

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
) 8:17 a.m.
 ZTE USA, INC.) June 29, 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 COURT SECURITY OFFICER: All rise.

4 THE COURT: Please be seated.

5 Good morning, everyone.

6 Okay. We had a productive informal charge
7 conference back in chambers last night after many of you all
8 left, and worked through a number of objections, and the
9 counsel were able to sort of highlight the major differences
10 between the parties. We did make some progress.

11 And when we concluded, the counsel, Mr. Levy and
12 Ms. O'Connell, endeavored to work out their differences. And
13 I think on many of those they were able to -- to do that and
14 resubmitted revised proposed jury instructions to us early
15 this morning.

16 So I have taken a look at those. And, obviously,
17 subject to the argument on the motions for judgment as a
18 matter of law, we'll make some final changes to those
19 proposed jury instructions and get those completed.

20 And then after that, I will give you an opportunity
21 to put any objections -- any remaining objections on the
22 record.

23 There was one issue, and I don't know -- and I
24 notice Ms. O'Connell is not in the courtroom. I don't know
25 if someone is prepared to address instructions.

1 MR. FINDLAY: I will, Your Honor. She had a family
2 emergency and was called away.

3 THE COURT: Oh, okay. All right.

4 Ms. Haley, I think, has a copy of the 101
5 instruction that we have -- obviously, subject to the rulings
6 on the motions for judgment as a matter of law, is our sort
7 of preliminary take on what that instruction would look like.

8 And what we did in principal part is to take out
9 the section -- there was a sentence that read: To be
10 well-understood, routine, and conventional means that the
11 claim elements were widely prevalent or in common use in the
12 relevant industry.

13 And I just -- I know there's some source -- the
14 source, apparently, is some USPTO guidance on that, but
15 there's not any Federal Circuit authority that's been
16 provided for that phrase, "widely prevalent or in common use
17 in the relevant industry" language.

18 Mr. Findlay, can you help me on that?

19 MR. FINDLAY: I'm comparing that language with the
20 Aatrix Software case, Your Honor, and I don't have anything
21 more I could add other than that case.

22 THE COURT: Very well.

23 MR. FINDLAY: So subject to the JMOLs and
24 preserving the objection, I understand the Court's position.

25 THE COURT: Okay. Very well.

1 MR. FINDLAY: Thank you.

2 THE COURT: And then likewise -- you can stay
3 there, Mr. Findlay, if you want to -- I did take out the
4 sentence -- the next sentence primarily because it's
5 confusing and that it seems to imply the jury must regard
6 statements in the specification when considering 101.

7 The sentence that was removed read: Your
8 determination must depend upon the combination of the claim
9 elements in the patent and not statements in the
10 specification of the patents.

11 If -- if the statement is geared towards telling
12 the jury that they have to look at the -- you know, at the
13 claim to decide whether the claim elements are -- are, you
14 know, well-understood, routine, that -- it seems to me that
15 concept is already, you know, well covered in the previous
16 sentence that says: You must decide if the elements in each
17 of these claims, taken individually or as a combination,
18 involve well-understood, routine, and conventional activity.

19 MR. FINDLAY: That's -- that's fine.

20 THE COURT: Is that all right with you all?

21 Okay. Maybe at this time what we should do is hear
22 argument on the motions for judgment as a matter of law.

23 I've told the jury we'll start as -- as close to
24 8:45 as we possibly can, so I encourage the parties to make
25 their arguments as concise as possible. But whoever would

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.