**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

RFCYBER CORP.,	§ § §	Case No. 6:21-cv-00916-ADA
Plaintiff,	§ §	**JURY TRIAL DEMANDED**
v.	§ §	███████████████
APPLE, INC.,	§ § §	
Defendant.	§ § §	

**RFCYBER CORP.'S REPLY IN SUPPORT OF ITS MOTION
FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Apple's Opposition resorts to a firehose of mischaracterizations and baseless accusations of misrepresentation. These dramatics indicate the weakness of Apple's position. RFCyber uncovered evidence that Apple knew of the asserted patents, and either knew of or was willfully blind to infringement. Apple's purportedly complete interrogatory responses omitted key information regarding its knowledge, and Mr. Lasker's deposition was the first time these details came to light. There is no unfair prejudice to Apple and no continuance is required because Apple has already taken discovery of these communications, and of RFCyber's non-involvement despite Dr. Zheng's false claims to represent RFCyber. Each good cause factor therefore favors the amendment alleging willfulness and pre-suit indirect infringement.

Apple's central argument assumes the false premise that new evidence of its pre-suit indirect infringement and willfulness is the same as that before the Court when those claims were dismissed without prejudice. But the evidence showing that Apple knew of the asserted patents and that it infringed them, or was willfully blind to infringement, is new. <u>First</u>, Mr. Lasker admitted that Apple knew of the asserted patents. Dkt. 133-6, 128:9-129:1, 126:3-13. <u>Second</u>, Mr. Lasker testified ██ ██████ Ex. V, Lasker Dep. 105:14-107:1. <u>Third</u>, Mr. Lasker testified regarding that process, ██ ██████████ Dkt. 133-6, 110:18-111:3 (emphasis added). <u>Fourth</u>, Mr. Lasker testified that ██ ████████████████████████████████ Dkt. 133-6, 117:16-25. <u>Fifth</u>, ████████████ ██.

<u>Finally</u>, in view of Mr. Lasker's admissions, the Dr. Zheng's emails show that Apple knew of its infringement or was willfully blind. Dr. Zheng stated that ████████████████████

███

█████████" Dr. Zheng also made a claim chart available to Apple, which Apple declined to review. *See* Dkt. 133-4. Contrary to Apple's suggestion, these emails were not before the Court when the renewed motion to dismiss was decided because Apple did not produce them until afterwards, and their significance was not clear until Mr. Lasker admitted to Apple's review and knowledge based on those emails. Each good cause factor therefore weighs in favor of granting the Motion.

A. The Amendment is Important and Presents an Exceptionally Strong Case

Apple does not dispute that renewal of RFCyber's knowledge and willfulness claims would be important. Instead, Apple takes the extreme position that these claims are futile. But Apple ignores the substance of the newly discovered evidence, and falsely asserts that new evidence of record is the same as when RFCyber's claims were dismissed without prejudice. It is not.

The new evidence supports an exceptionally strong case for pre-suit indirect infringement and willfulness. The evidence establishes Apple knew of the patents, and that Apple knew of its infringement of those patents at least based on: (1) Dr. Zheng's communications; (2) Apple's review of those patents when it cited to them in its own patent applications; and (3) Apple's review ██████████████████████████████. The evidence also establishes a strong case for willful blindness, at least because: (1) Apple deliberately structured its patent acquisition ██████ ████████ and designed policies ██████████████████████████ and against disseminating information regarding its infringement ████████████████ so as to deliberately turn a blind eye toward infringement; (2) Apple declined to review the claim chart that Dr. Zheng prepared to avoid learning more about its infringement; (3) Apple continued to avoid review of those patents even after it cited them while prosecuting its own patents; and (4) Apple conducted patent searches regarding mobile payments which it is withholding.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.

fastcase®
Smarter legal research.