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

MAXELL, LTD., *Plaintiff*, v. APPLE INC., *Defendants*.	Case No. 5:19-cv-00036-RWS **JURY TRIAL DEMANDED**

JOINT NOTICE

Pursuant to the Court's Order dated January 16, 2020 (Dkt. 186), Plaintiff Maxell, Ltd. ("Plaintiff" or "Maxell") and Defendant Apple Inc., ("Defendant" or "Apple") hereby file this Joint Notice regarding the status of Apple's source code production. The parties conducted a meet and confer call on January 23, 2020 on which source code issues were discussed. Lead and local counsel were present on the call for both parties. The parties' positions are stated herein:

I. Production Of Source Code And Supplemental Infringement Contentions

Maxell's Position: Maxell informed Apple that it will supplement its infringement contentions within 30 days of Apple representing and Maxell verifying that all the relevant source code has been made available for inspection. During the meet and confer call and in subsequent correspondence (including in Apple's portion of this Notice below), Apple has confirmed that its source code production was and continues to be incomplete, including with respect to core accused functionalities. For example, Apple still has **not** produced source code for iPhone 11, iPhone 11 Pro, iPhone 11 Pro Max. Further, Apple still has not produced

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

for watchOS 5.0 and 6.0. *See* Apple's Interrogatory Response to Interrogatory No. 14.[1] Similarly, Apple has still not produced for iOS 13.0, watchOS 5.0, and 6.0. *See id.* This despite the fact that Apple has represented in this case that "the most accurate and complete information about how Apple products produce ringtones, VoiceOver, and Siri notifications is source code, including, for example,

Despite the clear relevance of these functionalities to Maxell's infringement contentions and Maxell raising these deficiencies with Apple on multiple occasions, the deficiencies remain. Thus, Apple's continued representation that it complied with P.R. 3-4 by "produc[ing] technical documents and source code sufficient to determine the operation of the accused functionalities… in August 2019" is simply a fallacy. By its own admission, Apple has yet to fully comply with P.R. 3-4 and is hiding behind the "sufficient to determine the operation" language. Further, in August 2019, Apple did not make available for inspection source code for for any of the watch products,[2] for **any** of the accused products, [3] and for various models.[4] As these examples show (and there are many more) Apple failed miserably to comply with P.R. 3-4,[5] in some instances completely failing to produce source code or relevant versions of the accused operating system. For this reason alone, Apple's motion to compel was premature and is moot.

---

1 watchOS 5.0 and 6.0 is executed on Apple Watch model nos. A1803, A1802, A1817, A1816, A1758, A1757, A1859, A1858, A1861, A1860, A1978, A1977, A1976, A1975, A2095, A2094, A2093, A2092.

2 was not produced for watchOS 1.0, watchOS 2.0, watchOS 3.0, and watchOS 4.0, which is executed on at least Apple Watch model nos. A1554, A1553, A1803, A1802, A1817, A1816, A1758, A1757, A1859, A1858, A1861, and A1860

3 was not produced for any of iOS 7-12 or watchOS 1-4

4 iOS 7.0-9 is executed on iPhone 6S Plus, iPhone 6S, iPhone 6 Plus, iPhone 6, iPhone SE, iPhone 5s, iPhone 5C, and additional accused modes of iPads.

5 Indeed, Apple still has not even produced schematics for all of the Accused Products, which would be necessary to comply with the requirements of P.R. 3-4.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

Regardless of the number of files produced (an issue Apple has focused on instead of substance), Apple has failed to produce relevant code related to accused products and functionalities. Although such source code should have been produced at the outset of this litigation in accordance with the Local Patent Rules, Apple continuously refused to produce specific code until Maxell identified it with what Apple deemed to be adequate specificity (a difficult undertaking for Maxell not knowing what source code might exist). Even after Maxell identified specific source code that should exist but that had not been produced, Apple's production has taken months and then was produced in a manner in which Maxell could not determine which source code files related to which products.[6] Further, the source code for the "recently released products," which code Maxell requested in September, almost 5 months ago, still hasn't been provided. Apple now states its source code production will be completed by February 12, 2020, which is 6 months after Apple's source code production should have been complete.[7] Further, Apple has previously represented that its source code production was complete only for Maxell to inspect the code at significant cost[8] and find continuing deficiencies related to the accused functionality.[9]

---

[6] After expending significant time and resources to conduct a review of this incomplete source code, Apple required Maxell to propound an additional interrogatory to obtain information necessary to understand Apple's source code production. Apple then waited the full response period prior to responding to the interrogatory with the necessary information.

[7] Instead of cherry-picking source code files to produce, Apple should have just produced the full source code for each accused product as Maxell originally requested. This would have clearly been the least burdensome approach for Apple and the most efficient with respect to getting the source code timely produced. Instead, Apple has chosen a course which has hampered a meaningful review by Maxell and caused both parties to needlessly incur substantial costs not just reviewing source code but also addressing deficiencies between counsel and with the Court.

[8] Notably, Maxell had discussions with Apple's counsel before beginning its source code review regarding the substantial cost associated with source code review. Maxell requested that Apple confirm its source code production was complete so that Maxell would not needlessly incur substantial cost associated with source code review only to determine that it could not meaningfully review the code made available or need to return to complete its review. Apple's misconduct has therefore caused Maxell to needlessly incur substantial costs that could have been easily avoided.

[9] Apple states that Maxell has identified "certain source code files" as missing when they had been previously produced. This was the case for two instances, . Apple fails to mention

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

Maxell is hopeful, though not confident based on the history of this case, that Apple's source code production will in fact be completed by February 12 and no motion to compel will be necessary. Maxell, however, reserves the right to bring such a motion if its review of Apple's source code after February 12 reveals such production to remain deficient. Such reservation is particularly warranted in view of Apple's representations of completeness in the past, which Maxell has found to be inaccurate, and Apple's ongoing position that it will only produce additional code if identified with specificity by Maxell. We trust that Apple's most recent representation is accurate and that Apple has (or will by February 12) finally produced all relevant code (and not just those gaps in the code that Maxell has been able to identify as examples with specificity). Apple is obviously best positioned to identify relevant source code, and that it has placed the burden on Maxell (who is not familiar with what code even exists) to identify missing code with specificity is nonsensical and contrary to the Local Rules. Maxell's ability in this regard is obviously limited. Maxell can only make such identifications based on its review of the source code that is produced, including the code that remains to be produced by February 12.

In addition to Apple's continuing source code deficiencies, there are numerous other discovery deficiencies that Apple has not cured, which directly impact Maxell's ability to meaningfully review Apple's source code production as also touched upon during the last hearing before the Court. These obviously also impact Maxell's ability to determine which source code is ultimately to be included within its infringement contentions. Such deficiencies,

---

that Maxell had previously identified these files as missing. Then in a subsequent serial production, Apple made these files available amongst additional newly produced source code files without identifying or explaining what "new" files have been produced, where they have been produced, and/or without supplementing their interrogatory responses. Each time, however, Apple has made a serial production Maxell has incurred costs to review this code and identified additional deficiencies to Apple. For these two files, Maxell thought they continued to be missing but withdrew its request when Apple identified the locations where Apple made the files available.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

including Apple's production of technical documents, license agreements, and non-source code technical documents Apple improperly produced on the source code computer, were also discussed on the parties' most recent meet and confer and are likely to be the subject of an unfortunate but necessary motion to compel.[10]

Apple's Position: Pursuant to P.R. 3-4, Apple produced technical documents and source code sufficient to determine the operation of the accused functionalities, including [REDACTED] [REDACTED] in August 2019 after a reasonable investigation based on Maxell's initial infringement contentions. That this production did not include every possible source code file and every possible technical document that pertains to every unobvious facet of Maxell's infringement contentions is not a surprise; Fed. R. Civ. P. 26 and P.R. 3-4 do not require such a scorched-earth investigation—overturning every rock and interviewing every engineer in the company, to collect, review, and produce every bit of source code and every document that ***Maxell*** decides is "relevant" and calls for Apple to produce. Indeed, this Court rejected such a view when it denied Maxell's motion to compel Apple to produce this information with its July Initial Disclosures. That Apple has asked Maxell for clarification as to some of its requests is eminently reasonable. Indeed, many of Maxell's requests have been for source code that Apple has already produced, doesn't exist, or have been so vague that Apple cannot understand the specific source code that Maxell actually seeks or its relevance to Maxell's infringement

[10] Apple takes issue with Maxell's request of seeking inspection of each of the accused products "regardless of whether there are any differences relevant to Maxell's infringement allegations." But Apple created this problem. Maxell remains open to the parties agreeing on a representative product and has served discovery requests to confirm that certain accused products function the same way relative to the infringing functionality. Yet, Apple denied all these discovery requests. Further, Apple identified hundreds of versions of operating systems in its interrogatory response, while producing source code for fewer versions. To the extent that Apple agrees that there are no meaningful differences relevant to the infringing functionality for certain accused products and supplements its discovery responses to reflect this, Maxell is willing to narrow its request for inspection to only such products.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

WHAT WILL YOU BUILD? | sales@docketalarm.com | 1-866-77-FASTCASE

fastcase®
Smarter legal research.