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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)	No. CR-09-0110 SI
)	
v.)	
)	
AU OPTRONICS CORPORATION;)	JURY INSTRUCTIONS
AU OPTRONICS CORPORATION AMERICA;)	
HSUAN BIN CHEN, aka H.B. CHEN;)	DRAFT - AS OF 2/24/12
HUI HSIUNG, aka KUMA;)	
LAI-JUH CHEN, aka L.J. CHEN;)	
SHIU LUNG LEUNG, aka CHAO-LUNG)	
LIANG and STEVEN LEUNG; and)	
TSANNRONG LEE, aka TSAN-JUNG LEE)	
and HUBERT LEE;)	
)	
Defendants.)	

1 WHAT IS EVIDENCE

2 The evidence you are to consider in deciding what the facts are consists of:

- 3 (1) the sworn testimony of any witness;
4 (2) the exhibits received in evidence; and
5 (3) any facts to which the parties have agreed.

6
7 WHAT IS NOT EVIDENCE

8 In reaching your verdict you may consider only the testimony and exhibits received in
9 evidence. The following things are not evidence and you may not consider them in deciding
10 what the facts are:

- 11 1. Questions, statements, objections, and arguments by the lawyers are not evidence.
12 The lawyers are not witnesses. Although you must consider a lawyer's questions
13 to understand the answers of a witness, the lawyer's questions are not evidence.
14 Similarly, what the lawyers have said in their opening statements, will say in their
15 closing arguments and at other times is intended to help you interpret the
16 evidence, but it is not evidence. If the facts as you remember them differ from the
17 way the lawyers state them, your memory of them controls.
- 18 2. Any testimony that I have excluded, stricken, or instructed you to disregard is not
19 evidence. In addition, some evidence was received only for a limited purpose;
20 when I have instructed you to consider certain evidence in a limited way, you
21 must do so.
- 22 3. Anything you may have seen or heard when the court was not in session is not
23 evidence. You are to decide the case solely on the evidence received at the trial.

24
25 DIRECT AND CIRCUMSTANTIAL EVIDENCE

26 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such
27 as testimony by a witness about what that witness personally saw or heard or did. Circumstantial
28 evidence is indirect evidence, that is, it is proof of one or more facts from which you can find

1 another fact.

2 You are to consider both direct and circumstantial evidence. Either can be used to prove
3 any fact. The law makes no distinction between the weight to be given to either direct or
4 circumstantial evidence. It is for you to decide how much weight to give to any evidence.

5
6 CREDIBILITY OF WITNESSES

7 In deciding the facts in this case, you may have to decide which testimony to believe and
8 which testimony not to believe. You may believe everything a witness says, or part of it, or none
9 of it.

10 In considering the testimony of any witness, you may take into account:

- 11 1. the witness's opportunity and ability to see or hear or know the things testified to;
- 12 2. the witness's memory;
- 13 3. the witness's manner while testifying;
- 14 4. the witness's interest in the outcome of the case, if any;
- 15 5. the witness's bias or prejudice, if any;
- 16 6. whether other evidence contradicted the witness's testimony;
- 17 7. the reasonableness of the witness's testimony in light of all the evidence; and
- 18 8. any other factors that bear on believability.

19 The weight of the evidence as to a fact does not necessarily depend on the number of
20 witnesses who testify. What is important is how believable the witnesses were, and how much
21 weight you think their testimony deserves.

22
23 ACTIVITIES NOT CHARGED

24 You are here only to determine whether the defendants are guilty or not guilty of the
25 charge in the indictment. The defendants are not on trial for any conduct or offense not charged
26 in the indictment.

1 CHARTS AND SUMMARIES

2 During the trial, certain charts and summaries were shown to you in order to help explain
3 the evidence in the case.

4
5 [These charts and summaries fall into three categories for purposes of your consideration.

6 The first category of charts and summaries are those that have been admitted in evidence.
7 The charts and summaries in evidence are only as good as the underlying supporting material.
8 You should, therefore, give them only such weight as you think the underlying material
9 deserves.

10 The second category of charts and summaries are those that were not admitted in
11 evidence but will go into the jury room with you. The second category of charts and summaries
12 were shown to you during the testimony of expert witnesses in the case. Those charts and
13 summaries will go into the jury room with you so that you can better understand the expert
14 testimony you have heard. Those summaries and charts are not themselves evidence or proof of
15 any facts, however. If they do not correctly reflect the facts or figures shown by the evidence in
16 the case, you should disregard those charts and summaries and determine the facts from the
17 underlying evidence.

18 The third category of charts and summaries were not admitted in evidence and will not go
19 into the jury room with you. Those summaries and charts are not themselves evidence or proof
20 of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the
21 case, you should disregard those charts and summaries and determine the facts from the
22 underlying evidence.]

23
24 STIPULATIONS OF FACT

25 The parties have agreed to certain facts that have been stated to you. You should
26 therefore treat these facts as having been proved.

1 REASONABLE DOUBT - DEFINED

2 Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant
3 is guilty. It is not required that the government prove guilt beyond all possible doubt.

4 A reasonable doubt is a doubt based upon reason and common sense and is not based
5 purely on speculation. It may arise from a careful and impartial consideration of all the
6 evidence, or from lack of evidence.

7 If after a careful and impartial consideration of all the evidence, you are not convinced
8 beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not
9 guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you
10 are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the
11 defendant guilty.

12
13 PRICE FIXING

14 The indictment charges the defendants with conspiring to fix prices. A conspiracy to fix
15 prices is an agreement or mutual understanding between two or more competitors to fix, control,
16 raise, lower, maintain, or stabilize the prices charged, or to be charged, for products or services.

17 The aim and result of every price-fixing agreement, if successful, is the elimination of
18 one form of competition.

19 A price-fixing conspiracy is commonly thought of as an agreement to establish the same
20 price; however, prices may be fixed in other ways. Prices are fixed if a target, goal, range or
21 level of prices is agreed upon by the conspirators. They are fixed because they are agreed upon.
22 Thus, any agreement to raise or lower a price, to set a maximum price, to stabilize prices, to set a
23 price or price range, to set target prices, or to maintain a price is illegal.

24 If you should find that the defendants entered into an agreement to fix prices, the fact that
25 the defendants or their coconspirators did not abide by it, or that one or more of them may not
26 have lived up to some aspect of the agreement, or that they may not have been successful in
27 achieving their objectives, is no defense. The agreement is the crime, even if it is never carried
28 out.

1 Evidence that the defendants and alleged coconspirators actually competed with each
2 other has been admitted to assist you in deciding whether they actually entered into an agreement
3 to fix prices. If the conspiracy charged in the indictment is proved, it is no defense that the
4 conspirators actually competed with each other in some manner or that they did not conspire to
5 eliminate all competition. Nor is it a defense that the conspirators did not attempt to collude with
6 all of their competitors. Similarly, the conspiracy is unlawful even if it did not extend to all
7 products sold by the conspirators or did not affect all of their customers.

8 Evidence of the prices actually charged by the defendants has been admitted to assist you
9 in deciding whether they entered into an agreement to fix prices. Such evidence may lead you to
10 conclude that the defendants never entered into the agreement charged in the indictment or that
11 they did enter into the agreement. Or such evidence may show that they made an agreement but
12 failed to live up to it, or started undercutting one another right away, or offered prices lower than
13 those agreed upon to customers they did not want to lose, or it may show that they became
14 convinced that the whole scheme was unwise and should be abandoned. Regardless of this type
15 of evidence, if the conspiracy as charged existed, for any period of time, it was unlawful.

16 Evidence of similarity of business practices of the defendants and alleged coconspirators,
17 or the fact that they may have charged identical prices for the same goods, does not alone
18 establish an agreement to fix prices, since such activities may be consistent with ordinary and
19 proper competitive behavior in a free and open market.

20 The defendants and alleged coconspirators may charge the same prices, may copy each
21 other's price lists or may follow and conform exactly to each other's price policies and price
22 changes and such conduct would not violate the Sherman Act, unless you find it was done
23 pursuant to an agreement between two or more conspirators, as alleged in the indictment.

24 Nevertheless, you may consider such facts and circumstances along with all other
25 evidence in determining whether the evidence of competition, prices actually charged, similarity
26 of business practices, or similarity of prices resulted from the independent acts or business
27 judgment of the defendants and alleged coconspirators freely competing in the open market, or
28 whether it resulted from an agreement among or between two or more of them.

1 EXCHANGES OF INFORMATION

2 Evidence has been introduced concerning the exchange of information about prices
3 between the defendants and employees of other companies manufacturing TFT-LCDs alleged to
4 be coconspirators. The government claims that such exchanges are part of the evidence
5 establishing that the defendants entered into an agreement or mutual understanding to fix prices,
6 as alleged in the indictment.

7 It is not unlawful for a person to obtain information about a competitor's prices or even to
8 exchange information about prices unless done pursuant to an agreement or mutual
9 understanding between two or more persons to fix prices as charged in the indictment.
10 Nevertheless, you may consider such facts and circumstances, along with other evidence, in
11 determining whether there was an agreement or mutual understanding between two or more
12 persons to fix prices as alleged in the indictment.

13
14
15 IGNORANCE OF ANTITRUST LAWS/GOOD FAITH NO DEFENSE

16 It is not necessary for the government to prove that the defendants knew that an
17 agreement, combination, or conspiracy to fix prices, as charged in the indictment, is a violation
18 of the law. Thus, if you find beyond a reasonable doubt from the evidence in the case that a
19 defendant knowingly joined a conspiracy to fix prices, as charged, then the fact that the
20 defendant believed in good faith that what was being done was not unlawful is not a defense.

21
22 VENUE

23 Before you can find a defendant guilty of committing the crime charged in the
24 indictment, you must find by a preponderance of the evidence that, between September 14, 2001
25 and December 1, 2006, the conspiratorial agreement or some act in furtherance of the conspiracy
26 occurred in the Northern District of California. This district includes San Francisco, San Mateo,
27 Santa Clara, Alameda, Contra Costa, Marin, Sonoma, Napa, Del Norte, Humboldt, Lake,
28 Mendocino, Monterey, Santa Cruz, and San Benito counties.

1 To prove something by a preponderance of the evidence is to prove it is more likely true
2 than not true. This is a lesser standard than “beyond a reasonable doubt.”

3
4 DISPOSITION OF CHARGES AGAINST COCONSPIRATORS

5 For reasons that do not concern you, the case against several alleged coconspirators of
6 the defendants is not before you. Do not speculate why. That fact should not influence your
7 verdicts with respect to the defendants, and you must base your verdict solely on the evidence
8 against the defendants.

1 If you find from your consideration of all the evidence that each of these elements has
2 been proved beyond a reasonable doubt, then you should find the defendant guilty.

3 If, on the other hand, you find from your consideration of all of the evidence that any of
4 these elements has not been proved beyond a reasonable doubt, then you should find the
5 defendant not guilty.

6
7 CONSPIRACY EXPLAINED

8 The type of relationship condemned by the Sherman Act as a conspiracy is often
9 described as a “partnership in crime,” in which each person found to be a member of the
10 conspiracy is liable for all acts and statements of the other members made during the existence of
11 and in furtherance of the conspiracy. To create such a relationship, two or more persons must
12 enter into an agreement or mutual understanding that they will act together for some unlawful
13 purpose or to achieve a lawful purpose by unlawful means.

14 In order to establish the existence of a conspiracy, the evidence need not show that the
15 members of the conspiracy entered into any express, formal, or written agreement; that they met
16 together; or that they directly stated what their object or purpose was, or the details of it, or the
17 means by which the object was to be accomplished. The agreement itself may have been entirely
18 unspoken. What the evidence must show in order to prove that a conspiracy existed is that the
19 alleged members of the conspiracy in some way came to an agreement or mutual understanding
20 to accomplish a common purpose.

21 Direct proof of a conspiracy may not be available. A conspiracy may, however, be
22 disclosed by the circumstances or by the acts of the members. Therefore, you may infer the
23 existence of a conspiracy from what you find the parties actually did, as well as from the words
24 they used. Mere similarity of conduct among various persons, however, or the fact that they may
25 have associated with one another and may have met or assembled together and discussed
26 common aims and interests, does not necessarily establish the existence of a conspiracy. If
27 actions were taken independently by them, solely as a matter of individual business judgment,
28 without any agreement or mutual understanding among them, then there would be no conspiracy.

1 A conspiracy may vary in its membership from time to time. It may be formed without
2 all parties coming to an agreement at the same time, knowing all the details of the agreement, or
3 knowing who all the other members are. It is not essential that all members acted exactly alike
4 or agreed to play any particular part in carrying out the agreement. The unlawful agreement may
5 be shown if the proof establishes that the parties knowingly worked together to accomplish a
6 common purpose.

7 In determining whether a conspiracy has been proved, you must view the evidence as a
8 whole and not piecemeal. You should consider the actions and statements of all the alleged
9 conspirators. The conspiracy may be inferred from all the circumstances and the actions and
10 statements of the participants. Acts that are by themselves wholly innocent acts may be part of
11 the sum of the acts that make up a conspiracy to restrain trade in violation of the Sherman Act.

12 A conspiracy ends only when its purposes and objectives have been accomplished or all
13 the parties to the conspiracy abandon or terminate it.

14 15 PERIOD OF CONSPIRACY

16 The indictment charges that the alleged conspiracy began on or about September 14,
17 2001 and continued until on or about December 1, 2006. The government need not prove that the
18 conspiracy existed on those exact dates or that the conspiracy continued for the entire period
19 charged in the indictment. It is sufficient if the government proves beyond a reasonable doubt
20 that the conspiracy existed during or reasonably near the time period alleged in the indictment,
21 and that the defendant joined the conspiracy some time during the period alleged in the
22 indictment and continued to be a member to a time within the period of the statute of limitations,
23 which, for purposes of this case, is the period from June 9, 2005 through June 9, 2010.

24 25 STATUTE OF LIMITATIONS

26 As I have explained, the indictment charges that the alleged conspiracy began on or about
27 September 14, 2001 and continued until on or about December 1, 2006.

1 A five-year statute of limitations applies to the alleged conspiracy. The grand jury
2 returned its indictment against defendants on June 9, 2010. This means that a defendant cannot
3 be found guilty unless you find beyond a reasonable doubt that the conspiracy existed at some
4 time within the period of the statute of limitations, which is the period beginning from June 9,
5 2005 and continuing until June 9, 2010. One way the government can prove the conspiracy
6 existed in this period is to prove that one or more members of the conspiracy performed some act
7 after June 9, 2005 and before June 9, 2010 in furtherance of the purposes and objectives of the
8 conspiracy.

9 You may consider evidence of a defendant's conduct prior to June 9, 2005, insofar as it
10 tends to prove or disprove the existence of the conspiracy and the defendants acts after that date.

11 KNOWINGLY JOINING THE CONSPIRACY

12 As previously noted, the second element the government must prove beyond a
13 reasonable doubt for you to find a defendant guilty is that the defendant knowingly joined the
14 conspiracy charged in the indictment. To act "knowingly" means to act voluntarily and
15 intentionally, and not because of a mistake, accident, or other innocent reason. Therefore, before
16 you may convict a defendant, the evidence must establish that the defendant joined the
17 conspiracy to fix prices with the intent to aid or advance the object or purpose of the conspiracy.
18

19 A person may become a member of a conspiracy without full knowledge of all the
20 details of the conspiracy, the identity of all of its members, or the parts they played in the
21 charged conspiracy. Knowledge of the essential nature of the conspiracy is enough. On the
22 other hand, a person who has no knowledge of a conspiracy but who happens to act in a way
23 which furthers some object or purpose of the conspiracy does not thereby become a member of
24 the conspiracy. Similarly, mere knowledge of a conspiracy without participation in the
25 conspiracy is also insufficient to make a person a member of the conspiracy.

26 But a person who knowingly joins an existing conspiracy, or participates in part
27 of the conspiracy, with knowledge of the overall conspiracy, is just as responsible as if he had
28 been one of the originators of the conspiracy or had participated in every part of it. Likewise, a

1 duties the agent has general authority to perform. Apparent authority is the authority that
2 outsiders could reasonably assume the agent would have, judging from his position with the
3 company, the responsibilities previously entrusted to him or his office, and the circumstances
4 surrounding his past conduct.

5 To be acting within the scope of his employment or with actual or apparent
6 authority, the agent first must have intended that his act would produce some benefit to the
7 corporation. The agent's acts or statements need not actually have resulted in any benefit to the
8 corporation. As long as the agent intended to benefit the corporation in some manner, the fact
9 that he may also have acted for other reasons as well, such as for his own personal benefit, is of
10 no consequence.

11 CORPORATE OFFICER – INDIVIDUAL LIABILITY

12 A corporate officer, such as a president of a company, is subject to prosecution
13 under Section 1 of the Sherman Act whenever he knowingly participates in effecting the illegal
14 conspiracy by directly participating in the conspiracy and/or indirectly or directly authorizing,
15 ordering, or consenting to the participation of a subordinate in the crime. A person is responsible
16 for conduct that he performs or causes to be performed on behalf of a corporation just as though
17 the conduct were performed on his behalf.

18 To find a defendant liable for the acts of a subordinate as distinguished from his
19 own acts, you must find beyond a reasonable doubt that the defendant knew of the existence of
20 the conspiracy and knowingly authorized, ordered, or consented to the participation of a
21 subordinate in that conspiracy.

22 On the other hand, a person who has no knowledge of a conspiracy, but who
23 happens to act in a way which furthers some purpose of the conspiracy, does not thereby become
24 a member of the conspiracy. Moreover, a person is not responsible for the conduct of others
25 performed on behalf of a corporation merely because that person is an officer, employee, or other
26 agent of the corporation.

27 For purposes of these instructions, to “participate knowingly” means to
28 encourage, advise, or assist for the purpose of furthering the conspiracy.

1 ACTS AND STATEMENTS OF COCONSPIRATORS - ADMISSIBILITY AND USE

2 If you find beyond a reasonable doubt that a defendant whose guilt you are
3 considering was a member of the conspiracy charged in the indictment, then any acts done or
4 statements made in furtherance of the conspiracy by persons also found by you to have been
5 members of that conspiracy may be considered against the defendant. This is so even if such
6 acts were done and statements were made in the defendant's absence and/or without the
7 defendant's knowledge.

8 Before you may consider the statements or acts of a conspirator in deciding the
9 issue of a defendant's guilt, you must first determine that the acts and statements were made
10 during the existence and in furtherance of the unlawful scheme. If the acts were done or the
11 statements made by someone whom you do not find to be a member of the conspiracy, or if they
12 were not done or said in furtherance of the conspiracy, then they may be considered by you as
13 evidence only against the person who did or said them.

14
15 TESTIMONY OF CERTAIN WITNESSES

16 You have heard testimony from J.Y. Ho of CMO, Brian Lee of CPT, and C.C. Liu
17 of CPT, witnesses who pleaded guilty to a crime arising out of the same events for which the
18 defendant is on trial and received favored treatment from the government in connection with this
19 case. The guilty pleas are not evidence against the defendants, and you may consider them only
20 in determining these witnesses' believability.

21 In addition, you have heard testimony from Michael Wong, who received
22 immunity. His testimony was given in exchange for a promise by the government that he will not
23 be prosecuted.

24 For these reasons, in evaluating the testimony of these witnesses, you should
25 consider the extent to which or whether their testimony may have been influenced by any of
26 these factors. In addition, you should examine the testimony of J.Y. Ho, Brian Lee, C.C. Liu,
27 and Michael Wong with greater caution than that of other witnesses.

28

1
2 DUTY TO DELIBERATE

3 When you begin your deliberations, elect one member of the jury as your
4 foreperson who will preside over the deliberations and speak for you here in court.

5 You will then discuss the case with your fellow jurors to reach agreement if you
6 can do so. Your verdict, whether guilty or not guilty, must be unanimous.

7 Each of you must decide the case for yourself, but you should do so only after you
8 have considered all the evidence, discussed it fully with the other jurors, and listened to the
9 views of your fellow jurors.

10 Do not be afraid to change your opinion if the discussion persuades you that you
11 should. But do not come to a decision simply because other jurors think it is right.

12 It is important that you attempt to reach a unanimous verdict but, of course, only
13 if each of you can do so after having made your own conscientious decision. Do not change an
14 honest belief about the weight and effect of the evidence simply to reach a verdict.

15
16 CONSIDERATION OF EVIDENCE - CONDUCT OF THE JURY

17 Because you must base your verdict only on the evidence received in the case and
18 on these instructions, I remind you that you must not be exposed to any other information about
19 the case or to the issues it involves. Except for discussing the case with your fellow jurors
20 during your deliberations:

21 Do not communicate with anyone in any way and do not let anyone else
22 communicate with you in any way about the merits of the case or anything to do
23 with it. This includes discussing the case in person, in writing, by phone or
24 electronic means, via email, text messaging, or any Internet chat room, blog,
25 website or other feature. This applies to communicating with your family
26 members, your employer, the media or press, and the people involved in the trial.

27 If you are asked or approached in any way about your jury service or anything
28 about this case, you must respond that you have been ordered not to discuss the

1 matter and to report the contact to the court.

2
3 Do not read, watch, or listen to any news or media accounts or commentary about
4 the case or anything to do with it; do not do any research, such as consulting
5 dictionaries, searching the Internet or using other reference materials; and do not
6 make any investigation or in any other way try to learn about the case on your
7 own.

8 The law requires these restrictions to ensure the parties have a fair trial based on
9 the same evidence that each party has had an opportunity to address. A juror who violates these
10 restrictions jeopardizes the fairness of these proceedings. If any juror is exposed to any outside
11 information, please notify the court immediately.

12
13 USE OF NOTES

14 Some of you have taken notes during the trial. Whether or not you took notes,
15 you should rely on your own memory of what was said. Notes are only to assist your memory.
16 You should not be overly influenced by your notes or those of your fellow jurors.

17
18 JURY CONSIDERATION OF PUNISHMENT

19 The punishment provided by law for this crime is for the court to decide. You
20 may not consider punishment in deciding whether the government has proved its case against the
21 defendant beyond a reasonable doubt.

22
23 VERDICT FORM

24 A verdict form has been prepared for you. After you have reached unanimous
25 agreement on a verdict, your foreperson should complete the verdict form according to your
26 deliberations, sign and date it, and advise the clerk that you are ready to return to the courtroom.