

Federal Circuit Affirms *MV3 v. Roku*

DECEMBER 8, 2021

On November 5, 2021, the Federal Circuit handed down a one-line order summarily affirming the October 2020 jury verdict in the case of *MV3 v. Roku*, presumptively concluding the first jury trial of Judge Albright's tenure in the Western District of Texas.

The \$41 million dispute began when MV3 alleged that Roku's "Roku Players" and "Roku TV" infringed U.S. Patent No. 8,862,223 – a "mobile set top box for streaming media." MV3 specifically argued that Roku's use of "casting" and "mirroring" in both of their devices was covered by the patent's claims. "Casting" allows Roku users to direct any video playing on their mobile device to stream to their TV set, while "mirroring" allows Roku users to project the screen of their device onto their TV set.

In response, Roku told the federal jury that there were nine differences between the patent's claims and Roku's innovations. One such difference was the main subject of this appeal: The patent's use of the term "docking port." Importantly, MV3's patent called for a "mobile set top box for streaming media" using traditional TV signals to operate. Roku's products, on the other hand, utilize the internet to allow its users to "mirror" and "cast." Roku thus requested Judge Albright to issue an instruction asking the jury to interpret the term as requiring a "physical, wired connection." Albright rejected this claim construction order. In its stead, he gave the jury the flexibility to interpret "docking port" according to its "plain and ordinary meaning." Nonetheless, the jury used that flexibility to agree with Roku's interpretation and found non-infringement.

On appeal to the Federal Circuit, MV3 claimed that Judge Albright insufficiently resolved this "hotly contested" dispute and asked for a re-trial. MV3 contended that Albright should have instructed the jury that "docking port" encapsulated both wired and wireless connections. However, the three-judge panel disagreed, concluding that MV3 had waived its right to object to Judge Albright's handling of the construction because it never asked for that form of construction during trial. Judge Todd M. Hughes, during the hearing, told MV3's counsel: "You asked for plain and ordinary meaning. You can't now go back and say, 'Well, we were wrong. You should have adopted our alternative construction.'"

The trial was extensively covered by multiple outlets because of its significance to Judge Albright's career and it taking place during the pandemic. Only seven jurors were selected. Air purifiers were placed in the jury box. Witnesses took the stand surrounded by plexiglass, leading Winston's Mike Tomasulo – who attended the trial in-

person – to observe that it looked like the experts were testifying from a “dunk tank.” Nonetheless, Judge Albright’s handling of his first jury trial was “well organized.” A complicated patent trial, involving relatively novel technology, only took six days. Brevity was noticeably encouraged by Judge Albright to both witnesses and counsel. Absent an unusual grant of appeal, it appears that the case between MV3 and Roku is concluded.

Members of our Waco Watch team – [Danielle Williams](#), and [DaWanna McCray](#) – extensively covered the trial through multiple podcast episodes. You can listen to these episodes through the below links:

Pre-Trial Rulings: Motions in Limine, *Daubert* Challenges, and Summary Judgment.

Day 1: Opening statements and plaintiff’s case-in-chief: Infringement.

Day 2: Plaintiff’s case-in-chief: Infringement and damages.

Day 3: Plaintiff’s case-in-chief: Damages (cont.); Defendant’s case-in-chief: Infringement.

Day 4: Defendant’s case-in-chief: Infringement (cont.)

Day 5: Defendant’s case-in-chief: Damages; Plaintiff’s rebuttal on infringement.

Day 6: Closing arguments.

Discussion of Verdict and Wrap-Up.

3 Min Read

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