

**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-0036-RWS

**JURY TRIAL DEMANDED**

**ORDER**

Upon consideration of the Emergency Joint Motion to Partially Amend Docket Control Order (Docket No. 231), the Court finds the Motion should be **GRANTED**.

It is hereby **ORDERED** that the following schedule of deadlines is in effect until further order of this Court:

<b>3 DAYS after conclusion of Trial</b>	Parties to file <b>Motion to Seal Trial Exhibits</b> , if they wish to seal any highly confidential exhibits.  <b>EXHIBITS: See Order Regarding Exhibits below.</b>
October 26, 2020 Court designated date – not flexible without good cause - Motion Required	<b>9:00 a.m. JURY TRIAL before Judge Robert W. Schroeder III, Texarkana, Texas.</b>  For planning purposes, parties shall be prepared to start the evidentiary phase of trial immediately following jury selection.
October 26, 2020 Court designated date – not flexible without good cause - Motion Required	<b>9:00 a.m. JURY SELECTION before Judge Robert W. Schroeder III, Texarkana, Texas.</b>
October 6, 2020	<b>10:00 a.m. PRETRIAL CONFERENCE before Judge Robert W. Schroeder III, Texarkana, Texas.</b>

	<p>Discuss trial logistics and <i>voir dire</i> procedure. Resolve any pending motions or objections.</p> <p>Lead trial counsel must attend the pretrial conference.</p>
<p>September 29, 2020 [1 week before pretrial]</p>	<p><b>File a Notice of Time Requested for (1) voir dire, (2) opening statements, (3) direct and cross examinations, and (4) closing arguments.</b></p>
<p>September 29, 2020 [1 week before pretrial]</p>	<p><b>File Responses to Motions <i>in Limine</i>.</b></p>
<p>September 22, 2020 [2 weeks before pretrial]</p>	<p><b>File Motions <i>in Limine</i> and pretrial objections.</b></p> <p>The parties are <b>ORDERED</b> to meet and confer to resolve any disputes before filing any motion <i>in limine</i> or objection to pretrial disclosures.</p>
<p>September 22, 2020 [2 weeks before pretrial]</p>	<p><b>File Joint Final Pretrial Order, Joint Proposed Jury Instructions with citation to authority and Form of the Verdict for jury trials.</b></p> <p>Parties shall use the pretrial order form on Judge Schroeder's website.</p> <p>Proposed Findings of Fact and Conclusions of Law with citation to authority for issues tried to the bench.</p>
<p>September 15, 2020 3 weeks before pretrial]</p>	<p>Exchange Objections to Rebuttal Deposition Testimony.</p>
<p>September 8, 2020 [4 weeks before pretrial]</p>	<p><b>Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings due.</b></p> <p>If a daily transcript or real time reporting of court proceedings is requested for trial or hearings, the party or parties making said request shall file a notice with the Court.</p>
<p>September 8, 2020</p>	<p>Exchange Rebuttal Designations and Objections to Deposition Testimony.</p>

<p>[4 weeks before pretrial]</p>	<p>For rebuttal designations, cross examination line and page numbers to be included.</p> <p>In video depositions, each party is responsible for preparation of the final edited video in accordance with their parties’ designations and the Court’s rulings on objections.</p>
<p>August 25, 2020 [6 weeks before pretrial]</p>	<p>Exchange Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) by the Party with the Burden of Proof.</p> <p>Video and Stenographic Deposition Designation due. Each party who proposes to offer deposition testimony shall serve a disclosure identifying the line and page numbers to be offered.</p>
<p>September 15, 2020</p> <p>Court designated date – not flexible without good cause - Motion Required</p>	<p><b>10:00 a.m. HEARING ON ANY REMAINING DISPOSITIVE MOTIONS (INCLUDING <i>DAUBERT</i> MOTIONS) before Judge Robert W. Schroeder III, Texarkana, Texas.</b></p>
<p>June 30, 2020</p> <p>Court designated date – not flexible without good cause – Motion Required</p>	<p><b>Any Remaining Dispositive Motions<sup>1</sup> due from all parties and any other motions that may require a hearing (including <i>Daubert</i> motions).</b></p> <p>Motions shall comply with Local Rule CV-56 and Local Rule CV-7. <u>Motions to extend page limits will only be granted in exceptional circumstances. Exceptional circumstances require more than agreement among the parties.</u></p> <p>For each motion filed, the moving party shall provide the Court with one (1) copy of the completed briefing (opening motion, response, reply, and if applicable, surreply), excluding exhibits, in a three-ring binder appropriately tabbed. All documents shall be double-sided and must include the CM/ECF header. These copies shall be delivered to Judge Schroeder’s chambers in Texarkana as soon as briefing has completed.</p> <p><b>Respond to Amended Pleadings.</b></p>

<sup>1</sup> *I.e.* any motions on issues other than indefiniteness.

June 23, 2020  [1 weeks before dispositive motions]	Parties to Identify Rebuttal Trial Witnesses.
June 16, 2020  [2 weeks before dispositive motions]	Parties to Identify Trial Witnesses; Amend Pleadings (after <i>Markman</i> Hearing).  It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. It is necessary to file a Motion for Leave to Amend after the deadline. However, except as provided in Patent Rule 3-6, if the amendment would affect infringement contentions or invalidity contentions, a motion must be made pursuant to Patent Rule 3-6 irrespective of whether the amendment is made prior to this deadline.
June 16, 2020  [2 weeks before dispositive motions]	Expert Discovery Deadline.
May 26, 2020  [5 weeks before dispositive motions]	Parties designate rebuttal expert witnesses (non-construction issues), rebuttal expert witness reports due. Refer to Local Rules for required information.  If, without agreement, a party serves a supplemental expert report after the rebuttal expert report deadline has passed, the serving party must file notice with the Court stating service has occurred and the reason why a supplemental report is necessary under the circumstances.
April 28, 2020  [9 weeks before dispositive motions]	Parties with burden of proof designate expert witnesses (non-construction issues). Expert witness reports due. Refer to Local Rules for required information.
April 21, 2020  [10 weeks before dispositive motions]	Deadline to complete all fact depositions.
April 7, 2020	Final Election of Asserted Prior Art.

[12 weeks before dispositive motions]	
March 31, 2020	Fact discovery deadline (with exception of fact depositions).
[13 weeks before dispositive motions]	

In the event that any of these dates fall on a weekend or Court holiday, the deadline is modified to be the next Court business day.

The parties are directed to Local Rule CV-7(d), which provides in part that “[a] party’s failure to oppose a motion in the manner prescribed herein creates a presumption that the party does not controvert the facts set out by movant and has no evidence to offer in opposition to the motion.”

A party may request an oral hearing on a motion filed with the Court. Any such request shall be included in the text or in a footnote on the first page of the motion or any responsive pleading thereto. The Court does not hold telephonic hearings absent unusual circumstances.

#### Other Limitations

- (a) The following excuses will not warrant a continuance or justify a failure to comply with the discovery deadline:
- (i) The fact that there are motions for summary judgment or motions to dismiss pending;
  - (ii) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
  - (iii) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.
- (b) Amendments to the Docket Control Order (“DCO”): Any motion to alter any date on the DCO shall take the form of a motion to amend the DCO. The motion shall include a chart in the format of the DCO that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a date the proposed date column should remain blank or indicate that it is unchanged). The motion to amend the DCO shall also include a proposed DCO in traditional two-column format that incorporates the requested changes and that also lists all remaining dates. In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines rather than needing to also refer to an earlier version of the DCO.

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