

Trial Alert: Countdown to Kick-Off – The Case History

SEPTEMBER 23, 2020

After much anticipation, Judge Alan D Albright, the busiest patent judge in the country, will soon preside over his first patent infringement trial since being appointed two years ago on September 18, 2018. The trial will begin on October 5, 2020, with a final PTC on September 23 and jury selection on October 1. The case is *MV3 Partners LLC v. Roku, Inc.*, Case No. 6:18-cv-00308-ADA.

This trial has piqued the interest of litigators, especially those with cases pending before Judge Albright. We will finally get to see what trials will look like in Judge Albright's courtroom. If you are not currently up to date on this case or cannot personally attend the trial—do not fret. In the days before the October 5 trial, we will bring you up to speed by providing thorough summaries on the background of the case, including on the dispositive motions and rulings, as well as claim construction and *Daubert* motions and rulings. We will also provide updates on the final PTC, jury selection, and the “ins and outs” of the trial.

But first, here is a brief summary of the case's factual and procedural history:

- **October 16, 2018:** MV3 sued Roku, seeking monetary damages and prejudgment interest. MV3 alleged that it owns United States Patent No. 8,863,223 (the '223 Patent), which discloses a set-top box that acts as a conduit between disparate data networks and display devices. MV3 asserted that Roku manufactures, sells or distributes products and services that directly and indirectly infringe the '223 Patent.
- **January 8, 2019:** Judge Albright denied Roku's 12(b)(6) Motion to Dismiss MV3's direct infringement claims for lacking the requisite specificity. Roku alleged the complaint lacked sufficiently detailed allegations to support the claim for a direct infringement claim under the doctrine of equivalents. The court declined to weigh in on whether the complaint contained sufficient detail, stating that MV3 will need to proffer its infringement contentions in due course.
- **January 22, 2019:** Roku filed an Answer to MV3's Amended Complaint, denying that it directly or indirectly infringed on the '223 Patent. Roku also asserted three affirmative defenses: 1) noninfringement; 2) invalidity; and 3) inequitable conduct, as well as three counterclaims: 1) declaratory judgment of non-infringement; 2) declaratory judgment of invalidity; and 3) inequitable conduct.
- **June 25, 2019:** Judge Albright denied MV3's Motion to Dismiss and Motion to Strike Roku's inequitable conduct counterclaim and affirmative defense, respectively.

- **July 19, 2019:** *Markman*
- **October 2, 2019:** Judge Albright issued a claim construction Order.
- **June 4, 2019:** Judge Albright held a pretrial hearing on *Daubert* motions and the parties' motions for summary judgment. During this hearing, Judge Albright denied most of the *Daubert* motions, and informed the parties to assert any *Daubert* challenges during *voir dire* of the expert. Judge Albright also heard arguments on the parties' motions for summary judgment, but denied the motions and, in some cases, noted that he will address the issues at the appropriate time at the end of trial.

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[Evan Lewis](#)

[William Logan](#)

[Danielle Williams](#)

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[Evan Lewis](#)



William Logan



Danielle Williams

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