

**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

**PLAINTIFF MAXELL, LTD.'S SUR-REPLY IN OPPOSITION TO DEFENDANT
APPLE INC.'S MOTION FOR PARTIAL DISMISSAL OF PLAINTIFF'S COMPLAINT
FOR FAILURE TO STATE A CLAIM**

Apple's Reply confirms that its motion is based on gamesmanship rather than principle. Its strategy is to cherry-pick excerpts from the Complaint, omit the relevant context, and feign ignorance of the surrounding circumstances.

Apple's tactic fails because it is built on grossly incorrect legal standards. The correct legal standard to state a claim is mere plausibility. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Notice pleading "do[es] not require heightened fact pleading of specifics." *Id.* Rather, all that is required is that the Complaint sets out "enough facts to state a claim to relief that is plausible on its face." *Id.*

Moreover, Apple has no legal basis to complain that the Opposition includes some additional details adding color to the Complaint. To the extent any of those details are absent from the Complaint, they are readily permissible, not for the purpose of supplementing the Complaint, but for illustrating that the allegations therein are *plausible*. *See Early v. Bankers Life & Cas. Co.*, 959 F.2d 75, 79 (7th Cir. 1992) ("a plaintiff is free, in defending against a motion to dismiss, to allege without evidentiary support any facts he pleases that are consistent with the complaint, in order to show that there is a state of facts within the scope of the complaint that if proved (a matter for trial) would entitle him to judgment."). Thus, to the extent Maxell's Opposition contains any color beyond the Complaint, that is unobjectionable.

Under the proper legal standards, the Complaint states a claim for willful and induced infringement that is plainly "plausible on its face." *Twombly*, 550 U.S. at 570. The details in Maxell's opposition confirm this. The Court should reject Apple's gamesmanship and deny the motion to dismiss.

I. ARGUMENT

A. The Complaint Plausibly Alleges Apple's Specific Intent.

Apple continues to characterize Maxell's references to Apple's websites as generic, but that does not make them so. The allegations in the Complaint provide ample detail to inform Apple of what products, functionality, and user communications form the basis of the claims. For example, consider the allegations regarding the '317 Patent.

- The Complaint includes allegations that the iPhone XS includes Apple's "Maps" software that "allows users to access location information, including the present location of the device and orientation of the device and use such information to provide walking navigation information and/or share location." Compl. at ¶24.
- The Complaint includes annotated "excerpts from Apple's websites [to] provide non-limiting examples of the iPhone XS infringing." *Id.* (citing <https://www.apple.com/ios/maps/>). This instructional material is plainly intended to promote customer use of the described features. Indeed, it includes statements directed to potential users, like "**You'll** also be able to get where you're going with improved routes," and "**you** can get detailed directions." *Id.* (emphasis added).
- The Complaint further includes allegations that "Apple's customers who purchase devices and components thereof and operate such devices and components in accordance with Apple's instructions directly infringe" and "Apple instructs its customers through at least user guides or websites, such as those located at... <https://www.apple.com/ios/maps/>." *Id.* at 24, 27; *see also* Opp. 4-6 (providing additional examples for other patents). And that link is to the very same web page excerpted just three paragraphs prior.

Despite all this, Apple still argues that it is “left to guess what Maxell’s theory of specific intent is.” Reply at 2. Apple provides four arguments for why, but none holds water. *Id.* at 1-3.

First, Apple argues that Maxell’s citations to the manual landing page is insufficient because that page links to many manuals. Reply 1-2. But, for each patent, Maxell specifically identifies accused products at issue. *See, e.g.*, Complaint at ¶¶ 24-25. No doubt, Apple can use its own landing page to identify the manuals corresponding to those accused products, just as it expects its customers to do. Because the Complaint includes sufficient information to identify the relevant manuals, it is irrelevant that the landing page links to additional manuals.

Second, Apple argues that Maxell fails to cite the exact portion of each manual or webpage related to the accused functionality. This argument fails because the Complaint identifies exactly which features are relevant to each patent and which webpages provide instructions regarding those features. As discussed above, the Complaint even includes website excerpts demonstrating the relevant features. The Complaint thus provides ample notice of which manuals and webpages are relevant, and which portions therein are concerned.

Third, Apple argues that Maxell failed 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). Reply 2-3. But that is not so. Maxell argued in its Opposition that *Core Wireless* is distinguishable because it involved a failure to identify accused functionalities. *See* Opp. 7. In contrast, Maxell has identified at length the products and functionality accused. *See id.*

Fourth, Apple argues that allegations describing its products’ infringing functionality are relevant only to its own direct infringement, not to its specific intent to induce infringement. Reply 3. But the fact that Apple sells products configured to infringe when used as intended is highly relevant to the case for inducement: such sales, coupled with Apple’s promotion of the

infringing features through user manuals and advertising, suffice to state a plausible claim for induced infringement. *See* Compl. at ¶¶ 24, 25, 27.

B. The Allegations Regarding Pre-Suit Notice of the '586 Patent Are Sufficient.

Regarding pre-suit notice of the '586 Patent, Apple continues to demand that Maxell have alleged this fact with heightened specificity where the law demands only plausibility. At bottom, Apple's argument is only that notice of the '586 Patent is implausible because the patent issued *after* the alleged date of the notice. Yet Apple's own arguments demonstrate that notice in these circumstances *is* plausible: Apple appears to acknowledge that it received notice of the underlying application on October 9, 2018,¹ and it admits that such notice *can* constitute notice of the patent. *See* Reply 4. Those arguments demonstrate that, even where a defendant is alleged to have received notice of a patent four months before that patent issued, knowledge of the patent remains plausible. Whether Maxell can ultimately prove that knowledge is a fact issue for trial, not a reason to dismiss. *See Pecorino v. Vutec Corp.*, 934 F. Supp. 2d 422, 450 (E.D.N.Y. 2012).

Apple's attempt to distinguish the Complaint from that in *Copa* fails out of the gate. *See* Reply 4 (citing 1:18-cv-00218, 2018 U.S. Dist. LEXIS 191927 (D. Me. Nov. 9, 2018)). Apple argues that the *Copa* complaint included "other facts"—that the defendant reviewed the patent application and competed with the plaintiff. Reply 4. But the Complaint here also includes "other facts"—details regarding the years of licensing negotiations and technical discussions concerning the asserted patents. *See* Opp. at 10-12 (citing Compl. at ¶ 5). Those "other facts" render it plausible that Apple received notice of the '586 Patent.

C. The Allegations Regarding Knowledge of Infringement Are Sufficient.

The allegations in the Complaint are also sufficient to support a plausible inference of knowledge for pre-suit indirect and willful infringement. The Complaint details six years of

¹ The Opposition's reference to October 19, rather than October 9 was a typographical error.

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