IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

MOBILEMEDIA IDEAS, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 10-258-SLR
	)	
APPLE INC.,	)	
	)	
Defendant.	)	
	)	

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MEMORANDUM OPINION

Dated: July 21, 2016
Wilmington, Delaware

ROBINSON, District Judge

I. INTRODUCTION

Plaintiff MobileMedia Ideas, LLC ("MobileMedia") filed a patent infringement complaint against Apple Inc. ("Apple") on March 31, 2010, alleging in its amended complaint infringement of sixteen patents, including U.S. Patent No. RE 39,231 ("the '231 patent") and 6,725,155 ("the '155 patent").[1] (D.I. 1; D.I. 8) Apple answered and counterclaimed on August 9, 2010. (D.I. 10) The court resolved the parties' claim construction issues and summary judgment motions for infringement and invalidity. (D.I. 461; D.I. 462); *MobileMedia Ideas, LLC v. Apple Inc.*, 907 F. Supp. 2d 570, 596-99 (D. Del. 2012). The case proceeded to a six day jury trial beginning on December 3, 2012 on three of the asserted patents. The court then resolved the parties' post-trial motions. (D.I. 539; D.I. 540; D.I. 541; D.I. 542); *MobileMedia Ideas, LLC v. Apple Inc.*, 966 F. Supp. 2d 433 (D. Del. 2012); *MobileMedia Ideas, LLC v. Apple Inc.*, 966 F. Supp. 2d 439 (D. Del. 2012). The Federal Circuit issued its mandate on June 5, 2015, affirming in part, reversing in part, vacating and remanding. *MobileMedia Ideas LLC v. Apple Inc.*, 780 F.3d 1159 (Fed. Cir. 2015). Presently before the court is Apple's motion for summary judgment regarding damages (D.I. 633) and motions to exclude certain expert opinions (D.I. 636, 639). The court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

II. SUMMARY JUDGMENT

[1] The '231 patent, titled "Communication Terminal Equipment and Call Incoming Control Method," reissued on August 8, 2006. An ex parte reexamination resulted in a reexamination certificate that issued April 3, 2012. The '155 patent, titled "Method and Apparatus for Information Processing, and Medium for Information Processing," was filed on February 9, 2000 and issued on April 20, 2004.

A. Standard

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the burden of demonstrating the absence of a genuine issue of material fact. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 415 U.S. 475, 586 n. 10 (1986). A party asserting that a fact cannot be—or, alternatively, is—genuinely disputed must be supported either by citing to "particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for the purposes of the motions only), admissions, interrogatory answers, or other materials," or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1)(A) & (B). If the moving party has carried its burden, the nonmovant must then "come forward with specific facts showing that there is a genuine issue for trial." *Matsushita*, 415 U.S. at 587 (internal quotation marks omitted). The Court will "draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence." *Reeves v. Sanderson Plumbing Prods., Inc.,* 530 U.S. 133, 150 (2000).

To defeat a motion for summary judgment, the non-moving party must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586-87; *see also Podohnik v. U.S. Postal Service*, 409 F.3d 584, 594 (3d Cir. 2005) (stating party opposing summary judgment "must present more than just bare assertions, conclusory allegations or suspicions to show the existence of

a genuine issue") (internal quotation marks omitted). Although the "mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment," a factual dispute is genuine where "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* at 249-50 (internal citations omitted); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (stating entry of summary judgment is mandated "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial").

B. Analysis[2]

1. Prosecution history

On March 6, 1998, twice amended claims 1 and 12 were again amended in response to an office action[3] rejecting the claims over prior art, adding certain language relevant to the issue at bar:

> 1. (Twice Amended) A communication terminal for informing a user of a **received call** from a remote caller by an alert sound comprising:
>
> an alert sound generator for generating a sound; and
>
> control means for controlling said alert sound generator and determining whether a predetermined operation is operated when said alert sound is being rung and when said predetermined operation is operated an operating state of said alert sound generator is altered based on an

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[2] The court recites only the background needed for the issues at bar. A fuller recitation may be found in previous opinions. (*See e.g.*, D.I. 630)

[3] During prosecution of U.S. Patent No. 5,995,852 ("the '852 patent"). Original claim 12 of the '231 patent was issued in the '852 patent. The subsequent reexamination yielded the '231 patent, which proceedings added new claims 20-23. The prosecution history of the '852 patent is properly considered in the above analysis.

> outcome of the determination and **a communication state between the terminal and the remote caller remains unchanged**.
>
> 12. (Twice Amended) The communication terminal according to claim 1, further comprising:
>
> RF signal processing means for transmitting and/or receiving radio waves; and
>
> an antenna for transmitting and/or receiving said radio waves, **wherein said communication status** between said apparatus and said remote caller is established by said transmitted and/or received radio waves.

(D.I. 658, ex. G at JA268-72) (emphasis added) On February 16, 1999, claim 1 was further amended[4] in relevant part to change the last limitation to:

> 1. (Four-Times Amended) A communication terminal for informing a user of a **received call** from a remote caller by an alert sound, comprising:
>
> an alert sound generator for generating the alert sound when the call is received from the remote caller;
>
> control means for controlling said alert sound generator; and
>
> means for specifying a predetermined operation by the user,
>
> wherein when said alert sound generator is generating the alert sound and said means for specifying said predetermined operation is operated by the user, said control means controls said alert sound generator to change a volume of the alert sound only for **the received call**, without affecting the volume of the alert sound for future **received calls**, while **a call ringing state, as perceived by the remote caller, of the call to the terminal from the remote caller remains unchanged.**

(*Id.* at JA 339) (emphasis added) Claim 12 was not amended. The applicant argued, in response to an obviousness rejection, that the prior art did "not disclose or suggest control of the alert sound in the manner provided in" amended claim 1. More specifically, it did not disclose "changing a volume of the alert sound only for the call . .

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[4] The interim amendment to claim 1 (on August 18, 1998) did not affect the language at issue. (D.I. 658, ex. G at JA299-301)

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