

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

Judge Robert W. Schroeder III

VIRNETX INC., et al

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V.

§

CIVIL NO. 6:12cv855

§

APPLE INC.

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MINUTES FOR FINAL PRE-TRIAL CONFERENCE
HELD BEFORE JUDGE ROBERT W. SCHROEDER III
JANUARY 19, 2016

OPEN:10:05 am

ADJOURN: 3:47 pm

ATTORNEY FOR PLAINTIFFS: See Attorney Sign-In Sheet

ATTORNEY FOR DEFENDANTS: See Attorney Sign-In Sheet

LAW CLERK: Jenna Rea

COURTROOM DEPUTY: Betty Schroeder

COURT REPORTER: Brenda Smith

10:05 am Case called, parties announced ready, Court introduces staff and welcomes parties; Court suggests he goes through some logistical issues with respect to trial; would like to hear argument to clarify a few things; will take up motions in limine and then objections to exhibits; we will have until 4:00; jury selection and trial will begin on January 25; explains jury selection process; Mr. Johnny Ward asks when they can get list; Court says they can have them Friday afternoon; parties need to contact Gleith Green, Clerk's Office; trial schedule for first day will be opening statements after lunch and then testimony to begin; the course of the trial schedule will be starting at 9:00 with witness on stand, jury in box ready to go; Court will be here by 8:00, take up any matters no later than 8:30; Court questions if any trial management issues remain; Mr. Jason Cassidy responds; advises Court that the following will be tried - patent '135, claims 1, 3, 7, 8; '151, claim 13; '211, claims 36, 37, 47, 51; and '504, claims 1, 2, 5, 16, 21, 27; Mr. Greg Arovas advises Court regarding time needed; believes they can do it in 19 hours; Mr. Cassidy would like 12 hours; Mr. Arovas responds; Mr. Brad Caldwell responds; Court responds with 15 hours to present case, if redundant or

wasting time, will reduce that amount; Court advises parties to have exhibit lists every day, plus previous day's list; Mr. Jones asks question regarding cumulative; Court responds; Mr. Daniel Pearson asks about admitting en masse on first day; Court responds; Mr. Arovas questions Court regarding en masse; Court responds; Court explains practice of sealing courtroom; each side responsible for complying with the rule; on last day of trial, Court will supply lunch to jury; parties can submit snacks and drinks; agreed juror notebooks will be allowed; Court asks if parties have discussed witness questioning by the jury; Mr. Cassidy responds; Court is inclined to do it; Mr. Arovas advises they are discussing it; Mr. Caldwell responds; Court responds; Court advises parties of electronic devices policy in courtroom; cell phones can be brought in but must be turned off and put away; schedule will be 9:00; one morning break around 10:15 or 10:30, for about 15 minutes; go to around noon; lunch for an hour and fifteen minutes; come back around 1:15, break around 3:15 or 3:30, about 15 minute break; go until about 5:00; if having to break early, will try to make time up the next day; Mr. Caldwell asks about opening - 30 minutes would work; Court responds; Mr. Arovas responds - an hour, maybe 45 minutes; Court will let the parties know later, but will probably go 45 minutes; Court asks about closing; Mr. Caldwell and Mr. Arovas respond; Court is inclined to wait; Court would like to hear argument on Motion to Clarify

- 10:48 am Mr. Caldwell argues Motion to Clarify (dkt. #369)
- 11:05 am Court questions Mr. Caldwell; Mr. Caldwell responds
- 11:11 am Mr. Arovas responds
- 11:31 am Mr. Caldwell responds
- 11:39 am Court appreciates the presentations given; Court rules that the motion will be GRANTED; does not incorporate the domain name service; for purposes of trial, the focus should be on factual issues
- 11:42 am Court addresses two housekeeping matters; deadline for filing things during the course of trial shall be filed by 10:00 pm, response no later than 7:00 am the following morning; with respect to bench conferences - any time used at a bench conference will be deducted from the losing party; with respect to the Court's request that the parties discuss a proposed remedy for the 29 page motion for judgment of no equitable conduct filed by plaintiffs- do parties want to be heard on that?
- 11:44 am Mr. Mike Jones responds
- 11:47 am Mr. Pearson responds; Court responds
- 11:49 am Mr. Jones responds

- 11:50 am Will break for lunch and take up motions in limine after lunch; Court believes it would have been the better practice to seek leave before filing motion; Court will reduce Plaintiff's opening statement time from 45 minutes to 30 minutes
- 11:51 am Recess
- 1:05 pm Court would like to hear argument on motions in limine, five minutes a side with no rebuttal; Mr. Arovas advises Court that an order has been agreed upon; Mr. Cassidy advises that some of them have been worked out
- 1:06 pm Mr. Arovas begins with the motion relating to the proceedings of the 417 trial (Apple I)
- 1:12 pm Mr. Ward responds; Court responds
- 1:19 pm Court questions Mr. Ward; Mr. Ward responds
- 1:20 pm Mr. Arovas responds
- 1:24 pm Court advises that a lot of this will be flushed out at trial, a number of sidebars. Don't think it necessary to retry the case; preliminary ruling is to DENY VPN On Demand; same with FaceTime; invalidity GRANTED; with respect to damages GRANTED; change in trial counsel GRANTED; Mr. Ward what about change in witnesses; Mr. Ward responds; will have to approach on that
- 1:28 pm Mr. Cassidy argues VirnetX's "D" - any reference to any litigation
- 1:32 pm Mr. Arovas responds
- 1:38 pm Court - will have to carry to trial; seems like parties should be able to come to an agreement on this (Apple X)
- 1:39 pm Mr. Caldwell questions Court; Court responds; if still a gap regarding CISCO will address it before opening
- 1:40 pm Mr. Jones argues Apple II relating to expert Dr. Wecker
- 1:44 pm Mr. Pearson responds
- 1:46 pm Court questions Mr. Pearson; Mr. Pearson responds; Court GRANTS motion
- 1:47 pm Mr. Robert Appleby argues part that relates to damages expert Mr. Weinstein
- 1:50 pm Mr. Cassidy responds; motion GRANTED
- 1:51 pm Mr. Arovas sees no reason to argue part pertaining to Dr. Jones

1:52 pm Mr. Caldwell argues VirnetX's "A"

1:56 pm Court questions Mr. Caldwell; Mr. Caldwell responds

1:59 pm Mr. Arovas responds

2:03 pm Court questions Mr. Arovas; Mr. Arovas responds; Court responds - will GRANT motion; if we get to a point and want to discuss other patents, approach and we will take it up at that time

2:05 pm Mr. Arovas continues; Mr. Caldwell responds; Mr. Arovas responds; Court - for purposes of opening, let's keep it at a very high level; Mr. Arovas responds

2:07 pm Mr. Appleby argues Apple III

2:10 pm Mr. Justin Nemunaitis responds

2:11 pm Court GRANTS motion

2:12 pm Mr. Nemunaitis questions Court; Court responds

2:14 pm Mr. Cassidy argues VirnetX's "E"; advises that subparts 3 and 4 are agreed

2:15 pm Mr. Appleby responds; thought they had an agreed MIL; Mr. Cassidy responds; Court GRANTS motion

2:18 pm Mr. Cassidy argues another subpart; Mr. Appleby responds; Court WILL HOLD ruling until results of deposition

2:19 pm Mr. Cassidy argues motion in limine regarding derivation; Mr. Appleby responds Court wants parties to meet and confer to resolve this one

2:21 pm Mr. Jones argues Apple IV

2:24 pm Mr. Jason McManis responds

2:26 pm Court questions Mr. McManis; Mr. McManis responds; Mr. Caldwell responds

2:27 pm Mr. Jones responds; Court questions Mr. Jones; Mr. Jones responds

2:29 pm Court would like to see selected portions of transcripts from Mr. Jones; not inclined to rule differently than Judge Davis

2:30 pm Mr. Cassidy argues VirnetX's "F"

2:32 pm Mr. Appleby responds

- 2:37 pm Mr. Cassidy responds; motion will be granted
- 2:38 pm Mr. Jones argues Apple V
- 2:41 pm Mr. Chris Stewart responds; motion will be DENIED
- 2:43 pm Mr. John Summers argues VirnetX's "H"; will not argue subsection B and C which leaves A
- 2:48 pm Mr. Joseph Loy responds; Court will DENY motion; will hear objections during trial as it arises and the plaintiff will need to be prepared to show specific questions and answers from the deposition where the witness was blocked from being asked or being allowed to answer the question
- 2:52 pm Ms. Jeannie Heffernan argues Apple VI
- 3:00 pm Court questions Mr. Pearson; Mr. Pearson responds to Court and then responds to Ms. Heffernan's argument
- 3:03 pm Court believes this is a Daubert motion and has already ruled on it; will DENY but if we get to a point where Apple feels like we're into testimony that feels prohibited, we will have a sidebar and deal with it at the time.
- 3:03 pm Break
- 3:23 pm Mr. Arovas advises that there are some agreements; a couple of open issues
- 3:23 pm Mr. Loy states that VirnetX's "I" is agreed to; discusses agreement regarding VirnetX's "J"; Mr. Cassidy replies to agreement; Court asks exactly where are we; Mr. Cassidy replies; VirnetX rejects offer regarding Mr. Van Pelt; Court responds; Mr. Cassidy replies; Court will DENY VirnetX's "J";
- 3:29 pm Mr. Loy advises that deposition on January 24 will not exceed two hours; agreement on no evidence, testimony, or reference to any former or current Apple employee or executive as well as VirnetX's employees or executives
- 3:30 pm Mr. Cassidy advises that VirnetX's "B" is agreed on; Mr. Deoras agrees
- 3:31 pm Ms. Leslie Schmidt argues Apple VII
- 3:36 pm Mr. Cassidy responds; Court questions; Mr. Cassidy responds; Court GRANTS motion
- 3:40 pm Mr. Caldwell responds to Motion in Limine regarding Mr. Van Pelt; Court questions Mr. Caldwell; Mr. Caldwell responds; Mr. Arovas responds; Mr. Caldwell responds

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