

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

MAXELL, LTD.,

Plaintiff,

vs.

APPLE INC.,

Defendant.

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

JURY TRIAL DEMANDED

████████████████████

**DECLARATION OF LUANN SIMMONS IN SUPPORT OF
DEFENDANT APPLE INC.'S MOTION FOR PROTECTIVE ORDER**

I, Luann L. Simmons, hereby declare as follows:

1. I am an attorney at the law firm of O'Melveny & Myers LLP, counsel for Apple, Inc. ("Apple") in this matter filed by Maxell, Ltd. ("Maxell"). I have personal knowledge of the facts stated herein and if called to testify could and would competently testify thereto.

2. Andrew N. Stein is Senior Litigation Counsel at Apple. He has been and is currently responsible for managing *Maxell, Ltd. v. Apple Inc.* (No. 5:19-cv-00036-RWS). He conducts regular meetings with Apple's outside counsel for this case, such as myself and other attorneys at O'Melveny & Myers LLP, to discuss the status of this case and plan Apple's litigation strategy. He also manages the day-to-day activities of Apple's outside counsel, including myself and other attorneys at O'Melveny & Myers LLP.

3. Mr. Stein has attended multiple court hearings in this case, along with myself and other counsel for Apple, including the June 19, 2019, Scheduling Conference in this case, the August 28, 2019, hearing on Apple's Motion to Dismiss, and the September 17, 2019, hearings on Apple's Motion to Transfer and Maxell's Motion to Compel.

4. During the September 17, 2019 hearing, outside counsel for Apple stated:

[REDACTED]

5. Maxell served a Notice of Deposition to Andrew Stein on October 8, 2019.

6. Maxell served a Notice of Rule 30(B)(6) Deposition of Defendant Apple Inc. on

October 8, 2019, which included the following topics:

Topic No. 34: Apple's creation, acquisition, retention, or storage of (or ability to acquire, retain, and store) any Documents that relate to the identity, design, structure, development, operation, and functionality of the Accused Features or Functions of the Accused Products

Topic No. 57: Your system(s) and method(s) for tracking the identity and costs of the Implicated Components used in the Accused Products and the Persons with knowledge thereof.

Topic No. 83: Defendant's responses to all written discovery requests, including any interrogatory served on Defendant in the Litigation, including the bases therefore, and the Persons with knowledge thereof.

7. Apple requested that Maxell withdraw Maxell's notice to depose Andrew Stein by letter dated October 11, 2019.

8. Maxell refused by letter dated October 16, 2019.

9. Attached as **Exhibit A** are excerpts of a true and correct copy of the non-final, rough transcript of a meeting-and-confer held on November 4, 2019.

I declare under the penalty of perjury that the foregoing is true and correct. Executed in San Francisco, California, on this 5th day of November, 2019.

/s/ Luann L. Simmons
Luann L. Simmons

Exhibit A

11/4/19 Meet-and-Confer Rough Transcript at 10:14-11:16

14 MS. SIMMONS: Right. 10:22

15 So as we explained in our letter, 10:22

16 Mr. Stein has not attempted to collect 10:22

17 information and that's not what he was going to 10:22

18 say to the Court to fill out one of the lines 10:22

19 in the chart of Interrogatory 6 in this case. 10:22

20 He was offering to provide an 10:22

21 illustrative example of the difficulties 10:22

22 involved in collecting this kind of information 10:22

23 to further support Apple's arguments from -- 10:22

24 and it was information based on -- or it's 10:22

25 experience that he had from another case, as 10:22

2 we've explained to you. 10:22

3 So he does not have any unique 10:22

4 information or knowledge, certainly none that's 10:22

5 non-privileged, about the ability or lack 10:22

6 thereof to collect the information that Maxell 10:22

7 has sought in Interrogatory No. 6. 10:23

8 MR. LEVY: I mean, I understand your 10:23

9 position. That's not what was represented to 10:23

10 the Court. 10:23

11 So we're in a dispute. There's a 10:23

12 reason we disagree here. You're telling us one 10:23

13 thing now. We heard something else in court. 10:23

14 We think, based on what was represented to the 10:23

15 Court, there is good reason, good basis, for 10:23

16 his deposition. 10:23

Exhibit A

11/4/19 Meet-and-Confer Rough Transcript at 12:13-13:14

13 MS. SIMMONS: Okay. So then if 10:24
14 you're ultimately trying to get at what it 10:24
15 takes to collect that information, he is 10:24
16 absolutely not the only person who can provide 10:24
17 that information. 10:24

18 And indeed you have served a 10:24
19 30(b)(6) notice that includes topics that 10:24
20 relate to that information. 10:24

21 So what is your position on why he 10:24
22 is the only person that can provide that 10:24
23 information? 10:24

24 MR. LEVY: He -- well, in terms of 10:24
25 the information about what it is he tried to 10:24
2 do, I mean, if someone else wants to testify 10:24
3 about what it is Andrew Stein did and who he 10:25
4 spoke to and the results of that, then okay. 10:25
5 But it seems like the most direct place to get 10:25
6 that information is from Mr. Stein. 10:25

7 I mean, he was offered up in court 10:25
8 to provide that testimony, so -- I mean I 10:25
9 guess -- you know, again, we're in a dispute 10:25
10 here. You think we can get that information 10:25
11 from someone else. We think he's the best 10:25
12 source for that information. 10:25

13 We're talking about what -- 10:25

14 (Simultaneous crosstalk.) 10:25

Exhibit A

11/4/19 Meet-and-Confer Rough Transcript at 15:6-19

6 MS. SIMMONS: Okay. You've cited in 10:27
7 your letter the Pamida, P-a-m-i-d-a, case. We 10:27
8 don't think that that's applicable. 10:27
9 But I wanted to know if you have any 10:27
10 other legal authority to support your position. 10:27
11 That's the only case you've cited in your 10:27
12 letter. 10:27
13 MR. LEVY: I mean, we've -- I'm not 10:27
14 going to -- I didn't go looking for other cases 10:27
15 to cite on this call. 10:27
16 But if this comes down to motions 10:27
17 practice, if you don't offer him up, then we'll 10:27
18 conduct whatever additional legal research we 10:28
19 need to do to support our papers. 10:28

11/4/19 Meet-and-Confer Rough Transcript at 16:8-19

8 MS. SIMMONS: And again, he is the 10:28
9 right one to ask about what he would have 10:28
10 testified about regarding his difficulties in 10:28
11 obtaining information for another case? Is 10:28
12 that what you're referring to when you say he's 10:28
13 the best one to get the information? 10:28
14 MR. LEVY: That was offered up to 10:29
15 the Court. Yes. 10:29
16 MS. SIMMONS: Okay. About another 10:29
17 case. 10:29
18 MR. LEVY: That was offered up to 10:29
19 the Court in this case. 10:29