

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

3 VIRNETX, INC. )  
4 ) DOCKET NO. 6:10cv417  
5 -vs- )  
6 ) Tyler, Texas  
7 ) 9:00 a.m.  
8 ) October 31, 2012  
9 APPLE, INC.

8 TRANSCRIPT OF TRIAL  
9 MORNING SESSION  
10 BEFORE THE HONORABLE LEONARD DAVIS,  
11 UNITED STATES CHIEF DISTRICT JUDGE, AND A JURY

12 A P P E A R A N C E S

13  
14 FOR THE PLAINTIFFS:

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produced by a Computer.

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1 P R O C E E D I N G S

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Please be seated.

5 All right. I understand there are couple

6 of matters before we bring the jury in; is that correct?

7 MR. CASSADY: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. CASSADY: Your Honor, Jason Cassady  
10 for the Plaintiff.

11 We have the joint stipulation on the MILs  
12 and one final document for Your Honor to hopefully enter  
13 as an order, for opening. And then we have a small -- a  
14 small oral motion in limine that Eric Albritton and I  
15 have agreed to, and we want to get that on the record  
16 before we start argument.

17 THE COURT: All right. Let's do it.

18 MR. CASSADY: Okay. May I approach?

19 THE COURT: Yes. Uh-huh.

20 MR. CASSADY: Your Honor, the parties  
21 shared this document last night. Everybody is in  
22 agreement on this as long as we get the other small oral  
23 motion in limine in.

24 And at the very end of this is -- the  
25 paperclip -- is an order for Your Honor, but obviously

1 we will take your word for it on the record, Your Honor.

2 THE COURT: Thank you.

3 Has this been entered electronically?

4 Has it been filed electronically?

5 MR. CASSADY: We didn't get a chance to  
6 file it, because of the timing of the agreement, but  
7 we're happy to do that.

8 THE COURT: All right. And if you will  
9 file it, then I will -- no objection, is there, to the  
10 order granting first supplemented notice of joint  
11 stipulation relating to certain motions in limine?

12 MR. ALBRITTON: No objection, Your Honor.

13 THE COURT: All right. That will be  
14 granted.

15 MR. CASSADY: Thank you, Your Honor.

16 And then the last thing is the motion in  
17 limine regarding Apple's patents or reference to their  
18 patents in the opening or throughout the case. We  
19 understand this is a motion in limine, which means  
20 people can approach and make arguments; but the parties  
21 have agreed that for purposes of the situation, Apple  
22 can say they have lots of patents, but they won't refer  
23 to or hint or make any reference to having patents on  
24 the products in this case or the software in this case.

25 THE COURT: Okay. Is that agreeable,

1 Mr. Albritton?

2 MR. ALBRITTON: For purposes of the  
3 opening. And if we want to do more, we will approach.

4 THE COURT: All right. Thank you.

5 That's granted.

6 Anything further?

7 MR. CASSADY: Your Honor, one other thing  
8 is we have our admitted list. Obviously, I would like  
9 to do that in front of the jury, but I want to make sure  
10 we're all on the same procedure before I get  
11 embarrassed.

12 THE COURT: That's exactly what we'll do.

13 MR. CASSADY: Okay. Thank you, Your  
14 Honor.

15 THE COURT: Y'all come forward and have a  
16 seat, if you need to find one. Are there seats  
17 available? Y'all scrunch up. We're not going to have  
18 anybody standing in the back of the courtroom. Getting  
19 close and cozy back there.

20 Counsel, approach if you would, please.

21 (Bench conference.)

22 THE COURT: Mr. Brown, who I believe was  
23 seated during the voir dire, and I think during the  
24 opening, on the far back seat is not here. He looked  
25 like he was having some trouble following everything, to

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