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

MAXELL, LTD.,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 5:19-cv-00036-RWS

LEAD CASE

JURY TRIAL DEMANDED

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**MAXELL, LTD.'S OPPOSED MOTION FOR EXTENSION OF TIME TO
SUPPLEMENT INFRINGEMENT CONTENTIONS PURSUANT TO P.R. 3-1(g)**

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Pursuant to the Court's Order (D.I. 204) and in view of the state of the discovery described below, Maxell seeks a 10-day extension of time to supplement its infringement contentions pursuant to P.R. 3-1(g) on March 23, 2020 as opposed to March 13, 2020.

In the Order, the Court states that, “[b]ased on Apple’s representation [that it completed its source code production on February 12], Maxell’s 30-day deadline began to run on February 12, 2020. Accordingly, Maxell’s deadline to serve revised infringement contentions pursuant to this Order is March 13, 2020.” D.I. 204 at 5. But the representation the Court relied upon in setting its deadline was not accurate. Apple did not complete its source code production on February 12. It in fact made at least one additional production on February 19. *See* Ex. B (2/20/20 Email Zhou to Siddiqui).

In addition to producing source code after February 12, Apple has not provided an up-to-date response to Maxell’s interrogatory which requests that Apple identify, for each directory of source code made available, the accused products and/or operating system versions to which each directory corresponds. Apple admits that its most recent response to this interrogatory, dated February 6, 2020, addresses only “source code made available for inspection as of January 31” and does not identify the corresponding accused products/operating system versions associated with any code produced after that date. *See* Ex. C (2/18/20 Email Pensabene to Siddiqui). This means that as of the filing of this Motion, Apple has not provided the necessary information for Maxell to conduct a meaningful source code review and provide citations in its supplemental contentions, for at least the source code produced since January 31. Apple also admits that it still has not produced source code for Express Transit mode, an accused functionality for the ’794 Patent and a deficiency Maxell identified as early as October 11, 2019. *See* Ex. A (2/26/20 Ltr. Pensabene to Beaber at fn. 1); Ex. D (10/11/19 Ltr. Beaber to Zhou at

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2).¹

Moreover, based on Apple's February 6 supplemental interrogatory response linking source code to accused products/operating system versions, it appears that Apple still has not produced source code for any accused functionality² for iPadOS, which is the operating system for eleven accused iPad products.³ Maxell identified this deficiency to Apple as early as November 14, 2019. Ex. E (11/14/19 Ltr. Beaber to Beasley and Zhou).

The requested extension is necessary in view of the above-stated facts regarding Apple's source code production. Perhaps recognizing the faults in its source code production, and the fact that it produced source code after its represented date of February 12, even Apple relayed to Maxell that it expected Maxell to serve supplemental contentions by March 23—the date Maxell now requests of the Court. Ex. A (2/26/20 Ltr. Pensabene to Beaber at 2-3). In view of Apple's correspondence, Maxell was surprised to learn Apple opposes this modest extension. Ex. F (3/2/2020 Email Pensabene to Miller).

Apple asserts that the Court's Order requires that Maxell must serve its supplemental contentions by March 13 and then, if Maxell wishes to address the code that Apple produced on February 19, Maxell should seek leave to do so. *Id.* Given that it is already known and admitted that Apple produced source code after the date represented to and relied upon by the Court, it is highly inefficient to require Maxell to prepare back-to-back supplemental contentions and go

¹ Apple states [REDACTED]

[REDACTED]. See Ex. A.

² These include, at least, Maps, AirDrop, FaceTime, Find My Friends, Bluetooth pairing, and Camera functionality.

³ These include the “12.9-inch iPad Pro, 11-inch iPad Pro, 10.5-inch iPad Pro, 9.7-inch iPad Pro, iPad (7th generation), iPad (6th generation), iPad (5th generation), iPad mini (5th generation), iPad mini 4, iPad Air (3rd generation), and iPad Air 2”). See <https://www.apple.com/ipados/>.

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through the process of seeking leave of Court to do so. Maxell should not be required to expend this additional effort based on Apple's failure to meet its own deadline. It is also contrary to the applicable rule: Maxell "need not comply with P.R. 3-1 for those claim elements until 30 days after source code for each Accused Instrumentality is produced by the opposing party." P.R. 3-1(g). Apple's source code production was not completed on February 12.

Maxell will endeavor to supplement its P.R. 3-1 Disclosures as ordered by the Court to the best of Maxell's ability, even given the remaining holes in Apple's source code production and related interrogatory response. However, Maxell's agreement to supplement its P.R. 3-1 Disclosures is not a concession that Maxell has not been prejudiced as a result of Apple's piecemeal and belated source code production. Indeed, Maxell has been (and continues to be) prejudiced by Apple's discovery conduct and despite agreeing to supplement, reserves its rights to seek adequate remedies and relief.

Dated: March 3, 2020

By: /s/ Jamie B. Beaber

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CERTIFICATE OF CONFERENCE

I certify that Plaintiff Maxell, Ltd. has complied with the requirements of Local Rule CV-7(h). Specifically, Maxell sent Apple an email on February 29, 2020 stating its intention to move for the extension requested herein and sought Apple's position on such motion. Apple responded via email on March 2, 2020 stating it would oppose any such request. On March 3, 2020, the parties held a telephonic meet and confer, which was attended by lead and local counsel for both parties. Maxell and Apple were not able to reach agreement related to the extension requested by Maxell in this Motion.

/s/ Jamie B. Beaber

Jamie B. Beaber

/s/ Geoff Culbertson

Geoff Culbertson

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