

# EXHIBIT E

## Dallas 320134v1

## **WILLFUL INFRINGEMENT<sup>2</sup>**

In this case, Bedrock argues that the Defendants willfully infringed the claims of Bedrock's '120 Patent.

The issue of willful infringement relates to the amount of damages Bedrock is entitled to recover in this lawsuit. If you decide that Defendant willfully infringed the claims of Bedrock's patent, then it is my job to decide whether or not to award increased damages to Bedrock. You should not take this factor into account in assessing the damages, if any, to be awarded to Bedrock.

To prove willful infringement, Bedrock must persuade you by clear and convincing evidence that the Defendants acted with reckless disregard of the claims of Bedrock's patent. To show "reckless disregard," Bedrock must satisfy a two-part test: the first concerns the Defendants' conduct, the second concerns the Defendants' state of mind.

When considering the Defendants' conduct, you must decide whether Bedrock has proven by clear and convincing evidence that Defendants' conduct was reckless; that is, that the Defendants proceeded with the allegedly infringing conduct with knowledge of the patent, and in the face of an unjustifiably high risk that it was infringing the claims of a valid patent. Because that is an objective issue, the state of mind of Defendant is not relevant to it. Legitimate or credible defenses to infringement, even if ultimately not successful, demonstrate a lack of recklessness.

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<sup>2</sup>Adapted from the National Jury Instruction Project Model Patent Jury Instructions § 4.1 (June 17, 2009).

If you conclude that Bedrock has proven that a Defendant's conduct was reckless, then you need to consider the second part of the test. You must determine whether Bedrock proved by clear and convincing evidence that the unjustifiably high risk of infringement was known or so obvious that it should have been known to the Defendant. In deciding whether Bedrock satisfied the state-of-mind part of the test, you should consider all facts surrounding the alleged infringement including, but not limited to, the following:

1. whether the Defendant acted in a manner consistent with the standards of commerce for its industry;
2. whether the Defendant intentionally copied without a reasonable basis a product of Bedrock covered by one or more claims of the patent, as distinguished from trying to "design around" the patent by designing a product that the Defendant believed did not infringe those claims.