EXHIBIT D

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Petitioner
v.
MAXELL, LTD.
Patent Owner

Case No. IPR2020-00199
U.S. Patent No. 6,329,794

PETITONER APPLE INC.'S PRELIMINARY REPLY

dates.[3] *See* 157 Cong. Rec. S5429 (Sept. 8, 2011) (Sen. Kyl) ("High-technology companies … are often sued by defendants asserting multiple patents with large numbers of vague claims, making it difficult to determine in the first few months of the litigation which claims will be relevant. . . . [I]t is important that the section 315(b) deadline afford defendants a reasonable opportunity to identify and understand the patent claims that are relevant to the litigation.")

Factor 3 – The Court has little substantive investment: Apart from the *Markman* proceedings, the district court has not invested other substantive efforts and the litigation is not "advanced." Summary judgment is still months away, and it is unlikely the court will tackle invalidity until trial. Fact discovery and depositions are ongoing. The bulk of the parties' work lies ahead. *See IOENGINE* at *14.

Nor did the litigation give Apple a tactical advantage. Because Maxell did not substantively respond to Apple's invalidity contentions, Apple could not have used any substantive insight gained in the litigation in its IPR filings. (Paper 11, at 12.)

[3] Maxell argues it served Apple with a letter identifying the challenged patent on May 17, 2018. That letter (Ex. 2001) listed ***80 different patents*** and ***647 possible claims***. Maxell's suggestion that this letter should be part of this analysis is patently unreasonable.