PUBLIC VERSION

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

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

**MAXELL, LTD.'S OPPOSITION TO DEFENDANT APPLE INC.'S MOTION
TO STRIKE PORTIONS OF MAXELL'S OPENING EXPERT REPORTS THAT
EXCEED THE SCOPE OF MAXELL'S P.R. 3-1 INFRINGEMENT CONTENTIONS
AND NEW EXPERT THEORIES OFFERED AFTER EXPERT REPORTS**

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TABLE OF ABBREVIATIONS

Abbreviation	Description
Maxell	Plaintiff Maxell, Ltd.
Apple	Defendant Apple Inc.
Infr. Cont.	Plaintiff Maxell, Ltd's Infringement Contentions Pursuant to Patent Local Rules 3-1 and 3-2 served June 12, 2019 and appendices thereto and Plaintiff Maxell, Ltd's Second Supplemental Infringement Contentions Pursuant to Patent Local Rules 3-1 and 3-2 served March 13, 2020 and appendices thereto Relevant Excerpts at Ex. 1
Madisetti Rpt.	Initial Expert Report of Vijay Madisetti, Ph.D. Concerning Apple's Infringement of U.S. Patent No. 8,339,493, served May 7, 2020 Relevant Excerpts at Ex. 2
Markman Hr. Tr.	Transcript of *Markman* Hearing dated January 8, 2020 Relevant Excerpts at Ex. 3
Vojcic Rpt.	Initial Expert Report of Branimir Vojcic, Ph.D. Concerning Apple's Infringement of U.S. Patent No. 6,408,193, served May 7, 2020 Relevant Excerpts at Ex. 4
Crockett Rpt.	Expert Report of John Crockett Regarding Source Code Relating to Cellular Functionalities, served May 7, 2020 Relevant Excerpts at Ex. 5
Williams Dep. Tr.	Deposition Transcript of Tim A. Williams, Ph.D., dated June 25, 2020 Relevant Excerpts at Ex. 6

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I.   INTRODUCTION

Apple's Motion (D.I. 365) improperly conflates *theories* of infringement with *evidence* of infringement. Maxell's opening expert reports do not disclose any new infringement theories; rather, they (1) provide a more technically detailed explanation of Maxell's previously disclosed infringement theories and (2) identify confidential evidence in support of such theories that was produced by Apple during discovery and was not otherwise publicly available. The information Apple seeks to strike is exactly the type of information and documentary evidence allowed and required in an expert report under Rule 26. Apple's attempt to address its disagreement with Maxell's expert's *application* of existing infringement theories through a motion to strike is improper. Cross examination—not exclusion—is the proper means for Apple to attack the bases of the infringement opinions of Maxell's experts. Moreover, there is no prejudice here as Apple's experts have already fully responded to these allegedly new infringement theories. The Court should therefore deny Apple's Motion in its entirety.

II.   LEGAL STANDARDS

Proper infringement contentions under P.R. 3-1 provide a defendant with notice of a plaintiff's infringement theories. *Linex Techs., Inc. v. Belkin Int'l, Inc*., 628 F. Supp. 2d 703, 706 (E.D. Tex. 2008) (noting "enough specificity is required to give an alleged infringer notice of the patentee's claims"); *see also* D.I. 204 at 4 and 338 at 4. "The Rules do not require the disclosure of specific evidence nor do they require a plaintiff to prove its infringement case." *EON Corp. IP Holdings, LLC v. Sensus USA Inc*., Case No. 6:09-cv-116, 2010 WL 346218, at *2 (E.D. Tex. Jan. 21, 2010). "Infringement contentions are not intended to act as a forum for argument about the substantive issues but rather serve the purpose of providing notice to the Defendants of infringement theories beyond the mere language of the patent claim." *Motion Games, LLC v. Nintendo Co*., No. 6:12-cv-878, 2015 WL 1774448, at *2 (E.D. Tex. Apr. 16, 2015); *see also*

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