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 [redacted] **JURY TRIAL DEMANDED**

APPLE INC.'S OPPOSITION TO MAXELL, LTD.'S MOTION FOR SUMMARY JUDGMENT OF NO INVALIDITY UNDER 35 U.S.C. §§ 102 AND 103 OF CLAIMS 7, 16, AND 17 FOR U.S. PATENT NO. 10,212,586

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I. INTRODUCTION

Maxell seeks to resolve at summary judgment a classic factual dispute about whether the asserted claims of U.S. Patent No. 10,212,586 ("the '586 Patent") are invalid. Maxell's motion seeks to entirely eliminate Apple's invalidity case—anticipation and two obviousness theories—for the '586 Patent, arguing that Apple's expert Dr. Daniel Menascé "does not show" how a particular prior art reference (U.S. Patent No. 6,871,063 ("Schiffer")) discloses a subpart of a single limitation: a memory which previously stores information "about" another mobile terminal.

While Maxell disagrees with Dr. Menascé's opinions, that does not justify summary judgment. Dr. Menascé's opinion that Schiffer discloses this limitation based on an "access code" previously stored on a SIM card is well supported by Schiffer alone. *E.g.*, Menascé Appx. D at 8-10. In addition, Dr. Menascé provides obviousness analyses based on Schiffer and another reference (U.S. Patent Publication No. 2006/0041746 ("Kirkup"). *See* Ex. 4, 438/'586 Opening ¶¶ 223-248; *see also* Ex. 5, Appx. D. Maxell quibbles with Dr. Menascé's opinions, parroting opinions of its expert Dr. Tim Williams without citation. At best, this shows a "colorable disagreement" between experts that must be resolved by a jury as courts in this District hold—not at summary judgment. If Maxell doubts the bases of Dr. Menascé's opinions, it may cross-examine him at trial. But it should not ask the Court to adopt its own expert's opinions as a matter of law.

Indeed, Maxell frames the issue to be decided as whether "Apple has failed to establish by clear and convincing evidence that the Schiffer reference relied on by Dr. Menascé discloses [certain] 'memory' limitations," as if trial has already occurred. Maxell ignores factual disputes regarding Schiffer's teachings and it wholly fails to address obviousness as a separate legal standard. Viewing the evidence in Apple's favor, the right question is whether there is no genuine issue of material fact such that "no reasonable jury could return a verdict" finding the asserted claims invalid. Maxell cannot meet that burden, and therefore, its motion should be denied.

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