

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

MAXELL, LTD.,

*Plaintiff,*

v.

ZTE CORPORATION and  
ZTE USA INC.,

*Defendants.*

Case No. 5:16-cv-00179-RWS

**JURY TRIAL DEMANDED**

**ORDER**

Upon consideration of the Parties Stipulated Motion for Entry of Amended Docket Control Order as to Pretrial Filings Only, the Court finds the Motion is well taken and should be **GRANTED**.

It is hereby **ORDERED** that the following schedule of remaining deadlines is in effect for *Maxell, Ltd. v. ZTE USA, Inc., et al.*, Case No. 5:16-cv-00179-RWS until further order of this Court:

Original Date	Proposed Amended Date (ZTE Case Only)	Event
<b>3 DAYS after conclusion of Trial</b>		Parties to file <b>Motion to Seal Trial Exhibits</b> , if they wish to seal any highly confidential exhibits.  <b>EXHIBITS: See Order Regarding Exhibits below.</b>
June 18, 2018  Court designated date – not flexible without good cause – Motion Required		<b>9:00 a.m. JURY TRIAL before Judge Robert W. Schroeder III, Texarkana, Texas.</b>  For planning purposes, parties shall be prepared to start the evidentiary phase of trial immediately following jury selection.

Apple v. Maxell

Original Date	Proposed Amended Date (ZTE Case Only)	Event
June 18, 2018  Court designated date – not flexible without good cause - Motion Required		<b>9:00 a.m. JURY SELECTION before Judge Robert W. Schroeder III, Texarkana, Texas.</b>
June 7, 2018  Court designated date – not flexible without good cause - Motion Required		<b>10:00 a.m. PRETRIAL CONFERENCE before Judge Robert W. Schroeder III, Texarkana, Texas.</b>  Discuss trial logistics and <i>voir dire</i> procedure. Resolve any pending motions or objections.  Lead trial counsel must attend the pretrial conference.
June 1, 2018		<b>File Responses to Motions <i>in Limine</i>.</b>
May 25, 2018	May 28, 2018	<b>File Motions <i>in Limine</i> and pretrial objections</b>  The parties are <b>ORDERED</b> to meet and confer to resolve any disputes before filing any motion <i>in limine</i> or objection to pretrial disclosures.
May 25, 2018	June 1, 2018	<b>File Joint Final Pretrial Order, Joint Proposed Jury Instructions with citation to authority and Form of the Verdict for jury trials.</b>  Parties shall use the pretrial order form on Judge Schroeder's website.  Proposed Findings of Fact and Conclusions of Law with citation to authority for issues tried to the bench.

In the event that any of these dates fall on a weekend or Court holiday, the deadline is modified to be the next Court business day.

The parties are directed to Local Rule CV-7(d), which provides in part that “[i]n the event a party fails to oppose a motion in the manner prescribed herein the Court will assume that the party has no opposition.”

Apple v. Maxell

### Other Limitations

- (a) The following excuses will not warrant a continuance or justify a failure to comply with the discovery deadline:
  - (i) The fact that there are motions for summary judgment or motions to dismiss pending;
  - (ii) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
  - (iii) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.
- (b) Amendments to the Docket Control Order (“DCO”): Any motion to alter any date on the DCO shall take the form of a motion to amend the DCO. The motion shall include a chart in the format of the DCO that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a date the proposed date column should remain blank or indicate that it is unchanged). The motion to amend the DCO shall also include a proposed DCO in traditional two-column format that incorporates the requested changes and that also lists all remaining dates. In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines rather than needing to also refer to an earlier version of the DCO.
- (c) Indefiniteness: In lieu of early motions for summary judgment, the parties are directed to include any arguments related to the issue of indefiniteness in their *Markman* briefing, subject to the local rules’ normal page limits.
- (d) Motions in Limine: Each side is limited to one (1) motion *in limine* addressing no more than ten (10) disputed issues. In addition, the parties may file a joint motion *in limine* addressing any agreed issues. The Court views motions *in limine* as appropriate for those things that will create a proverbial “skunk in the jury box,” e.g., that, if mentioned in front of the jury before an evidentiary ruling can be made, would be so prejudicial that the Court could not alleviate the prejudice with an appropriate instruction. Rulings on motions *in limine* do not exclude evidence, but prohibit the party from offering the disputed testimony prior to obtaining an evidentiary ruling during trial.
- (e) Exhibits: Each side is limited to designating 250 exhibits for trial absent a showing of good cause. The parties shall use the exhibit list sample form on Judge Schroeder’s website.
- (f) Deposition Designations: Each side is limited to designating no more than ten (10) hours of deposition testimony for use at trial absent a showing of good cause. As trial approaches, if either side needs to designate more than ten (10) hours, the party may file a motion for leave and show good cause. All depositions to be read into evidence as part of the parties’ case-in-chief shall be EDITED so as to exclude all unnecessary, repetitious, and irrelevant testimony; ONLY those portions which are relevant to the issues in controversy shall be read into evidence.
- (g) Witness Lists: The parties shall use the sample form on Judge Schroeder’s website.

**ORDER REGARDING EXHIBITS, EXHIBIT LISTS AND WITNESS LISTS:**

- A. On the first day of trial, each party is required to have:
- (1) One copy of their respective original exhibits on hand. Each exhibit shall be properly labeled with the following information: Identified as either Plaintiff's or Defendant's Exhibit, the Exhibit Number and the Case Number.
  - (2) Three hard copies of each party's exhibit list and witness list on hand.
  - (3) One copy of all exhibits on USB Flash Drive(s) or portable hard drive(s). This shall be tendered to the Courtroom Deputy at the beginning of trial.
- B. The parties shall follow the process below to admit exhibits.
- (1) *On the first day of trial*, each party shall tender an "offered" list of exhibits it plans to admit into evidence that day which are NOT objected to, and read that list into the record. Parties shall entitle the list "[Plaintiff's/Defendant's] Exhibits Offered on [DATE]." If, during the course of the day's testimony, a party wishes to offer an objected exhibit into evidence, the party may move for admission at the time it wishes to use that exhibit with a witness. The Court will then hear the opposing party's objection and will rule on the objection at that time.
  - (2) *On each subsequent day of trial*, parties shall first read into the record any exhibits that were admitted over objection from the previous day. The parties shall next tender an "offered" list of any additional exhibits NOT objected to that it plans to admit that day, and read that list into the record. The list shall be entitled "[Plaintiff's/Defendant's] Exhibits Offered on [DATE]." Finally, the parties shall tender a separate running list of all previously admitted exhibits throughout the course of trial entitled "[Plaintiff's/Defendant's] Exhibits Previously Admitted through [DATE of the most recently completed trial day]."
  - (3) *At the conclusion of evidence*, each party shall read any exhibit that was admitted over objection that day into the record and then tender its final list of every admitted exhibit, entitled "[Plaintiff's/Defendant's] Final List of All Admitted Exhibits."
- C. At the conclusion of evidence, each party shall be responsible for pulling those exhibits admitted at trial, whether used or not, and tender those to the Courtroom Deputy, who will verify the exhibits and tender them to the jury for their deliberations. One representative from each side shall meet with the Courtroom Deputy to verify the exhibit list.
- D. At the conclusion of trial, all boxes of exhibits shall be returned to the respective parties and the parties are instructed to remove these exhibits from the courtroom.
- E. Within five business days of the conclusion of trial, each party shall submit to the Courtroom Deputy:
- (1) A Final Exhibit List of Exhibits Admitted During Trial in Word format.
  - (2) Two CD(s) containing admitted unsealed trial exhibits in PDF format. If the Court ordered any exhibits sealed during trial, the Sealed Exhibits shall be

Apple v. Maxell

submitted on a separate CD. If tangible or over-sized exhibits were admitted, such exhibits shall be substituted with a photograph in PDF format.

- (3) A disk containing the transcripts of Video Depositions played during trial, along with a copy of the actual video deposition.

**SIGNED this 5th day of June, 2018.**

  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE