

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

TYLER DIVISION

DATE: 3/24/11

**JUDGE
JOHN LOVE**

**REPORTER: Jan Mason
LAW CLERK: Anna Phillips**

**BEDROCK COMPUTER TECHNOLOGIES,
LLC
Plaintiff**

CIVIL ACTION NO: 6:09cv269

vs.

PRETRIAL HEARING

**SOFTLAYER TECHNOLOGIES INC., ET
AL
Defendant**

ATTORNEY FOR PLAINTIFF

ATTORNEY FOR DEFENDANT

Refer to Sign-In Sheet

Refer to Sign-In Sheet

On this day, came the parties by their attorneys and the following proceedings were had:

OPEN: 9:06 am

ADJOURN: 12:25 pm

TIME:	MINUTES:
9:06 am	Case called.
	The Court greeted the parties and stated we are here for a pretrial conference. The Court advised of parties of dates for trial. After consultation , jury selection for both trial is April 4. For the first trial, April 11. April 27, the second trial begins and will go Wednesday through Friday and resume May 10. The Court discussed voir dire. Panel will be brought up and will be divided. General voir dire will be done, then attorneys can voir dire each panel.
	Mr. Cawley responded and stated there may be issues for second panel listening to first.
9:12 am	The Court will look into this.
	Ms. Doan joined in request of second trial to be sent out when first panel questioned.

DAVID J. MALAND, CLERK

FILED: 3/24/11

BY: *Mechele Morris*, Courtroom Deputy

TIME:	MINUTES:
	The Court further discussed voir dire times. The Court intention today is to cover everything possible. The Court is flexible for more time for resolution from parties. Parties can raise what they need to today.
9:15 am	Mr. Cassady stated they are dropping willfulness as to Google.
	Ms. Doan stated the parties have not fully finished meet and confer with objections to depo design, and exhibits and other objections.
9:17 am	Mr. Morisseau stated they anticipate to filing a motion to strike of Dr. Jones.
	The Court will allow motion to be filed.
	Ms. Bennett responded regarding supplemental report.
	The Court stated he needs to be informed in writing as to declaration and report. This does not have to be gotten into today. The motion for leave to file request for admissions is granted. The Court will take up Bedrock's motion in limine.
	Mr. Stevenson began argument on Motion in Limine, #587. Discussion made on re-exam as well as the second reexamination. Law was explained regarding re-exams. The re-exam should come in in its entirety. Discussion made on the differences of first and second re-exam.
9:33pm	The Court is considering further briefing on what the PTO is looking at as what they looked at the first time.
	Mr. Stevenson stated they could present something to the Court.
9:33 am	Mr. Smith responded. Discussion made on references of first and second re-exam. As to validity, none of the re-exams should come in. If they do come in, his view is all or nothing.
	The Court believes that this may be a second look at re-exam.
	Mr. Smith further responded. The Court should have a full paper record in front of the Court.
	The Court ordered parties to file a short document, no more than five pages of issue of separateness of re-exam by March 29.
9:40 am	Mr. Smith discussed the expert report of Mr. Weinstein as well as his deposition.
	The Court questioned Mr. Stevenson regarding Mr. Weinstein's testimony.
	Mr. Stevenson responded as to what Mr. Weinstein will testify to regarding re-exams.
	Mr. Smith discussed the hypothetical negotiations and re-exams and timing. Royalty rate was considered in first re-exam and report, not the second.
	Mr. Stevenson further discussed Weinstein's report. Mr. Smith further discussed the report and royalty amounts. They should be able to cross examine Mr. Weinstein
9:52 am	The Court will get briefing and look at Bedrock's motion #1 further. The Court will move to #2 and hear from Mr. Boyce.

TIME:	MINUTES:
	Mr. Boyce began argument on motion #2 regarding ownership of the '120 patent.
	The Court stated this can be presented to the trial Judge.
9:55 pm	Mr. Cawley responded and discussed ownership issues and their position regarding this. Further discussion made on their motion. Mr. Boyce responded regarding the facts.
	The Court granted motion #2 as stated on the record. Standing ownership issue needs to be further looked at. Bedrock owns the patent at this point, but can be raised before the trial Judge.
	Mr. Stern responded. Mr. Jones responded.
	The Court will move on to motion C.
	Mr. Cawley asked if during this discussion, parties leave not covered under the protective order. Mr. Cawley argued motion C or #3.
10:03 am	Mr. Pennypacker stated in large, parties are in agreement but wanted to make record clear of this. Discussion further made regarding motion C regarding Mr. Lotvin and Mr. Garrod's testimony. Mr. Stern responded.
10:06 am	The Court granted motion C as agreed, stated on the record. The Court will move to motion D.
	Mr. Aurentz began argument on motion D regarding divorce or separation of Dr. Garrod.
10:10 am	Mr. Smith responded. They do not intend to disparage reputation. Argument made regarding motion D and issues they would like to bring up.
	The Court granted motion as to Dr. Garrod.
	Mr. Smith further argued motion as to Dr. Nemes.
	The Court stated parties can approach the bench with any issues.
	Mr. Aurentz responded.
	The Court granted motion D as to Dr. Nemes. The Court believes motion E has been covered. The Court is granting in part as to motion E.
10:15 am	Mr. Cawley responded. Discussion made as to motion E. Mr. Moresseau responded.
	The Court will move on to next motion.
	Mr. Aurentz began argument on motion F. Parties have some agreement on this, but issues on some.
	Mr. Smith responded. There is no distinctions between law firms and client. They ask for complete reciprocity. Mr. Stern concurs.
	Mr. Aurentz presented transcript of motion hearing and voir dire of Virentx case. Mr. Cassidy responded.
10:22 am	The Court will look at this issue on motion F and defer ruling. Let's move on to motion G.

TIME:	MINUTES:
	Mr. Cassady believes that an agreement has been reached on this motion. Agreement stated on the record. Ms. Doan responded and restated her opinion of agreement.
	The Court granted as stated on the record. Parties can approach the bench on any issues. Let's move to motion H.
10:26 am	Mr. Cassady began argument on motion H. Ms. Pennypacker responded and discussed issues regarding motion. Discussion made on Google's patents. Mr. Cassady responded and further argued motion. Ms. Pennypacker responded as to what they would like to get into regarding motion.
10:30 am	The Court granted the motion as instructed. Parties can approach the bench with any issues. Moving on to motion I.
	Mr. Cassady began argument on motion I.
	Mr. Smith responded.
	The Court granted motion in part, denied in part, as instructed.
	Mr. Cassady responded. Mr. Smith responded. Mr. Stern responded.
10:35 am	The Court denied as instructed. Objections can be done.
10:36 am	Recess for 10 minutes.
10:55 am	Court resumed. The Court will move to defendant's motion #1 in motion in limine #604. The Court asked Mr. Cawley where in Dr. Jones report that is discussed denial of services attack.
	Mr. Curry responded and gave places where this is mentioned. Mr. Cawley further responded as to what they would like to get into.
11:04 am	Mr. Stern responded and argued motion. Reference made to exhibit #17 regarding revenues. This is a pretext to get revenue to the jury. Mr. Cawley responded. They have no intention to offer this exhibit. Argument further made as to motion. Discussion made on what they intent to offer. Mr. Stern further responded and argued motion. Further discussed as to what Mr. Jones and Weinstein will testify to.
	The Court granted as to overall revenue but will take other issues under advisement. This moves us to motion #3.
11:16 pm	Mr. Boyce began argument on motion #3 regarding third party parties.
	Mr. Curry stated this is not hearsay. Discussion made on how this will be introduced.
	The Court denied the motion #3. Motion #4 will be further briefed. Let's move to #5.
11:20 am	Mr. Boyce began argument on motion #5. Mr. Cassady responded. Mr. Boyce further responded. Discussion made on the purpose of testimony. Mr. Cassady responded and discussed what he will put on as to the witnesses.
	The Court will not preclude that the witnesses be called. The Court needs to hear the questions of experts and Bedrock can cross exam. The Court denied this motion at this point.

TIME:	MINUTES:
11:28 am	Mr. Stern responded. Mr. Cassady responded.
	The Court is denying the motion.
	Mr. Jones responded. This is the skunk in the jury box and will come out in opening statement. Discussion made on concerns.
	Mr. Cassady responded. Objection made and to not letting this out in opening statement. Further argument made on motion. Mr. Jones responded. He would like the trial to play out before the bell is rung. Mr. Cassady further responded. Mr. Jones further responded. Mr. Cassady and Mr. Jones further argue motion. Mr. Boyce further responded. Further discussion on expert testimony.
11:46 am	The Court withdrew the denial of motion #5 and now will defer ruling. Let's move to #6. The Court denied #6. Moving on to #7.
	Mr. Moresseau began argument on motion #7.
	Mr. Cawley responded and made his argument as to motion. Parties continue argument on motion. Reference made to Wikileaks.
11:53 am	The Court granted as to Wikileaks. Moving on to motion #8. This issue has been seen before.
	Mr. Briggs began argument on motion #8.
	Mr. Stevenson responded and made his argument. Parties continue arguing motion.
	The Court denied motion #8. Moving on to motion #11.
	Mr. Morisseau stated #11 and #15 have been combined but will be argued separately.
	Mr. Stern asked to file a supplemental report.
	Mr. Stevenson responded. It is too late in the game. Mr. Stern responded. Mr. Briggs responded. Parties continue
	The Court denied request and experts can testify to this. Moving on to motion #11.
12:03 pm	Mr. Stern began argument on motion #11.
	Mr. Stevenson responded and argued motion. The best approach is object during trial
	The Court denied the motion. Moving on to #15.
	Mr. Morisseau argued motion #15. Mr. Stevenson responded and made argument.
	The Court granted to what is in deposition. Moving on to #12.
	Ms. Doan began argument on motion #12.
12:14 pm	The Court denied motion #12.
	Ms. Doan asked to at least grant what was agreed to in this motion. Mr. Cassady responded.

TIME:	MINUTES:
	The Court stated this can be developed in trial. Motion is granted as to certain areas as stated on the record.
	Ms. Doan responded. Mr. Cassady responded.
	The Court granted as to defendants filing lawsuits as to each other. Moving on to #13.
12:19 pm	Ms. Capocia began argument on motion #14 pertaining to MySpace. Discussion made on declaration and revenues.
	Mr. Curry responded regarding the declaration. Everything in declaration is factual and degrades their credibility.
12:21 pm	The Court granted as to motion as to getting into this in front of the jury. If something needs to be brought to the Court's attention, parties may do so. The Court will move on to #14.
	Mr. Whitehurst began argument on motion #14. He believes this motion is largely agreed. Mr. Stevenson responded and argued motion. Parties continue arguing motion.
	The Court denied motion #14.
	Ms. Doan asked about #12 and discussed prior agreement. Mr. Cassady responded and made agreement.
	The Court granted getting in to all of this. The Court encourage parties to work on objections, exhibits and depo designations. The Court is open to another pretrial, but encouraging this. The parties can let the Court know by next Wednesday. Pretrial would be on April 4 if necessary.
	Mr. Curry discussed the protective order and ordering defendant to make their source code available computers available one week before trial and continuing through trial.
	The Court granted this request.
	Mr. Stern asked about willfulness claim being dropped. Parties agreed, effective now.
	Mr. Cassady would like to bring in a patent video that has been edited by agreement.
	The Court will work with the parties on this issue.
12:25 pm	There being nothing further, we are adjourned.