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3 Things To Know After Busy WDTX Patent Judge's 1st Trial

By Ryan Davis

Law360 (October 16, 2020, 9:10 PM EDT) -- Now that the first patent jury trial before Western District of Texas Judge Alan Albright has ended with a complete verdict for the defense, here's what attorneys say litigants gearing up for future trials in the burgeoning patent hotspot of Waco can learn from the case.

The trial, at which the jury on Wednesday **cleared** Roku of infringing an MV3 Partners LLC streaming media patent, was closely watched in the intellectual property world since the Western District of Texas is now the nation's busiest court for patent litigation.

Judge Albright, a former Bracewell LLP patent attorney who took the bench in 2018, has **actively promoted** his court as a venue for patent cases, and plaintiffs have responded: nearly 700 patent suits have been filed in the district so far this year, more than any other court.

With many more such trials expected in the years to come, the Roku case was the first opportunity to see how jurors in the district evaluate patent cases, and how Judge Albright's experience will inform his handling of trials. Attorneys who traveled to watch the trial or followed it said they found the experience illuminating.

"This was an historic event — a former patent litigator and trial lawyer who is now a judge presiding over a patent jury trial; I mean, that doesn't happen that often," said Eric Tautfest, chair of the IP department at Texas-based Gray Reed & McGraw LLP, who attended much of the trial. "I think that the way the judge comported himself shows that the excitement is warranted."

Defense Win Likely Won't Curb New Suits

Plaintiffs have been drawn to Judge Albright's court in part because he's indicated he will bring cases to trial quickly and likely won't stay them for reviews by the Patent Trial and Appeal Board. As such, attorneys say the enthusiasm patent owners feel for Waco is unlikely to be dampened by the defendant's win in the first trial.

"That's the million-dollar question everyone is thinking about right now," said Syed Fareed of Baker Botts LLP, who followed coverage of the trial. "Time will tell, but I don't expect there to be a significant change in the number of filings we see in Waco."

"This is just one data point, and I would not say that the outcome here reflects anything one way or the other about the judge or the district," Trautfest added.

And as Judge Albright conducts more trials, it will become clearer if Western District of Texas juries develop a different reputation than those in the Eastern District of Texas, which tend to be viewed as friendly to patent owners.

"I want a few more trials under our belt in the district to get a better feel for if the jury pool is going to produce a little more conservative type of jury than we might be typically used to in Eastern District of Texas cases, where we've seen some pretty significant, high-dollar plaintiff wins," said Victor Johnson of Dykema Gossett PLLC, who has a colleague who attended the trial.

Yet the way MV3's case against Roku proceeded up until the point the verdict was reached is likely to be encouraging to plaintiffs, said Mike Tomasulo, an IP litigator in Winston & Strawn LLP's Los Angeles office who flew to Waco for the trial.

"The case got to a trial; a trial lawyer can't ask for more than that," he said. "If you're trying to file cases on behalf of plaintiffs, anything can happen in a trial."

Eugene Mar of Farella Braun & Martel LLP, who followed the case, said he's also watching see if there's a drop in new suits filed in Waco, or if Roku's victory makes defendants any less likely to aggressively seek to transfer cases to other districts.

"One of the best takeaways is that I think this will lead some companies and perhaps some attorneys to reconsider some of their underlying assumptions," he said. "The verdict shows that this Western District of Texas jury pool will give careful consideration to both sides of the case."

Judge Runs a Tight Ship

Attorneys who were in the courtroom said Judge Albright did an admirable job of keeping the trial on track and making sure the witnesses gave straight answers on the stand.

"You're going to have a judge who's very knowledgeable and very experienced in intellectual property law, having been a trial lawyer himself. He understands the rules of evidence and procedure, and it shows," Tautfest said. "He knows how to handle the courtroom and keep things moving, while at the same time being deferential and respectful to everyone."

One theme was Judge Albright making clear to witnesses that when they were asked a yes or no question, that's how he wanted them to answer.

When they didn't follow that admonition, the judge would "politely interject" and remind them to answer yes or no, Tomasulo said, calling the move "really good for the search for the truth."

"He's not going to let the expert witness rattle off a two-minute answer that gobbles up a lot of your time," he said. "He doesn't want that, and nobody does."

That approach shows the judge is respectful of the jurors' time and wants to keep the trial focused, Mar said.

"There's complicated subject matter being presented, and he wants to make sure the jurors are getting the information they need but also getting to hear the answers to the questions that are being posed," he said.

During the trial, the judge was also strict about witnesses only testifying about material in the expert report. And he worked with the attorneys to resolve disputes while the jury was on a break — and would sometimes stay late to make sure the trial stayed on track.

"Judge Albright really enjoyed himself; I mean thoroughly," said Jennifer Doan of Haltom & Doan, who was in attendance. "It was a delight to see a federal judge who so enjoyed trying a case. He ran a very thorough and efficient courtroom without having a heavy hand."

One moment that caught the attention of observers came when a Roku witness talked about the company's connection to the local community in the district. That led Judge Albright to remark he was struck by the fact Roku had said the case didn't belong in Texas, having sought to transfer it to California.

Future defendants should take that exchange to heart and aim to avoid credibility questions by ensuring their arguments in a motion to transfer aligns with what witnesses might say at trial about local connections, Fareed said.

"It's not a binary determination that just because you moved to transfer before, you shouldn't play up any local connection. But I think you have to perhaps be extra-cautious that whatever the witness is going to testify about doesn't contradict" the motion, he said.

Virus Safety Measures Praised

The Roku case was originally slated to go to trial in June but was delayed multiple times due to the coronavirus pandemic. When it finally got underway, observers said they were impressed by Judge Albright's commitment to enforcing virus safety measures in the courthouse.

"The court did everything it could and will continue to do more to improve the safety of the environment, but it was safe, and I think everyone felt safe," Tomasulo said. "The judge made it very clear it's a priority for him."

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His efforts included making sure everyone wore a mask throughout the trial, apart from the attorneys speaking and the witnesses, who spoke from behind a set of plexiglass barriers that was nicknamed the "dunk tank."

The staff also put tape on seats in the courtroom to promote social distancing and had a sign-in sheet for people to attest they did not have symptoms, and to provide their contact information so everyone in attendance could be notified if someone tested positive.

"I thought that was forward-thinking, and I had not seen that in any other state or federal courthouse I've been in during COVID," Doan said. She added that "it is great to have federal judges take cases to trial and keep the docket moving even during COVID, versus allowing a huge backlog of cases to build up."

Observers said that based on what they saw, they felt very comfortable with Judge Albright's approach to both addressing pandemic safety and managing a patent trial.

"If I had a patent case, I'd have no reservations at all filing it in his court, and if I was a defendant, likewise, I'd have no reservations about appearing in front of him," Tautfest said.

The case was 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 Philip Shea and Emily Kokoll.

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