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 19 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 20 **SAN FRANCISCO DIVISION**

21 FIRSTFACE CO., LTD.,
 22 Plaintiff,
 23 v.
 24 APPLE INC.,
 25 Defendant.

CASE NO. 3:18-cv-02245-JD

**PLAINTIFF'S REPLY IN SUPPORT OF
 MOTION FOR PARTIAL SUMMARY
 JUDGMENT**

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. SUMMARY JUDGMENT ON THE POWER BUTTON LIMITATIONS..... 1

 A. Judicial Estoppel Bars Apple from Disputing Infringement of These Limitations. 1

 B. Even if Apple Is Not Estopped, Summary Judgment for Firstface Is Proper. 2

 i. Firstface did not waive the argument that “on/off” means “on or off.” 2

 ii. “On/off” means “on or off.” 3

 iii. The Court should grant summary judgment regardless of its construction. 5

II. SUMMARY JUDGMENT REGARDING APPLE’S INVALIDITY POSITIONS 6

 A. Apple’s Atrix 4G Invalidity Theories Fail as a Matter of Law..... 7

 i. Apple misstates the scope of Firstface’s motion..... 7

 ii. Apple misstates case law and testimony to try to avoid summary judgment. 7

 iii. Firstface did not waive this argument. 8

 iv. Apple’s efforts to conjure up factual disputes fail. 9

 B. The Apple Fingerprint Prototype Is Not Prior Art..... 9

 i. Apple has not shown who conceived of the Apple Fingerprint Prototype. 10

 ii. Apple has not shown conception of every claim element..... 11

 iii. Apple has not shown actual or constructive reduction to practice..... 11

 iv. Apple has not shown diligence. 12

 C. Apple’s iPhone 3GS/4 Invalidity Theories Are Barred by Estoppel. 13

 D. Apple’s New Enablement Defense Cannot Survive Summary Judgment. 15

III. CONCLUSION..... 15

TABLE OF AUTHORITIES**Cases**

1		
2		
3	<u>Cases</u>	
4	<i>Andersen Corp. v. Fiber Composites, LLC,</i>	
5	474 F.3d 1361 (Fed. Cir. 2007).....	4, 5
6	<i>Baughman v. Walt Disney World Co.,</i>	
7	685 F.3d 1131 (9th Cir. 2012)	2
8	<i>Bracco Diagnostics v. Maia Pharms.,</i>	
9	839 F. App'x 479 (Fed. Cir. 2020)	3
10	<i>C.R. Bard, Inc. v. M3 Systems, Inc.,</i>	
11	157 F.3d 1340 (Fed. Cir. 1998).....	10
12	<i>Contour IP Hldg. v. Gopro,</i>	
13	No. 17-cv-4738, 2020 WL 109063 (N.D. Cal. Jan. 9, 2020).....	13
14	<i>Curtiss-Wright Flow Control Corp. v. Velan, Inc.,</i>	
15	438 F.3d 1374 (Fed. Cir. 2006).....	5
16	<i>Dow Chem. Co. v. Astro-Valcour, Inc.,</i>	
17	267 F.3d 1334 (Fed. Cir. 2001).....	10
18	<i>Envirotech v. Redline Detection,</i>	
19	No. 12-cv-1861, 2015 WL 4744394 (C.D. Cal. Jan. 29, 2015).....	13
20	<i>Fox Grp., Inc. v. Cree, Inc.,</i>	
21	700 F.3d 1300 (Fed. Cir. 2012).....	10
22	<i>Karlin Tech. Inc. v. Surgical Dynamics, Inc.,</i>	
23	177 F.3d 968 (Fed. Cir. 1999).....	4
24	<i>Kruse Technology Partnership v. DMAX, Ltd.,</i>	
25	No. SACV 09-00458-JVS, 2010 U.S. Dist. LEXIS 148990 (C.D. Cal. Sep. 21, 2010).....	4
26	<i>Lacayo v. Donahoe,</i>	
27	No. 14-CV-04077-JSC, 2015 WL 993448 (N.D. Cal. Mar. 4, 2015).....	14
28	<i>Microchip Tech. v. Aptiv Servs. US,</i>	
	No. 17-cv-1194, 2020 WL 4335519 (D. Del. July 28, 2020).....	13
	<i>Optical Coating Lab. v. Applied Vision, Ltd.,</i>	
	No. C-92-4689 MHP, 1996 U.S. Dist. LEXIS 1476 (N.D. Cal. Feb. 5, 1996).....	3
	<i>Poly-America, L.P. v. GSE Lining Technology, Inc.,</i>	
	383 F.3d 1303 (Fed. Cir. 2004).....	8

1	<i>Rissetto v. Plumbers & Steamfitters Local 343</i> , 94 F.3d 597 (9th Cir. 1996)	2
2		
3	<i>Silvestri v. Grant</i> , 496 F.2d 593 (C.C.P.A. 1974)	10
4		
5	<i>Thor v. Howe</i> , 466 F.3d 173 (1st Cir. 2006).....	2
6		
7	<i>Tyco Healthcare Grp. v. Ethicon Endo-Surgery, Inc.</i> , 774 F.3d 968 (Fed. Cir. 2014).....	11
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
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1 **I. SUMMARY JUDGMENT ON THE POWER BUTTON LIMITATIONS.**

2 Apple fails to rebut Firstface’s showing that the accused products practice the power button
3 limitations. Instead of addressing the merits, Apple argues Firstface waived every possible theory of how
4 its products could practice the power button limitations. Firstface has waived nothing. But the Court
5 need not wade into these arguments. The undisputed evidence shows that Apple successfully argued to
6 the PTAB that a device with a button identical to the accused products’ power button meets the power
7 button limitations. This estops Apple from maintaining that the accused products do not satisfy the power
8 button limitations. The Court should grant partial summary judgment on this basis alone.

9 **A. Judicial Estoppel Bars Apple from Disputing Infringement of These Limitations.**

10 Apple’s arguments that judicial estoppel does not apply are based on misrepresentations of the
11 PTAB record. Apple first argues that its position on the power button limitations is consistent with its
12 position in the IPRs because, “[b]efore the PTAB, Apple explained that Firstface’s own infringement
13 theories, if accepted, also showed invalidity.” ECF 257 at 9. Apple provides the Court with a side-by-side
14 comparison of Firstface’s infringement contentions with one of Apple’s IPR petitions, and argues that
15 “[b]y pointing to Firstface’s infringement theories, Apple did not concede them.” *Id.* But Apple did not
16 mention Firstface’s infringement theories before the PTAB, let alone state that its arguments were based
17 on them. The side-by-side comparison in Apple’s response does not appear anywhere in the record before
18 the PTAB. Nor do Firstface’s infringement contentions. Apple argued, without reservation, that the
19 “sleep/wake button” in the iOS 3.1 User Guide, which functioned exactly like the Accused Products, met
20 the power button limitations. ECF 241-6 at 30-31, 66-67; ECF 241-7 at 28, 66. Apple’s attempt to run
21 from that argument smacks of the very opportunism that judicial estoppel is meant to preclude.

22 Second, Apple argues that it “did not persuade the PTAB to take a position regarding the ‘On/Off’
23 limitation” because “the prior art’s satisfaction of that limitation was not at issue in the IPR.” ECF 257.
24 Apple does not (and cannot) dispute that the Board found that the iOS 3.1 User Guide discloses “a power
25 button configured to turn on *and* off the terminal by pressing” because it describes “an additional
26 ‘Sleep/Wake’ button that turns the power on and off.” ECF 241-8 at 17-18; ECF 241-9 at 21, 54. It does
27 not matter that Firstface did not dispute that the iOS 3.1 User Guide discloses the power button
28 limitations—judicial estoppel does not require that an issue was contested. *See Baughman v. Walt Disney*

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