UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALFRED E. MANN FOUNDATION FOR SCIENTIFIC RESEARCH, et al.,

Plaintiffs,

v.

COCHLEAR CORPORATION, et al.,

Defendants.

Case No. CV 07-08108 FMO (SHx)

[TENTATIVE] VERDICT FORM

We, the jury, unanimously agree to the answers to the following questions and return them under the instructions of this Court as our verdict in this case:

I. United States Patent No. 5,609,616 ("the '616 patent")

A. Infringement of Claim 1

1. For each of the following products, has the Foundation proven by a preponderance of the evidence that the Cochlear Defendants have directly infringed claim 1 of the '616 patent?

(Please answer in each cell with a "YES" (for the Foundation), or with a "NO" (for the Cochlear Defendants)).

ACCUSED PRODUCT	WRITE "YES" OR "NO"
Nucleus 24 (CI24 series) cochlear implants	
Nucleus Freedom (CI24RE series and CI422) cochlear implants	
Nucleus 5 (CI500 series) cochlear implants	
Sprint (SP5) sound processors	
Freedom (SP12) sound processors	
Nucleus 5 (SP15) sound processors	
WinDPS software	
Custom Sound software	

2. For each of the following products, has the Foundation proven by a preponderance of the evidence that the Cochlear Defendants have contributed to the infringement of claim 1 of the '616 patent?

(Please answer in each cell with a "YES" (for the Foundation), or with a "NO" (for the Cochlear Defendants)).

ACCUSED PRODUCT	WRITE "YES" OR "NO"
Nucleus 24 (CI24 series) cochlear implants	
Nucleus Freedom (CI24RE series and CI422) cochlear implants	
Nucleus 5 (CI500 series) cochlear implants	

Sprint (SP5) sound processors	
Freedom (SP12) sound processors	
Nucleus 5 (SP15) sound processors	
WinDPS software	
Custom Sound software	

3. For each of the following products, has the Foundation proven by a preponderance of the evidence that the Cochlear Defendants have induced the infringement of claim 1 of the '616 patent?

(Please answer in each cell with a "YES" (for the Foundation), or with a "NO" (for the Cochlear Defendants)).

ACCUSED PRODUCT	WRITE "YES" OR "NO"
Nucleus 24 (CI24 series) cochlear implants	
Nucleus Freedom (CI24RE series and CI422) cochlear implants	
Nucleus 5 (CI500 series) cochlear implants	
Sprint (SP5) sound processors	
Freedom (SP12) sound processors	
Nucleus 5 (SP15) sound processors	
WinDPS software	
Custom Sound software	

B. Infringement of Claim 10

4. For each of the following products, has the Foundation proven by a preponderance of the evidence that the Cochlear Defendants have directly infringed claim 10 of the '616 patent?

(Please answer in each cell with a "YES" (for the Foundation), or with a "NO" (for the Cochlear Defendants)).

ACCUSED PRODUCT	WRITE "YES" OR "NO"
Nucleus 24 (CI24 series) cochlear implants	
Nucleus Freedom (CI24RE series and	

CI422) cochlear implants	
Nucleus 5 (CI500 series) cochlear implants	
Sprint (SP5) sound processors	
Freedom (SP12) sound processors	
Nucleus 5 (SP15) sound processors	
WinDPS software	
Custom Sound software	

5. For each of the following products, has the Foundation proven by a preponderance of the evidence that the Cochlear Defendants have contributed to the infringement of claim 10 of the '616 patent?

(Please answer in each cell with a "YES" (for the Foundation), or with a "NO" (for the Cochlear Defendants)).

ACCUSED PRODUCT	WRITE "YES" OR "NO"
Nucleus 24 (CI24 series) cochlear implants	
Nucleus Freedom (CI24RE series and CI422) cochlear implants	
Nucleus 5 (CI500 series) cochlear implants	
Sprint (SP5) sound processors	
Freedom (SP12) sound processors	
Nucleus 5 (SP15) sound processors	
WinDPS software	
Custom Sound software	

6. For each of the following products, has the Foundation proven by a preponderance of the evidence that the Cochlear Defendants have induced the infringement of claim 10 of the '616 patent?

(Please answer in each cell with a "YES" (for the Foundation), or with a "NO" (for the Cochlear Defendants)).

ACCUSED PRODUCT	WRITE "YES" OR "NO"
Nucleus 24 (CI24 series) cochlear implants	

Nucleus Freedom (CI24RE series and CI422) cochlear implants	
Nucleus 5 (CI500 series) cochlear implants	
Sprint (SP5) sound processors	
Freedom (SP12) sound processors	
Nucleus 5 (SP15) sound processors	
WinDPS software	
Custom Sound software	

C. Willfulness

7. If you answered "Yes" to any of Questions 1 through 6, and thus found that the Cochlear Defendants infringed the '616 patent, has the Foundation proven by clear and convincing evidence that the Cochlear Defendants' infringement was willful?

(Please answer with a "YES" (for the Foundation), or with a "NO" (for the Cochlear Defendants)).

Answer "Yes" or "No": ____

D. Validity

8. Have the Cochlear Defendants proven, by clear and convincing evidence, that claim 1 of the '616 patent is invalid due to obviousness?

(Please answer with a "YES" (for the Cochlear Defendants), or with a "NO" (for the Foundation)).

Answer "Yes" or "No": ____

9. Have the Cochlear Defendants proven, by clear and convincing evidence, that claim 10 of the '616 patent is invalid due to anticipation?

(Please answer with a "YES" (for the Cochlear Defendants), or with a "NO" (for the Foundation)).

Answer "Yes" or "No": ____

10. Have the Cochlear Defendants proven, by clear and convincing evidence, that claim 10 of the '616 patent is invalid due to obviousness?

(Please answer with a "YES" (for the Cochlear Defendants), or with a "NO" (for the Foundation)).

Answer "Yes" or "No": ____

II. United States Patent No. 5,938,691 ("the '691 patent")

A. Infringement of Claim 6

11. For each of the following products, has the Foundation proven by a preponderance of the evidence that the Cochlear Defendants have directly infringed claim 6 of the '691 patent?

(Please answer in each cell with a "YES" (for the Foundation), or with a "NO" (for the Cochlear Defendants)).

ACCUSED PRODUCT	WRITE "YES" OR "NO"
Nucleus 24 (CI24 series) cochlear implants	
Nucleus Freedom (CI24RE series and CI422) cochlear implants	
Nucleus 5 (CI500 series) cochlear implants	
Sprint (SP5) sound processors	
Freedom (SP12) sound processors	
Nucleus 5 (SP15) sound processors	
WinDPS software	
Custom Sound software	

12. For each of the following products, has the Foundation proven by a preponderance of the evidence that the Cochlear Defendants have contributed to the infringement of claim 6 of the '691 patent?

(Please answer in each cell with a "YES" (for the Foundation), or with a "NO" (for the Cochlear Defendants)).

ACCUSED PRODUCT	WRITE "YES" OR "NO"
Nucleus 24 (CI24 series) cochlear implants	
Nucleus Freedom (CI24RE series and CI422) cochlear implants	
Nucleus 5 (CI500 series) cochlear implants	
Sprint (SP5) sound processors	
Freedom (SP12) sound processors	
Nucleus 5 (SP15) sound processors	
WinDPS software	
Custom Sound software	

13. For each of the following products, has the Foundation proven by a preponderance of the evidence that the Cochlear Defendants have induced the infringement of claim 6 of the '691 patent?

(Please answer in each cell with a "YES" (for the Foundation), or with a "NO" (for the Cochlear Defendants)).

ACCUSED PRODUCT	WRITE "YES" OR "NO"
Nucleus 24 (CI24 series) cochlear implants	
Nucleus Freedom (CI24RE series and CI422) cochlear implants	
Nucleus 5 (CI500 series) cochlear implants	
Sprint (SP5) sound processors	
Freedom (SP12) sound processors	
Nucleus 5 (SP15) sound processors	
WinDPS software	
Custom Sound software	

B. Infringement of Claim 7

14. For each of the following products, has the Foundation proven by a preponderance of the evidence that the Cochlear Defendants have directly infringed claim 7 of the '691 patent?

(Please answer in each cell with a "YES" (for the Foundation), or with a "NO" (for the Cochlear Defendants)).

ACCUSED PRODUCT	WRITE "YES" OR "NO"
Nucleus 24 (CI24 series) cochlear implants	
Nucleus Freedom (CI24RE series and CI422) cochlear implants	
Nucleus 5 (CI500 series) cochlear implants	
Sprint (SP5) sound processors	
Freedom (SP12) sound processors	
Nucleus 5 (SP15) sound processors	
WinDPS software	
Custom Sound software	

15. For each of the following products, has the Foundation proven by a preponderance of the evidence that the Cochlear Defendants have contributed to the infringement of claim 7 of the '691 patent?

(Please answer in each cell with a "YES" (for the Foundation), or with a "NO" (for the Cochlear Defendants)).

ACCUSED PRODUCT	WRITE "YES" OR "NO"
Nucleus 24 (CI24 series) cochlear implants	
Nucleus Freedom (CI24RE series and CI422) cochlear implants	
Nucleus 5 (CI500 series) cochlear implants	
Sprint (SP5) sound processors	
Freedom (SP12) sound processors	
Nucleus 5 (SP15) sound processors	
WinDPS software	
Custom Sound software	

16. For each of the following products, has the Foundation proven by a preponderance of the evidence that the Cochlear Defendants have induced the infringement of claim 7 of the '691 patent?

(Please answer in each cell with a "YES" (for the Foundation), or with a "NO" (for the Cochlear Defendants)).

ACCUSED PRODUCT	WRITE "YES" OR "NO"
Nucleus 24 (CI24 series) cochlear implants	
Nucleus Freedom (CI24RE series and CI422) cochlear implants	
Nucleus 5 (CI500 series) cochlear implants	
Sprint (SP5) sound processors	
Freedom (SP12) sound processors	
Nucleus 5 (SP15) sound processors	
WinDPS software	
Custom Sound software	

C. Willfulness

17. If you answered "Yes" to any of Questions 11 through 16, and thus found that the Cochlear Defendants infringed the '691 patent, has the Foundation proven by clear and convincing evidence that the Cochlear Defendants' infringement was willful?

(Please answer with a "YES" (for the Foundation), or with a "NO" (for the Cochlear Defendants)).

Answer "Yes" or "No": ____

D. Validity

18. Have the Cochlear Defendants proven, by clear and convincing evidence, that claim 6 of the '691 patent is invalid due to anticipation?

(Please answer with a "YES" (for the Cochlear Defendants), or with a "NO" (for the Foundation)).

Answer "Yes" or "No": ____

19. Have the Cochlear Defendants proven, by clear and convincing evidence, that claim 6 of the '691 patent is invalid due to obviousness?

(Please answer with a "YES" (for the Cochlear Defendants), or with a "NO" (for the Foundation)).

Answer "Yes" or "No": ____

20. Have the Cochlear Defendants proven, by clear and convincing evidence, that claim 7 of the '691 patent is invalid due to obviousness?

(Please answer with a "YES" (for the Cochlear Defendants), or with a "NO" (for the Foundation)).

Answer "Yes" or "No": ____

III. Inequitable Conduct

21. Have the Cochlear Defendants proven, by clear and convincing evidence, that the inventors and/or patent attorney who prosecuted the application from which the '616 patent issued, withheld from the United States Patent and Trademark Office prior art that was material to the prosecution of the '616 patent?

(Please answer with a "YES" (for the Cochlear Defendants), or with a "NO" (for the Foundation)).

Answer "Yes" or "No": ____

22. Have the Cochlear Defendants proven, by clear and convincing evidence, that the inventors and/or patent attorney that prosecuted the application from which the '616 patent

issued, acted with an intent to deceive the Unitd States Patent and Trademark Office?

(Please answer with a "YES" (for the Cochlear Defendants), or with a "NO" (for the Foundation)).

Answer "Yes" or "No": ____

IV. Damages

A. Notice and Marking

23. If you find that the Cochlear Defendants have infringed a valid claim of the '616 patent, when did the Foundation give the Cochlear Defendants notice of the alleged infringement?

_____[Date]

24. If you find that the Cochlear Defendants have infringed a valid claim of the '691 patent, when did the Foundation give the Cochlear Defendants notice of the alleged infringement?

_____[Date]

B. Reasonable Royalty

25. If you find that the Cochlear Defendants have infringed a valid claim of either the '616 patent or the '691 patent, what is the reasonable royalty rate that the Cochlear Defendants should pay to the Foundation?

_____**%**

26. If you find that the Cochlear Defendants have infringed a valid claim of either the '616 patent or the '691 patent, what are the total damages that the Cochlear Defendants should pay to the Foundation?

$_____

Have the presiding juror sign and date this form.

Signed:_____ Date:_____

PRESIDING JUROR