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WDTX Judge Moves Roku Patent Trial To August Amid Virus

By **Ryan Davis**

Law360 (June 15, 2020, 5:52 PM EDT) -- U.S. District Judge Alan D. Albright on Monday postponed a patent jury trial involving Roku that was set for this month until August due to the COVID-19 pandemic, but noted that because of the ongoing public health emergency, he can't guarantee it will take place at that time.

The jury trial in the case — where MV3 Partners LLC accuses Roku of infringing its streaming media patent — had been set to begin June 29 in the Western District of Texas, after being postponed from June 1. However, Judge Albright said Monday that holding the trial in June is no longer feasible, according to minutes of a phone conference in the court docket.

"The court explained that we will not be able to hold the trial as it has been set due to the pandemic," the minute entry said. "The court suggests August 3, however he cannot guarantee that the pandemic will allow the trial to go forward then."

The parties said they would confer with their clients about whether Aug. 3 or Aug. 10 would be a better date. Both those dates are Mondays, and Judge Albright said he planned to hold jury selection on the Thursday or Friday before. The judge also canceled a final pretrial conference planned for this Thursday and said it would instead be held about 10 days before the new trial date.

The trial was initially set to begin on June 1. In early April, Roku **asked the judge** to reschedule, saying it was concerned that because its attorneys, who live in Virginia and Maryland, were under stay-at-home orders due to the pandemic, they might not be able to travel to Waco, Texas, for trial.

Days later, Judge Albright — who **touts his court** as a place where patent cases go to trial quickly — **rejected** Roku's request, saying that "because trial is still several weeks away, it is premature to continue the case at this time."

However, he said that he was willing to consider "all reasonable adjustments" to the schedule, noting that "preparing for a patent trial can be an arduous task in the best of times and is obviously much more difficult when mobility has been severely restricted by the government."

On May 8, Western District of Texas Chief Judge Orlando Garcia **ordered** that all trials in the district scheduled through June 30 would have to be continued due to the pandemic, with new dates set by each presiding judge.

Judge Albright responded the following week by **rescheduling** the Roku trial for June 29

before an eight-member jury. He said the date was "unavoidable" and that the "trial must go when set," according to minutes of the conference where he rescheduled the case.

The courts in Texas have started conducting in-person jury trials during the pandemic, with the Eastern District of Texas conducting one last week in a slip-and-fall case. The judge **told Law360** that when jurors were asked if they were concerned about the virus, "not one hand went up."

MV3 filed suit in October 2018, alleging Roku TVs and some of the company's media players — the Roku Streaming Stick, Roku Ultra and Roku Express — infringe its patent on a system that streams media content from a mobile phone to larger displays such as televisions.

Counsel for Roku and MV3 could not immediately be reached Monday for comment about the latest postponement.

The patent-in-suit is U.S. Patent No. 8,863,223.

MV3 is represented by Jonathan K. Waldrop, Darcy L. Jones, Marcus A. Barber, John W. Downing, Heather S. Kim, Jack Shaw, ThucMinh Nguyen and Paul G. Williams of Kasowitz Benson Torres LLP; J. Mark Mann, G. Blake Thompson and Andy Tindel of Mann Tindel & Thompson; and Craig D. Cherry of Haley & Olson PC.

Roku is represented by Alexander J. Hadjis, Lisa M. Mandrusiak, W. Todd Baker, Christopher Ricciuti and Frank West of Oblon McClelland Maier & Neustadt LLP; Richard D. Milvenan of McGinnis Lochridge LLP; and David N. Deaconson of Pakis Giotes Page & Burleson PC.

The case is MV3 Partners LLC v. Roku Inc., case number 6:18-cv-00308, in the U.S. District Court for the Western District of Texas.

--Additional reporting by Lauren Berg, Britain Eakin, Dani Kass, Jack Queen and Daniel Siegal. Editing by Daniel King.

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