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ALFRED E. MANN FOUNDATION FOR SCIENTIFIC RESEARCH

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

ALFRED E. MANN FOUNDATION FOR SCIENTIFIC RESEARCH,

Plaintiff,

vs.

COCHLEAR CORPORATION, ET AL.,

Defendants.

AND RELATED COUNTERCLAIMS

Case No. 2:07-cv-08108-FMO-SH

PLAINTIFF'S THIRD AMENDED [PROPOSED] JURY VERDICT FORM

Judge: Hon. Fernando M. Olguin
Trial Date: January 14, 2014
Time: 9:00 a.m.
Place: Ctrm 22, 5th Floor

JURY VERDICT FORM

You, the jury, are to answer the following questions based on the evidence admitted at trial and according to all of the instructions I have given you.

I. U.S. Patent No. 5,609,616 – Claim 1

A. Direct Infringement

1. Did the Foundation prove, by a preponderance of evidence, that the Cochlear Defendants literally infringed Claim 1 of U.S. Patent No. 5,609,616? *(Answer "Yes" or "No" for each of the accused products)*

PRODUCT	**WRITE "YES" OR "NO"**
CI24 Series Cochlear Implants	
CI24RE, CI422 and CI500 Series Cochlear Implants	
SP5 Series Speech Processors	
SP12 or SP15 Series Speech Processors	
WinDPS or Custom Sound Software	

2. If you answered No to Question I.A.1 above, did the Foundation prove, by a preponderance of evidence, that the Cochlear Defendants infringed Claim 1 of U.S. Patent No. 5,609,616 under the doctrine of equivalents? *(Answer "Yes" or "No" for each of the accused products)*

PRODUCT	**WRITE "YES" OR "NO"**
CI24 Series Cochlear Implants	
CI24RE, CI422 and CI500 Series Cochlear Implants	
SP5 Series Speech Processors	
SP12 or SP15 Series Speech Processors	

WinDPS or Custom Sound Software	

B. Did the Foundation prove, by a preponderance of evidence, that the Cochlear Defendants induced infringement of Claim 1 of U.S. Patent No. 5,609,616? *(Answer "Yes" or "No" for each of the accused products)*

PRODUCT	**WRITE "YES" OR "NO"**
CI24 Series Cochlear Implants	
CI24RE, CI422 and CI500 Series Cochlear Implants	
SP5 Series Speech Processors	
SP12 or SP15 Series Speech Processors	
WinDPS or Custom Sound Software	

C. Did the Foundation prove, by a preponderance of evidence, that the Cochlear Defendants contributorily infringed Claim 1 of U.S. Patent No. 5,609,616? *(Answer "Yes" or "No" for each of the accused products)*

PRODUCT	**WRITE "YES" OR "NO"**
CI24 Series Cochlear Implants	
CI24RE, CI422 and CI500 Series Cochlear Implants	
SP5 Series Speech Processors	
SP12 or SP15 Series Speech Processors	
WinDPS or Custom Sound Software	

D. Did the Foundation prove, by clear and convincing evidence, that the Cochlear Defendants willfully infringed Claim 1 of U.S. Patent No. 5,609,616?

Answer "Yes" or "No": ____

II. **U.S. Patent No. 5,609,616 – Claim 10**

A. Direct Infringement

1. Did the Foundation prove, by a preponderance of evidence, that the Cochlear Defendants literally infringed Claim 10 of U.S. Patent No. 5,609,616? *(Answer "Yes" or "No" for each of the accused products)*

PRODUCT	**WRITE "YES" OR "NO"**
CI24 Series Cochlear Implants	
CI24RE, CI422 and CI500 Series Cochlear Implants	
SP5 Series Speech Processors	
SP12 or SP15 Series Speech Processors	
WinDPS or Custom Sound Software	

2. If you answered No to Question II.A.1 above, did the Foundation prove, by a preponderance of evidence, that the Cochlear Defendants infringed Claim 10 of U.S. Patent No. 5,609,616 under the doctrine of equivalents? *(Answer "Yes" or "No" for each of the accused products)*

PRODUCT	**WRITE "YES" OR "NO"**
CI24 Series Cochlear Implants	
CI24RE, CI422 and CI500 Series Cochlear Implants	
SP5 Series Speech Processors	
SP12 or SP15 Series Speech Processors	
WinDPS or Custom Sound Software	

B. Did the Foundation prove, by a preponderance of evidence, that the Cochlear Defendants induced infringement of Claim 10 of U.S. Patent No. 5,609,616? *(Answer "Yes" or "No" for each of the accused products)*

PRODUCT	**WRITE "YES" OR "NO"**
CI24 Series Cochlear Implants	
CI24RE, CI422 and CI500 Series Cochlear Implants	
SP5 Series Speech Processors	
SP12 or SP15 Series Speech Processors	
WinDPS or Custom Sound Software	

C. Did the Foundation prove, by a preponderance of evidence, that the Cochlear Defendants contributorily infringed Claim 10 of U.S. Patent No. 5,609,616? *(Answer "Yes" or "No" for each of the accused products)*

PRODUCT	**WRITE "YES" OR "NO"**
CI24 Series Cochlear Implants	
CI24RE, CI422 and CI500 Series Cochlear Implants	
SP5 Series Speech Processors	
SP12 or SP15 Series Speech Processors	
WinDPS or Custom Sound Software	

D. Did the Foundation prove, by clear and convincing evidence, that the Cochlear Defendants willfully infringed Claim 10 of U.S. Patent No. 5,609,616?

Answer "Yes" or "No": ____

III. **U.S. Patent No. 5,938,691 – Claim 6**

A. Direct Infringement

1. Did the Foundation prove, by a preponderance of evidence, that the Cochlear Defendants literally infringed Claim 6 of U.S. Patent No. 5,938,691? *(Answer "Yes" or "No" for each of the accused products)*

PRODUCT	**WRITE "YES" OR "NO"**
CI24 Series Cochlear Implants	
CI24RE, CI422 and CI500 Series Cochlear Implants	
SP5 Series Speech Processors	
SP12 or SP15 Series Speech Processors	
WinDPS or Custom Sound Software	

2. If you answered No to Question III.A.1 above, did the Foundation prove, by a preponderance of evidence, that the Cochlear Defendants infringed Claim 6 of U.S. Patent No. 5,938,691 under the doctrine of equivalents? *(Answer "Yes" or "No" for each of the accused products)*

PRODUCT	**WRITE "YES" OR "NO"**
CI24 Series Cochlear Implants	
CI24RE, CI422 and CI500 Series Cochlear Implants	
SP5 Series Speech Processors	
SP12 or SP15 Series Speech Processors	
WinDPS or Custom Sound Software	

B. Did the Foundation prove, by a preponderance of evidence, that the Cochlear Defendants induced infringement of Claim 6 of U.S. Patent No. 5,938,691? *(Answer "Yes" or "No" for each of the accused products)*

PRODUCT	**WRITE "YES" OR "NO"**
CI24 Series Cochlear Implants	
CI24RE, CI422 and CI500 Series Cochlear Implants	
SP5 Series Speech Processors	
SP12 or SP15 Series Speech Processors	
WinDPS or Custom Sound Software	

C. Did the Foundation prove, by a preponderance of evidence, that the Cochlear Defendants contributorily infringed Claim 6 of U.S. Patent No. 5,938,691? *(Answer "Yes" or "No" for each of the accused products)*

PRODUCT	**WRITE "YES" OR "NO"**
CI24 Series Cochlear Implants	
CI24RE, CI422 and CI500 Series Cochlear Implants	
SP5 Series Speech Processors	
SP12 or SP15 Series Speech Processors	
WinDPS or Custom Sound Software	

D. Did the Foundation prove, by clear and convincing evidence, that the Cochlear Defendants willfully infringed Claim 6 of U.S. Patent No. 5,938,691?

Answer "Yes" or "No": ____

IV. **U.S. Patent No. 5,938,691 – Claim 7**

A. Direct Infringement

1. Did the Foundation prove, by a preponderance of evidence, that the Cochlear Defendants literally infringed Claim 7 of U.S. Patent No. 5,938,691? *(Answer "Yes" or "No" for each of the accused products)*

PRODUCT	**WRITE "YES" OR "NO"**
CI24 Series Cochlear Implants	
CI24RE, CI422 and CI500 Series Cochlear Implants	
SP5 Series Speech Processors	
SP12 or SP15 Series Speech Processors	
WinDPS or Custom Sound Software	

2. If you answered No to Question IV.A.1 above, did the Foundation prove, by a preponderance of evidence, that the Cochlear Defendants infringed Claim 7 of U.S. Patent No. 5,938,691 under the doctrine of equivalents? *(Answer "Yes" or "No" for each of the accused products)*

PRODUCT	**WRITE "YES" OR "NO"**
CI24 Series Cochlear Implants	
CI24RE, CI422 and CI500 Series Cochlear Implants	
SP5 Series Speech Processors	
SP12 or SP15 Series Speech Processors	
WinDPS or Custom Sound Software	

B. Did the Foundation prove, by a preponderance of evidence, that the Cochlear Defendants induced infringement of Claim 7 of U.S. Patent No. 5,938,691? *(Answer "Yes" or "No" for each of the accused products)*

PRODUCT	**WRITE "YES" OR "NO"**
CI24 Series Cochlear Implants	
CI24RE, CI422 and CI500 Series Cochlear Implants	
SP5 Series Speech Processors	
SP12 or SP15 Series Speech Processors	
WinDPS or Custom Sound Software	

C. Did the Foundation prove, by a preponderance of evidence, that the Cochlear Defendants contributorily infringed Claim 7 of U.S. Patent No. 5,938,691? *(Answer "Yes" or "No" for each of the accused products)*

PRODUCT	**WRITE "YES" OR "NO"**
CI24 Series Cochlear Implants	
CI24RE, CI422 and CI500 Series Cochlear Implants	
SP5 Series Speech Processors	
SP12 or SP15 Series Speech Processors	
WinDPS or Custom Sound Software	

D. Did the Foundation prove, by clear and convincing evidence, that the Cochlear Defendants willfully infringed Claim 7 of U.S. Patent No. 5,938,691?

Answer "Yes" or "No": ____

V. VALIDITY OF THE FOUNDATION'S PATENTS

A. Prior Art Status of McDermott Thesis[1]

1. Did the Cochlear Defendants prove, by clear and convincing evidence, that the document titled "An Advanced Cochlear Implant Hearing Prosthesis for Profound To Total Deafness" by Hugh McDermott, was publicly available as prior art on or before August 29, 1990?

Answer "Yes" or "No": ____

B. Claim 1 of U.S. Patent No. 5,609,616

1. Did the Cochlear Defendants prove, by clear and convincing evidence, that Claim 1 of U.S. Patent No. 5,609,616 is invalid due to obviousness?

Answer "Yes" or "No": ____

C. Claim 10 of U.S. Patent No. 5,609,616

1. Did the Cochlear Defendants prove, by clear and convincing evidence, that Claim 10 of U.S. Patent No. 5,609,616 is invalid due to anticipation?

Answer "Yes" or "No": ____

2. Did the Cochlear Defendants prove, by clear and convincing evidence, that Claim 10 of U.S. Patent No. 5,609,616 is invalid due to obviousness?

Answer "Yes" or "No": ____

D. Claim 6 of U.S. Patent No. 5,938,691

1. Did the Cochlear Defendants prove, by clear and convincing evidence, that Claim 6 of U.S. Patent No. 5,938,691 is invalid due to anticipation?

Answer "Yes" or "No": ____

[1] This question should not be asked if the Thesis is not admitted into evidence.

2. Did the Cochlear Defendants prove, by clear and convincing evidence, that Claim 6 of the U.S. Patent No. 5,938,691 is invalid due to obviousness?

Answer "Yes" or "No": ____

E. **Claim 7 of U.S. Patent No. 5,938,691**

1. Did the Cochlear Defendants prove, by clear and convincing evidence, that Claim 7 of the U.S. Patent No. 5,938,691 is invalid due to obviousness?

Answer "Yes" or "No": ____

VI. **DEFENDANTS' CLAIMS OF INEQUITABLE CONDUCT (ADVISORY)**

A. Did the Cochlear Defendants prove, by clear and convincing evidence, that the patent attorney who prosecuted the application from which U.S. Patent 5,609,616 issued, Mr. Gold, withheld or misrepresented information before the U.S. Patent and Trademark Office?

Answer "Yes" or "No": ____

B. Did the Cochlear Defendants prove, by clear and convincing evidence, that the information withheld or misrepresented was material to the prosecution of the application from which U.S. Patent 5,609,616 issued?

Answer "Yes" or "No": ____

C. Did the Cochlear Defendants prove, by clear and convincing evidence, that the Mr. Gold acted with intent to deceive the U.S. Patent and Trademark Office?

Answer "Yes" or "No": ____

VII. DAMAGES FOR THE COCHLEAR DEFENDANTS' PATENT INFRINGEMENT

Answer the question posed in this Section only if (i) you answered "Yes" for the corresponding product and claim in Sections I through IV that the Foundation proved that the Cochlear Defendants infringed at least one claim of U.S. Patent Nos. 5,609,616 or 5,938,691, and (ii) found that the Cochlear Defendants did not prove that a claim for which you answered "Yes" for any product in Sections I through IV was invalid.

A. **What damages should the Foundation recover for the Cochlear Defendants' infringement of Claim 1 of U.S. Patent No. 5,609,616?**

PRODUCT	**DAMAGES AWARD**
CI24 Series Cochlear Implants	**$**
CI24RE, CI422 and CI500 Series Cochlear Implants	**$**
SP5 Series Speech Processors	**$**
SP12 or SP15 Series Speech Processors	**$**
WinDPS or Custom Sound Software	**$**

B. **What damages should the Foundation recover for the Cochlear Defendants' infringement of Claim 10 of U.S. Patent No. 5,609,616?**

PRODUCT	**DAMAGES AWARD**
CI24 Series Cochlear Implants	**$**
CI24RE, CI422 and CI500 Series Cochlear Implants	**$**
SP5 Series Speech Processors	**$**
SP12 or SP15 Series Speech Processors	**$**
WinDPS or Custom Sound Software	**$**

C. **What damages should the Foundation recover for the Cochlear Defendants' infringement of Claim 6 of U.S. Patent No. 5,938,691?**

PRODUCT	**DAMAGES AWARD**
CI24 Series Cochlear Implants	**$**
CI24RE, CI422 and CI500 Series Cochlear Implants	**$**
SP5 Series Speech Processors	**$**
SP12 or SP15 Series Speech Processors	**$**
WinDPS or Custom Sound Software	**$**

D. **What damages should the Foundation recover for the Cochlear Defendants' infringement of Claim 7 of U.S. Patent No. 5,938,691?**

PRODUCT	**DAMAGES AWARD**
CI24 Series Cochlear Implants	**$**
CI24RE, CI422 and CI500 Series Cochlear Implants	**$**
SP5 Series Speech Processors	**$**
SP12 or SP15 Series Speech Processors	**$**
WinDPS or Custom Sound Software	**$**

Signed this ___ day of January, 2014:

_____	_____
Jury Foreperson	Juror
_____	_____
Juror	Juror
_____	_____
Juror	Juror
_____	_____
Juror	Juror

Dated: January 15, 2013

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By /s/ Daniel Grunfeld
Daniel Grunfeld
Attorneys for Plaintiff
Alfred E. Mann Foundation for Scientific Research