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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

**JURY TRIAL DEMANDED**

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**MAXELL, LTD.'S OPPOSED MOTION FOR SANCTIONS**

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Two primary orders and the Local Patent Rules govern the scope and timing of discovery in this case, and Apple has disobeyed them. Though Apple repeatedly represented to Maxell and the Court that its document and source code productions were complete under the rules, the representations were simply untrue. Moreover, Apple has refused to address its deficiencies in good faith, often disregarding the materiality and relevance of the materials sought and accusing Maxell of overreaching, harassing, and trying to drive up the costs of litigation. Now, however, we are in the final stages of fact discovery, and Maxell is having to work through documents and source code that *continue* to be produced instead of preparing for depositions and expert reports. Even worse, Apple still has not produced fulsome, complete discovery for all accused products, components, and functionalities. It is too late now for Maxell to review and make meaningful use of such late produced materials. To remedy the prejudice, the Court should 1) preclude Apple from using the discovery it failed to timely produce, including discovery produced after January 31; 2) deem certain accused products/components and source code to be representative of all versions of that product as detailed in the chart below; and 3) assess monetary sanctions.

## **I. Background**

### **A. Governing Rules and Orders**

Patent Rule 3-4(a) requires production of “[s]ource code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its P.R. 3-1(c) chart.” D.I. 62 at 1-2. At a September 2019 hearing, Apple represented to the Court that it had timely complied with the P.R. 3-4 requirement. D.I. 90 (9/17/19 Hr’g. Tr. at 46:7-47:8). On this point, the Court was very clear: “If you haven’t met that deadline, you’re in violation of the Rule.” *Id.* at 46:21-22. To which, Apple’s counsel acknowledged: “we are taking the position that we have met that deadline and that is a hard deadline.” *Id.* at 47:5-6. Despite such

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representation, Maxell's review of Apple's technical documents and source code revealed that Apple had not only failed to meet the deadline but was withholding relevant documents and code for certain accused products and versions of accused operating systems.

Beyond the Patent Rules, Apple has ignored the "Additional Disclosures" requirement of this Court's Discovery Order D.I. 42 at 3(b). When that deadline passed with only a paltry production by Apple, Maxell quickly alerted the Court to ensure Apple's timely compliance. D.I. 56. Maxell argued that Apple's conduct must be addressed early "to avoid more prejudice from Apple's delays, including waiting until the final days of discovery to provide relevant, responsive information." *Id.* at 1. In response, the Court held: "Apple agreed to substantially complete all discovery by November 27, 2019... and the Court expects it to meet this deadline." D.I. 126 at 4. The Order reiterated Apple's obligation to "produce or permit the inspection of all documents... in [its] possession, custody, or control that are relevant to the pleaded claims or defenses...." *Id.* Acknowledging these obligations, Apple filed a Notice of Compliance on November 27 representing that it substantially completed its document and source code production. D.I. 147. In fact, however, Apple's production was woefully incomplete.

**B. Maxell's Efforts to Obtain Relevant Discovery**

Maxell has attempted to work with Apple on discovery from the beginning. On June 18, 2019, Maxell sent a letter identifying the most relevant categories of documents including, for example, technical specifications, schematics, and source code relating to the accused features and functionalities and to a limited number of implicated components, as well as non-technical materials such as market studies and customer surveys. Ex. A (6/18/19 Ltr. Beaber to Simmons). When Maxell asked whether there were any categories Apple would not produce, Apple responded it was "unaware of any areas where the parties are at an impasse." Ex. B (7/18/19 Ltr. Beasley to Beaber). Apple also confirmed it would "continue to produce documents sufficient to

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