PUBLIC VERSION

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

MAXELL, LTD.,	Case No. 5:19-cv-00036-RWS
Plaintiff,	**LEAD CASE**
v.	**JURY TRIAL DEMANDED**
APPLE INC.,	PUBLIC VERSION
Defendant.	

MAXELL, LTD.'S OPPOSED MOTION TO COMPEL[1]

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[1] In exchange for an extension in response time to a discovery letter sent by Maxell, Ltd. on December 18, 2019, Apple agreed to an expedited briefing schedule of three business days with respect to any resultant Motion to Compel. This applies to all issues herein except those related to Licenses, Marketing Surveys, and Prior Litigation Documents.

Despite this Court's clear discovery rules, and an order from the Court compelling Apple to comply with its discovery obligations, Maxell is again in the unfortunate place of having to seek the Court's help. In its prior Motion to Compel, Maxell expressed concerns about Apple's discovery misconduct, including Apple's delayed document production, such that Maxell would be left with little time to review dense technical and financial material Apple was deliberately withholding. Maxell's concerns have sadly come true.

Apple's discovery misconduct is not limited to a failure to produce materials, but also to a pattern of abusing this Court's discovery rules and procedures. For its P.R. 3-4 disclosures, Apple produced the bare minimum it unilaterally deemed "sufficient to show" the operation of the accused functionalities, relying primarily on a limited source code production; thereafter, Apple took the stance that this was the extent of its obligation in this case. Every time Maxell requested production of additional, obviously relevant materials, Apple objected on the basis the requests were not proportional to the needs of the case (albeit never explaining why) and demanded unprecedented, detailed explanations for why the materials should be produced (often on a document-by-document basis). Even then, Apple limited production (if it happened at all) to just a small subset of the relevant materials.

Apple's misconduct also includes delaying repeated requests for meet and confers in a plain rejection of the Discovery Order. For example, Maxell made a written request on January 27 for Apple to produce 11 relevant licenses. On January 31, Apple stated Maxell had not supported its assertion of relevance and demanded additional information, which Maxell provided the next day along with a request to meet and confer. Apple responded on February 3 and again demanded additional information, which Maxell yet again provided on February 5, again with a request to meet and confer. Both times, Apple ignore the requested meet and confer.

Under the Discovery Order, Apple should have met and conferred and provided Maxell a final position by February 10. Yet, on February 13, Apple stated that it was looking into the issue, provided no detail about what it would provide (or not), and put off a meet and confer until its "investigation" was complete. Unfortunately, Apple treats the meet and confer requirement much as it has the rest of its discovery obligations, with a refusal to comply.

I. Deficient Categories of Materials

Technical Documents. After months of back and forth regarding Apple's technical document production, Apple represented it had "conducted a reasonable investigation for the accused functionalities and produced all responsive technical documents that could be located after a reasonable search." Ex. A (Excerpt of 1/31/2020 Letter). Although Apple's representation would appear to close the matter, Maxell's review of Apple's productions, source code, and publicly available information indicates that relevant technical documents have in fact not been produced. The sheer volume of materials that Apple claims do not exist raise questions into whether such investigation was sufficient. Examples of such materials include:[2]

- **Complete Schematics**. Apple has not produced schematics for 29 accused products. Certain produced schematics are incomplete excerpts. For example, ███████████ ██ ██ ███████████████████████████████████.

- **Documents Describing Cellular Functionalities**. Relevant to the '193 Patent, Maxell requested documents regarding how signals transmit through different components to send and receive signals to a cell tower. Apple stated ██████████████████████ ██ ██ ██ ██ ██████████████. Apple clearly has additional, relevant documentation.

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[2] Maxell provides at least one basis for its belief that additional documents exist in this Motion. Additional support for its belief is included in Exhibit B.

- ██████████ **Code**. A datasheet produced by third-party ████████████████
██████████████████████████████████

  Apple has not produced code or settings information that it uses to configure/integrate ████████████████████████████████████. This is relevant to Maxell's claims regarding the asserted '193 Patent.

- **Requirements Specifications**. Apple produced ████████████████████████
████████████████, but none it provided to ████████████████████
████████████████████. Such documents exist according to, for example, ████████████████████████████████████
███████████████████████

- **Testing Documents**. Apple produced nothing describing testing specifications or results for a majority of the accused functionalities (*e.g.*, performance of open loop power control and inner loop power control as required by WCDMA standards, FaceTime, Low Power Mode, Siri features (Announce Calls, VoiceOver), AirDrop, Bluetooth pairing, unlocking via Bluetooth, Power Reserve Mode, Express Transit, Shutdown and boot-up procedures). Testing documents must exist based on, for example, ██████████████
██

- ██
Apple produced ██
████████████████, but not for the ████████████████████████
████████ in the iPhone 6S Plus, iPhone 6s, iPhone SE, iPad 5th generation (WiFi), iPad 5th generation (WiFi + Cellular), or iPod Touch 5th generation.

- **Technical Specifications** ██████████████████████████████████████
████████████████████████████████████. Beyond publicly available user guides, webpages, and ████████████████████, Apple produced very few technical documents describing the design, development, or operation of accused functionalities low power mode, implementation of Siri, Paired Unlock, Announce Calls, Location calculation by Maps, Open-loop power control, Closed-loop power control, Watch Application, Maps application, VoiceOver and Do Not Disturb, FaceTime functionality, Express Transit, Power Reserve Mode, Bluetooth functionality relevant to '586 and '438 Patents, and shutdown and boot-up for iOS and watch OS products.[3]

- **Camera Module Specifications**. Apple produced documents corresponding only to image sensors in the cameras, not hardware specifications for the camera modules, ██s.

- **Source Code**. Apple stated its Source Code production would be complete on February 12. Maxell is reviewing Code the week of February 17, but based on Apple's February 6th interrogatory response, it appears Apple still has not produced the following Code (or has

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[3] Apple has previously stated tha██
██." Ex. A (excerpt of 1/23/20 Meet and Confer Tr. at11:3-9). It is difficult to believe that ██████████████████████████████
██.

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not identified which produced code relates to the noted operating systems):

Non-Source Code Documents on Source Code Computer. Maxell agreed to heightened restrictions governing production of "Source Code," including to review code on standalone computers at Apple's counsel's offices during business hours and to printing restrictions of no more than 250 pages total. D.I. 45 at 11(c). The agreement protects Source Code only, but Apple produced over a thousand non-source code documents on the Source Code computers, improperly restricting Maxell's ability to access, review, and use such materials.

Maxell first raised this issue in September and again in December, at which point it provided specific examples and requested their production. They included ████████████ ██ ██ — highly relevant and directly addressing claimed functionality. Apple responded it was proper for the documents to be on the Source Code computer because ██████████████████████ ████████████████████████████████████. Ex. A (Excerpt of 1/15/2020

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