

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

EVOLVED WIRELESS, LLC,)	
)	
Plaintiff,)	
)	C.A. No. 15-cv-542-JFB-SRF
v.)	
)	JURY TRIAL DEMANDED
APPLE INC.,)	
)	FILED UNDER SEAL
Defendant.)	

**PLAINTIFF EVOLVED WIRELESS, LLC'S OPENING BRIEF IN SUPPORT OF
MOTION *IN LIMINE* RELATED TO DEFENDANT APPLE**

Dated: August 30, 2018

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Evolved Wireless, LLC (“Evolved Wireless”) respectfully moves to exclude evidence and argument related to damages Apple, Inc. (“Apple”) allegedly suffered as a result of Evolved Wireless’s alleged breach of “FRAND” obligations.¹ The only purported evidence Apple has produced to date to support such damages are two invoices attached to Apple’s opposition to Evolved Wireless’s summary judgment motion—which Apple filed seven months after the close of fact discovery. *See* D.I. 243, Ex. O, P; D.I. 144. These invoices relate to expert costs incurred in this litigation. Apple’s opposition brief also indicated, for the first time, that Apple intends for its corporate witness, Heather Mewes, to provide further evidence of damages via testimony at trial. D.I. 242 at 10. In addition to being untimely, these invoices and any testimony by Ms. Mewes, which presumably will only relate to costs Apple has incurred in this lawsuit, are legally irrelevant. As such, the invoices and testimony should be excluded under Federal Rules of Evidence 402. Further, the invoices and testimony, as well as any other previously undisclosed evidence regarding Apple’s alleged damages, should be excluded as untimely and unfairly prejudicial under Federal Rule of Evidence 403.

1. Factual Background

Apple pled a Breach of Contract counterclaim, alleging that Evolved Wireless breached FRAND obligations and that Apple had been harmed by being forced to defend Evolved Wireless’s claims of infringement and to incur “substantial expense” in doing so. D.I. 9 ¶¶ 61-

¹ As of the date of filing, Evolved Wireless has not yet received Apple’s exhibit list, deposition designations, or proposed statements of disputed issues of fact or law. *See* D.I. 399. Accordingly, Evolved Wireless reserves the right to seek leave of the Court to file additional motions *in limine* should Apple’s pre-trial materials generate unforeseen evidentiary issues, or to object as necessary at trial to issues raised therein.

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