

Trial Alert: Countdown to Kick-Off – Jury Selection

OCTOBER 3, 2020

United States Magistrate Judge Manske presided over jury selection on October 1, 2020 in the long-awaited, and much-discussed, *MV3 Partners LLC v. Roku, Inc.* case. Forty-two potential jurors were brought in, from which a jury of five women and two men was ultimately impaneled. In the room, the jurors were divided into two groups, with 21 jurors most likely to be selected on one side of the room, and the remaining 21 on the other side.

The court spoke first, and after thanking the jurors for their time, read one-page summaries from each of the parties describing what the case is about. The summaries briefly touched on the technologies at issue and introduced the parties to the jury.

Next, the attorneys introduced themselves and their law firms. It speaks to the small-city and small-town nature of the division that, even though the division covers 13 counties, one venire member had worked with one of the attorneys before, and another had lived across the street from another attorney. Notably, although the parties are also represented by counsel from out of state, both parties chose to let their local counsel lead *voir dire*. Both attorneys who spoke emphasized their Waco *bona fides* and their good judgment in marrying Waco natives.

Judge Manske then asked the first 21 jurors to stand up, introduce themselves, state their and their spouse's occupation, and to tell the room what their hobbies were. The most common pastimes included hunting, fishing, reading, and watching television, and Judge Manske usually followed up to ask more specifics about each juror's hobbies. Bovine technologists be warned—one juror said his hobby was “messing with [his] cows,” and the court took a beat before saying it had no further questions because the court did not “know much about cows.”

None of the venire members said they had heard or read any media or press coverage of the case.

Other notable characteristics of the 21 jurors who spoke were that at least six of them had served on some sort of jury before, either civil or criminal. Most held jobs in the trades, service industry, or retail industry. And at least four owned some sort of Roku device, although several others had another kind of streaming device. Several were veterans, which is not surprising given the district's inclusion of Fort Hood, a major Army base.

Each side was given 45 minutes to speak to and question the jury pool. Plaintiff's counsel spoke first. They explained the importance of empaneling an unbiased jury through the lighthearted example of why you would not want a University of Texas Longhorn designing the football uniform of a Texas A&M Aggie, and vice versa. They also

analogized patent rights and patent infringement to land and cases of trespass, likely playing off several juror’s comments about their pride in their homes. The venire members uniformly agreed that they would take some sort of action against a trespasser on their land. Likewise, Plaintiff’s counsel assured the jurors that MV3’s use of the patent-at-issue was not like “house flipping,” perhaps to head off any comment by the Defendant about non-practicing entities. (N.B. on this last point — the Defendants have already agreed not to use any disparaging language such as “patent troll,” but the parties agreed that the issue might come up in, e.g., the damages context).

Defendant’s counsel seized on both of these themes, starting by warning the jury (lightheartedly, as well) that the inventor of the Roku was, in fact, an Aggie. Defendant’s counsel also further developed the land/trespass analogy, and asked the juror pool if it would be right for a jealous neighbor to claim a prime fishing spot on someone else’s property once they had seen how many fish you could catch there. This was also universally condemned. Defendant’s counsel also walked the jury pool through the necessity of finding that each and every element of a patent claim had been infringed before they could make a finding of infringement through several simple examples (e.g., a patent for a soccer ball would not be infringed by a football because it is not round, nor a baseball because it is not hollow).

The court then questioned the jurors if they would have any problem applying the appropriate burden of proof, and a short break was called for counsel to make their strikes. Each party was given four elective strikes. Although one venire member was excused early on because of scheduling concerns, no other juror was struck for cause. The jury of seven was then empaneled and sworn.

The trial begins Monday, October 5, at 9AM.

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