

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

VIASAT, INC.,

Plaintiff-Counterclaim
Defendant,

vs.

SPACE SYSTEMS/LORAL, LLC
(f/k/a SPACE SYSTEMS/LORAL,
INC.), LORAL SPACE &
COMMUNICATIONS,
INC.,

Defendants-Counterclaim
Plaintiffs.

CASE NO. 3:12-cv-00260-H-WVG

**[PROPOSED REVISED] VERDICT
FORM**

Trial Date: March 25, 2014

Time: 9:00 a.m.

Courtroom: 15A

Judge: Hon. Marilyn L. Huff

[PROPOSED VERDICT FORM]¹

Please read the entire verdict form. When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Your answer to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Jury Instructions. Please refer to the Jury Instructions if you are unsure about the meaning or usage of any legal term that appears in the questions below.

(Continued on following page.)

¹ Matthews, Patent Jury Instruction Handbook §2:10 (Dell USA, L.P. v. Lucent Technologies, Inc., No. 4:03-CV-347 (Verdict Feb 1, 2008) (modified); N.D. Cal. Model Jury Instructions (modified).

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

I. Findings On ViaSat's Claims

A. INFRINGEMENT

1. Answer "Yes" or "No" on the chart below as to each claim in columns 1A, 1B, and 1C below.
 - a. Has ViaSat proven by a preponderance of the evidence that SS/L directly infringed any of the claims of the patents listed below, either literally or under the doctrine of equivalents with respect to the Jupiter-1 satellite?
 - b. Has ViaSat proven by a preponderance of the evidence that SS/L contributorily infringed any of the claims of the patents listed below with respect to the Jupiter-1 satellite?
 - c. Has ViaSat proven by a preponderance of the evidence that SS/L induced infringement of any of the claims of the patents listed below with respect to the Jupiter-1 satellite?

	1A	1B	1C
	(Direct Infringement)	(Contributory Infringement)	(Induced Infringement)
'875 Patent			
Claim 1	_____	_____	_____
Claim 12	_____	_____	_____
'827 Patent			
Claim 7	_____	_____	_____

'043 Patent

Claim 1 _____

Claim 3 _____

Claim 8 _____

2. Answer "Yes" or "No" on the chart below as to each claim in columns 2A, 2B, and 2C below.

a. Has ViaSat proven by a preponderance of the evidence that SS/L directly infringed any of the claims of the '043 patent listed below, either literally or under the doctrine of equivalents with respect to the NBN satellites?

b. Has ViaSat proven by a preponderance of the evidence that SS/L contributorily infringed any of the following claims of the '043 patent listed below with respect to the NBN satellites?

c. Has ViaSat proven by a preponderance of the evidence that SS/L induced infringement of any of the following claims of the '043 patent with respect to the NBN satellites?

2A

2B

2C

(Direct
Infringement)(Contributory
Infringement)(Induced
Infringement)**'043 Patent**

Claim 1 _____

Claim 3 _____

Claim 8 _____

3. If you answered "Yes" to any of the questions above, has ViaSat proven by clear and convincing evidence that SS/L knew or should have known that its actions constituted an unjustifiably high risk of infringement of a valid and enforceable patent?

Yes _____ No _____

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4. If your answer to Question 3 is “Yes,” please identify the patents that you believe to have been willfully infringed by SS/L.

- ___ '875 Patent
- ___ '827 Patent
- ___ '043 Patent

5. Has ViaSat proven by a preponderance that Loral directly infringed any of the claims of the patents listed below, either literally or under the doctrine of equivalents with respect to the NBN satellites?

'043 Patent

- Claim 1 _____
- Claim 3 _____
- Claim 8 _____

6. Has ViaSat proven by a preponderance that Loral is liable for inducing infringement of any of the claims of the patents listed below with respect to the Jupiter-1 satellite?

'875 Patent

- Claim 1 _____
- Claim 12 _____

'827 Patent

- Claim 7 _____

'043 Patent

- Claim 1 _____

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Claim 3 _____

Claim 8 _____

7. If you answered “Yes” to any of the questions above, has ViaSat proven by clear and convincing evidence that Loral knew or should have known that its actions constituted an unjustifiably high risk of infringement of a valid and enforceable patent?

Yes _____ No _____

8. If your answer to Question 3 is “Yes,” please identify the patents that you believe to have been willfully infringed by Loral.

____ ’875 Patent

____ ’827 Patent

____ ’043 Patent

E. INVALIDITY DEFENSES

Please note that you should answer the following questions regarding validity regardless of your findings with respect to infringement. Some questions have multiple sub-parts.

(1) Anticipation

9. Have SS/L and Loral proven by clear and convincing evidence that any of the claims of the following patents are invalid as anticipated or, in other words, not new?

’875 Patent

Claim 1 _____

Claim 12 _____

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'827 Patent

Claim 7 _____

Claim 8 _____

'043 Patent

Claim 1 _____

Claim 3 _____

Claim 8 _____

(2) Obviousness

10. Have SS/L and Loral proven by clear and convincing evidence that any of the claims of the patents listed on the chart below are invalid because they would have been obvious to a person of ordinary skill in the field at the time the patent application was filed?

'875 Patent

Claim 1 _____

Claim 12 _____

'827 Patent

Claim 7 _____

Claim 8 _____

'043 Patent

Claim 1 _____

Claim 3 _____

Claim 8 _____

(3) Inventorship

11. Have SS/L and Loral proven by clear and convincing evidence that the '827 patent fails to meet the requirement to name all actual inventors and only the actual inventors?

Yes _____ No _____

(4) Indefiniteness

12. Have SS/L and Loral proven by clear and convincing evidence that any of the claims of the following patents are invalid as indefinite?

'827 Patent

Claim 7 _____

Claim 8 _____

'043 Patent

Claim 1 _____

Claim 3 _____

Claim 8 _____

F. CONTRACT CLAIMS

13. Has ViaSat proven by a preponderance of the evidence that SS/L breached the March 2006 NDA or the January 7, 2008 Build Contract?

Yes _____ No _____

14. If you answered “Yes,” has ViaSat proven by a preponderance of the evidence that it was harmed by SS/L’s breach?

Yes _____ No _____

15. Has ViaSat proven by a preponderance of the evidence that Loral breached the Loral NDA?

Yes _____ No _____

16. If you answered “Yes,” has ViaSat proven by a preponderance of the evidence that it was harmed by Loral’s breach?

Yes _____ No _____

(continue on to next page . . .)

1 **G. DAMAGES**

2 VIASAT SEEKS DAMAGES FROM SS/L AND LORAL FOR BOTH
 3 PATENT INFRINGEMENT AND BREACH OF CONTRACT. EVEN IF YOU
 4 FIND THAT THE DAMAGES FOR THESE TWO LEGAL CLAIMS OVERLAP,
 5 YOU SHOULD CONSIDER THE AMOUNT OF DAMAGES (IF ANY) FOR
 6 EACH CLAIM SEPARATELY. THIS MEANS YOUR ANSWERS TO
 7 QUESTIONS 17-19 (DEALING WITH PATENT INFRINGEMENT DAMAGES)
 8 SHOULD BE CONSIDERED SEPARATELY FROM YOUR ANSWER TO
 9 QUESTION 20 (DEALING WITH BRACH OF CONTRACT DAMAGES).
 10 QUESTION 21 ADDRESSES THE EXTENT TO WHICH ANY DAMAGES YOU
 11 AWARD FOR EACH TYPE OF CLAIM OVERLAP.

12 **(1) Patent Infringement Damages – Jupiter-1**

13 YOU ARE TO ANSWER THE FOLLOWING QUESTIONS ONLY FOR
 14 THE VIASAT PATENT CLAIMS THAT YOU FOUND WERE BOTH
 15 INFRINGED AND NOT INVALID, IF ANY, IN RELATION TO THE JUPITER-1
 16 SATELLITE. [**Defendants propose:** IF YOU DID NOT FIND ANY CLAIMS
 17 TO BE BOTH INFRINGED AND NOT INVALID, DO NOT ANSWER THESE
 18 QUESTIONS.]

19 17. What lost profits, if any, did ViaSat show by a preponderance of the evidence
 20 it suffered as a result of sales that it would with reasonable probability have
 21 made but for SS/L or Loral's infringement with respect to the Jupiter-1
 22 satellite?

23 \$ _____

24 18. If ViaSat has not proved its entitlement to lost profits or if lost profits do not
 fully compensate ViaSat for the infringement, what has ViaSat proved by a
 preponderance of the evidence it is entitled to as a reasonable royalty with
 respect to the claims you found were infringed in relation to the Jupiter-1

1 satellite?

2 \$ _____

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4 **(2) Patent Infringement Damages – NBN Satellites**

6 YOU ARE TO ANSWER THE FOLLOWING QUESTION ONLY FOR
7 THE '043 PATENT CLAIMS THAT YOU FOUND WERE BOTH INFRINGED
8 AND NOT INVALID, IF ANY, IN RELATION TO THE NBN SATELLITES.

9 **[Defendants propose:** IF YOU DID NOT FIND ANY CLAIMS TO BE BOTH
10 INFRINGED AND NOT INVALID, DO NOT ANSWER THIS QUESTION.]

11 19. What has ViaSat proved by a preponderance of the evidence it is entitled to as
12 a reasonable royalty with respect to the claims you found were infringed in
13 relation to the NBN satellites?

14 \$ _____

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16 **(3) Breach of Contract Damages**

17 YOU ARE TO ANSWER THE FOLLOWING QUESTION ONLY IF YOU
18 FOUND THAT SS/L OR LORAL BREACHED ITS CONTRACTUAL
19 OBLIGATIONS AND VIASAT WAS HARMED AS A RESULT OF THE
20 BREACH.

21 20. If you found any of the contracts asserted by ViaSat breached by SS/L or
22 Loral and that ViaSat was harmed by such breach, what is the total dollar
23 amount ViaSat has proved by a preponderance of the evidence it is entitled to
24 receive to compensate for that breach of contract?

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3 VIASAT SEEKS DAMAGES FROM SS/L AND LORAL FOR BOTH

4 BREACH OF CONTRACT AND PATENT INFRINGEMENT. HOWEVER,

5 VIASAT WILL ONLY BE AWARDED DAMAGES ONCE FOR A

6 PARTICULAR INJURY, REGARDLESS OF THE NUMBER OF LEGAL

7 THEORIES ALLEGED. YOU ARE TO ANSWER THE FOLLOWING

8 QUESTIONS ONLY IF YOU AWARDED VIASAT DAMAGES IN RESPONSE

9 TO QUESTIONS 17-20 ABOVE.

10 **ViaSat Proposes:**

11 21. Please identify the following summaries of all damages amounts, if any, that

12 you awarded:

13 (a) **Total damages to be awarded to ViaSat:** _____

14 (b) **Damages attributable to patent infringement:** _____

15 (The sum of the amounts identified in response to

16 Questions 17, 18, and 19)

17 (c) **Damages attributable to breach of contract:** _____

18 (The amount identified in response to Question 20)

19 (d) **The amount of damages, if any, that overlap,**

20 **between ViaSat's patent infringement and breach**

21 **of contract claims:** _____

22 (The amount of overlap between Question 21(b) and

23 21(c))

24 **Defendants Propose:**

25 21. Please identify the following summaries of all damages amounts, if any, that

26 you awarded:

- 1 (a) **Damages for patent infringement:**
2 (The sum of the amounts identified in response to
3 Questions 17, 18, and 19) _____
- 4 (b) **Damages for breach of contract:**
5 (The amount identified in response to Question 20) _____
- 6 (c) **The amount of breach of contract damages**
7 **entered for 21(b) that does not overlap with any**
8 **patent infringement damages entered for 21(a):** _____
9 (The amount in Question 21(b) that is not
10 duplicative of the amount in Question 21(a))
- 11 (d) **Total damages:**
12 (Question 21(a) plus Question 21(c)) _____
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II. Findings On SS/L's Claims

A. DIRECT INFRINGEMENT

22. Answer "Yes" or "No" on the chart below as to each claim in columns 22A, 22B, and 22C below.

- a. Has SS/L proven by a preponderance of the evidence that ViaSat directly infringed any of the claims of the patents listed below, either literally or under the doctrine of equivalents with respect to the Surfbeam 1 Broadband System?
- b. Has SS/L proven by a preponderance of the evidence that ViaSat contributorily infringed any of the claims of the patents listed below with respect to the Surfbeam 1 Broadband System?
- c. Has SS/L proven by a preponderance of the evidence that ViaSat induced infringement of any of the claims of the patents listed below with respect to the Surfbeam 1 Broadband System?

	22A	22B	22C
	(Direct Infringement)	(Contributory Infringement)	(Induced Infringement)
'696 Patent			
Claim 1	_____	_____	_____
Claim 11	_____	_____	_____

23. Answer "Yes" or "No" on the chart below as to each claim in columns 23A, 23B, and 23C below.

- a. Has SS/L proven by a preponderance of the evidence that ViaSat directly infringed any of the claims of the patents listed below, either literally or under the doctrine of equivalents with respect to the Surfbeam 2 Broadband System?

- b. Has SS/L proven by a preponderance of the evidence that ViaSat contributorily infringed any of the claims of the patents listed below with respect to the Surfbeam 2 Broadband System?
- c. Has SS/L proven by a preponderance of the evidence that ViaSat induced infringement of any of the claims of the patents listed below with respect to the Surfbeam 2 Broadband System?

	23A	23B	23C
	(Direct Infringement)	(Contributory Infringement)	(Induced Infringement)
'696 Patent			
Claim 1	_____	_____	_____
Claim 11	_____	_____	_____

24. Answer "Yes" or "No" on the chart below as to each claim in columns 24A, 24B, and 24C below.

- a. Has SS/L proven by a preponderance of the evidence that ViaSat directly infringed any of the claims of the patents listed below, either literally or under the doctrine of equivalents with respect to the Linkstar Pro System?
- b. Has SS/L proven by a preponderance of the evidence that ViaSat contributorily infringed any of the claims of the patents listed below with respect to the Linkstar Pro System?
- c. Has SS/L proven by a preponderance of the evidence that ViaSat induced infringement of any of the claims of the patents listed below with respect to the Linkstar Pro System?

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	24A	24B	24C
	(Direct Infringement)	(Contributory Infringement)	(Induced Infringement)
'696 Patent			
Claim 1	_____	_____	_____
Claim 11	_____	_____	_____

D. INVALIDITY DEFENSES

Please note that you should answer the following questions regarding validity regardless of your findings with respect to infringement. Some questions have multiple sub-parts.

(1) Written Description

25. Has ViaSat proven by clear and convincing evidence that the '696 patent does not contain an adequate written description of any of the claimed invention(s) thereby rendering one or more of the following claims invalid?

'696 Patent

Claim 1 _____

Claim 11 _____

(2) Enablement

26. Has ViaSat proven by clear and convincing evidence that the specification of '696 patent does not contain a description of the claimed invention that is sufficiently full and clear to enable persons of ordinary skill in the field to make and use the invention, thereby rendering one or more of the following claims invalid?

'696 Patent

Claim 1 _____

Claim 11 _____

(3) Anticipation

27. Has ViaSat proven by clear and convincing evidence that any of the following claims of the '696 Patent are invalid as anticipated or, in other words, not new?

'696 Patent

Claim 1 _____

Claim 11 _____

(4) Obviousness

28. Has ViaSat proven by clear and convincing evidence that any of the following claims of the '696 Patent are invalid because they would have been obvious to a person of ordinary skill in the field at the time the patent application was filed?

'696 Patent

Claim 1 _____

Claim 11 _____

E. CONTRACT CLAIM

29. Has SS/L proven by a preponderance of the evidence that ViaSat breached the March 2006 NDA?

Yes _____ No _____

30. If you answered "Yes," has SS/L proven by a preponderance of the evidence that it was harmed by ViaSat's breach of the March 2006 NDA?

Yes _____ No _____

F. DAMAGES

SS/L SEEKS DAMAGES FROM VIASAT FOR BOTH PATENT INFRINGEMENT AND BREACH OF CONTRACT. EVEN IF YOU FIND THAT THE DAMAGES FOR THESE TWO LEGAL CLAIMS OVERLAP, YOU

1 SHOULD CONSIDER THE AMOUNT OF DAMAGES (IF ANY) FOR EACH
 2 CLAIM SEPARATELY. THIS MEANS YOUR ANSWERS TO QUESTION 31
 3 (DEALING WITH PATENT INFRINGEMENT DAMAGES) SHOULD BE
 4 CONSIDERED SEPARATELY FROM YOUR ANSWER TO QUESTION 32
 5 (DEALING WITH BRACH OF CONTRACT DAMAGES). QUESTION 33
 6 ADDRESSES THE EXTENT TO WHICH ANY DAMAGES YOU AWARD FOR
 7 EACH TYPE OF CLAIM OVERLAP.

8 **(1) Patent Infringement Damages**

9 YOU ARE TO ANSWER THE FOLLOWING QUESTION ONLY FOR
 10 THE SS/L PATENT CLAIMS THAT YOU FOUND WERE BOTH INFRINGED
 11 AND NOT INVALID, IF ANY. [**Defendants propose:** IF YOU DID NOT FIND
 12 ANY CLAIMS TO BE BOTH INFRINGED AND NOT INVALID, DO NOT
 13 ANSWER THIS QUESTION.]

14 31. What has SS/L proved by a preponderance of the evidence it is entitled to as a
 15 reasonable royalty with respect to the claims you found infringed?

16 \$ _____

17 **(2) Breach of Contract Damages**

18 32. If you found that ViaSat breached the March 2006 NDA and that SS/L was
 19 harmed by such breach, what is the total dollar amount SS/L has proved by a
 20 preponderance of the evidence it is entitled to receive to compensate for that
 21 breach of contract?

22 \$ _____

23 SS/L SEEKS DAMAGES FROM VIASAT FOR BOTH BREACH OF
 24 CONTRACT AND PATENT INFRINGEMENT. HOWEVER, SS/L WILL

ONLY BE AWARDED DAMAGES ONCE FOR A PARTICULAR INJURY, REGARDLESS OF THE NUMBER OF LEGAL THEORIES ALLEGED. YOU ARE TO ANSWER THE FOLLOWING QUESTIONS ONLY IF YOU AWARDED SS/L DAMAGES IN RESPONSE TO QUESTIONS 31 AND 32 ABOVE.

ViaSat proposes:

33. Please identify the following summaries of all damages amounts, if any, that you awarded:

(a) **Total damages to be awarded to SS/L:** _____

(b) **Damages attributable to patent infringement:** _____
(The amount identified in response to Question 31)

(c) **Damages attributable to breach of contract:** _____
(The amount identified in response to Question 32)

(d) **The amount of damages, if any, that overlap, between ViaSat's patent infringement and breach of contract claims:** _____
(The amount of overlap between Question 33(b) and 33(c))

Defendants propose:

33. Please identify the following summaries of all damages amounts, if any, that you awarded:

(a) **Damages for patent infringement:** _____
(The amount identified in response to Question 31)

(b) **Damages for breach of contract:** _____
(The amount identified in response to Question 32)

1 (c) **The amount of breach of contract damages**
2 **entered for 33(b) that does not overlap with any**
3 **patent infringement damages entered for 33(a):** _____

4 (The amount in Question 33(b) that is not
5 duplicative of the amount in Question 33(a))

6 (d) **Total damages:**
7 (Question 33(a) plus Question 33(c))
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10 DATED: April 1, 2014

11 QUINN EMANUEL URQUHART
12 & SULLIVAN, LLP

SUSMAN GODFREY LLP

13 /s/ Michelle Ann Clark
14 Michelle Ann Clark

/s/ Joseph S. Grinstein
Joseph S. Grinstein

15 *Attorneys for Plaintiff ViaSat, Inc.*

*Attorneys for Defendants/Counterclaim
16 Plaintiffs Space Systems/Loral, LLC (f/k/a
17 Space Systems/Loral, Inc.) and Loral
18 Space & Communications Inc.*