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Roku Beats \$41M Infringement Claim In Texas Trial

By **Katie Buehler**

Law360 (October 14, 2020, 1:20 PM EDT) -- A Western District of Texas jury on Wednesday cleared Roku Inc. of claims that its RokuTV and Roku Players devices infringed patented media streaming technology, denying the patent holding company's claim for more than \$41 million in past damages.

After about five hours of deliberation following five days of evidence, a seven-person Western District of Texas jury in Waco, Texas, found MV3 Partners LLC didn't prove Roku had infringed any of its claims in U.S. Patent No. 8,863,223. The case was U.S. District Judge Alan D. Albright's first patent jury trial since his appointment to the bench in September 2018.

MV3 alleged Roku had infringed its patent ever since it was issued in October 2014 and owed more than \$6 million for the screen mirroring technology its devices use and roughly \$35 million for the screen casting technology. Roku argued to the jury throughout the trial that the technology its devices use is leaps and bounds beyond MV3's patent.

"We are pleased with today's non-infringement verdict which vindicates our position that Roku has no liability to MV3 Partners LLC in this case," Joe Hollinger, Roku's vice president of litigation and intellectual property, said in a statement. "We appreciate the efforts of the court and jury during these challenging times."

Counsel for both parties didn't immediately respond to requests for comment Wednesday.

During closing arguments Wednesday morning, MV3 attorney Jonathan K. Waldrop of Kasowitz Benson Torres LLP urged the seven-person jury to deliver justice for the six years of alleged infringement, echoing pleas for justice he made in his **opening statements** in the case Oct. 5.

"The courtroom is packed for you to answer these questions," Waldrop told the jury, pointing to the gallery.

The three wooden benches on each side of the gallery had been taped off to allow 6 feet between each seat, technically limiting the maximum occupancy to 16 people. But attorneys and observers flouted the social distancing measures — even adjusting the blue tape that marked off the appropriate distance — to allow for about 26 people to watch closing arguments Wednesday morning.

Roku, denying infringement, told the jury its products don't use MV3's patented technology, but an advanced version of it.

"They are to MV3's patent like email is to a fax machine," Roku attorney Alexander Hadjis of Oblon McClelland Maier & Neustadt LLP said. "Or like word-processing computers [are] to a typewriter. We wouldn't apply a typewriter patent to a computer."

Hadjis told the jury that while he believes Roku is not infringing the patent, damages should be limited if the jury does find infringement. He said damages of no more than \$1.5 million would better correspond to the amount of revenue the company earns from the allegedly infringing technology.

Roku has paid no more than \$150,000 for another screen mirroring technology deal, Hadjis said. He said MV3 wrongly used revenue from the company's other business to calculate the requested damages, which he said are roughly 277 times more than what Roku has paid other companies for similar technology.

Judge Albright told the parties he thought the trial went well.

"I think the lawyers are exceptional," he said before bringing the jury into the courtroom. "I think the witnesses are exceptional. All I have to do is sit and referee and let the jury decide. It's the greatest system on the planet."

After closing arguments, once he had dismissed the jury to begin deliberations, Judge Albright complimented the attorneys on their closings.

During the five-day trial, the judge would sometimes interrupt witnesses to remind them to directly answer an attorney's question — a pet peeve of his, according to **statements he made** at the American Bar Association Section of Intellectual Property Law's virtual IP Fall Institute earlier this month. On Tuesday, he told an attorney to skip a question, saying it had already been asked and answered.

The trial was also Judge Albright's first jury trial **during the coronavirus pandemic**, and his safety protocols evolved as the trial progressed.

When the trial started, it was held in a larger courtroom in the Waco, Texas, courthouse and social distancing was left up to the judgment of gallery members. By Tuesday, the court had implemented the blue tape dividers.

The court also posted a notice on the courtroom doors, telling anyone planning to enter that they must fill out a COVID-19 symptoms form to enable contact tracing.

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 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, Dan L. Bagatell of Perkins Coie LLP, David N. Deaconson of Pakis Giotes Page & Burleson PC and Darryl Adams of Slayden Grubert Beard PLLC.

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

--Editing by Marygrace Murphy.

Update: This story has been updated to reflect the verdict and to add counsel information for Roku.

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