EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BEDROCK COMPUTER TECHNOLOGIES LLC,	§	
	§	
Plaintiff,	§	
	§	**CASE NO. 6:09-CV-269-LED**
v.	§	
	§	
SOFTLAYER TECHNOLOGIES, INC., CITIWARE TECHNOLOGY SOLUTIONS, LLC, GOOGLE INC., YAHOO! INC., MYSPACE INC., AMAZON.COM INC., PAYPAL INC., MATCH.COM, LLC, AOL LLC, AND CME GROUP INC.,	§	**JURY TRIAL DEMANDED**
	§	
Defendants.	§	

JOINT PROPOSED PRELIMINARY JURY INSTRUCTIONS FOR SECOND TRIAL

Ladies and Gentlemen of the Jury:[1]

You have now been sworn as the jury to hear this case. As the jury, you will decide the disputed questions of fact. As the Judge, I will decide all questions of law and procedure. From time-to-time during the trial and at the end of the trial, I will instruct you on the rules of law that you must follow in making your decision.

Very soon, the lawyers for each side will make what is called an opening statement. Opening statements are intended to assist you in understanding the evidence. However, what the

[1] Adapted from instructions as given in *Mirror Worlds, LLC v. Apple, Inc.*, No. 6:08-CV-88; *i4i LP v. Microsoft Corp.*, No. 6:07cv113 (E.D. Tex. May 2009).

lawyers say during their opening statements is not evidence. It's only what they expect the evidence will show. You should base your decision on the evidence that you will hear and that comes into evidence from the witness box and from the exhibits that I admit into evidence. You will rely on this evidence in making your decision as to the verdict in this case.

To help you follow the evidence, I will now give you a summary of the positions of the parties. The parties in this case are Bedrock Computer Technologies LLC, which I will refer to as "Bedrock," and Softlayer Technologies, Inc., Yahoo! Inc., MySpace, Inc., Amazon.com Inc., and AOL LLC, which I will together refer to as "Defendants."

As I will explain in further detail, Bedrock contends that Defendants infringe United States Patent 5,893,120, known as the '120 Patent. Defendants assert that they do not infringe the '120 Patent. Defendants also assert that **[Defendants propose: Bedrock does not own the '120 Patent. Defendants' further assert that** the '120 Patent is invalid **[Defendants' propose: because its subject matter is obvious and anticipated in light of prior art in the relevant field, issues I will explain further a later in these instructions.]**.

To fulfill your duties as jurors, you must separately decide whether each defendant has infringed the '120 Patent, **[Defendants propose: whether Bedrock owns the '120 patent,]** and whether the '120 Patent is invalid. If you decide that the '120 Patent has been infringed, **[Defendants propose: and is owned by Bedrock,]** is valid, you will need to decide any money damages to be awarded to compensate for that infringement.

You will learn more about these causes of action and defenses later.

After all of the evidence is in, I will instruct you on the applicable law, and you will hear closing arguments of counsel, and you will then retire to deliberate and consider your verdict.

During this case, I want you to keep an open mind. Do not decide any fact until you have heard all of the evidence, then closing arguments and my instructions. Pay close attention to the testimony and the evidence.

If you would like to take notes during the trial, you may do so. We have some notebooks that I'm going to ask the court security officer to pass out to you at this time, as well as a pen.

The notebooks each have a cover page under the plastic cover. Slide the cover page out so you can write your name at the top of that, so you will know whose notebook that is, then slide it back in.

If you will open your notebook, you should find a blank tablet on the inside for taking notes. Please write your name on the front page of that tablet. And then you can flip to the second page to begin taking any notes, if you desire to. And that is so you can identify your tablet and your notebook. You can also make notes in your notebook, if you'd like to. What you are going to find in your notebook is a copy of the patent in this case, a copy of the Court's claim construction chart, and a glossary of terms. I'll go over all of that with you in detail as I go through these instructions. So please just listen to my instructions now.

If you decide to take notes in this case, be careful not to get so involved in your note taking that you become distracted and miss part of the testimony. You don't need to write down everything that happens, but take such notes as you feel are appropriate or would be helpful to you. Your notes are to be used as an aid to your memory. And if your memory should later be different from your notes, then you should rely on your memory and not on your notes.

Just because something gets written down on the notepad doesn't make it any more important than your recollection or another juror's recollection. So do not be unduly influenced by the notes

that others may take. A juror's notes are not entitled to any greater weight than the recollection of each juror concerning the testimony.

Even though we have a court reporter present who will be making stenographic notes of what is said in court, a typewritten copy of the testimony will not be available for your use during deliberations. However, any exhibits that are introduced into evidence – that would be documents, physical evidence – will be available for you during your deliberations.

Also during your deliberations, you will receive a copy of what is called the Court's Charge, which I will give you at the end of the case, which has all of the law in it and your verdict form. So you'll have that to take to the jury room with you as well.

Now, my next instruction is a very important instruction. Until this trial is over, do not discuss this case with anyone, and do not permit anyone to discuss this case in your presence. Do not discuss the case even with the other jurors until all of the jurors are in the jury room actually deliberating at the end of the case. And the reason for that is simple: That until all of the evidence is in, you have received the law, and I tell you it is time for you to begin your deliberations, there should be no discussion among you about, well, did you hear this, or what did you think about that, during the trial of the case. **[Defendants propose: this is also important because Bedrock gets to present its evidence first, and Defendants will present their evidence second. You should not make any decisions about the case until defendants have had their opportunity to present evidence and you have heard from all side.]**

So do not visit with each other about anything regarding this case until it is time to deliberate. The same thing goes with family members or friends. Do not discuss this case with anyone. Each juror should hold themselves completely apart from any discussion about this case

with anyone until we get to the end of the case and then only with your fellow jurors when you go back to deliberate.

If anyone should attempt to discuss this case or to approach you concerning this case, you should inform me immediately or through my court staff, and you should not visit with them.

Hold yourself completely apart from all of the people involved in the case, the parties, the witnesses, the attorneys and the persons associated. It is important not only that you be fair and impartial but also that you appear to be fair and impartial. And that is why you should not have any contact with any of them.

You have a juror badge on. All of the lawyers here and spectators, they're all friendly people and would love to chat with you, but they're going to see that juror badge, so they're not going to be communicating with you in the elevator or chitchatting with you, and you should not communicate or chitchat with them. Hold yourself completely apart from them.

Also, as far as discussing this case with others, if you have any type of social networking internet site or tool like FaceBook, MySpace, or Twitter, you should not discuss or even mention the case at all on any of those sites. Do not post updates about what is going on in the case to any of those sites.

Do not make any independent investigation of any fact or matter in this case. Do not learn anything about the case from any other outside source. And that is very important, because what you decide this case on is only the testimony that's taken under oath and the exhibits that are legally admitted into evidence. So you should not go to any other source or receive information from any other source. I don't know if there will be anything on television or in the newspaper about this

case, probably not, but do not watch TV or read the newspaper about this case. If there should be something, just turn the TV to another channel, and don't read the article.

Also, do not use the internet to find out more information about the case, the parties, or the attorneys in the case. In other words, do not go home and get on your computer and start doing any kind of independent investigation. That would be extremely improper. It would violate your oath as a juror, because you would be considering something other than the evidence in the case, and it could result in a mistrial of the case and all of the time and expense involved in this going for nothing. So be sure to follow that instruction. You are to be guided only by the evidence in the case, only by what you see and hear in this – in this courtroom and nothing else.

During the trial, it may be necessary for me to confer with the lawyers out of your hearing or to conduct a part of the trial out of your presence. I will handle these matters as briefly and as conveniently for you as I can, but you should remember that they are a necessary part of any trial.

Let me visit with you about the patents and the U.S. patent system generally. You saw some of this on the video that you saw with the jury panel before voir dire.

The United States Constitution grants Congress the powers to enact laws "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Using this power, Congress enacted the patent laws. Patents are granted by the United States Patent and Trademark Office (sometimes called "the PTO"). A valid United States patent gives the patent holder certain rights for up to 20 years from the date the patent application was filed or for 17 years from the date the patent issued. The patent holder may prevent others from making, using, offering to sell, or selling the patented invention within the United States, and from importing it into the United States without the patent

holder's permission. A violation of the patent holder's rights is called infringement. The patent holder may try to enforce a patent against persons believed to be infringers by a lawsuit filed in federal court.

[Defendants propose: Everyone, however, has the right to use existing knowledge and principle. A patent cannot remove from the public the ability to use what was known or obvious before the invention was made or patent protection sought. Thus, to be entitled to patent protection, an invention must be new, useful, and non-obvious.]

The process of obtaining a patent is called patent prosecution. To obtain a patent, one must file an application with the PTO. The PTO is an agency of the federal government and employs trained examiners who review applications for patents. The application includes a section called the "specification," which must contain a written description of the claimed invention telling what the invention is, how it works, and how to make and use it, in such full, clear, concise, and exact terms so that others skilled in the field will know how to make and use it. The specification concludes with one or more numbered sentences. These are the patent "claims." If the patent is eventually granted by the PTO, the claims define the boundaries of its protection and give notice to the public of those boundaries. Claims can be independent or dependent. An independent claim is self-contained. A dependent claim refers back to an earlier claim and includes the requirements of the earlier claim.

After the applicant files a patent application, a PTO patent examiner reviews it to determine whether the claims are patentable and whether the specification adequately describes the invention claimed. In examining a patent application, the patent examiner may review "prior art." Prior art is defined by law, and, at a later time, I will give you specific instructions on what constitutes prior

art. In general, though, prior art includes things that existed before the claimed invention, that were publicly known or used in this country, or that were patented or described in a publication in any country. The examiner considers, among other things, whether each claim defines an invention that is new, useful, and not obvious when compared with the prior art **[Defendants propose: that the PTO examiner considers in conducting the review]**. A patent lists prior art the examiner considered; this list is called the "cited references." The cited references include the prior art found by the examiner as well as any prior art submitted to the PTO by the applicant.

After the prior art search and examination of the application, the patent examiner then informs the applicant in writing what the examiner has found and whether any claim is patentable, and thus will be "allowed." This writing from the patent examiner is called an "office action." If the examiner rejects any of the claims, the applicant then responds with arguments and sometimes changes the claims or submits new claims. This process, which takes place only between the examiner and the patent applicant, may go back and forth for some time until the examiner believes that the application and claims meet the requirements for a patent **[Defendants propose: based on the materials that the PTO examiner has reviewed]**. The papers generated during this time of communicating back and forth between the patent examiner and the applicant make up what is called the "prosecution history." All of this material becomes available to the public no later than the date when the PTO grants the patent.

Just because the PTO grants a patent does not necessarily mean that any invention claimed in the patent is, in fact, legally entitled to the protection of a patent. One or more claims may, in fact, not be patentable under the law. A person accused of infringement has the right to argue here in federal court that a claimed invention in the patent is not entitled to patent protection because it

does not meet the requirements for a patent. In other words, an accused infringer may defend a suit for patent infringement on the grounds that the patent is invalid.

The granting of a patent by the Patent and Trademark Office, however, carries with it the presumption that the patent is valid. From the issuance of a patent, it is presumed that the subject matter is new, useful, and constitutes an advance that was not, at the time the invention was made, obvious to one of ordinary skill in the art. However, that presumption may be rebutted at trial and you, the finder of fact, may find the patent to be invalid. **[Defendants propose: For example, Defendants are entitled to point to prior art not considered by the PTO examiner and to raise other arguments to show that the patent was obvious in light of prior art or was anticipated by prior art, as I will explain further in these instructions.]**

Now, let me visit with you about the parts of a patent.

A patent includes two basic parts: A written description of the invention and the patent claims. The written description, which may include drawings, is often referred to as the "specification" of the patent. Please refer to the '120 patent on the screen as I identify the different sections. The cover page of the '120 patent provides identifying information, including the date the patent issued and the patent number along the top, as well as the inventors' names and filing date, and a list of certain prior art references considered in the patent office when deciding to issue the patent.

The specification of the '120 patent begins with an abstract, found on the cover page. The abstract is a brief statement about the subject matter of the invention. Next are the drawings which appear as Figures 1-7 on the next 6 pages. The drawings illustrate the various aspects or features of the invention.

The written description of the invention appears next. In this portion of the patent, each page is divided into two columns, which are numbered at the top. The lines on each page are also numbered going down the middle column, as you will see. The written description of the '120 patent begins at column 1, line 1 and continues to column 13, line 22. So when you see a reference during the trial to a column and a line number, you can go to that part of the patent to locate it. The written description includes a background section, a summary of the invention and a detailed description of the invention including some specific examples.

The specification ends with numbered paragraphs called claims. The claims may be divided into a number of parts, referred to as claim limitations. In the '120 patent, the claims begin at column13, line 23 and continue to the end of the patent, at column 14, line 59. **[Defendants propose: As you see, there are 8 claims in the '120 Patent.]**[2]

Patent claims may exist in two forms, referred to as independent claims and dependent claims. An independent claim does not refer to any other claim of the patent. It is not necessary to look at any other claim to determine what an independent claim covers. Claims 1 and 6 of the '120 Patent are independent claims. Claims 2 and 5 are dependent claims. A dependent claim refers to at least one other claim in the patent. A dependent claim includes each of the limitations of the other claim or claims to which it refers, as well as the additional limitations recited in the dependent claim itself. Therefore, to determine what a dependent claim covers, it is necessary to look at both the dependent claim and other claim or claims to which it refers. To determine what a dependent claim covers, the words of that claim and the words of the independent claim must be read together.

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[2] **[Bedrock objects because the fact there are 8 claims in the '120 Patent is not relevant; only the claims Bedrock alleges to be infringed are relevant.]**

Now let me instruct you about the significance of the patent claims. The claims of a patent are a main focus of a patent case, because the claims are what define the patent owner's rights under the law. That is, the claims define what the patent owner may exclude others from doing during the term of the patent.

The claims of a patent serve two purposes. First, they set the boundaries of the invention covered by the patent. Second they provide notice to the public of what those boundaries are. Thus, when a product or a method is accused of infringing a patent, the patent claims are compared to the accused product or method to determine whether there is infringement. **[Defendants propose: And when the validity of a patent is challenged, the claims are compared to the prior art to determine whether the patent claims are new, useful, and non-obvious.]**

[Bedrock proposes: The claims of the patent are what are infringed when patent infringement occurs because the claims define what the patent is. The claims are also at issue when the validity of a patent is challenged.] In reaching your determinations with respect to infringement and validity, you must consider each claim separately.

You will also find behind the patent in your notebook a claim construction chart **[Bedrock proposes: and that is something that transpired earlier in this case where the attorneys got together and decided what terms they agreed on, what ones they did not. And if they did not agree on the meaning of a term in the patent, they then asked the Court to construe the patent or to resolve that dispute as to the meaning of those terms. And the claim construction chart, which is included in your notebook, contains those constructions that the court has earlier ruled as to the meaning of specific claim terms. Don't worry about understanding all of that now. I am just giving you an overview now.]**. It is my job as Judge to determine what the patent

claims mean and to instruct you about that meaning. The claim construction chart included in your notebook contains the meanings for terms in the claims I have determined. You must use these meanings I give you when you decide the issues of infringement and invalidity.[3]

[Defendants propose: In deciding whether or not an accused product infringes a patent or whether or not prior art invalidates a patent, the first step is to understand the meaning of the words used in the patent claims. You must accept the meanings I give you and use them when you decide whether or not a patent claim is infringed and whether or not a patent claim is invalid.][4]

This will all become clearer as the trial progresses, but this is a good starting place for you to help you understand some of the basic elements of a patent and some of the basic language and nomenclature.

[Defendants propose: To decide the facts, the evidence you are to consider consists of the sworn testimony of any witness, and any facts to which the lawyers agree, or stipulate.

Keep in mind what is not evidence. The following things are not evidence, and you must not consider them as evidence in deciding the facts of the case: Statements and argument of the attorneys; questions of the attorneys, except to the extent the witnesses provide answers that are part of the evidence; objections of the attorneys; testimony that I instruct you to disregard; and anything you may see or hear when the Court is not in session, even if what you see or hear is done or said by one of the parties or by one of the witnesses.

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[3]By submitting jury instructions with respect to the Court's claim constructions, the parties do not intend to waive and hereby expressly preserve their contentions in their *Markman* briefing and arguments and reserve their rights to appeal.

[4]**[Bedrock objects to this proposal because it is duplicative of the preceding three sentences.]**

It is for you to decide how much weight to give to any evidence, which brings us to the question of the credibility of a witness. In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says or part of it or none of it.

In considering the testimony of any witnesses, you may take into account the opportunity and ability of the witness to see or hear or know the things that the witness testifies to; the witness' memory; the witness' manner while testifying; the witness' interest in the outcome of this case and any bias or prejudice; whether other evidence contradicts the witness' testimony; the reasonableness of the witness' testimony in light of all the evidence, and any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. The testimony of a single witness may be sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if, after considering all the other evidence, you believe that single witness.

Although you must consider only the evidence in this case, you may draw reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. You may make deductions and reach conclusions that reason and common sense lead you to make from the testimony and evidence.]

[Defendants Propose: In this case, you are going to hear testimony from expert witnesses. When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field – he/she is called an expert witness – is permitted to state his/her opinion on those technical matters. However, you are

not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely upon it.[5]

Certain testimony will be presented to you through a deposition. A deposition is the sworn, recorded answers to questions asked a witness in advance of the trial. Under some circumstances, if a witness cannot be present to testify from the witness stand, that witness' testimony may be presented, under oath, in the form of a deposition. Some time before this trial, attorneys representing the parties in this case questioned this witness under oath. A court reporter was present and recorded the testimony. The questions and answers will be read or shown videographically to you today. This deposition testimony is entitled to the same consideration and weighed and otherwise considered by you insofar as possible in the same way as if the witness had been present and had testified from the witness stand in court.[6]

Undoubtedly, there will be some objections during the course of the trial. It is the duty of the attorney on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible.

When the Court allows testimony or other evidence to be introduced over the objection of an attorney, the Court does not, unless expressly stated, indicate any opinion as to the weight or the effect of such evidence. When the Court sustains an objection, the jury must disregard the question entirely and may draw no inference from the wording of it or speculate as to what the witness would have said had the Court permitted an answer to the question.

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[5] **Fifth Circuit Pattern Jury Instructions – Civil, No. 2.19 (2009).**
[6] **Fifth Circuit Pattern Jury Instructions – Civil, 2.23 Deposition Testimony (2006).**

The law of the United States permits the judge to comment to the jury on the evidence in the case. And such comments are only expressions of the judge's opinion as to the facts, and the jury may disregard them entirely, since the jurors are the sole judges of the facts.]

[Defendants propose: At times during the trial, it may be necessary for me to talk with the lawyers here at the bench out of your hearing, or by calling a recess. I will handle these matters as briefly and as conveniently for you as I can, but you should remember that they are a necessary part of any trial.

If you need to communicate with me at any time during the trial, simply give a signed note to the bailiff, and he will give it to me.]

I will now give you some information about the issues that will be presented to you at this trial, as well as a short overview of the applicable law. At the close of the trial you will be given more specific instructions that you must follow in reaching your verdict. You will also be given a verdict form and questions that you must answer in providing your verdict.

First, let me explain the burden of proof required in this case. In any legal action, facts must be proved by a required standard of evidence, known as the burden of proof. The burden of proof used for the claims and defenses in this case is known as preponderance of the evidence. When a party has the burden of proving any claim or defense by a preponderance of the evidence, it means the evidence must persuade you that the claim or defense is more likely true than not. Put another way, if you were to put the evidence for and against the party who must prove the fact on the opposite sides of a scale, a preponderance of the evidence requires that the scale tip at least somewhat toward the party who has the burden of proof. Again, you should base your decision on all the evidence, regardless of which party presented it.

You may have heard that is used in criminal cases called beyond a reasonable doubt. That requirement is the highest burden of proof and is used only in criminal cases. It does not apply in this case and you should, therefore, put it out of your mind. **[Defendants propose: You may have also heard a standard called clear and convincing on the video that you watched with the jury panel before voir dire. That standard will not be used in determining the issues in this case.]**[7]

Now let me visit with you about infringement. **[Defendants propose: As I mentioned earlier, the '120 Patent has 8 claims.]**[8] Bedrock contends that Defendants Softlayer, Yahoo, MySpace, and Amazon, infringe claims 1, 2, 5 and 6 of the '120 Patent. Bedrock alleges that Defendant AOL has infringed claims 1 and 2 of the '120 Patent. You may mark those claims on the patents in your notebooks by circling those claim numbers. **[Defendants Propose: Claims 3, 4, 7 and 8 are not at issue in this case.]**[9]

Bedrock contends that Defendants literally infringe the asserted claims of the '120 Patent. Defendants deny that they literally infringe any of these claims. To prove literal infringement of a particular claim, a party must prove by a preponderance of the evidence that the opposing party makes, uses, sells, or offers to sell an accused product or instrumentality that includes each and every limitation of a particular claim.

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[7] **[Bedrock objects to this instruction because the video does not use the words "clear and convincing."]**

[8] **[Bedrock objects because the fact that the '120 Patent has 8 claims is not relevant; only 4 claims are alleged to have been infringed.]**

[9] **[Bedrock objects because the instruction that certain claims have not been accused to have been infringed is irrelevant and is likely to confuse the jury.]**

Now let me explain the defense of invalidity. **[Defendants propose: Invalidity is a defense to patent infringement.]**[10] Defendants contend that the asserted claims of the '120 Patent are invalid. Bedrock denies that the asserted patent claims are invalid. A person accused of infringement has the right to assert that the claimed invention in a patent did not meet the requirements for patentability and, therefore, that the issued patent claim is invalid. However, the granting of a patent by the Patent and Trademark Office carries with it the presumption that the patent is valid.

I will now explain to you briefly the legal requirements for each of the grounds on which the parties rely to contend that the asserted patent claims are invalid. I will provide more details for each ground in my final instructions at the end of the case. The first ground is what is called anticipation. Defendants contend that the inventions covered by the asserted claims of the '120 Patent are not new. An invention that is not new is said to be anticipated by the prior art. To prove that a claim is anticipated by prior art, a party must prove by a preponderance of the evidence that each and every limitation of the claim was present in a single item of prior art.

Defendants also contend that the asserted claims of the other's patents-in-suit are invalid for obviousness. To prove invalidity of a patent based on obviousness, a party must prove by a preponderance of the evidence that the invention defined by the claim would have been obvious to a hypothetical person of ordinary skill in the art at the time the invention was made. **[Defendants propose: This means that even if all the requirements of the claim cannot be found in a single prior art reference that would anticipate the claim, if a person of ordinary skill in the field of**

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[10] **[Bedrock objects to this instruction because the instruction is duplicative of the sentence immediately before this instruction.]**

the invention who knew about all of the prior art would have come up with the claimed invention then it is obvious.] It will be up to you to decide the level of ordinary skill in the art of the patents based on all the evidence introduced at trial, including the level of education and experience of persons working in the field, the types of problems encountered in the field and the sophistication of the technology.

[Defendants propose: One of the ways in which a patent's subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution encompassed by the patent's claims. That obvious solution may consist of a combination of elements found in different pieces of prior art. In many cases a person of ordinary skill in the art would be able to combine the teachings of multiple prior art references to produce the teachings of the patent, and this can be accomplished with ordinary creativity. In this situation, the patent is obvious. In addition, where there is a need for a design, or market pressure, to solve a problem, and there are a number of identified and predictable solutions to that problem, a person of ordinary skill will have good reason to pursue the known options within his or her technical grasp. Where this happens, the patent is likely not the product of true innovation but rather of ordinary skill and common sense, and the patent is considered obvious. Defendants also contend that Bedrock does not own the '120 Patent. Bedrock contends that it owns the '120 Patent. If Bedrock does not own the '120 Patent, it does not have the right to sue the Defendants for infringement.][11]

Now with regard to damages, Bedrock claims that it has suffered damages as a result of Defendants' infringement and is entitled to a reasonable royalty. Damages cannot be speculative.

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[11] **[Bedrock objects to this instruction because it is an inaccurate statement of the law.]**

A party must prove the damages it has suffered as a result of alleged infringement by a preponderance of the evidence. The fact that I am instructing you about damages now **[Defendants propose: or that the parties will present evidence on damages,]** does not mean that Bedrock is or is not entitled to recover damages. **[Defendants propose: Even if Bedrock establishes infringement, it has the burden to prove the damages it sustained as a result of that infringement.]**.

[Defendants propose: This trial, like all jury trials, comes in six phases. We have completed the first phase, which was to select you as jurors. We are now about to begin the second phase, the opening statements. The opening statements of the lawyers are statements about what each side expects the evidence to show. The opening statements are not evidence for you to consider in your deliberations.

The evidence comes in the third phase, when the witnesses will take the witness stand and the documents will be offered and admitted into evidence. In the third phase, Bedrock goes first in calling witnesses to the witness stand. These witnesses will be questioned by Bedrock's counsel in what is called direct examination. After the direct examination of a witness is completed, the opposing side has an opportunity to cross-examine the witness. After Bedrock has presented its witnesses, Defendants will call their witnesses, who will also be examined and cross-examined. The parties may present the testimony of a witness by reading from their deposition transcript or playing a video of the witness's deposition testimony. A deposition is the sworn testimony of a witness taken before trial and is entitled to the same consideration as if the witness had testified at trial.

The evidence often is introduced piecemeal, so you need to keep an open mind as the evidence comes in. You are to wait until all the evidence comes in before you make any decisions. In other words, keep an open mind throughout the entire trial.

The fourth phase of the trial is when I read you the jury instructions. In that phase, I will instruct you on the law. I have already explained to you a little bit about the law. But in the fourth phase of the trial, I will explain the law in much more detail.

After we conclude the fourth phase, the lawyers again have an opportunity to talk to you in what is called "closing argument," which is the fifth phase. Again, what the lawyers say is not evidence. The closing arguments are not evidence for you to consider in your deliberations.

Finally, in the sixth phase of the trial it will be time for you to deliberate. You can then evaluate the evidence, discuss the evidence among yourselves and make a decision in the case. You are the judges of the facts, and I decide questions of law. I will explain the rules of law that apply to this case, and I will also explain the meaning of the patent claim language. You must follow my explanation of the law and the patent claim language even if you do not agree with me. Nothing I say or do during the course of the trial is intended to indicate what your verdict should be.]

At the end of the trial, you will get a written charge that will have all of these instructions in it in much more detail than I am giving to you now, and you will also be given a verdict form that will ask you some very simple questions such as:

And at the end of the trial, you will get a written charge that will have all of these instructions in it in much more detail than I am giving to you now. You will also have a verdict

form that will ask you **[Bedrock proposes: some very simple questions on infringement and validity.] [Defendants propose: some very simple questions on ownership, infringement, and invalidity:]**

[Defendants propose:

Whether Bedrock own the '120 Patent?

Whether any Defendant infringe a claim of the '120 Patent?

Whether the '120 patent invalid?]

If you find that Defendants infringe the '120 Patent and that the '120 Patent is valid, **[Defendants propose: and that Bedrock owns the '120 patent,]** you will be asked the amount of damages that you find. So there will be questions that you will have to answer in the case basically dealing with infringement, invalidity, **[Defendants propose: ownership]** and damages.

I know this is all very complex. Do not feel like you have to be an expert on patent law. We have plenty of experts in the room. You are going to hear a lot of testimony about it. This is just to give you an overview so that, as you hear a lot of these terms and you hear the evidence, hopefully, this will give you a little context to filter it through.

Let me finally visit with you regarding your duties as jurors. You have two duties as jurors. Your first duty is to decide the facts from the evidence in this case. That is your job and yours alone. Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow them all.

Perform these duties fairly and impartially. Do not allow your sympathy, prejudice, fear or public opinion to influence you. Nothing I say now and nothing I say or do during the trial is meant

to indicate any opinion on my part about what the facts are or about what your verdict should be. Again, you, the jury, will be the sole judges of the facts in this case.

That concludes my opening instructions for you.