PUBLIC VERSION

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

MAXELL, LTD.,	Case No. 5:19-cv-00036-RWS
Plaintiff,	
v.	**JURY TRIAL DEMANDED**
APPLE INC.,	PUBLIC VERSION
Defendant.	

**MAXELL, LTD.'S SUR-REPLY IN OPPOSITION TO DEFENDANT
APPLE INC.'S MOTION TO STRIKE PORTIONS OF MAXELL'S OPENING
EXPERT REPORTS THAT EXCEED THE SCOPE OF MAXELL'S
P.R. 3-1 INFRINGEMENT CONTENTIONS AND NEW EXPERT
<u>THEORIES OFFERED AFTER EXPERT REPORTS</u>**

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When faced with a similar motion in the context invalidity expert reports, Apple emphasized that contentions serve a notice function, and "experts may elaborate on disclosed . . . theories without using the same exact words as in [] contentions." D.I. 346 at 7; *see also* Ex. 9, Apple's Presentation for Hearing on Maxell's Motion to Strike at slide 20 ("Contentions . . . need only provide fair notice"). In response, this Court found that "experts [are] not limited to the precise words and phrases used in the contentions, and [parties are] entitled to add detail to previously disclosed theories." D.I. 444 at 5. Despite Apple's contradictory positions on the identical issue, the support here is undeniable—even more than what is required—including Maxell's experts' uses in many instances of **the precise words and phrases** found in the infringement contentions albeit with expansion. Accordingly, Apple's Motion should be denied.

I.   ██████████   **Theory in Dr. Madisetti's Report**

In its Motion, Apple argued that ███████████████████████████████████ ██████████████████████████████████ Mot. at 4. Thus, in its Opposition, Maxell identified an excerpt from its infringement contentions describing the exact operation of the "image sensor" reading out "lower number of lines" of pixels from the image sensor as part of outputting the image to the image signal processor. Opp. at 4. The inquiry should close here. But faced with this daunting evidence, Apple now shifts gears and—without citing to any expert opinion—construes binning to be a "specific process that represent a 2x2 array of pixels in a simplified format." Reply at 2. On one hand, Apple argued to this Court that expert reports need not include the exact same words as the ones included in the contentions, but when the shoe is on the other foot, Apple wants Maxell's infringement contentions to include Apple's definition of "binning" in order to put Apple on notice of a disclosed theory.

As Maxell has repeatedly explained in opposing numerous motions filed by Apple on

these claim limitations, the infringement contentions provide sufficient notice that the accused

products downsample image data as part of outputting images in different resolutions. Opp. at 4.

Evidence of outputting of images in different resolutions by downsampling can be found in

various operations in the accused products including by applying scalers or by binning. Indeed,

binning operations are repeatedly and consistently disclosed in Maxell's infringement

contentions. *See* Ex. 8, Inf. Cont., Appx. 3 at 108 ("On information and belief, the pixel binning

involves mixing pixels"); *see also id.* at 214 (same); Opp. at 3 (disclosing "binning" twelve

times). There is no new infringement theory. Binning is simply evidence of the accused products

mixing and culling pixels such that the accused products downsample pixels to output images in

different resolutions, just like they downsample while applying scalers.

Moreover, Apple admits that ████████████████████████████ is "Slo-Mo"

mode. Reply at 3. And while Apple says that the SSICs "lack any mention of 'Slo-Mo'", Maxell

disclosed Slo-Mo mode repeatedly in its First Infringement Contentions and in SSICs. *See* Opp.

at 5 (describing the disclosure of "slow motion" mode in the First Infringement Contentions); *see*

also Ex. 8, Inf. Cont., Appx. 3 at 296 ("Use camera to record videos on your iPhone and change

modes to take slow motion and time-lapse videos").[1]

Thus, Maxell identified "binning" in its infringement contentions using the same words

used by Dr. Madisetti in his expert report, and Maxell identified "the only mode that uses sensor

binning" in its infringement contentions. Aside from using the same words and identifying the

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[1] Apple also alleges that Maxell "admits that its SSIC did not identify the actual sensor binning source code." Reply at 2. Maxell makes no such concession. Maxell explicitly stated that it believes these source code files merely provide evidence of the disclosed theories and has only agreed to strike out certain source code files because Maxell does not intend to rely on these at trial. Therefore, Maxell decided to narrow down the disputes between the parties, an exercise reasonable counsel take all the time instead of disagreeing for the sake of disagreeing. Opp at 7.

only mode that uses sensor binning, it is unclear what more Apple needed to be on notice of Maxell's infringement theory.

II.   ███████████████████ **Theory in Dr. Vojcic's and Mr. Crockett's Reports**

Apple has not addressed any of Maxell's detailed arguments explaining how Dr. Vojcic and Mr. Crockett are not presenting a new infringement theory but are merely pointing to evidence showing infringement by the disclosed power control function, including closed loop power control and gain control of variable amplitude amplifier. Opp. at 7-9. Thus, Maxell simply incorporates by reference its Opposition to rebut Apple's conclusory statement that Dr. Vojcic and Mr. Crockett "presented an entirely new infringement theory that accuses the ██████ ████████ of meeting certain limitations." Reply at 3.

Apple further alleges that Maxell "deceptively adds new annotations" to rebut Apple's argument that Maxell's infringement contentions were limited to transmit path components. Reply at 3-4. First, there was nothing "deceptive" about these annotations because Maxell explicitly stated "red annotations added" in its brief, an exercise that is quite common in legal writing when the writer wants to add emphasis or call attention to a particular portion of an excerpt/quote. Opp. at 9. Second, as Apple demonstrates in the original image from the infringement contentions, neither the transmit path nor the receive path was highlighted in the infringement contentions; thus, Maxell was not limiting its infringement theories to transmit path components. Third, Apple does not address Maxell's argument that when discussing bias and gain control, the infringement contentions explicitly highlighted amplifiers in the receive path and identified them with datasheets. Opp. at 9-10.

In summary, Maxell's experts do not present any new ██████████████ theory but only provide evidence of the disclosed theories, and Maxell's infringement contentions were not limited to transmit path components as alleged by Apple. Thus, none of Dr. Vojcic or Mr.

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