IN AND FOR THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MOBILE TELECOMMUNICATIONS TECHNOLOGIES, LLC	*	Civil Docket No. 2:13-CV-258
VS.	*	Marshall, Texas
APPLE, INC.	*	November 17, 2014 1:45 P.M.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE ROY PAYNE
UNITED STATES MAGISTRATE JUDGE

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P R O C E E D I N G S

LAW CLERK: All rise.

(Jury in.)

THE COURT: Thank you. Please be seated.

Ladies and gentlemen, I'd ask you if you'd turn your attention now to the lawyers. I think counsel for Plaintiff is prepared to begin.

Mr. Dacus.

MR. DACUS: We are, Your Honor. Thank you.

THE COURT: All right.

MR. DACUS: May it please the Court, Your Honor. Good afternoon. I want to start this afternoon exactly where I started with you when you came in for jury service, and that is to say a very sincere thanks to you on behalf of myself, on behalf of MTel, on behalf of Mr. Fitton.

And what you now know that you didn't know at the time of jury service is that a juror who serves in a patent case is owed a little bit of an extra thanks, because this is pretty thick stuff. This is pretty dense information, and there's a lot of information.

My goal over the next 40 minutes -- and sometimes I accomplish this goal and sometimes I don't -- is to try to help you organize the evidence that you've seen. It's not my position -- as I told you from the beginning, it's not my position to tell you what the evidence is. You heard the evidence from the witness stand. But you've seen and heard a lot of evidence, so my goal is to help you or try to help you organize some of that evidence that you've seen.

And one reason I think we can at least potentially accomplish that goal is when you boil all this information down that you've heard and you boil all these patents down, almost all of these issues and all -- related to infringement, boiled down to one or two words in the claims.

And so I want to remind you of what those issues are so that you can crystallize in your mind exactly where the parties dispute the things.

A lot -- a lot -- a lot of these elements are admitted by Apple, and we don't need to spend a lot of time on them. But where the disputes lie, I want to help remind you of the evidence that you've seen related to those.

Now, I also want to take time this afternoon -- I'm trying to go forward here, Mr. Gros (phonetic spelling).

There we go -- is to remind you of how we get here today, November 17th of 2014. And this is the chronology that I showed you at the very beginning of the lawsuit in opening statements. I don't want to go back through it, but there's a couple things that I want to remind you of, and they're the things written down in the green.

These are things I said in opening, because I thought they might be important, but as I went through the case, I realized that they're probably more important than I ever anticipated.

You know in the early '90s up through the middle '90s that, of course, MTel was developing two-way messaging, a two-way data transmission system. And you know now that you've heard from Mr. Hays and you've heard from Mr. Pinter, two inventors who were there at the time, that they were creating inventions not only for problems that were

currently being experienced on that paging network, but they foresaw problems that if two-way wireless data transmission really became popular, problems that would occur in the future. And they were trying to solve those problems that would occur in the future.

And I will tell you that these six patents that are at issue here were problems that they told you that they foresaw might actually happen if two-way data transmission wirelessly became a very popular thing. And as we all know, it did.

The thing you also know -- and remember I warned you at the beginning that if you hear Apple say, hey, these are old or these are aging technologies, I wanted you to really get your antenna or your radar up, because they're trying to leave you with the impression that these claims and these inventions relate solely to paging.

But you know from what Mr. Hays said and what Mr. Pinter told you that they're much broader than just paging. They relate to any network on which someone is transmitting data wirelessly in a two-way fashion.

Now, I put these up here, because, you know, basically you've seen these devices. These are the -- the pagers that were in 1996, 1997, and, of course, the 2010 is -- is the -- is the Apple iPhone.

And you note the similarities between the devices.

And as Mr. Hays and Mr. Pinter told you, those -- those paging devices could basically function as the -- the phones do today. They had email; they had attachments; you could send the equivalent of a text. You could even get on -- even though there was no Internet, you could have gotten on the Internet, if there was such a thing.

Now, we overlay that history with Apple's history. And you know this is Apple's slide that they showed you in opening. It says four decades of innovation. And you remember I asked Ms. Caldbeck, I said, well, doesn't that really beg the question of what innovation Apple had? And she said she didn't think so.

But I would respectfully suggest to you that I do -- I do think it begs the question of what was Apple's innovation. You now know from the evidence that Apple was basically a computer company. Not basically; they were a computer company for those first three decades; and, of course, they employed engineers who knew all about computers.

But in 2000, after they got in some financial trouble, moving into the middle 2000s, of course, came the iPhone. The iPhone and ultimately the iPad enjoyed more success than I think Apple even ever imagined. And, of course, the prominent feature or the most popular feature of those devices was two-way wireless data communications.

And as they became more popular, what we came to know, what you came to know through the evidence from Mr. Lanning and then ultimately from Ms. Davis is that those -- those pop -- the popularity of those devices created issues. It created issues of whether or not they had enough capacity on those networks to handle the type of data that was flowing.

As Mr. Lanning told you, everybody wants on their device the ability to transmit data faster, the ability to get more capacity on their device.

And as we said from the beginning, the solutions that Apple turned to were those very same solutions that MTel, Mr. Hays, Mr. Pinter had solved back in the middle 1990s.

Now, I want to pause for just a second here. You remember at -- before we talked about infringement because I want to talk about the details of infringement, but before we do it, you remember that the Judge told you at the beginning of this case that you're going to have to judge credibility and believability.

He just read you a jury instruction on that again, reminding you that, you know, Apple's going to say X in this case, MTel has said Y. And you've got to judge the credibility and the believability.

And in every lawsuit, I think, there are things

that are said, things that are put on the board that really go to that issue. And, in particular, in this case, you've heard many times -- you've seen Apple say four decades of innovation. You've seen them put up the Apple inventions of the iPhone and the iPad and call it the Apple invention.

And -- and they also said something in opening statement that I think is very important, and this -- what I have on the screen, of course, is the transcript of the trial. We get each day the transcript of the trial typed out by Ms. Holmes, and this is what the Apple lawyers in opening: Apple employs thousands and thousands of the world's finest engineers, and they work millions of hours every single year to build these Apple products from the ground up. They build them from scratch and it's their own work and it's their own inventions. It's their own work and their own inventions.

You now know -- until we got to the very last Apple witness before we could get that evidence all the way out, but you now know from what Julie Davis told you, their damages expert who's worked for them many times in the past that, in fact, they don't build these from scratch. It's not their own work. It's not their own inventions.

You remember that I asked her isn't it true that there are hundreds of other people's technology in the iPhone and the iPad. And she said: Actually it may be

thousands. So you now know from the evidence that these devices contain hundreds of other people's technology. You also know from what she told you that others -- patent owners like MTel have had to go to court to force Apple to do the right thing and pay for the use of that technology.

Sometimes in the course of a lawsuit, what you don't hear, who you do not hear from on a witness stand also says a lot to credibility. So think back to who the -- Apple brought here as their corporate representative, okay? Mrs. Caldbeck. And, again, as I told Mrs. Caldbeck, I'm not being personally critical of her. But do you remember that she has been at Apple for one year? They brought an employee who had been at Apple for one year to tell you about the history -- four decades of innovation at Apple.

Why not bring an engineer to a patent case who's been at Apple for all or most of those four decades, rather than someone who has been there for a year? I would suggest to you that the answer came from her on the stand when I said: Are you aware that other people -- hundreds of others have technology in these? And she said: I don't know really anything about that. Right? She said: I don't -- I don't really know if there's a bunch of other people's technology in them.

I would suggest to you there's a reason they didn't bring an engineer who has been at Apple for most of

those four decades to talk to you about the history and innovation at Apple.

What else did you not hear? You remember the -- the statement from opening statement where they said they build these things from scratch, they develop them themselves? When you put these type of features into products, the engineers at Apple, you would certainly expect, would come here and testify about how they developed those products. Where are the documents that show the development of those features? Where are the options that they explore? Where are the pros and cons? Where are the tests of the testing of those features in those products.

Those are the kinds of things if you really -- if Apple really developed these from scratch, if they're really their own products, those are the kinds of things you'd expect to hear from the witness stand, and you heard none of it.

So with that backdrop, we'll turn to the question of infringement. As I told you, we -- MTel has to come to you for help. And the way you help us is by answering this question of infringement.

Of course, there are two sets of patents, the messaging and the transmission patents. The '946, I want to run through the evidence that you heard related to infringement on the '946. And I start with the '946 because

I probably -- I think it's probably the simplest issue for you to make a decision on.

You remember that the '946 relates to the tap to download, the load vid -- video or the load images function. And you remember that this is a slide from Apple's presentation. Apple said to you, they do not infringe, but the only reason they put forward, even though they put an X through all three of those elements, all three of them contained the word retransmission. And Apple claims that their products do not retransmit.

And to kind of reorient you to this issue, if you look down on the bottom, that's the representation of what Apple does. You remember that the email is sent from the server to the Apple iPhone or the iPad, and then there's a tap to download. If you tap to download it, then out of the image or the attachment or the video is first sent from the server to the iPhone.

And what Apple said to you -- and, again, this is one of the demonstratives that they showed you. You remember Mr. -- Dr. Kelly testified about this. He said that because this photo is transmitted for the first time, there is no retransmission. That's their only and sole position.

And so I've written on the top, is that incredible or is that believable? And the answer to that question is

actually found in several things, but one of which is what the Judge just read to you in your jury instructions. So for those who are taking notes -- and you'll have these jury instructions in the -- in the deliberation room with you -- if you look on Page 9 of those jury instructions given by the Court, you'll see what the Court has said about retransmission. And the -- the Court says: The Court has held that the plain and ordinary meaning of the word retransmission is not so limited as to require that a retransmission can only occur after a first transmission of a message from a communication network to a mobile unit.

So what does that mean? Dr. Kelly says we don't infringe. We, Apple, don't infringe because this is the first transmission and, therefore, it's not a retransmission. It cannot be a retransmission is what Dr. Kelly says. The Court says the exact opposite. The Court said that first transmission can be a retransmission.

So I don't need to tell you -- the Court's construction's told you, and you certainly know, you're duty bound to follow the law. The Court's given you exactly what the law is with respect to this.

Dr. Kelly, on the other hand, as you remember, this is one of the demonstratives that Mr. Mort, when he was asking Mr. Kelly, you may remember he read this to Dr. Kelly on the stand -- it's the very same definition that I just