

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

OCTOBER 28, 2012

**LEONARD DAVIS, Judge Presiding**

Law Clerk(s): Gabrielle LaHatte  
Chief Staff Attorney: Nicole Mitchell

Court Reporter: Shea Sloan  
Judicial Assistant: Carrie King

<b>VIRNETX INC. V. APPLE INC.</b>	<b>CIVIL ACTION NO: 6:10-CV-417</b>
<b>ATTORNEYS FOR PLAINTIFF</b> See Sign-In Sheet	<b>JURY SELECTION</b> <b>ATTORNEYS FOR DEFENDANTS</b> See Sign-In Sheet
On this day, came the parties by their attorneys and the following proceedings were had:	
OPEN: 9:00 AM	ADJOURN: 3:45 PM

<b>TIME:</b>	<b>MINUTES:</b>
9:00 AM	Preliminary Proceedings: Pretrial matters taken up.
	Jason Cassady for Plaintiff discussed Motion in Limine issues.
	Mr. Cassady presented arguments on Plaintiff's Motion in Limine B. Scott Woloson responded for Defendant and discussed potential agreement. Mr. Cassady replied. Court granted motion.
	Austin Curry presented arguments on Plaintiff's Motion in Limine G. Mr. Woloson responded for Defendant. Court granted motion and advised counsel that they must approach the bench before this issue is brought before the jury.
	Brad Caldwell presented arguments on Plaintiff's Motion in Limine F. Matt Rodgers responded for Defendant. Mr. Caldwell replied. Court inquired of Mr. Rodgers re <i>Daubert</i> . Mr. Rodgers responded. Mr. Caldwell further replied. Court granted motion and advised counsel that they must approach the bench before this issue is brought before the jury. Court discussed effect this information may have on the jury.
	Mr. Caldwell presented arguments on Plaintiff's Motion in Limine H. Mr. Woloson responded and discussed potential agreement. Mr. Caldwell replied. Mr. Woloson replied. Mr. Caldwell further replied. Court inquired regarding relief Plaintiff is requesting. Mr. Caldwell responded. Court advised counsel that this matter will be taken up when the issue arises during trial.
	Mr. Cassady advised that Plaintiff has no further matters to discuss.
	Mr. Woloson advised that Defendant has no further matters to discuss.

<b>TIME:</b>	<b>MINUTES:</b>
	Court inquired regarding Plaintiff's <i>Emergency Motion to Dismiss Invalidity Counterclaims</i> (Docket No. 559).
	Danny Williams responded for Defendant. Mr. Williams presented a summary of the proceedings to date.
	Court inquired regarding a stipulation. Mr. Williams responded.
	Court inquired regarding length of trial time subject to motion. Mr. Williams responded.
	Court inquired regarding re-examination subject to motion. Mr. Williams responded.
	Court inquired regarding effect of dismissal subject to motion as compared to jury verdict. Mr. Williams responded.
	Court inquired regarding effect on co-defendants subject to motion. Mr. Williams responded.
	Doug Cawley responded for Plaintiff. Discussed timetable for adjudication of validity claims. Court requested copy of Plaintiff's proposed order denying motion. Copy tendered to the Court.
	Mr. Williams responded for Defendant. Court inquired regarding communications between the parties. Eric Albritton responded. Mr. Cawley had nothing further.
	Court inquired of Mr. Cawley regarding effect Plaintiff's proposed order would have as compared to a jury finding. Mr. Cawley responded. Court inquired regarding specific language that would trigger termination of proceedings at USPTO.
	Court inquired of Mr. Williams regarding potential agreement. Mr. Williams responded. Court inquired regarding re-examination proceedings. Mr. Williams responded. Court and Mr. Williams discussed.
	Mr. Cawley responded. Mr. Williams replied. Court inquired of Mr. Williams regarding motion having same effect as a jury finding. Mr. Williams requested time to confer with his client.
9:40 AM	Court in recess
9:47 AM	Court resumes.
	Court inquired regarding Defendant's response. Mr. Albritton responded for Defendant and requested the Court deny its motion. Mr. Cawley advised that Plaintiff does not object. Court denied Plaintiff's <i>Emergency Motion to Dismiss Invalidity Counterclaims</i> (Docket No. 559) without prejudice to refile.
	Mr. Albritton advised that the Desmarais firm will be assisting the defense team for Defendant Apple. Mr. Cawley responded that Plaintiff does not object if invalidity ruling will apply to Defendant Cisco as well. Mr. Desmarais addressed the Court and asked to respond. The Court acknowledged Mr. Desmarais.
	John Desmarais appeared and represented that he and Michael Stadnick would request to appear at trial on behalf of Defendant Apple only and that collateral estoppel should not apply to Defendant Cisco. Mr. Cawley responded.

<b>TIME:</b>	<b>MINUTES:</b>
	Court requested that the parties file motions and briefing on the issue. Court advised it is ready to proceed with jury selection.
9:50 AM	Court in recess so that Jury Panel may be seated.
10:00 AM	<b>Jury Panel seated in the courtroom.</b>
	Court addressed the Jury Panel and welcomed them to jury service. Court provided a brief overview of the case.
	Court conducted voir dire examination of the Jury Panel.
	Court asked counsel for the parties to introduce themselves, co-counsel, clients and any witnesses from the East Texas area.
	Mr. Cawley introduced himself, co-counsel, and client, and advised Plaintiff has no witnesses from the East Texas area.
	Court inquired if anyone knew those mentioned. No response.
	Mr. Albritton introduced himself, co-counsel, and client, and advised Defendant has no witnesses from the East Texas area.
	Court inquired if anyone knew those mentioned. No response.
	Mr. Cawley conducted voir dire examination of the jury panel on behalf of Plaintiff.
	Mr. Albritton conducted voir dire examination of the jury panel on behalf of Defendant.
	Court asked counsel to approach the bench. (Bench Conference held).
	Court addressed the Jury and advised they will be given a 20 minute break.
	Court requested Jurors #10, 22, and 23 remain in the courtroom.
11:21 AM	<b>Jury excused from Courtroom.</b>
	Court asked Juror #23 some additional questions. Juror #23 excused.
	Court asked Juror #22 some additional questions. Juror #22 excused.
	Court asked Juror #10 some additional questions. Mr. Albritton asked Juror #10 some additional questions. Court questioned Juror further. Juror #10 excused.
	Court addressed the parties and requested challenges as to these three witnesses.
	Mr. Albritton challenged Juror #22 for cause. Mr. Cawley did not object. Court granted motion.
	Mr. Albritton challenged Juror #10 for cause. Mr. Cawley objected. Court denied motion.
	Mr. Albritton challenged Juror #23 for cause. Court denied motion.
	Court advised counsel that each side will have 7 peremptory challenges.
11:30 AM	Court in recess.

<b>TIME:</b>	<b>MINUTES:</b>
11:50 AM	<b>Jury seated in Courtroom</b>
11:50 AM	Court resumed. Mr. Albritton requested to approach the bench. (Bench Conference held).
	Court asked Clerk to read the names of the jurors selected. Clerk read the 8 names of the jurors. Court thanked and excused the remaining Jury Panel. Court asked the Clerk to administer oath to Jury Panel. <b>Jury sworn.</b>
	Court gave the Jury some preliminary instructions.
12:30 PM	<b>Court excused Jury until Wednesday, October 31, 2012 at 9:00 a.m.</b>
	Court addressed the parties. Requested the parties have their exhibits ready to be submitted on Wednesday. Requested the parties not file documents after 7:00 pm or to otherwise advise the court the next morning of the filing. Requested available witnesses appear to be sworn in on Wednesday. Requested the parties have their jury charge ready on Wednesday morning.
	Mr. Cawley advised Plaintiff has nothing further.
	Mr. Albritton addressed the court regarding Motions in Limine. Mr. Cawley responded that Plaintiff also has some Motion in Limine issues to be addressed.
12:35 PM	Court adjourned for lunch.
2:07 PM	Court resumed.
	Mr. Caldwell requested to take up Plaintiff's Motions in Limine. Discussed the order of proceedings.
	Mr. Caldwell presented arguments on Plaintiff's Motion in Limine C. Mr. Woloson responded for Defendant and discussed potential agreement on first part of the motion. Court inquired regarding what Defendant might bring up before the jury. Mr. Woloson responded. Mr. Caldwell replied. Court granted the motion and advised counsel that they must approach the bench before this issue is brought before the jury.
	Mr. Caldwell presented arguments on Plaintiff's Motion in Limine E and advised that the first bulleted portion is agreed to by the parties. Court granted the first bulleted portion.
	Mr. Caldwell presented arguments on the second bulleted portion of Plaintiff's Motion in Limine E and advised that it is agreed to by the parties. Court granted the second bulleted portion.
	Mr. Caldwell advised that Plaintiff waives the third bulleted portion of its Motion in Limine E. Court denied the third bulleted portion.
	Mr. Caldwell presented arguments on the fourth bulleted portion of Plaintiff's Motion in Limine E. Drew Kim responded for Defendant. Mr. Caldwell responded. Mr. Kim further responded. Court inquired regarding change in code in use of defense. Mr. Kim responded. Court granted the fourth bulleted portion and advised counsel that they must approach the bench before this issue is brought before the jury.

TIME:	MINUTES:
	Mr. Caldwell presented arguments on the fifth bulleted portion of Plaintiff's Motion in Limine E. Mr. Kim responded. Mr. Caldwell responded. Mr. Kim further responded. Court inquired regarding argument on non-infringing alternatives. Mr. Kim responded. Mr. Caldwell responded. Court denied the fifth bulleted portion and advised Defendant on what may be brought before the jury.
	Mr. Caldwell presented arguments on the sixth portion of Plaintiff's Motion in Limine E (contained in the narrative portion of the motion). Mr. Williams responded for Defendant. Court inquired regarding witness testimony. Mr. Williams responded. Court inquired regarding expert reports. Mr. Williams responded. Mr. Caldwell responded. Court inquired regarding prejudice to Plaintiff. Mr. Caldwell responded. Court denied the sixth portion of the motion. Court inquired regarding additional discovery. Mr. Caldwell responded. Mr. Williams responded. Mr. Caldwell further responded. Mr. Williams further responded. Court advised the parties.
	Nothing further from Plaintiff.
	Mr. Kim advised that Defendant's Motion in Limine #1 is agreed. Mr. Cassady responded and wanted to clarify the proposed language. Mr. Kim responded and requested time to review the language.
2:52 PM	Court in recess.
3:08 PM	Court resumed.
	Mr. Kim addressed the court regarding the portions of Defendant's Motion in Limine that are agreed. Court requested the parties file a joint stipulation. Mr. Cassady responded. Mr. Kim responded.
	Mr. Cassady advised that Plaintiff's Motion in Limine A is agreed.
	Mr. Caldwell advised that an agreement has been reached regarding examination of Dr. Jones.
	Mr. Woloson presented arguments on Defendant's Motion in Limine #2. Mr. Curry responded for Plaintiff. Court granted the motion as to the S. Jobs statement. Mr. Woloson responded. Mr. Curry responded. Court denied the motion as to "should have known." Court advised the parties to provide trial briefs on this issue.
	Mr. Woloson presented arguments on Defendant's Motion in Limine #6. Mr. Caldwell responded for Plaintiff. Mr. Williams responded for Defendant. Court inquired regarding application and patent issued. Court will allow issue but not argument in detail. Mr. Caldwell responded; requested clarification on what Court will allow. Court inquired regarding reasons for argument. Mr. Caldwell responded. Court clarified ruling. Mr. Williams responded. Mr. Cassady responded. Court requested response from Mr. Williams. Mr. Williams responded. Mr. Cassady responded. Court advised that this matter will be taken up when the issue is reached at trial.
	Mr. Woloson presented arguments on Defendant's Motion in Limine #8. Mr. Curry responded. Court denied motion.

TIME:	MINUTES:
	Mr. Kim presented arguments on Defendant's Motion in Limine #3. Mr. Pearson responded for Plaintiff. Court granted the motion and advised counsel that they must approach the bench before this issue is brought before the jury.
	Mr. Kim presented arguments on Defendant's Motion in Limine #7. Mr. Cawley responded for Plaintiff. Mr. Kim replied. Court denied motion.
	Mr. Albritton requested clarification of Court's ruling on Defendant's Motion in Limine #3. Mr. Pearson responded. Court clarified ruling and advised Mr. Albritton.
	Mr. Kim presented arguments on Defendant's Motion in Limine regarding discovery disputes. Mr. Caldwell has no further arguments on this issue and believes this issue needs no further ruling. Mr. Kim and Mr. Caldwell discussed agreement.
	Mr. Woloson inquired as to when Court would like to receive briefing. Court responded.
	Mr. Curry addressed the court regarding "willful blindness." Court and Mr. Curry discussed.
	Mr. Cassidy addressed the Court regarding newly issued products. Mr. Williams responded. Mr. Cassidy responded. Mr. Williams responded. Mr. Cassidy responded. Court inquired as to relief requested. Mr. Cassidy responded. Mr. Williams responded. Court and parties discussed.
	Mr. Cassidy addressed the Court regarding inequitable conduct. Court inquired of Mr. Williams regarding inequitable conduct. Mr. Williams responded. Court advised Mr. Williams regarding procedures for presenting testimony on this issue. Mr. Williams responded. Court further advised Mr. Williams. Mr. Cassidy inquired regarding witness testimony. Mr. Williams responded. Court inquired as to agreements on witnesses. Mr. Cassidy responded. Mr. Williams inquired of the Court regarding witness testimony. Court and Mr. Williams discussed.
	Mr. Cassidy requested the Court grant Plaintiff's Motion in Limine as to Apple's patents to prevent use in Defendant's opening statements. Court requested response from Mr. Albritton regarding opening statements. Mr. Albritton responded. Mr. Cawley responded. Court granted motion and advised counsel that they must approach the bench before this issue is brought before the jury.
3:45 PM	There being nothing further, Court adjourned.