

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

VERVAIN, LLC,

Plaintiff,

v.

**WESTERN DIGITAL CORPORATION AND
WESTERN DIGITAL TECHNOLOGIES, INC.**

Defendants.

Case No. 6:21-cv-00488-ADA

PUBLIC VERSION

ORDER ON THE PENDING MOTIONS AND MOTIONS *IN LIMINE*

After considering the briefing and the oral argument at the pretrial conference, the Court hereby memorializes the following rulings on the pending motions for the above-captioned case:

Motion	Ruling
Vervain’s Motion for Partial Summary Judgment – 2010 Memory Card Alleged Prior Art (ECF No. 103)	Granted.
Vervain’s Motion for Partial Summary Judgment – Gorobets 912 and Sprouse Prior Art Combination (ECF No. 103)	Granted.
Vervain’s Motion for Partial Summary Judgment – “Blocks” Claim Construction (ECF No. 103)	Granted. The term “blocks” in the asserted claims is construed to mean “in a non-volatile memory, a physical group of memory cells.”
Western Digital’s Motion for Partial Summary Judgment of Non-Infringement and Invalidity Under 35 U.S.C. Sec. 112 for Lack of Written Description (ECF No. 105)	Denied. With regard to [REDACTED], denied as moot consistent with ruling on motion to strike (ECF No. 102).

Motion	Ruling
Western Digital's Motion to Strike Certain Opinions of Dr. Sunil Khatri Regarding Infringement (ECF No. 102)	Granted.
Western Digital's Motion to Exclude Dr. Sunil P. Khatri's Overprovisioning Model and Ms. Kimberly J. Schenk's Related Damages Opinions (ECF No. 107)	Denied.
Vervain's Motion to Strike the Untimely Supplemental Expert Report of Carl Sechen, Ph.D. (ECF No. 171)	Denied as moot.

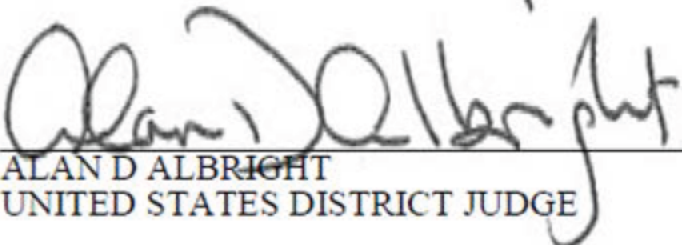
After considering the briefing and the oral argument at the pretrial conference, the Court hereby memorializes the following rulings on the pending motions in *limine* for the above-captioned case, subject to and for the reasons stated on the record:

Motion	Ruling
<u>Vervain MIL No. 1:</u> To Preclude Any Argument, Evidence, Testimony, Reference, Or Remarks Regarding IPLC's, Vervain's, Or Greenthread's Efforts To Monetize The Asserted Patents That Did Not Result In An Executed Agreement (ECF No. 143)	Granted.
<u>Vervain MIL No. 2:</u> To Preclude Any Evidence of Unelected Prior Art, Including Reference To WD Or Third-Party Patents Or Other Prior Art Not Part Of The Elected Invalidity Grounds (ECF No. 143)	Denied.
<u>Vervain MIL No. 3:</u> To Preclude Any Improper Reference to Alleged Noninfringing Alternatives, Including Undisclosed Noninfringing Alternatives And Unaccused Products (ECF No. 143)	Denied.
<u>Vervain MIL No. 4:</u> To Preclude Any Argument, Evidence, Testimony, Reference, Suggestion Or Insinuation That Vervain Had An Obligation To Contact Or Notify Western Digital Prior To Filing Suit (ECF No. 143)	Granted.
<u>Vervain MIL No. 5:</u> To Preclude Expert Testimony From Any Lay Witness, Including WD Employees (ECF No. 143)	Granted.
<u>Western Digital MIL No. 1:</u> Exclude Any "Golden Rule" Arguments Or Suggestions That The Jurors Should Put Themselves In Dr. Rao's Or Vervain's Position And Do Unto Them As They Would Have Done Unto Themselves (ECF No. 145)	Granted.

Motion	Ruling
<u>Western Digital MIL No. 2:</u> Exclude Any Evidence, Argument, Testimony, Or Suggestion That Dr. Rao’s Decades-Old Work With Jack Kilby, Dr. Rao’s Work At The Smithsonian, And Citations To The Asserted Patents Or Dr. Rao’s Other Patents Or Applications As Prior Art Have Any Relevance To Secondary Considerations Of Non-Obviousness (ECF No. 145)	Denied.
<u>Western Digital MIL No. 3:</u> Exclude Any Evidence, Argument, Testimony, Or Suggestion Regarding Alleged Copying, Including That Western Digital Had Pre-Suit Notice Of The Asserted Patents, Including Any Citations To The Asserted Patents In Western Digital’s Patents [REDACTED] (ECF No. 145)	Granted.
<u>Western Digital MIL No. 4:</u> Exclude Any Evidence, Argument, Testimony, Or Suggestion That Western Digital Manufactures The Accused Products Outside Of The United States (ECF No. 145)	Granted.
<u>Western Digital MIL No. 5:</u> Exclude Any Evidence, Argument, Testimony, Or Suggestion That The “Accessed Most Frequently” And “Frequent Writes” Limitations In The ’298, ’385, And ’240 Patents Are “Hot Blocks” Limitations When The Claims Do Not Use The Term “Hot Block” (ECF No. 145)	Denied.
<u>Agreed-Upon MIL No. 1:</u> Exclude any evidence, argument, testimony, or suggestion regarding international sales of accused products manufactured outside of the United States.	Granted.
<u>Agreed-Upon MIL No. 2:</u> Exclude any argument, evidence, reference or suggestion regarding the fact that a claim of the Asserted Patents was previously asserted but is no longer asserted.	Granted.
<u>Agreed-Upon MIL No. 3:</u> Exclude any argument, evidence, testimony (including cross-examination), insinuation, or reference that because Vervain has not accused or sued a third party of infringing the Asserted Patents, that the accused products and accused features do not infringe or that the other party’s products are non-infringing alternatives.	Granted.
<u>Agreed-Upon MIL No. 4:</u> Exclude any argument, evidence, testimony (including cross-examination), insinuation, or reference to the sale, purchase, or repurchase of Greenthread shares.	Granted.

Motion	Ruling
<u>Agreed-Upon MIL No. 5:</u> Exclude any argument, evidence, testimony (including cross-examination), insinuation, or reference to Flash Control LLC, Si-Flash, LLC, or Si-Flash Drives, LLC or any Flash Control LLC, Si-Flash, LLC, or Si-Flash Drives, LLC intellectual property.	Granted.
<u>Agreed-Upon MIL No. 6:</u> Exclude any argument, evidence, testimony (including cross-examination), insinuation, or reference implying that it is improper to assert patents without practicing them, although Defendants are free to elicit testimony that Vervain and Greenthread don't make and never made any products, and don't practice the patents, and are also free to elicit testimony that Dr. Rao has never made any products that practice the patent.	Granted.

SIGNED this 19th day of July, 2023.


ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE