

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

MAXELL, LTD.,

Plaintiff,

v.

APPLE INC.,

Defendants.

Civil Action No. 5:19-cv-00036

JURY TRIAL DEMANDED

**MAXELL, LTD.'S REPLY IN SUPPORT OF ITS 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 THE NAVTALK ALLEGED PRIOR ART**

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(Including Exhibits From Maxell's Motion, Dkt. 383)

Exhibit No.	Description
1	Excerpts from the Opening Expert Report of Dr. Joseph A. Paradiso Regarding Invalidity of U.S. Patent Nos. 6,748,317, 6,580,999, and 6,430,498 (May 7, 2020)
2	Expert Report of Robert L. Stoll (June 4, 2020)
3	Declaration of David Ayres (March 24, 2020)
4	Deposition Transcript of L. Kent Broddle (April 17, 2020)

...

Apple's response confirms that it has failed to meet the high bar to establish by clear and convincing evidence that the "NavTalk" device it relies for its invalidity case is prior art that was publicly sold in the United States over twenty years ago. It is now undisputed that Apple and its experts have provided no evidence of public use or sale of the actual device at APL-MAXELL_P01. Contrary to Apple's desire, this is not "irrelevant." Opp. at 3 ("Paragraphs 9 and 13 are irrelevant.") Instead, it is crucial that Apple explain the origin of the device its expert relies on for its invalidity analysis against each claimed element, and for Apple to verify that this device is the same that was publicly used or sold on or before the July 12, 1999 critical date.

Apple's Opposition either ignores these flaws or claims that they do not matter. As a result, Apple cannot carry its burden of proving that the NavTalk device is prior art. Summary judgment of no invalidity is therefore appropriate.

I. Apple Has Not Shown the Device it Relied on as Prior Art Was in Public Use or Sale

Apple has failed to provide clear and convincing evidence to support a conclusion that the NavTalk handheld electronic navigation device and accompanying user manual was in public use in the United States on or before July 12, 1999. *See* Ex. 1, Paradiso Rep. at ¶¶ 132, Ex. 2, Stoll Rep. at ¶¶ 157-95.¹

Apple does not dispute it has not provided evidence of prior use of the NavTalk device produced as APLMAXELL_P01. Opp. at 3. Instead, Apple asserts that evidence pertaining to *any* NavTalk device equally applies because the NavTalk device produced as APLMAXELL_P01 is "representative of NavTalk devices sold before that [critical] date." *Id.* However, not only has Apple not provided any actual evidence to support this proposition, it has also failed to acknowledge Maxell's evidence that it does not. Therefore, Apple's assertions boil

¹ It is irrelevant whether the device was on sale on or before July 12, 1999 because 35 USC 102(b) requires the sales to be "more than one year prior to the date of the application" and there is no evidence that NavTalk was on sale on or before July 12, 1998.

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