

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

REALTIME DATA, LLC, d/b/a IXO,

Plaintiff,

v.

T-MOBILE U.S.A., INC.,

Defendant.

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CIVIL ACTION No. 6:10CV493

JUDGE RON CLARK

JURY INSTRUCTIONS

You have heard the evidence in this case. I will now instruct you on the law that you must apply. It is your duty to follow the law as I give it to you. On the other hand, you, the jury, are the judges of the facts. Do not consider any statement that I have made during the course of the trial, or make in these instructions, as an indication that I have any opinion about the facts of this case.

After I instruct you on the law, the attorneys will have an opportunity to make their closing arguments. Statements and arguments of the attorneys are not evidence and are not instructions on the law. They are intended only to assist the jury in understanding the evidence and the parties' contentions.

It is my duty as Judge to explain what some of the words used in the patent claims mean. Attached as Appendix A to this charge are the claim terms I have defined for you. These are the same definitions found in the "Claim Chart" section of your juror notebooks. You must accept as correct the definitions contained in Appendix A. The words and terms of the patents that I have not defined for you in Appendix A are to be given their ordinary and accustomed meaning as understood by a person of ordinary skill in the art, in the context of the patent specifications and file history.

When words in these instructions and in the definitions in Appendix A are used in a sense that varies from their commonly understood meaning, you are given a proper legal definition, which you are bound to accept in place of any other meaning. The other words in these instructions, and in the definitions I have provided to you, have the meaning commonly understood.

Answer each question based on the facts as you find them. Do not decide who you think should win and then answer the questions accordingly. Your answers and your verdict must be unanimous.

I. What Is and What Is Not Evidence

You will be instructed to answer some questions based upon a **“preponderance of the evidence.”** This means you must be persuaded by the evidence that what the party seeks to prove is more likely true than not true. You will be instructed to answer other questions by **“clear and convincing evidence.”** This is a higher burden than by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt. Clear and convincing evidence is evidence that produces in your mind a firm belief or conviction as to the matter at issue. This clear and convincing evidence standard requires greater proof than is necessary for the preponderance of evidence standard.

In deciding whether any fact has been proved in the case, you may, unless otherwise instructed, consider the testimony of all witnesses, including those called by deposition, regardless of who may have called them, all exhibits received in evidence, regardless of who may have produced them, and the facts to which the parties have stipulated. Attached as Appendix B to this charge is a list of facts to which the parties have stipulated. This is the same list that is found in the “Stipulated Facts” section of your juror notebooks. You must treat all of the stipulated facts as having been proved.

In determining the weight to give to the testimony of a witness, you should ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact, or whether there was evidence that at some other time, the witness said or did something, or failed to say or do something, that was different from the testimony the witness gave before you during the trial.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people may forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was an intentional falsehood or simply an innocent lapse of memory, and the significance of that may depend on whether it has to do with an important fact or only with an unimportant detail.

If scientific, technical, or other specialized knowledge may be helpful to the jury, a witness with special training or experience may testify and state an opinion concerning such matters. However, you are not required to accept that opinion. You should judge such testimony like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, and all

the other evidence in the case. In deciding whether to accept or rely upon the opinion of such a witness, you may consider any bias of the witness, including any bias you may infer from evidence that the witness has been or will be paid for reviewing the case and testifying, or from evidence that he or she testifies regularly.

In making up your mind and reaching your verdict, do not make your decisions simply because there were more witnesses on one side than on the other. Do not reach a conclusion on a particular point just because there were more witnesses testifying for one side on that point. The testimony of a single witness may be sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all the other evidence you believe that single witness.

While you should consider only the evidence in this case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw, from the facts that have been established by the testimony and evidence in the case.

There are two types of evidence that you may consider in properly finding the truth as to the facts in the case. One is direct evidence, such as testimony of an eyewitness. The other is indirect or circumstantial evidence, which is the proof of a

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