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APPLE INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

WI-LAN, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

AND RELATED
COUNTERCLAIMS

CASE NO. 3:14-cv-1507-DMS-BLM (consolidated);

CASE NO. 3:14-cv-02235-DMS-BLM (lead case)

APPLE INC.'S RENEWED OBJECTIONS TO CERTAIN OPINIONS OF DR. VIJAY MADISETTI

Dept.: 13A
Judge: Hon. Dana M. Sabraw
Magistrate Judge: Hon. Barbara L. Major

In order to avoid disrupting the presentation of evidence at trial with multiple preservation objections, Apple Inc. ("Apple") respectfully submits for the record the following written objections to certain testimony of Dr. Vijay Madisetti. As set forth in Apple's *Daubert* motion briefing (Dkt. Nos. 333, 373) and trial brief (Dkt. No. 433), Apple objects to the testimony of Dr. Madisetti about the alleged "benefits" of the asserted patents, as well as the expected testimony of Professor Prince and Mr. Kennedy that rely upon such benefits opinions.

First, Dr. Madisetti's "call quality" opinions are based on insufficient facts and data. Fed. R. Evid. 702, Comm. Notes on Rules, 2000 Amend. He relies on tests of two Samsung phones, not iPhones, conducted months before the first accused iPhone was commercially released. He provides no evidence that the Samsung phones are "representative" of the later-released iPhones, which by itself is grounds to strike his opinions. Dr. Madisetti relies on third-party tests performed on third-party products. Dr. Madisetti does not even say whether the two Samsung smartphones allegedly practice the asserted patents, much less that their call quality matched the accused iPhones. His assumptions about the tested Samsung smartphones are unsupported and insufficient.

Second, contrary to Wi-LAN's claim, Dr. Madisetti did not opine that the Samsung Galaxy S4 Mini test data provides a "benchmark" for the call quality of the accused iPhones. His expert reports do not use the words "benchmark" or "Samsung" at all. He did not test or look at a Samsung phone, and did not opine that any Samsung phone practices the asserted claims. And he did not compare the Samsung Galaxy S4 Mini to an accused iPhone or any other phone. Dr. Madisetti also did not opine about the purported "benchmark" network conditions during the third-party magazine's tests—which were conducted on a single day months before the iPhone 6 was even released, in a single location, on a single network, and using a single VoIP application, Skype, rather than Apple's VoIP application, FaceTime. Thus, Wi-LAN cannot credibly claim Dr. Madisetti offered a "benchmark" opinion.

He did not identify the purported "benchmark" product or network conditions in his report, let alone compare that purported "benchmark" Samsung phone to later-released iPhones.

Third, Dr. Madisetti's "call quality" opinions are an unjustified extrapolation of the limited data he cites. *See* Fed. R. Evid. 702, Comm. Notes on Rules, 2000 Amend. (courts must examine "whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion"). Dr. Madisetti's conclusion about all accused iPhones under all network conditions—from tests done on two Samsung phones in 2014—is an unjustified extrapolation from the Signals Research Group paper and his own "tests." Dr. Madisetti makes no connection between the single 1.4 MOS measurement he selected from the test versus his generic opinion about all of the accused iPhones. Thus, it was unreliable for Dr. Madisetti to conclude that a single MOS measurement on a Samsung phone could extrapolate to the general performance of all VoIP applications on the accused iPhones.

Fourth, Dr. Madisetti's personal "test" of two iPhones is unreliable because his test cannot be challenged in any objective sense. *See* Fed. R. Evid. 702, Comm. Notes on Rules, 2000 Amend. (courts must consider "whether the expert's theory can be challenged in some objective sense, or whether it is instead simply a subjective, conclusory approach that cannot reasonably be assessed for reliability"); *see also Cabrera v. Cordis Corp.*, 134 F.3d 1418, 1423 (9th Cir. 1998) (opinion based on "unsubstantiated and undocumented information is the antithesis of ... scientifically reliable expert opinion"). Dr. Madisetti is expected to testify that he "conducted a test using an iPhone 6 Plus and iPhone 7 Plus (on T-Mobile) for a VoLTE call and a Skype call with upload data, and observed a similar degradation in MOS for the Skype call." Dkt. No. 330, Ex. 1, Madisetti Report at ¶ 415. That is the end of his "analysis." He presents no data from his purported "test"—what the network conditions were, what the controls were, the type or source of audio he

used, how many times he ran his tests, or what instruments he used to measure call quality (if anything). Dr. Madisetti produced two audio files from his "test," but the files simply demonstrate that the audio cuts out briefly at the 20-second mark of one 102-second recording (labeled "Skype"), while the other recording (labeled "VoLTE") cuts out at the 58-second mark, and ends after 64 seconds. Dr. Madisetti does not explain the audio gap in either sample. Dr. Madisetti's "similarity" opinion therefore cannot be tested—it is a subjective, conclusory opinion that cannot reasonably be assessed for reliability. It should be excluded.

Fifth, Dr. Madisetti inappropriately assigns all of the purported benefits of VoLTE to the asserted claims of the '145 patent. Yet it is undisputed that the named inventors did not invent VoLTE, and that other individuals and companies contributed to the purported benefits of VoLTE. Thus, Dr. Madisetti's expected testimony that the '145 patent claims are entirely responsible for the alleged benefits VoLTE call quality as compared to a Skype call are unreliable and violate the Federal Circuit's apportionment requirements. This is particularly the case when Dr. Madisetti previously opined that the no-longer-asserted claims of the '761 patent also contributed to VoLTE call quality.

Sixth, Dr. Madisetti's other "benefits" opinions are equally unreliable, because they hinge solely on the alleged benefits of LTE, which is not sufficiently tied to Wi-LAN's "VoLTE" infringement theory. For those patents (the '145 and patents), he focuses exclusively on LTE uploading and downloading. Dkt. No. 330, Ex. 1, Madisetti Report, Exhibit H thereto, Rows 2-5. Dr. Madisetti's opinions are unreliable for two reasons. As an initial matter, Dr. Madisetti's opinions about the alleged benefits of LTE do not match Wi-LAN's "VoLTE" infringement theory. *See* Dkt. No. 117 at 3 ("As Wi-LAN's infringement contentions show, this suit is focused on VoLTE, which was not supported by the products accused in the First Action."). Dr. Madisetti's benefits opinions based on LTE have nothing to do with VoLTE, and therefore are not sufficiently tied to the alleged practice of the asserted

patents. Moreover, his LTE-based benefits opinions would violate the summary judgment order and Federal Circuit mandate in the prior *Wi-LAN v. Apple* case, which held that Apple's LTE-capable iPhones do not infringe Wi-LAN's patents. *Wi-LAN USA, Inc. v. Apple Inc.*, 830 F.3d 1374, 1377 (Fed. Cir. 2016); *Wi-LAN USA, Inc. v. Apple Inc.*, Case No. 13-cv-00798, Dkt. No. 278 (S.D. Cal. Sept. 30, 2014).

For the foregoing reasons, and for the reasons set forth in Apple's *Daubert* briefing (Dkt. Nos. 333, 373) and Apple's trial brief (Dkt. No. 430), the Court should sustain Apple's objections and exclude Dr. Madisetti's testimony about the purported "benefits" of the asserted patents, as well as the opinions of Professor Prince and Mr. Kennedy that rely upon such benefits opinions.

Dated: July 24, 2018

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