

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DRONE TECHNOLOGIES, INC.,)	Civil Action No. 2:14-cv-00111
Plaintiff)	
)	Judge Arthur J. Schwab
v.)	
)	
PARROT S.A. and PARROT, INC.)	FILED ELECTRONICALLY
Defendants)	
)	

PLAINTIFF'S PRETRIAL STATEMENT

Pursuant to Local Rule 16.1.C, and this Court's Case Management Order Re: Damages [Doc. No. 126], Plaintiff submits its Pretrial Statement.

I. BRIEF NARRATIVE STATEMENT OF MATERIAL FACTS TO BE OFFERED AT TRIAL

In 2006, Yu-Tuan "Diane" Lee conceived of a new and improved remote control system for controlling remote controlled airplanes, cars, and the like. Existing remote controllers typically used joysticks or similar manual controls to pilot a remote control airplane, for example. Ms. Lee's concept was to make piloting more intuitive by allowing a user to move the remote controller itself, that is, tilting the remote controller in the direction of desired movement for the airplane.

Ms. Lee filed two U.S. patent applications on her inventions, and they issued as U.S. Patent No. 7,584,071 (on September 1, 2009) and U.S. Patent No. 8,106,748 (on January 31, 2012).

In 2012, Ms. Lee discovered that Defendants were manufacturing and selling flying drones (AR.Drone and AR.Drone 2.0) that were piloted using an app that could be obtained from Apple's App Store. Once downloaded, the FreeFlight app allowed a user to pilot Defendants' drones by simply tilting an iPhone (or iPod Touch or iPad). Ms. Lee advised Apple that she

believed that Defendants' drone products were infringing her patents. In March 2013, Apple removed Defendants' software app (referred to as "FreeFlight" or "AR.FreeFlight 2") from the Apple App Store meaning that Defendants' customers could no longer download the FreeFlight app to their iPhone (or iPod or iPad) to pilot Defendants' drones.

Defendants replaced the FreeFlight app with a new app called "AR.Drone app." The new AR.Drone app was specifically designed so that it would not conflict with Ms. Lee's patents. As a result, the new app lacked the two key functions available under the previous app. Defendants refer to these two features as "absolute control mode" and "accelerometer mode." In simple terms, accelerometer mode allows the pilot to fly the drone by tilting the iPhone (or iPod or iPad), and absolute control mode allows the pilot to fly the drone from his perspective (meaning that tilting the iPhone to the left will cause the drone to fly to the pilot's left, even if the drone is facing a different direction).

Without the FreeFlight app, and its absolute control mode and accelerometer mode features, customers were unhappy. For three-and-a-half months, Defendants scrambled to find a solution to deal with what had proven to be a public relations nightmare.

Ultimately, Defendants persuaded Apple to make the FreeFlight app available again for download from Apple's App Store by promising Apple that Defendants would reimburse Apple if it had to pay any damages or attorney's fees for infringing Diane Lee's patents. Defendants "absolute control mode" and "accelerometer mode" were again available to control their drones.

In December 2013, Diane Lee assigned her patents to Drone Technologies, Inc., a company started by her husband to gain value (through licensing and otherwise) from the patented technology. On January 24, 2014, Drone Technologies sued Defendants for patent infringement.

On November 3, 2014, this Court held Defendants liable for infringing the two patents.

A reasonable royalty will be determined at trial based, *inter alia*, on the *Georgia-Pacific* factors as fully set forth by Mr. Ned Barnes, Plaintiff's damages expert, in his Rule 26(a)(2) report. Doc. No. 186. Because Mr. Barnes relied heavily on information designated by Defendants as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY under the Protective Order, Plaintiff incorporates Mr. Barnes' report, of record at Doc. No. 186, in full by this reference.

II. STATEMENT OF ALL DAMAGES CLAIMED

As indicated, a reasonable royalty will be determined at trial based, *inter alia*, on the *Georgia-Pacific* factors as outlined by Mr. Ned Barnes in his Rule 26(a)(2) report. Doc. No. 186. In order to avoid having to file this Pretrial Statement under seal, Plaintiff incorporates Mr. Barnes' report, of record at Doc. No. 186, in full by this reference.

In addition, Plaintiff will also seek a finding that the case is exceptional, providing for enhanced damages and attorney's fees under 35 U.S.C. §§ 284 and 285. Plaintiff will also seek its costs and prejudgment interest.

III. WITNESSES

Pursuant to Local Rule 16.1.C, Plaintiff identifies the following witnesses (damages only) it expects to call at trial, with offers of proof for each included at the end of this Pretrial

Statement:

Ned S. Barnes, CPA
Berkeley Research Group, LLC
1800 M Street NW, Second floor
Washington, DC 20036
Phone: (202) 480-2682

Bruce Ding
Drone Technologies, Inc.
No. 14, Ln. 50, Sec. 3, Nangang Rd.
Nangang Dist.
Taipei City 11510
Taiwan, R.O.C.

James Foley
CLARK HILL
150 N. Michigan Ave
Suite 2700
Chicago, IL 60601
Phone: (312) 985-5557

Plaintiff identifies the following trial witnesses who it may call at trial, either live or by deposition:

François Callou
PARROT S.A.
174, quai de Jemmapes
75010 Paris
Phone: +33 (0)1 48 03 60 60

Henri Seydoux
PARROT S.A.
174, quai de Jemmapes
75010 Paris
Phone: +33 (0)1 48 03 60 60

Plaintiff reserves the right to call at trial any witness identified in Defendants' Pretrial Statement.

IV. DEPOSITION DESIGNATIONS

In accordance with the Court's Pretrial Order Re: Damages [Doc. No. 127], Plaintiff will submit designations of deposition excerpts by April 1, 2015.

V. EXHIBITS

Pursuant to Local Rule 16.1.C and this Court's Pretrial Order Re: Damages [Doc. No. 127], Plaintiff's exhibit list is attached hereto. *See* Attachment 1.

VI. LEGAL ISSUES TO BE ADDRESSED

At this time, Plaintiff believes that the following legal issues should be addressed at the pretrial conference:¹

1. Whether Defendants may be permitted to argue (or present evidence) that Diane Lee is the not the true/sole inventor and/or that the patents are therefore invalid (as in Doc. No. 174);
2. Whether Defendants may be permitted to argue (or present evidence) that Bruce Ding is the true inventor and/or that his former employer owns rights to the patents (as in Doc. No. 174);
3. Whether Defendants may be permitted to argue (or present evidence regarding) Bruce Ding's previous employment at Freescale (as in Doc. No. 225);
4. Whether Defendants may be permitted to argue (or present evidence regarding) the extent to which Defendants' drone products infringe, e.g., whether Defendants' use of the invention "is non-existent and insignificant at the most" (as in Doc. No. 196, ¶ 7);
5. Whether Defendants may be permitted to argue (or present evidence) that the patented inventions did not make a sufficiently valuable contribution to the art (as in Doc. No. 196, ¶¶ 20-25); and
6. Whether Defendants may be permitted to argue (or present evidence) regarding the concurrent *inter partes* review proceedings IPR2014-00730 or IPR2014-00732 in the Patent Office, including the existence thereof.

Plaintiff reserves the right to seek leave to supplement or add to the above list as issues arise after the filing of this Pretrial Statement or are raised by the Defendants' Pretrial Statement.

¹ Some of these legal issues will be the subject of Plaintiff's motions *in limine* (if the parties cannot reach agreement) to be filed by April 2, 2015. Doc. No. 127, ¶ 5. Additional issues, however, may need to be addressed as well.

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