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 SURREPLY IN OPPOSITION TO MAXELL LTD.'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF VALIDITY BASED ON SAMSUNG'S *SOTERA* STIPULATIONS (DKT. 132)

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I. INTRODUCTION

Maxell's motion for partial summary judgment of validity based on Samsung's *Sotera* stipulations (Dkt. 132, "Mot.") is contrary to prevailing law and should be denied for the reasons below and as explained in Samsung's opposition (Dkt. 178, "Opp.").

II. ARGUMENT

A. The Court Should Apply *Chemours* And Deny Maxell's Motion

Maxell does not dispute that its motion should be denied under the *Chemours* standard because, under *Chemours*, product prior art is not subject to IPR estoppel, even if the product prior art is materially identical to printed references that could have been raised in an IPR proceeding. *Chemours Co. FC, LLC v. Daikin Indus., Ltd.*, C.A. No. 17-1612 (MN), 2022 WL 2643517 (D. Del. July 8, 2022). *Chemours* is the correct legal standard because "Congress could have dictated that estoppel applies to products covered by the paper art underlying the IPR where the paper art discloses the same claim limitations as the product[;] Congress did not do so." *Id.*, 2022 WL 2643517, at *2. This is the correct result because an IPR petitioner cannot rely on product prior art. 35 U.S.C. § 311(b). Employing a standard that extends IPR estoppel under 35 U.S.C. § 315(e)(2) to product prior art would thus be contrary to "well-accepted canons of constructions." *Chemours*, 2022 WL 2643517, at *2. The Court should therefore apply *Chemours* and deny Maxell's motion

B. The *Wasica* Line Of Cases Requires "Materially Identical" Prior Art

If the Court decides to follow the *Wasica* line of cases—which it should not—then the test is whether the product prior art is "materially identical" to the publication. Opp. at 11. While Maxell's reply mouths the "materially identical" standard in its section headings (*see, e.g.,* Reply at 6 ("Materially Identical")), Maxell fails to apply that standard—which examines material differences between the products and the publications—and instead applies an "adequately

described" test, which examines the publications relative to the claim limitations. *See, e.g.,* Reply at 6-7 (comparing whether the publication describes the claims). However, there is no basis to replace the "materially identical" test with the "adequately described" test. In this regard, the *Wasica* case itself makes clear that estoppel does not apply to "superior" product prior art. *Wasica Fin GmbH v. Schrader*, 432 F. Supp. 3d 448, 453 n.5 (D. Del. 2020) ("[n]or is this a case in which there is a contention that the product (ZR-1 Sensors) is a 'superior and separate reference' from the prior art publication"). Thus, if the product prior art is a superior reference to the publication—and by definition is not materially identical to it—estoppel should not apply.

The cases Maxell cites also support applying a "materially identical" test if *Chemours* is not applied. For example, in *Wirtgen*, the court stated that "[w]hen a party relies on a printed publication before the PTAB and then relies on a physical device in court, it relies on the same 'ground' if the printed publication and the physical device ***provide the same information***." *Wirtgen America, Inc. v. Caterpillar, Inc*., No. 1:17-cv-00770-JDW-MPT, 2024 WL 51010, at *9 (D. Del. Jan. 4, 2024) (emphasis added). The "loophole" the *Wirtgen* court sought to prevent was "add[ing] a physical device ***that is identical*** to patents or printed publications in the subsequent civil case just to evade estoppel." *Id*. (emphasis added). The ultimate ruling in *Wirtgen* turned on the fact that the "physical products on which Caterpillar seeks to rely are '***entirely cumulative***' of the printed publications." *Id.* at 10 (emphasis added). This finding was based in part on an admission by defendant's expert that the product added "***nothing of note***" to the publications. *Id.* (emphasis added).

Boston Scientific also supports applying a "materially identical" test if *Chemours* is not applied. *Bos. Sci. Corp. v. Cook Grp. Inc.,* 653 F. Supp. 3d 541, 594 (S.D. Ind. 2023) ("if the patent challenger is relying on a physical device at the district court that is ***fully*** disclosed in an

estopped patent or publication, then there is truly ***no substantive difference*** between the ground to be argued before the district court and the ground that was or reasonably could have been argued at the IPR.") (emphasis added). There, the court found that the defendant was ***not*** estopped on four of the five prior art products, finding the publications did not fully disclose all material features in the products. *Id.* at *595-97.

Other cases cited by Maxell also apply the "materially identical" standard. For example, *Hafeman* applied the "materially identical" standard and nowhere suggests an "adequately described" standard should apply. *Hafeman v. LG Electronics,* 6-21-cv-00696, 2023 WL 4362863, at *1 (W.D. Tex. Apr. 14, 2023) ("LG does not rebut Ms. Hafeman's argument that the system art and the IPR references are materially identical because of LG's admissions").

The *Vaporstream* case is inapposite. There, the defendant's local rule invalidity contentions only identified "patent and printed publication prior art references" and did "not identify any system art references." *Vaporstream, Inc. v. Snap, Inc.*, No. 2:17-cv-00220-MLH, 2020 WL 136591, at *24 (C.D. Cal. Jan. 13, 2020). The court therefore found that IPR estoppel applied. *Id.* at *25. Here, by contrast, it is undisputed that Samsung has been consistently asserting ***product*** prior art.

Maxell relies on *Avanos Med. Sales* in applying an "adequately described" test here. *Avanos Med. Sales, LLC v. Medtronic Sofamor Danek USA, Inc*., No. 2:19-cv-02754-JPM, 2021 WL 8693677, at *2 (W.D. Tenn. Oct. 8, 2021). However, while *Avanos* states, in reaching its "adequately described" finding, that "the inquiry is whether the non-public documentation or physical product is the only available material that cites certain limitations," that statement finds no support in the either the IPR estoppel statute or the "materially identical" standard applied under the *Wasica* line of cases. *Id*. at *2. Indeed, the only case that *Avanos* cites for its statement of the

relevant "inquiry"—*SiOnyx*—says no such thing and instead ***denied*** summary judgment of IPR estoppel citing the "superior and separate reference" standard. *SiOnyx, LLC v. Hamamatsu Photonics K.K.*, 330 F. Supp. 3d 574, 603-04 (D. Mass. 2018) (quoting *Star Envirotech Inc. v. Redline Detection LLC*, No. SACV 12-01861 JGB, 2015 WL 4744394, at *4 (C.D. Cal. Jan. 29, 2015) ("[T]he physical machine itself discloses features claimed in the '808 Patent that are not included in the instruction manual, and it is therefore a superior and separate reference.")). And no court has applied *Avanos* to estop a party from asserting product prior art on the basis that publications "adequately described" the claims. Finally, by definition all instituted IPRs cite publications that arguably "adequately describe" limitations, or they would not have been instituted. Thus, Maxell's "adequately described" test would always prohibit all product prior art challenges—directly contrary to *Wasica* lines of cases that apply the "materially identical" test.

C. The Product Prior Art Is Not "Materially Identical" to the Publications

1. The N93 Product is not "Materially Identical" To the N93 User Manual

Maxell recites—and then immediately abandons—the "materially identical" test for the N93 product because the evidence of that product (including the N93 Service Manual, N93 samples, and a wealth of other evidence) are indisputably not identical to, and are in fact superior to, the N93 User Manual prior art publication. *See*, *e.g.*, Reply at 7 ("Maxell need not show that the evidence in the N93 Service Manual is materially identical to the N93 User Guide."). But that is the very test that the *Wasica* line of cases use to separate product prior art that is ***cumulative*** of the printed publications (which is estopped) from product prior art that is ***different and superior*** to the publications (which is not estopped). As a result, Maxell fails to contest Samsung's showing that the detailed schematics in the N93 Service Manual (which show the claim components for numerous material limitations) and the testing of the N93 samples (which show claimed functions, including the simultaneous use of radios) are not present in the N93 User Manual. Opp. at 11-14.

Because this showing establishes that the two are not materially identical, Maxell's motion fails.

Maxell's reply does not dispute that its motion erroneously classified the N93 Service Manual as a "publication." Opp. at 10-11; Reply at 6-7. Instead, Maxell abandons the SUMFs and legal theory raised in its motion and now asserts for the first time in its reply that the N93 User Manual by itself adequately discloses all claim limitations. Reply at 6-7. However, as discussed above, this is not the test—the test is whether the User Manual and the evidence of the product relied upon by Samsung are materially identical, and they are not. Maxell's self-serving demonstrative (Ex. 24) does not show otherwise. For example, for limitation [1l] of claim 1 of the '590 patent, Ex. 24 lacks any reference to the N93 User Manual disclosing an update for the "operating system" as claimed, nor does Samsung's IPR assert that limitation [1l] is satisfied by the N93 User Manual. Ex. 8, 38-40. Maxell knows Samsung's IPR petition is limited in this manner, as it emphatically pointed out to the Board. Ex. H (POPR), 52 ("The Petition only asserts that N93 discloses application downloads…. Therefore, N93 only discloses pulling updates … for *applications* and not its operating system.") (emphasis in original). In contrast, the N93 Product itself discloses updating the operating system as required by limitation [1l]. Ex. 13, (Buehrer Op. Rpt.), ¶¶ 332-349. Indeed, this is a material distinction between Samsung's district court theory that the N93 Product anticipates the claims and Samsung's IPR theory that the N93 Product in combination with Herle renders the claims obvious. *See, e.g.*, Ex. H (POPR), 53 ("There is no evidence regarding whether the operating systems in N93 … could be updated at all. In this case, 'it is unclear why a POSITA would look to Herle to incorporate delta-based over-the-air updates for operating system for two devices that *do not support updates for operating systems*.'") (emphasis in original), 53-58 (same). The fact that the N93 Product shows its operating system can be updated is by itself a material difference between the two. Thus, the N93 Product is not

"materially identical" to the N93 User Manual under the *Wasica* standard, nor does the N93 User Manual adequately describe the claims under Maxell's untimely new theory.

Dr. Buehrer's testimony further confirms the N93 Product is a different and superior reference to the N93 User Manual. Dr. Buehrer was asked whether his invalidity opinion as to claim 1 would "still stand" if the Court excluded the N93 "samples" in view of the N93 User Manual "and other documents." Ex. 21 (Buehrer Tr.), 166:20-24. Dr. Buehrer testified he had not done that analysis, but he knew it would "weaken" his opinion. *Id.*, 167:2-5. While he also testified that the lack of samples would not "change my opinion of how they function," he testified that was in light of "all of the evidence that we've gathered," referring to ***all*** of the evidence of the N93 product, including the N93 Service Manual and the wealth of other documentary evidence cited in his report. *Id.*, 167:6-9. This testimony thus does not support Maxell's motion.

2. The Galaxy SIII User Manual Is Not Materially Identical To The Galaxy SIII Device For The Claimed Limitations Of The '757 Patent

Maxell has failed to show that the Galaxy SIII User Manual is materially identical to the Galaxy SIII device for the asserted claims of the '757 patent. For example, limitation [1i] recites "control such that *a first standby time* of a case where the first camera is enabled and the second camera is disabled *is longer* than *a second standby time* of a case where the second camera is enabled and the first camera is disabled." While Mr. Guidash refers to the Galaxy SIII User Manual to demonstrate the existence of a timer, Mr. Guidash relies *exclusively* on testing of the Galaxy SIII device and source code to establish that the first standby time is longer than the second standby time. Ex. 9 (Guidash Op. Rpt.), ¶¶ 183-186.

Rather than address what Mr. Guidash actually says about this claim requirement, Maxell's reply instead begins with a reference to paragraph 182 of his report, which says nothing about the first standby time being longer than the second standby time. Ex. 9, ¶ 182. After this unhelpful

citation, Maxell's reply then shifts to Mr. Guidash's discussion of claim 5 in paragraph 195 of this report, neither of which says anything about a first standby time being longer than a second standby time. Ex. 9, ¶ 195. Maxell's reply thus fails to demonstrate either that the Galaxy SIII User Manual is "materially identical" to the Galaxy SIII device under the *Wasica* standard, or that the N93 User Manual adequately describes the claims under Maxell's new theory.

Maxell's reply also fails to establish that the Galaxy SIII User Manual discloses limitation [1f] or claim 5, as demonstrated in Samsung's opposition. *See* Opp. at 15-17. Because claims 5 and 9 depend from claim 1, Maxell's reply also fails to demonstrate that the Galaxy SIII User Manual "adequately" discloses all the limitations of these claims. Thus, Maxell has failed to demonstrate that the Galaxy SIII User Manual is "materially identical" to the Galaxy SIII device for any asserted claim of the '757 patent under any possible application of that standard.

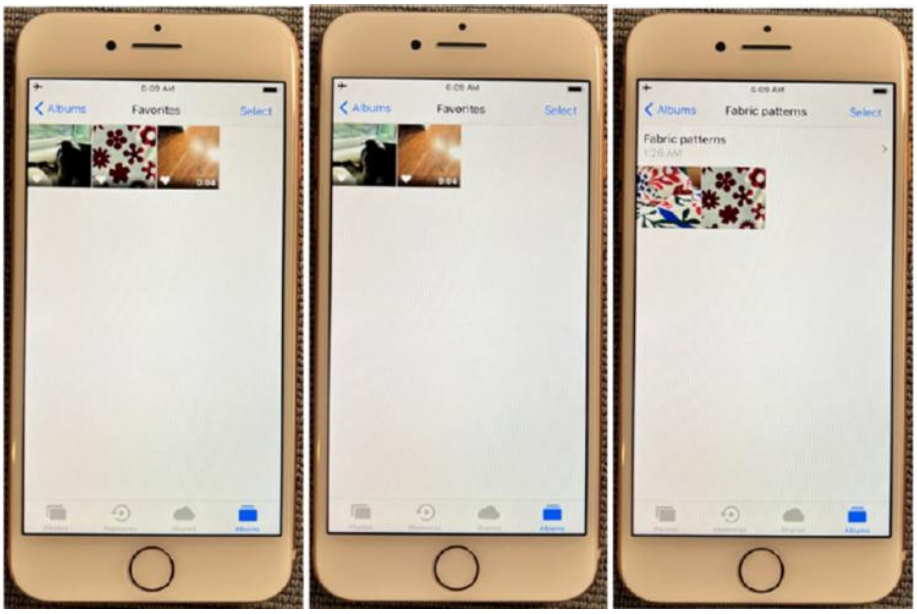
3. The iPhone 8 User Manual Is Not Materially Identical To The iPhone 8 Device For The Claimed Limitations Of The '815 Patent

Maxell has failed to show that the iPhone 8 User Manual is materially identical to the iPhone 8 device for the asserted claims of the '815 patent. For example, limitation [1l] recites "wherein, upon one video information stored on the recording medium included in both the first group of video information and the second group of video information being deleted from the first group of video information, the one video information continues to be included in the second group of video information." Neither Maxell's motion nor its reply demonstrates where this limitation is found in the iPhone 8 User Manual.

Maxell's reply states "Dr. Kia devotes six paragraphs to his opinion that the iPhone 8 User Manual discloses this claim limitation. *Id.*, ¶¶ 311-313, 316-318." Reply at 9-10. However, none of these paragraphs demonstrate limitation [1l] is disclosed in the User Manual. Indeed, the only portions of the User Manual cited in these paragraphs of Dr. Kia's report are as follows:

> "Mark your favorites. While viewing a photo or video, tap to add it to the Favorites album. A photo or video can be part of another album as well as Favorites." [¶ 311, citing iPhone 8 User Manual at 228]
>
> "The ability to add a video to the Favorites album while it remains part of another album demonstrates that the video information is stored in multiple groups." [¶ 312, citing iPhone 8 User Manual at 228]
>
> "By marking a video as a favorite, users can easily locate it within the Favorites album, while still maintaining its presence in other relevant albums." [¶ 313, citing iPhone 8 User Manual at 228]

Ex. 10. None of these citations to the User Manual discloses that a video that is deleted from the Favorites album will not be deleted from other albums, as required by limitation [1l]. Instead, as discussed in paragraph 314 of this report, Dr. Kia ***solely*** established that functionality in the iPhone 8 by testing the iPhone 8 device, which showed that removing the photo of the red flowers on white fabric from the Favorites album does not remove that photo from the Fabric Patterns folder:



Accordingly, Maxell's motion and reply fail to demonstrate either that the iPhone 8 User Manual is "materially identical" to the iPhone 8 device under the *Wasica* standard as to claim 1, or that the User Manual adequately describes the claims under Maxell's new theory.

Because claim 8 depends from claim 1, Maxell's motion and reply also necessarily fail as

to claim 8. Maxell also fails to establish that the iPhone 8 User Manual describes the limitations of claim 8, which recites "an on screen display generator generating on screen display information." Indeed, Maxell now admits that Dr. Kia's report "does not cite the [iPhone 8] User Manual" for claim 8 but instead "appears to rely on some pictures from the device." Reply at 10. Maxell attempts to deflect attention from this fatal flaw by pointing to Samsung's invalidity contentions for claim 8. Reply at 10. However, Maxell fails to demonstrate that the contentions, which rely on obviousness as well as anticipation, establish that the iPhone 8 User Manual adequately describes the limitations of claim 8. Ex. 27, at 1. Moreover, it is clear from a review of the contentions that the iPhone 8 User Manual does not do so because the cited portion of the User Manual only addresses the "stored video information" portion of claim 8 and does not address the "on screen display generator" portion of the claim. Ex. 27, at 56. Instead, the iPhone 8 device discloses that part of the limitation as addressed in Dr. Kia's report. Ex. 10, ¶ 314. As a result, Maxell's motion must be denied as to both claims 1 and 8 of the '815 patent.

4. The Galaxy S10 User Manual Is Not Materially Identical To The Galaxy S10 Device For The Claimed Limitations Of The '815 Patent

Maxell has failed to show that the Galaxy S10 User Manual is materially identical to the Galaxy S10 device for the asserted claims of the '815 patent. Maxell's reply purports to demonstrate that Dr. Kia's report relies on the Galaxy S10 User Manual for limitations [21pre]-[21b], but makes no showing that Dr. Kia's report relied on the Galaxy S10 User Manual for any of the remaining limitations [21c]-[21h]. This is because Dr. Kia's report does not contend that the Galaxy S10 User Manual discloses these limitations.

For example, limitation [21h][1] recites "wherein the display displays the decrypted video

[1] The final limitation of claim 21 is referred to as [21h] in Samsung's invalidity contentions and as [21m] in Dr. Kia's opening report.

information." Dr. Kia's report does not cite the Galaxy S10 User Manual for this limitation. Ex. 10, ¶¶ 219-220. Perhaps recognizing this, Maxell's reply now asserts that "in its preliminary invalidity contentions, Samsung relied entirely on the [Galaxy S10] User Manual as disclosing claims 21, 24 and 27." But this also is incorrect. Samsung's preliminary invalidity contentions for limitation [21h], the entirety of which is reproduced below, does not even mention the Galaxy S10 User Manual, but instead relies only on the Samsung prior art phones including the S23:

'815 Patent Claim Limitation	**Samsung Galaxy Prior Art Smartphones Exemplary Disclosure**
[21h] wherein the display displays the decrypted video information.	Samsung Prior Art Smartphones include "wherein the display displays the decrypted video information." To the extent Maxell contends the Samsung Prior Art Smartphones do not read on/disclose/practice this limitation, a person of ordinary skill in the art would have readily arrived at this limitation by combining or modifying it in view of their general knowledge and/or the prior art references disclosed in the corresponding section of Samsung's Invalidity Contentions.

Ex. 28, at 120. The same is true for several other limitations, including limitations [21d], [21e] and [21g]. Ex. 10, at ¶¶ 181-187, 188-193, 212-218; Ex. 28, at 118-120.

Simply put, Maxell's motion and reply fail to show that any of limitations [21d], [21e], [21g] or [21h] are disclosed at all, let alone adequately described, by the Galaxy S10 User Manual. Maxell has therefore failed to establish that the Galaxy S10 User Manual is "materially identical" to the Galaxy S10 device for claim 21 of the '815 patent, or for claims 24 and 27, which depend from claim 21, under any articulation of the IPR estoppel standard. Maxell's motion should therefore be denied for claims 21, 24, and 27 of the '815 patent.

III. CONCLUSION

For the foregoing reasons, Maxell's motion should be denied.

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CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically on February 18, 2025, pursuant to Local Rule CV-5(a) and has been served on all counsel who have consented to electronic service via electronic mail.

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