

## Trial Alert: Countdown to Kick-Off – Pre-Trial Rulings on Motions in Limine, Daubert Challenges, and Summary Judgment

OCTOBER 5, 2020

The Court's rulings on the parties' pre-trial motions are summarized in the table in the Court's [order](#).

A few observations from the rulings and the hearing transcript are below. For further observations on the pre-trial rulings, please listen to DaWanna McCray's interview with Danielle Williams.



Regarding inequitable conduct, Judge Albright granted MV3's motion *in limine* to preclude Roku from presenting evidence related to its counterclaim and affirmative defense for inequitable conduct. This means that, in front of the jury, Roku cannot present evidence on MV3's alleged inequitable conduct and its duty of candor and/or lack thereof to the U.S. Patent Office. The parties will instead have a bench trial, after closing arguments and while the jury deliberates. But, the Court will allow Roku to present evidence that touches on its inequitable conduct defense and counterclaim during trial *only if* Roku could provide "some reason why it is relevant to an issue that is not related to inequitable conduct but rather is related to either infringement, invalidity, or damages in its case-in-chief."

Judge Albright also granted MV3's motion *in limine* to preclude Roku from making statements, during *voir dire* and opening, that any of Roku's patents relate to and/or cover the Accused Product (i.e., the "Mobile Set Top Box" described in U.S. Patent No. 8,863,223 (the "223 Patent")). Specifically, Roku expressed an interest in explaining to the jury, during opening statement, that it is "an innovative company with a really cool product," and that Roku "has developed technology [and] has its own patents." The jury may hear, during opening statement, that Roku "is a very inventive company," but Roku is precluded from mentioning its patents at that time. Judge Albright further said he "will be very unhappy if plaintiff objects during [ ] opening argument and vice versa."

The jury also will not hear any evidence relating to forum-shopping, how the damages award will be distributed, or fee agreements. Judge Albright agreed with MV3 and found that this sort of evidence is irrelevant and must be excluded. The parties are likewise precluded from presenting any evidence or argument on the motivation for filing the lawsuit or counterclaims. Along with finding this evidence irrelevant, Judge Albright stated that the reasons for filing the suit are self-explanatory—that is, MV3 believes that Roku infringed on its patent.

The Court is allowing testimony from the inventor of the '223 Patent, Jared Abbruzzese. Judge Albright denied Roku's motion *in limine* to exclude Mr. Abbruzzese's testimony about the content of the '223 Patent. Roku explained that, during his deposition, Mr. Abbruzzese stated that he could not remember the content of '223 Patent, and declined the invitation to read the content of the patent into deposition. Roku argued that it would be unfair for the Court to allow Mr. Abbruzzese to "come into the courtroom and have a deep understanding of what he thinks this patent is all about." Judge Albright denied the motion and stated, "that's why we take depositions," and that, if Mr. Abbruzzese "suddenly is a fountain of knowledge, [Roku] will certainly be able to point out to the jury that at his deposition that wasn't so." But, Judge Albright made clear that Mr. Abbruzzese is "unique," unlike an expert, and "he gets to look at his patent" and study it in preparation for trial.

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