

PUBLIC VERSION

**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

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**MAXELL, LTD.'S REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY
JUDGMENT OF NO INVALIDITY OF U.S. PATENT NO. 8,339,493 IN VIEW OF THE
SONY MVC-FD83 AND MVC-FD88 CAMERAS**

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1	Excerpts from the Opening Expert Report of Dr. Alan C. Bovik Regarding Invalidity of U.S. Patent No. 8,339,493
2	Subpoena to Sony to Produce Documents (March 6, 2020)
3	Subpoena to Sony to Testify at a Deposition (March 6, 2020)
4	Service Manual for MVC-FD83/FD88 Cameras (SCA0004377)
5	Sony Sales Data (SCA0004493)
6	Declaration of Susan West
7	Image of “P06” Version of MVC-FD88 Camera (MAXELL_APPLE0274104)
8	Image of “P07” Version of MVC-FD88 Camera (APL-MAXELL_01099037)
9	Image of “P06” Version of MVC-FD88 Camera (MAXELL_APPLE0274105)
10	Image of “P07” Version of MVC-FD88 Camera (APL-MAXELL_01099039)
11	Sony Digital Image Training Guide (SCA0003619)
12	Apple’s Reply to Patent Owner Preliminary Response in the ’493 Patent IPR Proceeding, filed July 20, 2020
13	Excerpts from the Rebuttal Expert Report of Vijay Madiseti, Ph.D., Concerning Validity of U.S. Patent No. 8,339,493, served June 4, 2020
14	Excerpts from the Expert Report of Robert L. Stoll, served June 4, 2020

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Apple's opposition (Dkt. 425) does little to address its glaring failure of proof regarding the public availability of the Sony MVC-FD83 and MVC-FD88 cameras. Apple has no evidence explaining the origin of these devices, and no one took any steps to verify that the specific cameras Apple analyzed were sold prior to the '493 Patent's January 2000 priority date. Apple made no effort to trace the chain of title for these products or to confirm that they were not modified or had their components replaced since their alleged sale in 1999.

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 Sony MVC-FD83 and MVC-FD88 cameras are prior art. Summary judgment of no invalidity is therefore appropriate.

I. The Evidence Apple Relies Upon—Sales, Manuals, and Magazines—Is Inconclusive.

Sales Data. Apple does not dispute that the Sony sales data it relies on to show public availability nowhere indicates [REDACTED]. It also does not dispute that no one from Sony explained this either. It is further undisputed that the Sony cameras were [REDACTED]

[REDACTED] Opp. at 4. Instead, Apple assumes that, because it subpoenaed Sony's U.S. subsidiary, it must have received U.S. sales data. *Id.* at 8. But Apple cites nothing to support that assumption. Indeed, it is equally probable that this Sony subsidiary maintained sales data for the entire North American region, including Canada and Mexico, or even maintained worldwide sales data to track how U.S. sales compared to other countries. There is simply no evidence.

Apple's unsupported assumptions about this sales data is no reason to deny Maxell's motion. *See Krim v. BancTexas Grp., Inc.*, 989 F.2d 1435, 1449 (5th Cir. 1993) ("Summary judgment, to be sure, may be appropriate ... if the nonmoving party rests merely upon conclusory allegations, improbable inferences, and unsupported speculation."); *Galindo v. Precision American Corp.*, 754 F. 2d 1212, 1216 (5th Cir. 1985) ("unsupported allegations" improper).

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