

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

MAXELL, LTD.

§

V.

§

No. 5:19CV36-RWS

§

APPLE INC.

§

§

**ORDER DENYING HEARING ON MOTION TO COMPEL
AND RESERVING RULING ON MOTION FOR SANCTIONS TO LATER DATE**

The following motions have been referred to the undersigned United States Magistrate Judge for pretrial purposes in accordance with 28 U.S.C. § 636:

Maxell, Ltd.’s Opposed Motion to Compel (Docket Entry # 197); and

Maxell, Ltd.’s Opposed Motion for Sanctions (Docket Entry # 210).

Plaintiff Maxell, Ltd. (“Maxell”) filed its opposed motion to compel on February 14, 2020. Docket Entry # 197. In its motion, Maxell requests the Court order Defendant Apple Inc. (“Apple”) to 1) produce all relevant technical documents related to the accused features and functionalities of the Accused Products, 2) produce all non-Source Code documents made available on the Source Code computers, 3) provide a fulsome response to Maxell Interrogatory No. 9, 4) produce the license agreements requested by Maxell, 5) produce all relevant Buyer Surveys, Owner Surveys, and Owner Studies, and 6) produce the prior litigation documents requested by Maxell.

Pursuant to the parties’ agreement, Apple filed an expedited “preliminary response” on February 20, 2020. Docket Entry # 199. District Judge Schroeder referred the motion to the undersigned on February 26, 2020. Two days later, Apple filed its response to Maxell’s motion to compel, combining its preliminary response and the “present supplement in a single document.” Docket Entry # 205 at n. 1. Apple states Maxell did not properly meet and confer on each purported

dispute raised. According to Apple, the majority of those documents Apple was investigating and has now produced. For those issues that the parties properly discussed, Apple represents it had already provided or is in the process of providing, or for those that Maxell never specifically requested before filing its motion, “Apple will nonetheless be producing.” Docket Entry # 205 at p. 1. Apple requests costs and sanctions, asserting Maxell “rush[ed] to court without meeting-and-conferring” and its “motion paints a picture that Apple has intentionally withheld documents by mischaracterizing or misrepresenting certain documents.” *Id.* at p. 7.

Maxell did not seek leave to file a reply. Instead, on March 5, 2020, Maxell filed its opposed motion for sanctions, wherein it requests the Court preclude Apple from using the discovery it failed to timely produce, including discovery produced after January 31; deem certain accused products/components and source code to be representative of all versions of that product as detailed in the chart contained in the motion; and assess monetary sanctions. Docket Entry # 210 at p. 1. According to Maxell, in the final stages of discovery, it is “having to work through documents and source code that *continue* to be produced instead of preparing for depositions and expert reports.” *Id.* (emphasis in original). It is not clear from the motion for sanctions which documents addressed in the motion to compel are still at issue. However, Maxell asserts “Apple still has not produced fulsome, complete discovery for all accused products, components, and functionalities.” *Id.* Maxell states it is “too late now” for it to “review and make meaningful use of such late produced materials.” *Id.* Therefore, Maxell requests eighteen specific sanctions.

On March 6, 2020, the Court entered an Order Regarding Expedited Briefing Schedule and Setting Hearing on Pending Motions. Docket Entry # 215. The Court ordered Apple to file an expedited response to the motion for sanctions on or before March 16, 2020, and it set both motions

for hearing March 17, 2020. Although Maxell had indicated its willingness to waive reply briefing on the motion for sanctions, the Court stated it would allow the parties to file reply briefing following the Court's hearing. *Id.* at p. 2.

On March 13, 2020, the undersigned issued an Order Regarding Hearing on Pending Motions, cancelling the March 17, 2020 hearing previously set for oral arguments on the above motions. Docket Entry # 230. In the order, the Court noted it had reviewed the briefing filed with the Court to date and was of the opinion a hearing is not necessary. *Id.* However, the Court stated to the extent any party is of the firm opinion a hearing is critical to the Court's consideration of the motions, a hearing could be reset but at a much later date given the potential limitations on travel due to COVID-19. *Id.* The Court advised any party insisting upon oral argument on the motions to notify the Court via email. *Id.*

The Court further modified the briefing schedule on the motion for sanctions, ordering Apple to file its response on or before March 19, 2020, Maxell to file its reply on or before March 25, 2020, and Apple to file its surreply on or before March 31, 2020. *Id.* Additionally, the Court advised that if neither party responded the Court would rely solely on the briefing and rule as soon as practicable, hopefully by the week of April 6, 2020. *Id.* at p. 2. Noting in a footnote Maxell had requested expedited briefing and a single hearing on both motions due to the April 7, 2020 deadline for opening expert reports, the Court advised the parties to raise with District Judge Schroeder the issue of an extension of any scheduling order deadlines, if warranted. *Id.* at p. 2, n. 1.

On March 16, 2020, District Judge Schroeder entered an order extending the deadline to complete all fact depositions to April 21, 2020 and the deadline for opening expert reports to April 28, 2020. Docket Entry # 232. The same day, Chief Judge Rodney Gilstrap entered General Order

20-03 regarding Court Operations Under Exigent Circumstances Created by the COVID-19 Pandemic.

Also on March 16, counsel for Maxell emailed the Court, notifying the Court Maxell believes a hearing would be very helpful to the resolution of the motions but noted its concern that the “timing of any in-person hearing will necessarily delay resolution of the motions beyond even the amended expert report deadline of April 21, further causing prejudice to Maxell.” Maxell requests the Court hold a telephonic hearing on the pending motions, wherein the parties would deliver their presentations to the Court and each other ahead of time. Alternatively, the parties could provide Webex presentations during the hearing.

In its email response March 16, counsel for Apple stated Apple also believes a hearing would be helpful to the Court in deciding the pending motions. “In particular, Apple takes very seriously Maxell’s allegations in those motions and believes the Court would benefit from a full airing of the parties arguments and facts regarding those issues.” Apple is sensitive to the unprecedented health issues presented by COVID-19, but given the seriousness of the relief requested in the motion for sanctions in particular, requests that at least that motion be heard by the Court in person. Apple believes that an in-person hearing could be scheduled later in the case without impacting the overall case schedule and without any purported prejudice to Maxell.

As set forth in the Court’s General Order 20-03, the “CDC and other public health entities have recommended social distancing to limit further community spread of COVID-19.” Taking into consideration matters of public health, while reducing the size of public gatherings and the need for travel,” the Court noted judges may use telephonic or video proceedings where deemed appropriate by the presiding judge. *Id.* at pp. 1-2. However, General Order 20-03 “does not impact any court’s

continuing discretion to consider and decide particular matters on the papers alone.” *Id.* at p. 2. It remains the Court’s opinion the motion to compel, to the extent there are any disputed documents that remain in issue following Apple’s more recent productions, can be decided on the papers the week of April 6, which is prior to the amended deadlines to complete fact depositions and provide opening expert reports.

In an effort to streamline the issues remaining, the Court orders Maxell, on or before March 26, 2020, to file a reply to Apple’s response to Maxell’s motion to compel, clearly setting forth the documents still at issue. Apple shall file any surreply on or before March 31, 2020. The parties are allowed fifteen pages for the reply and surreply briefing. The Court will rule on the motion to compel on the papers the week of April 6, 2020, as previously indicated.

Meanwhile, the briefing on the motion for sanctions will be also be ripe on March 31, 2020. The Court agrees with Apple that, to the extent warranted after a review of all of the relevant briefing, an in-person hearing could be scheduled later in the case without impacting the overall case schedule and without any prejudice to Maxell.

Accordingly, it is

ORDERED that on or before March 26, 2020, Maxell shall file a reply to Apple’s response to Maxell’s motion to compel, clearly setting forth the documents still at issue. Apple shall file any surreply on or before March 31, 2020. The parties are allowed fifteen pages for the reply and surreply briefing. The Court will rule on the motion to compel on the papers the week of April 6, 2020, as previously indicated. It is further

ORDERED that the Court will determine at a later date whether an in-person hearing on Maxell’s motion for sanctions is warranted. If so, the Court will schedule the hearing when safe to

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