

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

MV3 PARTNERS LLC,
Plaintiff

-v-

ROKU, INC.,
Defendant

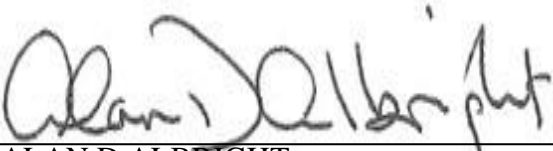
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W-18-CV-00308-ADA

**ORDER REGARDING MOTIONS *IN LIMINE*,
MOTIONS FOR SUMMARY JUDGMENT, AND *DAUBERT* MOTIONS**

Before the Court are the parties' respective motions *in limine*, motions for summary judgment, and *Daubert* motions. The Court held a hearing concerning these motions on June 4, 2020. During that hearing, the Court provided oral rulings on each of the motions. The Court now enters those motions.

SIGNED this 29th day of September, 2020.


ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

MV3's Motions in Limine

Motion	Ruling
MV3's Motion in Limine No. 1 to exclude references to:	
(i) MV3 as a Non-Practicing Entity and Patent Owner	<p>GRANTED.</p> <p>Roku is precluded from raising this topic during <i>voir dire</i> and opening arguments. If Roku seeks to put on evidence about this topic at trial, Roku needs to notify the Court in advance for the Court's ruling on the topic.</p>
(ii) MV3's Prior Litigations Involving MV3 Witnesses	<p>GRANTED.</p> <p>Roku is precluded from raising this topic during <i>voir dire</i> and opening arguments. If Roku seeks to put on evidence about this topic at trial, Roku needs to notify the Court in advance for the Court's ruling on the topic.</p>
(iii) MV3's Attorney Fee Agreements or Payments and/or Non-Payments to its Counsel	<p>GRANTED.</p> <p>Roku is precluded from raising this topic during <i>voir dire</i> and opening arguments. If Roku seeks to put on evidence about this topic at trial, Roku needs to notify the Court in advance for the Court's ruling on the topic.</p>
(iv) How or to Whom a Damages Award to MV3 may be Distributed, Including its Members' Ownership Interests	<p>GRANTED.</p> <p>Roku is precluded from raising this topic during <i>voir dire</i> and opening arguments. If Roku seeks to put on evidence about this topic at trial, Roku needs to notify the Court in advance for the Court's ruling on the topic.</p>

Motion	Ruling
(v) Forum Shopping, Litigation Abuse, or the Western District of Texas as a Popular Venue for Patent Litigation or as an Improper Venue	GRANTED
MV3's Motion in Limine No. 2 to exclude references to:	
(i) Suggestions that a Damages Award may Increase the Price of Roku's Products, put Roku's Manufacturers Out of Business, or Lead to the Loss of Jobs	GRANTED. Roku is precluded from raising this topic during <i>voir dire</i> and opening arguments. If Roku seeks to put on evidence about this topic at trial, Roku needs to notify the Court in advance for the Court's ruling on the topic.
(ii) Licenses for which no Expert has Provided an Opinion that such Licenses are Comparable to a Hypothetical License to the Patent-in-Suit	GRANTED. MV3's Motion in Limine No. 2 was granted as it pertains to <i>voir dire</i> and opening arguments. Use of evidence pertaining to these topics during trial is carried over.
(iii) Prior Judicial Opinions Pertaining to MV3's Expert Witnesses	GRANTED. Roku is precluded from raising this topic during <i>voir dire</i> and opening arguments. If Roku seeks to put on evidence about this topic at trial, Roku needs to notify the Court in advance for the Court's ruling on the topic.
MV3's Motion in Limine No. 3 to exclude References to:	
(i) The Duty of Candor to the U.S. Patent Office or the Issue of Inequitable Conduct	GRANTED Roku is precluded from using evidence related to the duty of candor or inequitable conduct but is not precluded from offering relevant evidence to an issue unrelated to the duty of candor or inequitable conduct but related to infringement, invalidity, or damages in its case-in-chief.

Motion	Ruling
(ii) Disparaging Comments Regarding the Patent Office and its Examiners	GRANTED
(iii) Unified Patents' <i>Inter Partes</i> Review Concerning the Patent-in-Suit.	GRANTED. Roku is precluded from making any references to a parallel proceeding.
(iv) Comparisons of Roku's Accused Devices to Any Prior Art	DENIED and carried over to trial.
(v) Demonstrations of and/or References to Software as "Prior Art" that was Created or Modified after the Filing of the Patent-in-Suit	DENIED and carried over to trial.
(vi) Non-Elected or Non-Identified Prior Art	DENIED and carried over to trial.
(vii) Narrowed Claims (Infringement Claims that were Asserted but Later Dropped)	GRANTED
MV3's Motion in Limine No. 4 to exclude references to:	
(i) Allegations that any of Roku's Patents are Related to and/or Cover the Accused Products	GRANTED. Roku is precluded from raising this topic during <i>voir dire</i> and opening arguments. If Roku seeks to put on evidence about this topic at trial, Roku needs to notify the Court in advance for the Court's ruling on the topic; Roku is restricted from putting in evidence of its patents during trial until the Court can hear the question and make sure the Court approves of it.
(ii) Unreliable Expert Opinions by Drs. Russ and Bovik, and any New Infringement and Invalidity Opinions that were not Disclosed in their Expert Reports	GRANTED-in-part subject to ruling on MV3's Motion to Exclude the Opinions in Dr. Samuel Russ's Rebuttal Expert Report and Dr. Alan Bovik's Opening and Rebuttal Expert Reports.
(iii) Information that Roku Failed to Disclose in Response to a Contention Interrogatory regarding Infringement Defenses	The issue of whether either party is precluded from making an argument in view of alleged discovery deficiencies is

Motion	Ruling
	carried over to trial.
(iv) Dr. Bovik's Testimony Regarding how the Roku Products Operate	GRANTED-in-part subject to ruling on MV3's Motion to Exclude the Opinions in Dr. Samuel Russ's Rebuttal Expert Report and Dr. Alan Bovik's Opening and Rebuttal Expert Reports.
(v) Suggestions that the Roku TV Products and the Roku Streaming Media Players Allegedly Operate Differently with Respect to the Query Limitation	GRANTED to the extent the Court granted any applicable Daubert motion on this topic.
(vi) Alleged Non-Infringing Alternatives that are not Acceptable or were not Available	DENIED.
(vii) Testimony or Arguments Contrary to or Unsupported by the Court's Claim Construction Order	GRANTED.

Roku's Motions in Limine

Motion	Ruling
Roku's Motion in Limine No. 1 to exclude Mr. Jared Abbruzzese's testimony on the content of the patent	DENIED
Roku's Motion in Limine No. 2 to exclude evidence or argument by Jared Abbruzzese, Wayne Barr, and David Marshack about the factual basis and motivation for filing the lawsuit	DENIED
Roku's Motion in Limine No. 3 to exclude testimony about what MV3 intended the patent to cover.	GRANTED
Roku's Motion in Limine No. 4 to exclude testimony and arguments that mischaracterize claim construction outcomes.	GRANTED-in-part, DENIED-in-part subject to ruling on MV3's Motion to Exclude the Opinions in Dr. Samuel Russ's Rebuttal Expert Report and Dr. Alan Bovik's Opening and Rebuttal Expert Reports.
Roku's Motion in Limine No. 5 to exclude evidence or argument by Dr. Dan Schonfeld about what happens in the network during the DIAL operation.	Undecided and carried forward to trial
Roku's Motion in Limine No. 6 to exclude documents, testimony, and evidence regarding indirect infringement prior to the filing date of the complaint.	GRANTED-in-part. MV3 is precluded from raising this topic during <i>voir dire</i> and opening arguments. If MV3 seeks to put on evidence about this topic at trial, MV3 needs to notify the Court in advance for the Court's ruling on the topic. MV3 disputes Roku's assertion that MV3 is precluded from using documents prior to the date of the lawsuit for purposes related to indirect infringement liability.
Roku's Motion in Limine No. 7 to exclude documents, testimony, and evidence regarding direct infringement of Roku TVs	DENIED.

MV3's Daubert Motions

Motion	Ruling
MV3's Motion to Exclude the Opinions in Dr. Samuel Russ's Rebuttal Expert Report and Dr. Alan Bovik's Opening and Rebuttal Expert Reports	
(i) Set Top Box.	GRANTED-in-part. The Court struck the following opinions of Dr. Russ: That a set top box requires the device to be used only with a network that provides the set top box; that a set top box act as an interface to a television; and that a set top box be self-contained.
(ii) Docking port.	GRANTED-in-part. The Court ruled that Dr. Russ cannot opine that a docking port requires a docking station.
(iii) Multicast.	GRANTED-in-part. The Court ruled that Dr. Russ cannot opine that a multicast broadcast is limited to a single sender.
(iv) Adaptive Circuitry	GRANTED-in-part. The Court struck the entirety of Dr. Russ's and Dr. Bovik's opinions related to adaptive circuitry.
(v) Dr. Bovik's Opinions that Criticize the Schonfeld Opening Report Without Explaining Why Dr. Schonfeld is Wrong Render His Opinion Unreliable.	DENIED.
MV3's Motion to Exclude Certain Opinions in the Expert Report of Lauren R. Kindler Regarding Roku's Licensing History and Preferences	DENIED
MV3's Motion to Exclude Certain Portions in Dr. Samuel Russ's Opening Expert Report Regarding Patent Invalidity	DENIED
MV3's Motion to Exclude Certain Opinions in the Expert Report of Robert L. Stoll Relating to Inequitable Conduct	DENIED

Roku's Daubert Motions

Motion	Ruling
Roku's Motion to preclude MV3 and Dr. Dan Schonfeld from relying on the doctrine of equivalents for the "querying the display device" limitation	GRANTED
Roku's Motion to exclude the opinions and testimony of Mr. Roy Weinstein with respect to:	
(i) The survey approach, based on an overbroad survey that did not test the accused functionality	Denied without prejudice to renew at trial. MV3 to segregate and cordon off trial testimony regarding the survey in question.
(ii) Revenue streams unrelated to the patented features	DENIED
(iii) Third-party app approach not based on any scientifically valid methodology	GRANTED
(iv) Bases of the APPU approach led to flawed and overstated royalty rates	DENIED
(v) Lump sum damages figures that are not compensatory measures	DENIED

MV3's Motions for Summary Judgment

Motion	Ruling
MV3's Motion For Partial Summary Judgment Dismissing Roku's Inequitable Conduct Counterclaim and Striking Roku's Inequitable Conduct Affirmative Defense	DENIED
MV3's Motion For Partial Summary Judgment Finding that the Patent-in-Suit is Valid for Satisfying the Written Description Requirement	DENIED without prejudice.

Roku's Motions for Summary Judgment

Motion	Ruling
Roku's motion for summary judgment that:	
(i) Roku TVs do not have a display device that is separate from a mobile set top box	DENIED
(ii) Roku TVs do not query a display device	DENIED
(iii) Roku streaming devices and Roku TVs do not authenticate a user	DENIED
Roku's Request to Strike MV3's request for Enhanced Damages under 35 U.S.C § 284 in the pretrial order as not having been previously and properly pled	GRANTED-in-part, DENIED-in-part. The Court did not strike MV3's claim for enhanced damages. The Court will consider enhanced damages with respect to conduct throughout the course of the litigation.
Roku's motion to exclude the survey opinions and testimony of Dr. Marais and the Marais and Wecker report	DENIED. MV3 will partition off Mr. Roy Weinstein's testimony regarding the survey question.