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## Roku Tells WDTX Patent Jury Its Tech's Web Access Is Key

By **Katie Buehler**

Law360 (October 5, 2020, 6:53 PM EDT) -- Roku Inc. told a Texas federal jury Monday that during a weeklong trial, jurors will learn about several differences between the company's RokuTV and a streaming media technology patent it's accused of infringing, kicking off U.S. District Judge Alan Albright's first patent jury trial since his appointment to the bench in September 2018.

Of those nine differences, a substantial one is that RokuTV and similar products use the internet to allow its users to stream and cast media, while MV3 Partners LLC's patent-in-suit calls for the products to use traditional TV signals, Roku attorney Alexander Hadjis of Oblon McClelland Maier & Neustadt LLP told a seven-person Western District of Texas jury. MV3 is accusing Roku of stealing its patented technology and profiting off it since at least 2014.

"Roku pays for patents it wants to use and bring into their products," Hadjis said. "Roku doesn't want to pay for what it doesn't use."

He added that while MV3 owns the patent, it has never used it in a product or prototype, and none of Roku's competitors license the technology for their own products.

MV3 attorney Jonathan Waldrop of Kasowitz Benson Torres LLP said he predicted Hadjis would bring up that argument and told jurors that just because MV3 isn't currently using the patent doesn't mean Roku isn't infringing.

"It's not a defense to trespass and say, 'Well, you weren't using it,'" he said.

The attorneys' oral arguments Monday morning kicked off a four-times-postponed trial in front of Judge Albright that is expected to last until Friday. The trial had originally been scheduled to begin June 1, but was pushed back to **June 29**, then **Aug. 3 or 5**, then Sept. 3 or 4 and finally to **Oct. 5** in light of the COVID-19 pandemic, which has killed more than 200,000 Americans nationwide and more than 16,000 Texans, according to data from Johns Hopkins University.

Everyone in attendance is required to wear a face mask, including attorneys sitting in the well, but not at counsel tables. Attorneys for MV3 and Roku wore face masks while seated at their tables, but removed them to present their openings to jurors. Judge Albright told attorneys, before bringing the jury in, that whether they wore masks the entire time or not was up to them.

"I'm OK with folks at counsel table wearing masks. However, I'm OK with you not wearing them, too," he said.

The seven jurors were seated one seat apart from each other, provided with their own bottle of hand sanitizer and wore face coverings — six wore face masks while a seventh wore just a face shield.

Judge Albright addressed the jurors before starting the trial, telling them his staff had worked for weeks to figure out the safest way to hold the trial, including placing an air purifier by the jury box.

The Western District judge's procedures varied significantly from those of U.S. District Judge Rodney Gilstrap in the Eastern District of Texas. Judge Gilstrap held his **second in-person COVID-19-era trial** the week of Sept. 14, during which the attorneys in the well never wore masks and the jurors only wore face shields. Like his peer in Waco, Judge Gilstrap required viewers in the gallery to wear face masks.

Over the next week, the jurors will hear from MV3 company representatives, satellite engineers, patent attorneys and the inventor himself, Waldrop told the jury. Roku plans to present its senior vice president, a principal engineer and an electric engineer.

Roku had originally challenged the validity of MV3's patent, but told Judge Albright on Thursday it was dropping that defense.

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. Black Thompson and

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, Dan L. Bagatell of Perkins Coie 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 Daniel Siegal, Ryan Davis and Dani Kass. Editing by Orlando Lorenzo.

*Update: This story has been updated to include more details about Judge Albright's patent trial record.*

*Correction: A previous version of this story misidentified Roku's attorney. The error has been corrected.*

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