

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

MAXELL, LTD.,

Plaintiff

v.

APPLE INC.,

Defendant.

NO. 5:19-cv-00036-RWS

JURY TRIAL DEMANDED

**DEFENDANT APPLE INC.'S MOTION FOR ISSUANCE OF LETTERS OF
REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE**

Pursuant to this Court's inherent authority to issue Letters Rogatory, Defendant Apple Inc. ("Apple"), by and through its undersigned attorneys, hereby requests this Court to issue a Letter of Request for International Judicial Assistance to obtain documents and things from Hitachi, Ltd. ("Hitachi").

Apple's use of Letter Rogatory is an appropriate method of obtaining discovery from Hitachi because Japan is not a signatory to the Hague Convention on the Taking of Evidence Abroad in Civil and Criminal Matters. *See* Fed. R. Civ. P. 4(2)(2)(B); All Writs Act, 28 U.S.C. §§ 1651, 1781 (permitting "the transmittal of a letter rogatory or request directly from a tribunal in the United States to the foreign or international tribunal, officer, or agency to whom it is addressed and its return in the same manner."); *see also* U.S. Dep't of State Legal Considerations for Japan, <https://travel.state.gov/content/travel/en/legal-considerations/judicial/country/japan.html> (last visited on November 11, 2019).

Judicial assistance between the United States and Japan is governed by Article 5 of the Vienna Convention on Consular Relations. *See* U.S. Dep't of State Legal Considerations for

Japan; *see also* Vienna Convention on Consular Relations (1963), available at http://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf (last visited November 11, 2019). Article 5(j) of the Convention acknowledges that the use of Letter Rogatory is an appropriate method of requesting evidence located in a foreign State. *See* Vienna Convention on Consular Relations (1963). Furthermore, as numerous courts have confirmed, the use of Letter Rogatory has been the traditional method of requesting foreign judicial assistance in obtaining evidence located aboard. *See, e.g., Bakeer v. Nippon Cargo Airlines, Co.*, 2011 U.S. Dist. LEXIS 90102, *61-62 (E.D.N.Y. 2011) (opinion noting that “[s]ince Japan is not a signatory to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters . . . , [t]he only method for obtaining the testimony of an unwilling Japanese witness is through ‘a letter rogatory executed by a Japanese court’”); *United States v. Walus*, 616 F.2d 283, 304 (7th Cir. 1980) (district court should have granted request by defendant for use of letter rogatory to obtain evidence located abroad that was relevant to defendant’s case).

The proposed letter submitted herewith solicits documents from Hitachi. Apple submits that the requested documents are necessary and in the interest of justice, that Hitachi is not subject to service of a subpoena within the United States, and that defendant Maxell, Ltd. has represented that it is not possible for it to obtain the documents from Hitachi itself.¹

For these reasons, Apple respectfully requests the Court grant its motion, endorse the attached Letter of Request, and direct the Clerk to place the Court’s seal upon them and return them to Apple for delivery to the foreign jurisdiction.

¹ Apple reserves all rights to move to compel Maxell to obtain such documents from Hitachi, and to challenge Maxell’s representation that such documents are not within its possession, custody, or control.

Dated: November 27, 2019

/s/ Luann L. Simmons

Luann L. Simmons (*Pro Hac Vice*)
lsimmons@omm.com
O'MELVENY & MYERS LLP
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
Telephone: 415-984-8700
Facsimile: 415-984-8701

Xin-Yi Zhou (*Pro Hac Vice*)
vzhou@omm.com
Anthony G. Beasley (TX #24093882)
tbeasley@omm.com
O'MELVENY & MYERS LLP
400 S. Hope Street
Los Angeles, CA 90071
Telephone: 213-430-6000
Facsimile: 213-430-6407

Laura Bayne Gore (*Pro Hac Vice*)
lbayne@omm.com
O'MELVENY & MYERS LLP
Times Square Tower, 7 Times Square
New York, NY 10036
Telephone: 212-326-2000
Facsimile: 212-326-2061

Bo Moon (*Pro Hac Vice*)
bmoon@omm.com
O'MELVENY & MYERS LLP
610 Newport Center Drive, 17th Floor
Newport Beach, CA 92660
Telephone: 949-823-6900
Facsimile: 949-823-6994

Melissa R. Smith (TX #24001351)
melissa@gilliamsmithlaw.com
Bobby Lamb (TX #24080997)
wrlamb@gilliamsmithlaw.com
GILLIAM & SMITH, LLP
303 South Washington Avenue
Marshall, Texas 75670
Telephone: (903) 934-8450
Facsimile: (903) 934-9257

Attorneys for Defendant Apple Inc.

APPLE'S MOT FOR ISSUANCE OF LETTER OF PRO

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served this 27th day of November, 2019 with a copy of this document via electronic mail.

/s/ Melissa R. Smith
Melissa R. Smith

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