EXHIBIT 13

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The California Institute of Technology v. Broadcom Limited et al.; Case No. 2:16-cv-03714-GW-(AGRx)
Tentative Rulings on:

(1) Plaintiff's Motion for Summary Judgment as to No Inequitable Conduct (Partial) (Docket No. 942 - public; Docket No. 957 - sealed; *see also* Docket No. 994 (notice of errata)); Opposition (Docket No. 1070 - public; Docket No. 1104 - sealed); Reply (Docket No. 1153 - public; Docket No. 1180 - sealed)

(2) Defendants' Motion for Summary Judgment as to No Joint Infringement (Docket No. 959 - public; Docket No. 1006 - sealed); Opposition (Docket No. 1055 - public; Docket No. 1095 - sealed); Reply (Docket No. 1137 - public; Docket No. 1183 - sealed)

(3) Plaintiff's Motion to Strike Certain Opinions of Defendants Experts Brendan Frey and Wayne Stark (Docket No. 974 - public; Docket No. 1000 - sealed); Opposition (Docket No. 1059 - public; Docket No. 1102 - sealed); Reply (Docket No. 1141 - public; Docket No. 1175 - sealed)

(4) Defendants' Motion to Exclude Infringement Opinions of Dr. Michael Tanner (Docket No. 964 - public; Docket No. 1007 – sealed); Opposition (Docket No. 1057 - public; Docket No. 1094 - sealed); Reply (Docket No. 1133 - public; Docket No. 1182 - sealed)

(5) Plaintiff's Motion to Strike Late-Disclosed Non-Infringing Alternative (Docket No. 971 - public; Docket No. 996 - sealed); Opposition (Docket No. 1052 - public; Docket No. 1101 - sealed); Reply (Docket No. 1144 - public; Docket No. 1176 - sealed)

(6) Plaintiff's Motion to Exclude Improper Claim Construction Opinions of Dr. Stark and Dr. Blanksby (Docket No. 968 - public; Docket No. 998 - sealed); Opposition (Docket No. 1064 - public; Docket No. 1103 - sealed); Reply (Docket No. 1149 - public; Docket No. 1174 - sealed)

(7) Broadcom's Motion for Summary Judgment as to Non-Infringement as to Extraterritorial Sales (Docket No. 975 - public; Docket No. 1008 - sealed); Opposition (Docket No. 1050 - public; Docket No. 1093 - sealed); Reply (Docket No. 1154 - public; Docket No. 1184 - sealed)

[Portions of the parties' briefing related to the pending motions addressed by this Tentative Ruling were filed under seal. The parties will be expected to state their positions as to whether any material should remain under seal during the hearing on the motions, including the basis for any continued request to seal.]

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I. Introduction

Plaintiff The California Institute of Technology currently alleges patent infringement against Defendants Broadcom Limited, Broadcom Corporation, Avago Technologies Limited, and Apple Inc. *See* First Amended Complaint ("FAC"), Docket No. 36; *see also* Docket No. 1. Plaintiff asserts that Defendants infringe fifteen claims from three of its patents: (1) U.S. Patent No. 7,116,710 ("the '710 Patent"); (2) U.S. Patent No. 7,421,032 ("the '032 Patent"); and (3) U.S. Patent No. 7,916,781 ("the '781 Patent") (collectively, the "Asserted Patents").[1] *See* Docket No. 409 (Plaintiff's Amended Notice of Withdrawal of Certain Asserted Claims of Asserted Patents); *see also* Docket No. 953 (Joint Report Regarding Pending Disputed Issues).

The parties have filed this first "round" of motions for summary judgment and motions to exclude.[2] Those motions have been fully briefed.

For the reasons stated in this Order, the Court would rule as follows:

- Broadcom's Motion for Summary Judgment as to Non-Infringement as to Extraterritorial Sales (Docket No. 975) would be **GRANTED-IN-PART** and **DENIED-IN-PART** as stated herein.
- Defendants' Motion for Summary Judgment as to No Joint Infringement (Docket No. 959) would be **GRANTED**.
- The Court would **DENY-IN-PART**, **GRANT-IN-PART**, and **DEFER-IN-PART**

[1] The fifteen remaining claims in this case are: Claims 20, 22, and 23 of the '710 Patent; Claims 3, 11, 13, 17, and 18 of the '032 Patent; and Claims 5, 6, 9, 10, 13, 19, and 22 of the '781 Patent. Docket No. 409. Of those claims, eleven were selected as representative claims for purposes of adjudication in this lawsuit: Claims 20, 22, and 23 of the '710 Patent; Claims 3, 11, 17, and 18 of the '032 Patent; and Claims 6, 9, 13, and 22 of the '781 Patent. *See id.*; *see also* Docket No. 487, 488. On March 22, 2019, in a joint report filed by the parties, Plaintiff stated that it intended to file a "formal notice of withdrawal" on the basis that it has "withdrawn its infringement allegations with respect to claims 5, 6, 9, and 10 of the '781 patent and claim 13 of the '032 patent." Docket No. 953 at 2; *see also* Docket No. 998 at 2 (Plaintiff's memorandum in support of motion to exclude improper claim construction opinions, stating that it alleges that Defendants infringe Claims 20, 22, and 23 of the '710 Patent, Claims 3, 11, 17, and 18 of the '032 Patent, and Claims 9, 13 and 22 of the '781 Patent). Plaintiff has not yet filed such a notice, which, once filed, will be understood to remove those five claims from the case entirely given that Plaintiff does not represent that any of the claims "[s]elected for adjudication" are representative of any of the withdrawn claims.

[2] Specifically, the following seven motions have been filed: (1) Plaintiff's Motion for Summary Judgment as to No Inequitable Conduct (Partial) (Docket No. 942); (2) Defendants' Motion for Summary Judgment as to No Joint Infringement (Docket No. 959); (3) Plaintiff's Motion to Strike Certain Opinions of Defendants' Experts Brendan Frey and Wayne Stark (Docket No. 974); (4) Defendants' Motion to Exclude Infringement Opinions of Dr. Michael Tanner (Docket No. 964); (5) Plaintiff's Motion to Strike Late-Disclosed Non-Infringing Alternative (Docket No. 971); (6) Plaintiff's Motion to Exclude Improper Claim Construction Opinions of Dr. Stark and Dr. Blanksby (Docket No. 968); (7) Broadcom's Motion for Summary Judgment as to Non-Infringement as to Extraterritorial Sales (Docket No. 975).

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Plaintiff's Motion to Exclude Improper Claim Construction Opinions of Dr. Stark and Dr. Blanksby (Docket No. 968) as stated herein.

- As stated herein, Plaintiff's Motion to Strike Certain Opinions of Defendants' Experts Brendan Frey and Wayne Stark (Docket No. 974) would be **GRANTED-IN-PART** and **DEFERRED-IN-PART** pending discussion at the hearing.
- Plaintiff's Motion to Strike Late-Disclosed Non-Infringing Alternative (Docket No. 971) would be **DENIED**.
- The Court would **GRANT-IN-PART** and **DENY-IN-PART** Defendants' Motion to Exclude Infringement Opinions of Dr. Michael Tanner (Docket No. 964) as stated herein.
- Plaintiff's Motion for Summary Judgment as to No Inequitable Conduct (Partial) (Docket No. 942) would be **GRANTED**.

II. Legal Standard

A. Summary Judgment

Under Federal Rule of Civil Procedure ("Rule") 56, a party may move for summary judgment, identifying each claim or defense − or the part of each claim or defense − on which summary judgment is sought, and the court shall grant it when the pleadings, the discovery and disclosure materials on file, and any affidavits show that "there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Miranda v. City of Cornelius*, 429 F.3d 858, 860 n.1 (9th Cir. 2005). As to materiality, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is "genuine" if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *Id.*

To satisfy its burden at summary judgment, a moving party with the burden of persuasion must establish "beyond controversy every essential element of its [claim or defense]." *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 888 (9th Cir. 2003); O'Connell & Stevenson, *Rutter Group Prac. Guide: Fed. Civ. Proc. Before Trial* ("*Federal Practice Guide*") § 14:126 (2016). By contrast, a moving party without the burden of persuasion "must either produce evidence negating an essential element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion

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at trial." *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos.*, Inc., 210 F.3d 1099, 1102 (9th Cir. 2000); *see also Devereaux v. Abbey,* 263 F.3d 1070, 1076 (9th Cir. 2001) (en banc) ("When the nonmoving party has the burden of proof at trial, the moving party need only point out 'that there is an absence of evidence to support the nonmoving party's case.'") (quoting *Celotex Corp. v. Catrett,* 477 U.S. 317, 325 (1986), and citing *Fairbank v. Wunderman Cato Johnson,* 212 F.3d 528, 532 (9th Cir. 2000) (holding that the *Celotex* "showing" can be made by "pointing out through argument . . . the absence of evidence to support plaintiff's claim")).

> If the party moving for summary judgment meets its initial burden of identifying for the court the portions of the materials on file that it believes demonstrate the absence of any genuine issue of material fact, the nonmoving party may not rely on the mere allegations in the pleadings in order to preclude summary judgment[, but instead] must set forth, by affidavit or as otherwise provided in Rule 56, specific facts showing that there is a genuine issue for trial.

T.W. Elec. Serv., Inc., v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987) (internal citations and quotation marks omitted) (citing, among other cases, *Celotex*, 477 U.S. at 323). "A non-movant's bald assertions or a mere scintilla of evidence in his favor are both insufficient to withstand summary judgment." *See FTC v. Stefanchik*, 559 F.3d 924, 929 (9th Cir. 2009). In addition, the evidence presented by the parties must be admissible. *See* Fed. R. Civ. P. 56(e). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. *See Thornhill Publ'g Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979). Relatedly, "[a]ny objections to declarations or other evidence must be made at or (preferably) before the hearing, and should be ruled upon by the court before ruling on the motion itself." *Federal Practice Guide* § 14:333 (citing *Hollingsworth Solderless Terminal Co. v. Turley*, 622 F.2d 1324, 1335 n.9 (9th Cir. 1980); *Sigler v. American Honda Motor Co.*, 532 F3d 469, 480 (6th Cir. 2008)). In judging evidence at the summary judgment stage, however, courts do not make credibility determinations or weigh conflicting evidence at the summary judgment stage, and must view all evidence and draw all inferences in the light most favorable to the non-moving party. *See T.W. Elec.*, 809 F.2d at 630-31 (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)); *Anderson*, 477 U.S. at 255 ("The evidence of the non-movant is to be believed and all justifiable inferences are to be drawn in [the non-movant's] favor.").

"If the court does not grant all the relief requested by the motion, it may enter an order

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