CHAPTER 1. PRELIMINARY INSTRUCTIONS FOR TRIAL OF A UTILITY PATENT

I. EXCERPTS OF PRELIMINARY INSTRUCTIONS FROM MODEL PATENT JURY INSTRUCTIONS

- § 1:1 AIPLA Model Instructions with Glossary (2024)
- § 1:2 Federal Circuit Bar Association Model Instructions (2016)
- § 1:3 National Jury Instruction Project's Model Patent Jury Instructions (2009)
- § 1:4 Northern District of California Model Instruction with Glossary (2019)
- § 1:5 Pattern Jury Instructions of the Seventh Circuit (Patents) (2020)

II. PRELIMINARY INSTRUCTIONS GIVEN BY COURTS

- § 1:6 Preliminary instructions, short version (E.D. Tex. 2008)
- § 1:7 Preliminary instructions providing an overview of the patent system and the parts of a patent, no need to consider indirect infringement, willfulness or damages if infringement not found (N.D. Ill. 2012)
- § 1:8 Preliminary instructions providing an overview of the patent system and the parts of a patent (N.D. Cal. 2014)
- § 1:9 Preliminary instructions providing duties of the jury, an overview of the patent system and the parts of a patent Infringement of three utility patents (E.D. Tex. 2016)
- § 1:10 Preliminary instructions providing duties of the jury, an overview of the patent system and the parts of a patent Infringement of two utility patents (N.D. Cal. 2015)

- § 1:11 Preliminary instructions providing duties of the jury, an overview of the patent system and the parts of a patent (W.D. Wis. 2015)
- § 1:12 Preliminary instructions providing duties of the jury, an overview of the patent system and the parts of a patent Infringement of one utility patent (N.D. Cal. 2015)
- § 1:13 Preliminary instructions providing duties of the jury, evidence, expert witnesses, burden of proof, parties and their contentions, patent laws, patent claims, independent and dependent claims (D. Del. 2018)
- § 1:14 General instructions, summary of contentions and patent issues, burdens of proof, evidence, witnesses, patent claims, claim construction (D. Del. 2019)
- § 1:15 General instructions, burdens of proof, evidence, statements of counsel, witnesses, deposition testimony, demonstrative exhibits, stipulations (D. Del. 2020)
- § 1:16 Duty of jury, burdens of proof, evidence, testimony from corporate witnesses, charts, slides, and summaries, deposition testimony, requests for admission, expert opinions, patent claims, multiple patents covering same product (N.D. Cal. 2021)
- § 1:17 Organization not to be prejudiced, corporate agents, burden of proof, credibility, impeachment, evidence, inferences, statements of counsel, juror notes, comments by the court, opinion testimony, deposition testimony, demonstratives (E.D. Ten. 2021)
- § 1:18 Burden of proof, evidence, demonstrative exhibits, credibility of witnesses, impeachment, expert witnesses, deposition testimony, objections, use of notes (E.D. Tex. 2022)
- § 1:19 Duties of the jury, evidence, conferences, juror notes, jury rules, standards of proof, claim construction, summaries and charts, testimony, deposition testimony, written interrogatories (W.D. Mo. 2022)
- § 1:20 Duties of the jury, summary of the dispute, burden of proof, evidence, deposition testimony, demonstratives, credibility of testimony, direct and circumstantial evidence, role of patent claims, independent and dependent claims, claim construction (D. Kan. 2022)

CHAPTER 2. INFRINGEMENT OF A UTILITY PATENT

I. EXCERPTS OF MODEL PATENT JURY INSTRUCTIONS ON INFRINGEMENT & WILLFUL INFRINGEMENT

- § 2:1 AIPLA Model Instructions (2024)
- § 2:2 National Jury Instruction Project's Model Patent Jury Instructions (2009)
- § 2:3 Northern District of California Model Instructions (2019)
- § 2:4 Pattern Jury Instructions of the Seventh Circuit (Patents) (2017)

II. INSTRUCTIONS ACTUALLY GIVEN BY COURTS ON INFRINGEMENT AND WILLFUL INFRINGEMENT

- § 2:5 Direct infringement, literal and doctrine of equivalents, court-appointed expert witness, verdict form (N.D. Cal. 2007)
- § 2:6 Cross-claims for infringement, direct infringement, infringement of means-plusfunction claims, contributory infringement, inducing infringement (N.D. Cal. 2013)
- § 2:7 Overview and interpretation of patent claims, direct infringement, indirect infringement, contributory infringement, willful infringement (N.D. Ill. 2012)
- § 2:8 Direct infringement, active inducement, contributory infringement (D. Conn. 2012)
- § 2:9 Direct literal infringement where parties stipulated that only certain claim limitations were in dispute, sale of non-accused redesigned product not evidence that accused product infringed, improper to compare to patentee's commercial product—Verdict form (D. Minn. 2007)
- § 2:10 Direct infringement, literal and under doctrine of equivalents, of "comprising" claims, infringement by means-plus-function limitations, prosecution history estoppel barring specific equivalents, impact of separate patenting of accused device, "burden of proof" (D. Kan. 2006)

- § 2:11 Inducing infringement with detailed general instructions (E.D. Mich. 2007)
- § 2:12 Claim construction instructions expressly instructing the jury that claim was not limited to patent figures and that certain features were not required by the claim, Inducing infringement, Willful infringement with focus on state of mind of accused infringer's employee, Verdict Form with jury interrogatories specific to elements of inducing infringement (N.D. Cal. 2009)
- § 2:13 Direct infringement, inducing infringement based on providing instructions, and contributory infringement (M.D. Fla. 2007)
- § 2:14 Direct infringement, inducing infringement, contributory infringement, willful infringement with "reasonable person" standard, claim construction supplied as an appendix, verdict form (E.D. Tex. 2007)
- § 2:15 Direct infringement, means-plus-function limitations, inducing infringement, "within U.S." requirement applied to method and apparatus claims, willful infringement in view of accused infringer's litigation defenses (E.D. Tex. 2008)
- § 2:16 Willful infringement in view litigation defenses and efforts to obtain a preliminary injunction, literal infringement, means-plus-function limitation, impact of prior adjudication of infringement of different product (C.D. Cal. 2008)
- § 2:17 Direct literal infringement and infringement under doctrine of equivalents, willful infringement with a list of nine specific factors to consider, including an internal investigation by the accused infringer's in-house counsel that was not relied upon as an opinion of counsel (E.D. Tex. 2009)
- § 2:18 Divided (Joint) infringement, Willful infringement permitting jury to consider pre-issuance activity and whether accused infringer offered to indemnify its customers (W.D. Mo. 2009)
- § 2:19 Divided infringement of a method claim, infringement under doctrine of equivalents, instruction not to compare accused product to patentee's product in determining infringement (D. Del. 2010)

§ 2:20	Importation of product made by a patented process under § 271(a) and § 271(g), literal infringement, infringement under the doctrine of equivalents, and infringement of means-plusfunction limitations, Verdict Form (E.D. Tex. 2010)
§ 2:21	Infringement by importation of product made by a patented process focusing on "materially changed" aspect of § 271(g) (C.D. Cal. 2009)
§ 2:22	Infringement of four utility patents (D. Nev. 2015)
§ 2:23	Infringement of two utility patents (N.D. Cal. 2014)
§ 2:24	General patent infringement instructions, direct infringement, induced infringement, willful infringement (E.D. Tex. 2017)
§ 2:25	General patent infringement instructions, literal infringement, indirect infringement, and willful infringement (W.D. Wash. 2015)
§ 2:26	General patent infringement instructions including literal, contributory, indirect, and willful infringement (N.D. Cal. 2016)
§ 2:27	General patent infringement instructions (W.D. Wis. 2016)
§ 2:28	Willful infringement (N.D. Cal. 2016)
§ 2:29	General patent infringement instructions including literal, direct, induced, and contributory infringement (D. Del. 2017)
§ 2:30	Importation of infringing goods, willful infringement, infringement by multiple entities (M.D.N.C. 2017)
§ 2:31	Infringement, infringement by multiple parties, implied license, patent exhaustion (D. Del. 2018)
§ 2:32	Direct infringement, indirect infringement, active inducement, contributory infringement (D. N.J. 2018)
§ 2:33	Direct infringement under doctrine of equivalents, willful infringement (D. Del. 2019)
§ 2:34	Direct infringement, indirect induced infringement, infringement where one or more components located outside U.S., infringement through supply of components for combination abroad, infringement by import/sale/offer for sale/or use (D. N.J 2019)
§ 2:35	Direct infringement, infringement under doctrine of equivalents, active inducement, $\S~271(f)(l)$

- infringement, willful infringement (S.D. Cal. 2019)
- § 2:36 Claim interpretation, direct infringement, literal infringement, willful infringement (E.D. Tex. 2021)
- § 2:37 Claim terms, direct infringement, literal infringement (W.D. Tex. 2021)
- § 2:38 Claim interpretation, direct infringement, literal infringement, active inducement, contributory infringement, willful infringement (D. Del. 2021)
- § 2:39 Multiple patents covering the same product, willful infringement (N.D. Cal. 2021)
- § 2:40 Infringement by acts of multiple parties (D. Del. 2022)
- § 2:41 Infringement generally, infringement under the doctrine of equivalents, indirect infringement, infringement under Sections 271(f)(1) and 271(f)(2) (W.D. Va. 2022)

CHAPTER 3. INVALIDITY DEFENSES

I. EXCERPTS OF MODEL PATENT JURY INSTRUCTIONS ON INVALIDITY DEFENSES

- § 3:1 AIPLA Model Instructions (2024)
- § 3:2 Federal Circuit Bar Association Model Patent Jury Instructions (2020)
- § 3:3 National Jury Instruction Project's Model Patent Jury Instructions
- § 3:4 Northern District of California Model Instruction (2019)
- § 3:5 Pattern Jury Instructions of the Seventh Circuit (Patents) (2017)

II. INSTRUCTIONS ACTUALLY GIVEN BY COURTS ON INVALIDITY DEFENSES

- § 3:6 Patent invalidity: Burden of proof, anticipation, obviousness, duty to deliberate (N.D. Cal. 2014)
- § 3:7 Patent invalidity: Burden of proof, written description, prior art, obviousness (N.D. Cal. 2014)
- § 3:8 Patent invalidity: Written description, anticipation, statutory bar, obviousness, patent exhaustion (N.D. Cal. 2012)

§ 3:9	Anticipation by prior art, on-sale bar,
\$ 0.0	obviousness, inventor proving earlier date of invention, and verdict form (N.D. Cal. 2007)
§ 3:10	Anticipation, inherent anticipation, obviousness (with <i>Dystar</i> instruction) (D. Kan. 2006)
§ 3:11	Anticipation by public knowledge, public use, printed publication, prior patent, on-sale bar, corroboration requirement for oral testimony to support anticipation, obviousness, Verdict Form (E.D. Tex. 2009)
§ 3:12	Anticipation, inherent anticipation, public use, obviousness, analogous art (M.D. Fla. 2007)
§ 3:13	Enablement, anticipation, obviousness, date of invention, verdict form (E.D. Tex. 2007)
§ 3:14	Anticipation, obviousness, enablement, written description and allowing Jury to give weight to fact that PTO did not consider prior art if that art was material (D. Mass 2012)
§ 3:15	General invalidity instructions, obviousness, prior art, and anticipation (E.D. Tex. 2016)
§ 3:16	General invalidity instructions, anticipation, and obviousness (N.D. Cal. 2016)
§ 3:17	General invalidity instructions, prior art, anticipation, and obviousness (W.D. Wis. 2015)
§ 3:18	General invalidity instructions, anticipation, statutory bars, and obviousness (N.D. Cal. 2015)
§ 3:19	General invalidity instructions, anticipation, and written description (D. Del. 2016)
§ 3:20	General invalidity instructions, prior art, anticipation, prior public knowledge, on-sale bar, obviousness, scope and content of prior art and differences between the prior art and claims, level of ordinary skill, hindsight, inventorship, and indefiniteness (D. Del. 2016)
§ 3:21	General invalidity instructions, public use, prior sale, prior invention, corroboration (E.D. Tex. 2017)
§ 3:22	General invalidity instructions, prior art, person of ordinary skill in the art, secondary considerations (E.D. Wis. 2017)
§ 3:23	Invalidity, prior art, priority date, anticipation, obviousness, written description (E.D. Tex. 2018)
§ 3:24	Invalidity defense, anticipation, obviousness, priority date (D. Del. 2019)
§ 3:25	Invalidity-burden of proof, priority, prior art,

anticipation, obviousness, level of ordinary skill, written description, enablement (D. N.J. 2018) Invalidity defense, proving invalidity, invalidity of § 3:26 independent and dependent claims, presumption of validity, anticipation, prior art, obviousness, (E.D.N.C. 2019) Invalidity defense, anticipation, prior art, § 3:27 obviousness, (D.Del. 2020) Invalidity, prior art, anticipation, obviousness, § 3:28 level of ordinary skill (W.D. Tex. 2021) § 3:29 Invalidity, patent eligibility, anticipation, obviousness, level of ordinary skill (D. Del. 2021) § 3:30 Invalidity, level of ordinary skill, written description requirement, lack of enablement, prior art, date of invention, anticipation, obviousness (N.D. Cal. 2021) § 3:31 Invalidity, prior art, effective filing dates, person of ordinary skill in the art, obviousness, lack of enablement, written description (D. Del. 2022) § 3:32 Invalidity, person of ordinary skill in the art, prior art, obviousness, written description, double patenting (M.D.N.C. 2021) Invalidity, prior art, anticipation, obviousness, § 3:33

CHAPTER 4. EQUITABLE & OTHER NON-INVALIDITY DEFENSES TO PATENT INFRINGEMENT

I. INSTRUCTIONS GIVEN IN ACTUAL CASES

level of ordinary skill, obviousness (D. Del. 2022)

- § 4:1 Inequitable conduct and unclean hands (W.D. Tex. 2006)
- § 4:2 Express and implied license (M.D. Fla. 2007)
- § 4:3 Implied iicense (E.D. Tex. 2008)
- § 4:4 Patent misuse based on marking with expired patent number (N.D. Iowa 2004)
- § 4:5 Laches, equitable estoppel, and patent misuse (jury making findings for court's later use), patent exhaustion and repair/reconstruction, and special verdict form (E.D. Ky. 2007)
- § 4:6 Intervening rights arising from reexamination (W.D. Wash. 2005)
- § 4:7 Advisory verdict on prosecution laches and Unclean Hands (C.D. Cal. 2009)

- § 4:8 Exhaustion of patent rights due to licensee's sales, breach of contract and antitrust counterclaims for failing to license on FRAND terms and failing to disclose patent rights to standard setting body (N.D. Cal. 2012)
 § 4:9 Inequitable conduct (C.D. Cal. 2017)
- § 4:10 Non-obviousness as an invalidity defense (D. Del. 2017)
- § 4:11 Defenses against non-infringement, including patent exhaustion, implied license, and permissible repair (N.D. Ga. 2018)
- § 4:12 Express license, breach of contract, breach of implied covenant (N.D. Cal. 2018)
- § 4:13 Waiver, equitable estoppel (N.D. Cal. 2018)
- § 4:14 Unfair competition, intentional interference, conversion, civil conspiracy (D. Del. 2019)
- § 4:15 Patent exhaustion (D. Del. 2020)
- § 4:16 Licenses and third party settlements (E.D. Tenn. 2021)
- § 4:17 Tying (D. Del. 2021)
- § 4:18 Inequitable conduct and unclean hands (W.D. Tex. 2021)

CHAPTER 5. COMPENSATORY DAMAGES FOR INFRINGEMENT OF A UTILITY PATENT

I. EXCERPTS OF MODEL PATENT JURY INSTRUCTIONS ON DAMAGES

- § 5:1 AIPLA Model Instructions (2024)
- § 5:2 Federal Circuit Bar Association Model Instructions (2020)
- § 5:3 National Jury Instruction Project's Model Patent Jury Instructions (2009)
- § 5:4 Northern District of California Model Instruction (2019)
- § 5:5 Pattern Jury Instructions of the Seventh Circuit (Patents) (2020)

II. INSTRUCTIONS ACTUALLY GIVEN BY COURTS ON DAMAGES

§ 5:6 Patent damages: Burden of proof, lost profits,

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- market share, reasonable royalty, date of commencement, design patent damages, one recovery per accused sale (N.D. Cal. 2012)
- § 5:7 Reasonable royalty damages, factors to consider in determining reasonable royalty (E.D. Tex. 2013)
- § 5:8 Agreement regarding the date for commencement of any potential damages, reasonable royalty, factors for determining reasonable royalty (D. Conn. 2012)
- § 5:9 Lost profits from lost sales, lost convoyed sales, and past and future price erosion—Reasonable royalty damages—Date damages began based on marking—Jury must determine damages even if they find in favor of the accused infringer—Verdict form (D. Minn. 2007)
- § 5:10 Reasonable royalty for a computer-based invention based on the entire market value rule and accounting for infringer's actual and foreseeable profits—Reissue claims substantially identical to original claims (S.D. Cal. 2007)
- § 5:11 Lost profits with fixed costs instruction, reasonable royalty, and doubts resulting from inadequate records resolved against accused infringer (M.D. Fla. 2012)
- § 5:12 Damages generally, burden of proof, compensatory damages, and defendant's profits (W.D. Wash. 2012)
- § 5:13 Damages generally, burden of proof, calculating damages in case of inducement or contributory infringement, lost profits, and reasonable royalty (N.D. Cal. 2016)
- § 5:14 Damages generally, reasonable royalty, and apportionment (W.D. Wis. 2015)
- § 5:15 Damages generally, reasonable royalty, commencement of damages, calculating damages due to contributory or induced infringement (D. Del. 2016)
- § 5:16 Damages generally, beginning and end of damages, recoverable damages, apportionment, lost profits, reasonable royalty (D. Del. 2016)
- § 5:17 Damages generally, burden of proof, date of damages, reasonable royalty (E.D. Tex. 2017)
- § 5:18 Damages generally, burden of proof, date of damages, reasonable royalty (D. Del. 2017)

- § 5:19 Damages, reasonable royalty, hypothetical negotiation, *Georgia-Pacific* factors, license comparability, apportionment for royalty, lump sum versus running royalty (E.D. Tex. 2018)
- § 5:20 Damages generally, reasonable royalty (N.D. Ga. 2018)
- § 5:21 Damages generally, lost profits factors, reasonable royalty factors, apportionment, willful infringement (D. Del. 2019)
- § 5:22 Damages generally, reasonable royalty (E.D. Tex. 2019)
- § 5:23 Patent damages: reasonable royalty (D. Del. 2020)
- § 5:24 Patent damages: Lost profits, unjust enrichment, conversion (D. Del. 2019)
- § 5:25 Patent damages: reasonable royalty (D. Del. 2020)
- § 5:26 Patent damages: Reasonable royalty, attribution/ apportionment, convoyed sales, timing, availability of non-infringing substitutes (W.D. Tex. 2021)
- § 5:27 Patent damages: Burden of proof, reasonable royalty (E.D. Tex. 2021)
- § 5:28 Patent damages: Lost profits, reasonable royalty, comparable agreements, apportionment (E.D. Tenn. 2021)
- § 5:29 Damages generally, lost profits in a two-supplier market, lost profits with acceptable non-infringing substitute products, reasonable royalty factors, apportionment in damages, reasonable royalty for multiple patents (D. Del. 2022)
- § 5:30 Damages, requirement of notice, lost profits, *Panduit* factors, collateral sales, reasonable royalty (E.D. Wis. 2022)

CHAPTER 6. INFRINGEMENT OF A DESIGN PATENT

I. MODEL JURY INSTRUCTIONS

§ 6:1 Model Design Patent Jury Instructions (IPO August 2010)

II. INSTRUCTIONS ACTUALLY GIVEN BY COURTS REGARDING DESIGN PATENTS

§ 6:2 Design patent infringement and induced infringement (C.D. Cal. 2011) § 6:3 Design patent claim construction, direct, inducing, and willful infringement, invalidity for anticipation, obviousness, lack of ornamentality, damages of lost profits and reasonable royalty (N.D. Cal. 2012) § 6:4 Design patent infringement and offer to sell (W.D. Wash. 2014) § 6:5 Design patents generally, willful infringement, lost profits (N.D. Ill. 2018) Design patents, invalidity, willful infringement, § 6:6 damages (N.D. Tex. 2018) § 6:7 Design patents, invalidity, infringement, willful infringement, damages (D. Del. 2020) § 6:8 Design patents, infringement (S.D. Cal. 2021) § 6:9 Design patent invalidity for anticipation and lack of enablement (D. Del. 2021) § 6:10 Design patents generally, claim construction, infringement, willful infringement, invalidity,

damages (C.D. Cal. 2022)