PUBLIC VERSION

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 RENEWED MOTION TO COMPEL INFRINGEMENT CONTENTIONS COMPLIANT WITH PATENT RULE 3-1(G) AND FOR SCHEDULE EXTENSION OR, IN THE ALTERNATIVE, TO PRECLUDE MAXELL'S RELIANCE ON SOURCE CODE FOR INFRINGEMENT

Maxell has not evaded its duty to provide compliant contentions. Although Apple claims it was "owed" P.R. 3-1(g) contentions since last September, that is not so. A plaintiff need not comply with P.R. 3-1(g) "until 30 days after source code" is produced. D.I. 42 at ¶ 3(a). The Court acknowledged that Apple did not trigger P.R. 3-1(g) supplementation until February, holding: "Maxell's 30-day deadline began to run on February 12, 2020." D.I. 204 at 5. Thus, Maxell served P.R. 3-1(g) contentions on March 13, 2020 that were significantly narrowed from its First Supplemental Infringement Contentions (FSIC) and fully compliant the Court's Order and rules.

Apple's claims of prejudice are unsupported. Whereas Apple's **counsel** argues it cannot "reasonably discern the accused functionality" from Maxell's contentions, [redacted]. Siddiqui Decl. at ¶2. Regardless, to the extent there is any prejudice, it is not from a lack of specificity in Maxell's Second Supplemental Infringement Contentions (SSIC). Rather, it is the result of Apple's discovery tactics and adherence to rigid source code restrictions. Apple controlled the deadline for Maxell's P.R. 3-1(g) supplementation, as it was Apple's completion of source code production that triggered the event. Had Apple produced all relevant code earlier (as Maxell requested), Maxell would have served its supplementation earlier.[1] Apple's complaint that its experts cannot analyze the cited code is also self-created. Apple has had Maxell's infringement theories since June 2019 and was given insight into the code Maxell may rely on in October 2019. If Apple chose to wait until the end of fact discovery to have its experts begin code review, Apple should be the party to suffer the consequences. This is particularly true in view of the fact that Apple could take steps to work around the current code review restrictions in view of COVID-19, as suggested by Judge Gilstrap,[2] but has chosen not to.

[1] Apple continued its production of source code and documents after Maxell's SSICs. Siddiqui Decl. at ¶ 3. Code for [redacted] still has not been produced. *Id.* Apple's counsel [redacted]. *Id.*
[2] "[P]andemic conditions may require production of computer source code in ways that are not consistent with the producing party's normal security protocols." Standing Order Regarding Pretrial Procedures During COVID-19.

Apple's requested relief reveals that the true motive behind the instant motion is the same as many of Apple's other motions: delay of trial. Apple waited more than a month after Maxell served its SSICs before bringing this motion. And when the parties met and conferred to discuss it, Apple would only identify a single example of deficiency. Although Maxell did not agree it was necessary, Maxell offered to provide more detail with respect to that single example to avoid motions practice.[3] But Apple declined as it would then be without a basis on which to seek delay.

I. Maxell's SSICs are Significantly and Sufficiently Focused and Compliant

Apple's motion amounts to a renewed demand for pinpoint citations, or at least citations meeting the level of detail required for expert reports or motions for summary judgment on infringement. Such detail is not required. This Court held the rules do "not require pinpoint citations to source code in every case…. Plaintiff may cite to ranges of source code, even broad ranges that include non-accused functionality, so long as that range has some focus on the accused functionality and the defendant is fairly put on notice." D.I. 204 at 4. "[W]hen a plaintiff cites large and undifferentiated ranges of source code from which a defendant could not reasonably discern the accused functionality, the contentions are insufficiently specific." *Id.*; *see also* D.I. 145 at 1.

Maxell heeded the Court's directive to provide focused source code citations. It narrowed the source code cited in its FSICs from thousands of pages of source code files to just 70 pages. More specifically, Maxell's original contentions provided an overview of its infringement theories in a cover document, which were expanded upon in appended claim charts that contained a textual description and explanation of the accused functionalities for each accused claim element based on documentary evidence including, *e.g.*, screenshots of accused products, listings of components,

[3] To the extent Apple argues that this demonstrates Maxell *could* further narrow its citations, Maxell does not deny the possibility in expert reports. Maxell's experts have been diligently working on their reports and developing their detailed opinions. But infringement contentions are not required to provide the same level of detail as such reports.

and/or Apple webpages. In its SSICs, Maxell added a reference to these charts, for each applicable claim element, to a separate Sub-Appendix wherein Maxell identified the narrowed source code files with paths applicable to the claim element. The detailed listing of code was broken down by element and operating system or, where appropriate hardware/firmware. Although Apple asserts these Sub-Appendices were not enough to render Maxell's contentions compliant, an actual review of the issues raised by Apple demonstrates otherwise.

'493 Patent. Maxell narrowed its identification of source code for element 5(e) from over 650 source code files to ten. Moreover, [redacted]. Maxell performed similar narrowing for element 5(d).

Apple's argument that Maxell never identifies accused functions or explains how the processing functions relate to the accused functionality of "mixing or culling signal charges" completely ignores the textual disclosures in Maxell's contentions, which the Court held must be taken into account. D.I. 204 at 4 ("[S]ource code citation must provide a defendant with fair notice of the software functionalities that are accused when the citations are read in light of the textual disclosures."). As to the "mixing and culling" element of 5(e), Maxell points to just **one** infringing functionality—downsampling (or "downscaling") of image data—in its contentions:

> Upon information and belief the displayed image is a downsampled/culled version of the image on the sensor, or the array of pixels from the area of the image sensor selected for read-out….

Siddiqui Decl. at ¶4 (discussing claim 5(e)). Maxell initially provided evidence of such downsampling/downscaling through actual operation of the phone and evaluation of camera modules by demonstrating how in preview mode ("monitoring mode") the resolution of the image being rendered is scaled down from the total number of pixels in the image sensor, and supplemented its contentions to provide detailed evidence through a small number of source code

files. Given the singular identification of downsampling/downscaling, non-source code evidence, and small number of code files cited, no guessing is required to discern the accused functionalities. Further, for 19 Accused Products executing seven versions of operating systems, Maxell has printed a mere 20 pages of source code, which provides a preview of Maxell's infringement expert report.[4] These small excerpts, which show [redacted], provide expert-report level detail. This makes it clear that Apple is not actually seeking a narrowing in order to understand Maxell's theories, but rather wants pinpoint, expert-report-level citations in advance of expert reports (or, more likely, to create an imaginary deficiency for delay purposes).[5]

Claim element 5(d) of the '493 Patent requires that accused products use "all signal charges accumulated in all N number of vertically arranged pixel lines" when recording an image in static image mode. In its infringement contentions, Maxell has set forth only one infringement theory, *i.e.*, the recording of still pictures at certain resolutions:

> the [accused products] each use N number ([e.g.], 3024 or fewer) pixel lines when recording images in static mode…. In other words, in these examples at one orientation, the [accused products] each capture still images that have 3024 vertically arranged pixel lines, using all of the vertically arranged pixel lines (N) available for static image capture in these products' 12MP image sensing device.

Siddiqui Decl. at ¶5 (discussing claim 5(d)). Maxell even provided screenshots showing the recording of the image, and the source code files simply, clearly, and precisely correspond to this accused functionality of recording still pictures with certain resolutions.

'794 Patent. If Apple has any issues discerning the accused functionality, it is (again)

[4] It is not appropriate to limit Maxell's reliance on code to the printed excerpts. Because of tight printing restrictions for the code, Maxell could not print out all relevant code, but rather had to choose representative examples.

[5] This is further evidenced by a recent letter wherein Apple objected to printing of code from a file Apple states was not identified in the SSICs. *Id.* at ¶10. Apple clearly seeks to compel Maxell to identify specific source code in hopes that it can both preview expert opinion and later limit Maxell's experts to the specified code. But, that a particular "code file was not cited in… infringement disclosures does not automatically preclude [use of the file] to support a theory that was timely disclosed." *Oracle America, Inc. v. Google Inc.*, No. 10-cv-3261, 2011 WL 4479305, at *3 (N.D. Cal. Sept. 26, 2011). Apple's attempt to prematurely limit Maxell's case is improper.

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