IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PERSONALIZED USER MODEL, L.L.P.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
GOOGLE, INC.,	)	
	)	
Defendant.	)	
	)	C.A. No. 09-525 (LPS)
GOOGLE, INC.,	)	
	)	
Counterclaimant,	)	
	)	
v.	)	
	)	
PERSONALIZED USER MODEL, L.L.P. and YOCHAI KONIG,	)	
	)	
Counterclaim-Defendants.	)	

JOINT PROPOSED PRELIMINARY JURY INSTRUCTIONS

INTRODUCTION

Members of the jury: Now that you have been sworn in, I am going to give you some preliminary instructions for guidance on your role as jurors in this case.

These instructions are intended to introduce you to the case and the law that you will apply to the evidence that you will hear. I will give you more detailed instructions on the law at the end of the trial. Also, because this case involves patents, which will deal with subject matter that is not within the everyday experience of most of us, I will also give you some preliminary instructions regarding patents to assist you in discharging your duties as jurors.

THE PARTIES AND THEIR CONTENTIONS

Before I begin with those instructions, however, allow me to give you an overview of who the parties are and what each contends.

You may recall that during the process that led to your selection as jurors, I advised you that this is a civil action for patent infringement arising under the patent laws of the United States.

I will now review for you the parties in this action and the positions that you will have to consider in reaching your verdict. The Plaintiff in this case is Personalized User Model or PUM for short. The Defendant in this case is Google.

The two United States Patents at issue in this case are U.S. Patent Numbers 6,981,040, and 7,685,276. For simplicity, I will refer to these patents by their last three numbers, as "the '040 patent" and "the '276 patent." A copy of each of these patents has been given to you along with these preliminary instructions. Collectively, I will refer to these patents as the "Asserted Patents" or the "Patents-in-Suit." Sometimes, patents are referred to by the name of one of the inventors followed by the last three digits of their patent number. So, for example, you may hear the attorneys and witnesses in this case refer to the '040 patent as the Konig '040 patent.

PUM contends that Google infringes six claims of the patents-in-suit. These may be referred to as the "asserted claims," and are as follows: claims 1 and 22 of the '040 Patent and claims 1, 3, 7, and 21 of the '276 Patent. Each asserted claim must be considered separately to determine infringement.

PUM contends that Google infringes the Asserted Claims of the Patents-in-Suit because Google makes, uses, sells or offers for sale the certain products without PUM's authorization. These products, which I will refer to as the "Accused Products," are Google Search, Google's

Search Ads, and Google's Content Ads (including YouTube).

Google denies that the Accused Products infringe the asserted claims of the Patents-in-Suit. Google also contends that the Patents-in-Suit are invalid because they are anticipated, or rendered obvious by, the prior art. Non-infringement and invalidity are defenses to a charge of infringement. Google denies that it has infringed the patents-in-suit. Google further alleges that the asserted claims of the patents-in-suit are invalid because the patents in suit are anticipated by prior art publications, patents, and products that existed at the time of the invention or were obvious in view of the state of the art at that time. Google also asserts that named inventor of the patents-in-suit Yochai Konig breached his employment agreement with his former employer. PUM and Konig deny these claims, and assert that the inventions do not fall within the scope of Konig's employment agreement and that Google's claims are untimely.

I will also instruct you as on these claims and defenses in my instructions to you at the close of the evidence.

DUTIES OF THE JURY

Let me now turn to the general rules that will govern the discharge of your duties as jurors in this case. It will be your duty to find what the facts are based on the evidence as presented at trial. You and you alone will be the judges of the facts. In judging the facts, it will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness's testimony to accept or reject. I will decide which rules of law apply to this case as I will instruct you both during these preliminary instructions and at the close of the evidence. You must follow that law whether you agree with it or not. In addition to instructing you about the law, I will provide you with instructions as to what the claims of the patents mean. You are

bound by your oath as jurors to follow these and all the instructions that I give you, even if you personally disagree with them. All the instructions are important, and you should consider them together as a whole. You will then apply the law to the facts as you find them.

Perform these duties fairly. Do not let any bias, sympathy, or prejudice that you may feel toward one side or the other influence your decision in any way. Also, do not let anything that I may say or do during the course of the trial influence you. Nothing that I may say or do is intended to indicate, or should be taken by you as indicating, what your verdict should be.

EVIDENCE

The evidence from which you will find the facts will consist of the testimony of witnesses, documents and other things received into the record as exhibits, and any facts that the lawyers agree to or stipulate to or that I may instruct you to find. The testimony of witnesses consists of the answers of the witnesses to questions posed by the attorneys or the court--you may not ask questions.

Certain things are not evidence and must not be considered by you. I will list them for you now.

1. Statements, arguments, and questions by the attorneys are not evidence.

2. Objections to questions are not evidence. Attorneys have an obligation to their clients to make objections when they believe evidence being offered is improper under the rules of evidence. You should not be influenced by the objection or by the Court's ruling on it. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other. If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction. If I give a limiting instruction during trial, I will try to clarify this for you

at that time.

3. Testimony that the court has excluded or told you to disregard is not evidence and must not be considered.

4. During trial, you will be shown charts and animations to help illustrate the testimony of the witnesses. These illustrative exhibits, called "demonstrative exhibits," are not admitted into evidence and should not be considered as evidence.

5. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. If someone testifies that he saw it raining outside, and you believe him, that is direct evidence that was raining outside. Circumstantial evidence is indirect proof or proof of facts from which you may conclude that other facts exist. 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 infer that it was raining outside.

As a general rule, the law makes no distinction between these two types of evidence, but simply requires that you find facts from all the evidence in the case, whether direct, circumstantial, or a combination of the two. In judging the facts, you should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves. It will be up to you to decide which witnesses to believe, which witnesses not to believe, the weight you believe the testimony deserves, and how much of any witness's testimony to accept or reject.

CREDIBILITY OF WITNESSES – WEIGHING CONFLICTING TESTIMONY

You are the sole judges of each witness's credibility. You should consider each witness's source of knowledge, reliability of memory and 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 interest; the witness's demeanor on the witness stand; and all the circumstances that, according to the evidence, could affect the credibility of the testimony.

If you find the testimony to be contradictory, you must try to reconcile it, if reasonably possible, so as to make one harmonious story of it all. But if you can't do this, then it is your duty and privilege to believe the testimony that, in your judgment, is most believable and disregard any testimony that, in your judgment, is not believable. This instruction applies to the testimony of all witnesses, including expert witnesses.

EXPERT TESTIMONY

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. You are free to accept or reject the testimony of experts, just as with any other witness.

BURDEN 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."

As I have already told you, in this case, PUM alleges that Google infringes the Patents-in-Suit. PUM, therefore, has the burden of proving infringement by what is called a preponderance of the evidence. That means PUM has to produce evidence which, considered in the light of all the facts, leads you to believe that what PUM alleges is more likely true than not.

To put it differently, if you were to put PUM's and Google's evidence on opposite sides of a scale, the evidence supporting PUM's allegations would have to make the scale tip somewhat towards PUM's side. If PUM fails to meet this burden, your verdict must be for Google.

As I noted earlier, Google asserts that PUM's patents are invalid. A patent, however, is presumed to be valid. Accordingly, Google has the burden of proving by clear and convincing evidence that the patents are invalid. Clear and convincing evidence is evidence that produces an abiding conviction that the truth of a factual contention is highly probable. Proof by clear and convincing evidence is thus a higher burden than proof by a preponderance of the evidence.

Google also has to prove its breach of contract claim by a preponderance of the evidence. PUM in turn must prove by a preponderance of the evidence its defenses to that claim.

Those of you who have sat on criminal cases will have heard the term proof beyond a reasonable doubt. That requirement does not apply to a civil case; therefore, you should put it out of your mind.

PATENT VIDEO

At this time, we are going to show a 17-minute video as an introduction to the patent system. It contains background information to help you understand what patents are, why they are needed, the role of the Patent Office, and why disputes over patents arise. This video was prepared by the government, not by the parties.

In addition, many of the terms you will hear during this trial are contained in the "Glossary of Patent Terms," which you can find at the end of these preliminary instructions. Feel free to refer to the Glossary throughout the trial.

SUMMARY OF ISSUES

In this case, you must decide several things according to the instructions that I shall give you at the end of the trial. Those instructions will repeat this summary and will provide more detail. One thing you will not need to decide is the meaning of the patent claims. That is one of my jobs - to decide what the patent claims mean. In essence, you must decide:

1. Whether PUM has proven by a preponderance of the evidence that Google's Accused Products infringed with respect to any or all of the asserted claims of the Patents-in-Suit.

2. Whether Google has proven by clear and convincing evidence that the Asserted Claims are invalid as anticipated or obvious by prior art.

3. Whether Google has proven by a preponderance of the evidence that Dr. Konig breached his employment agreement.

4. Whether PUM has proven by a preponderance of the evidence that Google's breach of contract claim is time-barred, and that Dr. Konig's invention is protected from assignment by

California law.

The Google products and services accused by PUM of infringement are those versions of the products and services as they existed June 2011. There may or may not have been changes to these products after that date. You will not be hearing evidence of any such changes that occurred after that date. The attorneys will only be asking questions addressed to the accused products and services as they existed in June 2011, and the witnesses will be giving answers as to how those products and services existed in June 2011. You may see witnesses struggle to answer these questions because they may need to put themselves back in the time frame at issue and may need to put out of their mind any changes to Google products or services that may have occurred after June 2011.

CONDUCT OF THE JURY

Now, a few words about your conduct as jurors.

First, I instruct you that during the trial you are not to discuss the case with anyone or permit anyone to discuss it with you. Until you retire to the jury room at the end of the case to deliberate on your verdict, you simply are not to talk about this case. If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator, or the like, remember it is because they are not supposed to talk with you nor you with them. In this way, any unwarranted and unnecessary suspicion about your fairness can be avoided. If anyone should try to talk to you about this case, bring it to the Court's attention promptly.

Second, I know that many of you use cell phones, the Internet and other tools of technology to communicate. You must not use these tools to communicate electronically with anyone about the case. This includes your family and friends. Just to reiterate, you may not communicate with

anyone about the case on your cell phone, through e-mail, text messaging, through any blog, through any Internet chat room, or by way of any other social networking website, including Twitter, Facebook, Myspace, LinkedIn, and YouTube.

Not every judge allows jurors to have access to their cell phones and devices in the jury room during trial. In this trial, I am going to allow you to keep those devices, but you are not permitted to use them to do any research about this case or about the parties in the case. You are bound by your oath to follow this instruction and I expect that if anyone violates this instruction you will let me or my staff know promptly. If you would prefer for my staff to hold onto your phone and other devices during trial, we will be happy to do so.

Third, except in the courtroom during trial, do not read or listen to anything touching on this case in any way. By that I mean, if there may be a newspaper article or radio or television report relating to this case, do not read the article or watch or listen to the report.

Fourth, do not try to do any research or make any investigation about the case on your own.

Let me elaborate. During the course of the trial, you must not conduct any independent research about the case, the matters in the case, and the individuals or entities involved in the case. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or any other electronic means. Also, should there happen to be a newspaper article or radio or television report relating to this case, do not read the article or listen to the report. It is important that you decide this case based solely on the evidence presented in the courtroom. Please do not try to find out information from any other sources.

Finally, do not form any opinion until all the evidence is in. Keep an open mind until you start your deliberations at the end of the case.

During the trial, you may, but are not required to, take notes regarding testimony; for

example, exhibit numbers, impressions of witnesses or other things related to the proceedings. A word of caution is in order. There is generally a tendency 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, you are instructed that your notes are only a tool to aid your own individual memory and you should not compare your 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. Also, keep in mind that you will not have a transcript of the testimony to review. So, above all, your memory will be your greatest asset when it comes time to deliberate and render a decision in this case.

If you do take notes, you must leave them in the jury deliberation room which is secured at the end of each day. And, remember that they are for your own personal use.

I will give you detailed instructions on the law at the end of the case, and those instructions will control your deliberations and decision.

COURSE OF THE TRIAL

The trial will now begin.

First, each side may make an opening statement outlining its case. The opening statements are not evidence. They are intended to explain to you what each side intends to prove and are offered to help you follow the evidence. It will be up to you to determine whether the evidence - the testimony of the witnesses and the admitted documents - supports what the attorneys say in their opening statements.

After the opening statements, PUM will present its witnesses, and Google may cross-examine them. Then Google will present its witnesses, and PUM may cross-examine them.

Lawyers are permitted to make transition statements whenever they call a witness to the stand, to introduce the witness and to briefly explain the relevance of the witness's anticipated testimony. I have already instructed you that what the attorneys say is not evidence. These transition statements may be given only to help you follow along.

After all the evidence is presented, the attorneys will make their closing arguments. The closing arguments are not evidence. Their purpose is to summarize and interpret the evidence for you. I will then give you final instructions on the law and describe for you the matters you must resolve. You will then retire to the jury room to deliberate on your verdict.

At the end of this trial and before you begin your deliberations, I will read and give you a copy of written instructions on the law.

Please keep in mind that evidence is often introduced somewhat piecemeal. So, as the evidence comes in, you as jurors need to keep an open mind.

We will begin shortly, but first I want to outline the anticipated schedule of the trial.

TRIAL SCHEDULE

Though you have heard me say this during jury selection, I want to again outline the schedule I expect to maintain during the course of this trial.

This case is expected to take up to 10 days to try. We will normally begin the day at 9 A.M. promptly. We will go until approximately 12:30 P.M. and, after a 30-minute break for lunch, continue from 1:00 P.M. to 4:30 P.M. There will be a fifteen minute break in the morning

and another fifteen minute break in the afternoon. The only significant exception to this schedule may occur when the case is submitted to you for your deliberations. On that day, the proceedings might last beyond 5:00 P.M.

Finally, please understand that this is a timed trial. That means the Court has allocated to each party a maximum number of hours in which to present all portions of its case. This allows me to assure you that we expect to be completed with this case by a week from Friday, that is by March 21. Of course, to keep on schedule, it is important that you be here promptly each morning and be ready at the end of each of our scheduled breaks.

GLOSSARY OF PATENT TERMS

Applicants: The named inventors who are applying for the patent.

Assignment: Transfer of ownership rights in a patent or patent application from one person or company to another.

Claims: That part of a patent that defines the invention. These are found at the end of the patent specification in the form of numbered paragraphs.

Embodiment: A method that is an example of the claimed invention.

Examination: Procedure before the U.S. Patent and Trademark Office whereby an Examiner reviews the filed patent application to determine if the claimed invention is patentable.

File Wrapper, File History, or Prosecution History:

The written record of proceedings in the United States Patent and Trademark Office ("Patent Office" or "PTO"), including the original patent application and later rejections, responses to the rejections and other communications between the Patent Office and the applicant.

Filing Date: Date a patent application, with all the required sections, has been submitted to the U.S. Patent and Trademark Office.

Limitation: A required part of an invention set forth in a patent claim. A limitation is a requirement of the invention. The word "limitation" is often used interchangeably with the word "requirement." The phrase "claim limitation" is often used interchangeably with the phrase "claim element."

Patent and Trademark Office (PTO): An administrative branch of the U.S. Department of Commerce that is charged with overseeing and implementing the federal laws of patents and trademarks. It is responsible for examining all patent applications and issuing all patents in the United States.

Prior Art: Any information that was publicly known (including items that have been offered for sale, publications, or patents) that was made, known, used, published, or patented more than one year before the filing date of the patent application.

Prior Art References: Any item of prior art (publication, patent, or product) used to determine patentability.

Specification: That part of the patent application or patent that describes the invention, and may include drawings. The specification does not define the invention; only the claims do.

Written Description: That part of the patent specification which explains how the invention works and usually includes a drawing.