



**1. DUTY OF JURY**

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Ladies and gentlemen: You are now the jury in this case. It is my duty to instruct you on the law.

These instructions are preliminary instructions to help you understand the principles that apply to civil trials and to help you understand the evidence as you listen to it. You will be allowed to keep and refer to this set throughout the trial. This set of instructions is not to be taken home and must remain in the jury room when you leave in the evenings. At the end of the trial, I will give you a final set of instructions. It is the final set of instructions which will govern your deliberations.

You must not infer from these instructions or from anything I may say or do as indicating that I have an opinion regarding the evidence or what your verdict should be.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all important.

## 2. WHAT A PATENT IS AND HOW ONE IS OBTAINED

1 This case involves a dispute relating to a United States patent. Before summarizing the  
2 positions of the parties and the legal issues involved in the dispute, let me take a moment to explain  
3 what a patent is and how one is obtained.  
4

5 Patents are granted by the United States Patent and Trademark Office (sometimes called  
6 “the PTO”). The process of obtaining a patent is called patent prosecution. A valid United States  
7 patent gives the patent owner the right to prevent others from making, using, offering to sell, or  
8 selling the patented invention within the United States, or from importing it into the United States,  
9 during the term of the patent without the patent holder’s permission. A violation of the patent  
10 owner’s rights is called infringement. The patent owner may try to enforce a patent against persons  
11 believed to be infringers by a lawsuit filed in federal court.  
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13 To obtain a patent one must file an application with the PTO. The PTO is an agency of the  
14 federal government and employs trained examiners who review applications for patents.  
15 The application includes what is called a “specification,” which must contain a written description  
16 of the claimed invention telling what the invention is, how it works, how to make it and how to use  
17 it so others skilled in the field will know how to make or use it. The specification concludes with  
18 one or more numbered sentences. These are the patent “claims.” When the patent is eventually  
19 granted by the PTO, the claims define the boundaries of its protection and give notice to the public  
20 of those boundaries.  
21

22 After the applicant files the application, a PTO patent examiner reviews the patent  
23 application to determine whether the claims are patentable and whether the specification  
24 adequately describes the invention claimed. In examining a patent application, the patent examiner  
25 reviews records available to the PTO for what is referred to as “prior art.” The examiner also will  
26 review prior art if it is submitted to the PTO by the applicant. Prior art is defined by law, and I will  
27 give you specific instructions as to what constitutes prior art at a later time. However, in general,  
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1 prior art includes things that existed before the claimed invention, that were publicly known, or  
2 used in a publicly accessible way in this country, or that were patented or described in a publication  
3 in any country. The examiner considers, among other things, whether each claim defines an  
4 invention that is new, useful, and not obvious in view of the prior art. A patent lists the prior art  
5 that the examiner considered; this list is called the “cited references.”

6 After the prior art search and examination of the application, the patent examiner then  
7 informs the applicant in writing what the examiner has found and whether any claim is patentable,  
8 and thus will be “allowed.” This writing from the patent examiner is called an “office action.” If  
9 the examiner rejects the claims, the applicant then responds and sometimes changes the claims or  
10 submits new claims. This process, which takes place only between the examiner and the patent  
11 applicant, may go back and forth for some time until the examiner is satisfied that the application  
12 and claims meet the requirements for a patent. The papers generated during this time of  
13 communicating back and forth between the patent examiner and the applicant make up what is  
14 called the “prosecution history.” All of this material becomes available to the public no later than  
15 the date when the patent issues.

16 The fact that the PTO grants a patent does not necessarily mean that any invention claimed  
17 in the patent, in fact, deserves the protection of a patent. For example, the PTO may not have had  
18 available to it all the information that will be presented to you. A person accused of infringement  
19 has the right to argue here in federal court that a claimed invention in the patent is invalid because  
20 it does not meet the requirements for a patent.  
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**3. PATENTS AT ISSUE AND OVERVIEW OF THE PARTIES**

To help you follow the evidence, I will now give you a summary of the positions of the parties.

The parties in this case are Emblaze Ltd. and Apple Inc. The case involves United States Patent No. 6,389,473 owned by Emblaze. For your convenience, the parties and I will often refer to this patent number 6,389,473 by the last three numbers of the patent number, namely, as the “’473 patent.”

Emblaze filed suit seeking money damages from Apple for allegedly inducing infringement of claims 23, 28, 37 and 40 of the ’473 patent.

Apple denies that it has infringed the asserted claims and also argues that the asserted claims are invalid.

Your job will be to decide whether or not the asserted claims have been infringed and whether or not those claims are invalid. If you decide that any claim of the ’473 patent has been infringed and is not invalid, you will then need to decide any money damages to be awarded to Emblaze to compensate it for the infringement.

**4. WHAT IS EVIDENCE**

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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 into evidence; and
3. any facts to which the lawyers have agreed.

**5. WHAT IS NOT EVIDENCE**

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In reaching your verdict, you may consider only the sworn testimony of witnesses and exhibits received into evidence or facts to which the lawyers have agreed. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What the parties have said in their opening statements, will say in their closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.
2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.
3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered.
4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at trial.

**6. EVIDENCE FOR A LIMITED PURPOSE**

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Some evidence may be admitted for a limited purpose only.

If I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.



**7. DIRECT AND CIRCUMSTANTIAL EVIDENCE**

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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 proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. 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.

By way of example, if you wake up in the morning and see that the sidewalk is wet, you may find from that fact that it rained during the night. However, other evidence, such as a turned on garden hose, may provide a different explanation for the presence of water on the sidewalk. Therefore, before you decide that a fact has been proved by circumstantial evidence, you must consider all the evidence in the light of reason, experience, and common sense.

**8. RULING ON OBJECTIONS**

1  
2 There are rules of evidence that control what can be received into evidence. When a lawyer  
3 asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not  
4 permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question  
5 may be answered or the exhibit received. If I sustain the objection, the question cannot be  
6 answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you  
7 must ignore the question and must not guess what the answer might have been.

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

**9. CREDIBILITY OF WITNESSES**

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In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. Proof of a fact does not necessarily depend on the number of witnesses who testify about it.

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

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

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

**10. CONDUCT OF JURORS**

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

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

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

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10 Do not communicate with anyone in any way and do not let anyone else communicate with  
11 you in any way about the merits of the case or anything to do with it. This includes discussing the  
12 case in person, in writing, by phone or electronic means, via e-mail, text messaging, or any internet  
13 chat room, blog, website or other feature. This applies to communicating with your fellow jurors  
14 until I give you the case for deliberation, and it applies to communicating with everyone else  
15 including your family members, your employer, the media or press, and the people involved in the  
16 trial, although you may notify your family and your employer that you have been seated as a juror  
17 in the case. But, if you are asked or approached in any way about your jury service or anything  
18 about this case, you must respond that you have been ordered not to discuss the matter and to  
19 report the contact to the court.  
20

21 Because you will receive all the evidence and legal instruction you properly may consider  
22 to return a verdict: do not read, watch, or listen to any news or media accounts or commentary  
23 about the case or anything to do with it; do not do any research, such as consulting dictionaries,  
24 searching the internet or using other reference materials; and do not make any investigation or in  
25 any other way try to learn about the case on your own.  
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The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire trial process to start over. If any juror is exposed to any outside information, please notify the court immediately

**11. TAKING NOTES**

1           If you wish, you may take notes to help you remember the evidence. You will have access  
2 to the physical items and exhibits admitted into evidence during your deliberations, but you will  
3 not have transcripts of the testimony given in court. If you do take notes, please keep them to  
4 yourself until you and your fellow jurors go to the jury room to decide the case. Do not let  
5 note-taking distract you. When you leave, your notes should be left in the jury room. No one will  
6 read your notes. They will be destroyed at the conclusion of the case.  
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8           Whether or not you take notes, you should rely on your own memory of the evidence.  
9 Notes are only to assist your memory. You should not be overly influenced by your notes or those  
10 of your fellow jurors.  
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## 12. QUESTIONS TO WITNESSES BY JURORS

1           You will be allowed to propose written questions to witnesses after the lawyers have  
2 completed their questioning of each witness. You may propose questions in order to clarify the  
3 testimony, but you are not to express any opinion about the testimony or argue with a witness.  
4 If you propose any questions, remember that your role is that of a neutral fact finder, not an  
5 advocate.  
6

7           Before I excuse each witness, I will offer you the opportunity to write out a question on a  
8 form provided by the court. Do not sign the question. I will review the question with the attorneys  
9 to determine if it is legally proper.  
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11           There are some proposed questions that I will not permit, or will not ask in the wording  
12 submitted by the juror. This might happen either due to the rules of evidence or other legal  
13 reasons, or because the question is expected to be answered later in the case. If I do not ask a  
14 proposed question, or if I rephrase it, do not speculate as to the reasons. Do not give undue weight  
15 to questions you or other jurors propose. You should evaluate the answers to those questions in the  
16 same manner you evaluate all of the other evidence.  
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18           By giving you the opportunity to propose questions, I am not requesting or suggesting that  
19 you do so. It will often be the case that a lawyer has not asked a question because it is legally  
20 objectionable or because a later witness may be addressing that subject.  
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**13. BENCH CONFERENCES AND RECESSES**

1 From time to time during the trial, it may become necessary for me to talk with the  
2 attorneys out of the hearing of the jury, either by having a conference at the bench when the jury is  
3 present in the courtroom, or by calling a recess. Please understand that while you are waiting, we  
4 are working. The purpose of these conferences is not to keep relevant information from you, but to  
5 decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and  
6 error.  
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8 Of course, we will do what we can to keep the number and length of these conferences to a  
9 minimum. I may not always grant an attorney's request for a conference. Do not consider my  
10 granting or denying a request for a conference as any indication of my opinion of the case or of  
11 what your verdict should be.  
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#### 14. OUTLINE OF TRIAL

1 The trial will now begin. First, each side may make an opening statement. An opening  
2 statement is not evidence. It is simply an outline to help you understand what that party expects  
3 the evidence will show.  
4

5 The presentation of evidence will then begin. Witnesses will take the witness stand and the  
6 documents will be offered and admitted into evidence. There are two standards of proof that you  
7 will apply to the evidence, depending on the issue you are deciding. On some issues, you must  
8 decide whether something is more likely true than not. On other issues you must use a higher  
9 standard and decide whether it is highly probable that something is true.  
10

11 Emblaze will present its evidence on its contention that at least one claim of the '473 patent  
12 has been infringed by Apple. These witnesses will be questioned by Emblaze's counsel in what is  
13 called direct examination. After the direct examination of a witness is completed, the opposing  
14 side has an opportunity to cross-examine the witness. To prove infringement of any claim,  
15 Emblaze must persuade you that it is more likely than not that Apple infringed that claim.  
16

17 After Emblaze has presented its witnesses, Apple will call its witnesses, who will also be  
18 examined and cross-examined. Apple will put on evidence responding to Emblaze's infringement  
19 contention and its contention that the asserted claim of the '473 patent is invalid.  
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21 Emblaze will then return to put on what is referred to as "rebuttal" evidence to any evidence  
22 offered by Apple of non-infringement. Emblaze also will respond to Apple's evidence of  
23 invalidity.  
24

25 Because the evidence is introduced piecemeal, you need to keep an open mind as the  
26 evidence comes in and wait for all the evidence before you make any decisions. In other words,  
27 you should keep an open mind throughout the entire trial.  
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The parties may present the testimony of a witness by reading from his or her deposition  
transcript or playing a videotape of the witness's deposition testimony. A deposition is the sworn

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testimony of a witness taken before trial and is entitled to the same consideration as if the witness had testified at trial.

After the evidence has been presented, I will give you final instructions on the law that applies to the case and the attorneys will make closing arguments. Closing arguments are not evidence. After the instructions and closing arguments, you will then decide the case.

**IT IS SO ORDERED.**

Dated: June 27, 2014

  
PAUL S. GREWAL  
United States Magistrate Judge