

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

MAXELL, LTD.,

Plaintiff

v.

APPLE INC.,

Defendant.

Civil Action No. 5:19-cv-00036-RWS

JURY TRIAL DEMANDED



**APPLE INC.'S SUR-REPLY IN SUPPORT OF ITS OPPOSITION TO
MAXELL, LTD.'S 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**

Substantial evidence—including sales data, manuals, marketing documents, and advertisements—confirms that the Sony MVC-FD83/88 were known and used in the U.S. before January 2000, the '493 Patent's priority date. Maxell cannot identify any evidence to the contrary, much less a lack of a factual dispute as to the evidence that Apple has put forward. Instead, Maxell resorts to speculation, arguing that despite Apple's evidence it is "equally probable" that the products were not sold in the U.S. before January 2000. D.I. 459 ("Reply") at 1. Maxell's argument is self-defeating: if there are factual disputes for the jury to resolve, such as whether the Sony products were sold in the U.S. before January 2000, Maxell's Motion for Partial Summary Judgment (D.I. 370, "Mot.") of no invalidity based on the Sony MVC-FD83/88 products should be denied.

Maxell goes on to speculate that there were different "versions" of the products, some of which **may** have been sold after the '493 Patent's priority date and **may** have differed from products sold before that date. Maxell's Reply, however, confirms that this argument is also baseless. No record evidence describes or even suggests different product versions with material differences. Accordingly, there are genuine issues of material fact triable to the jury as to whether the Sony MVC-FD83/88 products were known and used before January 2000 and whether they had the relevant features that Apple relies on to invalidate the claims of the '493 Patent. Thus, Apple respectfully requests that Maxell's Motion be denied.

I. The Sony MVC-FD83/88 Were Known And Used In The U.S. Before January 2000

Substantial evidence confirms that the Sony MVC-FD83/88 products were known and used in the U.S. before the '493 Patent's priority date. *See* D.I. 425, ("Opp.") at 1, 8-10. Unable to overcome this evidence, Maxell's Reply relies instead on manufactured facts and speculation.

First, Maxell's speculation that the sales data produced by Sony could include "Canada and Mexico" or "worldwide sales" (Reply at 1) is unsupported by any evidence. As Apple's

Opposition showed, the Sony Electronics Inc. sales records showing sales of [REDACTED] units of the Sony MVC-FD83/88 were produced in response to a subpoena for U.S. sales data from a U.S. corporation responsible for Sony's electronics business in the U.S. Opp. at 3-4. No evidence suggests this data includes sales to Mexico, Canada, or any country other than the U.S.

Second, by speculating that it is somehow "equally probable" that Sony Electronics Inc.'s sales records reflect foreign sales (Reply at 1), Maxell effectively concedes that summary judgment is not proper. The Court must draw "all reasonable inferences in favor of the non-movant," here Apple. *Billups-Rothenberg, Inc. v. Associated Reg'l and Univ. Pathologists, Inc.*, 642 F.3d 1031, 1036 (Fed. Cir. 2011). So even if there were two "equally probable" inferences, one of which favors Apple, Maxell's Motion must be denied.

Third, Maxell attacks each piece of evidence in isolation, but ignores that the pieces corroborate each other. For example, Maxell makes up another fact—that the Sony MVC-FD83/88 were "first offered for sale in October/November 1999" (Reply at 2)—to argue that the service manual's May 1999 date is not probative of when the products were publicly available. But the actual evidence refutes Maxell's argument. For example, a Circuit City advertisement on June 13, 1999 (Opp., Ex. E)—just weeks after May 1999—corroborates the service manual's date to show that the products were publicly available before October/November 1999—they were available for sale in mid-1999.

Similarly, Maxell argues that the product advertisements—taken in complete isolation—do not contain "sufficient information" to describe all relevant features of the products. Reply at 2-3. That is irrelevant. As Maxell admits, the advertisements describe the Sony MVC-FD83/88 by their model numbers and certain product features, such as image resolution, digital zoom capability, and drive speed. *Id.* at 2. These advertisements confirm that the products were

publicly sold before January 2000, and the attributes described in the advertisements—*e.g.*, the model numbers and technical features—link them to Apple’s other evidence, including sales data, product manuals, marketing documents, and physical samples, which do describe all the relevant features of the products. *See* Opp. at 13-14.

The evidence as a whole confirms that the Sony MVC-FD83/88 were known and used in the U.S. before January 2000. Maxell’s Reply confirms that there is at least a triable issue of material fact that precludes summary judgement.

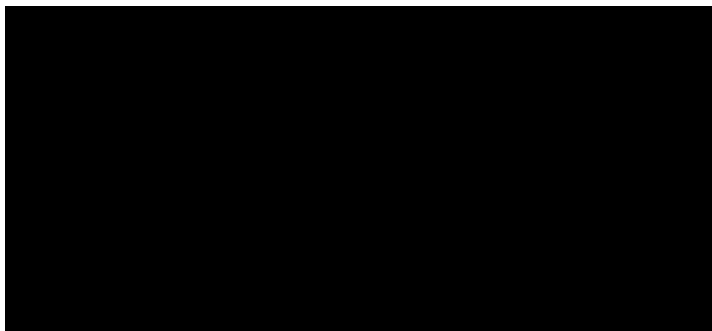
II. Maxell Cites No Evidence Showing Different Versions of MVC-FD83/88

None of Sony’s sale records, user and service manuals, marketing documents, advertisements, or product labels describe different “versions” of the Sony MVC-FD83/88. *See, e.g.*, Opp., Exs. C-H. It would be unreasonable to infer that Sony sold different versions of these products without ever mentioning them in any of its documents. Yet, that is the inference Maxell asks the Court to draw.

In an attempt to avoid evidence predating the ’93 Patent that describes the relevant features of the MVC-FD83/88, Maxell argues that Apple’s prior art is limited to only its three physical samples and excludes any “printed publications” describing the products. Reply at 3-4. This argument is baseless. The Court’s Focusing Order states that “a prior art instrumentality ... and associated references that describe that instrumentality shall count as one reference.” D.I. 44 at 1 n.1. And Apple’s election of prior art identifies “[p]roducts ... in public use or on sale related to the Sony MVCFD83/FD88 digital camera (‘MVCFD83’) as well as documents describing the MVCFD83.” Ex. L at 3. As Apple’s Opposition explains, multiple documents dated before January 2000—including manuals, marketing documents, and advertisements—corroborate and confirm the relevant features of the product samples tested by Apple’s expert. Opp. at 14-15. Maxell cannot unilaterally limit Apple’s evidence to only the product samples.

Moreover, that the product samples have “different serial numbers, different production locations, [and] different labeling” (Reply at 3) does not support an inference that different product versions existed. To the contrary, Apple’s Opposition demonstrates that all relevant evidence in the record refutes such an inference by consistently describing the same technical features and functionality for the MVC-FD83/88. Opp. at 11-12.

Next, Maxell insists that a typographical error in Sony’s “Digital Image Training Guide” is not an error but proof that different versions of the MVC-FD88 existed. Reply at 3-4. But that document, excerpted on the right, lists the correct “1280 x 960” resolution and then erroneously specifies “1280 x 768” in the same paragraph. Mot., Ex. 11 at



SCA0003620. Nothing in this document suggests that two versions of the MVC-FD88 existed. And all other Sony documents, product manuals, advertisements, and product samples confirm that the MVC-FD88’s correct resolution is 1280 x 960. Opp. at 12-13. At best, “there is a material dispute as to the credibility and weight” of this evidence—a single discrepancy in one document cannot serve as the basis for summary judgment. *See Crown Packaging Tech., Inc. v. Ball Metal Beverage Container Corp.*, 635 F.3d 1373, 1384 (Fed. Cir. 2011).

Similarly, Maxell argues that because certain advertisements list different resolutions for the MVC-FD83, different versions must exist. Reply at 4. But Apple’s Opposition explains that, unlike the MVC-FD88, the MVC-FD83 allows for image interpolation that increases output resolution to be higher than its image sensor’s native resolution. *See* Opp. at 6 n.2. Thus, it is not surprising that some documents describe resolutions higher than the MVC-FD83’s non-interpolated, native resolution of 1024 x 768. The ’493 Patent’s asserted claims do not require

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