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Roku's Trial Delay Request OK'd By 'Surprised' Texas Judge

By [Daniel Siegal](#)

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Law360 (August 10, 2020, 10:19 PM EDT) -- U.S. District Judge Alan D. Albright on Monday again delayed a patent jury trial involving [Roku](#) because of the coronavirus pandemic, noting his surprise this time that Roku's attorneys had asked for the case to start in October because of persistent safety concerns.

The jury trial in the Western District of Texas — where MV3 Partners LLC is accusing Roku of infringing its streaming media patent — has already been delayed multiple times. The trial was set to start on June 1, June 29, [Aug. 3 or 10](#), and most recently Sept. 3 or 4, but each time Judge Albright pushed it off due to the pandemic.

During Monday's phone conference, Judge Albright agreed to scrap the September start date and find a new one for the future, possibly in October, according to minutes of the conference in the court docket.

"The court announced that the trial may go forward in September. The defendant voiced that due to the current pandemic and the numbers associated with it in Waco, that their clients feel it would be possibly unsafe for their health and they would like the trial to be moved further out — possibly October," the minute entry said. "The court was surprised as he thought everyone was on board with moving forward in September."

In a three-page letter filed with the court on Sunday, Roku told Judge Albright that it had serious concerns about having a jury trial in the Waco region right now. The company expressed special concern that the trial is not just a local matter, but one that brings in attorneys from both the west and east coasts who will have to meet frequently in person to prepare for trial.

"As a result, and irrespective of each team member's possible exposure due to his or her travel, lodging, and living circumstances, each team member's chances of exposure will be increased since the other team members

will have experienced their own travel, lodging, and living circumstances," Roku's letter said.

Roku added that it has team members who are at an "enhanced risk" due to underlying health conditions, and that it should not be forced to conduct the trial without these people.

Monday's scheduling decision also comes after Western District of Texas Chief Judge Orlando Garcia on Thursday [again delayed](#) the resumption of in-person trials in his district. He ordered that all civil and criminal bench and jury trials through Sept. 30 be continued.

Roku's letter quoted Judge Garcia's order in noting that there have been thousands of confirmed cases of coronavirus in the Western District of Texas, and the order "makes it clear that jury trials should not be held if they would 'compromise the health and safety of court personnel, litigants, counsel, law enforcement, witnesses, and jurors.'"

Judge Albright's law clerk Austin Schnell told Law360 on Monday that Judge Garcia's order "allows for individual divisions to hold jury trials if the most senior district judge in that division determines they may be held safely," and that Judge Albright is prepared to hold trials in September.

MV3 sued in October 2018, alleging Roku TVs and some of the company's media players — the Roku Streaming Stick, Roku Ultra and Roku Express — infringe its patent on a system that streams media content from a mobile phone to larger displays such as televisions.

Attorneys for the parties also did not immediately respond to requests for comment on Monday.

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. Blake 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](#), 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 Ryan Davis and Dani Kass. Editing by Adam LoBelia.

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[MV3 Partners LLC v. Roku, Inc.](#)

Case Number

[6:18-cv-00308](#)

Court

Texas Western

Nature of Suit

Patent

Judge

[Alan D Albright](#)

Date Filed

October 16, 2018

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Patents

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