

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

MAXELL, LTD.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD. and
SAMSUNG ELECTRONICS AMERICA,
INC.,

Defendants.

Civil Action No. 5:23-cv-00092-RWS

JURY TRIAL DEMANDED

**SAMSUNG'S OPPOSITION TO MAXELL'S MOTION FOR PARTIAL
RECONSIDERATION OF THE COURT'S ORDER (DOCKET NO. 285)**

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I. INTRODUCTION

For at least three reasons, Maxell fails to show that the Court committed any error, much less a manifest error that justifies reconsidering its grant of summary judgment on the '590 patent.

First, the Court correctly found that Maxell did not dispute the timing of the assignment of the Bluetooth radio to transmit video information relative to the Accept message, namely that the accused Samsung products wait to assign a radio to transmit the video information until after they receive the Accept message, as established by Dr. Buehrer. Maxell's Opposition and Sur-reply briefs instead argued that the intervening "Accept" message is irrelevant and the fact that the Bluetooth radio is sometimes assigned to transmit the video information is sufficient. Docket No. 179 (Opp.) at 10; Docket No. 223 (Sur-reply) at 4. Maxell did not dispute that the controller assigned the Bluetooth or Wi-Fi radio to transmit video information "when" and "in response" the Accept message because Maxell's expert, Mr. McNair, did not analyze the relevant code or offer any such opinion. Thus, Maxell's briefing instead was constrained to the narrow proposition that the Bluetooth radio would be "turned on" at certain times and that, eventually, the Bluetooth radio might be assigned to transmit video information as shown by Maxell's test results. The Court was therefore correct in: (1) ruling that Maxell's Opposition and Sur-reply briefs did not create a genuine dispute of material fact about the timing of the assignment of the Bluetooth radio relative to the Accept message; (2) applying *DoggyPhone* and *Sierra Wireless* to reject Maxell's argument that the intervening Accept message is "superfluous"; and (3) granting summary judgment.

Second, Maxell argues for the first time in its Motion for Reconsideration ("MFR") that the Bluetooth radio is assigned to transmit video information prior to receipt of the Accept message. However, even if this belated argument is considered by the Court—it should not be—the Court should deny Maxell's motion because none of the evidence Maxell cites raises a genuine dispute of material fact. Maxell's new and unsupported attorney argument instead repackages the

same evidence the Court already considered and correctly found failed to raise a genuine issue of material dispute about “when” the claimed assignment to transmit video information occurs relative to the Accept message. Dr. Buehrer’s opinion about the relevant source code remains undisputed—in all cases, the accused Samsung products wait and do not assign a radio to transmit video information until after they receive the Accept message.

Third, the Court correctly found that Maxell’s attorney argument about the test videos was unsupported and failed to raise a genuine dispute of material fact. Order at 60. Maxell chose to rely on attorney argument rather than provide the test videos for the Court’s review, and Maxell’s expert does not opine (as Maxell’s attorneys incorrectly argue for the first time now) that the test videos show anything relevant about when the assignment occurs relative to the Accept message.

II. LEGAL STANDARD

Maxell must show a manifest error of law or fact warranting reconsideration. *See Templet v HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004); *Crenshaw Enters., Ltd. V. Irabel, Inc.*, Civil Action No. 1:17-cv-322, 2018 WL 6220060, at *2 (E.D. Tex. Feb. 15, 2018) (collecting cases applying Rule 59(e) standard to motions under Rule 54(b)); *Frew v. Wilson*, Civil Action No. 3:93-CV-00065-RWS, 2020 WL 8994102, at *2-3 (E.D. Tex. July 23, 2020) (applying Rule 59(e) manifest error standard to Rule 54(b) motion).

“A motion for reconsideration should not be used to raise arguments ‘that could, and should, have been made before entry of judgment or to re-urge matters that have already been advanced by a party.’” *De Leon v. Flavor & Fragrance Specialties, Inc.*, 6:12-CV-327, 2014 WL 12601029, at *1 (E.D. Tex. Sept. 15, 2014); *Frew*, 2020 WL 8994102, at *3 (same). Rather, a Rule 54(b) motion for reconsideration “should ‘serve the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence.’” *Frew*, 2020 WL 8994102, at *3 (quoting *Waltman v. Indoggyt'l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989). “[L]itigants

are expected to present their strongest case when the matter is first considered. A motion to reconsider based on recycled arguments only serves to waste the resources of the court.” *State of Louisiana v. Sprint Comms. Co.*, 899 F. Supp. 282, 284 (M.D. La. 1995). Reconsideration is an “extraordinary remedy that should be used sparingly.” *Templet*, 367 F.3d at 479.

III. ARGUMENT

A. The Court Should Deny Maxell’s Motion for Reconsideration Because Maxell Did Not Dispute When the Bluetooth Radio Is Assigned to Transmit Video Relative to the Receipt of the Accept Message.

Maxell’s MFR fails to show “manifest error” because Maxell did not dispute in its Opposition or Sur-reply that the controller waited to assign the Bluetooth radio to transmit the video information until after receiving the Accept message. Instead, Maxell argued (incorrectly) that Samsung’s reliance on *DoggyPhone* was “misplaced” and that the intervening Accept message was “superfluous.” Opp. at 10; Sur-reply at 4. Now that the Court has ruled against Maxell’s legal position—an issue for which Maxell does not seek reconsideration—Maxell cannot demonstrate that the Court committed “manifest error” by failing to address an argument Maxell did not make.

Maxell’s prior failure to dispute when the Bluetooth radio is assigned to transmit video relative to the receipt of the Accept message is apparent from its response to Samsung’s undisputed material facts (UMFs). In UMF7, Samsung demonstrated:

UMF7: For the accused Bluetooth file share function, the assignment of a connection to the first radio communication circuit, *i.e.*, the assignment of either a Bluetooth or Wi-Fi radio for the transmission of video information, is not made either *when* or *in response* to an indication from the user indicat[ing] to transmit video information using the first communication circuit, but rather the controller waits to assign either Bluetooth or Wi-Fi to transmit the video information until it receives an “Accept” response code from the target phone, which response code determines which type of radio will be assigned. Ex. C [Buehrer Rpt.] at ¶¶ 67-90; Ex. E [McNair Tr.] at 68:23-69:17.

Docket No. 120 (Mot.) at 2 (emphasis added). Samsung proved that the controller waits to assign the radio “to transmit the video information” until after it receives the “Accept” message, and Dr. Buehrer’s opinion that the controller does so in all cases is unrebutted.

Maxell’s response to UMF7, quoted in its entirety below, was narrowly tailored to claiming that the Bluetooth radio is “assigned in response to” a user indication to transmit video “because the Bluetooth circuit is turned on when the user indicate to ‘share’ via Bluetooth”:

UMF7: Disputed. Samsung presents an incomplete factual record. In Bluetooth File Share, the Bluetooth circuit is assigned in response to an indication from a user indicating to transmit video information using a Bluetooth circuit at least because the Bluetooth circuit is turned on when the user indicate to “share” via Bluetooth. *Id.*, [Ex. 1, McNair Rpt.] ¶¶ 534-67; Ex. 2 [Buehrer Rpt.] ¶ 76.

Opp. at 1-2. Notably, Maxell did not dispute that the controller waits to assign the Bluetooth radio to transmit the video information until after the controller receives the Accept message, as set forth in UMF7. And Maxell’s Opposition and Sur-reply did not address the timing of that assignment relative to the Accept message.

Maxell’s Opposition also cited Samsung witness testimony and documents (Opp. at 7-8) and Maxell test results (*id.* at 8-9), but that evidence merely confirms the undisputed fact that, at some undiscussed point in time, the controller might assign the Bluetooth radio (or the Wi-Fi radio) to transmit the video information. None of that evidence relates to when the controller would assign a radio to transmit the video information relative to the Accept message, as Samsung explained in its Reply. Docket No. 201 (Reply) at 3-4. Maxell then argued that the Bluetooth circuit is “turned on” the “moment the user provides an indication.” Opp. at 9. But this merely supports the undisputed fact that the Bluetooth circuit would be turned on to search for nearby devices and to send the invitation. Docket No. 120-4 (Buehrer Rpt.) at ¶ 69. And the experts agreed the invitation message is not “the video information.” *Id.* (Buehrer Rpt.); Docket No. 120-5 (McNair Tr.) at

68:13-22. Accordingly, none of this evidence raises a dispute regarding when the controller assigns the radio to transmit the video information relative to the Accept message. Reply at 4.

Maxell then argued in its Opposition that Samsung's reliance on *DoggyPhone* was "misplaced" and that Samsung's argument about the timing of the assignment relative to the Accept message was "superfluous." Opp. at 10. The Court correctly rejected Maxell's argument (Order at 59-60), and Maxell does not seek reconsideration of that legal finding. Thus, nothing in Maxell's Opposition raised a genuine dispute of material fact about when the controller assigns the radio to transmit the video information relative to the Accept message. To the contrary, Maxell's Opposition makes clear that Maxell and its expert incorrectly argued the intervening Accept message was irrelevant.

Maxell also failed to dispute this issue in its Sur-reply. Maxell first argued that the controller would always assign Bluetooth under certain conditions. Sur-reply at 3-4. But even if that attorney argument were true, it does not raise a genuine dispute of material fact about when the controller would make the determination to assign the Bluetooth radio to transmit the video information relative to the Accept message.

Maxell then began a paragraph in the middle of page 4 of its Sur-reply by asserting there is a factual dispute as to when assignment occurs. Sur-reply at 4. However, nothing in that paragraph addresses the relevant issue, *i.e.*, the timing of the assignment of the Bluetooth circuit to transmit the video information relative to the Accept message. *Id.* Instead, Maxell begins by incorrectly (and irrelevantly) asserting that Samsung is conflating assignment with transmission, when Samsung has never made that argument. *Id.* Maxell's Sur-reply then cites pages 7-9 of its Opposition to claim there is a "direct cause and effect," but Maxell's Opposition does not address the timing of the assignment for transmission of video information relative to the Accept message,

as demonstrated above. Maxell closes that paragraph with a citation to Dr. Buehrer's un rebutted testimony, which establishes the relevant assignment to transmit video information does not occur until "when" and "in response to" the Accept message.

Maxell then concluded its Sur-reply by repeating its incorrect argument that *DoggyPhone* "misses the point." Sur-reply at 4. Thus, Maxell's Sur-reply did not dispute Dr. Buehrer's opinion that the controller will not assign a radio to transmit video information until after it receives the Accept message, much less cite any evidence that shows anything to the contrary.

Maxell's attorney argument at the dispositive motion hearing also did not create a genuine dispute of fact. In its MFR, Maxell points only to its attorney's argument at the hearing regarding Dr. Buehrer's un rebutted opinion. MFR at 3, 5 (citing Hrg. Tr. at 154:15-24). But that attorney argument just confirms that Dr. Buehrer's opinion is undisputed because that argument was not accompanied by any factual showing that is contrary to Dr. Buehrer's opinion that the Bluetooth radio is not assigned for transmission of video information until after the Accept message.

In summary, Maxell's argument in opposing Samsung's summary judgment motion was that intervening events like the Accept message were irrelevant. Maxell's expert based his opinion on that same incorrect premise. Docket No. 179-1 (McNair Rpt.) at ¶ 672 ("whether additional conditions or options may be present in certain instances, is irrelevant"). And that is why Maxell failed to dispute the relevant portion of Samsung's UMF7. Thus, the Court correctly found that Maxell did not raise a genuine dispute of material fact about the relative timing of the assignment of the Bluetooth radio to transmit video information relative to the Accept message.

B. The Court Should Reject Maxell's New Argument Both Because It Is Untimely and Because It Fails to Raise a Genuine Dispute of Material Fact.

Maxell argues for the first time in its MFR that the Bluetooth radio is assigned prior to receipt of the Accept message. The Court should reject this belated argument. *De Leon*, 2014 WL

12601029, at *1; *Frew*, 2020 WL 8994102, at *3. However, even if the Court were to consider Maxell's new argument, the Court should still deny Maxell's MFR because the argument simply repackages old evidence that fails to establish a genuine dispute of material fact.

1. Facts That Maxell Does Not Address

As an initial matter, even in its MFR Maxell does not dispute certain key facts. Maxell does not dispute or seek reconsideration of the Court's finding that, after the user provides the accused indications, sometimes the phone will use Wi-Fi rather than Bluetooth to transmit the video information. Order at 59 (citing Docket No. 120-5 (McNair Tr.) at 69:5-12). And Maxell does not dispute or seek reconsideration of the Court's holding that *DoggyPhone* and *Sierra Wireless* preclude intervening events like the Accept message. Maxell also does not dispute that Maxell's expert, Mr. McNair, offered no opinion as to why the phone would assign one radio instead of the other. Mot. at 7; Docket No. 120-5 (McNair Tr.) at 68:23-69:4, 69:13-17. And Maxell does not dispute that, as agreed by the experts, the invitation sent by the transmitting phone to the receiving phone via Bluetooth prior to the Accept message is not the claimed "video information." Mot. at 8; Docket No. 120-3 (Buehrer Rpt.) at ¶ 69; Docket No. 120-5 (McNair Tr.) at 68:13-22.

The only issue that Maxell now seeks—for the first time—to "dispute" in its MFR is the timing of the assignment of the radio to transmit video information relative to the Accept message. But none of the evidence discussed in Maxell's MFR could or does raise a genuine dispute of material fact concerning the relative timing of those two events. On the contrary, Dr. Buehrer's line-by-line analysis of the relevant source code showing each step taken by the controller, up to the precise line in the code when the controller will assign either Bluetooth or Wi-Fi to transmit the video information "when" and "in response to" the Accept message, remains undisputed. Maxell's MFR merely adds attorney argument about the relative timing, which cannot and does not support its request for reconsideration of the Court's Order, both because the argument is

unsupported by evidence and because Maxell could have, but did not, make these arguments in its Opposition and Sur-reply briefs. *De Leon*, 2014 WL 12601029, at *1.

2. Maxell Has No Evidence Raising a Genuine Dispute of Material Fact About the Relative Timing of the Assignment of a Radio to Transmit Video Information and the Accept Message.

Maxell first argues that Samsung improperly “only” cites Dr. Buehrer’s opinion and Mr. McNair’s deposition testimony in UMF7. MFR at 1-2. But Mr. McNair’s report is silent about when the controller assigns a radio to transmit the video information relative to the Accept message, so there was nothing for Samsung to cite other than the fact that Mr. McNair could not remember offering any such opinion at his deposition.¹ Maxell then repeats its attorney argument about the Maxell test videos and incorrectly asserts these tests are unrebutted (MFR at 3), which Samsung addresses below.

Maxell then points to Dr. Buehrer’s unrebutted opinion that the controller does not assign a radio to transmit video information until after the Accept message. MFR at 3. But, again, Dr. Buehrer’s careful source code analysis identifies each step of the process, each line of code, and explains precisely in the code where the controller is assigned to transmit the video information; namely, after the receipt of the Accept message. Docket No. 120-3 (Buehrer Rpt.) at ¶¶ 67-90. Maxell then claims that a Samsung engineer testified that the controller will assign Bluetooth under certain circumstances. MFR at 3-4. But the cited testimony does not address the relevant issue,

¹ In a footnote, Maxell cites five pages of Mr. McNair’s expert report for the vague proposition that he purportedly discussed “timing of the connection.” MFR at 3, fn. 1 (citing Docket No. 179-1 at 638-642). But Maxell did not cite pages 638-642 (corresponding to paragraphs 597 to 606) in opposing Samsung’s motion for summary judgment, so Maxell cannot cite this pre-existing information now to argue the Court committed “manifest error.” *Frew*, 2020 WL 8994102, at *3 (the Court may consider “newly discovered evidence”). Regardless, nothing on these newly cited pages addresses the relevant issue; namely, when the controller assigns either the Bluetooth or Wi-Fi radio to transmit video information relative to the Accept message. Dr. Buehrer’s opinion on this issue thus remains unrebutted.

namely when the controller will assign the radio to transmit video information relative to the Accept message. Reply at 3-4. Docket No. 120-3 (Buehrer Rpt.) at ¶¶ 78-79 (“always”).

Maxell’s attorneys then argue that a subset of test videos—which Maxell did not submit as evidence with its Opposition or Sur-reply and still are not before the Court—“**clearly**” show assignment “**before**” and “prior to” the user selecting Accept. MFR at 4 (emphasis in original); *see also* MFR at 6-7 (“prior to the user selecting ‘Accept’”). But Mr. McNair offered no such opinion. In his report, Mr. McNair grouped all his tests together in a three-row table that included all his tests from S22 to S22 as well as from S22 to other devices. Docket No. 179-1 (McNair Rpt.) at 636-637. In his report, Mr. McNair opined on all the tests as a single group and did not distinguish among them in any way. Docket No. 179-1 (McNair Rpt.) at ¶ 594. Mr. McNair never opines that any test video shows assignment of a radio to transmit video “before” or “prior to” the Accept message as Maxell’s attorneys incorrectly now argue in their MFR. *Id.* Notably, Mr. McNair did provide such an opinion for other functionality—just not the Bluetooth functionality at issue here. For example, for his tests of the Quick Share application, Mr. McNair opined that his tests showed the controller assigning a Wi-Fi radio “before” the user selects “Accept.” Docket No. 179-1 (McNair Rpt.) at ¶ 568. Thus, Mr. McNair knew how to opine that his tests showed that type of timing relationship when he thought it was shown. The absence of any such opinion by Mr. McNair in his report for the tests related to the Bluetooth file sharing functionality at issue here is glaring.²

² Maxell’s attorneys included a portion of Mr. McNair’s table in their MFR that included only the tests involving S22 and different devices, implying that this subset of tests are somehow different from the tests involving two S22 devices. However, not only did Mr. McNair not draw any such distinction, the full table showing the S22-to-S22 testing (which Maxell failed to provide the Court), confirms there is no such difference.

Maxell then incorrectly argues the subset of tests related to the S22 and other devices are not “rebutted.” MFR at 5. Not so. As shown Samsung’s Reply brief, all the tests simply confirm the undisputed fact that it is possible for the controller to assign the Bluetooth radio to transmit the video information—but none of the tests show when the controller assigns the Bluetooth radio to transmit the video information relative to the controller receiving the Accept message. Reply at 3-4. That timing and causal relationship is shown only in the source code of the software executed by the controller, and Dr. Buehrer’s opinion that the source code shows the S22 always waits for the Accept message to assign a radio to transmit the video information is unrebutted. Docket No. 120-3 (Buehrer Rpt.) at ¶¶ 78-79 (“always”). Attorney argument cannot change that fact. Maxell next cites Mr. McNair’s opinion at paragraph 594 and its Opposition at page 8 (MRF at 5-6), but they do not address the Accept message at all, much less the timing of the assignment of a radio to transmit video relative to the Accept message.

Maxell then employs additional attorney argument to claim that Mr. McNair’s tests were designed to require that the controller assign the Bluetooth radio. MFR at 6. This unsubstantiated attorney argument contradicts Mr. McNair’s concession that he did not consider why Bluetooth or Wi-Fi would be assigned in various instances. Docket No. 120-5 (McNair Tr.) at 69:13-17. Regardless, even if this attorney argument were true and the test conditions made it inevitable that the controller would eventually assign the Bluetooth radio to transmit the video information, that still would not raise a genuine dispute of material fact because, as Dr. Buehrer’s uncontradicted source code analysis shows, the controller never assigns a radio to transmit video information until after receipt of the Accept message. Docket No. 120-3 (Buehrer Rpt.) at ¶¶ 78-79 (“always”).

Maxell then argues that Mr. McNair’s opinions at paragraphs 670-672 of his report support reconsideration. MFR at 6. But Maxell cited these paragraphs in its Opposition for the limited

proposition that the Bluetooth radio would be “turned on.” Opp. at 9. None of these paragraphs discusses the Accept message at all, much less the relevant timing of the assignment. In fact, these paragraphs confirm that Mr. McNair based his opinion on the incorrect assumption that intervening events (like the Accept message) were irrelevant. Docket No. 179-1 (McNair Rpt.) at ¶¶ 670 (opining that the fact that the source code may use Wi-Fi instead is irrelevant), 671 (“Even if, there are additional steps or different functionalities ... the evidence demonstrates that the Samsung Galaxy is capable of transmitting and receiving video information via Bluetooth.”), 672 (“Whether the source code goes through a step of checking whether additional conditions or options may be present in certain instances, is irrelevant.”). The Court correctly found—and Maxell does not challenge—that under *DoggyPhone* and *Sierra Wireless* such intervening events are relevant and preclude infringement. Order at 59-60. Thus, paragraphs 670-672 confirm that Mr. McNair’s opinions cannot create a genuine dispute of material fact because they are based on the incorrect premise that intervening events like the Accept message are irrelevant.

C. The Court Did Not Commit Manifest Error in Rejecting Maxell’s Attorney Argument.

The Court correctly found that the statement in Maxell’s Sur-reply that Samsung’s noninfringement argument only applies to S22-to-S22 video transfer “is unsupported, is not evidence, and is attorney argument that does not create a material dispute of fact.” Order at 60. Maxell’s attempt in its MFR to find a factual basis for its attorney argument fails. Maxell’s Opposition originally grouped all the tests together. Opp. at 8 (first sentence of last paragraph). The only difference noted by Maxell in its Opposition was that Dr. Buehrer did not test the S22 transmitting video to other devices. *Id.* at 8-9. In its Reply, Samsung responded that none of the tests created a genuine dispute of material fact about the relevant timing of when the controller assigns a radio to transmit the video information relative to the Accept message. Reply at 3-4. And

Dr. Buehrer addressed all scenarios by offering his undisputed opinion that the source code of the S22 showed that the S22 always waits until after receiving the Accept message to assign either Bluetooth or Wi-Fi to transmit the video information. Mot. at 8; Reply at 4; Docket No. 120-3 (Buehrer Rpt.) at ¶¶ 78-79 (“always”). Thus, the Court was correct that Maxell’s attorneys had no support or evidence to argue for the first time in Maxell’s Sur-reply that Samsung’s noninfringement argument only applied to S22-to-S22 video transfers. And the Court was correct in holding that that argument did not create a material issue of fact, because none of the Maxell test videos are in evidence and none bear on the relevant timing issue as shown above.

Undaunted, Maxell relies heavily on the test videos throughout its MFR, and Maxell’s attorneys now depart even more dramatically from the evidence by arguing for the first time that those test videos show assignment “before” the Accept message—a proposition that Maxell’s own expert never asserted. Maxell cannot create a genuine issue of material fact by piling on even more unsupported attorney argument about tests that are not in evidence.

IV. CONCLUSION

Maxell falls well short of demonstrating that the Court committed manifest error in granting summary judgment, especially where Maxell impermissibly raises a new argument that it never made before, and even that new argument does not raise a genuine dispute of material fact.

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CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically on May 8, 2025, pursuant to Local Rule CV-5(a) and has been served on all counsel who have consented to electronic service via electronic mail.

/s/ Melissa R. Smith

Melissa R. Smith