

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Applera Corporation and :
Roche Molecular Systems, Inc., :
plaintiffs, :
 :
v. : 3:98cv1201 (JBA)
 :
MJ Research Inc. and Michael :
and John Finney, defendants. :

Interpretation of Jury Verdict

On April 2, 2004, the jury returned its completed verdict form¹ and the Court obtained clarification from the jury regarding the damages awarded in its response to Question 11, namely, that the awards against each individual defendant were intended to be in addition to and not subsumed in the amount awarded against MJ Research Inc. ("MJ"). Without accepting the verdict or polling the jurors, the Court excused the jurors with

¹ After reviewing the verdict form, a side bar conference was held:

THE COURT: The way the verdict is set out, there are damages columns for MJ, John Finney and Michael Finney. It is not clear from the form whether they intend them to be all added up or whether some are subsumed in the others.

MR. REINES: Just different amounts.

THE COURT: I think I need to ask them.

MR. FOSTER: I thought your instructions covered that. Am I not thinking about that?

THE COURT: It doesn't.

MR. DIEBNER: No.

MR. REINES: So ask them for a clarification.

Tr. (April 2, 2004) at 3:15-4:2. The sidebar concluded without further input from defense counsel.

the instruction to return on April 15, 2004 for possible further instruction and/or deliberation. After colloquy with the parties regarding whether the damages specified in response to Question 11 were inconsistent with the jury's answers to preceding interrogatories, the Court requested briefing on this issue and on whether the jury should receive supplemental instructions and be directed to deliberate further on any matter. The parties' briefing revealed that they were in agreement that the jury should receive no further instructions and should engage in no further deliberations, although the parties strongly disagreed over the proper interpretation of the verdict.² Accordingly, the verdict was read into the record, the jurors polled for unanimity and the verdict was accepted and entered on April 15, 2004.³

Because the parties disagree how the verdict totaling and apportioning damages should be construed, the Court is required to interpret it to preserve it, if possible. The principles set forth in Crystal Semiconductor Corp. v. Tritech Microelecs. Int'l Inc., 246 F.3d 1336 (Fed. Cir. 2001) are applicable to this interpretation, which is summarized as follows: the jury awarded plaintiffs total reasonable royalty damages of \$19,800,000 (for MJ's induced infringement of the PCR Process patents and claim 16 of the '493 Patent, and MJ's direct, induced, and contributory

² The Court also received letter briefs from both parties, dated respectively April 16 and 19 of 2004. All arguments raised therein have been considered and both letters will accordingly be docketed.

³ The verdict form as clarified is attached as Appendix A.

infringement of the '675 and '610 Patents), and then apportioned each defendant's share, allocating 90% of the total, \$17,820,000, against MJ, 5%, \$990,000, against Michael Finney, and 5%, \$990,000, against John Finney. Because each individual defendant was found to have induced the infringement found by the jury, all three defendants are jointly and severally liable for the total \$19,800,000 award.

I. Discussion

All agree that it is the Court's duty to preserve a jury verdict, even where it appears ambiguous or inconsistent. See e.g., Indu Craft, Inc. v. Bank of Baroda, 47 F.3d 490, 497 (2d Cir. 1995) ("A court's role is to reconcile and preserve whenever possible a seemingly inconsistent jury verdict."); McGuire v. Russell Miller, Inc., 1 F.3d 1306, 1311 (2d Cir. 1993).⁴ To this end, it is within the Court's discretion to seek jury clarification of answers to verdict interrogatories, as done here, to clarify an ambiguous damages calculation. See Gentile v. County of Suffolk, 926 F.2d 142, 153-54 (2d Cir.

⁴ "A district court has a duty to reconcile the jury's answers on a special verdict form with any reasonable theory consistent with the evidence, and to attempt to harmonize the answers if possible under a fair reading of those answers. The court must search for a reasonable way to read the verdicts as expressing a coherent view of the case, and if there is any way to view a case that makes the jury's answers to the special verdict form consistent with one another, the court must resolve the answers that way even if the interpretation is strained. The district court should refer to the entire case and not just the answers themselves."

1992) (emphasis added);⁵ see also Indu Craft, 47 F.3d at 494.⁶

Here, following the Court's inquiry, the jury foreperson immediately responded that the numbers awarded were meant to be aggregated. To be certain that the foreperson spoke accurately for all jurors, the Court asked the jury to retire to clarify its damages verdict.⁷ Whether or not defense counsel timely objected

⁵ "Defendants argue that the fact that the jury divided their award for each plaintiff into two equal parts - \$75,000 on the state law cause of action and \$75,000 on the federal cause of action - indicates that the jury impermissibly compensated each plaintiff twice for identical injuries. But it is equally conceivable that the jury found that each plaintiff suffered \$150,000 worth of discrete, unduplicated injuries as a result of the County's violations of law, and merely split the total amount equally between the state and federal causes of action in announcing their award to the court on the form submitted to it. This supposition is supported by the jury's insistence, in response to the court's appropriate polling after the verdict, that the jury did intend to award a total of \$150,000 to each plaintiff and that the damages awarded under state and federal law were 'independent.'"

⁶ "Plaintiff was found by the jury to have been damaged in the amount of \$3 million on its contract claim, but it was also found to have failed to mitigate \$1 million of this amount. In addition, the jury awarded plaintiff \$1.25 million on its *prima facie* tort claim. Prior to being discharged, the jury was polled and stated it was their intention that the cumulative award to Indu Craft be \$3.25 million."

⁷ THE COURT: Madam Foreperson, question 11 does not give you a place to make clear whether amounts are intended by the jury to be added up for a total number or whether some numbers are contained within other numbers. Do you need to return to deliberate to make that clarification, or was it clear in your mind, all of you, whether the numbers that you have given are intended to be added up, that is cumulative, or whether some were intended to be a break out within others?

JUROR: Shall I answer? I believe that it is intended to be added up.

THE COURT: So that each number on each line in all three columns, it is the intent of the jury that they be added up, that they are cumulative numbers?

JUROR: Yes.

THE COURT: Now, when I'm going to read this verdict, I'm going to ask each of you, after I have read that verdict, to stand and tell me whether this is your verdict. In answering that question, you are also answering that you concur with the statement of your foreperson, that is, that in placing these numbers, it is your intention that they be all

to the Court's request for clarification,⁸ the Court believes its duty to preserve a jury verdict was properly discharged by seeking jury clarification on the narrow question of whether the damages awarded were intended to be cumulative or not.

The jury's verdict reflecting its intent that the total damage award was the sum of all three apportionments to the respective defendants (by its addition to the verdict form "Total Damages: \$19,800,000 = \$17,820,000 + \$990,000 + \$990,000")⁹ is challenged by the defendant as legally deficient because,

added up, not that some numbers are subparts of other numbers. All right? So when I ask you if this is your verdict, I am including that question. Do you wish to retire to make sure that you are all in agreement on that?

JUROR: Yes, please.

THE COURT: Then what I want you to do is to take this back with you and make sure that you are in agreement as to whether these numbers are what I will call cumulative, meaning you intended that they be added up, or whether some are duplicative of others, and the way you will tell me that is by adding at the bottom "total equals," and I will know about your answer in that way. Thank you very much.

Id. at 4:4-5:22. After the jury indicated that it had completed its clarifying task but before the jury was brought back into the courtroom, defense counsel stated his objection "to any further instruction before the verdict is read," id. at 5:24-25, and moved for a mistrial "[o]n the basis that sending the jury back with that instruction invited them to add up the numbers and make the total verdict higher." Id. at 6:6-13. The jury was then brought in and it submitted its clarified verdict form to the Court.

⁸ Contrary to defendants' current position, see Mem. [Doc. #1078] at 3, the defendants did not make timely objection to this procedure, and only made an oral motion for mistrial after the jury foreperson gave her clarification and the jury gave notice of completion of its clarifying task. Defendants did make timely objection to any "further" charging of the jury.

⁹ The parties both agree that, with respect to the liability of the individual defendants, the jury was instructed only on a theory of indirect infringement and thus that the claims against the individual defendants were wholly derivative of and based entirely upon MJ's infringement. See Mem. [Doc. #1079] at 1-2; Mem. [Doc. #1078] at 2; Jury Instructions [Doc. #1077] at 47-48; Verdict Form [Doc. # 1083] Question 6. The aggregated damages thus do not include any amount based on individual defendants' actions apart from that causing MJ's infringement.

defendants assert, damages caused by an infringer cannot be split between the infringer and the inducers, and the Court must construe the verdict as containing subsidiary awards against the Finneys (the inducers) which are subsumed within the award against MJ (the infringer), resulting in a total damage award of only \$17,820,000. The Federal Circuit's decision in Crystal Semiconductor demonstrates that a jury may apportion the damages as this jury did. In that case, the Federal Circuit affirmed a jury verdict that split a \$21,830,862 verdict (based on reasonable royalty and lost profits) by assigning 40% to the direct infringer and 60% to the inducer.¹⁰ In similar fashion, the jury here apportioned 90% of the total verdict to MJ and 5% to each individual defendant. Under Crystal Semiconductor, such a verdict is consistent with the jury's corresponding findings of direct, induced, and contributory infringement by MJ and inducement of such infringement by the individual defendants. See Verdict Form [Doc. #1078] Question 6. Accordingly, the Court rejects defendants' contrary arguments. See e.g., Mem. [Doc. #1078] at 5.

Crystal Semiconductor also provides guidance on the issue of whether defendants are jointly and severally liable for the total damages awarded, an issue on which the jury received no

¹⁰ All damages in the case derived from the direct infringer's (OPTi's) sales of chips purchased from the inducer (Model 931) and the inducer's inducement of all such infringing sales. See Crystal Semiconductor, 246 F.3d at 1344, 1349-51, 1361.

instruction. Assuming the jury's affirmative response to question 6 meant each individual defendant had induced all of MJ's direct, induced, and contributory infringement found in questions 1-4, all three defendants are jointly and severally liable for the total damages caused by MJ's infringement, i.e. \$19,800,000. "A party that induces or contributes to infringement is jointly and severally liable with the direct infringer for all general damages." Crystal Semiconductor, 246 F.3d at 1361. In Crystal Semiconductor, the inducer was held jointly and severally liable for all the infringing sales of the direct infringer and all such sales were therefore included in the base from which the inducer's willfulness damages were calculated. See id. It would be an illogical reading of Crystal Semiconductor to conclude that the Federal Circuit empowered a jury to override the principle of joint and several liability through the apportionment of compensatory damages but then required the district court to reinstate the joint and several principle for purposes of determining a willfulness damage award. Rather, the logical reading of Crystal Semiconductor is that it utilized standard tort terminology in describing a joint tortfeasor's comparative responsibility or "share," and did not intend also to suggest that the inducing tortfeasor was not jointly and severally liability for the entire award, including the co-tortfeasor's 40% share. See e.g. Restatement (Third) of Torts § 15 (2000) ("When persons are liable because they acted in

concert, all persons are jointly and severally liable for the share of comparative responsibility assigned to each person engaged in concerted activity."). Thus, the notion that a jury may apportion damages into shares is not inconsistent with holding joint tortfeasors jointly and severally liable for the other tortfeasors' shares.

As it is axiomatic that neither individual defendant can be jointly and severally liable for infringement which he did not induce, the Court must thus examine the imbedded assumption that the jury concluded that each individual defendant induced all acts of MJ's infringement: direct, induced, and contributory. Defendants argue that the verdict, by assigning lower damage figures to each of the Finneys, discloses the jury's finding that each Finney induced less than all infringement found:¹¹

The jury's unambiguous decision as to the Finneys shows that the jury decided that the Finneys only induced a small portion of MJ's infringement. This is a perfectly reasonable and logical decision given the plaintiffs' allegations that MJ engaged in a broad range of infringing conduct over several years and the lack of specific evidence presented during trial that the Finneys "actively assisted" MJ's infringing activities with the specific intent to encourage their corporation's infringement. Such a conclusion is also bolstered by the fact that Interrogatory No. 6 of the Verdict Form is worded so that the jury could find the Finneys liable if they induced "any part" of MJ's infringing acts.

Reply [Doc. #1080] at 2. Plaintiffs argue, however, that the jury took the opportunity presented by the three columns of

¹¹ The Court notes that the defendants never requested that the Court ask the jury for further clarification on this factual finding but, to the contrary, requested the Court not to order the jury to deliberate further.

blanks in question 11 to overlay an apportionment of the total damages based on its view of the relative share of culpability of each defendant and not thereby to impair its underlying finding that the individual defendants induced all of MJ's infringement. The Court agrees with Applera.

Read as a whole, the Court's jury instructions on "Personal Liability for Infringement by Corporation" present the jury with ten indivisible categories of MJ's alleged infringement (inducing infringement of the PCR process patents; and direct infringement, inducing infringement, and contributory infringement of each of the '675, '493, and '610 patent), each of which the jury was told it could find that the individual defendants induced. See Jury Instructions [Doc. #1077] at 47-48. The instructions do not suggest that any of the ten categories is divisible so as to permit the jury to find that the individual defendants induced less than the totality of MJ's infringing conduct in any one category. See id.¹² Question No. 6 on the verdict form is consistent with the categorical picture painted by the Jury Instructions, asking:

"As to any part of questions 1-4 to which you answered "yes," do you find that Michael Finney and/or John Finney induced such infringement?"

Questions 1-4 broke down MJ's claimed infringement into 22 categorical parts, based on type of infringement (induced,

¹² Defendants never requested that the jury be instructed on any such theory of partial inducement liability.

direct, or contributory), by patent (PCR process, '675, '493, and '610) and, with respect to the '675 and '610 patents, by claim. As to each, the jury was asked to answer "yes" if it found infringement by MJ and "no" if it did not. The jury answered "yes" as to 16 parts. Thus, question 6's "any part of questions 1-4 to which you answered "yes"" unambiguously defines "part" as that to which a "yes" answer was earlier provided, here, the 16 parts affirmatively answered by the jury. Continuing the consistent presentation of infringement by indivisible category, question 6 further referenced each of those 16 affirmative responses as "such infringement," and thereby, contrary to defendants' viewpoint, did not provide the jury with any indication that it might find the individual defendants induced less than all infringement in any one part. However, because question 6 provided the jury with only one place to answer "yes" or "no" as to each individual defendant's personal liability, the potential for some ambiguity was introduced: by answering "yes" as to each individual defendant, did the jury intend to indicate it found each one induced all 16 categorical parts of MJ's infringement found in questions 1-4 or fewer than all such parts? The Court views the responses to questions 1-4, 6, and 11 to demonstrate the most likely answer to be all 16 parts. First, of the 22 parts set forth in questions 1-4, only one is applicable to the PCR process patents (question 1) and only one is applicable to the '493 patent (question 3 part 4). Therefore,

the jury's award of damages in question 11 against the Finneys' for inducing MJ's infringement of the PCR process patents and the '493 patent requires the conclusion that the jury's "yes" answer as to both defendants in question 6 conveyed a finding that each individual defendant had induced the entirety of MJ's infringement of those two patents (MJ's infringement of each having been presented to the jury as only one indivisible category). Second, in apportioning damages to the Finneys for MJ's infringement of the PCR process patents and the '493 patent, the jury used a precise formula, apportioning 90% of the total damage award to MJ and 5% to each individual defendant. In apportioning damages to the Finneys for MJ's infringement of the '675 and '610 patents, the jury used precisely the same formula, notwithstanding that its "yes" answer to question 6 (coupled with damage awards against the Finneys for the '675 and '610 patents) could theoretically have meant that the individual defendants induced anywhere from 1 to 14 of the categories of MJ's infringement of those patents. The use of the same formula leads the Court to conclude that the jury's intent was that each individual induced all such infringement found, for, had the jury concluded that either individual defendant induced less than all 14 categories of infringement, one would reasonably have expected the jury would reflect a partial inducement finding by apportioning less than 5% of the damage award for the '675 and '610 patents to contrast with the 5% share used in the context of

the other two patents regarding which the jury found the individual defendants had induced all of MJ's infringement.

Thus, while defendants' proposed interpretation is not implausible, it violates the principle that the jury acted in accord with the instructions it was given, instructions presenting MJ's infringement in indivisible categories, and requires the conclusion that the jury on its own and without being so instructed developed a theory of partial inducement liability and applied it in question 11. Thus, the better view is that the jury followed the indivisible category approach in making its findings of liability and then, having three columns for enumerating damage awards (one for each defendant), undertook to apportion the total damages among the three defendants in accord with its view of each's comparative responsibility.

It is so ordered.

/s/

Janet Bond Arterton U.S.D.J.

Dated at New Haven, Connecticut this 28th day of April, 2004.

_____ claim 161 Yes ___ No X

_____ 4. Do you find that Applera has proved by a preponderance of the evidence that MJ has contributed to the infringement of the following thermal cyclers patent claims?

 '675 Patent
_____ claim 45 Yes X No _____

 '610 Patent
_____ claim 1 Yes X No _____
_____ claim 44 Yes X No _____
_____ claim 158 Yes X No _____
_____ claim 160 Yes _____ No X
_____ claim 161 Yes _____ No X

_____ ...

WILLFULNESS

5. Has Applera proved by clear and convincing evidence that such infringement as you found in questions 1-4 was willful?

_____ PCR Process Patents Yes X No _____
_____ '675 Patent Yes _____ No X
_____ '493 Patent Yes X No _____
_____ '610 Patent Yes _____ No X

_____ ...

PERSONAL LIABILITY OF FINNEYS - PATENT INFRINGEMENT

6. As to any part of questions 1-4 to which you answered "yes," do you find that Michael Finney and/or John Finney induced such infringement?

_____ Michael Finney Yes X No _____
_____ John Finney Yes X No _____

...

7. With respect to any part of question 6 to which you answered yes, has Applera proved by clear and convincing evidence that such induced infringement of either Finney was willful?

_____ Michael Finney Yes X No _____

_____ John Finney Yes X No _____

...

DAMAGES - PATENT INFRINGEMENT

11. What amount has Applera proved by a preponderance of the evidence is the total amount of infringement damages? (...).

	MJ	Michael Finney	John Finney
PCR Process Patents	<u>\$12,474,000</u>	<u>\$693,000</u>	<u>\$693,000</u>
'675 Patent	<u>\$2,673,000</u>	<u>\$148,500</u>	<u>\$148,500</u>
'493 Patent	<u>\$1,603,800</u>	<u>\$89,100</u>	<u>\$89,100</u>
'610 Patent	<u>\$1,069,200</u>	<u>\$59,400</u>	<u>\$59,400</u>

Total
Damages: \$19,800,000 = \$17,820,000 + \$990,000 + \$990,000