Exhibit 1

1.1 OPENING INSTRUCTION [1]

WE ARE ABOUT TO BEGIN THE TRIAL OF THE CASE YOU HEARD ABOUT DURING THE JURY SELECTION. BEFORE THE TRIAL BEGINS, I AM GOING TO GIVE YOU A BRIEF OVERVIEW OF THIS CASE AND INSTRUCTIONS THAT WILL HELP YOU UNDERSTAND WHAT WILL BE PRESENTED TO YOU AND HOW YOU SHOULD CONDUCT YOURSELF DURING THE TRIAL.

THESE INSTRUCTIONS ARE PRELIMINARY INSTRUCTIONS TO HELP YOU UNDERSTAND THE PRINCIPLES THAT APPLY TO CIVIL TRIALS AND TO HELP YOU UNDERSTAND THE EVIDENCE AS YOU LISTEN TO IT. AT THE END OF THE TRIAL, I WILL GIVE YOU A FINAL SET OF INSTRUCTIONS. IT IS THE FINAL SET OF INSTRUCTIONS WHICH WILL GOVERN YOUR DELIBERATIONS.

YOU MUST NOT INFER FROM THESE INSTRUCTIONS OR FROM ANYTHING I MAY SAY OR DO AS INDICATING THAT I HAVE AN OPINION REGARDING THE EVIDENCE OR WHAT YOUR VERDICT SHOULD BE.

IN FOLLOWING MY INSTRUCTIONS, YOU MUST FOLLOW ALL OF THEM AND NOT SINGLE OUT SOME AND IGNORE OTHERS. THEY ARE ALL IMPORTANT.

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[1] Adapted from 3 Kevin F. O'Malley, Jay E. Grenig, & Hon. William C. Lee, Federal Jury Practice and Instructions – Civil § 101.01 (5th ed. 2000); Ninth Circuit Model Civil Jury Instructions - 1.1A (2007 Edition).

1.2 ROLES OF THE JUDGE AND JURY[2]

AFTER ALL THE EVIDENCE HAS BEEN HEARD AND ARGUMENTS AND INSTRUCTIONS ARE FINISHED, YOU WILL MEET TO MAKE YOUR DECISION. YOU WILL DETERMINE THE FACTS FROM ALL THE TESTIMONY AND OTHER EVIDENCE THAT IS PRESENTED. YOU ARE THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS.

BY YOUR VERDICT, YOU WILL DECIDE DISPUTED ISSUES OF FACT. I WILL DECIDE ALL QUESTIONS OF LAW THAT ARISE DURING THE TRIAL. BEFORE YOU BEGIN YOUR DELIBERATIONS AT THE CLOSE OF THE CASE, I WILL INSTRUCT YOU IN MORE DETAIL ON THE LAW THAT YOU MUST FOLLOW AND APPLY. YOU ARE REQUIRED TO FOLLOW THE LAW AS I GIVE IT TO YOU WHETHER YOU AGREE WITH IT OR NOT.

BECAUSE YOU WILL BE ASKED TO DECIDE THE FACTS OF THIS CASE, YOU SHOULD GIVE CAREFUL ATTENTION TO THE TESTIMONY AND EVIDENCE PRESENTED. DURING THE TRIAL YOU SHOULD KEEP AN OPEN MIND AND SHOULD NOT FORM OR EXPRESS ANY OPINION ABOUT THE CASE UNTIL YOU HAVE HEARD ALL OF THE TESTIMONY AND EVIDENCE, THE LAWYERS' CLOSING ARGUMENTS, AND MY INSTRUCTIONS TO YOU ON THE LAW.

[2] Adapted from 3 Kevin F. O'Malley, Jay E. Grenig, & Hon. William C. Lee, Federal Jury Practice and Instructions – Civil §§ 101.01, 101.10 (5th ed. 2000).

1.3 JURY CONDUCT[3]

TO ENSURE FAIRNESS, YOU MUST OBEY THE FOLLOWING RULES:

1. DO NOT TALK TO EACH OTHER ABOUT THIS CASE OR ABOUT ANYONE INVOLVED WITH THIS CASE UNTIL THE END OF THE TRIAL WHEN YOU GO TO THE JURY ROOM TO DECIDE ON YOUR VERDICT.

2. DO NOT TALK WITH ANYONE ELSE ABOUT THIS CASE OR ABOUT ANYONE INVOLVED WITH THIS CASE UNTIL THE TRIAL HAS ENDED AND YOU HAVE BEEN DISCHARGED AS JURORS. "ANYONE ELSE" INCLUDES MEMBERS OF YOUR FAMILY AND YOUR FRIENDS. YOU MAY TELL PEOPLE YOU ARE A JUROR, BUT DO NOT TELL THEM ANYTHING ELSE ABOUT THE CASE.

3. OUTSIDE THE COURTROOM, DO NOT LET ANYONE TELL YOU ANYTHING ABOUT THE CASE, OR ABOUT ANYONE INVOLVED WITH IT UNTIL THE TRIAL HAS ENDED. IF SOMEONE SHOULD TRY TO TALK TO YOU ABOUT THE CASE DURING THE TRIAL, PLEASE REPORT IT TO ME IMMEDIATELY.

4. DURING THE TRIAL YOU SHOULD NOT TALK WITH OR SPEAK TO ANY OF THE PARTIES, LAWYERS OR WITNESSES INVOLVED IN THIS CASE. YOU SHOULD NOT EVEN PASS THE TIME OF DAY WITH ANY OF THEM.

5. DO NOT READ ANY NEWS STORIES OR ARTICLES ABOUT THE CASE, OR ABOUT ANYONE INVOLVED WITH IT, OR LISTEN TO ANY RADIO OR TELEVISION REPORTS ABOUT THE CASE OR ABOUT ANYONE INVOLVED WITH IT.

6. DO NOT DO ANY RESEARCH, SUCH AS CHECKING DICTIONARIES, OR MAKE ANY INVESTIGATION ABOUT THE CASE ON YOUR OWN.

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[3] Adapted from 3 Kevin F. O'Malley, Jay E. Grenig, & Hon. William C. Lee, Federal Jury Practice and Instructions – Civil § 101.11 (5th ed. 2000).

7. DO NOT MAKE UP YOUR MIND DURING THE TRIAL ABOUT WHAT THE VERDICT SHOULD BE. KEEP AN OPEN MIND UNTIL AFTER YOU HAVE GONE TO THE JURY ROOM TO DECIDE THE CASE AND YOU AND THE OTHER JURORS HAVE DISCUSSED ALL THE EVIDENCE.

8. IF YOU NEED TO TELL ME SOMETHING, SIMPLY GIVE A SIGNED NOTE TO THE MARSHAL TO GIVE TO ME.

1.4 WHAT IS EVIDENCE[4]

THE EVIDENCE IN THIS CASE WILL CONSIST OF THE FOLLOWING:

1. THE SWORN TESTIMONY OF THE WITNESSES;

2. THE EXHIBITS THAT HAVE BEEN RECEIVED IN EVIDENCE; AND

3. ANY STIPULATED FACTS BY THE PARTIES.

[4] Adapted from 3 Kevin F. O'Malley, Jay E. Grenig, & Hon. William C. Lee, Federal Jury Practice and Instructions – Civil §§ 101.40 & 101.42 (5th ed. 2000); Ninth Circuit Model Civil Jury Instructions - 1.6 (2007 Edition); 2006 Fifth Circuit Civil Pattern Jury Instructions.

1.5 WHAT IS NOT EVIDENCE[5]

IN REACHING YOUR VERDICT, YOU MAY CONSIDER ONLY THE TESTIMONY AND EXHIBITS RECEIVED INTO EVIDENCE. CERTAIN THINGS ARE NOT EVIDENCE, AND YOU MAY NOT CONSIDER THEM IN DECIDING WHAT THE FACTS ARE.

1. ARGUMENTS AND STATEMENTS BY LAWYERS ARE NOT EVIDENCE. THE LAWYERS ARE NOT WITNESSES. WHAT THEY WILL SAY IN THEIR OPENING STATEMENTS, IN THEIR CLOSING ARGUMENTS, AND AT OTHER TIMES IS INTENDED TO HELP YOU INTERPRET THE EVIDENCE, BUT IT IS NOT EVIDENCE. IF THE FACTS AS YOU REMEMBER THEM DIFFER FROM THE WAY THE LAWYERS HAVE STATED THEM, YOUR MEMORY OF THEM CONTROLS.

2. QUESTIONS AND OBJECTIONS BY LAWYERS ARE NOT EVIDENCE. ATTORNEYS HAVE A DUTY TO THEIR CLIENTS TO OBJECT WHEN THEY BELIEVE A QUESTION IS IMPROPER UNDER THE RULES OF EVIDENCE. YOU SHOULD NOT BE INFLUENCED BY THE OBJECTION OR BY THE COURT'S RULING ON IT.

3. TESTIMONY THAT HAS BEEN EXCLUDED OR STRICKEN, OR THAT YOU HAVE BEEN INSTRUCTED TO DISREGARD, IS NOT EVIDENCE AND MUST NOT BE CONSIDERED.

4. ANYTHING YOU MAY HAVE SEEN OR HEARD WHEN THE COURT WAS NOT IN SESSION IS NOT EVIDENCE. YOU ARE TO DECIDE THE CASE SOLELY ON THE EVIDENCE RECEIVED AT THE TRIAL.

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[5] Adapted from 3 Kevin F. O'Malley, Jay E. Grenig, & Hon. William C. Lee, Federal Jury Practice and Instructions – Civil §§ 101.40 & 101.42 (5th ed. 2000); Ninth Circuit Model Civil Jury Instructions - 1.7 (2007 Edition); 2006 Fifth Circuit Civil Pattern Jury Instructions.

1.6 EVIDENCE FOR A LIMITED PURPOSE[6]

SOME EVIDENCE MAY BE ADMITTED FOR A LIMITED PURPOSE ONLY. WHEN I INSTRUCT YOU THAT AN ITEM OF EVIDENCE HAS BEEN ADMITTED FOR A LIMITED PURPOSE, YOU MUST CONSIDER IT ONLY FOR THAT LIMITED PURPOSE AND FOR NO OTHER PURPOSE.

[6] Adapted from 3 Kevin F. O'Malley, Jay E. Grenig, & Hon. William C. Lee, Federal Jury Practice and Instructions – Civil §§ 101.40 & 101.42 (5th ed. 2000); Ninth Circuit Model Civil Jury Instructions - 1.8 (2007 Edition); 2006 Fifth Circuit Civil Pattern Jury Instructions.

1.7 DIRECT OR CIRCUMSTANTIAL EVIDENCE[7]

EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL. DIRECT EVIDENCE IS DIRECT PROOF OF A FACT, SUCH AS TESTIMONY BY A WITNESS ABOUT WHAT THAT WITNESS PERSONALLY SAW OR HEARD OR DID. CIRCUMSTANTIAL EVIDENCE IS PROOF OF ONE OR MORE FACTS THAT TEND TO PROVE OR DISPROVE THE EXISTENCE OR NONEXISTENCE OF CERTAIN OTHER FACTS. YOU SHOULD CONSIDER BOTH KINDS OF EVIDENCE. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. YOU ARE TO DECIDE HOW MUCH WEIGHT TO GIVE ANY EVIDENCE.

[7] Adapted from 3 Kevin F. O'Malley, Jay E. Grenig, & Hon. William C. Lee, Federal Jury Practice and Instructions – Civil §§ 101.40 & 101.42 (5th ed. 2000); Ninth Circuit Model Civil Jury Instructions - 1.9 (2007 Edition); 2006 Fifth Circuit Civil Pattern Jury Instructions.

1.8 RULINGS ON OBJECTIONS[8]

THERE ARE RULES THAT CONTROL WHAT CAN BE RECEIVED INTO EVIDENCE. WHEN A LAWYER ASKS A QUESTION OR OFFERS AN EXHIBIT INTO EVIDENCE AND A LAWYER ON THE OTHER SIDE THINKS THAT IT IS NOT PERMITTED BY THE RULES OF EVIDENCE, THAT LAWYER MAY OBJECT. IF I OVERRULE THE OBJECTION, THE QUESTION MAY BE ANSWERED OR THE EXHIBIT RECEIVED. IF I SUSTAIN THE OBJECTION, THE QUESTION CANNOT BE ANSWERED, AND THE EXHIBIT CANNOT BE RECEIVED. WHENEVER I SUSTAIN AN OBJECTION TO A QUESTION, YOU MUST IGNORE THE QUESTION AND MUST NOT GUESS WHAT THE ANSWER MIGHT HAVE BEEN.

[8] Adapted from 3 Kevin F. O'Malley, Jay E. Grenig, & Hon. William C. Lee, Federal Jury Practice and Instructions – Civil §§ 101.40 & 101.42 (5th ed. 2000); Ninth Circuit Model Civil Jury Instructions - 1.10 (2007 Edition); 2006 Fifth Circuit Civil Pattern Jury Instructions.

1.9 CREDIBILITY OF WITNESSES[9]

YOU, AS JURORS, ARE THE SOLE JUDGES OF THE CREDIBILITY OF THE WITNESSES AND THE WEIGHT THEIR TESTIMONY DESERVES. YOU MAY BE GUIDED BY THE APPEARANCE AND THE CONDUCT OF THE WITNESS, OR BY THE MANNER IN WHICH THE WITNESSES TESTIFY, OR BY THE CHARACTER OF THE TESTIMONY GIVEN, OR BY EVIDENCE TO THE CONTRARY OF THE TESTIMONY GIVEN. YOU SHOULD CAREFULLY SCRUTINIZE ALL THE TESTIMONY GIVEN, THE CIRCUMSTANCES UNDER WHICH EACH WITNESS HAS TESTIFIED, AND EVERY MATTER IN EVIDENCE WHICH TENDS TO SHOW WHETHER THE WITNESS WAS WORTHY OF BELIEF. CONSIDER EACH WITNESS' INTELLIGENCE, MOTIVE AND STATE OF MIND, THEIR DEMEANOR OR MANNER WHILE ON THE STAND. CONSIDER THE WITNESS'S ABILITY TO OBSERVE THE MATTERS AS TO WHICH HE OR SHE HAS TESTIFIED, AND WHETHER HE OR SHE IMPRESSES YOU AS HAVING AN ACCURATE RECOLLECTION OF THESE MATTERS. CONSIDER ALSO ANY RELATION EACH WITNESS MAY BEAR TO EITHER SIDE OF THE CASE; THE MANNER IN WHICH EACH WITNESS MIGHT BE AFFECTED BY THE JURY; AND THE EXTENT TO WHICH, IF AT ALL, EACH WITNESS IS EITHER SUPPORTED OR CONTRADICTED BY OTHER EVIDENCE IN THE CASE.

INCONSISTENCIES OR DISCREPANCIES IN THE TESTIMONY OF A WITNESS, OR BETWEEN THE TESTIMONY OF DIFFERENT WITNESSES, MAY OR MAY NOT CAUSE YOU, AS A JUROR, TO DISCREDIT SUCH TESTIMONY. TWO OR MORE PERSONS WITNESSING AN INCIDENT OR TRANSACTION MAY SEE IT OR HEAR IT

[9] *Active Video Networks, Inc. v. Verizon Comm., Inc.*, No. 2:10cv248 (E.D. Va.).

DIFFERENTLY. AN INNOCENT MISRECOLLECTION, LIKE A FAILURE OF RECOLLECTION, IS NOT AN UNCOMMON EXPERIENCE. IN WEIGHING THE EFFECT OF A DISCREPANCY, ALWAYS CONSIDER WHETHER IT PERTAINS TO A MATTER OF IMPORTANCE OR AN UNIMPORTANT DETAIL AND WHETHER THE DISCREPANCY RESULTS FROM INNOCENT ERROR OR INTENTIONAL FALSEHOOD.

A WITNESS MAY BE DISCREDITED OR IMPEACHED BY CONTRADICTORY EVIDENCE, OR BY EVIDENCE THAT AT SOME OTHER TIME THE WITNESS HAD SAID OR DONE SOMETHING, OR HAS FAILED TO SAY OR DO SOMETHING WHICH IS INCONSISTENT WITH THE WITNESS' TESTIMONY HERE IN COURT, HIS PRESENT TESTIMONY. IF YOU BELIEVE ANY WITNESS HAS BEEN IMPEACHED AND, THUS, DISCREDITED, IT IS YOUR EXCLUSIVE DECISION TO GIVE THE TESTIMONY OF THAT WITNESS SUCH CREDIBILITY AS YOU THINK IT DESERVES.

IF A WITNESS IS SHOWN KNOWINGLY TO HAVE TESTIFIED FALSELY TO ANY MATERIAL MATTER, YOU HAVE A RIGHT TO DISTRUST SUCH WITNESS' TESTIMONY IN OTHER PARTICULARS AND YOU MAY REJECT ALL THE TESTIMONY OF THAT WITNESS OR GIVE IT SUCH CREDIBILITY AS YOU THINK IT DESERVES.

ALSO, THE WEIGHT OF THE EVIDENCE IS NOT NECESSARILY DETERMINED BY THE NUMBER OF WITNESSES TESTIFYING TO THE EXISTENCE OR THE NONEXISTENCE OF ANY FACT. YOU MAY FIND THAT THE TESTIMONY OF A SMALL NUMBER OF WITNESSES AS TO ANY FACT IS MORE CREDIBLE THAN THE TESTIMONY OF A LARGER NUMBER OF WITNESSES TO THE CONTRARY.

1.10 DEPOSITION TESTIMONY[10]

DEPOSITIONS MAY ALSO BE RECEIVED IN EVIDENCE. DEPOSITIONS CONTAIN SWORN TESTIMONY, WITH THE LAWYERS FOR EACH PARTY BEING ENTITLED TO ASK QUESTIONS. IN SOME CASES, ALL OR PART OF A DEPOSITION MAY BE PLAYED FOR YOU ON VIDEOTAPE. DEPOSITION TESTIMONY MAY BE ACCEPTED BY YOU, SUBJECT TO THE SAME INSTRUCTIONS THAT APPLY TO WITNESSES TESTIFYING IN OPEN COURT.

[10] Adapted from 3 Kevin F. O'Malley, Jay E. Grenig, & Hon. William C. Lee, Federal Jury Practice and Instructions – Civil §§ 101.40 & 101.42 (5th ed. 2000); Ninth Circuit Model Civil Jury Instructions – 2.4 (2007 Edition); 2006 Fifth Circuit Civil Pattern Jury Instructions.

1.11 BENCH CONFERENCES AND RECESSES[11]

DURING THE TRIAL, IT MAY BE NECESSARY FOR ME TO TALK WITH THE LAWYERS OUT OF YOUR HEARING ABOUT QUESTIONS OF LAW OR PROCEDURE. SOMETIMES, YOU MAY BE EXCUSED FROM THE COURTROOM DURING THESE DISCUSSIONS. THE PURPOSE OF THESE CONFERENCES IS NOT TO KEEP RELEVANT INFORMATION FROM YOU, BUT TO DECIDE HOW CERTAIN EVIDENCE IS TO BE TREATED UNDER THE RULES OF EVIDENCE AND TO AVOID CONFUSION AND ERROR. I WILL TRY TO LIMIT THESE INTERRUPTIONS AS MUCH AS POSSIBLE.

[11] Adapted from 3 Kevin F. O'Malley, Jay E. Grenig, & Hon. William C. Lee, Federal Jury Practice and Instructions – Civil § 101.01 (5th ed. 2000); Ninth Circuit Model Civil Jury Instructions - 1.18 (2007 Edition).

1.12 NO TRANSCRIPT AVAILABLE/TAKING NOTES[12]

AT THE END OF THE TRIAL, YOU WILL HAVE TO MAKE YOUR DECISION BASED ON WHAT YOU RECALL OF THE EVIDENCE. YOU WILL NOT HAVE A WRITTEN TRANSCRIPT TO CONSULT, AND IT IS DIFFICULT AND TIME CONSUMING FOR THE REPORTER TO READ BACK LENGTHY TESTIMONY. I URGE YOU TO PAY CLOSE ATTENTION TO THE TESTIMONY AS IT IS GIVEN.

IF AT ANY TIME YOU CANNOT HEAR OR SEE THE TESTIMONY, EVIDENCE, QUESTIONS OR ARGUMENTS, LET ME KNOW SO THAT I CAN CORRECT THE PROBLEM.

IF YOU WISH, YOU MAY TAKE NOTES TO HELP YOU REMEMBER THE EVIDENCE. IF YOU DO TAKE NOTES, PLEASE KEEP THEM TO YOURSELF UNTIL YOU AND YOUR FELLOW JURORS GO TO THE JURY ROOM TO DECIDE THE CASE. DO NOT LET NOTE-TAKING DISTRACT YOU. WHEN YOU LEAVE, YOUR NOTES SHOULD BE LEFT IN THE JURY ROOM. NO ONE WILL READ YOUR NOTES. THEY WILL BE DESTROYED AT THE CONCLUSION OF THE CASE.

WHETHER OR NOT YOU TAKE NOTES, YOU SHOULD RELY ON YOUR OWN MEMORY OF THE EVIDENCE. NOTES ARE ONLY TO ASSIST YOUR MEMORY. YOU SHOULD NOT BE OVERLY INFLUENCED BY YOUR NOTES OR THOSE OF YOUR FELLOW JURORS.

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[12] Adapted from 3 Kevin F. O'Malley, Jay E. Grenig, & Hon. William C. Lee, Federal Jury Practice and Instructions – Civil §§ 101.40 & 101.42 (5th ed. 2000); Ninth Circuit Model Civil Jury Instructions - 1.13, 1.14 (2007 Edition); 2006 Fifth Circuit Civil Pattern Jury Instructions.

1.13 WHAT A PATENT IS AND HOW ONE IS OBTAINED[13]

[THIS INSTRUCTION SUMMARIZES INFORMATION ABOUT PATENTS THAT IS DISCUSSED IN THE FEDERAL JUDICIAL CENTER'S VIDEO, "AN INTRODUCTION TO THE PATENT SYSTEM." DEFENDANTS UNDERSTAND THAT THE COURT WILL PLAY THE PATENT VIDEO FOR THE JURY, IN WHICH CASE, THIS INSTRUCTION NEED NOT BE READ.]

THIS CASE INVOLVES A DISPUTE RELATING TO TWO UNITED STATES PATENTS. BEFORE SUMMARIZING THE POSITIONS OF THE PARTIES AND THE ISSUES INVOLVED IN THE DISPUTE, LET ME TAKE A MOMENT TO EXPLAIN WHAT A PATENT IS AND HOW ONE IS OBTAINED.

PATENTS ARE GRANTED BY THE UNITED STATES PATENT AND TRADEMARK OFFICE (SOMETIMES CALLED "THE PATENT OFFICE" OR "PTO"). A VALID UNITED STATES PATENT GIVES THE PATENT OWNER THE RIGHT TO PREVENT OTHERS FROM MAKING, USING, OFFERING TO SELL, OR SELLING THE PATENTED INVENTION WITHIN THE UNITED STATES DURING THE TERM OF THE PATENT WITHOUT THE PATENT OWNER'S PERMISSION. A VIOLATION OF THE PATENT OWNER'S RIGHTS IS CALLED INFRINGEMENT. THE PATENT OWNER MAY TRY TO ENFORCE A PATENT AGAINST PERSONS BELIEVED TO BE INFRINGERS BY A LAWSUIT FILED IN FEDERAL COURT, LIKE THIS COURT.

THE APPLICATION INCLUDES WHAT IS CALLED A "SPECIFICATION," WHICH CONTAINS A WRITTEN DESCRIPTION OF THE CLAIMED INVENTION TELLING WHAT THE INVENTION IS, HOW IT WORKS, HOW TO MAKE IT AND HOW TO USE IT

[13] Adapted from Model Patent Jury Instructions prepared by the Federal Circuit Bar Association (Feb. 2012).

SO THAT SOMEONE WITH SKILL IN THAT FIELD WILL KNOW HOW TO MAKE OR USE IT. THE SPECIFICATION CONCLUDES WITH ONE OR MORE NUMBERED SENTENCES. THESE ARE THE PATENT "CLAIMS." WHEN 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.

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. AFTER THE APPLICANT FILES THE APPLICATION, AN EXAMINER REVIEWS THE APPLICATION TO DETERMINE WHETHER THE CLAIMS ARE PATENTABLE (APPROPRIATE FOR PATENT PROTECTION) AND WHETHER THE SPECIFICATION ADEQUATELY DESCRIBES THE INVENTION CLAIMED. IN EXAMINING A PATENT APPLICATION, THE EXAMINER REVIEWS CERTAIN INFORMATION ABOUT THE STATE OF THE TECHNOLOGY AT THE TIME THE APPLICATION WAS FILED. THE PTO SEARCHES FOR AND REVIEWS INFORMATION THAT IS PUBLICLY AVAILABLE OR THAT IS SUBMITTED BY THE APPLICANT; THIS INFORMATION IS CALLED "PRIOR ART." THE EXAMINER REVIEWS THIS PRIOR ART TO DETERMINE WHETHER OR NOT THE INVENTION IS TRULY AN ADVANCE OVER THAT OF THE ART AT THE TIME. PRIOR ART IS DEFINED BY LAW, AND I WILL GIVE YOU, AT A LATER TIME SPECIFIC INSTRUCTIONS AS TO WHAT CONSTITUTES PRIOR ART. HOWEVER, IN GENERAL, PRIOR ART INCLUDES INFORMATION THAT DEMONSTRATES THE STATE OF TECHNOLOGY THAT EXISTED BEFORE THE CLAIMED INVENTION WAS

MADE OR BEFORE THE APPLICATION WAS FILED. A PATENT LISTS THE PRIOR ART THAT THE EXAMINER CONSIDERED; THIS LIST IS CALLED THE "CITED REFERENCES."

AFTER THE PRIOR ART SEARCH AND EXAMINATION OF THE APPLICATION, THE EXAMINER INFORMS THE APPLICANT IN WRITING OF WHAT THE EXAMINER HAS FOUND AND WHETHER THE EXAMINER CONSIDERS ANY CLAIM TO BE PATENTABLE, AND THUS, WILL BE "ALLOWED." THIS WRITING FROM THE EXAMINER IS CALLED AN "OFFICE ACTION." IF THE EXAMINER REJECTS THE CLAIMS, THE APPLICANT HAS AN OPPORTUNITY TO RESPOND TO THE EXAMINER TO TRY TO PERSUADE THE EXAMINER TO ALLOW THE CLAIMS, AND TO CHANGE THE 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 IS SATISFIED THAT THE APPLICATION MEETS THE REQUIREMENTS FOR A PATENT, OR THAT THE APPLICATION SHOULD BE REJECTED AND NO PATENT SHOULD ISSUE. THE PAPERS GENERATED DURING THESE COMMUNICATIONS BETWEEN THE EXAMINER AND THE APPLICANT ARE CALLED THE "PROSECUTION HISTORY."

THE FACT THAT THE PTO GRANTS A PATENT DOES NOT NECESSARILY MEAN THAT ANY INVENTION CLAIMED IN THE PATENT, IN FACT, DESERVES THE PROTECTION OF A PATENT. FOR EXAMPLE, THE PTO MAY NOT HAVE HAD AVAILABLE TO IT ALL OTHER PRIOR ART AND OTHER INFORMATION THAT WILL BE PRESENTED TO YOU. A PERSON ACCUSED OF INFRINGEMENT HAS THE RIGHT TO ARGUE HERE IN FEDERAL COURT THAT A CLAIMED INVENTION IN THE

PATENT IS INVALID BECAUSE IT DOES NOT MEET THE REQUIREMENTS FOR A PATENT. IT IS YOUR JOB TO CONSIDER THE EVIDENCE PRESENTED BY THE PARTIES AND DETERMINE INDEPENDENTLY WHETHER OR NOT DEFENDANTS HAVE PROVEN THAT THE PATENT IS INVALID.

1.14 SUMMARY OF CONTENTIONS

TO HELP YOU FOLLOW THE EVIDENCE, I WILL NOW GIVE YOU A SUMMARY OF THE POSITIONS OF THE PARTIES. PLAINTIFF I/P ENGINE. INC. CONTENDS THAT DEFENDANTS GOOGLE, INC., AOL, INC., IAC SEARCH & MEDIA, INC., GANNETT CO., INC., AND TARGET CORP. INFRINGE U.S. PATENT NO. 6,314,420 AND U.S. PATENT NO. 6,775,664. THESE PATENTS ARE SOMETIMES REFERRED TO AS THE '420 AND THE '664 PATENTS. SPECIFICALLY, I/P ENGINE CONTENDS THAT GOOGLE'S ADWORDS SYSTEM DIRECTLY INFRINGES THE ASSERTED CLAIMS, AND THAT AOL, INC., IAC SEARCH & MEDIA, GANNETT, AND TARGET INFRINGE THROUGH THEIR USE OF GOOGLE'S ADWORDS SYSTEM.

DEFENDANTS DENY THAT THEY INFRINGE ANY CLAIM OF THE '420 PATENT OR THE '664 PATENT. DEFENDANTS ALSO CONTEND THAT THE ASSERTED CLAIMS OF THE '420 PATENT AND THE '664 PATENT ARE INVALID. INVALIDITY IS A DEFENSE TO PATENT INFRINGEMENT. EVEN THOUGH THE UNITED STATES PATENT AND TRADEMARK OFFICE HAS ALLOWED THE CLAIMS OF THE '420 PATENT AND THE '664 PATENT, YOU, THE JURY, ARE RESPONSIBLE FOR DECIDING WHETHER THE CLAIMS OF THE PATENT ARE VALID.

YOUR JOB IS TO DECIDE WHETHER OR NOT THE ASSERTED CLAIMS OF THE '420 PATENT OR THE '664 PATENT HAVE BEEN INFRINGED AND WHETHER OR NOT THOSE CLAIMS ARE INVALID. IF YOU DECIDE THAT ANY CLAIM OF THE '420 PATENT OR THE '664 PATENT HAS BEEN INFRINGED AND ALSO THAT AN INFRINGED CLAIM IS NOT INVALID, THEN YOU WILL THEN NEED TO DECIDE MONEY DAMAGES TO BE AWARDED TO I/P ENGINE.

1.15 PATENTS AT ISSUE[14]

[THE COURT SHOWS THE JURY ONE OR MORE OF THE PATENTS-IN-SUIT AND POINTS OUT THE PARTS, WHICH INCLUDE THE SPECIFICATION, DRAWINGS, AND CLAIMS, INCLUDING CLAIMS AT ISSUE.]

LET'S TAKE A MOMENT TO LOOK AT THE TWO PATENTS INVOLVED IN THIS CASE. THE FIRST PAGE OF EACH PATENT IDENTIFIES THE DATE THE PATENT WAS GRANTED AND PATENT NUMBER ALONG THE TOP, AS WELL AS THE NAMES OF THE INVENTORS, THE FILING DATE, AND A LIST OF THE REFERENCES CONSIDERED IN THE PTO.

THE SPECIFICATION OF THE PATENT BEGINS WITH AN ABSTRACT, ALSO FOUND ON THE FIRST PAGE. THE ABSTRACT IS A BRIEF STATEMENT ABOUT THE SUBJECT MATTER OF THE INVENTION. NEXT ARE THE DRAWINGS. THE DRAWINGS ILLUSTRATE VARIOUS ASPECTS OR FEATURES OF THE INVENTION. THE WRITTEN DESCRIPTION OF THE INVENTION APPEARS NEXT AND IS ORGANIZED INTO TWO COLUMNS ON EACH PAGE. THE SPECIFICATION ENDS WITH NUMBERED PARAGRAPHS; AS I INDICATED, THESE ARE THE PATENT CLAIMS, WHICH DEFINE THE SCOPE OF THE INVENTION.

[14] Adapted from Adapted from Patent Jury Instructions, The National Patent Jury Instruction Project § 1.2 (June 17, 2009).

1.16 THE ROLE OF THE CLAIMS OF A PATENT[15]

BEFORE YOU CAN DECIDE MANY OF THE ISSUES IN THIS CASE, YOU WILL NEED TO UNDERSTAND THE ROLE OF PATENT "CLAIMS." THE PATENT CLAIMS ARE THE NUMBERED SENTENCES AT THE END OF EACH PATENT. THE CLAIMS ARE IMPORTANT BECAUSE IT IS THE WORDS OF THE CLAIMS THAT DEFINE WHAT A PATENT COVERS. THE FIGURES AND TEXT IN THE REST OF THE PATENT PROVIDE A DESCRIPTION AND/OR EXAMPLES OF THE INVENTION AND PROVIDE A CONTEXT FOR THE CLAIMS, BUT IT IS THE CLAIMS THAT DEFINE THE BREADTH OF THE PATENT'S COVERAGE. EACH CLAIM IS EFFECTIVELY TREATED AS IF IT WERE A SEPARATE PATENT, AND EACH CLAIM MAY COVER MORE OR LESS THAN ANOTHER CLAIM. THEREFORE, WHAT A PATENT COVERS DEPENDS, IN TURN, ON WHAT EACH OF ITS CLAIMS COVERS.

YOU WILL FIRST NEED TO UNDERSTAND WHAT EACH CLAIM COVERS IN ORDER TO DECIDE WHETHER OR NOT THERE IS INFRINGEMENT OF THE CLAIM AND TO DECIDE WHETHER OR NOT THE CLAIM IS INVALID. THE LAW SAYS THAT IT IS MY ROLE TO DEFINE THE TERMS OF THE CLAIMS AND IT IS YOUR ROLE TO APPLY MY DEFINITIONS TO THE ISSUES THAT YOU ARE ASKED TO DECIDE IN THIS CASE.

[15] Patent Jury Instructions prepared by the Federal Circuit Bar Association.

1.17 CLAIM CONSTRUCTION[16]

[THE COURT HANDS OUT ITS CLAIM CONSTRUCTIONS AT THIS TIME. THE FOLLOWING INSTRUCTION SHOULD BE READ:]

I HAVE ALREADY DETERMINED THE MEANING OF SOME OF THE TERMS OF THE ASSERTED CLAIMS. YOU HAVE BEEN GIVEN A DOCUMENT REFLECTING THOSE MEANINGS. FOR ANY CLAIM TERM FOR WHICH I HAVE NOT PROVIDED YOU WITH A DEFINITION, YOU SHOULD APPLY ITS ORDINARY MEANING. YOU ARE TO APPLY MY DEFINITIONS OF THESE TERMS THROUGHOUT THIS CASE.

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 OR INVALIDITY. THOSE ISSUES ARE YOURS TO DECIDE. I WILL PROVIDE YOU WITH MORE DETAILED INSTRUCTIONS ON THE MEANING OF THE CLAIMS BEFORE YOU RETIRE TO DELIBERATE YOUR VERDICT.

[16] Adapted from Model Patent Jury Instructions § A.3, Federal Circuit Bar Association (February 2012).

1.18 OUTLINE OF TRIAL[17]

THE TRIAL WILL NOW BEGIN. FIRST, EACH SIDE MAY MAKE AN OPENING STATEMENT. AN OPENING STATEMENT IS NOT EVIDENCE. IT IS SIMPLY AN OPPORTUNITY FOR THE LAWYERS TO EXPLAIN WHAT EACH SIDE EXPECTS THE EVIDENCE WILL SHOW.

THE PRESENTATION OF EVIDENCE WILL THEN BEGIN. WITNESSES WILL TAKE THE WITNESS STAND AND THE DOCUMENTS WILL BE OFFERED AND ADMITTED INTO EVIDENCE. THERE ARE TWO STANDARDS OF PROOF THAT YOU WILL APPLY TO THE EVIDENCE, DEPENDING ON THE ISSUE YOU ARE DECIDING. ON SOME ISSUES, YOU MUST DECIDE WHETHER CERTAIN FACTS HAVE BEEN PROVEN BY A PREPONDERANCE OF THE EVIDENCE. A PREPONDERANCE OF THE EVIDENCE MEANS THAT THE FACT THAT IS TO BE PROVEN IS MORE LIKELY TRUE THAN NOT. ON OTHER ISSUES THAT I WILL IDENTIFY FOR YOU, YOU MUST DECIDE WHETHER THE FACT HAS BEEN PROVEN BY CLEAR AND CONVINCING EVIDENCE, I.E., THAT YOU HAVE BEEN LEFT WITH A CLEAR CONVICTION THAT THE FACT HAS BEEN PROVEN.

THESE STANDARDS ARE DIFFERENT FROM WHAT YOU MAY HAVE HEARD ABOUT IN CRIMINAL PROCEEDINGS WHERE A FACT MUST BE PROVEN BEYOND A REASONABLE DOUBT. ON A SCALE OF THESE VARIOUS STANDARDS OF PROOF, AS YOU MOVE FROM PREPONDERANCE OF THE EVIDENCE, WHERE THE PROOF NEED ONLY BE SUFFICIENT TO TIP THE SCALE IN FAVOR OF THE PARTY PROVING THE FACT, TO BEYOND A REASONABLE DOUBT, WHERE THE FACT MUST BE

[17] Adapted from Model Patent Jury Instructions § A.5, Federal Circuit Bar Association (Feb. 2012).

PROVEN TO A VERY HIGH DEGREE OF CERTAINTY, YOU MAY THINK OF CLEAR AND CONVINCING EVIDENCE AS BEING BETWEEN THE TWO STANDARDS.

AFTER THE OPENING STATEMENTS, I/P ENGINE WILL PRESENT ITS EVIDENCE IN SUPPORT OF ITS CONTENTION THAT SOME OF THE CLAIMS OF THE PATENTS-IN-SUIT HAVE BEEN INFRINGED BY DEFENDANTS. TO PROVE INFRINGEMENT OF ANY CLAIM, I/P ENGINE MUST PERSUADE YOU THAT IT IS MORE LIKELY THAN NOT THAT DEFENDANTS HAVE INFRINGED THAT CLAIM.

DEFENDANTS WILL THEN PRESENT THEIR EVIDENCE THAT THE CLAIMS OF THE '420 PATENT AND THE '664 PATENT ARE INVALID. TO PROVE INVALIDITY OF ANY CLAIM, DEFENDANTS MUST PERSUADE YOU BY CLEAR AND CONVINCING EVIDENCE THAT THE CLAIM IS INVALID. IN ADDITION TO PRESENTING THEIR EVIDENCE OF INVALIDITY, DEFENDANTS WILL PUT ON EVIDENCE RESPONDING TO I/P ENGINE'S EVIDENCE ON INFRINGEMENT.

I/P ENGINE MAY THEN PUT ON ADDITIONAL EVIDENCE RESPONDING TO DEFENDANTS' EVIDENCE THAT THE CLAIMS OF THE '420 PATENT AND THE '664 PATENT ARE INVALID.

AFTER THE EVIDENCE HAS BEEN PRESENTED, THE ATTORNEYS WILL MAKE CLOSING ARGUMENTS AND I WILL GIVE YOU FINAL INSTRUCTIONS ON THE LAW THAT APPLIES TO THE CASE. THESE CLOSING ARGUMENTS BY THE ATTORNEYS ARE NOT EVIDENCE. AFTER THE CLOSING ARGUMENTS AND INSTRUCTIONS, YOU WILL THEN DECIDE THE CASE.