

Exhibit B

Jury Instructions

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

MAXELL, LTD.,

Plaintiff,

v.

APPLE INC.,

Defendants.

Case No. 5:19-cv-00036-RWS

JURY TRIAL DEMANDED

PROPOSED JURY INSTRUCTIONS

1. Introduction¹

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.

¹ Authority: Section 3.1, Fifth Circuit Pattern Jury Instructions (Civil Cases) (rev. 6/2020) (verbatim).

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 Considering Witness Testimony²

You alone are to determine the questions of credibility or truthfulness of the witnesses. In weighing the testimony of the witnesses, you may consider the witness's manner and demeanor, any feelings or interest in the case, or any prejudice or bias about the case, that he or she may have, and the consistency or inconsistency of his or her testimony considered in the light of the circumstances. Has the witness been contradicted by other credible evidence? Has he or she made statements at other times and places contrary to those made here? You must give the testimony of each witness the credibility that you think it deserves.

² Section 3.4, Fifth Circuit Pattern Jury Instructions (Civil Cases) (rev. 6/2020) (verbatim); Proposed by Apple in *Virnetx Inc. v. Apple Inc.*, Case No. 6:12-CV-855-RWS, Joint Submission of Jury Materials, Docket No. 855, Ex. B at 1-6 (E.D. Tex. Jul. 9, 2020).

Even though a witness may be a party to the action and therefore interested in its outcome, the testimony may be accepted if it is not contradicted by direct evidence or by any inference that may be drawn from the evidence, if you believe the testimony.

You are not to decide this case by counting the number of witnesses who have testified on the opposing sides. Witness testimony is weighed; witnesses are not counted. The test is not the relative number of witnesses, but the relative convincing force of the evidence. The testimony of a single witness is sufficient to prove any fact, even if a greater number of witnesses testified to the contrary, if after considering all of the other evidence, you believe that witness.

1.2 No Inference from Filing Suit³

The fact that a plaintiff brought a lawsuit and is in 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.

1.3 Expert Witnesses⁴

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. [Maxell Proposal: He or she is called an expert witness.] [Apple Proposal: delete]⁵ 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

³Authority: Section 3.6, Fifth Circuit Pattern Jury Instructions (Civil Cases) (rev. 6/2020) (“person” replaced with “plaintiff”).

⁴ Maxell Authority: Final Jury Instructions, Maxell, Ltd. v. ZTE (USA) Inc. Case No. 5:16-cv-00179-RWS, D.I. 223 (E.D. Tex., June 29, 2018).

⁵ Apple Authority: Section 3.5, Fifth Circuit Pattern Jury Instructions (Civil Cases) (rev. 6/2020) (verbatim); Proposed by Apple in *Virnetx Inc. v. Apple Inc.*, Case No. 6:12-CV-855-RWS, Joint Submission of Jury Materials, Docket No. 883, Ex. B at 1-6 (E.D. Tex. Jul. 9, 2020).

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 Testimony⁶

Certain testimony has been presented to you through a deposition. A deposition is the sworn, recorded answers to questions a witness was asked in advance of the trial. Under some circumstances, if a witness cannot be present to testify from the witness stand, that 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. The questions and answers have been read and/or shown to you during this trial. This deposition testimony is entitled to the same consideration and is to be judged by you as to credibility and weighed and otherwise considered by you in the same way as if the witness had been present and had testified from the witness stand in court.

2. Summary of Contentions

Maxell Proposal:

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 Apple Inc. The case involves ten 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 Apple infringes the following claims by making, using, selling, offering for sale, and/or importing into the United States certain Apple products. Specifically,

Maxell contends that Apple:

⁶ Authority: Section 2.13, Fifth Circuit Pattern Jury Instructions (Civil Cases) (rev. 6/2020); Proposed by Apple in *Virnetx Inc. v. Apple Inc.*, Case No. 6:12-CV-855-RWS, Joint Submission of Jury Materials, Docket No. 883, Ex. B at 1-4 (E.D. Tex. Jul. 9, 2020).

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