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

MAXELL, LTD.,

Plaintiff

v.

APPLE INC.,

Defendant.

Civil Action No. 5:19-cv-00036-RWS

JURY TRIAL DEMANDED

[redacted]

APPLE INC.'S MOTION FOR PROTECTIVE ORDER TO PREVENT DEPOSITION OF IN-HOUSE LITIGATION COUNSEL

TABLE OF CONTENTS

Page

I. INTRODUCTION 1
II. MATERIAL FACTS 1
III. LEGAL STANDARD 2
IV. ARGUMENT 3
A. Maxell's Attempt To Depose Apple's In-House Litigation Counsel Is Squarely Prohibited By *Shelton*. 3
B. *Shelton* Factors 2 and 3: Maxell Cannot Show That Mr. Stein Has Non-Privileged Information That Is Relevant And Crucial To Its Case. 4
C. *Shelton* Factor 1: Maxell Cannot Prove That Any Non-Privileged Information Known To Mr. Stein Cannot Be Obtained By Other Means. 6
D. Maxell Lacks A Good-Faith Basis To Seek Mr. Stein's Deposition. 7
V. CONCLUSION 7

TABLE OF AUTHORITIES

Page(s)

Cases

Angelicare, LLC v. St. Bernard Par.,
No. CV 17-7360, 2018 WL 1172947 (E.D. La. Mar. 6, 2018)..... 3

Asarco LLC v. Union Pac. R.R. Co.,
No. 2:12-CV-00283-EJL-REB, 2016 WL 1755241 (D. Idaho May 2, 2016) 5

Chesher v. Allen,
122 F. App'x 184 (6th Cir. 2005) 1

Davis-Lynch, Inc. v. Weatherford Int'l, Inc.,
No. CIV.A. 6:07-CV-559, 2009 WL 2174925 (E.D. Tex. July 21, 2009) 2, 3

Imperium IP Holdings (Cayman), Ltd. v. Samsung Elecs. Co.,
No. 4:14-CV-371, 2016 WL 242801 (E.D. Tex. Jan. 20, 2016) 2, 7

McKinney/Pearl Rest. Partners, L.P. v. Metro. Life Ins. Co.,
No. 3:14-CV-2498-B, 2016 WL 3033544 (N.D. Tex. May 26, 2016 6

Murphy v. Adelphia Recovery Tr.,
No. 3-09-MC-105-B, 2009 WL 4755368 (N.D. Tex. Nov. 3, 2009)..... 7

Nat'l W. Life Ins. Co. v. W. Nat. Life Ins. Co.,
No. A-09-CA-711 LY, 2010 WL 5174366 (W.D. Tex. Dec. 13, 2010)..... 3, 6

Nguyen v. Excel Corp.,
197 F.3d 200 (5th Cir. 1999) 1, 2

Pamida, Inc. v. E.S. Originals, Inc.,
281 F.3d 726 (8th Cir. 2002) 5

Secure Energy, Inc. v. Coal Synthetics,
No. 4:08CV01719 JCH, 2010 WL 199953 (E.D. Mo. Jan. 13, 2010)..... 2

Shelton v. Am. Motors Corp.,
805 F.2d 1323 (8th Cir. 1986) ..... passim

Thiessen v. Gen. Elec. Capital Corp.,
267 F.3d 1095 (10th Cir. 2001) 1

Vazquez v. Cent. States Joint Bd.,
No. 04 C 1798, 2009 WL 1530709 (N.D. Ill. June 1, 2009) 6

TABLE OF AUTHORITIES
(continued)

Page(s)

Rules

Fed. R. Civ. P. 26(c) 2

Fed. R. Civ. P. 26(c)(3) 7

Fed. R. Civ. P. 37(a)(5) 7

Local Rule AT-3(h) 7

I. INTRODUCTION

Courts in this and other districts uniformly hold that depositions of litigation counsel (including in-house litigation counsel) constitute "an abuse of the discovery process" that "lowers the standards of the profession," and are permissible only in rare situations where no other means of discovery is available and the information sought is crucial and non-privileged. *Shelton v. Am. Motors Corp*., 805 F.2d 1323, 1327, 1330 (8th Cir. 1986); *see also Nguyen v. Excel Corp.*, 197 F.3d 200, 209 & n.26 (5th Cir. 1999); *Thiessen v. Gen. Elec. Capital Corp.*, 267 F.3d 1095, 1112 (10th Cir. 2001). Maxell cannot come close to meeting this high bar. Far from exhausting other means of discovery, Maxell noticed Apple's in-house litigation counsel, Mr. Andrew Stein, as the ***first*** individual fact deposition in this case—a clear indication that Maxell is again using discovery not as means to address the merits of this case, but as a weapon to "add[] to the already burdensome time and costs of litigation." *Shelton*, 805 F.2d at 1327. And Maxell cannot identify any non-privileged testimony that Mr. Stein could provide that is crucial to this case. The only reason Maxell has demanded Mr. Stein's deposition, despite whatever thinly veiled excuse it may concoct, is to harass Mr. Stein and Apple.[1]

II. MATERIAL FACTS

Mr. Andrew Stein is Senior Litigation Counsel at Apple. Simmons Decl. at ¶ 2. He is responsible for supervising Apple's outside counsel in this litigation. *Id.* That work includes setting and directing litigation strategy and representing Apple at hearings and depositions. *Id*. at

[1] This is just the latest in a series of discovery abuses by Maxell, which include: (1) rushing to Court, with no precedent whatsoever, on the theory that every document relevant to the case must have been produced on the initial disclosure deadline of July 10; (2) moving the Court, in the face of unambiguous precedent from this Court, that Apple provide non-infringement contentions in response to interrogatories; (3) moving the Court to compel Apple to fill out a 10,000-cell spreadsheet as a single "interrogatory response"; and (4) refusing to provide substantive infringement contentions identifying allegedly infringing source code with specificity, as is clearly required by the local Patent Rules and this Court's precedent.

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