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

MAXELL, LTD.,	
Plaintiff	Civil Action NO. 5:19-cv-00036-RWS
v.	**JURY TRIAL DEMANDED**
APPLE INC.,	
Defendant.	

APPLE INC.'S RESPONSE TO
MAXELL LTD.'S MOTION TO COMPEL[1]

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[1] Pursuant to the parties' agreement, Apple responded on an expedited basis to the issues Maxell raised in its December 18, 2019 letter. D.I. 199. Apple now supplements that response to address the remaining issues raised in Maxell's motion to compel (D.I. 197). For the Court's convenience, Apple combined its preliminary response and the present supplement in a single document.

Continuing in its unabashed, scorched-Earth approach to discovery, Maxell's motion exposes the true motive behind that approach: to trash Apple before this Court at every opportunity. Indeed, Maxell filed its motion to compel only after willfully ignoring this Court's standing order requiring it to actually meet and confer on each and every purported "dispute" it now raises. And its *only* excuse for ignoring this Court's standing order is that, for *some* of the documents at issue, Apple requested a couple of days to investigate so it could present a definite response. Indeed, the majority of the documents Apple was investigating have now been produced. Even as to those issues that the parties properly discussed, Maxell now demands documents that Apple has already provided or is in the process of providing, or that Maxell never specifically requested before filing its motion, but that Apple will nonetheless be producing.

The chaotic state of Maxell's demands encapsulates its approach to discovery: vaguely alleging discovery deficiencies without specifying any issues for the parties to resolve, then running to court with aspersions of nefarious intent and misconduct. This contravenes the stated goal of "maximiz[ing] the best use of the Court's limited resources." 6/3/16 Standing Order re Meet and Confer. Accordingly, Maxell's motion should not only be denied, but Maxell should be sanctioned for its failure to respect the Court's standing order. *Id.*

Technical Documents:

- **Schematics**: Apple has produced schematics covering nearly all the accused products, has actually produced several of the schematics that Maxell claims are missing (APL-MAXELL: 00258023, 00257882, 00123893, 00393816, 00258121, 00123321), and has not intentionally withheld any. Were Maxell to have identified to Apple which schematics it believed were missing before it filed its motion, Apple could have investigated and the parties could have dispensed with this "dispute." But Maxell did not, and its previous, vague reference to "schematics for all products," along with other equally vague and non-specific complaints was not sufficient for Apple to realize any were missing from the set it produced after a reasonable search. Ex. D, 2/5/20 Beaber Ltr. at 1. Instead, Maxell avoided any meaningful meet and confer, and identified allegedly missing documents only for the first time in this motion. This belies its claimed need for the documents and exposes its motive: to unfairly and incorrectly portray Apple as failing to comply with discovery. A 5-minute meet-and-

confer would have saved the parties' and this Court's resources on this issue. But now that Maxell has identified the documents it believes are missing, Apple has undertaken a search and will produce those non-privileged documents it is able to locate.

- **Documents Describing Cellular Functionalities/Testing Documents (re CDMA power control)**: ██████████████████████████████████████
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████████ Ex. A, 1/15/20 Pensabene Ltr. at 2-3. The example Maxell cites (APL-MAXELL_01004324) is not to the contrary. ████████████████████████████
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- **Skyworks Code**: Seeking to manufacture a dispute, Maxell mischaracterizes a third-party document to argue that Apple has access to, and should therefore produce, the source code of that third-party. But, Apple has already produced or made available for inspection all Skyworks related material, including computer files, that it was able to locate. Nothing has been withheld. ████████████████████████████████
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██████████████████████ Maxell's citation to *lot* codes, which like serial numbers are irrelevant to how a product operates, to argue that Apple has withheld *source* code is at best a gross misreading or at worst a deliberate misrepresentation of the document.

- **Vendor Requirements Specifications**: As Maxell acknowledges, Apple produced requirements specifications for Broadcom and other third parties that might relate to accused functionalities, and its previous reasonable search did not return any such documents for Intel. ██
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██████████████████████████████ These physical characteristics have no relevance to any accused functionality and in no way suggest that Apple has any other documents relevant to this case.

- **Testing Documents**: Once again, Maxell seeks to manufacture a dispute by misrepresenting the documents. Apple produced testing documents relating to the accused functionalities, to the extent they exist and could be located in a reasonable search. ████████████████████
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██ The physical assembly of the hardware has no relevance to any accused functionalities. Nor does testing on phone bending cited in Maxell's Exhibit B.

- **Application Processor Chipset User Manual/ Micro-Architecture Specification**: As Maxell acknowledges, Apple already conducted a reasonable investigation and produced responsive manuals/specifications. Prior to receiving Maxell's motion, Maxell never told Apple that it believed such documents were missing for any particular chipset. ██████████ ██ ██

- **Technical Specifications / Software Design Guides / Firmware Device Specification / Hardware Abstraction Layer Specifications**: Contrary to Maxell's mischaracterization, Apple conducted a reasonable search for and produced a substantial number of technical documents describing the design, development, or operation of accused functionalities, including specifically those identified in Maxell's motion. For example, for "Bluetooth functionality" alone, Apple produced *approximately 90 such documents*. Ex. B, Exemplary Cites. While Maxell may not believe that other documents could not be located (DI 197 at 3 n.3), that is the case and Maxell will have the opportunity to explore that further in depositions. Apple has no obligation to turn over every rock and interview every engineer in the company looking for documents that Maxell believes may exist.

- **Camera Module Specifications**: Apple has produced datasheets for camera components like the CMOS image sensor, but has not located specifications for camera modules. Apple is not aware of any additional responsive documents.

- **Source Code**: On January 31, 2020, Apple provided Maxell a detailed chart listing what Apple understood to be Maxell's last source code requests, and that confirmed Apple's understanding that it had already satisfied those requests or, for a few, would be satisfied by February 12. Apple later confirmed its satisfaction of the open items in a February 14 letter. Rather than respond to either letter, and *before even inspecting what Apple had produced*, Maxell ran to court. But, for at least 9 of the 14 projects that Maxell requested, Apple has either *already produced* them or they *do not exist*. The remaining projects, which Maxell first brought to Apple's attention in its motion to compel, have already been produced. Thus, all source code issues raised in Maxell's motion have been resolved.

As noted, for some of the above categories (*e.g.*, Cellular Functionality, Vendor Requirements Specifications, Testing Documents), Maxell's speculation and cited documents do not demonstrate that other responsive documents exist. Regardless, Apple is conducting a further investigation to confirm that it has more-than-satisfied its discovery obligations and, if any additional documents are located, will promptly produce them.

██: The so-called "non-source

code" documents described in Maxell's motion have now already been produced ***twice*** in this case. ██

██. *See, e.g.,*

Rapp v. Maxim Healthcare Servs., Inc., No. 4:13-CV-51, 2014 WL 5341872, at *2 (E.D. Tex.

Sept. 30, 2014). ████████████████████████████████████

████████████████████████████ Apple then undertook the extraordinarily burdensome

effort to search more than 1.63 M files made available in this case for documents that may not

contain source code and then review those documents to confirm they contained no code. Apple

then produced these so-called non-source code documents for a ***second*** time, in the ***exact***

manner Maxell requested and before Maxell filed its motion to compel. Maxell's demand that

Apple reproduce these documents for a ***third*** time, in a ***third*** format, is without merit and

borderline, if not outright, harassment. Indeed, the exhibit Maxell submits clearly demonstrates

that, contrary to Maxell's representation, the electronic PDF documents are just as legible as they

would be in native format. Ex. C, APL-MAXELL_01196622 (zoomed in). Indeed, if one

printed the native documents they would look ***identical*** to the PDFs as produced.

      Forecast Documents: As Maxell acknowledges, Apple has already produced the

forecasts used in Apple's business operations, including two internal forecasts. ██████

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██████████████████████████ To the extent Maxell complains that Interrogatory

No. 9 was not yet updated, that has been addressed and a supplemental response served today.

      Licenses: Apple has already produced nearly 100 agreements. As is typical of Maxell's

requests in this case, Maxell's abrupt demand for additional documents in this category on

January 27 was accompanied by no explanation of how it believed they relate to any accused

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