

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

MAXELL, LTD.,

Plaintiff,

v.

APPLE INC.,

Defendant.

Civil Action No. 5:19-cv-00036-RWS

JURY TRIAL DEMANDED

**APPLE INC.'S DAUBERT MOTION TO EXCLUDE THE OPINIONS AND
TESTIMONY OF PLAINTIFF'S SURVEY EXPERT DR. TÜLİN ERDEM**

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I. INTRODUCTION

The opinions of Dr. Tülin Erdem, the witness Maxell offers to provide opinions concerning a survey that purports to show “awareness” and the “relative importance” of certain features and functionalities of the accused mobile devices in this case, are fundamentally flawed and should be excluded under *Daubert* for three reasons.

First, Dr. Erdem did not follow the standard practice of including proper “controls” in her survey. This renders her results scientifically unreliable. Specifically, her survey did not use a simple control-test methodology, similar to the use of a placebo group in medical research, to filter out responses that are based on factors unrelated to the specific feature she surveyed. Using a control group to filter out this “noise,” by comparing the results of one group examining the accused feature to those of another group examining a noninfringing alternative, is the only legally recognized method to ensure that survey evidence is not inaccurate or misleading.

Second, as she admits, Dr. Erdem’s survey only purported to measure users’ “awareness” and the “relative importance” to those users of the limited set of “granular” features she surveyed (features which are not of “absolute” importance to users’ purchasing decisions). But these measures are wholly irrelevant to any issue in this case. Maxell’s damages expert Carla Mulhern, their most logical consumer, did not rely on Dr. Erdem’s “awareness” survey results, citing (without explanation) only to the survey’s “relative” importance numbers to derive “value.” And in relying on the “relative” importance measure, Ms. Mulhern disregards the fact that Dr. Erdem did not measure the value of the asserted patents in any way, whether as a function of the value they add to the accused products or otherwise. Under directly applicable case law, evidence of the “relative” importance of allegedly patented features is irrelevant for the purpose of ascribing value to the patents or their contribution to the accused products.

Finally, Dr. Erdem’s survey described the allegedly infringing functionality of two of the

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