

**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

**JOINT MOTION TO PARTIALLY AMEND
DOCKET CONTROL ORDER**

Plaintiff Maxell, Ltd. and Defendant Apple Inc. hereby jointly move to further amend the current Docket Control Order, as amended on March 16, 2020 (Dkt. No. 232), in the above-captioned matter with respect to the timing of fact depositions and expert reports and discovery. The proposed amendments do not impact the dates for trial or the pretrial conference.¹

After the Court granted the parties' previous request for an extension, the parties have worked diligently to proceed with this case notwithstanding the COVID-19 related challenges. The parties have worked to make the necessary arrangements to proceed with remote depositions, to the extent possible, and to make Apple's source code available for inspection at a third-party facility. As of the date of this motion, Maxell has taken four remote depositions of Apple Rule

¹ Apple believes that COVID-19 and other issues Apple has raised with Maxell necessitate further extensions to the schedule. Maxell agrees that COVID-19 related issues necessitate the extension requested herein; however, it does not believe that any further extensions are warranted. If the parties cannot reach agreement this week, Apple intends to raise those issues with the Court, including a motion to take two fact depositions after the deadline (Maxell contests the propriety of one of the fact witnesses, including whether he was noticed for a deposition within the fact discovery period). The parties agree that their request for the present extension is without prejudice to their arguments regarding any relief that either may seek.

30(b)(6) designees, and the parties have agreed on or are scheduling 11 more fact depositions². The parties also expect that Maxell will have access to review Apple's source code at a third-party facility this week.

While the parties worked diligently and expeditiously to make all needed arrangements regarding review of Apple's source code and the remote depositions, the parties will not be able to complete all fact depositions by the current deadline of April 21. The parties, therefore, jointly request that the deadline to complete fact depositions be extended by an additional 9 days, from April 21 to April 30, 2020.³

To accommodate the timing of depositions, the parties further request that the deadline to complete expert reports, and expert discovery similarly be extended by 9 days. The amendments proposed in this Joint Motion does not change the dates for the hearing on dispositive motions, pretrial disclosures and filings, the pretrial conference, or trial.

A table representing the current deadlines and proposed amendments is set forth below:

Current Date	Proposed Amended Date	Event
3 DAYS after conclusion of Trial		Parties to file Motion to Seal Trial Exhibits , if they wish to seal any highly confidential exhibits. EXHIBITS: See Order Regarding Exhibits below.

² These fact depositions include 8 additional Apple Rule 30(b)(6) witnesses, 1 remaining Maxell Rule 30(b)(6) witness, and 2 third-party witnesses.

³ There are two fact depositions that cannot be scheduled to occur by either the current deadline or the proposed amended deadline (one of which is contested by Maxell as noted in footnote 1). To the extent Apple intends to call BJ Watrous at trial, Apple and Maxell have agreed that Apple will offer him for deposition before trial and as soon as the COVID-19 pandemic subsides.

Current Date	Proposed Amended Date	Event
<p>October 26, 2020</p> <p>Court designated date – not flexible without good cause - Motion Required</p>		<p>9:00 a.m. JURY TRIAL before Judge Robert W. Schroeder III, Texarkana, Texas.</p> <p>For planning purposes, parties shall be prepared to start the evidentiary phase of trial immediately following jury selection.</p>
<p>October 26, 2020</p> <p>Court designated date – not flexible without good cause - Motion Required</p>		<p>9:00 a.m. JURY SELECTION before Judge Robert W. Schroeder III, Texarkana, Texas.</p>
<p>October 6, 2020</p>		<p>10:00 a.m. PRETRIAL CONFERENCE before Judge Robert W. Schroeder III, Texarkana, Texas.</p> <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</p> <p>[1 week before pretrial]</p>		<p>File a Notice of Time Requested for (1) voir dire, (2) opening statements, (3) direct and cross examinations, and (4) closing arguments.</p>
<p>September 29, 2020</p> <p>[1 week before pretrial]</p>		<p>File Responses to Motions <i>in Limine</i>.</p>
<p>September 22, 2020</p> <p>[2 weeks before pretrial]</p>		<p>File Motions <i>in Limine</i> and pretrial objections.</p> <p>The parties are ORDERED to meet and confer to resolve any disputes before filing any motion <i>in limine</i> or objection to pretrial disclosures.</p>

Current Date	Proposed Amended Date	Event
<p>September 22, 2020</p> <p>[2 weeks before pretrial]</p>		<p>File Joint Final Pretrial Order, Joint Proposed Jury Instructions with citation to authority and Form of the Verdict for jury trials.</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</p> <p>[3 weeks before pretrial]</p>		<p>Exchange Objections to Rebuttal Deposition Testimony.</p>
<p>September 8, 2020</p> <p>[4 weeks before pretrial]</p>		<p>Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings due.</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>[4 weeks before pretrial]</p>		<p>Exchange Rebuttal Designations and Objections to Deposition Testimony.</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>

Current Date	Proposed Amended Date	Event
<p>August 25, 2020</p> <p>[4 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>10:00 a.m. HEARING ON ANY REMAINING DISPOSITIVE MOTIONS (INCLUDING DAUBERT MOTIONS) before Judge Robert W. Schroeder III, Texarkana, Texas.</p>
<p>June 30, 2020</p> <p>Court designated date – not flexible without good cause - Motion Required</p>		<p>Any Remaining Dispositive Motions⁴ due from all parties and any other motions that may require a hearing (including <i>Daubert</i> motions).</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>Respond to Amended Pleadings.</p>

⁴ *I.e.* any motions on issues other than indefiniteness.

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