

No. 2020-1251

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

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Mr. Xiaohua Huang *pro se*

Plaintiff-Appellant

v.

MEDIATEK USA, INC., FKA NEPHOS INC.,  
Defendant-Appellee

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Appeal from the United States District Court  
for the Northern District of California  
in No. 3:18-cv-06654-WHA, Judge William H. Alsup.

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**XIAOHUA HUANG'S PETITION  
FOR PANEL REHEARING**

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Xiaohua Huang *pro se*

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## CERTIFICATE OF INTEREST

*Pro se* Plaintiff-Appellant Xiaohua Huang certifies the following:

1. The full name of every party or amicus represented by me is: Xiaohua Huang
2. The name of the real party in interest represented by me is: Xiaohua Huang

**TABLE OF CONTENTS**

CERTIFICATE OF INTEREST ..... i  
TABLE OF CONTENTS ..... ii  
TABLE OF AUTHORITIES.....iii  
FEDERAL CIRCUIT RULE 35(b) STATEMENT ..... 1  
INTRODUCTION..... 2  
BACKGROUND ..... 6  
ARGUMENT ..... 10  
CONCLUSION ..... 19  
CERTIFICATE OF COMPLIANCE. ....20  
  
The Order of this Court .....ADD1  
  
PROOF OF SERVICE. ....28

## TABLE OF AUTHORITIES

### Cases

- (1). U.S. Superior Court in “Goodyear Tire & Rubber Co. v. Haeger, 137 S. Ct. 1178, 1186 (2017)”; 1, 16
- (2). United States Court of Appeals for the Ninth Circuit in “Haeger v. Goodyear Tire & Rubber Co. 793 F.3d 1122 (2015)” 1, 16

## **FEDERAL CIRCUIT RULE 35(b) STATEMENT**

I believe the panel decision is contrary to the following decision(s) of the precedent(s):

(1). U.S. Superior Court in “Goodyear Tire & Rubber Co. v. Haeger, 137 S. Ct. 1178, 1186 (2017)”;

(2). United States Court of Appeals for the Ninth Circuit in “Haeger v. Goodyear Tire & Rubber Co. 793 F.3d 1122 (2015)”

I believe this appeal requires an answer to one or more precedent-setting questions of exceptional importance:

1. Whether the Court failed to take into account the fact that Mr. Huang’s infringement contention clearly stated WHERE and HOW Nephos Inc. (MediaTeK USA) infringed the claims of the asserted patents when the accused device contains the TCAM which use, contain and include the figures of the asserted patents and the claim of the asserted patents read the corresponding figures of the patents and further read the TCAM and the accused devices.
2. Whether this Court use defendant’s fraud statement which Defendant never presented in the trial Court that Nephos (Hefei) Co., Ltd is a different company from Nephos, Inc. while the two company share the same email address info@nephosinc.com and Nephos (Hefei) Co., Ltd is a child company & part of Nephos, Inc. to deny Plaintiff’s appeal for rule 11 sanction against Defendant.
3. Whether this Court’s decision that Nephos, Inc. as a parent company and Nephos (Hefei)Co. Ltd as a child subsidiary company is a unrelated different company is related to the resolution of case 1:18-cr-00457-AMD because the two cases are all related whether the parent company and the child subsidiary company are unrelated different company..

/s/ Xiaohua Huang *pro se*

## INTRODUCTION

Both trial Court and the Panel in this Court prejudiced Plaintiff and failed to take the facts Plaintiff presented and only took Defendant's fraudulent statements to striking Plaintiff's infringement contention.

The panel of this court used defendant's fraud statement which never presented in the trial court to deny Plaintiff's appeal on rule 11 motion. The causes used by this Court and the trial Court are different and contradictive.

For the reason above Plaintiff requests rehearing.

### **1. Defendant's motion to strike infringement contention**

In Plaintiff's infringement contention Plaintiff clearly stated **WHERE and HOW** the accused devices read the claims of the asserted U.S. patent 6744653 and 6999331.

Where is "the TCAM used in the Networking chips of Nephos Inc., including but not limited to: TCAM used in the chips of Aries MT3250 Family, Aries Hybrid ToR Switch, Taurus Family NP8360 Series, Taurus ToR and FabricsSwitch."

Based on what TCAM design engineers of MediaTek told Plaintiff that the TCAM used in the networking chips of Nephos Inc.( the chips of Aries MT3250 Family, etc...) used (contain or include) FIG.1B, FIG.2E, FIG.8B, FIG.8C, FIG.9A and FIG.9B of US patent 6744653 and 6999331, Plaintiff explained HOW the claims of US patent 6744653 and 6999331 read FIG.1B, FIG.2E, FIG.8B, FIG.8C, FIG.9A and FIG.9B of US patent 6744653 and 6999331 to prove the TCAM used in chips of Aries MT3250 Family etc. read the claims of US patent 6744653 and 6999331 because the TCAM use, contain and include FIG.1B, FIG.2E, FIG.8B, FIG.8C,

FIG.9A and FIG.9B of US patent 6744653 and 6999331.

Defendant fooled the Court and claimed that Plaintiff only explain how the claims read the Figures of the patent and hide the fact that the designers claimed that **the TCAM design use, contain and include those Figures of the asserted patents.**

Both the trial Court and this Court ignored what Plaintiff presented that the TCAM used in the accused device use, contain and include the Figures of the asserted patents, so the claims read the Figures of the patents and further read the TCAM used in the accused devices.

## **2.Plaintiff's motion for rule11 sanction against Defendant**

In case 3:18-cv-6654 Plaintiff moves for Rule 11 sanctions against Defendant because Defendant present false and fraud information on its corporate ownership. In its corporate statement disclosure Defendant stated that "Nepfos Inc. is wholly-owned, indirectly, by MediaTek, Inc. (located in Hsinchu City, Taiwan) through MediaTek Investment Singapore Pte. Ltd. and Gaintech Co. Limited. Nepfos is 100 percent owned by Gaintech Co. Limited"

Plaintiff filed objection to Defendant's corporate statement. Attorney Stroy provided Plaintiff defendant's 2015 initial registration in the United States and a certificate of 10,000 shares of common stock issued to Gaintech Co. Limited at \$0.01 per share to prove that Nepfos Inc. is 100% owned by MediaTek and prepared a motion for Plaintiff to file to withdraw Plaintiff's objection.

Later Plaintiff presented the authenticated evidence that defendant Nepfos, Inc. website shows that

<http://www.nepfosinc.com/nps/contact-us/>

**Nepfos (Hefei) Co., Ltd. :**

No.615 Wanshui Road, Hefei Hi-tech Industry Development Zone,  
Hefei, Anhui, China

TEL: 86-551-6510-9118

Email : [info@nephosinc.com](mailto:info@nephosinc.com)

**Nephos (USA) Inc :**

2840 JUNCTION AVENUE SAN JOSE CA 95134 TEL: 1-408-  
526-1899

Email : [info@nephosinc.com](mailto:info@nephosinc.com)

**Nephos (Taiwan) Inc. :**

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Taiwan

Tel: +886-3-666-7858

Email : [info@nephosinc.com](mailto:info@nephosinc.com)

**Nephos (Singapore) Pte. Ltd. :**

80 Robinson Road #02-00, Singapore 068898

Tel: +1-65-677-35661

Email : [info@nephosinc.com](mailto:info@nephosinc.com)

Nephos Inc. includes : Nephos (Hefei) Co., Ltd., Nephos (USA)  
Inc., Nephos (Taiwan) Inc., Nephos (Singapore) Pte. Ltd, all  
those child company share same email address:

[info@nephosinc.com](mailto:info@nephosinc.com) the information is authenticated in  
Appx243-246).

Nephos (Hefei) Co. is a child company of Nephos, Inc. and part of  
Nephos, Inc. the ownership of Nephos (Hefei) Co. is also the ownership of  
Nephos Inc.

Plaintiff then presented authenticated evidence that  
Nephos (Hefei) Co. Ltd are invested by China Hefei governmental high-  
tech investment Ltd.” and other entities and that “the officers of Nephos  
(Hefei) Co., Ltd includes the Executives of Nephos Inc. and Hefei



government Officials”.(Appx76-82).

The following information is published in the following link:

<https://wenku.baidu.com/view/b44aa6e526d3240c844769eae009581b6bd9bd91.html>

The content was in Chinese, which is about the registration information change of Nephos (Hefei) Co. Ltd.

On May 18, 2018 Nephos (Hefei) Co. Ltd has the following shareholders:

Hefei governmental incubation leading investmentfund Ltd.: 20.45%

Lightman Investment Limited: 9.8%

Hefei governmental high-tech investment Ltd.: 6.81%

Yalesi investment LLP of Ningbo Meishan Tax free District:  
0.38%

Nephos Cayman Co. Limited: 62.54%

Which is authenticated in Appx76-82.

Plaintiff asked Defendant to correct its corporate statement on its ownership to avoid Plaintiff to file rule11 motion to sanction Defendant. Defendant Attorney Mr. Story threaten Plaintiff that if Plaintiff filed rule 11 motion, then Defendant will file motion to strike Plaintiff's infringement contention rather than settle the case.

Plaintiff sent rule 11 notice to Defendant to ask Defendant to correct its corporate statement. Instead correcting its corporate statement Defendant filed motion to strike Plaintiff's infringement Contention. Then Plaintiff filed rule 11 motion to sanction Defendant Nephos Inc. and attorney Mr. Story.

The trial Court denied Plaintiff's rule 11 motion with the cause that *“On the current record, this order does not find that Attorney Stroy attempted “to cheat” plaintiff or the Court with defendant's corporate*

*disclosure statement. Attorney Stroy based his filing upon information obtained from in-house counsel for MediaTek Inc.... following plaintiff's objection to the corporate disclosure statement, Attorney Stroy received from defendant and sent to plaintiff certain documents such as defendant's "Certificate of Incorporation," "Investor Representation Statement," and "Stock Issue Certificate" in order to verify to plaintiff his prior representations of defendant's ownership. Though plaintiff still disagrees with Attorney Stroy's representations and has provided other documents — originally written in Chinese and translated to English by plaintiff himself — that allegedly show that defendant has other owners aside from Gaintech (see, e.g., Dkt. No. 44-5), there is no evidence that Attorney Stroy acted in bad faith or otherwise violated his obligations under Rule 11 in his representations of defendant's ownership status. Moreover, even assuming that Attorney Stroy misstated defendant's ownership, it is unclear what exact injury plaintiff claims to have suffered based on a relatively inconsequential filing in the instant patent infringement action. ...." cited from trial court order Dkt.55.*

In case 12-1251 Defendant and its Counsel further made fraudulent statement to this Court that Nephos Inc. and Nephos (Hefei) Co., Ltd are different company. This Court took Defendant's fraud statement and denied Plaintiff's appeal on rule 11 sanction against Defendant. The Panel took Defendant's fraud statement that Nephos (Hefei) Co., Ltd is a different company from Nephos Inc. as cause to deny Plaintiff's appeal for rule 11 sanction. In the underlying case 3:18-cv-6654 Defendant never claimed that Nephos (Hefei) Co., Ltd is a different company from Nephos Inc.

## **BACKGROUND**

In 2014 Plaintiff passed his US patent 6744653 and 6999331 to the

director of Networking division of MediaTek ( in 2015 become independent company Nephos Inc.) to design low power consumption TCAM for its networking chips. From September, 2014 to November,2014 Plaintiff had several meetings with TCAM design team of Networking division of MediaTek ( in 2015 become independent company Nephos Inc.) to explain how to implement the content of US patent 6744653,6999331 to low power consumption TCAM design. Based on what engineers of Networking division of MediaTek ( in 2015 become independent company Nephos Inc.) told Plaintiff that the TCAM design used in the networking chips of Nephos, Inc. use, contain and include FIG.1B, FIG.2E , FIG.8B, FIG.8C, FIG.9A and FIG.9B of US patent 6744653 and 6999331. Because using US patent 6744653 and 6999331 the networking chips of Nephos Inc. (MediaTek USA) consume much lower power, its power consumption reduced to tens of Watt from 150Watt.

On November 21, 2018 Nephos Inc. filed “NEPHOS INC.’S CORPORATE DISCLOSURE STATEMENT” and stated:

“Nephos is wholly-owned, indirectly, by MediaTek, Inc.(Appx59)

On December 7, 2018 Plaintiff Mr. Huang filed an objection and stated : “Based on public information that Nephos Inc. is not wholly owned by MediaTek or Gaintech Co. Limited.Nephos Inc. has other investors (Appx60).

On December 13, 2018 Nephos’ Counsel Mr. Stroy sent Mr. Huang an email with an attachment of Nephos initial registration document and 10,000 share common stock issued to Gaintech to prove that Nephos Inc. is 100% owned by Gaintech and Gaintech is further 100% owned by MediaTek. Mr. Stroy also sent Mr. Huang a prepared withdraw filing of Mr Huang’s objection to “NEPHOS INC.’S CORPORATE DISCLOSURE STATEMENT” (Appx234-241).

On December 18, 2018 Mr. Huang replied to Mr. Story and stated:

“The materials you emailed to me was the original registration in 2015 and dated December, 2016, from 2016 to now based on the public information (which might not be published in English) which I collected and I can email to you, but your client should have them also, that Nephos Inc. registered several child company with new investors other than MediaTeK, so Nephos Inc. is not solely owned by MediaTeK.” (Appx233).

On March 14, 2019 Nephos filed “NEPHOS (USA) INC.’S CASE MANAGEMENT CONFERENCE STATEMENT” and continues lying that “Nephos is wholly-owned, indirectly, by MediaTek, Inc. (located in Hsinchu City, Taiwan) through MediaTek Investment Singapore Pte. Ltd. and Gaintech Co.Limited. Nephos is 100 percent owned by Gaintech Co.Limited.”.

In Dkt.29 filed on March 18, 2019, in Dkt.44 filed on May 7, 2019 and in Dkt.50 filed in May 28, 2019 Plaintiff Mr. Huang produced the following evidence:

The following information is published in the following link:  
<https://wenku.baidu.com/view/b44aa6e526d3240c844769eae009581b6bd9bd91.html>

The content was in Chinese, which is about the registration change information of Nephos (Hefei) Co. Ltd.

On May 18, 2018 Nephos (Hefei) Co. Ltd has the following shareholders:

Hefei governmental incubation leading investmentfund Ltd.: 20.45%

Lightman Investment Limited: 9.8%

Hefei governmental high-tech investment Ltd.: 6.81%

Yalesi investment LLP of Ningbo Meishan Tax free District: 0.38%

Nephos Cayman Co. Limited: 62.54%

Nephos Inc. and Mr. Brandon Stroy kept claiming that Nephos Inc.

is 100% owned by Gaintech Co. Limited. based on a 100,00 common share Stock certificate issued to Gaintech Co. Limited ( dated on December, 2016 ) in Dkt.27 filed on March 14, 2019 and Dkt.48 filed on May 21, 2019.

On the Hearing of July 3, 2019 Judge Alsup did not let the parties to discuss Mr. Huang's motion to sanction Nephos and its Counsel for violating rule 11. Only discuss Nephos' motion to strike Mr. Huang's infringement contention.

On July 9, 2019 in Order 55 Judge Alsup stated that "Attorney Stroy based his filing upon information obtained from in-house counsel for MediaTek Inc.," (Appx21).

On the Hearing of July 3, 2019 Judge Alsup did not let the parties to discuss Mr. Huang's motion to sanction Nephos and its Counsel for violating rule 11. Only discuss Nephos' motion to strike Mr. Huang's infringement contention.

On July 9, 2019 in Order 55 Judge Alsup stated that "Attorney Stroy based his filing upon information obtained from in-house counsel for MediaTek Inc.," (page 10 of Dkt.55) (Appx21.)

Defendant Nephos and trial Court denied the authenticated evidence that Nephos Inc. were invested by several Chinese Hefei governmental fund at least until March, 2019. The evidence produced by Plaintiff are authenticated and comply with the Fed. R. Evidence 901.(Appx67-82). All the filing of Nephos Inc. is frivolous and tried to cheat the Court and the customers including US government and Pentagon which used Amazon AWS data center, also caused Plaintiff Mr. Huang many time and effort to file many pleadings to ask Nephos to correct its erroneous information. Defendant further made fraudulent statement and cheated the Court to strike Plaintiff's infringement contention and used Plaintiff's US patents for free.

## ARGUMENT

### 1. Plaintiff clearly present Where and How the accused device read the claims of the asserted patents.

Before Plaintiff taught Nephos Inc. how to design TCAM, its TCAM burn very high power and the chip is not useable, after Mr. Huang taught Nephos how to design TCAM with the US patent 6744653 and 6999331, Nephos designed very low power TCAM with US patent 6744653 and 6999331 and sold its chips to Amazon and used in AWS datacenter.

The engineers of Defendant told Plaintiff in 2014 that the **TCAM designed by Defendant use, contain and include FIG.1B, FIG.2E , FIG.8B, FIG.8C, FIG.9A and FIG.9B of US patent 6744653 and 6999331.** which is in Appx128. Since the TCAM used in the accused products use, contain and include the FIG.1B, FIG.2E , FIG.8B, FIG.8C, FIG.9A and FIG.9B of US patent 6744653 and 6999331. We only need to prove the asserted claim read any of FIG.1B, FIG.2E , FIG.8B, FIG.8C, FIG.9A and FIG.9B of US patent 6744653 and 6999331, then the asserted claims read the TCAM used in the accused products (Accused Instrumentality), and further read the accused products. That is the theory of proving the infringement. The Claim chart focus on proving the claim read any of the FIG.1B, FIG.2E , FIG.8B, FIG.8C, FIG.9A and FIG.9B of US patent 6744653 and 6999331 to prove the claim read the accused products.

So the following claim chart focus on identify which Figure of the US patent 6999331 is read by the corresponding claim.

**Mr. Huang’s preliminary infringement contention**

<p><b>Claim Element</b>  <b>U.S. patent No. 6,999,331</b>  <b>Claim 1</b></p>	<p><b>Accused Instrumentality</b>                  TCAM IP used in chip products of Nephos Inc. including Aries MT3250 Family, Aries Hybrid ToR Switch, Taurus Family NP8360 Series, Taurus ToR and Fabrics Switch</p>
<p>1. A ternary content addressable memory (TCAM) comprising:</p>	<p><b>Aries MT3250 Family of Nephos Inc.</b>  <a href="http://www.nephosinc.com/nps/products/">http://www.nephosinc.com/nps/products/</a>                  Aries MT3250 Family of Nephos Inc. has function features :                  match/result <b>TABLE MEMORIES</b>, &gt;900K IP addresses with <b>&gt;80K ACL</b>  <b>WHERE AND HOW READ CLAIM:</b>  <b>“TABLE MEMORY”</b> is Ternary Content Addressable Memory (TCAM). <b>“DEEP PACKET CLASSIFICATION, PROGRAMMABLE RECURSIVE MATCH”</b> are achieved through TCAM</p>
<p>(1) an array of TCAM cells arranged in a plurality of rows and a plurality of</p>	

(1) a plurality of match lines, one match line for each row of TCAM cells and operatively coupled to a plurality of output transistors for the TCAM cells in each row; a plurality of dummy lines, one dummy line for each row of TCAM cells and operatively coupled to a plurality of dummy transistors for the TCAM cells in each row;

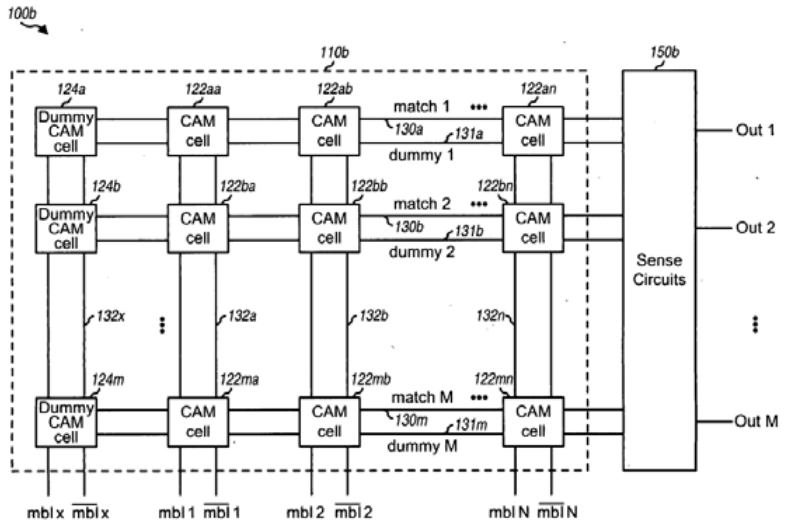


FIG. 1B

This claim section (1) read on the “CAM cell” symbol in FIG 1B of US patent 6999331 of the 14.8 Mbit TCAM design used in **Aries MT3250 Family of Nephos Inc.**  
<http://www.nephosinc.com/nps/products/>

(2) a plurality of match lines, one match line for each row of TCAM cells and operatively coupled to a plurality of output transistors for the TCAM cells in each row; a plurality of dummy lines, one dummy line for each row of TCAM cells and operatively coupled to a plurality of dummy transistors for the TCAM cells in each row;

TCAM used in “**Aries MT3250 Family of Nephos Inc.**” use “differential match line sensing design” as shown in FIG. B of US patent 6,999,331.

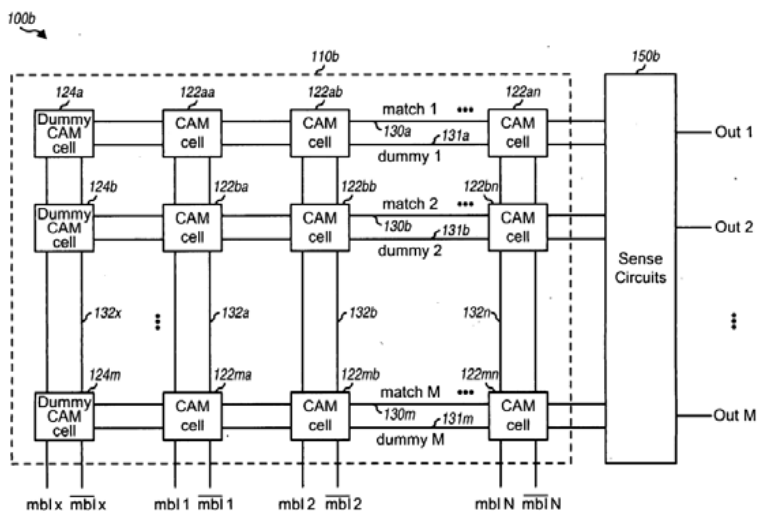


FIG. 1B

This claim section (2) read on the “match” and “dummy” line in FIG 1B of the 14.8 Mbit TCAM design used in **Aries MT3250 Family of Nephos Inc.**  
<http://www.nephosinc.com/nps/products/>

(3) a plurality of match data bit lines and

TCAM used in “**Aries MT3250 Family of Nephos Inc.**” use “differential match line sensing



complements, one pair of match data bit line and its complement for each column of TCAM cells to provide a match data and its complement to compare with the content stored in each TCAM cell of that column;

shown in FIG. B of US patent 6,999,331

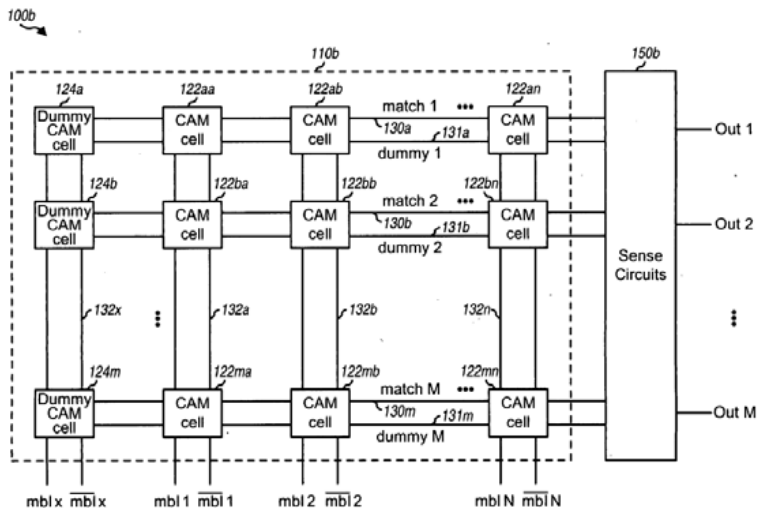


FIG. 1B

This claim section (3) read on the “mbl1 -MblN” and “mbl.bar-mblN.bar” line in FIG 1B of the 14.8 Mbit TCAM design used in **Aries MT3250 Family of Nephos Inc.**

<http://www.nephosinc.com/nps/products>

(4) a column of dummy TCAM (DTCAM) cells, each connected to the match line and the dummy line in each row;

TCAM used in “**Aries MT3250 Family of Nephos Inc.**” use “differential match line sensing design” as shown in FIG. B of US patent 6,999,331. This claim section (4) read on the “Dummy CAM cell” symbol in FIG 1B of the 14.8 Mbit TCAM design used in **Aries MT3250 Family of Nephos Inc.**

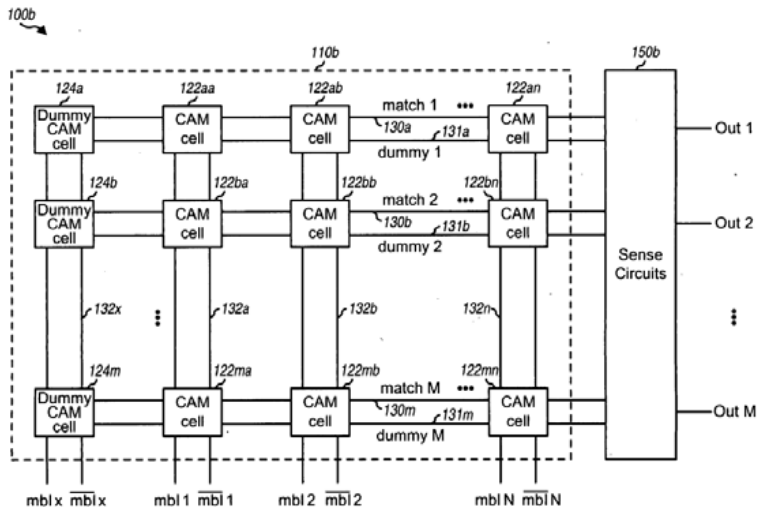


FIG. 1B

(5) a pair of dummy match

TCAM used in “**Aries MT3250 Family of Nephos**

data bit line and its complement for the column of DTCAM cells to provide a dummy match data and its complement to compare with the content stored in each DTCAM cell;

**Inc.** use “differential match line sensing design” as shown in FIG. B of US patent 6,999,331.

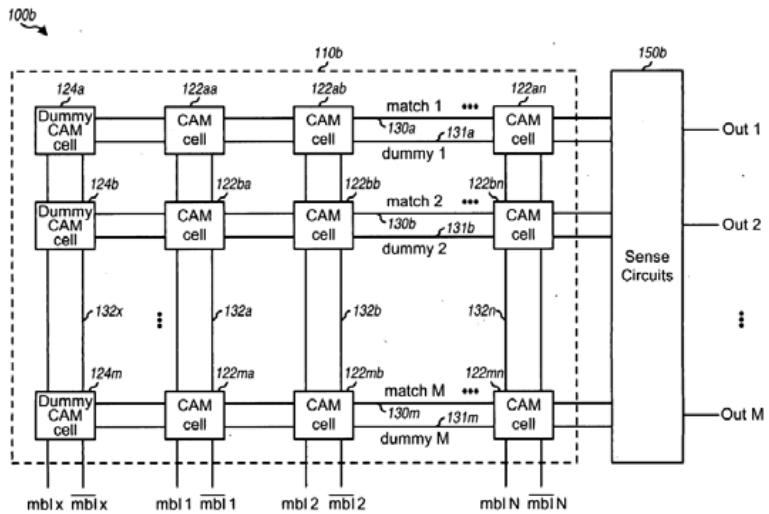


FIG. 1B

This claim section (5) read on the “mblx” and “mblx.bar” in FIG 1B of the 14.8 Mbit TCAM design used in **Aries MT3250 Family of Nephos Inc.**

(6) a sense amplifier connected to the match line and the dummy line in each row;

TCAM used in “**Aries MT3250 Family of Nephos Inc.**” use “differential match line sensing design” as shown in FIG.1B of US patent 6,999,331. This claim section (6) read on the “sens circuits” symbol in FIG 1B of the 14.8 Mbit TCAM design used in **Aries MT3250 Family of Nephos Inc.**

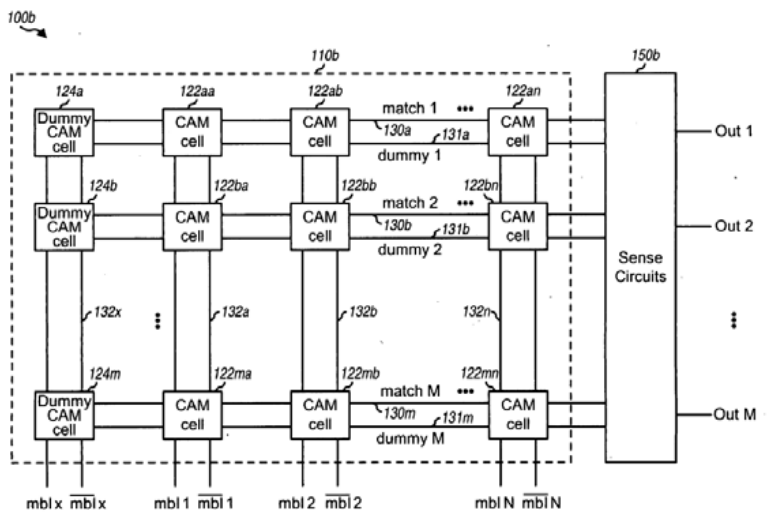


FIG. 1B

<p>(7) and current sources connected to each of the match line and the dummy line in each row.</p>	<p>This claim section (7) read the device 310a and 310 b of FIG. 4A, FIG. 4B, FIG. 6, FIG. 9A, FIG. 9B and FIG. 10. of '331 patent, which read any differential TCAM design including the TCAM used in <b>Aries MT3250 Family of Nephos Inc. So this claim section (7) read Aries MT3250 Family of Nephos Inc.</b></p> <p style="text-align: center;"><b>FIG. 9A</b></p>
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The rest of the infringement contention are in Appx101-225. Nephos Inc. frivolously accused Mr. Huang only explain the claim in the claim chart 3-1 (c). Nephos Counsel is in very bad faith. Both the trial Court and this court either are cheated by Defendant or abused the discretion.

**2. Defendant Nephos Inc. should be sanctioned based on Fed.R.civ.P.11 (b).**

Defendant first hide its corporate ownership, then made frivolous statement on Plaintiff's infringement contention in the trial court, finally Defendant cheated this Court and claimed that Nephos, Inc. and Nephos (Hefei) Co., Ltd is different company. The Decision of both trial Court and this court is contradictive to the decision of the following two prudential case:

- (1). U.S. Superior Court in “Goodyear Tire & Rubber Co. v. Haeger, 137 S. Ct. 1178, 1186 (2017)”;
- (2). United States Court of Appeals for the Ninth Circuit in “Haeger v. Goodyear Tire & Rubber Co. 793 F.3d 1122 (2015)”

In the above two case the District Court, the Circuit Court and U.S. Supreme Court sanctioned the Defendant for hiding the true information. Because the trial Court failed to sanction Defendant’s fraud statement on its corporate ownership, and erroneously stroke Plaintiff’s infringement contention based on Defendant’s fraudulent statement Defendant is encouraged to make further fraudulent statement to this court. The Plaintiff’s interest is damaged because Defendant used Plaintiff’s patent and paid nothing to Plaintiff and cost Plaintiff’s more time and effort to work on this case.

The following content is from Nephos Inc.’s website:

<http://www.nephosinc.com/nps/contact-us/>

**Nephos (Hefei) Co., Ltd. :**

No.615 Wanshui Road, Hefei Hi-tech Industry Development Zone, Hefei, Anhui, China

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Email : [info@nephosinc.com](mailto:info@nephosinc.com)

**Nephos (USA) Inc :**

2840 JUNCTION AVENUE SAN JOSE CA 95134

TEL: 1-408-526-1899

Email : [info@nephosinc.com](mailto:info@nephosinc.com)

**Nephos (Taiwan) Inc. :**

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30078, Taiwan

Tel: +886-3-666-7858

Email : [info@nephosinc.com](mailto:info@nephosinc.com)

**Nephos (Singapore) Pte. Ltd. :**

80 Robinson Road #02-00, Singapore 068898

Tel: +1-65-677-35661

Email : [info@nephosinc.com](mailto:info@nephosinc.com)

Nephos Inc. includes : Nephos (Hefei) Co., Ltd., Nephos (USA) Inc., Nephos (Taiwan) Inc., Nephos (Singapore) Pte. Ltd, the above information is authenticated in Appx243-246).

Nephos (Hefei) Co.Ltd. is a child company of Nephos, Inc. and part of Nephos, Inc. the ownership of Nephos (Hefei) Co. is also the ownership of Nephos Inc.

The following information is published in the following link:<https://wenku.baidu.com/view/b44aa6e526d3240c844769ea009581b6bd9bd91.html>

The content was in Chinese, which is about the registration change information of Nephos (Hefei) Co. Ltd.

On May 18, 2018 Nephos (Hefei) Co. Ltd has the following shareholders:

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Lightman Investment Limited: 9.8%

Hefei governmental high-tech investment Ltd.: 6.81% Yalesi investment LLP of Ningbo Meishan Tax free District:

0.38%

Nepfos Cayman Co. Limited: 62.54%

The above information is authenticated in Appx76-82.

Nepfos Inc. and Mr. Brandon Stroy kept claiming that Nepfos Inc. is 100% owned by Gaintech Co. Limited. based on a 100,00 common share Stock certificate issued to Gaintech Co. Limited ( dated on December, 2016 ) in Dkt.27 filed on March 14,2019 and Dkt.48 filed on May 21,2019.

To cover its lying MediaTek announced to buy 6.82% share of Nepfos (Hefei) Co.Ltd. from Hefei governmental high-tech investment Ltd with \$18 million on March,2019 (Appx83-85).

Whether This Court's decision that Nepfos (Hefei) Co. Ltd as a child subsidiary is an unrelated different company from Nepfos, Inc. as a parent company is erroneous should be related to the resolution of the case 1:18-cr-00457-AMD because the two cases are all related whether the parent company and the child subsidiary company are unrelated different company.

The trial Court is erroneous to have stated that Mr. Huang is not harmed and Nepfos' Counsel did not cheat. Nepfos Inc. should be sanctioned for cheating this Court that Nepfos (Hefei) Co. is an unrelated different company from Nepfos, Inc. and intent to trap this Court to set erroneous precedential case to many other cases.

Nepfos should be sanctioned for presenting false information for the improper propose to cheat Plaintiff, the Court and the public to hide its ownership because its chips

have been used in Amazon's data center AWS which hold data service to public, US government and Pentagon.

Nepfos should be sanctioned for repeatedly presenting false evidentiary support. After Mr. Huang informed Nepfos several time that the 100,00 share stock is dated in December, 2016, after that Nepfos Inc. has more investors, but Nepfos Inc. frivolously used that information to claim that Nepfos is 100 percent owned by MediaTek.

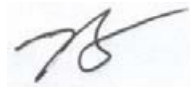
Nepfos should be sanctioned for frivolously denying the authenticated evidence that Nepfos were owned by several other investor. The evidence is authenticated and comply with Federal Rules of Evidence 901.

### **CONCLUSION**

For the reason above Plaintiff requests the Court rehear this case.

Dated: June 29, 2020

Respectfully Submitted,



Xiaohua Huang

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## **CERTIFICATE OF COMPLIANCE**

1. This petition for panel rehearing complies with the type-volume limitations of Federal Rule of Appellate Procedure 35(b)(2)(A) because it contains 3885 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the typestyle requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word in Century Schoolbook 14-point font.

/s/ xiaohua huang



NOTE: This disposition is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**XIAOHUA HUANG,**  
*Plaintiff-Appellant*

v.

**MEDIATEK USA, INC., FKA NEPHOS INC.,**  
*Defendant-Appellee*

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2020-1251

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Appeal from the United States District Court for the Northern District of California in No. 3:18-cv-06654-WHA, Judge William H. Alsup.

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Decided: June 3, 2020

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XIAOHUA HUANG, Los Gatos, CA, pro se.

JOHN HINTZ, Maynard, Cooper & Gale, PC, New York, NY, for defendant-appellee. Also represented by BRANDON H. STROY, San Francisco, CA.

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Before PROST, *Chief Judge*, REYNA and STOLL, *Circuit Judges*.

STOLL, *Circuit Judge*.

This appeal arises from an action for patent infringement. Xiaohua Huang accused MediaTek USA Inc., formerly known as Nephos Inc., of infringing certain claims of U.S. Patent Nos. 6,744,653 and 6,999,331, directed to ternary content addressable memory technology used in semiconductor chips. Mr. Huang challenges the district court's decision striking his infringement contentions and dismissing the action with prejudice based on Mr. Huang's repeated failures to comply with the Patent Local Rules of the U.S. District Court for the Northern District of California. Mr. Huang also challenges the district court's denial of his motion for sanctions, as well as his motion for a temporary restraining order and a preliminary injunction. Because the district court did not abuse its discretion in striking the contentions, dismissing the action, or denying Mr. Huang's motions, we affirm.

#### BACKGROUND

In his complaint, Mr. Huang alleged that MediaTek USA<sup>1</sup> directly and indirectly infringed the asserted '653 and '331 patent claims by making and selling chips that purportedly practice the claimed technology. Pursuant to Federal Rule of Civil Procedure 7.1, MediaTek USA filed a corporate disclosure statement stating that it was "wholly-owned, indirectly, by MediaTek, Inc. (located in Hsinchu City, Taiwan) through MediaTek Investment Singapore Pte. Ltd. and Gaintech Co. Limited" and was "100 percent owned by Gaintech Co. Limited." Nephos Inc.'s Corp. Disclosure Statement at 1, *Huang v. Nephos Inc.*, No. 18-06654 (N.D. Cal. Nov. 21, 2018), ECF No. 9.

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<sup>1</sup> The complaint named Nephos as the sole defendant. After the lawsuit was filed, Nephos merged into MediaTek USA. Unless context requires otherwise, this opinion refers to the defendant-appellee as MediaTek USA.

Mr. Huang filed an objection to the corporate disclosure statement, contending that MediaTek USA had misrepresented its corporate ownership. MediaTek USA later included the contents of its corporate disclosure statement in its case management statement, to which Mr. Huang also objected.

Prior to the initial case management conference, Mr. Huang served his preliminary infringement contentions on MediaTek USA. MediaTek USA notified Mr. Huang that his contentions were premature and defective under the Patent Local Rules. During the initial case management conference, MediaTek USA informed the district court that Mr. Huang's contentions were inadequate. The district court warned Mr. Huang that he must provide infringement contentions that complied with the requirements of the Patent Local Rules or risk dismissal of his lawsuit. Thereafter, according to the district court, Mr. Huang served substantially the same infringement contentions. After MediaTek USA again informed Mr. Huang that his contentions were inadequate and offered him an opportunity to amend, Mr. Huang again served essentially the same infringement contentions. MediaTek USA then moved to strike Mr. Huang's third set of infringement contentions as noncompliant with the Patent Local Rules and dismiss the action with prejudice. Mr. Huang, for his part, moved for sanctions against MediaTek USA and its outside counsel under Federal Rule of Civil Procedure 11, based on their alleged misrepresentations regarding the corporate ownership of MediaTek USA.

The district court granted MediaTek USA's motion to strike, finding that Mr. Huang's third set of infringement contentions were deficient under Patent Local Rule 3-1. *Huang v. Nephos Inc.*, No. 18-06654, 2019 WL 2996432, at \*1–5 (N.D. Cal. July 9, 2019). The district court allowed Mr. Huang “one last chance” to serve proper contentions, indicating that “no more amendments will be entertained and dismissal possibly with prejudice will be likely” if

Mr. Huang were to serve another set of defective contentions. *Id.* at \*5. The district court also denied Mr. Huang's motion for sanctions. *Id.* at \*6–8.

Following the district court's order, Mr. Huang served his fourth set of infringement contentions. MediaTek USA moved to strike the contentions as noncompliant with Patent Local Rule 3-1 and dismiss the action with prejudice. Shortly thereafter, Mr. Huang moved for a TRO and a preliminary injunction to block MediaTek USA from selling the accused products. The district court denied Mr. Huang's motion, finding that he "failed to establish, at the very least, a likelihood of irreparable harm." Order Denying Mot. for TRO and Prelim. Inj. at 1, *Huang v. Nephos Inc.*, No. 18-06654 (N.D. Cal. Aug. 30, 2019), ECF No. 68. The district court subsequently struck Mr. Huang's fourth set of infringement contentions and dismissed the action with prejudice. *Huang v. Nephos Inc.*, No. 18-06654, 2019 WL 5892988, at \*5 (N.D. Cal. Nov. 12, 2019).

Mr. Huang appeals. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(1).

#### DISCUSSION

Mr. Huang contends that the district court erred in striking his fourth set of infringement contentions as noncompliant with the Patent Local Rules. He also argues that the district court should have granted his motions for sanctions and injunctive relief. We discern no abuse of discretion in the district court's rulings.

#### I

We first consider Mr. Huang's challenge to the district court's decision to strike Mr. Huang's contentions and dismiss the action based on his violations of Patent Local Rule 3-1. We review a district court's application of its local rules for an abuse of discretion. *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1321

(Fed. Cir. 2016) (citing *Keranos, LLC v. Silicon Storage Tech., Inc.*, 797 F.3d 1025, 1035 (Fed. Cir. 2015)). “[T]his court gives broad deference to the trial court’s application of local procedural rules in view of the trial court’s need to control the parties and flow of litigation before it” and “so as not to frustrate local attempts to manage patent cases according to prescribed guidelines.” *SanDisk Corp. v. Memorex Prods., Inc.*, 415 F.3d 1278, 1292 (Fed. Cir. 2005) (quoting *Genentech, Inc. v. Amgen, Inc.*, 289 F.3d 761, 774 (Fed. Cir. 2002)).

The district court properly exercised its discretion in striking Mr. Huang’s contentions and dismissing the action with prejudice based on its finding that Mr. Huang repeatedly failed to serve contentions that complied with the Patent Local Rules. These local procedural rules of the U.S. District Court for the Northern District of California “require parties to state early in the litigation and with specificity their contentions with respect to infringement and invalidity.” *O2 Micro Int’l Ltd. v. Monolithic Power Sys., Inc.*, 467 F.3d 1355, 1359 (Fed. Cir. 2006).

The district court found that Mr. Huang’s fourth set of infringement contentions were deficient under Patent Local Rule 3-1. In particular, the district court found that the claim chart set forth in Mr. Huang’s contentions did not “identify[] specifically where and how each limitation of each asserted claim is found within each Accused Instrumentality,” as required by Patent Local Rule 3-1(c). *Huang*, 2019 WL 5892988, at \*2–3 (alteration in original) (quoting N.D. Cal. Patent L.R. 3-1(c)). Specifically, Mr. Huang’s chart did not provide the requisite “limitation-by-limitation analysis” tying the “specific feature[s] of an accused product to the claim language.” *Id.* at \*2. Instead, the contentions largely tied the claim limitations to his own figures in his patent specifications. The district court also found that the contentions provided only a general assertion of indirect infringement and thus lacked the specificity required by Patent Local Rule 3-1(d). *See* N.D. Cal. Patent

L.R. 3-1(d) (a party alleging indirect infringement must identify for each claim “any direct infringement” and describe “the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement”). The district court further found that the contentions did not comply with Patent Local Rule 3-1(e), which requires a party to identify “[w]hether each limitation of each asserted claim is alleged to be literally present or present under the doctrine of equivalents in the Accused Instrumentality.” N.D. Cal. Patent L.R. 3-1(e). Finally, the district court noted that Mr. Huang had been permitted to amend his contentions for a third time and had been warned on more than one occasion that deficient contentions could result in dismissal of the action.

On appeal, Mr. Huang contends that his contentions complied with Patent Local Rule 3-1 and should not have been stricken. For instance, he argues that because MediaTek USA engineers allegedly told him that the accused products were based on figures in the ’653 and ’331 patents, his claim chart only needed to show that the figures embody the claims to satisfy Patent Local Rule 3-1(c). But as the district court correctly observed, Patent Local Rule 3-1(c) expressly requires an identification of where and how each claim limitation is found in each “accused instrumentality,” not in the patents’ figures. We have considered Mr. Huang’s other arguments, but we do not find them persuasive.

Given that Mr. Huang had four opportunities to serve proper contentions and yet failed to do so despite receiving multiple warnings and ample guidance from the district court, we conclude that the district court was well within its discretion to strike Mr. Huang’s contentions and dismiss the action with prejudice.

## II

We next consider Mr. Huang’s challenge to the district court’s denial of his motion for sanctions against MediaTek

USA and its outside counsel. “In reviewing a district court’s decision to deny Rule 11 sanctions, we apply the law of the regional circuit.” *Raylon, LLC v. Complus Data Innovations, Inc.*, 700 F.3d 1361, 1367 (Fed. Cir. 2012) (citing *Eon-Net LP v. Flagstar Bancorp*, 653 F.3d 1314, 1328 (Fed. Cir. 2011)). The Ninth Circuit reviews a denial of sanctions for an abuse of discretion. *Islamic Shura Council of S. Cal. v. FBI*, 757 F.3d 870, 872 (9th Cir. 2014) (citing *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990)). “A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence.” *Id.* (quoting *Cooter & Gell*, 496 U.S. at 405).

We conclude that the district court did not abuse its discretion in holding that sanctions against MediaTek USA and its outside counsel were not warranted. Mr. Huang contends that MediaTek USA, through its counsel, misrepresented its corporate ownership in its court filings in violation of Rule 11. According to Mr. Huang, the district court ignored evidence that MediaTek USA was “owned by several Chinese governmental fund[s].” Appellant’s Br. 22–23. He accuses MediaTek USA of “presenting false information” to “hide its ownership” and “cheat” Mr. Huang, the district court, and the public. *Id.* at 22.

We are unpersuaded by Mr. Huang’s arguments. Based on the record before it, the district court found that MediaTek USA’s outside counsel “based his filing upon information obtained from in-house counsel for MediaTek Inc., defendant’s ultimate corporate parent.” *Huang*, 2019 WL 2996432, at \*6. The district court also found that after Mr. Huang objected to the corporate disclosure statement, MediaTek USA’s outside counsel “received from defendant and sent to [Mr. Huang] certain documents such as defendant’s ‘Certificate of Incorporation,’ ‘Investor Representation Statement,’ and ‘Stock Issue Certificate’ in order to verify to [Mr. Huang] his prior representations of defendant’s ownership.” *Id.* The district court further

found “no evidence that [MediaTek USA’s outside counsel] acted in bad faith or otherwise violated his obligations under Rule 11 in his representations of defendant’s ownership status.” *Id.* Although Mr. Huang contends that he presented evidence to support his motion, the district court indicated that “those documents refer to ‘Nephos (Hefei) Co. Ltd.’—a separate non-party to the instant action.” *Id.* at \*6 n.2. Mr. Huang has pointed to no evidence in the record suggesting that MediaTek USA’s court filings were incorrect. Under these circumstances, we disagree with Mr. Huang that the district court’s decision was based on a “clearly erroneous assessment of the evidence.” *Islamic Shura Council*, 757 F.3d at 872 (quoting *Cooter & Gell*, 496 U.S. at 405).

### III

Finally, we turn to Mr. Huang’s challenge to the district court’s decision denying his motion for a TRO and a preliminary injunction. Both this court and the Ninth Circuit review the denial of a preliminary injunction for an abuse of discretion. *Metalcraft of Mayville, Inc. v. The Toro Co.*, 848 F.3d 1358, 1363 (Fed. Cir. 2017); *Nationwide Bi-weekly Admin., Inc. v. Owen*, 873 F.3d 716, 727 (9th Cir. 2017); *see also Stuhlberg Int’l Sales Co. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that the circuit court’s “analysis is substantially identical for the injunction and the TRO”). “To obtain a preliminary injunction, a party must establish ‘that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest.’” *Metalcraft*, 848 F.3d at 1363 (alterations in original) (quoting *Luminara Worldwide, LLC v. Liown Elecs. Co.*, 814 F.3d 1343, 1352 (Fed. Cir. 2016)).

We conclude that the district court did not abuse its discretion in denying Mr. Huang’s motion for injunctive relief. Mr. Huang generally asserts that enjoining MediaTek



HUANG v. MEDIATEK USA, INC.

9

USA from selling its accused products is in the “public interest.” Appellant’s Br. 30–31; Reply Br. 20–21. But Mr. Huang has not asserted, let alone established, a likelihood of success or that he would likely suffer irreparable harm in the absence of an injunction. Indeed, beyond generally asserting the need to protect the public interest, Mr. Huang does not address the remaining three factors that a movant must establish to obtain injunctive relief. Accordingly, we are not persuaded that the district court abused its discretion in denying Mr. Huang’s motion.

#### CONCLUSION

For the foregoing reasons, we affirm the district court’s decisions striking Mr. Huang’s contentions, dismissing the action with prejudice, and denying Mr. Huang’s motions for sanctions and injunctive relief.

#### AFFIRMED

#### COSTS

No costs.

CERTIFICATE OF SERVICE

I certify that on June 30, 2020, I caused a copy of the foregoing document to be served by electronic means via email and regular US mail on all counsel.

/s/ xiaohua huang