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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  
 ) 1:03 p.m.  
ZTE USA, INC. ) June 27, 2018

TRANSCRIPT OF TRIAL  
AFTERNOON 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: Please rise for the jury.

4 (Jury in.)

5 THE COURT: Mr. Barrow, you may cross-examine the  
6 witness.

7 MR. BARROW: Thank you, Your Honor.

8 ANDREW WOLFE, PH.D., DEFENDANT'S WITNESS, SWORN

9 CROSS-EXAMINATION

10 BY MR. BARROW:

11 Q. Dr. Wolfe, welcome back.

12 A. Good morning -- good afternoon.

13 Q. Yeah. I thought it would be in the morning, too, so I  
14 understand.

15 So just before we start, I'm going to get right  
16 into it. We're running short on time. So, you know, please  
17 try to keep your answers brief. Your counsel will have the  
18 opportunity to do a redirect and give you the opportunity to  
19 clarify anything you wish to clarify. Okay?

20 A. I will do my best.

21 Q. Thank you.

22 Okay. So I listened to your direct testimony and,  
23 you know, I have to be honest, I'm a little bit confused  
24 because my understanding is that your initial position was  
25 that limitation 1(a) of the '794 patent was not practiced by

1 ZTE's phones, but it sounds like your new opinion is that  
2 only limitations -- your -- your non-infringement opinions  
3 only pertain to 1(b) and 1(c).

4 So could you please clarify that, what your current  
5 position is?

6 A. Sure. In addition to what I discussed today, I have an  
7 additional reason why these phones don't infringe, and it  
8 is -- it is with respect to the term "function devices." It  
9 is both legally and technically complicated, so out of  
10 respect for the jury's time and the Court's time I didn't go  
11 into it today. But I can explain it if you like. It is  
12 complicated.

13 Q. So I actually have some questions on that, so I think we  
14 actually might get into that a little bit.

15 MR. BARROW: Mr. Ebersole, could you please bring  
16 up the cross slides that -- that we prepared.

17 Q. (By Mr. Barrow) Okay. So, Dr. Wolfe, this is one of the  
18 first slides that you talked about. This shows the claim  
19 constructions that you followed, right?

20 A. Yes.

21 Q. Would you agree with me that these claim constructions  
22 represent the rules of the game, so to speak?

23 A. Well, some of them. As I said before, this is the  
24 Court's instruction to us as to what certain words in the  
25 claim mean. And we use plain and ordinary meaning, as I

1 explained before, for the other words, and -- and that's what  
2 I did.

3 Q. You said "some of them." So are you saying that you  
4 followed some of the Court's constructions but not -- not all  
5 of them?

6 A. No. I said that the Court construed some of the words  
7 in the claim --

8 Q. And you followed those instructions --

9 A. I'm sorry. And for the remaining words in the claim I  
10 used the plain and ordinary meaning in the context of the  
11 claim and specification.

12 Q. Sir, did you follow the Court's constructions?

13 A. Absolutely.

14 Q. Okay. And so let's go to first, limitation function  
15 device. And the first rule is that the function device is  
16 required by claim 1 of the '794 patent, must have the  
17 structure of either a modem device, an audio communication  
18 device, a videophone device, or an equivalent thereof, right?

19 Isn't that the rule?

20 A. Yeah. But my understanding --

21 Q. That's not the rule?

22 MS. CUNNINGHAM: Your Honor, I object to the extent  
23 Mr. Barrow is interrupting the witness's testimony.

24 THE COURT: Give him a chance to respond.

25 MR. BARROW: Absolutely, Your Honor.

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