UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ALFRED E. MANN FOUNDATION FOR SCIENTIFIC RESEARCH, Plaintiff, v. COCHLEAR CORPORATION, et al., Defendants.	Case No. CV 07-8108 FMO (SHx) **ORDER Re: BENCH TRIAL**

Having reviewed the parties' pretrial filings pursuant to the court's Order Re: Pretrial Filings, filed December 23, 2013 ("Court's Order of December 23, 2013"), the court ORDERS THAT:

1. The bench trial in this case shall commence immediately after the jury trial portion of the case is completed. The bench trial shall commence, irrespective of whether the jury is still deliberating. As noted in the Court's Order of December 23, 2013, each side will have two (2) hours for the separate bench trial. The issues for the bench trial are indefiniteness, inequitable conduct, laches, and equitable estoppel, and additionally prosecution history estoppel and award of enhanced damages due to willful infringement.[1]

2. No later than **January 13, 2014**, the parties shall file or lodge each of the following documents to the extent necessary to supplement the jury trial record:

[1] The court will set a separate briefing and hearing schedule for the issue of attorney's fees.

A. Additional Stipulated Facts: The parties shall submit a stipulation of any additional facts to which they agree.

B. Witness Declarations: For each witness a party intends to call at the bench trial, in lieu of direct testimony, counsel for that party shall (a) file and serve an executed declaration, or (b) if, and only if, such testimony is contained in discrete portions of a deposition, mark and lodge the testimony transcript in accordance with the Local Rules. The court expects to read the declarations and/or pertinent portions of the lodged testimony transcripts in chambers. At the bench trial, the court will permit "live" questioning only for cross-examination and re-direct of each such witness. This paragraph does not apply to adverse or hostile witnesses; i.e., counsel may call such witnesses to the stand for live examination in their case-in-chief.

C. Joint Bench Trial Exhibit List: The parties shall file a Joint Bench Trial Exhibit List, including any graphics or demonstrative aids intended to be used at the bench trial, regardless of whether they are intended to be introduced into evidence. The exhibits shall be numbered pursuant to Local Rule 26-4 and prepared according to the format set forth in Local Rule 16-5. In addition to the requirements of Local Rule 16-5, the parties shall include a separate column which indicates whether the parties have stipulated to the admission of the particular exhibit. *If a stipulation regarding the admissibility of an exhibit cannot be achieved, the parties are directed to attempt to reach a stipulation regarding such matters as foundation and waiver of the best evidence rule. The parties' goal should be to reach a stipulation regarding the admissibility of all proposed exhibits.*

D. Courtesy Copies: Two (2) courtesy copies of each document set forth in ¶¶ 2.A. through and 2.C. shall be delivered to chambers no later than **January 13, 2014**.

E. Lodging of Original Bench Trial Exhibits and Exhibit Books: No later than **January 13, 2014**, the parties shall lodge with the Clerk: (a) the original bench trial exhibits with the court's exhibit tags (yellow tags for plaintiff and blue tags for defendants) stapled to the front of the exhibit on the upper right corner with the case number, case name, and exhibit number record on each tag; (b) two (2) bench books containing a copy of each

proposed exhibit for use by the court, tabbed with numbers as described above;[2] and (c) two (2) copies of the Joint Bench Trial Exhibit List.

3. No later than **January 15, 2014**, each party shall file its written objections to the testimony contained in the opposing party's declarations and/or lodged testimony transcripts. Failure to file such written objections will be deemed a waiver of any such evidentiary objections.

4. No later than **January 15, 2014**, counsel for each party shall file or lodge each of the following documents:

A. Proposed Findings of Fact and Conclusions of Law: Each party shall lodge his or her proposed Findings of Fact and Conclusions of Law, which shall incorporate the agreed-to facts as well as facts to which there has been no stipulation.

B. Opening Statements: Each party shall submit a brief opening statement that summarizes how the attorney expects to prove the key components of his/her proposed findings.

5. With respect to ¶¶ 2.A. and 2.C. above, the parties shall comply with the meet and confer requirements set forth in the Court's Order of December 23, 2013.

6. The court will not, absent extraordinary circumstances, grant any extensions of the deadlines set forth in this Order.

Dated this 6th day of January, 2014.

/s/
Fernando M. Olguin
United States District Judge

[2] The exhibits in the bench book should be numbered and indexed, but need not have court exhibit tags attached.