

IP Law News

# Busy IP Judge Albright Holds First Patent Trial: Takeaways (2)

By Matthew Bultman

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- Waco judge's first patent trial comes in Roku case
  - Anticipation reflects judge's rise to patent prominence
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None of the patent cases in front of U.S. District Judge Alan Albright had gone to trial. Until now.

MV3 Partners LLC and Roku Inc. kicked off a jury trial last week in Albright's courtroom in the U.S. District Court for the Western District of Texas in Waco. The case centered on allegations that Roku's streaming media players and smart TVs infringe MV3's patented mobile streaming technology.

Jurors returned a verdict Wednesday that cleared Roku of infringement.

The patent trial, Albright's first as a judge, has been the subject of keen interest from intellectual property attorneys. They were curious to see what trials will look like in front of the judge who recently took the mantle of handling the most patent cases in the U.S.

Here are four takeaways from people who were in the courtroom.

## The Judge Is Active

From the opening, Albright was prepared.

The judge, a former patent litigator at Bracewell LLP, was engaged in the trial, and his courtroom was well-run, attorneys said. Albright was well-versed in the technology, and he tuned in to witnesses and their testimony.

Jennifer Nall, a partner at Baker Botts LLP in Austin, said the judge kept the trial moving and ensured that everyone involved could get the most out of the time when the jury was in the courtroom.

"He definitely looks like he's having fun up there," Nall said.

Albright, who took the bench in 2018, has designed a series of unusual rules for patent cases, outlining basic procedures for lawsuits in the run-up to trial. The judge has said the rules are designed to move cases along quickly and ensure fairness for both sides.

Attorneys said the judge's patent trials will be held in a similar fashion.

"Judge Albright seems to be focused on efficient, fair trials so that the jury can get the facts as quickly and fairly as possible," Nall said.

#### **He Wants Straight Answers**

When Judge Albright asks lawyers a question, he wants a direct answer.

"If I ask you a question, whatever you were thinking about or were going to say, answering that question is more important at that moment. And answering that question directly," Albright said in a recent interview with an Akin Gump Strauss Hauer & Feld LLP attorney.

The same is true for witnesses who are answering questions from attorneys at trial. Michael Tomasulo, a partner at Winston & Strawn LLP in Los Angeles, said it quickly became clear the judge isn't going to tolerate witnesses who don't directly answer questions.

During the opening day of testimony, the judge several times politely interjected and reminded witnesses that they had been asked a "yes or no" question, according to Tomasulo.

"I think the judge's position is, if you have a fair question, you're going to get a straight answer," he said.

Expert witnesses, in particular, tend to know when an answer might be harmful to their case and sometimes try to dance around a topic, avoiding a direct answer. During a deposition, Tomasulo said, attorneys might spend an hour trying to get an expert to admit something.

Albright's direct approach can cut through some of that and speed things up.

"I think a lot of lawyers will probably be grateful to be in a courtroom where the witnesses, especially the expert witnesses, are going to be required to answer direct questions," Tomasulo said.

#### **Remember the Texas Connections**

Roku last year asked Albright to transfer the case to the Northern District of California, arguing that was "a clearly more convenient venue." At the time, Roku said all of its relevant personnel and facilities were in California, with the exception of one engineer who worked from his home in Nevada.

During the trial, Roku's first witness was an executive based in Austin. He talked, in part, about how important West Texas is to the company, Tomasulo said.

This wasn't lost on Albright. The judge suggested he might revisit Roku's motion requesting the transfer to see if there were inconsistencies, Tomasulo said.

Roku is far from the first defendant sued in Waco to ask the case be sent to another state. There have been dozens of similar requests, which often include companies downplaying their connections to Texas and arguing it's more convenient to litigate the case elsewhere.

Companies will need to be careful about trying to distance themselves from West Texas, then later touting their Texas bona fides for jurors.

"I would view it as something that people ought to be thinking about," Tomasulo said. "If you're going to be going to trial here, you should be thinking about whether you're saying something right now that you'll wish you hadn't said."

#### Virus Precautions Were in Effect

There have only been a few in-person jury trials in patent cases during the coronavirus pandemic.

Attorneys said there were a number of precautions taken in the courtroom, including spacing the seven jurors throughout the jury box. The room was well-ventilated, and there was plexiglass around the witness stand. (Tomasulo described it as looking something like a dunk tank.)

Albright also encouraged social distancing, and masks were prevalent throughout the courtroom. Jurors and spectators wore them. The judge did, too, when a witness was on the stand.

Nall said the environment felt safe and jurors seemed "very comfortable." Some attorneys had previously wondered how masks and other virus precautions would change the dynamics of the courtroom. Nall said she didn't notice a major impact.

"I thought the tradeoff of having witnesses not have masks and having the lawyers not have masks seemed like a good balancing," Nall said.

(Updates in 3rd paragraph with jury verdict. An earlier version corrected the spelling of the name Nall in the penultimate and final paragraphs.)

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