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

MAXELL, LTD.)
) DOCKET NO. 5:16cv179
-vs-)
) Texarkana, Texas
) 8:30 a.m.
ZTE USA, INC.) June 27, 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

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

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Good morning. Be seated.

5 Do we have anything we need to raise before we have
6 the jury brought in?

7 MR. FINDLAY: Just very quickly, Your Honor. There
8 are a couple issues. Only one, I think, needs to be
9 addressed immediately.

10 This has to do with an exhibit that Mr. Beaber was
11 using to cross-examine Mr. Andrews with yesterday. This is
12 PX299. This is the claim chart that Maxell purportedly gave
13 to ZTE Corp about the '317 patent and the Fury -- and you may
14 recall, I think Mr. Beaber was asking Mr. Andrews about that
15 it met most of the limitations, et cetera.

16 We have a MIL, an agreed MIL in the case that no
17 one should talk about or raise evidence regarding dropped
18 claims of infringement or invalidity.

19 I'm not suggesting that Mr. Beaber violated that
20 MIL, but I think this gets close to it because the Fury is
21 not an accused product in this trial, Judge, and I think we
22 have to have the ability to redirect Mr. Andrews on that
23 point to clarify that, look, this claim chart may have said
24 whatever it said, but here in front of this jury the '317 --
25 I mean, the Fury, excuse me, is not accused of infringing the

1 '317, and I don't want us to walk on that MIL. And so I'm
2 seeking guidance from the Court.

3 THE COURT: Mr. Beaber.

4 MR. FINDLAY: And it had been accused perviously.

5 THE COURT: I'm sorry?

6 MR. FINDLAY: It -- it had been accused in the case
7 previously.

8 THE COURT: Right, sure.

9 MR. FINDLAY: It was dropped, so I don't want to
10 walk on that MIL.

11 THE COURT: Right.

12 MR. FINDLAY: Thank you.

13 MR. BEABER: Your Honor, to be clear, the
14 discussions between Maxell and ZTE with respect to this
15 document dealt with an entire portfolio of patents, correct?
16 And I think that's clear from Mr. Nakamura's testimony.

17 So the use of this document and the Fury -- the
18 Fury was representative of all of ZTE's products in those
19 discussions, including the ZTE ZMAX 2 phone.

20 So I don't have any problems with the
21 cross-examination. I think the document is already in
22 evidence. But I do think that, you know -- I didn't come
23 close to violating the MIL.

24 Claim 1 of the '317 patent is in there. That was
25 the focus of the discussions. And I think it's clear from

1 the other testimony that there is a portfolio of patents and
2 this was representative of that.

3 THE COURT: You -- you're certainly entitled to
4 redirect the witness on it. I don't think there's any
5 dispute about that.

6 MR. FINDLAY: On the -- on the Fury not being
7 accused. Thank you, Judge.

8 THE COURT: All right. What else?

9 MR. FINDLAY: There is one other issue I would like
10 to raise very quickly.

11 We are concerned -- if I can grab the transcript
12 from yesterday.

13 I think Mr. Beaber, respectfully, yesterday in his
14 cross of Mr. Andrews, tried to bring in and suggest to the
15 jury that ZTE Corp is here in the courtroom today, in a way
16 that was more blatant than what they've done earlier.

17 You may recall there have been at least ten
18 references to a Chinese mother ship, which I don't think was
19 inappropriate, although I don't know whether it directly
20 violated the non-disparaging MIL.

21 But now we've got a situation where it's kind of an
22 attempt at death by a thousand cuts. He asked Mr. Andrews:
23 You understand you're retained, and here on behalf of ZTE USA
24 and ZTE Corp, you're testifying on behalf of both of them
25 here today, correct?

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