

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

MAXELL, LTD.,

Plaintiff,

vs.

APPLE INC.,

Defendant.

Civil Action No. 5:19-cv-00036-RWS

JURY TRIAL DEMANDED

**DECLARATION OF LUANN L. SIMMONS IN SUPPORT OF
APPLE INC.'S MOTION TO STAY PENDING DETERMINATION OF
INTER PARTES REVIEW OF THE PATENTS-IN-SUIT**

I, Luann L. Simmons, hereby declare as follows:

1. I am an attorney at the law firm of O'Melveny & Myers LLP, counsel for Defendant Apple, Inc. ("Apple") in this matter filed by Plaintiff Maxell, Ltd. ("Maxell"). I have personal knowledge of the facts stated herein and if called to testify could and would competently testify thereto.

2. Attached as **Exhibit A** is a true and correct copy of the United States Patent Office's Patent Trial and Appeal Board Statistics, which contains data valid as of February 29, 2020. This document was retrieved from the USPTO's website (https://www.uspto.gov/sites/default/files/documents/Trial_Statistics_2020_02_29.pdf) on March 18, 2020.

3. Attached as **Exhibit B** is a true and correct copy of Lex Machina's Patent Trial and Appeal Board Statistics for trials listing Apple Inc. as the Petitioner, which contains data

valid as of March 19, 2020. This document was retrieved from Lex Machina's website on March 20, 2020.

4. Attached as **Exhibit C** is a true and correct copy of Lex Machina's Patent Trial and Appeal Board Statistics for trials listing Erise IP, PA as counsel for the Petitioner, which contains data valid as of March 19, 2020. This document was retrieved from Lex Machina's website on March 20, 2020.

5. Apple filed IPR2020-00199, challenging the validity of U.S. Patent No. 6,329,794 on December 19, 2019, and the PTAB accorded the Petition a filing date on December 23, 2019.

6. Apple filed IPR2020-00200, challenging the validity of U.S. Patent No. 10,084,991 on December 19, 2019, and the PTAB accorded the Petition a filing date on January 16, 2020.

7. Apple filed IPR2020-00201, challenging the validity of U.S. Patent No. 7,116,438 on December 19, 2019, and the PTAB accorded the Petition a filing date on December 23, 2019.

8. Apple filed IPR2020-00202, challenging the validity of U.S. Patent No. 10,212,586 on December 19, 2019, and the PTAB accorded the Petition a filing date on January 16, 2020.

9. Apple filed IPR2020-00203, challenging the validity of U.S. Patent No. 6,408,193 on December 20, 2019, and the PTAB accorded the Petition a filing date on January 13, 2020.

10. Apple filed IPR2020-00204, challenging the validity of U.S. Patent No. 6,928,306 on December 20, 2019, and the PTAB accorded the Petition a filing date on January 10, 2020.

11. Apple filed IPR2020-00407, challenging the validity of U.S. Patent No. 6,748,317 on January 13, 2020, and the PTAB accorded the Petition a filing date on February 12, 2020.

12. Apple filed IPR2020-00408, challenging the validity of U.S. Patent No. 6,430,498 on January 13, 2020, and the PTAB accorded the Petition a filing date on February 12, 2020.

13. Apple filed IPR2020-00409, challenging the validity of U.S. Patent No. 6,580,999 on January 13, 2020, and the PTAB accorded the Petition a filing date on February 12, 2020.

14. Apple filed IPR2020-00507, challenging the validity of U.S. Patent No. 8,339,493 on March 17, 2020, and the PTAB has not yet accorded the Petition a filing date.

15. On June 12, 2019, Maxell served its Infringement Contentions, in which it asserted a total of 90 claims.

16. After Apple produced source code for the accused products, Maxell served supplemental infringement contentions on March 13, 2020. The claim charts in Maxell's Infringement Contentions (as amended on March 13, 2020) include over 3,700 pages.

17. On November 6, 2019, Maxell made its Preliminary Election of Asserted Claims, reducing the number of asserted claims to 40.

18. This case is in the early stages of discovery. Fact discovery is not yet complete, most fact depositions remain, and expert discovery has not yet commenced.

19. On March 23, 2020, I was informed by counsel that Maxell opposes the concurrently filed Motion to Stay Pending Determination of *Inter Partes* Review of the Patents-in-Suit.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed in San Francisco, California, on this 24th day of March, 2020.

/s/ Luann L. Simmons
Luann L. Simmons