

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable James Donato, Judge

OPEN TEXT S.A.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. C-13-4843 JD
	)	
ALFRESCO SOFTWARE, LTD,	)	
et al.,	)	
	)	
Defendants.	)	
	)	
OPEN TEXT S.A.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. C-13-4910 JD
	)	
BOX, INC., et al.,	)	
	)	
Defendants.	)	
	)	

San Francisco, California  
Wednesday, June 18, 2014

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND  
RECORDING

\_\_\_\_\_  
\_\_\_\_\_  
(APPEARANCES ON THE FOLLOWING PAGE)

Transcribed by: Echo Reporting, Inc.  
Contracted Court Reporter/  
Transcriber  
echoreporting@yahoo.com

1 APPEARANCES:

2 For Plaintiff:

3 Cooley, LLP  
4 101 California Street  
5 Fifth Floor  
6 San Francisco, California  
7 94111

8 BY: THOMAS J. FRIEL, JR., ESQ.

9 Cooley, LLP  
10 380 Interlocken Crescent  
11 Suite 900  
12 Boomfield, Colorado 80021

13 BY: WAYNE O. STACY, ESQ.

14 BY: PAUL LOOMIS, ESQ.

15  
16 For Defendants:

17 Reed Smith  
18 101 2nd Street, Suite 1800  
19 San Francisco, California  
20 94105

21 BY: JOHN P. BOVICH ESQ.

22 BY: JAMES A. DAIRE, ESQ.

23 Kilpatrick Townsend  
24 Two Embarcadero Center  
25 8th Floor  
San Francisco, California  
94111

BY: A. JAMES ISBESTER, ESQ.

Kilpatrick Townsend  
1100 Peachtree Street NE  
Atlanta, Georgia 30309

BY: AUDRA ANN DIAL, ESQ.

1 Wednesday, June 18, 2014

1:31 p.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: Calling related actions civil 13-4910,  
5 Open Tex S.A. versus Box, Inc. and civil 13-4843, Open Text  
6 versus Alfresco Software, Limited.

7 Counsel, please come forward and state your appearances  
8 for the Court.

9 MR. FRIEL: Good morning, your Honor. Pleasure to  
10 be in your courtroom. Tom Friel, Cooley, LLP. With me  
11 today, Wayne Stacy, also with Cooley. We have in-house Paul  
12 Loomis.

13 THE COURT: All right. Welcome.

14 MR. FRIEL: Thank you.

15 MR. BOVICH: Good afternoon, your Honor. John  
16 Bovich with Reed Smith representing Box. With me is my  
17 colleague James Daire.

18 THE COURT: Welcome.

19 MR. ISBESTER: Good afternoon, your Honor. James  
20 Isbester of Kilpatrick Townsend representing the Alfresco  
21 Defendants. And with me is Audra Dial.

22 THE COURT: Welcome to you too.

23 All right. Let's get lead counsel for each party, all  
24 three of you up, please.

25 Okay. We are on the knife's edge of inefficiency and

1 chaos. So let's see what we can do to bring this together.  
2 I'm going to start with just a couple of organizing  
3 questions. The first is, why are we not consolidating this  
4 for all purposes, including trial? I'll start with the  
5 Plaintiff, Mr. Friel.

6 MR. FRIEL: Yes. I'm happy to address that.  
7 Consolidation for some purposes would be appropriate  
8 pretrial. I think discovery, a Markman proceeding. The  
9 question of consolidating them for trial is really an issue  
10 under the American Invents Act.

11 Before the American Invents Act, we would have probably  
12 sued both parties together or could have, and consolidation  
13 would have been easy. Now the parties are entitled to  
14 separate trials.

15 THE COURT: Well, you can agree to have joint -- a  
16 consolidated trial.

17 MR. FRIEL: Sorry?

18 THE COURT: You can agree to have a consolidated  
19 trial.

20 MR. FRIEL: Yes. That's right.

21 THE COURT: Is someone objecting to that on the  
22 Defense side?

23 MR. ISBESTER: I'm afraid so, your Honor, yes.

24 THE COURT: And why is that?

25 MR. ISBESTER: Two reasons. One is very

1 practical.

2 THE CLERK: Counsel, move in front of the mic,  
3 please.

4 THE COURT: Remember we're electronically  
5 recorded, so you have to state who you are every time.

6 MR. ISBESTER: James Isbester on behalf of  
7 Alfresco, your Honor.

8 Alfresco and Box are, of course, close competitors.  
9 And there is some concern that in a consolidated trial, it  
10 would be very difficult to maintain the confidentiality of  
11 materials from each other. That's the practical --

12 THE COURT: I'm not sealing courtrooms for trial.  
13 This is a public -- this is an open courtroom. So anybody  
14 from Box can walk in and watch the trial.

15 MR. ISBESTER: Your Honor, I appreciate your  
16 giving us that -- that heads up. May I ask that you at  
17 least allow us to make presentation of particular -- that  
18 particular portions of the trial or particular portions of  
19 the record be --

20 THE COURT: We're not going to do that right now.  
21 But as a general proposition --

22 MR. ISBESTER: Some later date.

23 THE COURT: -- courtrooms in the United States are  
24 open to the public, and it's a very high threshold to close  
25 them. So even if we got to that point, it would be for a

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.