IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

MAXELL, LTD., *Plaintiff*, v. APPLE INC., *Defendant*.	Case No. 5:19-cv-00036-RWS **JURY TRIAL DEMANDED** PUBLIC VERSION

MAXELL, LTD.'S OPPOSITION TO APPLE INC.'S MOTION TO COMPEL INFRINGEMENT CONTENTIONS COMPLIANT WITH PATENT RULE 3-1(G) OR, IN THE ALTERNATIVE, TO PRECLUDE MAXELL'S RELIANCE ON SOURCE CODE FOR INFRINGEMENT

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Maxell's infringement contentions are exceptional. They are thorough and detailed and provide Apple full notice of Maxell's infringement theories. But Apple is not concerned with this. Apple wants Maxell to provide early expert reports, identifying the precise evidence on which Maxell will rely at trial.

I. Legal Standard

Rule 3-1 contentions "must be reasonably precise and detailed...to provide a defendant with adequate notice of the plaintiff's theories of infringement, [but] they need not meet the level of detail required, for example, on a motion for summary judgment on the issue of infringement." *ROY-G-BIV Corp. v. ABB, Ltd*., 63 F. Supp. 3d 690, 699 (E.D. Tex. 2014). "The Rules do not require the disclosure of specific evidence nor do they require a plaintiff to prove its infringement case....Infringement contentions are not intended to require a party to set forth a prima facie case of infringement and evidence in support thereof." *EON Corp. IP Holdings, LLC v. Sensus USA Inc*., Case No. 6:09-cv-116, 2010 U.S. Dist. LEXIS 4973, at *8-9 (E.D. Tex. Jan. 21, 2010).

II. ARGUMENT

Patent Rule 3-1(g) "affords a party alleging infringement an opportunity to delay compliance with Patent Rule 3-1's requirements for claim elements that may be satisfied by source code that has not yet been produced." *Elbit Sys. Land & C4I Ltd. v. Hughes Network Sys., LLC*, No. 2:15-cv-00037-RWS-RSP, 2017 WL 2651618, at *9 (E.D. Tex. June 20, 2017), report and recommendation adopted, No. 2:15-CV-00037-RWS, 2017 WL 4693971 (E.D. Tex. July 31, 2017). But Maxell did not delay compliance with P.R. 3-1. On June 12, 2019, Maxell served its original Infringement Contentions ("OIC"), including twelve claim charts (of over 4,000 pages) identifying specifically where each element of each asserted claim is found in the accused products. For select limitations, **in addition to** specifically identifying where the limitation is found in accused products, Maxell also noted that the limitation implicates software, firmware and/or source code and that Maxell would supplement its contentions in accordance with P.R. 3-1(g). Maxell did not avoid providing its infringement theories, but reserved its right to provide **added** support from the code once the source code was available.

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PUBLIC VERSION

A. Maxell's Infringement Contentions Sufficiently Disclose Its Infringement Theories

Now Apple imposes two new requirements: 1) source code must **independently** provide a plaintiff's infringement theories and 2) a plaintiff must specifically identify the code on which it will rely to prove infringement. Neither is mandated by law or necessary "to provide 'all parties with adequate notice and information with which to litigate their cases' and deter 'litigation by ambush.'" Mot. at 1.

Apple reads the source code citations in Maxell's Supplemental Infringement Contentions ("SIC") in a vacuum, stating they leave Apple "at a loss as to Maxell's actual infringement theor[ies]." Mot. at 4. While this is hard to believe given it is Apple's own source code, code is not the only evidence Maxell provided. From the start Maxell identified its theory of infringement for each asserted limitation by identifying how certain functionalities of the accused products meet the limitation (*e.g.*, '493 Patent: Pixel Processing for Images and Image Stabilization) and then provided ample evidence and explanation, including, for example, screenshots of the accused devices, user guides, website pages, etc. Pursuant to P.R. 3-1(g), Maxell supplemented its contentions to include exemplary source code citations that further support Maxell's already-disclosed theories. There were no new "source code-based infringement theories," as Apple describes it. Maxell did not change any infringement theory from what was disclosed in its OICs on June 12, 2019. Rather, Maxell supplemented with code citation to further support its previously disclosed infringement theories.

As an example of an alleged deficiency, Apple points to element 1(d) of the '493 Patent. An actual review of the contentions, however, proves they are not the bare listing of code that Apple wants the Court to believe. For example, Maxell provided examples of Apple's infringement, such as the following:

> On information and belief, the signal processing unit in the iPhone X mixes or culls pixel lines in order to downsample from about 4032 vertically arranged pixel lines used to display images having about 2436 vertically arranged pixel lines used to monitor in static image mode (for example, the number of vertically arranged pixels used in the iPhone X's display screen). In mixing or culling the 4032 vertically arranged pixel lines of the iPhone X's light-receiving sensor to the 2436 or fewer vertically arranged pixel lines used to monitor images in static image mode, the device's signal processing unit reduces the signals from all N (4032) vertically arranged pixel lines by a factor of about 1.655 (for example, using approximately every other pixel line). By using only every other pixel line, the monitored image would

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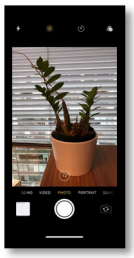
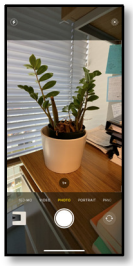
> include only the odd-numbered (alternatively even-numbered) pixel lines from the original image, or a mixing of each odd-numbered pixel line with the adjacent even-numbered pixel line. Thus, in this example, the signal processing unit skips pixel lines of intervals of K1 = 1 pixels. (In an alternative way of viewing Apple's infringement, K1 may be 2 in this example.)

This alone provides Apple full notice of Maxell's allegation of infringement. Yet Maxell also provided screenshots from the accused devices to assert that "fewer than 2436 vertically arranged pixel lines are used to monitor in static image mode due to the edges of the screen being used for menu items and other information," and that "the device monitors in still image mode":



"fewer than 2436 vertically arranged pixel lines are used to monitor in static image mode due to the edges of the screen being used …."



"device monitors in still image mode"

For support that other accused products mix or cull pixel lines from all N vertically arranged pixel lines used to capture still images to the smaller subset of pixel lines used to monitor in static image mode, Maxell provided a chart identifying exemplary values of N, pixel lines in monitoring mode, ratio, and K1 based on publically available information regarding the camera modules (an excerpt follows).

Infringing Product	Exemplary Values(s) of N	Exemplary Number of Pixel Lines in Monitoring Mode	Ratio	Exemplary Value of K1
iPhone 11	4032	1792	2.25	1
iPhone 11 Pro	4032	2436	~1.655	1
iPhone 11 Pro Max	4032	2688	1.5	1

As another example from Apple's motion, the contentions for element 1(f) of the '991 Patent are similarly detailed.[1] For element 1(f), Maxell asserts that each accused product "includes functionality wherein when the processor receives an inbound videophone call notice while displaying the first digital

[1] There are thirty accused products for the '991 Patent that Maxell addressed in its review of code and the SICs

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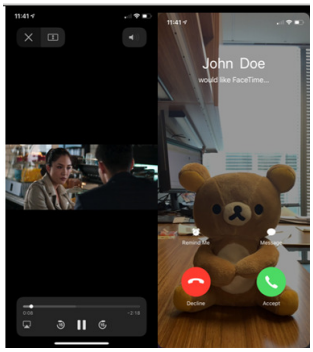
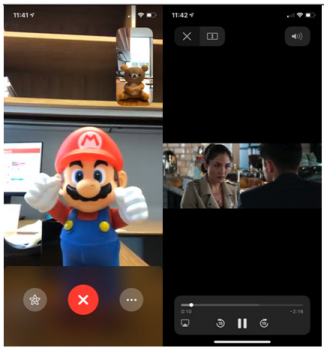
information on the display, the processor pauses the displaying of the first digital information and renders the camera operative" and provided links to technical specifications that show the devices include "Video Calling," "FaceTime," and "TV" or video playback. As an example, Maxell asserts that when the iPhone X receives an inbound videophone call notice while displaying the first digital information (*e.g.* video, movie, etc.) on the display, the processor pauses the displaying of the first digital information and renders the camera operative for a FaceTime call. Maxell provided the screenshots in support, such as the following that demonstrates the events wherein the "first digital information" was received from the iTunes Store (additional screenshots were provided for content received from the TV App and Browser):





Maxell further provided screenshots that show a similar series of events for the MacBook Pro 15.2.

Moreover, Maxell's code citations are not broad or vague as Apple asserts. Whereas Apple focuses on the number of citations, looking at their substance shows that the cited source code is narrow. By way of example, the contentions cover a total of sixteen accused products for the '493 Patent. Each of these products includes a camera module that performs the claimed functionality (*e.g.*, "mixing or culling"). Maxell cited only those files within the [redacted] directories. The cited files describe [redacted] Mot. at 4, which amounts to less than [redacted]% of all Apple produced code.[2] The relevant directories and

[2] This case concerns 22 different versions of operating systems. The cited code for a particular limitation often included citations of the same files as produced across the different versions, increasing the number of citations but not the substance.

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