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

DRONE TECHNOLOGIES, INC.,

Plaintiff,

v.

PARROT S.A., PARROT, INC.,

Defendants.

14cv0111
ELECTRONICALLY FILED

MEMORANDUM ORDER OF COURT RE: POST-TRIAL DAMAGES MOTIONS (DOC. NOS. 378, 380, 382, 383, 386)

I. Introduction

A. Jury Determination of Damages Due to Plaintiff for Defendants' Infringement

After unprecedented disruptive and dilatory discovery actions by Defendants, the Court was constrained to enter default judgment against Defendants as to infringement of two United States Patents. The only issue presented during the recent three-day jury trial was the amount of damages, if any, due to Plaintiff for Defendants' infringement.

After deliberating for approximately seven (7) hours over two (2) days, the jury determined that Plaintiff was due $3,783,950 for damages from January 31, 2012 through June 30, 2015 ("past damages") and $4,016,050 for damages from July 1, 2015 through expiration of the patents (7,584,071 patent ("the '071 patent")-March 2028; 8,106,748 ("the '748 patent")-November 2030) ("future damages"–advisory jury verdict). Doc. No. 371.

B. The Jury's Damages Verdict was Based Upon the Georgia-Pacific Factors

Before the trial commenced, based upon the Court's Pretrial Orders, the Parties worked to draft proposed preliminary jury instructions, motions in limine, evidentiary objections, proposed final jury instructions, and a proposed verdict form such that the trial would be solely

focused on a determination of damages derived from the application of relevant legal principles to relevant evidence. Doc. No. 127. As agreed-to by the Parties, the jury was instructed from the Court's first remarks and throughout the trial that their deliberations and eventual verdict must be based upon fifteen (15) enumerated factors ("*Georgia-Pacific* factors"). The importance of these factors was impressed upon the jurors by:

- providing the factors in a written document prior to preliminary jury instructions;
- reference by attorneys and witnesses to the factors throughout the trial;
- the Court's instruction at several points to re-read the provided factors; and
- the Court's preliminary and final jury instructions

Once seated, the jury was provided background on patents and patent litigation through a video from the Federal Judicial Center and then instructed by the Court that:

> [i]t has already been established that Parrot is liable for infringing Drone Technologies' '071 and '748 patents as to four specific models of Parrot Drone Products. Those four Parrot drone models are called: 1. AR.Drone; 2. AR.Drone 2.0 (pronounced "A R Drone Two Point Oh"); 3. Minidrones; and 4. Bebop Drones. The only issue for you to decide is: What is the proper amount of damages to be paid by Parrot to Drone Technologies, if any?

Doc. No. 320, pg. 2.

Following these preliminary instructions, the Court provided each juror with a two-page document entitled "Reasonable Royalty-Relevant Factors" that set forth factors to guide the jury's determination of a reasonable royalty. Doc. No. 308. These fifteen factors were agreed-to by the Parties and were derived from applicable case law. *Georgia-Pacific Corp. v. United States Plywood Corp.*, 318 F.Supp. 1116 (S.D. NY. May 28, 1970). The Court emphasized the importance of these factors to the jury and explained that:

> . . . I give this to you because I want you to read it now, we will read it one more time before we start the trial. But as the evidence comes in, I want you to see why you are hearing that evidence, because the evidence will relate to one or more of these factors as you see documents, as you hear testimony . . . I realize that it is not generally the vocabulary you use in your day-to-day life, but I just thought it was important that you see those criteria, those factors, prior to hearing all the

> evidence. You will see them again, but I just know that you are going to get three days of evidence and I want you to see what the evidence relates to, and you will obviously hear the opening and closing statements of counsel as to what they think the facts show as to those particular items.

Doc. No. 347, pgs. 85-86.

The jury was instructed that the enumerated factors were not the only potentially applicable factors but, rather, were "some of the kinds of factors" that may be considered along with "any other factors which in your mind would have increased or decreased the royalty Parrot would have been willing to pay and Drone Technologies would have been willing to accept, acting as normally prudent business people." Doc. No. 308, pg. 2.

Once the trial began, the proceedings were consistently focused on the *Georgia-Pacific* factors, which is demonstrated by the following:

- the attorneys explicitly referenced the *Georgia-Pacific* factors during opening arguments (Mr. Hopenfeld: "First, what is the invention and how does it differ from the technology that came before it? You have those *Georgia-Pacific* factors in front of you in your notebooks. You might want to get them out. If you have got your pen, you might want to think about circling factor No. 9. Take a look at factor No. 9. That's the advantages of the invention over the prior art." Doc. No. 347, pg. 112, lines 8-14);
- the expert witnesses relied on the factors during their testimony ("I believe the Court handed out as part of the jury's binder the actual 15 factors, we call them the *Georgia-Pacific* factors. But what the *Georgia-Pacific* factors really are is they provide an economic framework for people like myself who are in this business to – kind of a checklist for us to go through a determine what type of information should be looking at, what type of analysis should we be doing, what are the important considerations that go to determining what a reasonable royalty would be or what the amount of damages that would be appropriate in a given case." Doc. No. 347, pg. 204, lines 1-11);

- the Court reminded the jury of the factors before transitioning to the Defendants' case-in-chief ("I'd like you to take a few moments and re-read the two-page document again in front of you so that that's in front of your mind as we begin the Defendants' case. And I would ask that you give the Defendants' part of the case, called the Defendants' case-in-chief, the same careful attention that you paid to the Plaintiff's case." Doc. No. 357, pg. 2, lines 12-17); and
- the attorneys centered their presentation of closing arguments on the *Georgia-Pacific* factors (Mr. Tabachnick: "*Georgia-Pacific* factors No. 9 and 10. You remember Mr. Barnes talked about the advantages of the old over the new. All the comments about it being a breakthrough in the flying business, flying devices business, this absolute control mode and accelerometer mode, that it being revolutionary, that it be – the Popular Science article where it said it drastically simplifies piloting. All of these things that demonstrate, that are evidence of the fact that this is valuable technology." Doc. No. 361, pg. 13, lines 9-17)

Once the jury was ready to begin deliberations, the Court again instructed the jury members that the *Georgia-Pacific* factors were to be employed to determine damages. ("Now we are going to review the reasonable – the relevant factors that apply to a reasonable royalty determination. You will be familiar with these by now.") Doc. No. 361, pg. 61, lines 9-11.

In sum, all aspects of the trial were focused on the *Georgia-Pacific* factors and the jury's verdict necessarily reflects the jurors' appropriate consideration of these guiding principles.

C. The Jury was Presented with Competing Testimonial and Documentary Evidence

The presentation of the Parties' opinions as to an appropriate damages awards was primarily presented through three expert witnesses; namely, Ned Barnes for Plaintiff and John Jarosz and Francois Callou for Defendants. Doc. Nos. 187, 195, 198-199. The difference between the expert witnesses' damages calculations was approximately $24 million. Mr. Barnes testified for Plaintiff that total damages due for Defendants' infringement was $24.8 million,

while Mr. Jarosz opined that a lump sum payment of $680,000 was the highest appropriate sum. Doc. Nos. 187 and 344. These estimates were presented to the jury and calculated as follows:

Mr. Barnes' estimate: ($24.8 million)

Reasonable royalty rates of:

- $16/unit for A.R. Drone and Bebop
- $6/unit for the MiniDrone

Multiplied by the number of sales

- Through June 2015=$7.5 million
- Estimated through expiration of the patents=$17.3 million

Total =$24.8 million

Mr. Jarosz's estimate: ($680,000)

Past Damages-Reasonable royalty rate of:

- $.50/unit for patents at issue (based upon a collaboration agreement between Defendants and Thomas Barse)

Multiplied by the number of sales

- Through June 2015=$647,670
- Reduced to no more than $400,000

Future Damages-Reasonable royalty rate of:

- $.10/unit (based upon a collaboration agreement between Defendants and Thomas Barse)

Multiplied by the estimated number of sales

- Estimated from June 2015 through the expiration of the patents=$467,343
- Reduced to no more than $280,000

Implied total payment=$1.1 million

Reduced total=$680,000

The jury was informed how to incorporate these expert witness opinions into its separate calculation of damages. Specifically, the Court instructed that the opinions of expert witnesses may be given the weight each juror believed it deserved, and, if a determination was made that

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