

**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.	§	
	§	
APPLE INC,	§	
	§	
Defendant.	§	

ORDER

Before the Court is Maxell’s motion for extension of time to supplement infringement contentions pursuant to P.R. 3-1(g). Docket No. 207. Maxell filed this motion following the Court’s order compelling Maxell to produce supplemental infringement contentions by March 13, 2020. Docket No. 204.

Maxell seeks an extension of its deadline to file from March 13, 2020, to March 23, 2020. Maxell asserts that the March 13, 2020 deadline is based on Apple’s incorrect representation that its source code production was complete on February 12, 2020. Docket No. 207 at 2. Maxell further asserts that Apple has not identified the corresponding accused products/operating system versions associated with any code produced after January 31, 2020. Maxell claims that, as a result, it does not have necessary information to conduct a meaningful source code review and provide citations to material produced after January 31. *Id.* at 2.

Apple responds that Maxell has engaged in a “goalpost-moving approach to source code discovery” which has allowed them to delay compliance with P.R. 3-1(g) for six months. Docket No. 214 at 1. Apple further asserts that Maxell attempts to delay its compliance with P.R. 3-1(g)

with “serial requests for source code.” *Id.* Apple asserts that much of the source code has been available since August 2019 and that any source code produced after that date is not necessary to comply with P.R. 3-1(g). *Id.* at 2.

Accusations that the other party has not complied with its pre-trial obligations is a recurrent theme in this litigation. *See* Docket No. 56 (Maxell’s Motion to Compel Apple to Produce Timely Discovery); Docket No. 123 (Apple’s Motion to Compel Infringement Contentions Compliant with Rule 3-1(g)); Docket No. 156 (Apple’s Motion to Compel Licensing and Negotiation Documents); Docket No. 197 (Maxell’s Motion to Compel). Each party argues that the other is engaged in a pattern of bad behavior. *See* Docket No. 199; Docket No. 210. In addressing the party’s motions, the Court is aware of this history.

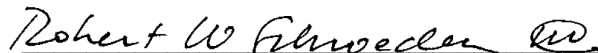
The Court ordered Maxell to produce infringement contentions compliant with Rule 3-1(g) by March 13, 2020, based on Apple’s representation that source code production was complete on February 12, 2020. Mindful of Maxell’s pending motion to compel, the Court noted that Maxell could seek leave to supplement its contentions should it succeed in demonstrating that Apple’s representation was incorrect. Docket No. 204 at 5.

It would be improper at this point to allow Maxell to further delay serving supplemental infringement contentions. The rules requiring infringement contentions are “designed to require parties to crystallize their theories of the case early in the litigation and to adhere to those theories once they have been disclosed.” *LG Electronics Inc. v. Q-Lity Computer Inc.*, 211 F.R.D. 360 (N.D. Cal 2002). Although Maxell insists that Apple’s source code production is incomplete, it is clear that Apple has already produced a substantial amount of source code. In light of the purpose of infringement contentions, then, the proper resolution to the parties’ disputes is to require Maxell to serve infringement contentions reflecting the source code that has been produced while allowing

Maxell a later opportunity to supplement its contentions to reflect any necessary source code produced pursuant to its motion to compel. *PersonalWeb Tech. v. Google Inc.*, No. C13-01317-EJD, 2014 WL 218164, at *1–2 (N.D. Cal. Jan. 17, 2014) (noting a history of allowing further supplemented infringement contentions following a motion to compel).

Though rolling infringement contentions are generally disfavored, *Nike, Inc. v. Adidas Am., Inc.*, 479 F. Supp. 2d 664, 669–70 (E.D. Tex 2007), allowing a party to delay serving infringement contentions for resolution of every discovery dispute is likewise disfavored. Accordingly, Maxell’s motion for extension of time is **DENIED**. Maxell shall produce infringement contentions reflecting source code that was produced prior to February 12, 2020. Following resolution of Maxell’s motion to compel (and the completion of source code production pursuant to such motion to compel, if applicable), Maxell may seek leave to supplement its contentions.

SIGNED this 9th day of March, 2020.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE