

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EVOLVED WIRELESS, LLC,)	
)	
Plaintiff,)	C.A. No. 15-542-JFB-SRF
)	
v.)	JURY TRIAL DEMANDED
)	
APPLE, INC.,)	PUBLIC VERSION
)	
Defendant.)	
<hr/>		
EVOLVED WIRELESS, LLC,)	
)	
Plaintiff,)	C.A. No. 15-545-JFB-SRF
)	
v.)	JURY TRIAL DEMANDED
)	
SAMSUNG ELECTRONICS CO., LTD. and)	PUBLIC VERSION
SAMSUNG ELECTRONICS AMERICA, INC.,)	
)	
Defendants.)	

**OPENING BRIEF IN SUPPORT OF DEFENDANTS APPLE INC.'S,
SAMSUNG ELECTRONICS CO., LTD.'S AND SAMSUNG ELECTRONICS
AMERICA, INC.'S JOINT MOTIONS *IN LIMINE***

John W. Shaw (#3362)
Karen E. Keller (#4489)
Andrew E. Russell (#5382)
David M. Fry (#5486)
Nathan R. Hoeschen (#6232)
SHAW KELLER LLP
I.M. Pei Building
1105 N. Market Street, 12th Floor
Wilmington, DE 19801
Tel: (302) 298-0700
jshaw@shawkeller.com
kkeller@shawkeller.com
arusell@shawkeller.com
dfry@shawkeller.com
nhoeschen@shawkeller.com

David E. Moore (#3983)
Bindu A. Palapura (#5370)
Stephanie E. O'Byrne (#4446)
POTTER ANDERSON & CORROON LLP
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19801
Tel: (302) 984-6000
dmoore@potteranderson.com
bpalapura@potteranderson.com
sobyrne@potteranderson.com

Attorneys for Defendant Apple, Inc.

Dated: August 30, 2018
Public Version Dated: September 6, 2018

*Counsel for Defendants Samsung Electronics
Co., Ltd. and Samsung Electronics America, Inc.*

TABLE OF CONTENTS

I. MOTION *IN LIMINE* NO. 1: PRECLUDE EVOLVED FROM OFFERING EVIDENCE REGARDING HOW EVOLVED ARRIVED AT ITS \$0.25 PER-DEVICE FIGURE.....1

II. MOTION *IN LIMINE* NO. 2: PRECLUDE DR. COOKLEV AND EVOLVED FROM ARGUMENTS, EVIDENCE, AND TESTIMONY REGARDING INFRINGEMENT UNDER THE DOCTRINE OF EQUIVALENTS6

III. MOTION *IN LIMINE* NO. 3: EXCLUDE ANY TESTIMONY REGARDING EVIDENCE OF, OR REFERENCE TO, THE PTAB’S DECISION NOT TO INSTITUTE IPR PROCEEDINGS AGAINST THE ’373 PATENT.11

IV. MOTION *IN LIMINE* NO. 4: EXCLUDE ANY TESTIMONY OR DECLARATIONS FROM ANY LG ELECTRONICS WITNESS.....13

V. MOTION *IN LIMINE* NO. 5: EXCLUDE IRRELEVANT EVIDENCE OF FINANCIAL RESOURCES AND SIZE, AS WELL AS UNFAIRLY PREJUDICIAL DOLLAR AMOUNTS OF SALES OF ACCUSED PRODUCTS.....19

VI. MOTION *IN LIMINE* NO. 6: PRECLUDE EVOLVED FROM RELYING ON DOCUMENTS PRODUCED AND FACT TESTIMONY DISCLOSED MORE THAN A YEAR AFTER THE CLOSE OF FACT DISCOVERY.21

TABLE OF AUTHORITIES

Cases

Acantha LLC v. Depuy Orthopaedics Inc.,
 No. 15-C-1257, 2018 WL 2431852 (E.D. Wis. May 30, 2018) 12-13

Amgen Inc. v. Amneal Pharmaceuticals LLC,
 C.A. No. 16-853-MSG, 2018 WL 1885664 (D. Del. Apr. 19, 2018)..... 9

Andover Healthcare, Inc. v. 3M Co.,
 C.A. No. 13-843-LPS, 2016 WL 6404111 (D. Del. Oct. 27, 2016) 11, 12

Art+Com Innovationpool GMBH v. Google Inc.,
 C.A. No. 14-217-TBD, D.I. 382 (D. Del. May 16, 2016)..... 11, 12

B. Braun Melsungen AG v. Teramo Med. Corp.,
 749 F. Supp. 2d 210 (D. Del. 2010)..... 23

Baltimore Aircoil Co. v. SPX Cooling Techs. Inc.,
 No. CCB-13-2053, 2016 WL 4426681 (D. Md. Aug. 22, 2016)..... 8

Best Med. Int’l, Inc. v. Accuray, Inc.,
 No. 2:10-cv-1043, 2013 WL 3305478 (W.D. Pa. July 1, 2013)..... 8-9

Callaway Golf Co. v. Acushnet Co.,
 576 F.3d 1331 (Fed. Cir. 2009)..... 13

Comcast Cable Commc’ns, LLC v. OpenTV, Inc.,
 No. C 16-6180, 2017 WL 2630088 (N.D. Cal. June 19, 2017)..... 8

CP Kelco United States, Inc. v. Pharmacia Corp.,
 213 F.R.D. 176 (D. Del. 2003) 5

Crawford v. George & Lynch, Inc.,
 19 F. Supp. 3d 546 (D. Del. 2013)..... 5

Dynetix Design Solutions v. Synopsys, Inc.,
 No. C11-5973-PSG, 2013 WL 4537838 (N.D. Cal. Aug. 22, 2013)..... 9

Finch v. Hercules Inc.,
 C.A. No. 92-251 MMS, 1995 WL 785100 (D. Del. Dec. 22, 1995) 26

Harris v. New Jersey,
 259 F.R.D. 89 (D.N.J. 2007)..... 5

Helios Software LLC et al v. SpectorSoft Corp.,
 C.A. No. 12-81-LPS, D.I. 545 (D. Del. Apr. 24, 2015)..... 23

Hologic, Inc. and Cytoc Surgical Products, LLC v. Minerva Surgical, Inc.,
 C.A. No. 15-1031, 2018 WL 3348998 (D. Del. July 9, 2018)..... 11

Int'l Bus. Machines Corp. v. Groupon, Inc.,
 C.A. No. 16-122-LPS, 2018 WL 3007662 (D. Del. June 15, 2018)..... 24-25

Integra Lifesciences Corp. v. Hyperbranch Medical Technology, Inc.,
 C.A. No. 15-819-LPS-CJB, 2018 WL 2186677 (D. Del. May 11, 2018) 11

Interdigital Communications Inc., et al. v. Nokia Corporation, et al.,
 C.A. No. 13-10-RGA, 2014 WL 8104167 (D. Del. Sept. 19, 2014) 12

Inventio AG v. Thyssenkrupp Elevator Corp.,
 C.A. No. 08-874-RGA, 2014 WL 554853 (D. Del. Feb. 6, 2014) 19-20, 21

LaserDynamics, Inc. v. Quanta Comput. USA, Inc.,
 694 F.3d 51 (Fed. Cir. 2012)..... 21

Lectec Corp. v. Chattem, Inc.,
 Case No. 5:08-cv-130-DF, 2011 WL 13086026 (E.D. Tex. Jan 4, 2011) 20

Meyers v. Pennypack Woods Home Ownership Ass'n,
 559 F.2d 894 (3d Cir. 1977)..... 23

MIICS & Partners America Inc. v. Toshiba Corp.,
 C.A. No. 14-803-RGA, D.I. 557 (D. Del. Oct. 12, 2017)..... 11, 12

Praxair, Inc. v. ATMI, Inc.,
 445 F. Supp. 2d 460 (D. Del. 2006)..... 17, 26

Prisua Engineering Corp. v. Samsung,
 No. 1:16-cv-21761-KMM, D.I. 268 (D. Fla. Feb. 13, 2018)..... 12

Pro batter Sports, LLC v. Sports Tutor, Inc.,
 No. 3:05-cv-01975-VLB, 2015 U.S. Dist. LEXIS 92107 (S.D. Cal. July 15, 2015)..... 10

QBE Ins. Corp. v. Jorda Enters.,
 277 F.R.D. 676 (S.D. Fla. 2012)..... 5

Sonos, Inc. v. D&M Holdings Inc.
 C.A. No. 14-1330-WCB, 2017 WL 5633204 (D. Del. Nov. 21, 2017)..... 7

St. Clair Intellectual Prop. Consultants, Inc. v. Matsushita Elec. Indus. Co.,
 C.A. No. 04-1436-LPS, 2012 WL 1015993 (D. Del. Mar. 26, 2012) 8

Stambler v. RSA Sec., Inc.,
 212 F.R.D. 470 (D. Del. 2003).....21, 23

Sycamore IP Holdings LLC v. AT&T Corp.,
 No. 2:16-cv-588, 2017 WL 4517953 (E.D. Tex. Oct. 10, 2017)..... 8, 9

SynQor, Inc. v. Artesyn Techs., Inc.,
 709 F.3d 1365 (Fed. Cir. 2013)..... 13

Teashot LLC v. Green Mountain Coffee Roasters, Inc.,
 595 F. App'x. 983 (Fed. Cir. 2015) 8

Tracinda Corp. v. Daimlerchrysler AG,
 C.A. No. 00-993-JJF, 2005 WL 927187 (D. Del. Apr. 20, 2005) 25

Uniloc USA, Inc. v. Microsoft Corp.,
 632 F.3d 1292 (Fed. Cir. 2011)..... 21

Vehicle IP, LLC v. AT&T Mobility LLC,
 227 F. Supp. 3d 319 (D. Del. 2016)..... 21

ViaTech Tech. Inc. v. Microsoft Corp.,
 C.A. No. 14-1226-RGA, 2017 WL 2538570 (D. Del. June 12, 2017) 8

ViaTech Techs. Inc. v. Microsoft Corp.,
 No. 2017-2276, 2018 WL 2338136 (Fed. Cir. May 23, 2018)..... 8

Virnetx, Inc. v. Cisco Sys., Inc.,
 767 F.3d 1308 (Fed. Cir. 2014)..... 13

Xpertuniverse, Inc. v. Cisco Systems, Inc.,
 C.A. No. 9-157-RGA, D.I. 608 (D. Del. Feb 28, 2013) 8

XY, LLC v. Trans Ova Genetics,
 No. 13-cv-0876-WJM-NYW, 2016 WL 97691 (D. Colo. Jan. 7, 2016) 12

Rules

Fed. R. Civ. P. 26..... *passim*

Fed. R. Civ. P. 37(c) 14, 17, 19, 23

Fed. R. Evid. 401 11, 19, 20

Fed. R. Evid. 402 11, 13, 19, 20

Fed. R. Evid. 403 *passim*

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.