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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA

v.

AU OPTRONICS CORPORATION;  
AU OPTRONICS CORPORATION AMERICA;  
HSUAN BIN CHEN, aka H.B. CHEN;  
HUI HSIUNG, aka KUMA;  
LAI-JUH CHEN, aka L.J. CHEN;  
SHIU LUNG LEUNG, aka CHAO-LUNG  
LIANG and STEVEN LEUNG;  
BORLONG BAI, aka RICHARD BAI;  
TSANNRONG LEE, aka TSAN-JUNG LEE  
and HUBERT LEE;  
CHENG YUAN LIN, aka C.Y. LIN;  
WEN JUN CHENG, aka TONY CHENG; and  
DUK MO KOO,

Defendants.

No. CR-09-0110 SI

UNITED STATES' PROPOSED  
PRELIMINARY JURY  
INSTRUCTIONS

Trial Date: January 9, 2012  
Time: 8:30 a.m.  
Judge: Hon. Susan Illston  
Place: Courtroom 10, 19th Floor

1 The United States submits the following proposed preliminary jury instructions to be  
2 given before opening statement. The government has provided these instructions to defendants.  
3 The government has met and conferred with counsel for AU Optronics Corporation and AU  
4 Optronics Corporation America (collectively "AUO"). The government and AUO are in  
5 agreement with respect to instructions 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.

6 AUO has indicated disagreement with some or all of instructions 2, 3 and 15, as set forth  
7 in the attached letter from Kirk Jenkins (Attachment A).

8  
9  
10 DATED: January 6, 2012

Respectfully Submitted,

11  
12 /s/ Peter K. Huston  
13 Peter K. Huston  
14 Antitrust Division  
15 Department of Justice  
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INSTRUCTION NO. 1

DUTY OF JURY

(PRELIMINARY INSTRUCTION)

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3 Jurors: You now are the jury in this case, and I want to take a few minutes to tell you  
4 something about your duties as jurors and to give you some preliminary instructions. At the end  
5 of the trial I will give you more detailed [written] instructions that will control your deliberations.  
6 When you deliberate, it will be your duty to weigh and to evaluate all the evidence received in the  
7 case and, in that process, to decide the facts. To the facts as you find them, you will apply the law  
8 as I give it to you, whether you agree with the law or not. You must decide the case solely on the  
9 evidence and the law before you and must not be influenced by any personal likes or dislikes,  
10 opinions, prejudices, or sympathy. Please do not take anything I may say or do during the trial as  
11 indicating what I think of the evidence or what your verdict should be—that is entirely up to you.  
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27 AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.1 (2010).  
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## INSTRUCTION NO. 2

## THE CHARGE—PRESUMPTION OF INNOCENCE

## (PRELIMINARY INSTRUCTION)

1  
2  
3 This is a criminal case brought by the United States government. The United States  
4 charges the defendants with violating Title 15 of the United States Code, Section 1, known as  
5 Section 1 of the Sherman Antitrust Act. The defendants on trial are AU Optronics Corporation,  
6 AU Optronics Corporation America, and current and former employees of AU Optronics  
7 Corporation Hsuan Bin Chen, Hui Hsiung, Lai-Juh Chen, Steven Leung, and Hubert Lee. The  
8 United States charges that representatives from corporations that manufacture thin-film transistor  
9 liquid crystal display panels (“TFT-LCDs”) and certain of their employees engaged in a  
10 conspiracy to fix the prices of TFT-LCDs. TFT-LCDs are used in notebook computers, desktop  
11 computer monitors and televisions. The United States charges that each of the defendants joined  
12 the conspiracy. The charge against the defendants is contained in the indictment. The indictment  
13 simply describes the charge the government brings against the defendants. The indictment is not  
14 evidence and does not prove anything. Each defendant has denied joining any conspiracy to fix  
15 prices and all have pleaded not guilty to the charges. In addition, the defendants have the right to  
16 remain silent and never have to prove innocence or present any evidence.

17 In order to help you follow the evidence, I will now give you a brief summary of the  
18 elements of the crime which the government must prove to make its case:

19 First, that the conspiracy existed at or about the time alleged in the indictment;

20 Second, that the defendants knowingly – that is voluntarily and intentionally – became  
21 members of the conspiracy charged in the indictment, knowing of its goal and intending to help  
22 accomplish it;

23 and

24 Third, that interstate commerce was involved.

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27 AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.2 (2010); *United*  
28 *States v. Alston*, 974 F.2d 1206, 1210 (9th Cir. 1992).

## INSTRUCTION NO. 3

## GROSS PECUNIARY GAIN

## (PRELIMINARY INSTRUCTION)

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4 The government does not have to prove that anyone derived monetary or economic gain  
5 from the alleged conspiracy or that the conspiracy caused any monetary or economic harm in  
6 order for you to find a defendant guilty of the offense. To find a defendant guilty, all that you  
7 must find is that the government has proven the elements of the offense, which I previously  
8 described.

9 But you will hear evidence during the course of the trial about the gain derived from the  
10 conspiracy. This evidence will be presented because, if you find one or both of the corporate  
11 defendants, AU Optronics Corporation or AU Optronics Corporation America, guilty following  
12 the presentation of evidence and your deliberations, you will be asked to determine whether the  
13 government has proven beyond a reasonable doubt that any of the defendants or other participants  
14 in the conspiracy derived monetary or economic gain from the conspiracy. If you find that any of  
15 the participants derived such gain, you will then have to decide whether the total gross gain  
16 obtained from the conspiracy was at least \$500 million. The evidence need not lead you to a  
17 precise determination as long as you find beyond a reasonable doubt that the gross gain was at  
18 least that amount.

19 Gross gain is the additional revenue to the conspirators from the conspiracy. In  
20 determining the gross gain from the conspiracy, you should total the gross gains to the defendants  
21 and other participants in the conspiracy from affected sales of TFT-LCD panels sold directly into  
22 the United States and sales of TFT-LCD panels incorporated into finished products sold into the  
23 United States. That total gain should not be reduced by any taxes or costs associated with the  
24 sales of those products.

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26 AUTHORITY: 18 U.S.C. § 3571(d); *United States v. Badaracco*, 954 F.2d 928, 938 (3d Cir.  
27 1992) (using gross gain to measure loss was in keeping with Sentencing Guidelines); *United*  
28 *States v. BP Products N.A., Inc.*, 610 F. Supp. 2d 655, 683 (S.D. Tex. 2009) (gross gain should  
not be reduced to a net sum by deducting costs); *United States v. Cortina*, 733 F. Supp. 1195,  
1204 (N.D. Ill. 1990) (basing Guidelines fine on gross pecuniary gain regardless of any losses).

INSTRUCTION NO. 4

DISPOSITION OF CHARGES AGAINST COCONSPIRATORS

(PRELIMINARY INSTRUCTION)

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

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AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 2.14 (2010).

INSTRUCTION NO. 5

WHAT IS EVIDENCE

(PRELIMINARY INSTRUCTION)

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

- (1) the sworn testimony of any witness;
- (2) the exhibits which are received in evidence; and
- (3) any facts to which the parties agree.

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AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.3 (2010).



INSTRUCTION NO. 6

WHAT IS NOT EVIDENCE

(PRELIMINARY INSTRUCTION)

The following things are not evidence, and you must not consider them as evidence in deciding the facts of this case:

- (1) statements and arguments of the attorneys;
- (2) questions and objections of the attorneys;
- (3) testimony that I instruct you to disregard; and
- (4) anything you may see or hear when the court is not in session even if what

you see or hear is done or said by one of the parties or by one of the witnesses.

AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.4 (2010).

INSTRUCTION NO. 7

DIRECT AND CIRCUMSTANTIAL EVIDENCE

(PRELIMINARY INSTRUCTION)

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

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

AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.5 (2010).

INSTRUCTION NO. 8

RULING ON OBJECTIONS

(PRELIMINARY INSTRUCTION)

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4 There are rules of evidence that control what can be received in evidence. When a lawyer  
5 asks a question or offers an exhibit in evidence and a lawyer on the other side thinks that it is not  
6 permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the  
7 question may be answered or the exhibit received. If I sustain the objection, the question cannot  
8 be answered, or the exhibit cannot be received. Whenever I sustain an objection to a question,  
9 you must ignore the question and must not guess what the answer would have been.

10 Sometimes I may order that evidence be stricken from the record and that you disregard or  
11 ignore the evidence. That means that when you are deciding the case, you must not consider the  
12 evidence that I told you to disregard.

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28 AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.6 (2010).

INSTRUCTION NO. 9

CREDIBILITY OF WITNESSES

(PRELIMINARY INSTRUCTION)

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

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

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

16 The weight of the evidence as to a fact does not necessarily depend on the number of  
17 witnesses who testify about it.  
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28 AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.7 (2010).

INSTRUCTION NO. 10

CONDUCT OF THE JURY

(PRELIMINARY INSTRUCTION)

1 I will now say a few words about your conduct as jurors.

2 First, keep an open mind throughout the trial, and do not decide what the verdict should be  
3 until you and your fellow jurors have completed your deliberations at the end of the case.

4 Second, because you must decide this case based only on the evidence received in the case  
5 and on my instructions as to the law that applies, you must not be exposed to any other  
6 information about the case or to the issues it involves during the course of your jury duty. Thus,  
7 until the end of the case or unless I tell you otherwise:

8 Do not communicate with anyone in any way and do not let anyone else communicate with  
9 you in any way about the merits of the case or anything to do with it. This includes discussing the  
10 case in person, in writing, by phone or electronic means, via email, text messaging, or any Internet  
11 chat room, blog, website or other feature. This applies to communicating with your fellow jurors  
12 until I give you the case for deliberation, and it applies to communicating with everyone else  
13 including your family members, your employer, the media or press, and the people involved in the  
14 trial, although you may notify your family and your employer that you have been seated as a juror  
15 in the case. But, if you are asked or approached in any way about your jury service or anything  
16 about this case, you must respond that you have been ordered not to discuss the matter and to  
17 report the contact to the court.

18 Because you will receive all the evidence and legal instruction you properly may consider  
19 to return a verdict: do not read, watch, or listen to any news or media accounts or commentary  
20 about the case or anything to do with it; do not do any research, such as consulting dictionaries,  
21 searching the Internet or using other reference materials; and do not make any investigation or in  
22 any other way try to learn about the case on your own.

23 The law requires these restrictions to ensure the parties have a fair trial based on the same  
24 evidence that each party has had an opportunity to address. A juror who violates these restrictions  
25 jeopardizes the fairness of these proceedings[, and a mistrial could result that would require the  
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1 entire trial process to start over]. If any juror is exposed to any outside information, please notify  
2 the court immediately.  
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25 AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.8 (2010).  
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INSTRUCTION NO. 11

NO TRANSCRIPT AVAILABLE TO JURY

(PRELIMINARY INSTRUCTION)

At the end of the trial you will have to make your decision based on what you recall of the evidence. You will not have a written transcript of the trial. I urge you to pay close attention to the testimony as it is given.

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AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.9 (2010).

INSTRUCTION NO. 12

TAKING NOTES

(PRELIMINARY INSTRUCTION)

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3 If you wish, you may take notes to help you remember the evidence. If you do take notes,  
4 please keep them to yourself until you and your fellow jurors go to the jury room to decide the  
5 case. Do not let note-taking distract you from being attentive. When you leave court for recesses,  
6 your notes should be left in the jury room. No one will read your notes.

7 Whether or not you take notes, you should rely on your own memory of the evidence.  
8 Notes are only to assist your memory. You should not be overly influenced by your notes or those  
9 of your fellow jurors.  
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28 AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.10 (2010).



INSTRUCTION NO. 13

OUTLINE OF TRIAL

(PRELIMINARY INSTRUCTION)

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3 The next phase of the trial will now begin. First, each side may make an opening  
4 statement. An opening statement is not evidence. It is simply an outline to help you understand  
5 what that party expects the evidence will show. A party is not required to make an opening  
6 statement.

7 The government will then present evidence and counsel for the defendant may  
8 cross-examine. Then, if the defendant chooses to offer evidence, counsel for the government may  
9 cross-examine.

10 After the evidence has been presented, I will instruct you on the law that applies to the  
11 case and the attorneys will make closing arguments.

12 After that, you will go to the jury room to deliberate on your verdict.  
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28 AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.11 (2010).

INSTRUCTION NO. 14

JURY TO BE GUIDED BY

OFFICIAL ENGLISH

TRANSLATION/INTERPRETATION

(PRELIMINARY INSTRUCTION)

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6 Languages other than English will be used for some evidence during this trial. When a  
7 witness testifies in another language, the witness will do so through an official court interpreter.

8 The evidence you are to consider and on which you must base your decision is only the  
9 English-language interpretation provided through the official court interpreters. Although some of  
10 you may know the non-English language used, you must disregard any meaning of the  
11 non-English words that differs from the official interpretation.

12 You must not make any assumptions about a witness or a party based solely upon the use  
13 of an interpreter to assist that witness or party.

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28 AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.12 (2010).

INSTRUCTION NO. 15

SEPARATE CONSIDERATION FOR EACH DEFENDANT

(PRELIMINARY INSTRUCTION)

Although the defendants are being tried together, you must give separate consideration to each defendant. In doing so, you must determine which evidence in the case applies to each defendant, disregarding any evidence admitted solely against some other defendants. The fact that you may find one of the defendants guilty or not guilty should not control your verdict as to any other defendants.

AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.13 (2010).

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