

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

MAXELL, LTD.,

Plaintiff,

v.

ZTE USA INC.,

Defendant.

Case No. 5:16-cv-00179-RWS

FINAL JURY INSTRUCTIONS

1. Introduction

MEMBERS OF THE JURY:

It is my duty and responsibility to instruct you on the law you are to apply in this case. The law contained in these instructions is the only law you may follow. It is your duty to follow what I instruct you the law is, regardless of any opinion that you might have as to what the law ought to be.

If I have given you the impression during the trial that I favor either party, you must disregard that impression. If I have given you the impression during the trial that I have an opinion about the facts of this case, you must disregard that impression. You are the sole judges of the facts of this case. Other than my instructions to you

on the law, you should disregard anything I may have said or done during the trial in arriving at your verdict.

You should consider all of the instructions about the law as a whole and regard each instruction in light of the others, without isolating a particular statement or paragraph.

The testimony of the witnesses and other exhibits introduced by the parties constitute the evidence. The statements of counsel are not evidence; they are only arguments. It is important for you to distinguish between the arguments of counsel and the evidence on which those arguments rest. What the lawyers say or do is not evidence. You may, however, consider their arguments in light of the evidence that has been admitted and determine whether the evidence admitted in this trial supports the arguments. You must determine the facts from all the testimony that you have heard and the other evidence submitted. You are the judges of the facts, but in finding those facts, you must apply the law as I instruct you.

You are required by law to decide the case in a fair, impartial, and unbiased manner, based entirely on the law and on the evidence presented to you in the courtroom. You may not be influenced by passion, prejudice, or sympathy you might have for the plaintiff or the defendant in arriving at your verdict.

1.1 No Inference from Filing Suit

The fact that a plaintiff brought a lawsuit in this Court seeking damages creates no inference that the plaintiff is entitled to a judgment. Anyone may make a claim and file a lawsuit. The act of making a claim in a lawsuit, by itself, does not in any way tend to establish that claim and is not evidence.

1.2 Direct and Circumstantial Evidence

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. As a general rule, the law makes no distinction between the weights that you should give to direct and circumstantial evidence, nor does it say that one is any better evidence than the other, but simply requires that you find the facts from all the evidence, both direct and circumstantial, and give it the weight you believe it deserves.

1.3 Expert Witnesses

When knowledge of a technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field is permitted to state his or her opinion on those technical matters. He or she is called an expert witness. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether the witness's testimony is believable or not, whether it is supported by the evidence, and whether to rely upon it. In deciding whether to accept or rely upon the opinion of an expert witness, you may consider any bias of the witness.

1.4 Deposition Testimony

Certain testimony in this case has been presented to you through a deposition. A deposition is the sworn, recorded answers to questions asked of a witness in advance of the trial. Under some circumstances, if a witness cannot be present to testify from the witness stand, the witness's testimony may be presented under oath in the form of a deposition. Sometime before this trial, attorneys representing the parties in this case questioned this witness under oath. A court reporter was present and recorded the testimony. You should judge the credibility of and weigh the importance of deposition testimony to the best of your ability just as if the witness had testified in court in person.

This deposition testimony is entitled to the same consideration and is to be judged by you as to the credibility and weight and otherwise considered by you insofar as possible the same as if the witness had been present and had testified from the witness stand in court.

2. Summary of Contentions

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 Maxell Ltd. and ZTE (USA) Inc. The case involves seven United States Patents, which are referred to as “Asserted Patents,” and certain claims of those patents, which are referred to as “Asserted Claims.”

Maxell contends that ZTE USA infringes the following claims by making, using, selling, offering for sale, and/or importing into the United States certain ZTE products. Specifically, Maxell contends that ZTE USA:

- a. literally infringes claim 1 of the '193 Patent;
- b. literally infringes claims 1–3 of the '317 Patent;
- c. literally infringes claim 5 of the '493 Patent;
- d. literally infringes claim 1 of the '729 Patent;
- e. literally infringes claims 1 and 8 of the '491 Patent;
- f. literally infringes claim 1 of the '695 Patent; and

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