

FILED

July 21, 2023

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

BY: Jennifer Clark
DEPUTY

TOUCHSTREAM TECHNOLOGIES, INC.,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

Civil Case No. 6:21-cv-569-ADA

JURY TRIAL DEMANDED
U.S. District Judge Alan Albright

FINAL JURY INSTRUCTIONS

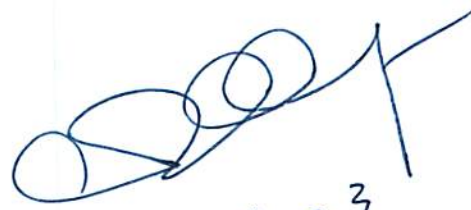

7/21/23
1040 am

Table of Contents

JURY INSTRUCTION NO. 1: JURY CHARGE	1
JURY INSTRUCTION NO. 2: EVIDENCE.....	3
JURY INSTRUCTION NO. 3: WITNESSES.....	5
JURY INSTRUCTION NO. 4: DEPOSITION TESTIMONY	7
JURY INSTRUCTION NO. 5: EXPERT TESTIMONY	8
JURY INSTRUCTION NO. 6: INTERROGATORIES	9
JURY INSTRUCTION NO. 7: BIAS—NO INFERENCE FROM FILING SUIT OR DEFENDING THE SUIT	10
JURY INSTRUCTION NO. 8: STIPULATIONS OF FACT	11
JURY INSTRUCTION NO. 9: LIMITING INSTRUCTION.....	12
JURY INSTRUCTION NO. 10: CHARTS AND SUMMARIES	13
JURY INSTRUCTION NO. 11: DEMONSTRATIVE EXHIBITS	14
JURY INSTRUCTION NO. 12: BIAS—CORPORATE PARTY INVOLVED	15
JURY INSTRUCTION NO. 13: BURDENS OF PROOF	16
JURY INSTRUCTION NO. 14: SUMMARY OF CONTENTIONS.....	17
JURY INSTRUCTION NO. 15: PATENT CLAIMS	19
JURY INSTRUCTION NO. 16: INDEPENDENT AND DEPENDENT CLAIMS	21
JURY INSTRUCTION NO. 17: INFRINGEMENT—GENERALLY.....	22
JURY INSTRUCTION NO. 18: OTHER PATENTS.....	23
JURY INSTRUCTION NO. 19: DIRECT INFRINGEMENT—KNOWLEDGE OF THE PATENT AND INFRINGEMENT ARE IMMATERIAL.....	24
JURY INSTRUCTION NO. 20: INFRINGEMENT BY LITERAL INFRINGEMENT	25
JURY INSTRUCTION NO. 21: DIRECT INFRINGEMENT: ACTS OF MULTIPLE PARTIES MUST BE COMBINED TO MEET ALL METHOD CLAIM LIMITATIONS	26
JURY INSTRUCTION NO. 22: PATENT INVALIDITY—GENERALLY	27
JURY INSTRUCTION NO. 23: INVALIDITY—PRIOR ART	28
JURY INSTRUCTION NO. 24: LEVEL OF ORDINARY SKILL	30
JURY INSTRUCTION NO. 25: OBVIOUSNESS	31
JURY INSTRUCTION NO. 26: DAMAGES—INTRODUCTION.....	34
JURY INSTRUCTION NO. 27: DATE OF COMMENCEMENT OF DAMAGES— PRODUCTS.....	35

:

JURY INSTRUCTION NO. 28: DAMAGES—REASONABLE ROYALTY	36
JURY INSTRUCTION NO. 29: DAMAGES—APPORTIONMENT REQUIRED.....	37
JURY INSTRUCTION NO. 30: REASONABLE ROYALTY—RELEVANT FACTORS..	38
JURY INSTRUCTION NO. 31: DAMAGES—COMPARABLE AGREEMENTS	41
JURY INSTRUCTION NO. 32: DAMAGES-RUNNING ROYALTY VS. LUMP SUM....	42
JURY INSTRUCTION NO. 33: JUROR NOTEBOOKS.....	43
JURY INSTRUCTION NO. 34: DUTY TO DELIBERATE	44
JURY INSTRUCTION NO. 35: SOCIAL MEDIA INSTRUCTION	45

JURY INSTRUCTION NO. 1: JURY CHARGE

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.

Each of you is going to have your own printed copy of these final jury instructions that I am giving you now, so there is really no need for you to take notes unless you want to.

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 Touchstream or Google in arriving at your verdict.

After the remainder of these instructions, you will hear closing arguments from the attorneys. Statements and arguments of the attorneys, I remind you, are not evidence, and they are not instructions on the law. They are intended only to assist the jury in understanding the evidence and the parties' contentions.

A verdict form has been prepared for you. You are to take this verdict form with you to the jury room; and when you have reached a unanimous decision or agreement as to the verdict, you are to have your foreperson fill in the blanks in the verdict form, date it, and sign it.

Answer each question in the verdict form from the facts as you find them to be. Do not decide who you think should win the case and then answer the questions to reach that result. Again, your answers and your verdict must be unanimous.



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.