

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

KOSS CORPORATION,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 6:20-cv-00665-ADA

**JURY TRIAL DEMANDED**

**ORDER REGARDING PLAINTIFF KOSS CORPORATION'S AND DEFENDANT  
APPLE INC.'S PRE-TRIAL MOTIONS AND OTHER DISPUTES**

Filing Party	Dkt. No.	Title	Ruling
Koss Corporation	141	Plaintiff Koss Corporation's Motion to Exclude the Untimely Testimony of Edward Brann	<b>GRANTED.</b>
Koss Corporation	174	Plaintiff Koss Corporation's Motion to Dismiss Defendant Apple Inc.'s Counterclaim for Breach of Contract Pursuant to Rule 12(b)(6) and Motion to Strike Apple's Affirmative Defense for Prosecution Laches Pursuant to Rule 12(f)	<b>DENIED.</b>
Koss Corporation	184	Plaintiff Koss Corporation's Motion to Exclude the Testimony and Opinions of Defendant Apple Inc.'s Experts for Improper Application of the Court's Claim Constructions	<b>DENIED IN PART AND MOOT IN PART:</b> The Motion is <b>DENIED</b> with respect to Mr. Wiggins' testimony regarding claim 61 of the '934 Patent. The remainder of this Motion is <b>MOOT</b> .

Filing Party	Dkt. No.	Title	Ruling
Apple Inc.	185	Defendant Apple Inc.'s Motion for Partial Summary Judgment on Apple's Breach-of-Contract Counterclaim and Affirmative Defense	<b>GRANTED:</b> The Court rules that the arbitration award collaterally estops Koss from disputing that Koss breached the Confidentiality Agreement through certain allegations in its Complaint and orders specific performance of Koss' obligations under Section 5 of the parties' contract. Apple is to send Koss a list of exhibits identified on Koss' trial exhibit list that Apple contends are documents that Koss is barred from using or introducing at trial under Section 5. The parties are directed to agree to the universe of documents that Koss cannot discuss or admit into evidence under the Court's order. For any documents where the parties do not agree, Koss is ordered to approach the bench, prior to a witness taking the stand, before discussing or attempting to introduce into evidence any of those listed documents or their contents, in either direct or cross-examination. The Court will take up disputes on any specific exhibit or testimony outside the jury's presence.
Koss Corporation	187	Plaintiff Koss Corporation's Motion to Exclude Certain Testimony and Opinions of Daniel C. Wiggins	<b>DENIED.</b>
Koss Corporation	188	Plaintiff Koss Corporation's Motion to Exclude or, in the Alternative, Strike Portions of the Testimony of Defendant Apple, Inc.'s Damages Expert, Thomas W. Britven, Regarding a Reasonable Royalty	<b>DENIED.</b>

Filing Party	Dkt. No.	Title	Ruling
Koss Corporation	189	Plaintiff Koss Corporation's Motion to Strike Expert Opinions of Dr. Christopher Jules White, Mr. Daniel C. Wiggins, Mr. Thomas J. Britven, and Dr. Itamar Simonson as Based on Untimely Discovery Disclosures	<b>DENIED IN PART AND MOOT IN PART:</b> The portion of the Motion pertaining to headphone packaging is MOOT because Apple and Koss agree that Apple may introduce headphone packaging (but not the headphones themselves) at trial. The portion of the Motion pertaining to pictures of the Plantronics headphones and Motorola S9 headphones is also MOOT because Apple only intends to use them as demonstratives. Because the Court already ruled on the dispute regarding Mr. Brann in its ruling regarding Dkt. No. 141, the portion of the Motion seeking to strike Mr. Brann's testimony is MOOT. The remainder of this Motion is DENIED.
Apple Inc.	190	Defendant Apple Inc.'s Omnibus <i>Daubert</i> Motion	<b>DENIED.</b>
Apple Inc.	192	Defendant Apple Inc.'s Motion for Summary Judgment of Non-Infringement and Invalidity under § 112	<b>GRANTED IN PART AND DENIED IN PART:</b> The Motion is <b>GRANTED</b> as to non-infringement with respect to '025 patent claims 3 and 44, and '934 patent claims 1, 3, 4, 35, 37, 39, and 62. The remainder of this Motion is DENIED.
Koss Corporation	194	Plaintiff Koss Corporation's Motions for Summary Judgment	Motion for Summary Judgment of No Inequitable Conduct: <b>DENIED.</b>  Motion for Summary Judgment of No Breach of Contract: <b>DENIED</b>  Motion for Summary Judgment Regarding Apple's Pre-Suit Mental State: <b>DENIED</b> with the clarification that the marking issue is <b>DENIED AS MOOT</b> based on the Court's granting Apple's Motion for Summary Judgment of Non-Infringement as it relates to the '025 Patent.

Filing Party	Dkt. No.	Title	Ruling
Apple Inc.	Dispute Chart	Discovery Dispute Chart Regarding Claim Reduction to Trial Limits	<b>MOOT.</b>

SIGNED this 18th day of July, 2022.

  
ALAN D ALBRIGHT  
UNITED STATES DISTRICT JUDGE