



**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

**APPLE INC.'S BRIEF IN OPPOSITION TO MAXELL, LTD.'S MOTION FOR
PARTIAL SUMMARY JUDGMENT OF NO INVALIDITY OF U.S. PATENT NOS.
6,748,317, 6,580,999, AND 6,430,498 IN VIEW OF ABOWD AND CYBERGUIDE**

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Maxell's Motion for Partial Summary Judgment of No Invalidity of U.S. Patent Nos. 6,748,317, 6,580,999, and 6,430,498 based on the public availability of Abowd and Cyberguide (Dkt. 382 or "Mot.") not only fails to identify an absence of a genuine dispute of material fact; it instead raises a series of doubts about Apple's evidence, confirming the existence of factual disputes that preclude summary judgment. What's more, Maxell's doubts derive from the opinions of an unqualified expert and patent attorney, Robert Stoll, that Apple has moved to strike (*see* Dkt. 357). Even if Mr. Stoll's opinions are admissible, they also present fact disputes with Apple's experts that are for the jury to resolve.

For the Abowd publication, Maxell's motion presents nothing more than fact disputes about how library records for the publication should be interpreted. Apple's librarian expert, Jacob Munford—who has 10 years of experience and education in library sciences—opines that "MARC" cataloging records from two libraries show that Abowd was catalogued, indexed, and publicly accessible at both libraries before the July 12, 1999 priority date of the '317, '999, and '498 Patents ("Navigation Patents"). Maxell's only rebuttal is the opinion of a patent attorney, Mr. Stoll, who is unqualified to offer expert opinions on interpreting library record. *See* Dkt. 357 at 8-10. Mr. Stoll completely disregards the MARC records, which he admits he cannot interpret. He instead misinterprets a "Do Not Circulate" label that appears on one copy of Abowd to mean it was not publicly available. But "Do Not Circulate" merely denotes a library holding that cannot be checked out and used *outside* of the library. The holding can still be accessed, reviewed, and copied by anyone *inside* the library, as proved by the fact that Mr. Munford was able to review and photocopy the very volume Maxell now bafflingly asserts was not publicly accessible.

Likewise, Cyberguide qualifies as prior art. The Abowd publication describes Cyberguide as a virtual map on a portable device given to visitors of open houses at Georgia Tech by 1996.

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