apple, substantially embodied the asserted claims. The iOS devices with the ReplayKit framework substantially embodied the asserted claims if, when they were sold by Apple, they (1) had no reasonable and intended non-infringing uses, (2) included all the inventive aspects of the asserted claims, and (3) all but completely practiced the asserted claims.

TeamViewer must prove all of these elements to prevail on this defense of patent exhaustion. If TeamViewer does not prove any one of these elements, you must reject TeamViewer's affirmative defense and find for Aqua Connect on this issue.

If you find that TeamViewer has proven all of these elements, you must find for TeamViewer on this issue. If you find for TeamViewer on this issue, you should not award any damages for TeamViewer's use and sale of the QuickSupport software, even if you find that

software to be infringing. However, you may still award damages for TeamViewer's use and sale of software other than QuickSupport, if you find such other software to be infringing.

Authority:

International Business Machines Corp. v. Groupon, Inc., No. 16-122, D.I. 311 at 57-59 (D. Del. June 13, 2018, Joint Proposed Final Jury Instructions at 4.12 Patent Exhaustion; *Wasica Finance GmbH et al. v. Schrader Int'l Inc.*, No. 13-1353-LPS, D.I. 202 at 41-42 (D. Del. Jan. 28, 2020); *Quanta Computer, Inc. v. LG Elecs., Inc.*, 553 U.S. 617, 128 S. Ct. 2109 (2008); *Impression Prod., Inc. v. Lexmark Int'l, Inc.*, 137 S. Ct. 1523 (2017)

Defendants' Proposed Instruction:

I will now instruct you on how to decide TeamViewer's defense of patent exhaustion. TeamViewer contends that Aqua Connect's rights to enforce the asserted patents against TeamViewer's accused products operating on devices running Apple's iOS operating system have been exhausted because they utilize Apple technology that Aqua Connect has authorized Apple to sell to the users of TeamViewer's accused products.

To prevail on the defense of patent exhaustion for an asserted claim, TeamViewer must prove the following by a preponderance of the evidence:

First, that Apple was authorized to sell its technology under the terms of a license agreement for the asserted patents.

Second, Aqua Connect relies on this licensed technology to satisfy one or more of the limitations of the asserted claim.

Authority:

International Business Machines Corp. v. Groupon, Inc., No. 16-122, D.I. 311 at 57-59 (D. Del. June 13, 2018, Joint Proposed Final Jury Instructions at 4.12 Patent Exhaustion; *Wasica Finance*

GmbH et al. v. Schrader Int'l Inc., No. 13-1353-LPS, D.I. 202 at 41-42 (D. Del. Jan. 28, 2020), Joint Proposed Final Jury Instructions – 5.1 Patent Exhaustion; *Apple Inc. v. Samsung Elec. Co., Ltd.*, Case 5:11-CV-01846-LHK, Dkt. 1893 (N.D. Cal. 2012), FINAL JURY INSTRUCTION NO. 34; *Quanta Computer, Inc. v. LG Electronics, Inc.*, 553 U.S. 617 (2008); *Wang Labs., Inc. v. Mitsubishi Elecs. Am., Inc.*, 103 F.3d 1571, 1580 (Fed. Cir. 1997); *Endo Pharm. Inc. v. Amneal Pharm., LLC*, 224 F.Supp.3d 368 (D. Del. 2016); *Anton/Bauer, Inc. v. PAG, Ltd.*, 329 F.3d 1343, 1348 (Fed. Cir. 2003); *Bandag, Inc. v. Al Bolser's Tire Stores, Inc.*, 750 F.2d 903 (Fed. Cir. 1984); *JVC Kenwood Corp. v. Nero, Inc.*, 797 F.3d 1039, 1046 (Fed. Cir. 2015); Settlement and License Agreement between Apple and Aqua Connect, dated December 14, 2007 (AQUA_029251).

5. INVALIDITY

5.1 INVALIDITY—BURDEN OF PROOF

I will now instruct you on the rules you must follow in deciding whether or not TeamViewer has proven that the Asserted Claims are invalid. To prove that any claim of a patent is invalid, TeamViewer must persuade you by clear and convincing evidence that the claim is invalid. [Plaintiffs' Proposal]: When a party has the burden of proving any claim or defense by clear and convincing evidence, it means that the party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt.]

Like infringement, you must determine whether each asserted claim is invalid on a claim-by-claim basis.

Authority:

FCBA No. B.4, Validity, 4.1 Invalidity-Burden of Proof.

5.2 INVALIDITY—PERSPECTIVE OF ONE OF ORDINARY SKILL IN THE ART

The question of invalidity of a patent claim is determined from the perspective of a person of ordinary skill in the art in the field of the asserted invention as of the time of invention. In deciding the level of ordinary skill, you should consider all the evidence introduced at trial, including:

- (1) the levels of education and experience of persons working in the field;
- (2) the types of problems encountered in the field; and
- (3) the sophistication of the technology.

Aqua Connect contends that the level of ordinary skill in the field was a person who had at least a Bachelor of Science (or equivalent) degree in electrical engineering, computer engineering, computer science, or a related field, including familiarity with operating systems, and 2-3 years of work experience in computer networking. Aqua Connect further contends that a master's degree in electrical engineering, computer engineering, computer science or a related field could be substituted for the 2-3 years of work experience. TeamViewer contends that the level of ordinary skill in the field was a person who had at least a Master's Degree in computer science, electrical engineering, or a related field, or a Bachelor's Degree in computer science, electrical engineering or a related field and two years of experience working with computer systems, networked computers, software development, and related technologies.

Authority:

N.D. Cal. Model Patent Jury Instr. 4.1b.

5.3 INVALIDITY—PRIOR ART

Plaintiffs’ Proposed Instruction

In order for someone to be entitled to a patent, the invention must actually be “new” and not obvious over what came before, which is referred to as the prior art. Prior art is considered in determining whether the claims of the ‘386 and ‘502 patents are anticipated or obvious.

Prior art may include items that were publicly known or that have been used or offered for sale, or references, such as publications or patents, that disclose the claimed invention or elements of the claimed invention. In order to qualify as prior art, the item must pre-date the earliest priority date of asserted claims of the ’386 patent or the ’502 patent. I will explain the concept of earliest priority date in the subsequent section.

Regardless of whether particular alleged prior art references were considered by the Patent Examiner during prosecution of the ’386 and ’502 patents, TeamViewer must prove by clear and convincing evidence that the challenged claims are invalid. This burden of proof on TeamViewer never changes regardless of whether the Patent Examiner considered the reference.

You must determine whether the references and items that TeamViewer argues are prior art are, in fact, prior art. There are different types of prior art, and I will instruct you on the relevant types that you need to consider. Specifically:

TeamViewer contends that the asserted art is prior art because it was published or made available to the public before the earliest priority date of the ‘386 and ‘502 patents.

TeamViewer must prove by clear and convincing evidence that each piece of asserted art is prior art. This includes proving, by clear and convincing evidence, that any “publication” prior art was actually available to the public before the earliest priority date of the claims at issue.

Authority:

FCBA No. B.4.3, 4.3a-1, a-2 Prior Art; 2019 AIPLA Model Patent Jury Instructions, 5.1 *In re Antor Media Corp.*, 689 F.3d 1282, 1289 (Fed. Cir. 2012) (citing *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1354 (Fed. Cir. 2003)); *Norian Corp. v. Stryker Corp.*, 363 F.3d 1321, 1330, 70 U.S.P.Q.2d 1508 (Fed. Cir. 2004); *PowerOasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1305–06 (Fed. Cir. 2008)

Defendants’ Proposed Instruction

In order for someone to be entitled to a patent, the invention must actually be “new” and not obvious over what came before, which is referred to as the prior art. Prior art may include items that were publicly known or that have been used or offered for sale, or references, such as publications or patents, that disclose the claimed invention or elements of the claimed invention. To be prior art, the item or reference must have been made, known, used, published, or patented either before the invention was made or more than one year before the filing date to which the patent is entitled.

TeamViewer must prove by clear and convincing evidence that items or references that it has asserted are prior art.

Authority:

FCBA No. B.4.3, 4.3a-1, -3 Prior Art; 2019 AIPLA Model Patent Jury Instructions, 5.1 *In re Antor Media Corp.*, 689 F.3d 1282, 1289 (Fed. Cir. 2012) (citing *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1354 (Fed. Cir. 2003)).

**5.4 INVALIDITY—[DEFENDANTS’ PROPOSAL: INVENTION
[PLAINTIFFS’ PROPOSAL: EARLIEST PRIORITY] DATE**

Plaintiffs’ Proposed Instruction

Whether a particular item of asserted art is prior art depends on whether it predates the earliest priority date to which the asserted claims are entitled.

The asserted claims of the ‘386 and ‘502 patents are entitled to a priority date at least as early as September 23, 2009, which is the filing date of the non-provisional application that led to the ‘386 and ‘502 patents. If you determine that Provisional Application No. 61/099,485—to which the ‘386 and ‘502 patents claim priority—provided an adequate written description of the subject matter of the asserted claims, then the claims are also entitled to a priority date at least as early as September 23, 2008, which is the filing date of the Provisional Application.

Furthermore, if you find that the inventor invented the asserted claims prior to September 23, 2008, then the asserted claims are entitled to the date of invention. The date of invention is either (1) when the invention was reduced to practice or (2) when it was conceived, provided the inventor(s) were diligent in reducing the invention to practice. Diligence means working continuously, though not necessarily every day. Conception is the mental part of an inventive act, i.e., the formation in the mind of the inventor of a definite and permanent idea of the complete and operative invention as it is thereafter to be applied in practice, even if the inventor did not know at the time that the invention would work. Conception of an invention is complete when the idea is so clearly defined in the inventor’s mind that, if the idea were communicated to a person having ordinary skill in the field of the technology, he or she would be able to reduce the invention to practice without undue research or experimentation. This requirement does not mean that the inventor has to have a prototype built, or actually explained her or his invention to another person. But, there must be some evidence beyond the inventor’s own testimony that

confirms the date on which the inventor had the complete idea. Conception may be proven when the invention is shown in its complete form by drawings, disclosure to another person, or other forms of evidence presented at trial. A claimed invention is “reduced to practice” (1) when it has been constructed, used, or tested sufficiently to show that it will work for its intended purpose, or (2) when the inventor files a patent application that fully describes the invention.

Authority:

FCBA No. B.4.3, 4.3a-1, a-2 Prior Art; 2019 AIPLA Model Patent Jury Instructions, 5.1 *In re Antor Media Corp.*, 689 F.3d 1282, 1289 (Fed. Cir. 2012) (citing *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1354 (Fed. Cir. 2003)); *Norian Corp. v. Stryker Corp.*, 363 F.3d 1321, 1330, 70 U.S.P.Q.2d 1508 (Fed. Cir. 2004); *PowerOasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1305–06 (Fed. Cir. 2008)

Defendants’ Proposed Instruction

The date of an invention is presumed to be the filing date of the patent application. For Aqua Connect to be entitled to an earlier invention date for the asserted patents, it must prove, by a preponderance of the evidence, on a claim-by-claim basis, that the invention was conceived as of the earlier date it seeks and that the inventors were diligent in reducing the invention to practice.

Authority:

International Business Machines Corp. v. Groupon, Inc., No. 16-122, D.I. 311 at 69 (D. Del. June 13, 2018, Joint Proposed Final Jury Instructions 5.3 Invention Date; *W.L. Gore & Associates, Inc. v. C.R. Bard, Inc. et al.*, No. 11-cv-515-LPS-CJB, D.I. 777 at 26 (D. Del.).

5.5 INVALIDITY—ANTICIPATION

Plaintiffs' Proposed Instruction

In order for someone to be entitled to a patent, the invention must actually be “new.” TeamViewer contends that the asserted claims of the Asserted Patents are invalid because the claimed inventions are anticipated. TeamViewer must convince you of this by clear and convincing evidence, in other words, that the evidence highly probably demonstrates that the claims are invalid.

Specifically, TeamViewer contends that the following pieces of prior art anticipate claims ____ of the '386 patent and claims ____ of the '502 patent: [fill in based on proof at trial]

Anticipation must be determined on a claim-by-claim basis. TeamViewer must prove by clear and convincing evidence that all of the requirements of a claim are present in a single piece of prior art. To anticipate the invention, the prior art does not have to use the same words as the claim, but all of the requirements of the claim must have been disclosed and arranged as in the claim. The claim requirements may either be disclosed expressly or inherently—that is, necessarily implied—but must be disclosed in sufficient detail that a person having ordinary skill in the art of the invention, looking at that one reference, could make and use the claimed invention.

Where TeamViewer is relying on prior art that was not considered by the PTO during examination, you may consider whether that prior art is significantly different and more relevant than the prior art that the PTO did consider. If you decide it is different and more relevant, you may weigh that prior art more heavily when considering whether the challenger has carried its clear-and-convincing burden of proving invalidity. However, even for prior art that was not considered by the PTO, TeamViewer retains the burden to prove anticipation by clear and convincing evidence.

Authority:

FCBA No. B4.3b-1, Anticipation

Defendants' Proposed Instruction

In order for someone to be entitled to a patent, the invention must actually be “new.” If an invention is not new, it is said to be “anticipated.”

Anticipation must be determined on a claim-by-claim basis. To anticipate a patent claim, each element in the claim must be presented in a single item of prior art or in a prior invention by another and arranged or combined in the same way as recited in the claim. The claim requirements may either be disclosed expressly or inherently—that is, necessarily implied—but must be disclosed in sufficient detail that a person having ordinary skill in the art of the invention, looking at that one reference, could make and use the claimed invention. In determining whether every one of the elements of the claimed invention is found in the prior art identified by TeamViewer, you should consider what a person of ordinary skill in the art would have understood from his or her review of the particular publication or patent.

TeamViewer contends that the following pieces of prior art anticipate claims 25 and 27 of the '386 patent and claims 25 and 27 of the '502 patent: [fill in based on proof at trial]. TeamViewer must show this by clear and convincing evidence.

Authority:

FCBA No. B4.3b-1, Anticipation

5.6 INVALIDITY—OBVIOUSNESS

Plaintiffs' Proposed Instruction

Even though an invention may not have been identically disclosed or described in a single prior art reference before it was made by an inventor, in order to be patentable, the invention must also not have been obvious to a person of ordinary skill in the field of technology of the patent before the effective filing date of the patent.

TeamViewer may establish that a patent claim is invalid by proving, by clear and convincing evidence, that the claimed invention would have been obvious to persons having ordinary skill in the field of computer networks at the time the patent was filed.

In determining whether a claimed invention is obvious, you must consider the level of ordinary skill in the field of computer networks at the time the patent was filed, the scope and content of the prior art, any differences between the prior art and the claimed invention, and, if present, so-called objective evidence or secondary considerations, which I will describe shortly. Do not use hindsight; consider only what was known at the time of the patent's effective filing date.

To establish that an Asserted Claim is obvious over a combination of references, TeamViewer must prove three things, by clear and convincing evidence. First, it must prove that all the limitations of the claim are disclosed in the cited references. Second, it must prove that a person of ordinary skill would have been motivated to combine the teachings of the references in order to achieve the claimed invention. Third, it must prove that a person of ordinary skill would have had a reasonable expectation of success in combining the teachings of the references to achieve the claimed invention. As a prerequisite to showing a motivation to combine and a reasonable expectation of success, TeamViewer must provide a clear, evidence-supported account of the contemplated workings of the proposed combination of references. It must also show not

only that the prior art elements are capable of being physically combined, but that the proposed combination would have worked for its intended purpose.

Keep in mind that the mere existence of each element of the claimed invention in the prior art does not prove obviousness. Most, if not all, inventions rely on building blocks of prior art. In considering whether a claimed invention is obvious, you should consider whether, at the time of the patent's effective filing date, there was a reason that would have prompted a person having ordinary skill in the field of the invention to combine the known elements in the prior art in the way that the claimed invention does, taking into account such factors as:

1. whether the claimed invention was merely the predictable result of using prior art elements according to their known function(s);
2. whether the claimed invention provides an obvious solution to a known problem in the relevant field;
3. whether the prior art teaches or suggests the desirability of combining elements claimed in the invention;
4. whether the prior art teaches away from combining elements in the claimed invention; and
5. whether it would have been obvious to try the combinations of elements, such as when there is a design incentive or market pressure to solve a problem and there are a finite number of identified, predictable solutions; however, "obvious to try" is not sufficient to prove obviousness in unpredictable technologies.

. Finally, in determining whether the claimed invention is obvious, you should take into account any objective evidence (sometimes called "secondary considerations") that may shed light on whether or not the claimed invention was obvious, such as:

- A. Whether the claimed invention was commercially successful as a result of the merits of the claimed invention (rather than the result of design needs or market-pressure, advertising, or similar activities);
- B. Whether the claimed invention satisfied a long-felt need;
- C. Whether others had tried and failed to make the claimed invention;
- D. Whether others invented the claimed invention at roughly the same time;
- E. Whether others copied the claimed invention;
- F. Whether there were changes or related technologies or market needs contemporaneous with the claimed invention;
- G. Whether the claimed invention achieved unexpected results;
- H. Whether others in the field praised the claimed invention;
- I. Whether persons having ordinary skill in the art of the invention expressed surprise or disbelief regarding the claimed invention;
- J. Whether others sought or obtained rights to the patent from the patent holder; and
- K. Whether the inventor proceeded contrary to accepted wisdom in the field.

In determining whether the claimed invention was obvious, you must consider each claim separately.

Authority:

FCBA No. B.4.3, 4.3c, Obviousness; *PAR Pharm., Inc. v. TWI Pharm., Inc.*, 773 F.3d 1186, 1194 (Fed. Cir. 2014); *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367–68 (Fed. Cir. 2016); *PersonalWeb Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 993-994 (Fed. Cir. 2017); *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 567 F.3d 1314, 1326 (Fed. Cir. 2009).

Defendants’ Proposed Instruction

Even though an invention may not have been identically disclosed or described before it was made by an inventor, in order to be patentable, the invention must also not have been obvious

to a person of ordinary skill in the field of technology of the patent at the time the invention was made.

TeamViewer may establish that a patent claim is invalid by proving, by clear and convincing evidence, that the claimed invention would have been obvious to persons having ordinary skill in the field of computer networking at the time the patent was filed.

In determining whether a claimed invention is obvious, you must consider the level of ordinary skill in the field of computer networking at the time the patent was filed, the scope and content of the prior art, any differences between the prior art and the asserted claims, and, if present, objective evidence or secondary considerations, which I will describe shortly. Do not use hindsight; consider only what was known at the time of the patent's effective filing date.

Keep in mind that the mere existence of each element of the claimed invention in the prior art does not prove obviousness. Most, if not all, inventions rely on building blocks of prior art. In considering whether a claimed invention is obvious, you should consider whether, at the time of the patent's effective filing date, there was a reason that would have prompted a person having ordinary skill in the field of the invention to combine the known elements in the prior art in a way that the claimed invention does, taking into account such factors as:

1. whether the claimed invention was merely the predictable result of using prior art elements according to their known function(s);
2. whether the claimed invention provides an obvious solution to a known problem in the relevant field;
3. whether the prior art teaches or suggests the desirability of combining elements claimed in the invention;

4. whether the prior art teaches away from combining elements in the claimed invention; and
5. whether it would have been obvious to try the combinations of elements, such as when there is a design incentive or market pressure to solve a problem and there are a finite number of identified, predictable solutions.

Finally, in determining whether the claimed invention is obvious, you should take into account any objective evidence (sometimes called “secondary considerations”) that may shed light on whether or not the claimed invention was obvious, such as:

- A. Whether the claimed invention was commercially successful as a result of the merits of the claimed invention (rather than the result of design needs or market-pressure, advertising, or similar activities);
- B. Whether the claimed invention satisfied a long-felt need;
- C. Whether others had tried and failed to make the claimed invention;
- D. Whether others invented the claimed invention at roughly the same time;
- E. Whether others copied the claimed invention;
- F. Whether there were changes or related technologies or market needs contemporaneous with the claimed invention;
- G. Whether the claimed invention achieved unexpected results;
- H. Whether others in the field praised the claimed invention;
- I. Whether persons having ordinary skill in the art of the invention expressed surprise or disbelief regarding the claimed invention;
- J. Whether others sought or obtained rights to the patent from the patent holder; and
- K. Whether the inventor proceeded contrary to accepted wisdom in the field.

In determining whether the claimed invention was obvious, you must consider each claim separately.

Authority:

FCBA No. B.4.3, 4.3c, Obviousness; *PAR Pharm., Inc. v. TWI Pharm., Inc.*, 773 F.3d 1186, 1194 (Fed. Cir. 2014); *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367–68 (Fed. Cir. 2016); *PersonalWeb Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 993-994 (Fed. Cir. 2017); *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 567 F.3d 1314, 1326 (Fed. Cir. 2009).

6. DAMAGES

6.1 DAMAGES GENERALLY

I will next instruct you on damages. You must not take these instructions as implying that either party is entitled to recover damages. Instructions regarding the measure of damages are given for your guidance in the event you find in favor of plaintiffs from a preponderance of evidence in the case in accordance with the other instructions.

If you find that use of the accused products infringe any of the asserted claims, and that those claims are not invalid, you must determine the amount of damages to be awarded to Aqua Connect for the infringement. On the other hand, if you find that each of the asserted patent claims is either invalid or is not infringed, then you should not consider damages in your deliberations.

Aqua Connect has the burden to establish the amount of its damages by a preponderance of the evidence. In other words, you should award only those damages that Aqua Connect establishes that it more likely than not has suffered. While Aqua Connect is not required to prove the amount of its damages with mathematical precision, it must prove them with reasonable certainty. You may not award damages that are speculative, damages that are only possible, or damages that are based on guesswork. The damages you award must be adequate to compensate Aqua Connect for the infringement. They are not meant to punish an infringer.

Authority:

FCBA No. B.5.1, Damages—Introduction.

6.2 DAMAGES--REASONABLE ROYALTY DEFINITION—USING THE “HYPOTHETICAL NEGOTIATION” METHOD

Aqua Connect is seeking damages in the amount of a reasonable royalty. A royalty is a payment made to a patent holder in exchange for the right to make, use, or sell the claimed inventions. A reasonable royalty is the amount of royalty payment that would have resulted from a hypothetical negotiation between the patent owner and the alleged infringer just before the infringement began. In considering this hypothetical negotiation, you should focus on what the expectations of the patent holder and the alleged infringer would have been had they entered into an agreement at that time, and had they acted reasonably in their negotiations. In determining this, you must assume that both parties believed the patent was valid and infringed and that both parties were willing to enter into an agreement. The reasonable royalty you determine must be a royalty that would have resulted from the hypothetical negotiation, and not simply a royalty either party would have preferred. Evidence of things that happened after the infringement first began can be considered in evaluating the reasonable royalty only to the extent that the evidence aids in assessing what royalty would have resulted from a hypothetical negotiation just prior to the first infringement. [Defendants’ Proposal: Although evidence of the actual profits an alleged infringer made may be used to determine the anticipated profits at the time of the hypothetical negotiation, the royalty may not be limited or increased based on the actual profits the alleged infringer made.]

Authority:

FCBA No. B.5.6, Reasonable Royalty—Definition; *ArcherDX, LLC, et al. v. Qiagen Sciences, LLC, et al.*, No. 18-1019-MN, D.I. 452 at 58 (D. Del. Aug. 24, 2021), [Proposed] Final Jury Instructions, Reasonable Royalty

6.3 DAMAGES-- RELEVANT FACTORS UNDER THE HYPOTHETICAL NEGOTIATION METHOD

In determining the amount of a reasonable royalty, you may consider evidence on any of the following factors, in addition to any other evidence presented by the parties on the economic value of the patent(s):

1. Any royalties received by Aqua Connect for the licensing of the patent-in-suit, to the extent those royalties prove or tend to prove an established royalty.
2. The rates paid by TeamViewer to license other patents comparable to the '386 and '502 patents.
3. The nature and scope of the license, as exclusive or non-exclusive, or as restricted or non-restricted in terms of its territory or with respect to whom the manufactured product may be sold.
4. Aqua Connect's established policy and marketing program (if any) to maintain its right to exclude others from using the patented inventions by not licensing others to use the inventions, or by granting licenses under special conditions designed to preserve that exclusivity.
5. The commercial relationship between Aqua Connect and TeamViewer, such as whether or not they are competitors in the same territory in the same line of business.
6. The effect of selling the patented product in promoting other sales of TeamViewer; the existing value of the inventions to Aqua Connect as a generator of sales of its non-patented items; and the extent of such collateral sales.
7. The duration of the '386 and '502 patents and the term of the license.
8. The established profitability of the products made under the '386 and '502 patents; their commercial success; and their popularity.

9. The utility and advantages of the patented inventions over the old modes or devices, if any, that had been used for achieving similar results.

10. The nature of the patented inventions; the character of the commercial embodiments of it as owned and produced by or for Aqua Connect; and the benefits to those who have used the inventions.

11. The extent to which TeamViewer has made use of the inventions; and any evidence that shows the value of that use.

12. The portion of the profit or of the selling price that may be customary in the particular business or in comparable businesses to allow for the use of the inventions or analogous inventions.

13. The portion of the profit that arises from the patented inventions themselves as opposed to profit arising from unpatented features, such as the manufacturing process, business risks, or significant features or improvements added by the accused infringer.

14. The opinion testimony of qualified experts.

15. The amount that a licensor (such as Aqua Connect) and a licensee (such as TeamViewer) would have agreed upon (at the time the infringement began) if both sides had been reasonably and voluntarily trying to reach an agreement; that is, the amount which a prudent licensee—who desired, as a business proposition, to obtain a license to manufacture and sell a particular article or process embodying the patented invention—would have been willing to pay as a royalty and yet be able to make a reasonable profit and which amount would have been acceptable by a patentee who was willing to grant a license.

16. Any other economic factor that a normally prudent business person 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. You may also consider any other factors which in your mind would have increased or decreased the royalty the alleged infringer would have been willing to pay and the patent holder would have been willing to accept, acting as normally prudent business people.

Authority:

FCBA No. B.5.8, Reasonable Royalty— Relevant Factors; 2019 AIPLA Model Patent Jury Instructions, 10.2.5.3 Reasonable Royalty-Relevant Factors If Using the Hypothetical Negotiation Method.

6.4 DAMAGES-- COMPARABLE AGREEMENTS²

Plaintiffs' Proposal

Comparable license agreements are one factor that may inform your decision as to the proper amount and form of the reasonable royalty award, similar to the way in which the value of a house is determined relative to comparable houses sold in the same neighborhood.

Whether a license agreement is comparable to the license under the hypothetical license scenario depends on many factors, such as whether they involve comparable technologies, comparable economic circumstances, comparable structure, and comparable scope. If there are differences between a license agreement and the hypothetical license, you must take those into account when you make your reasonable royalty determination.

The hypothetical license is deemed to be a voluntary agreement. When determining if a license agreement is comparable to the hypothetical license, you may consider whether the license agreement is between parties to a lawsuit and whether the license agreement was a settlement influenced by a desire to avoid further litigation.

Authority

FCBA No. B.5.9, Reasonable Royalty—Comparable Agreements; *Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301 (Fed. Cir. 2009); *Prism Techs. LLC v. Sprint Spectrum L.P.*, 849 F.3d 1360 (Fed. Cir. 2017).

Defendants' Proposal

When determining a reasonable royalty, you may consider evidence concerning the amounts that other parties have paid for rights to the asserted patents in question, or for rights to

² This instruction is to be given only if evidence of comparable agreements is entered into evidence.

similar technologies. A license agreement need not be perfectly comparable to a hypothetical license that would be negotiated between Aqua Connect and TeamViewer in order for you to consider it. However, if you choose to rely upon evidence from any other license agreements, you must account for any differences between those licenses and the hypothetically-negotiated license between the plaintiffs and defendants.

Authority:

FCBA No. B.5.9, Reasonable Royalty—Comparable Agreements; *ArcherDX, LLC, et al. v. Qiagen Sciences, LLC, et al.*, No. 18-1019-MN, D.I. 452 at 65 (D. Del. Aug. 24, 2021), [Proposed] Final Jury Instructions, Reasonable Royalty – Use of Comparable License Agreements.

6.5 DAMAGES-- DATE OF COMMENCEMENT OF DAMAGES

In determining the amount of damages, you must determine when the damages began.

If you find that TeamViewer infringed a valid claim of the '502 patent, then damages began on December 30, 2014.

If you find that TeamViewer infringed a valid claim of the '386 patent, but did not infringe a valid claim of the '502 patent, then damages began on May 2, 2017.

Authority:

FCBA No. B.5.10, Date of Commencement of Damages-Products.

6.6 DAMAGES-- ATTRIBUTION/APPORTIONMENT

The amount you find as damages must be based on the value attributable to the patented inventions, as distinct from unpatented features of the accused product or other factors such as marketing or advertising, or TeamViewer's size or market position. A royalty compensating the patent holder for damages must reflect the value attributable to the allegedly infringing features of the accused product, and no more. The process of separating the value of the allegedly infringing features from the value of all other features is called apportionment. When the accused infringing products have both patented and unpatented features, your award must be apportioned so that it is based only on the value of the patented features, and no more.

The ultimate reasonable royalty award must be based on the incremental value that the patented inventions add to the end product. For that reason, you should award damages based on a royalty rate or a lump sum that reflects the incremental value.

Authority:

FCBA No. B.5.12, Damages - Apportionment.

6.7 DAMAGES – AVAILABILITY OF NON-INFRINGEMENT ALTERNATIVES

Plaintiffs’ Proposal

In determining a reasonable royalty, you may also consider evidence concerning the availability and cost of acceptable non-infringing substitutes to the patented invention.

To be an “acceptable, noninfringing substitute,” a product must have the advantages of the patented invention that were important to people who actually purchased an alleged infringer’s product. If purchasers of an alleged infringer’s product were motivated to buy that product because of features available only from that product and from a patent holder’s patented product, then some other, alternative product is not an acceptable substitute, even if it otherwise competed with a patent holder’s and an alleged infringer’s products.

To be an “acceptable, noninfringing substitute,” the substitute must also have been noninfringing. A substitute is noninfringing if it (1) was licensed under the patent, or (2) did not include all of the features required by the asserted claims of the patent.

To be an “acceptable, noninfringing substitute,” the substitute must also have been “available” throughout the period of the infringement. An alternative product may be considered “available” as a potential substitute even if the product was not actually on sale during the infringement period. But, if the acceptable substitute was not sold during the infringement period, then the Defendants must show by a preponderance of the evidence that, during the infringement period, the Defendants had all the necessary equipment, materials, know-how, and experience to design and manufacture the acceptable substitute. Factors suggesting the alternative was not available include whether an alleged infringer had to design or invent around the patented technology to develop an alleged substitute.

Authority

FCBA Model Instruction 5.2 – “Lost Profits – Noninfringing Substitutes – Acceptability” and “Lost Profits – Noninfringing Substitutes – Availability;” AIPLA Model Instruction 10.2.1.4, “Lost Profits—Panduit Factors—Acceptable Non-Infringing Substitutes;” AIPLA Model Instruction 10.2.5.8, “Reasonable Royalty—Availability of Non-Infringing Substitutes”

Defendants’ Proposal

In determining a reasonable royalty, you may also consider evidence concerning the availability and cost of acceptable non-infringing alternatives to the patented invention. A non-infringing alternative is a way of providing the same or comparable functionality or achieving the same or a comparable result that does not require using the asserted claims in the United States. You may consider whether a party had the necessary equipment, know-how, and experience to implement the alternative and the time and cost to the party of implementing the alternative. An acceptable substitute must be a product that is licensed under the patent or that does not infringe the patent. An acceptable alternative must be a product that is licensed under the patent of that does not infringe the patent.

Authority:

Complete Genomics, Inc. v. Illumina, Inc., No. 19-970-MN, D.I. 404 at 38 (D. Del. May 5, 2022), Final Jury Instructions, Reasonable Royalty – Availability of Non-Infringing Alternatives

7. DELIBERATION AND VERDICT

7.1 INTRODUCTION

Now let me finish up by explaining some things about your deliberation in the jury room, and your possible verdicts.

Once you start deliberating, do not talk to the jury officer, or to me, or to anyone else except each other about the case. If you have any questions or messages, you must write them down on a piece of paper, sign them, and then give them to the jury officer. The officer will give them to me, and I will respond as soon as I can. I may have to talk to the lawyers about what you have asked, so it may take some time to get back to you. Any questions or messages normally should be sent to me through your foreperson, who by custom of this Court is Juror No. 1.

One more thing about messages. Do not ever write down or tell anyone how you stand on your votes. For example, do not write down or tell anyone that you are split 4-4, or 6-2, or whatever your vote happens to be. That should stay secret until you are finished.

Authority:

International Business Machines Corp. v. Groupon, Inc., C.A. No. 16-122-LPS, D.I. 386, Final Jury Instr. 7.1 (D. Del. 7/25/2018).

7.2 UNANIMOUS VERDICT

Your verdict must represent the considered judgment of each juror. In order for you as a jury to return a verdict, it is necessary that each juror agree to the verdict. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view towards reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the purpose of returning a verdict. Remember at all times that you are not partisans. You are judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

A form of verdict has been prepared for you. I will review it with you in a moment. You will take this form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the form. You will then return to the courtroom and my deputy will read aloud your verdict.

It is proper to add the caution that nothing said in these instructions, and nothing in the form of a verdict, is meant to suggest or convey in any way or manner any intimation as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

Authority:

International Business Machines Corp. v. Groupon, Inc., C.A. No. 16-122-LPS, D.I. 386, Final Jury Instr. 7.2 (D. Del. 7/25/2018).

7.3 DUTY TO DELIBERATE

Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong. But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that, your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds. Listen carefully to what the other jurors have to say, and then decide for yourself.

Authority:

International Business Machines Corp. v. Groupon, Inc., C.A. No. 16-122-LPS, D.I. 386, Final Jury Instr. 7.3 (D. Del. 7/25/2018).

7.4 SOCIAL MEDIA

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, smartphone, iPhone, iPad, blackberry, tablet or computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog or website such as Facebook, LinkedIn, YouTube, Instagram, Snapchat or Twitter to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations.

Authority:

International Business Machines Corp. v. Groupon, Inc., C.A. No. 16-122-LPS, D.I. 386, Final Jury Instr. 7.4 (D. Del. 7/25/2018).

7.5 COURT HAS NO OPINION

Let me finish by repeating something I said to you earlier. Nothing that I have said or done during this trial was meant to influence your decision in any way. You must decide the case yourselves based on the evidence presented.

Authority:

International Business Machines Corp. v. Groupon, Inc., C.A. No. 16-122-LPS, D.I. 386, Final Jury Instr. 7.5 (D. Del. 7/25/2018).