

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION**

FAWZY AMER DEGHEDEY,

Plaintiff/Counterclaim Defendant,

v.

VIZTEK, INC.,
KARIM ABDEL-MALEK,
CYBER ANATOMY CORPORATION
d/b/a CYBER-ANATOMY, INC.,

Defendants/Counter Claimants.

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CIVIL NO. 3:12-CV-00048-HCA

**FINAL
JURY INSTRUCTIONS**

Members of the jury, the instructions I gave at the beginning of the trial and during the trial are still in effect. Now I am going to give you some additional instructions.

You have to follow all of my instructions – the ones I gave you earlier, as well as those I give you now. Do not single out some instructions and ignore others, because they are all important. This is true even though I am not going to repeat some of the instructions I gave you at the beginning of or during the trial. You will have copies of the instructions I am about to give you now in the jury room. Remember, you have to follow all instructions, no matter when I give them, whether or not you have written copies.

I have not intended to suggest what I think your verdict should be by any of my rulings or comments during the trial.

FINAL INSTRUCTION NO. 1

You will have to decide whether certain facts have been proved by the greater weight of the evidence. A fact has been proved by the greater weight of the evidence, if you find that it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable.

You have probably heard the phrase “proof beyond a reasonable doubt.” That is a stricter standard than “more likely true than not true.” It applies in criminal cases, but not in this civil case; so put it out of your mind.

FINAL INSTRUCTION NO. 2

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

You may consider a witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness's testimony sounded reasonable; and whether or to what extent a witness's testimony is consistent with other evidence you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory, or an intentional falsehood; that may depend on whether it has to do with an important fact or only a small detail.

FINAL INSTRUCTION NO. 3

You have heard evidence claiming a witness made statements before this trial while under oath which were inconsistent with what the witness said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe the witness. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

FINAL INSTRUCTION NO. 4

Certain testimony from a deposition was shown from a video recording. A deposition is testimony taken under oath before the trial and preserved in writing or on video. Consider that testimony as if it had been given in court.

You also have heard the word “interrogatory.” An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

You also have heard the phrase “request for admission.” One party may serve on the other party a written request for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the party or which the party failed to deny.

FINAL INSTRUCTION NO. 5

The fact that a plaintiff or a defendant is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

A corporation acts only through its agents or employees. Any agent or employee of a corporation may bind the corporation by acts and statements made while acting within the scope of the authority delegated to the agent by the corporation, or within the scope of his or her duties as an employee of the corporation.

FINAL INSTRUCTION NO. 6

The parties have stipulated - that is, they have agreed - that certain facts are as stated into the record during trial. You should, therefore, treat those facts as having been proved.

FINAL INSTRUCTION NO. 7

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

FINAL INSTRUCTION NO. 8
Statement of Claims and Counterclaims

Dr. Fawzy Amer Deghedy asserts claims for breach of contract, breach of the implied covenant of good faith and fair dealing, breach of implied contract/quantum meruit, and unjust enrichment.

Dr. Karim Abdel-Malek, VizTek, Inc. (“VizTek”), and Cyber Anatomy Corporation d/b/a Cyber-Anatomy (“Cyber-Anatomy”) assert counterclaims for misappropriation of trade secrets, unfair competition, intentional interference with contract, defamation, intentional interference with prospective business, and copyright infringement.

The elements which the parties must prove to establish each claim and counterclaim will be explained to you in the instructions which follow.

FINAL INSTRUCTION NO. 9

Breach of Contract

Dr. Deghedy asserts a breach of contract claim against VizTek. The parties have stipulated that Dr. Deghedy and VizTek entered into a contract. You will first need to determine whether the contract entered into between Dr. Deghedy and VizTek was Plaintiff's Exhibit No. 3 or Defendants' Exhibit No. 1002.

To succeed on his breach of contract claim, Dr. Deghedy must prove all of the following propositions:

1. The terms of the contract.
2. Dr. Deghedy has done what the contract requires, including any condition precedent, or has been excused from doing what the contract requires as explained in the following Instruction No. 10.
3. VizTek breached the contract.
4. The amount of any damage VizTek caused.

If Dr. Deghedy has failed to prove any of these propositions, then Dr. Deghedy is not entitled to damages on this claim. If Dr. Deghedy has proved all of these propositions, then you will consider the defense of waiver as explained in Instruction No. 13.

FINAL INSTRUCTION NO. 10

Breach of Contract

A breach of the contract occurs when a party fails to perform a term of the contract. Performance is excused if the other party makes it impossible. Impossibility of performance means extraordinary circumstances which:

1. Prevent a person from carrying out the terms of the contract.
2. Could not reasonably have been anticipated; and
3. Are not the fault of that party.

Performance is not excused if the party who promised to perform created the circumstances which made performance impossible, or just because performance became economically burdensome or unattractive.

FINAL INSTRUCTION NO. 11

Breach of Contract

In determining the terms of the contract you may consider the following:

1. The intent of the parties along with a reasonable application of the surrounding circumstances.
2. The intent expressed in the language used prevails over any secret intention of either party.
3. The intent may be shown by the practical construction of a contract by the parties and by the surrounding circumstances.
4. You must attempt to give meaning to all language of a contract. Because an agreement is to be interpreted as a whole, assume that all of the language is necessary. An interpretation which gives a reasonable, effective meaning to all terms is preferred to an interpretation which leaves a part of the contract unreasonable or meaningless.
5. The meaning of a contract is the interpretation a reasonable person would give it if they were acquainted with the circumstances both before and at the time the contract was made.
6. Ambiguous language in a written contract is interpreted against the party who selected it. A contract provision is ambiguous if it is reasonably susceptible to more than one interpretation.
7. Where general and specific terms in the contract refer to the same subject, the specific terms control.

FINAL INSTRUCTION NO. 12

Breach of Contract – Condition Precedent

VizTek claims a condition precedent exists under paragraph 3.1 of the Deghedy-VizTek Contract.

Whether a condition precedent exists in a contract is determined from the intention of the parties gathered from the language of the agreement.

A determination that a condition precedent exists does not depend on the particular form of the words used, but rather depends upon the intention of the parties gathered from the language of the agreement.

FINAL INSTRUCTION NO. 13

Breach of Contract - Waiver

VizTek claims its performance under the Deghedy-VizTek Contract was excused because of waiver. The right to insist on performance can be given up. This is known as a "waiver". A waiver may be shown by actions, or you may conclude from Dr. Deghedy's conduct and the surrounding circumstances that a waiver was intended. The essential elements of a waiver are the existence of a right, knowledge of that right, and an intention to give it up.

If VizTek has proved waiver, then you shall find for VizTek on the breach of contract claim asserted by Dr. Deghedy. If VizTek has failed to prove waiver, then you shall decide whether Dr. Deghedy is entitled to recover damages on his breach of contract claim.

FINAL INSTRUCTION NO. 14

Breach of Contract - Damages

Dr. Deghedy seeks damages for his breach of contract claim under provision 1.2 of the contract.

The measure of damages for breach of contract is an amount that would place Dr. Deghedy in as good a position as he would have enjoyed if the contract had been performed.

The damages you award for breach of contract must be foreseeable or have been reasonably foreseen at the time the parties entered into the contract.

FINAL INSTRUCTION NO. 15

Implied Covenant of Good Faith and Fair Dealing

An implied covenant of good faith and fair dealing exists in all contracts. Good faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party.

In order for Dr. Deghedy to prevail against VizTek for his claim for breach of the implied covenant of good faith and fair dealing, he must prove:

- (1) Dr. Deghedy and VizTek were parties to a contract; and
- (2) that VizTek had no reasonable basis for denying compensation to Dr. Deghedy pursuant to the contract; or
- (3) that VizTek acted in bad faith or in a manner that is offensive to community standards of decency, fairness and reasonableness in denying compensation to Dr. Deghedy pursuant to the contract.

If Dr. Deghedy has failed to prove any of these propositions, then Dr. Deghedy is not entitled to damages on this claim. If Dr. Deghedy has proved all of these propositions, then Dr. Deghedy is entitled to recover damages in some amount on his claim for breach of the implied covenant of good faith and fair dealing.

FINAL INSTRUCTION NO. 16

Quantum Meruit

Dr. Deghedy also asserts a claim for “quantum meruit” pertaining to services performed and materials furnished to VizTek and Dr. Malek in calendar year 2007. The term “quantum meruit” is used to denote an implied-in-fact contract to pay for services rendered. The law implies a promise to pay the reasonable value of services and materials a person knowingly accepts from another. When a person employs someone to provide services and materials without agreeing on the amount of pay, an agreement is implied to pay the reasonable value of those services and materials.

To succeed on this claim, Dr. Deghedy must prove all of the following propositions:

1. Dr. Deghedy performed services under such circumstances as to give VizTek and Dr. Malek reason to understand:
 - (a) the services were performed for them and not some other person or company; and
 - (b) the services were not rendered gratuitously, but with the expectation of compensation from VizTek and Dr. Malek.
2. The services were beneficial to VizTek and Dr. Malek; and
3. The fair value of the services performed.

If Dr. Deghedy has failed to prove any of these propositions, then Dr. Deghedy is not entitled to damages on this claim. If Dr. Deghedy has proved all of these propositions, then Dr. Deghedy is entitled to recover damages in some amount on his claim of quantum meruit.

FINAL INSTRUCTION NO. 17

Unjust Enrichment

Dr. Deghedy also asserts a claim for unjust enrichment against defendants VizTek, Dr. Malek, and Cyber-Anatomy. A claim of unjust enrichment is based on the rule that one should not be allowed to profit or enrich oneself unjustly at the expense of another. Dr. Deghedy contends that certain Cyber-Anatomy products sold by defendants and authorized third-parties were created and developed based upon his invention, ideas, efforts, and/or labors, and as a result, that it would be unjust for defendants to retain the benefits of his invention, ideas, efforts, and/or labors. Dr. Deghedy contends that the defendants will be unjustly enriched if they are allowed to profit or enrich themselves by using Dr. Deghedy's invention, ideas, efforts, and/or labors in their products without paying him reasonable compensation for it. Defendants deny Dr. Deghedy's claims.

To prevail on his claim for unjust enrichment, Dr. Deghedy must prove the following:

1. the defendants were enriched by the receipt of a benefit;
2. the enrichment was at the expense of the plaintiff; and
3. it would be unjust to allow the defendants to retain the benefit under the circumstances.

If Dr. Deghedy has failed to prove any of these propositions, then Dr. Deghedy is not entitled to damages on this claim. If Dr. Deghedy has proved all of these propositions, then Dr. Deghedy is entitled to recover damages in some amount.

The measure of damages for unjust enrichment is the fair and reasonable compensation for defendants' use of Dr. Deghedy's invention, ideas, efforts, and/or labors in products they have sold and upon which they have been enriched, or the value of what was inequitably retained by the

defendants. Therefore, if Dr. Deghedy has proved the elements of his unjust enrichment claim as set out above, the law implies the existence of a contract requiring the defendants to pay Dr. Deghedy fair and reasonable compensation for defendants' use of Dr. Deghedy's invention, ideas, efforts, and/or labors or the value of what was inequitably retained by the defendants.

FINAL INSTRUCTION NO. 18
Misappropriation of Trade Secrets

Defendants VizTek and Cyber-Anatomy assert a counterclaim for misappropriation of trade secrets against Dr. Deghedy. To succeed on this counterclaim, Defendants must prove all of the following propositions:

1. One of the following is a trade secret:
 - (a) Defendants' technologies relating to virtual reality software – including real time rendering and virtual reality system integration;
 - (b) image projection, methods and best practices;
 - (c) interactive content, methods and best practices; or
 - (d) sales and marketing materials and strategies for these products, including pricing strategies.

2. Dr. Deghedy misappropriated a trade secret.

3. The misappropriation of the trade secret was a cause of damage to Defendants.

4. The nature and extent of damage.

If Defendants failed to prove any of these propositions, Defendants cannot recover damages on this claim. If Defendants proved all of these propositions, Defendants are entitled to recover damages in some amount on their counterclaim for misappropriation of trade secrets.

FINAL INSTRUCTION NO. 19

Misappropriation of Trade Secrets – “Trade Secret”

A "trade secret", which does not need to be in writing, is any formula, pattern, compilation, program, device, method, technique or process which:

1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, persons other than Defendants; and
2. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

In determining whether (a) Defendants’ technologies relating to virtual reality software – including real time rendering and virtual reality system integration; (b) image projection, methods and best practices; (c) interactive content, methods and best practices; or (d) sales and marketing materials and strategies for these products, including pricing strategies, is a "trade secret," you may consider the following factors:

- (a) The extent to which the information is known outside of Defendants’ business;
- (b) The extent to which it is known by employees and others involved in Defendants’ business;
- (c) The extent of measures taken by Defendants to guard the secrecy of the information;
- (d) The value of the information to Defendants and to Defendants’ competitors;
- (e) The amount of effort or money expended by Defendants in developing the information;
- (f) The ease or difficulty with which the information could be properly acquired or duplicated by others.

FINAL INSTRUCTION NO. 20

Misappropriation of Trade Secrets – “Misappropriated”

A trade secret is misappropriated if it is:

1. Acquired by improper means or from a person known to Dr. Deghedy to have acquired it by improper means.
2. Disclosed or used by a person who acquired it by improper means or from a person known to have acquired it by improper means.
3. Disclosed or used by a person who, at the time of disclosure or use, knows that the trade secret is acquired under circumstances requiring its secrecy to be maintained or its use limited.
4. Disclosed or used by a person who at the time of disclosure or use knows that the trade secret is derived from or through a person who acquired it under circumstances requiring its secrecy to be maintained or its use limited.
5. Disclosed or used by a person who, before a material change in the person's position, knows that the information is a trade secret and that the trade secret has been acquired by accident or mistake.

"Improper means" include theft, bribery, misrepresentation, breach of inducement of a breach of a duty to maintain secrecy, or espionage, including espionage through an electronic device.

A duty to maintain secrecy may be found in an agreement to keep information confidential or if there is a fiduciary relationship between two parties where one person acts for another, such as that between an employer and its employee or an employer and its agent.

FINAL INSTRUCTION NO. 21

Unfair Competition

Defendants VizTek and Cyber-Anatomy also assert a counterclaim of unfair competition against Dr. Deghedy. To succeed on this counterclaim, Defendants must prove all of the following propositions:

1. Dr. Deghedy directly or indirectly represented that Anatomy VR marketed by Dr. Deghedy was the product of Defendants.
2. Dr. Deghedy did so with an intent to deceive consumers.
3. Consumers were confused or were likely to be confused as to the manufacturer of Anatomy VR as a natural consequence of Dr. Deghedy's conduct.
4. Dr. Deghedy's conduct was a cause of damage to Defendants.
5. The nature and extent of damage.

If Defendants have failed to prove any of these propositions, Defendants cannot recover damages on this counterclaim. If Defendants proved all of these propositions, Defendants are entitled to damages in some amount on their counterclaim for unfair competition.

Concerning proposition No. 1 above, a representation exists when there is a similarity in the appearance of the products or they perform the same functions and Dr. Deghedy's marketing portrays Anatomy VR as the goods of Defendants.

FINAL INSTRUCTION NO. 22

Intentional Interference With Contract

VizTek asserts a counterclaim of interference with the SGHG / BABMEDEDCO -VizTek Contract against Dr. Deghedy. To succeed on this counterclaim, VizTek must prove all of the following propositions:

1. Dr. Deghedy intentionally and improperly interfered with the SGHG / BABMEDEDCO-VizTek Contract by misrepresenting the use of the Cyber-Anatomy system, controlling whether SGHG / BABMEDEDCO would fulfill its payment obligations under the agreement, encouraging the cancellation of a letter of credit, or preventing SGHG from fulfilling its payments obligations under the agreement.
2. The interference caused SGHG / BABMEDEDCO not to perform the contract.
3. The nature and amount of damage.

If VizTek has failed to prove any one or more of these propositions, VizTek is not entitled to damages on this counterclaim. If VizTek has proved all of these propositions, VizTek is entitled to damages in some amount on its counterclaim of intentional interference with contract.

FINAL INSTRUCTION NO. 23

Intentional Interference With Contract – “Improper & Intentional”

In determining whether Dr. Deghedy’s conduct in intentionally interfering with a contract is improper you should determine whether the conduct was fair and reasonable under the circumstances. In determining whether the conduct was improper you may consider:

1. The nature of the conduct.
2. Dr. Deghedy’s motive.
3. The interests of the party with which the conduct interferes.
4. The interest sought to be advanced by Dr. Deghedy.
5. The social interests in protecting the freedom of action of Dr. Deghedy and the contractual interests of the other party.
6. The nearness or remoteness of Dr. Deghedy’s conduct to the interference.
7. The relations between the parties.

Dr. Deghedy’s interference with a contract is intentional if Dr. Deghedy either interferes with the contract on purpose or knows the conduct is substantially certain to interfere with the contract.

FINAL INSTRUCTION NO. 24

Defamation

VizTek, Cyber-Anatomy and Dr. Malek assert a counterclaim of defamation against Dr. Deghedy. To succeed on this counterclaim, VizTek, Cyber-Anatomy and Dr. Malek must prove all of the following propositions:

1. Dr. Deghedy made statements concerning VizTek, Cyber-Anatomy and Dr. Malek.
2. Dr. Deghedy communicated the statements to someone other than VizTek, Cyber-Anatomy and Dr. Malek.
3. The statements tended to injure the reputation of VizTek, Cyber-Anatomy and Dr. Malek or injured VizTek, Cyber-Anatomy and Dr. Malek in the maintenance of their business or occupation.

If VizTek, Cyber-Anatomy and Dr. Malek have failed to prove any of these propositions, they are not entitled to recover damages on this counterclaim. If VizTek, Cyber-Anatomy and Dr. Malek have proved all of these propositions, then they have proven defamation and are entitled to recover damages in some amount unless Dr. Deghedy has proven the defense of truth as explained in the following instruction.

FINAL INSTRUCTION NO. 25

Defamation – Defense of Truth

Dr. Deghedy claims the statements complained about are true. The fact the statement is true or substantially true is a complete defense, regardless of bad faith or malicious purpose.

Dr. Deghedy must prove the truth of the statements. To do so, Dr. Deghedy must establish the truth of the entire language of the statements, and establish it in the sense attributed to it by VizTek, Cyber-Anatomy and Dr. Malek. Slight inaccuracies of expression are not important so long as the statements are substantially true.

If Dr. Deghedy has proven the truth of the statements, then VizTek, Cyber-Anatomy and Dr. Malek cannot recover on their defamation counterclaim. If Dr. Deghedy has failed to prove the truth of the statements, then you shall consider whether VizTek, Cyber-Anatomy and Dr. Malek are entitled to recover damages on the counterclaim of defamation.

FINAL INSTRUCTION NO. 26

Defamation – Damages

If you find Dr. Malek, VizTek or Cyber-Anatomy is entitled to recover damages for defamation, it is your duty to determine the amount. In doing so, you shall consider the following items:

1. General damages. General damages are presumed to result from the communication of a defamatory statement. These are the kind of damages the law presumes naturally and necessarily result from the communication of defamatory statements.

2. Punitive damages as described in Instruction No. 29.

Damages for defamation must be limited to those which naturally result from the defamatory statement.

FINAL INSTRUCTION NO. 27

Intentional Interference With Prospective Business

Defendants VizTek and Cyber-Anatomy claim that Dr. Deghedy interfered with their prospective business. To succeed on this counterclaim, Defendants must prove all of the following propositions:

1. Defendants have a prospective business relationship with potential new customers, including King Abdul Aziz University in Rabigh, Saudi Arabia; Arar; and the Saudi German Hospital (SGHG). "Prospective business relationship" means a reasonably likely business relationship of financial benefit to VizTek and Cyber-Anatomy.
2. Dr. Deghedy knew of the prospective relationship.
3. Dr. Deghedy intentionally and improperly interfered with the relationship by among other things, falsely communicating that the products he was selling were Defendants' products or by furnishing prospective customers with information regarding this lawsuit and Dr. Deghedy's false claims in this lawsuit, or by using Cyber-Anatomy's or VizTek's trade secrets and/or copyrighted material to market, sell or provide a product that competes with Cyber-Anatomy and/or VizTek.
4. The interference caused potential new customers, including King Abdul Aziz University in Rabigh, Saudi Arabia; Arar; or the Saudi German Hospital (SGHG) not to enter and/or continue the relationship.
5. The nature and amount of damage.

If Defendants have failed to prove any of these propositions, Defendants are not entitled to damages on this counterclaim. If Defendants have proved all of these propositions, Defendants are entitled to damages in some amount on their counterclaim of intentional interference with prospective business.

FINAL INSTRUCTION NO. 28

Intentional Interference With Prospective Business – “Intentional & Improper”

Dr. Deghedy’s interference with a prospective business relationship is intentional if Dr. Deghedy either interferes with the prospective business relationship on purpose or knows the conduct is substantially certain to interfere with the prospective business relationship.

Dr. Deghedy’s interference with a prospective business relationship is improper if the interference is done with the predominant purpose of financially harming or destroying the business of VizTek and Cyber-Anatomy.

FINAL INSTRUCTION NO. 29

Punitive Damages

VizTek, Cyber-Anatomy and Dr. Malek claim punitive damages against Dr. Deghedy based on his conduct as it relates to VizTek, Cyber-Anatomy, and Dr. Malek's claims for unfair competition, intentional interference with contract, defamation, and intentional interference with prospective business.

Punitive damages may be awarded if VizTek, Cyber-Anatomy and Dr. Malek have proven by a preponderance of clear, convincing and satisfactory evidence Dr. Deghedy's conduct constituted a willful and wanton disregard for the rights of another and caused actual damage to VizTek, Cyber-Anatomy and Dr. Malek. Evidence is clear, convincing and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it. Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

Punitive damages are not intended to compensate for the injury but are allowed to punish and discourage Dr. Deghedy and others from like conduct in the future. You may award punitive damages only if Dr. Deghedy's conduct warrants a penalty in addition to the amount you award to compensate for the actual damages to VizTek, Cyber-Anatomy and Dr. Malek .

There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors:

1. The nature of Dr. Deghedy's conduct that harmed VizTek, Cyber-Anatomy and Dr. Malek.
2. The amount of punitive damages which will punish and discourage like conduct by Dr. Deghedy. You may consider Dr. Deghedy's financial condition or ability to

pay. You may not, however, award punitive damages solely because of Dr. Deghedy's wealth or ability to pay.

3. VizTek, Cyber-Anatomy and Dr. Malek's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to VizTek, Cyber-Anatomy and Dr. Malek.
4. The existence and frequency of prior similar conduct.

FINAL INSTRUCTION NO. 30

Direct Copyright Infringement

VizTek and Cyber-Anatomy assert a counterclaim for direct copyright infringement against Dr. Deghedy. To succeed on this counterclaim, VizTek and Cyber-Anatomy must prove both of the follow propositions:

1. VizTek and Cyber-Anatomy own a valid registered copyright in the Cyber-Anatomy software, videos, presentations or marketing materials.
2. Deghedy infringed VizTek's and Cyber-Anatomy's copyright in the Cyber-Anatomy software, videos, presentations or marketing materials.

If VizTek and Cyber-Anatomy have failed to prove either of these propositions, VizTek and Cyber-Anatomy are not entitled to recover damages on this counterclaim. If VizTek and Cyber-Anatomy have proven both of these propositions, then VizTek and Cyber-Anatomy have proven copyright infringement and are entitled to recover damages in some amount.

FINAL INSTRUCTION NO. 31

Direct Copyright Infringement

In determining whether Cyber-Anatomy owns the copyright you should determine whether Cyber-Anatomy caused the software, videos, presentations or marketing materials to be fixed in a tangible medium. “Fixed in a tangible medium” means that the work must exist in a sufficiently permanent or stable form to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

A copyright owner has the following exclusive rights, among other rights:

1. To make copies of the copyrighted work.
2. To make derivative works based upon the copyrighted work.
3. To distribute copies of the copyrighted work to others.

A copyright owner may authorize others to make copies, make derivative works and to distribute copies. Committing any of the above acts without the copyright owner’s authorization constitutes copyright infringement.

FINAL INSTRUCTION NO. 32

Direct Copyright Infringement

In determining whether Dr. Deghedy infringed VizTek and Cyber-Anatomy's software, videos, presentations or marketing materials copyright by copying, you must determine both of the following:

1. Dr. Deghedy had access to the Cyber-Anatomy's copyrighted materials.
2. Dr. Deghedy's materials are substantially similar to the Cyber-Anatomy's copyrighted materials.

The concepts of access and similarity are to be considered together. If the evidence shows that Dr. Deghedy's materials are very similar to Cyber-Anatomy's materials, a lesser showing of access is required to create the inference of copying. If the evidence shows that Dr. Deghedy's materials are not very similar to Cyber-Anatomy's materials, a greater showing of access is necessary to create the inference of copying.

In determining whether Dr. Deghedy infringed VizTek and Cyber-Anatomy's copyrighted materials by making derivative works you must determine that Dr. Deghedy made modifications to VizTek and Cyber-Anatomy's materials without authorization, where a work is derivative if it has been substantially copied from the prior work.

In determining whether Dr. Deghedy infringed VizTek and Cyber-Anatomy's copyrighted materials by distributing the materials you must determine that Dr. Deghedy distributed VizTek and Cyber-Anatomy copyrighted materials to third parties without authorization.

FINAL INSTRUCTION NO. 33
Indirect Copyright Infringement

VizTek and Cyber-Anatomy also assert a counterclaim for indirect copyright infringement against Dr. Deghedy. To succeed on this counterclaim, VizTek and Cyber-Anatomy must prove all three of the follow propositions:

1. WorldViz directly infringed VizTek and Cyber-Anatomy's copyright in the Cyber-Anatomy software, videos, presentations or marketing materials.
2. Dr. Deghedy caused or materially contributed to WorldViz's infringement.
3. Dr. Deghedy knew or should have known that his activities would lead to infringement by WorldViz.

If VizTek and Cyber-Anatomy have failed to prove any of these propositions, VizTek and Cyber-Anatomy are not entitled to recover damages on this counterclaim. If VizTek and Cyber-Anatomy have proven all of these propositions, then VizTek and Cyber-Anatomy have proven indirect copyright infringement and are entitled to recover damages on this counterclaim in some amount.

FINAL INSTRUCTION NO. 34

Indirect Copyright Infringement

Under proposition No. 1 in the previous Instruction No. 33, to prove that WorldViz directly infringed VizTek and Cyber-Anatomy's copyright, VizTek and Cyber-Anatomy must prove both of the follow propositions:

1. VizTek and Cyber-Anatomy own a valid registered copyright in the Cyber-Anatomy software, videos, presentations or marketing materials.
2. WorldViz infringed VizTek's and Cyber-Anatomy's copyright in the Cyber-Anatomy software, videos, presentations or marketing materials.

If VizTek and Cyber-Anatomy have failed to prove either of these propositions, then VizTek and Cyber-Anatomy have not proven copyright infringement by WorldViz. If VizTek and Cyber-Anatomy have proven both of these propositions, then VizTek and Cyber-Anatomy have proven copyright infringement by WorldViz.

You should refer to Instruction No. 32 to determine whether WorldViz directly infringed VizTek and Cyber-Anatomy's copyright.

FINAL INSTRUCTION NO. 35

Indirect Copyright Infringement

In determining whether Dr. Deghedy induced WorldViz to infringe VizTek and Cyber-Anatomy's copyrighted materials you may consider whether Dr. Deghedy encouraged WorldViz to infringe by guiding WorldViz' development of software similar to VizTek and Cyber-Anatomy's software or by paying WorldViz for software development services.

In determining whether Dr. Deghedy contributed to WorldViz's infringement of VizTek and Cyber-Anatomy's copyrighted materials, you may consider whether Dr. Deghedy significantly contributed to WorldViz's infringement by guiding WorldViz' development of software similar to VizTek and Cyber-Anatomy's software or by paying WorldViz for software development services.

In determining whether Dr. Deghedy had knowledge of WorldViz's infringement of VizTek and Cyber-Anatomy's copyrighted materials you may consider whether Dr. Deghedy knew or should have known that his activities would lead to infringement by WorldViz.

FINAL INSTRUCTION NO. 36

Willful Copyright Infringement

VizTek and Cyber-Anatomy also assert a counterclaim for willful copyright infringement against Dr. Deghedy. In addition to proving direct infringement or indirect infringement, VizTek and Cyber-Anatomy must prove the following:

1. Dr. Deghedy's infringement of VizTek and Cyber-Anatomy's copyrighted materials was willful.

If VizTek and Cyber-Anatomy have failed to prove this proposition, VizTek and Cyber-Anatomy are still entitled to recover damages on the copyright infringement claim in some amount. If VizTek and Cyber-Anatomy have proven this proposition, then VizTek and Cyber-Anatomy have proven willful copyright infringement and are entitled to recover enhanced damages on this claim in some amount.

Willful infringement occurs when a party knows, or recklessly disregards the possibility, that its actions constitute copyright infringement. An infringement may be found to be willful if the infringer had knowledge that the activity constituted infringement or recklessly disregarded the possibility of infringement. The actions need not be malicious or mean-spirited to be considered 'willful.'

FINAL INSTRUCTION NO. 37

Copyright Infringement Damages

If you find that Dr. Deghedy has directly or indirectly infringed VizTek and Cyber-Anatomy's copyrighted materials, you must then determine the damages owed to VizTek and Cyber-Anatomy by Dr. Deghedy.

VizTek and Cyber-Anatomy have elected to seek statutory damages. This means that the range of damages you award is set by statute. You may award VizTek and Cyber-Anatomy an amount that you believe is just under the circumstances, provided that the amount is not less than \$750 or more than \$30,000 per copyrighted work that was infringed.

If you further determine that Dr. Deghedy willfully infringed VizTek and Cyber-Anatomy's copyrighted materials, you may increase the award of statutory damages up to \$150,000 per copyrighted work that was willfully infringed.

FINAL INSTRUCTION NO. 38

Copyright Infringement Damages

An infringement is considered innocent when Dr. Deghedy has proved both of the following elements:

1. Dr. Deghedy was not aware that his acts constituted infringement of the copyright; and
2. Dr. Deghedy had no reason to believe that his acts constituted an infringement of the copyright.

If you determine that Dr. Deghedy's infringement of any copyrights was innocent, you may reduce the award of statutory damages to a sum of not less than \$200.00.

FINAL INSTRUCTION NO. 39

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. Similarly, damages awarded to one party shall not be included in any amount awarded to another party.

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror and agreeing in advance that the average of those estimates shall be your item of damage.

With regard to actual damages (non-punitive damages), throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award actual damages by way of punishment or through sympathy.

FINAL INSTRUCTION NO. 40

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room, and they will be destroyed.

FINAL INSTRUCTION NO. 41

There are rules you must follow when you go to the jury room to deliberate and return with your verdict.

First, you will select a foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement, if you can do this without going against what you believe to be the truth, because all jurors have to agree on the verdict.

Each of you must come to your own decision, but only after you have considered all the evidence, discussed the evidence fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your mind if the discussion persuades you that you should. But, do not come to a decision just because other jurors think it is right, or just to reach a verdict. Remember you are not for or against any party. You are judges – judges of the facts. Your only job is to study the evidence and decide what is true.

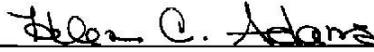
Third, if you need to communicate with me during your deliberations, send me a note signed by one or more of you. Give the note to the Court Security Officer and I will answer you as soon as I can, either in writing or here in court. While you are deliberating, do not tell anyone - including me - how many jurors are voting for any side.

Fourth, your verdict has to be based only on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think your verdict should be. The verdict is entirely up to you.

Finally, I am giving you a verdict form which is your written decision in this case. When you have all agreed on the verdict, your foreperson should complete and date the form. Each juror should then sign the form, indicating your unanimous agreement with the verdict. The

foreperson should then place the completed verdict form in the envelope being supplied to you and marked "Verdict." The foreperson should seal the envelope and deliver it to the Court Security Officer.

Dated September 25, 2014.



HELEN C. ADAMS
UNITED STATES MAGISTRATE JUDGE

RECEIVED

SEP 26 2014

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION**

**CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA**

FAWZY AMER DEGHEDEY,

Plaintiff/Counterclaim Defendant,

v.

VIZTEK, INC.,
KARIM ABDEL-MALEK,
CYBER ANATOMY CORPORATION
d/b/a CYBER-ANATOMY, INC.,

Defendants/Counter Claimants.

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CIVIL NO. 3:12-CV-00048-HCA

VERDICT FORM

We, the jury, find the following on the claims and counterclaims asserted in this case:

I. CLAIMS OF FAWZY AMER DEGHEDEY

A. Breach of Contract against Viztek, Inc.

Question No. 1: Which contract do you find Fawzy Amer Deghedy and VizTek, Inc. entered into? (please check one)

 X Plaintiff's Ex. No. 3 Defendants' Ex. No. 1002

Question No. 2: Did Fawzy Amer Deghedy prove his claim of breach of contract against VizTek, Inc.?

 YES X NO

If you answered "YES," please go to Question No. 3. If you answered "NO," then proceed to the next claim.

Question No. 3: Did VizTek, Inc. prove its defense of waiver?

 YES NO

If you answered "NO," please go to Question No. 4. If you answered "YES," then proceed to the next claim.

Question No. 4: What amount of damages, if any, do you find Fawzy Amer Deghedy is entitled to on his breach of contract claim against VizTek, Inc? \$ _____.

B. Breach of Implied Covenant of Good Faith and Fair Dealing against Viztek, Inc.

Question No. 1: Did Fawzy Amer Deghedy prove his claim of breach of implied covenant of good faith and fair dealing against VizTek, Inc.?

_____ YES NO

If you answered "YES," please go to Question No. 2. If you answered "NO," then proceed to the next claim.

Question No. 2: What amount of damages, if any, do you find Fawzy Amer Deghedy is entitled to on his breach of implied covenant of good faith and fair dealing claim against VizTek, Inc? \$ 0 _____.

C. Breach of Implied Contract/Quantum Meruit against Viztek, Inc.

Question No. 1: Did Fawzy Amer Deghedy prove his claim of breach of implied contract / quantum meruit against Viztek, Inc.?

YES _____ NO

If you answered "YES," please go to Question No. 2. If you answered "NO," then proceed to the next claim.

Question No. 2: What amount of damages, if any, do you find Fawzy Amer Deghedy is entitled to on his breach of implied contract / quantum meruit claim against VizTek, Inc.? \$ 20,000 _____.

D. Breach of Implied Contract/Quantum Meruit against Karim Abdel-Malek.

Question No. 1: Did Fawzy Amer Deghedy prove his claim of breach of implied contract / quantum meruit against Karim Abdel-Malek?

_____ YES NO

If you answered "YES," please go to Question No. 2. If you answered "NO," then proceed to the next claim.

Question No. 2: What amount of damages, if any, do you find Fawzy Amer Deghedy is entitled to on his breach of implied contract / quantum meruit claim against Karim Abdel-Malek? \$ _____.

E. Unjust Enrichment against Viztek, Inc. and Cyber-Anatomy, Inc.

Question No. 1: Did Fawzy Amer Deghedy prove his claim of unjust enrichment against Viztek, Inc. and Cyber-Anatomy, Inc.?

 X YES NO

If you answered "YES," please go to Question No. 2. If you answered "NO," then proceed to the next claim.

Question No. 2: What amount of damages, if any, do you find Fawzy Amer Deghedy is entitled to on his claim of unjust enrichment against Viztek, Inc. and Cyber-Anatomy, Inc.? \$ 128,000.

F. Unjust Enrichment against Karim Abdel-Malek.

Question No. 1: Did Fawzy Amer Deghedy prove his claim of unjust enrichment against Karim Abdel-Malek?

 YES X NO

If you answered "YES," please go to Question No. 2. If you answered "NO," then proceed to the next claim.

Question No. 2: What amount of damages, if any, do you find Fawzy Amer Deghedy is entitled to on his claim of unjust enrichment against Karim Abdel-Malek? \$.

II. COUNTERCLAIMS OF VIZTEK, INC., KARIM ABDEL-MALEK & CYBER ANATOMY CORPORATION d/b/a CYBER-ANATOMY, INC.

A. Misappropriation of Trade Secrets

Question No. 1: Did VizTek, Inc. and Cyber-Anatomy, Inc. prove the counterclaim of misappropriation of trade secrets against Fawzy Amer Deghedy?

 X YES NO

If you answered "YES," please go to Question No. 2. If you answered "NO," then proceed to the next counterclaim.

Question No. 2: What amount of damages, if any, do you find VizTek, Inc. and Cyber-Anatomy, Inc. are entitled to on the counterclaim of misappropriation of trade secrets against Fawzy Amer Deghedy? \$ 200,000.

B. Unfair Competition

Question No. 1: Did VizTek, Inc. and Cyber-Anatomy, Inc. prove the counterclaim of unfair competition against Fawzy Amer Deghedy?

 X YES NO

If you answered "YES," please go to Question No. 2. If you answered "NO," then proceed to the next counterclaim.

Question No. 2: What amount of damages, if any, do you find VizTek, Inc. and Cyber-Anatomy, Inc. are entitled to on the counterclaim of unfair competition against Fawzy Amer Deghedy? \$ 70,000.

C. Intentional Interference With Contract

Question No. 1: Did VizTek, Inc. prove the counterclaim of intentional interference with contract against Fawzy Amer Deghedy?

 YES X NO

If you answered "YES," please go to Question No. 2. If you answered "NO," then proceed to the next counterclaim.

Question No. 2: What amount of damages, if any, do you find VizTek, Inc. is entitled to on the counterclaim of intentional interference with contract against Fawzy Amer Deghedy? \$.

D. Defamation

Question No. 1: Did VizTek, Inc., Cyber-Anatomy, Inc. and Karim Abdel-Malek prove the counterclaim of defamation against Fawzy Amer Deghedy?

 X YES NO

If you answered "YES," please go to Question No. 2. If you answered "NO," then proceed to the next counterclaim.

Question No. 2: What amount of damages, if any, do you find VizTek, Inc., Cyber-Anatomy, Inc. and Karim Abdel-Malek are entitled to on the counterclaim of defamation against Fawzy Amer Deghedy? \$ 0.

 \$ 500 *dt*

Question No. 2: Please check each of the following materials which you find Fawzy Amer Deghedy has directly infringed:

\$ 150,000 Software for Cyber-Anatomy MedVR. Exhibit 1003 – CyberMEDTM system, including any hardware necessary to operate and view system in 3D

\$ 750 Video “Using the Anatomy Builder in Cyber-Anatomy” - Exhibit 1046

\$ 750 Video “Using the Hide and Unhide Tools in Cyber-Anatomy” – Exhibit 1046

\$ 750 Video “Camera Navigation in Cyber-Anatomy” – Exhibit 1050

\$ 750 Marketing Material – Exhibit 1021

\$ 750 Marketing Material – Exhibit 1034

Question No. 3: What amount of damages do you find VizTek, Inc. and Cyber-Anatomy, Inc. are entitled to on the counterclaim of direct copyright infringement against Fawzy Amer Deghedy? (You may award an amount that you believe is just under the circumstances, provided that the amount is not less than \$750 or more than \$30,000 per copyrighted work that was infringed. If you find that Dr. Deghedy willfully infringed VizTek and Cyber-Anatomy’s copyrighted materials, you may increase the award of statutory damages up to \$150,000. If you find that Dr. Deghedy’s infringement of any copyrights was innocent, you may reduce the award of statutory damages to a sum of not less than \$200.) \$ 153,750.

H. Indirect Copyright Infringement

Question No. 1: Did VizTek, Inc. and Cyber-Anatomy, Inc. prove the counterclaim of indirect copyright infringement against Fawzy Amer Deghedy?

X YES _____ NO

If you answered “YES,” please go to Question Nos. 2 and 3. If you answered “NO,” then proceed to date and sign the Verdict Form.

Question No. 2: Please check each of the following materials which you find Fawzy Amer Deghedy has indirectly infringed:

\$ 150,000 Software for Cyber-Anatomy MedVR. Exhibit 1003 – CyberMEDTM system, including any hardware necessary to operate and view system in 3D

\$ 750 Video “Using the Anatomy Builder in Cyber-Anatomy” - Exhibit 1046

\$ 750 Video “Using the Hide and Unhide Tools in Cyber-Anatomy” – Exhibit 1046

\$ 750 Video “Camera Navigation in Cyber-Anatomy” – Exhibit 1050

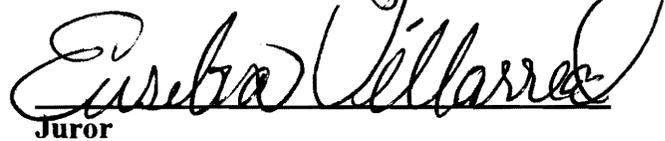
Question No. 3: What amount of damages do you find VizTek, Inc. and Cyber-Anatomy, Inc. are entitled to on the counterclaim of indirect copyright infringement against Fawzy Amer Deghedy? (You may award an amount that you believe is just under the circumstances, provided that the amount is not less than \$750 or more than \$30,000 per copyrighted work that was infringed. If you find that Dr. Deghedy willfully infringed VizTek and Cyber-Anatomy's copyrighted materials, you may increase the award of statutory damages up to \$150,000. If you find that Dr. Deghedy's infringement of any copyrights was innocent, you may reduce the award of statutory damages to a sum of not less than \$200.) \$ 152,250.00.

PLEASE DATE AND SIGN THE VERDICT FORM

DATED this 26 day of September, 2014.


Foreperson

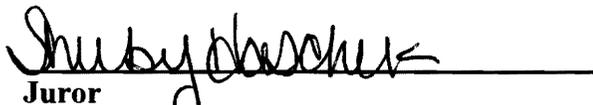

Juror


Juror

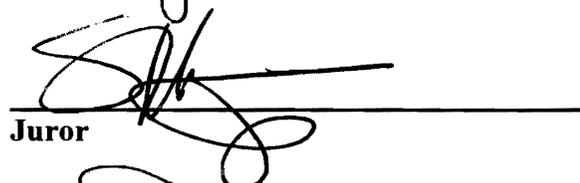

Juror


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