

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

MAXELL, LTD. )  
 ) DOCKET NO. 5:16cv179  
-vs- )  
 ) Texarkana, Texas  
 ) 8:48 a.m.  
ZTE USA, INC. ) June 25, 2018

TRANSCRIPT OF TRIAL  
MORNING SESSION  
BEFORE THE HONORABLE ROBERT W. SCHROEDER III,  
UNITED STATES DISTRICT JUDGE,  
AND A JURY

A P P E A R A N C E S

FOR THE PLAINTIFF:

MR. JAMIE B. BEABER  
MAYER BROWN LLP  
1999 K Street, NW  
Washington, DC 20006

MR. GEOFFREY P. CULBERTSON  
PATTON TIDWELL & CULBERTSON, LLP  
2800 Texas Blvd.  
Texarkana, TX 75503

COURT REPORTER: MS. CHRISTINA L. BICKHAM, RMR, CRR  
FEDERAL OFFICIAL COURT REPORTER  
300 Willow, Ste. 221  
Beaumont, TX 77701

Proceedings taken by Machine Stenotype; transcript was  
produced by a Computer.

1 FOR THE PLAINTIFF:

2

MR. ALAN GRIMALDI  
3 MR. KFIR B. LEVY  
MR. JAMES A. FUSSELL III  
4 MR. BRYAN C. NESE  
MR. WILLIAM J. BARROW  
5 MS. TIFFANY MILLER  
MR. BALDINE B. PAUL  
6 MR. SAQIB J. SIDDIQUI  
MR. CLARK S. BAKEWELL  
7 MAYER BROWN LLP  
1999 K. Street, NW  
8 Washington, DC 20006

9

10

11 FOR THE DEFENDANT:

12

MR. ERIC H. FINDLAY  
13 FINDLAY CRAFT PC  
102 N. College Ave., Ste. 900  
14 Tyler, Texas 75702

15

MS. CALLIE A. BJURSTROM  
16 MR. HOWARD N. WISNIA  
MS. NICOLE S. CUNNINGHAM  
17 MR. SARA J. O'CONNELL  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
18 501 W. Broadway, Ste. 1100  
San Diego, CA 92101-3575

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 (Jury out.)

3 THE COURT: All right. We're on the record back in  
4 chambers. I think it's about 8:45. Good morning to  
5 everybody.

6 All got some rest this weekend?

7 MR. BEABER: A little bit.

8 THE COURT: We have a number of things we need to  
9 discuss.

10 First, you probably heard in the courtroom we lost  
11 a juror over the weekend.

12 MS. CUNNINGHAM: No.

13 THE COURT: Mr. Grissom, Juror No. 3. Apparently,  
14 his wife was having some medical problems and was in the  
15 emergency room yesterday. And I don't know the precise  
16 details of what the issue is or what his situation is, but  
17 apparently he's going to be unable to continue in the trial.

18 I asked Mrs. Schroeder to reach out to him, and she  
19 spoke to him just a -- just a while ago just to verify that  
20 there was not any way he could be back and continue to serve.

21 So I will be glad to answer any questions. You all  
22 really know at this point about all I know, so I'm not sure  
23 that there's much more that I can tell you.

24 This is the first time this has happened to me, so  
25 I'm unsure exactly what to do other than to excuse him. We

1 obviously have seated eight. That leaves us with seven.  
2 We'll keep our fingers crossed that we don't lose an  
3 additional juror before it gets submitted for deliberations.

4 So that's what I know about that.

5 Any questions, comments, concerns about that?

6 I know that, Mr. Wisnia, the issue you raised on  
7 Friday afternoon with respect to the shadow juror -- I saw  
8 the filings yesterday with respect to that. I've reviewed  
9 both parties' filings. I'd be glad to hear anything in  
10 addition you all want to add to it, but I think I understand  
11 in general what -- what the concerns are.

12 MR. WISNIA: Your Honor, the -- Howard Wisnia.

13 The only additional point I would raise, which I --  
14 we didn't include in the briefing is on this locked room  
15 issue. If you may recall, we had that discussed in the  
16 brief.

17 10(k) of the protective order specifically provides  
18 some further information on this. And it reads as follows:  
19 If the receiving party's outside counsel, consultants, or  
20 experts obtained printouts or photocopies of source code  
21 material, the receiving party shall ensure that such outside  
22 counsel, consultants, or experts keep the printouts or  
23 photocopies in a secured, locked area in the offices of such  
24 outside counsel, consultants, or experts.

25 So the reference we believe in 10(e) to the locked

1 room is a reference to 10(k).

2 Thank you, Your Honor.

3 THE COURT: Okay. Anything you all --

4 MR. FUSSELL: Well, I would -- I would just comment  
5 on that.

6 Your Honor, their reading of this is essentially  
7 that we were to keep the source code in a locked room in our  
8 offices, give them two days' notice each time that somebody  
9 reviewed the code for the first time. Then we were supposed  
10 to log in and log out anytime anybody went in and out of that  
11 source code room, if you will, locked room.

12 That -- Mr. Wisnia knows that has not been the  
13 practice throughout this case. He raises this for the first  
14 time now that they have an issue with our jury consultants.

15 Mr. Wisnia took the deposition of every one of the  
16 experts in this case, and he knew that they had reviewed the  
17 source code beforehand. He asked them questions -- extensive  
18 questions about their review of the source code, and he knew  
19 that he -- they had never once received two days' notice  
20 before many of those source code reviewers had reviewed the  
21 source code.

22 Now he's taken a different position, trying to  
23 defend, frankly, the absurdity of the position that they've  
24 taken on -- with respect to this juror consultant issue.

25 I just want to raise that with the Court because

# 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.