

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

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

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

13
14 A P P E A R A N C E S

15 FOR THE PLAINTIFFS:

16 MR. DOUGLAS CAWLEY
17 MR. BRADLEY W. CALDWELL
18 MR. JASON D. CASSADY
19 MR. JOHN AUSTIN CURRY
20 McKOOL SMITH
21 300 Crescent Court, Ste. 1500
22 Dallas, TX 75201

23 COURT REPORTERS: MS. JUDITH WERLINGER
24 MS. SHEA SLOAN
25 shea_sloan@txed.uscourts.gov

26 Proceedings taken by Machine Stenotype; transcript was
27 produced by a Computer.

28

1 FOR THE PLAINTIFF:

2 MR. ROBERT M. PARKER
3 MR. ROBERT CHRISTOPHER BUNT
4 PARKER BUNT & AINSWORTH
5 100 East Ferguson, Ste. 1114
6 Tyler, TX 75702

5

6

7

8

FOR THE DEFENDANT:

9

10 MR. DANNY L. WILLIAMS
11 MR. TERRY D. MORGAN
12 MR. RUBEN S. BAINS
13 MR. CHRIS CRAVEY
14 MR. MATT RODGERS
15 MR. DREW KIM
16 MR. SCOTT WOLOSON
17 WILLIAMS, MORGAN & AMERSON, P.C.
18 10333 Richmond, Ste. 1100
19 Houston, TX 77042

15

16 MR. ERIC ALBRITTON
17 MR. STEPHEN E. EDWARDS
18 MS. DEBRA COLEMAN
19 MR. MATTHEW C. HARRIS
20 ALBRITTON LAW FIRM
21 P.O. Box 2649
22 Longview, TX 75606

19

20 MR. JOHN M. DESMARAIS
21 MR. MICHAEL P. STADNICK
22 DESMARAIS, LLP - NEW YORK
23 230 Park Avenue
24 New York, NY 10169

23

24

25

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

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.