EXHIBIT A

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 **SEALED**

ORDER

Before the Court is Defendant Apple Inc.'s Motion for Clarification of the Court's Order Granting-in-Part and Denying-in-Part Maxell's Motion to Strike Portions of Apple's Rebuttal Expert Reports Based on Untimely Claim Construction Positions (Docket No. 597). The motion has been fully briefed.[1]

In its order (Docket No. 586), the Court resolved the parties' dispute regarding language from claim 5 of the '493 patent, which recites an electric camera. *Id.* at 49–50. Specifically, claim 5(d) of the '493 patent recites:

> Wherein when recording an image in a static image mode, the signal processing unit generates the image signals by using all signal charges accumulated in all N number of vertically arranged pixel lines of the image sensing device, to provide N pixel lines . . .

'493 patent, claim 5. The parties had disputed whether "N number of vertically arranged pixel lines" must be every vertically arranged pixel line, or whether it can be a subset. Docket No. 586 at 49. Maxell moved to strike the opinions of Apple's expert for the '493 patent, Dr. Bovik, who

[1] Maxell filed a response (Docket No. 607), Apple filed a reply (Docket No. 609), and Maxell filed a sur-reply (Docket No. 613).

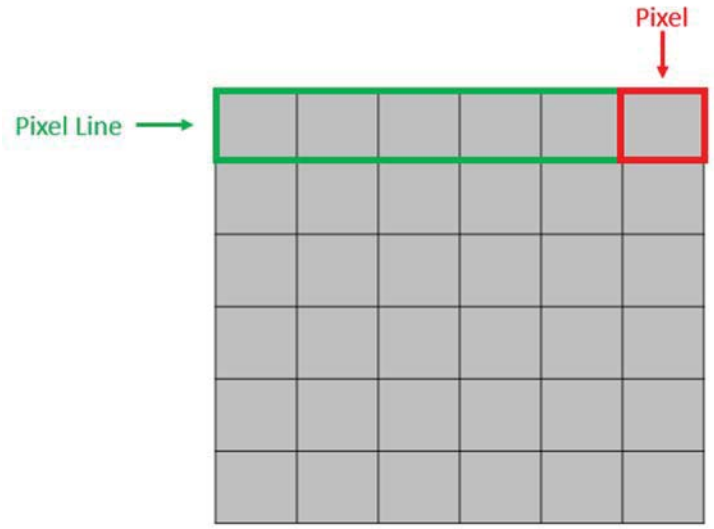
opined that the term "N number of vertically arranged pixel lines" must include every vertically arranged pixel line. *Id.* The Court first noted that [redacted], making Dr. Bovik's attempt at limiting the scope of "N number of vertically arranged pixel lines" based on preferred embodiments in the specification a belated claim construction dispute that Apple could have—and should have—raised during claim construction. *Id.* at 49–50. Nonetheless, the Court concluded that Apple's interpretation of "N number of vertically arranged pixel lines" unduly limited and contradicted the plain language of the claim term and struck paragraphs 27, 59–66, 71–79, 81–86, 92, 127 and 205–208 of Dr. Bovik's rebuttal expert report. *Id.* at 50.

Apple now seeks clarification as to whether the Court's ruling striking Dr. Bovik's opinions also extends to what it argues is "a wholly separate noninfringement theory" contained within the stricken paragraphs. Docket No. 597 at 3. Specifically, Apple asks whether Dr. Bovik's opinions about whether the accused products satisfy the requirement of using "all signal charges" accumulated in the vertically arranged pixel lines to record a static image was stricken by the Court's order. *Id.* at 2. Apple contends that while Dr. Bovik discusses the "all signal charges" requirement alongside his opinions regarding "N number of vertically arranged pixel lines," the two requirements—and Dr. Bovik's opinions on them—are discrete. *Id.* at 3–4. Because Maxell's motion to strike did not specifically address Dr. Bovik's "all signal charges" opinions and the Court's order did not specifically mention those opinions, Apple now asks the Court whether those opinions were meaningfully excluded. *Id.* at 4–5.

Maxell responds that Apple's motion is not asking for clarification of the Court's order, but rather for reconsideration of arguments already presented in Apple's motion for partial

summary judgment of noninfringement of the '493 patent. Docket No. 607 at 3. Maxell contends that Apple has never presented the "all signal charges" requirement as an independent noninfringement theory prior to this motion. *Id.* at 4–5. In any case, Maxell argues that Dr. Bovik's "all signal charges" opinions and the stricken "all N number of vertically arranged pixel lines" opinions stem from the same belated, incorrect claim construction argument—that claim element 5(d) requires "all pixels (i.e. all rows and all columns) of the image sensor to be used for generating a still image." *Id.* at 5 (quoting Docket No. 597-1, Ex. A (Bovik Reb. Rpt.) ¶ 61). This argument, Maxell contends, was rejected by the Court in its order denying partial summary judgment of noninfringement of the '493 patent. *Id.* at 6 (citing Docket No. 586 at 23).

The Court agrees with Apple and thus clarifies its prior ruling. Dr. Bovik's rebuttal expert report describes how claim element 5(d) requires the recited camera to generate image signals using: (1) "all signal charges accumulated in" (2) "all N number of vertically arranged pixel lines[.]" Docket No. 597-1, Ex. A (Bovik Reb. Rpt. ¶ 61). The "vertically arranged pixel lines" refers to rows of individual pixels:



See, e.g., '493 Patent at 4:66–5:6.

The Court previously struck Dr. Bovik's opinion claiming that the term "N number of vertically arranged pixel lines" must include every vertically arranged pixel line. Docket No. 586 at 50. This includes his improper conclusion requiring the use of all pixels in an image sensor to record a static image—i.e., all pixels in all rows and all columns. *Id.* But neither Maxell's motion nor the Court's order addressed Dr. Bovik's opinion that claim element 5(d) requires the use of "all signal charges" accumulated in the N number of vertically arranged pixel lines. *See id.* That is a separate requirement of the claim. If Apple wishes to have its expert opine that the accused products do not meet the "all signal charges" requirement, the Court will not prohibit that testimony.

But Dr. Bovik may not opine that an accused product must record still images "using all pixels of the camera's image sensor"—i.e., all pixels in all rows and all columns—because such an interpretation relies on Dr. Bovik's stricken opinion requiring every vertically arranged pixel line to be used. Docket No. 586 at 23.

In clarifying its prior order, the Court does not, however, adopt Apple's contention that "all signal charges" means "all pixels" in a pixel line must be used. Docket No. 597 at 4. The plain language of claim 5 treats the phrase "signal charge" as distinct from "pixel." As the Court has already noted, factual disagreements exist on whether the "all signal charges" claim element is met by the accused products. Docket No. 586 at 23. [redacted]

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