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**

DEFENDANT APPLE INC.'S REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NOS. 10,084,991 AND 8,339,493

Maxell fails to establish any genuine issue of material fact sufficient to defeat summary judgment of non-infringement of the '493 and '991 Patents. There is no factual dispute that the accused products do not use "all signal charges …" as recited in all asserted claims of the '493 Patent and that they do not include a "TV receiver" as required by the only asserted claim of the '991 Patent. Unable to cite any evidence to dispute this, Maxell resorts to misinterpreting claim terms and misapplying the Court's claim construction in an attempt to enlarge the claims' scope. But these efforts do not change that there is no genuine dispute of material fact that the accused products do not infringe, and Apple's Motion (D.I. 372, "Mot.") should be granted.

I. The Accused Products Do Not Infringe Claims 5-6 Of The '493 Patent

Claim element 5.d of the '493 Patent recites two separate requirements: a device must use "[1] **all** signal charges accumulated in [2] **all** N number of vertically arranged pixel lines" to record static images. There is no dispute that Apple's products satisfy neither requirement.

A. The Accused Products Do Not "us[e] all signal charges accumulated in … pixel lines" To Record Static Images

Apple's Motion demonstrates that none of the accused products use **all** active, light-receiving pixels in any pixel line—i.e., **all** signal charges accumulated in a pixel line—to record a static image. Mot. at 6-7. Maxell concedes as such. *See* D.I. 422 ("Opp.") at 2, 9-11.

In an attempt to deflect from this fact, Maxell inexplicably and impermissibly now points to **Apple's** products to support a new interpretation of its own claims. [redacted] Opp. at 10. But Claim 5 plainly requires use of "all signal charges accumulated in … pixel lines," and the accused products do not do so. Maxell cannot now pick and choose which signal charges count

[1] Maxell's premise that OPB pixels do not accumulate signal charges is also incorrect because the OPB pixels, although not light sensitive, do generate signal charges. *See* Mot., Ex. A at ¶ 69.

[redacted] based on how Apple's products operate. [redacted] Thus, the iPhone 5S does not use "all signal charges accumulated in … pixel lines." The other accused products do not infringe for the same reason. *Id.*, Exs. 9-24.

In an attempt to salvage its case with respect to the '493 Patent, Maxell resorts to making new claim construction arguments, pointing to a video embodiment, Figure 5, to claim that the patent contemplates an embodiment that only uses a part of each pixel line. Opp. at 10. But this too is a distraction. Figure 5 relates only to the "moving video mode," not the "static image mode" which is the relevant mode for the "all signal charges" limitation. *See* '493 Patent at 6:39-59 (describing Figure 5's cropping of video output to match "an NTSC standard television monitor"). The specification's description of a video embodiment cannot overcome the claim's clear, unambiguous language requiring use of "**all** signal charges accumulated in … pixel lines" for static image recording. *See Callpod, Inc. v. T Techn., Inc.*, No. 2:11-cv-326-JRG-RSP, 2013 WL 3832426, *6 (E.D. Tex. July 22, 2013) ("When the 'claim language is clear on its face,' a court's consideration of the other intrinsic evidence is 'restricted to determining if a deviation from the clear language of the claims is specified.'") (citation omitted).

B. The Accused Products Do Not Use "all N number of vertically arranged pixel lines" To Record Static Images

The accused products also do not have "a light receiving sensor having an array of pixels … **in an N number of vertically arranged pixel lines**," that uses "**all N number of vertically arranged pixel lines** of the image sensing device" for static image recording as required by Claim 5. Again misconstruing the plain language of the claims, Maxell argues that for an image sensor having 1650 pixel lines, the "all N number" limitation is met even if only 1600 pixels lines are used to record still images. Opp. at 4. But "all" does not mean "some." Maxell's arbitrary interpretation renders "all" meaningless and is improper for the reasons outlined below.

First, contrary to Maxell's assertion, "open-ended transitional phrases" such as "comprising" cannot "abrogate claim limitations" and do not "reach into each [claim element] to render every word and phrase therein open-ended." *Dippin' Dots, Inc. v. Mosey*, 476 F.3d 1337, 1343 (Fed. Cir. 2007). Here, the claim limitation "all" must be met.

Second, Maxell's attempt to construe "N number" as an arbitrary variable to argue that the claim does not require using all pixel lines is irreconcilable with how that term is used elsewhere in Claim 5. *See* Opp. at 4-5. Claim element 5.a recites a "light receiving sensor" having pixels arranged "in an **N number of** … pixel lines." '493 Patent at Claim 5. "N" is not an arbitrary number—it is the number of pixel lines on the image sensor of a given product. Whatever N is for a product, Claim element 5.d requires using "**all** N number of … pixels lines" for recording a static image. Maxell's construction of "N number" cannot overcome the claim's plain requirement that "all" such number of pixel lines must be used. *See id.*

Third, Maxell's reliance on embodiments that describe recording videos using a subset of pixels to argue that "all N number" of pixel lines is not "all" pixel lines also fails. *See* Opp. at 5-6; '493 Patent at 6:39-59 (describing outputting video to television), 4:64-5:15 (describing

"image stabilization" for "moving video mode"); 6:60-7:20 (describing outputting video to television). These video embodiments are inapplicable to the static image mode required by the "all N number" limitation. Maxell cites its expert's unsupported testimony to argue that these video embodiments can be transposed to static image recording (Opp. at 8), but the specification does not describe any embodiment using a subset of pixels to record static images and therefore does not support Maxell's position. *See* Mot., Ex. A at ¶¶ 62-63.

Fourth, Maxell's reliance on the specification's discussion of "effective" pixels to argue that "all N number" does not include all pixel lines also fails. *See* Opp. at 6-8. Claim 5 does not use the word "effective"—but uses the word "all" twice—and there is no basis to import "effective" from the specification to the claims. [redacted]

As the *Markman* Order explains: "When taking still images, **all of the effective pixels** on the image sensing device are used to produce signals with **as high a resolution as possible**." D.I. 235 at 41. This requirement is consistent with the plain language of Claim 5, requiring the use of "**all** signal charges accumulated in **all** N number of vertically arranged pixel lines" to record static images. [redacted] Thus, summary judgment of non-infringement is appropriate.

II. The Accused Products Do Not Infringe Claim 4 Of The '991 Patent

Summary judgement is warranted because the accused products do not have a "TV receiver" and thus cannot satisfy Claim 4's "communication apparatus" limitation. Maxell presents no factual disputes and improperly attempts to modify the Court's claim construction by

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