

PRELIMINARY INSTRUCTIONS TO THE JURY (WITH VIDEO)

Introduction

Members of the Jury:

Now that you have been selected and sworn, I will read to you the following preliminary instructions to guide you in your role as jurors in this case.

The Parties and Their Contentions

At this time, I will give you a brief overview of who the parties are and their contentions.

This is a patent infringement case arising under the patent laws of the United States. The plaintiff is _____. For ease of reference, I will refer to plaintiff as “_____.” The defendant is _____, which I will refer to as “_____.”

_____ owns U. S. Patent Number _____, which may be referred to as the _____ patent. During the trial, the parties will offer testimony and evidence to familiarize you with technology involved in the patents.

_____ contends that _____ has infringed the _____ patent. _____ contends it does not infringe. _____ also contends that the _____ patent is invalid and unenforceable.

Duties as Jurors

You may be wondering what role you will play as jurors in this case. I will now explain to you some of the general rules regarding your duties as jurors in this case.

It will be your duty to find from the evidence as presented at trial what the facts are. You, and you alone, are the judges of the facts. You will then have to apply those

facts as you find them to the law. I will instruct you on the law in more detail after all the evidence has been presented. You must follow that law whether you agree with it or not.

In addition to instructing you about the law, I will also provide you with instructions as to what the claims of the patent mean.

It is important that you perform these duties fairly. Do not let any bias, sympathy, or prejudice influence your decision in any way. Do not let anything that I may say or do during the course of the trial influence you. Nothing I may say or do during the course of this trial is intended to indicate what your verdict should be.

Evidence

The evidence from which you will find the facts will consist of the testimony of witnesses, and the documents and other things admitted into evidence as exhibits. In addition, the evidence may include certain facts agreed to by the parties or as I instruct you.

Certain things are not evidence. They include:

1. Statements, arguments, and questions by the lawyers are not evidence.
2. Objections to questions are not evidence. Lawyers have an obligation to their clients to make objections when they believe testimony or exhibits are being offered into evidence that are not proper under the Rules of Evidence. You should not be influenced by the objection or by my ruling on it. If I sustain or uphold the objection, you should ignore the question or the document. If I overrule the objection and allow the matter into evidence, treat the testimony or document like any other evidence. If I

instruct you that some item of evidence is admitted for a limited purpose, you must follow that instruction and consider that evidence for that purpose only.

3. Testimony or documents that I have either excluded, or told you to disregard, are not evidence and must not be considered.

4. Anything you see or hear outside the courtroom is not evidence and must be disregarded. You are to decide this case solely on the evidence presented here in the courtroom.

There are two types of evidence that you may properly consider: direct and circumstantial. Direct evidence is straightforward proof of a fact, such as testimony of an eye witness. Circumstantial or indirect evidence is proof of a fact or facts from which you may infer or conclude that other facts exist or do not exist. I will give you further instructions on direct and circumstantial evidence, as well as other matters, at the end of the case, but keep in mind that you may consider both kinds of evidence.

Credibility of Witnesses

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness's testimony to accept or reject. You are the sole judges of each witness's credibility. I will give you some guidelines for deciding the credibility of witnesses during my instructions at the end of the case.

Burden of Proof

I will now give some information regarding the burdens of proof.

This is a civil case. In any legal action, facts must be proven by the required weight of the evidence, known as the burden of proof. In this civil case, two burdens of

proof are used. The first is called proof by a preponderance of the evidence. The second is called proof by clear and convincing evidence.

_____ contends that _____ has infringed _____'s patent. _____ has the burden of proving patent infringement by the preponderance of the evidence. That means _____ has to produce evidence which, when considered in the light of all the facts, leads you to believe that what _____ claims is more likely true than not.

_____ denies that it infringes _____'s _____ patent. _____ does not have the burden of proof on the issue of infringement.

_____ contends that the claims of the patents are invalid. On this issue, _____, rather than _____, has the burden of proof. _____ must show by clear and convincing evidence that the patent is not valid. This is a heavier burden than a preponderance of the evidence. Clear and convincing evidence is evidence that persuades you that it is highly probable that what _____ seeks to prove is true.

I will discuss with you later, and in more detail, the specific elements that _____ must prove with respect to alleged infringement and that _____ must prove regarding alleged invalidity of the patent.

You may have heard the term "proof beyond a reasonable doubt." That requirement applies to criminal cases and does not apply to a civil case, like this one. You should not use this standard when considering whether _____ and _____ have met their respective burdens of proof on the various issues.

The United States Patents

Since this case is about a patent, which is an area unfamiliar to many people, you will be shown a video that will briefly explain the U.S. Patent system, the parts of the patent and how a patent is obtained. Many of the terms that are used in the video are contained in a Glossary of Patent Terms at the end of these Preliminary Instructions. Please feel free to refer to this Glossary throughout the trial.

Conduct as Jurors

Now a few words about your conduct as jurors.

First, I instruct you that during the trial and until you have heard all of the evidence and have gone to the jury room to deliberate, you are not to discuss the case with anyone, not even among yourselves. If anyone should try to talk to you about the case, bring it to my attention promptly.

Second, do not read or listen to anything touching on this case that is not admitted into evidence. By that I mean, if there is a newspaper article or radio or television report relating to this case, do not read the article or watch or listen to the report. In addition, do not try to do any independent research or investigation on your own on matters relating to this case.

Finally, do not reach any conclusion or form any opinion until all the evidence is in. Keep an open mind until you start your deliberations after the end of the case.

During the trial, you will be allowed to take notes. My courtroom deputy will provide you with pens, pencils and paper. If you do take notes, leave them in the jury room when you leave at the end of the day. Remember they are for your own personal

use—they are not to be given or read to anyone else. You are instructed that your notes are only a tool to aid your own individual memory and you should not compare your notes with other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence.

Although we have a court reporter here who will be transcribing the testimony during the course of the trial, you should not assume that the transcripts of the testimony will be available for your review during your deliberations. As you listen to the testimony, keep in mind that you will be relying on your recollection of the testimony during your deliberations.

Course of the Trial

The trial will begin today. I will now explain to you a little bit about the procedures that we will be following during the trial and the format of the trial.

Like all jury trials, this trial comes in stages or phases. At the beginning of the trial are the opening statements.

Each party may make an opening statement. The opening statements by the lawyers are statements about what a party intends to prove, and is presented to help you follow the evidence as it is offered. The opening statements are not evidence in the case.

After the opening statements, witnesses will be called and will take the stand to testify. Documents and other exhibits will be offered and admitted into evidence. What the witnesses say and what the documents or other exhibits state constitute evidence in the case. Generally, the plaintiff, that is, _____, goes first and will present witnesses and defendant, that is, _____, may cross-examine

them. _____ will also present witnesses, which _____ may cross examine. Often during the trial, the evidence is introduced in a somewhat piecemeal fashion. Because of this, you as jurors need to keep an open mind as the evidence comes in. Wait until all the evidence comes in before making any decision.

After the evidence has been presented, I will give you instructions on the law and the attorneys will make their closing arguments to summarize and to help you in making your determination. Again, what the lawyers say during the closing arguments is not evidence.

Finally, you will retire to deliberate your verdict. You then can evaluate the evidence, discuss the evidence among yourselves, and make a decision in the case.

Trial Schedule

_____ Although I outlined the trial schedule during the voir dire, I will repeat it now. I plan to keep this schedule during the course of this trial.

This case is expected to take ___ days to try. We will normally begin the day promptly at 9:00 a.m. We will usually go until 1:00 p.m., and after a one hour lunch break, continue from 2:00 p.m. until 5:00 p.m. There will also be a short breaks during the mid-morning and afternoon. One exception to this schedule may occur when the case is submitted to you for your deliberations. On that day, the proceedings may last beyond 5:00 p.m.