

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

**MAXELL, LTD.,**

**Plaintiff,**

**vs.**

**APPLE INC.,**

**Defendant.**

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

**JURY TRIAL DEMANDED**

**DEFENDANT APPLE INC.'S REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL  
DISMISSAL OF PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM**

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## I. INTRODUCTION

Maxell does not credibly dispute that its Complaint fails to sufficiently allege facts to support its claims of pre-suit indirect and willful infringement. Instead, Maxell devotes much of its Opposition to trying to supplement its Complaint with new allegations and explanations. However, because it is black-letter law that consideration of a motion to dismiss under Rule 12(b)(6) is limited to the pleadings, Maxell cannot rely on these *post hoc* supplements to save it now, and the Court should dismiss Maxell's pre-suit indirect and willful infringement claims.<sup>1</sup>

## II. ARGUMENT

### A. Maxell's Broad Citations to Apple's Website Do Not Plausibly Show Apple's Specific Intent to Induce Infringement

Maxell's generic references to Apple's website do not show that Apple specifically intended to induce its customers to infringe any Maxell patent, particularly given that Maxell asserts 10 patents related to technologies ranging from navigation to power management. It is not enough, as Maxell argues, to have identified a high-level functionality associated with each asserted patent and a link to a webpage vaguely relating to that functionality. Opp. at 5.

Even a cursory review of the Complaint belies Maxell's characterizations of its citations as "exact" and "tailored" to each patent. Opp. at 4-5. For example, in its boilerplate alleging specific intent for each Asserted Patent, Maxell alleges that Apple instructs customers through "user guides" available at [https://support.apple.com/en\\_US/manuals](https://support.apple.com/en_US/manuals). Complaint at ¶¶ 27, 41, 56,

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<sup>1</sup> Maxell attempts to reserve a right to amend the Complaint with one paragraph in its response (*see* Opp. at 13), but has not meaningfully demonstrated why it should be permitted to do so. Maxell could have pleaded all of the allegations it now offers in its response but chose not to. And Maxell could have sought leave to amend but chose not to. Allowing Maxell to benefit from this strategic withholding of alleged facts will unduly delay the case and cause prejudice to Apple. *See GSS Props., Inc. v. Kendale Shopping Center, Inc.*, 119 F.R.D. 379 (M.D.N.C. 1988) ("Parties have an obligation to introduce, at the earliest stage of the litigation as possible, the matters upon which they want to rely in supporting their claim or defense") (citing 6 C. Wright & A. Miller, *Federal Practice and Procedure*, § 1488 at 444 (1971)).

69, 86, 99, 112, 129, 142, 157. These paragraphs, however, reference the main Apple web page for its manuals, which contains links to 1,178 instruction manuals (one for *every Apple product*, accused or not) and encompasses (unsurprisingly) tens of thousands of pages of materials.

The same allegations also reference links to webpages that broadly describe accused applications, but these too are hardly “tailored.” For example, Maxell describes the claimed functionality of the ’317 patent as “displaying positions of a destination and a present place, and a relation of said direction and a direction from said present place to said destination” and “changing the display according to a change of said direction of said portable terminal orientation for walking navigation.” Complaint at ¶ 20 (internal quotations omitted). But in attempting to allege specific intent, Maxell cites the “Maps” landing page (*id.* at ¶¶ 27), which describes *all* of the functionality offered by Maps, including, *e.g.*, spoken directions, 3D views, destination suggestions, and lane guidance. See <https://www.apple.com/ios/maps/>. Maxell never identifies any statements on this webpage that purport to induce customers to infringe or even relate to the claimed functionality of the ’317 patent at all. Indeed, this webpage only provides feature descriptions; it neither directs nor instruct users to do anything. Apple is left to guess what Maxell’s theory of specific intent is, because, just as in *Stragent, LLC v. BMW of N. Am., LLC*, Maxell has failed “to allege how the instructions direct customers to use those products in an infringing manner.” No. 6:16-cv-446-RWS-KNM, 2017 U.S. Dist. LEXIS 156084, at \*25 (E.D. Tex. Mar. 3, 2017).

Maxell’s failure to distinguish *Core Wireless Licensing S.A.R.L. v. Apple Inc.*, No. 6:14-cv-JRG-JDL, 2015 U.S. Dist. LEXIS 107354 (E.D. Tex. Jul. 15, 2015) is telling. Maxell argues that unlike its Complaint, the *Core Wireless* complaint failed to “identify even which functions” were at issue. *Opp.* at 7. But Maxell’s citations to high-level landing pages for accused applications that discuss myriad features for those applications and to all Apple manuals fare no

better. It is insufficient to broadly allege that there is a website that may or may not contain some encouragement or instruction that is relevant to an Asserted Patent. *See Cevallos v. Silva*, 541 Fed. Appx. 390, 392 (5th Cir. 2013) (non-precedential) (dismissing claim if allegations only allow the court to infer “the mere possibility of misconduct”) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)).

Unable to save its inducement allegations, Maxell tries to supplement them with unpled and irrelevant allegations. Maxell now argues that it has shown Apple’s specific intent by alleging that Apple *directly* infringes—*e.g.*, a screenshot of the Find My Friends app as purported evidence of infringement of the ’317 patent. Opp. at 5-6 (citing Complaint at ¶ 24). But Maxell cannot explain, nor does it allege in its Complaint, how these *direct infringement* allegations demonstrate Apple’s specific intent to *induce infringement* by third parties.<sup>2</sup>

**B. Maxell Cannot Supplement Its Insufficient Allegations of Pre-Suit Knowledge of the ’586 Patent Through Briefing**

Maxell’s Opposition confirms that it could not have provided actual notice of the ’586 patent on October 9, 2018, as alleged in the Complaint, because the patent did not even exist on that date. However, Maxell tries another *post hoc* “fix” by offering new allegations in its Opposition. Indeed, Maxell now alleges, inconsistently and for the first time, that in addition to telling Apple on October 19, 2018<sup>3</sup> about the application that led to the ’586 Patent, it also told Apple that the PTO had allowed the application, but that Maxell was still making edits to correct “typographical errors.” Opp. at 7-8. These new “allegations” are irrelevant because they are not

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<sup>2</sup> Maxell does not even allege that Find My Friends is evidence of induced infringement. *See* Complaint at ¶ 27 (citing Manuals and Maps landing page, but nothing related to Find My Friends).

<sup>3</sup> The Opposition and Complaint are inconsistent. The Complaint alleges that Apple was on notice of the ’586 Patent since October 9, 2018, but the Opposition claims that Maxell told Apple about the application on October 19, 2018. *Compare* Complaint at ¶ 145 and Opp. at 7-8.

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