

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

MAXELL, LTD.,

Plaintiff

v.

APPLE INC.,

Defendant.

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

**JURY TRIAL DEMANDED**



**APPLE INC.'S REPLY IN SUPPORT OF ITS  
MOTION TO COMPEL LICENSING AND  
NEGOTIATION DOCUMENTS AND FOR SANCTIONS**

Maxell's Opposition reduces to an unsupported argument—directly contradicted by record evidence—that Maxell does not have a relationship with Hitachi.<sup>1</sup> Confronted with the extensive record that Apple presented in its opening brief, Maxell's opposition resorted to disavowing its own 30(b)(6) testimony, obfuscating critical facts about Maxell and Hitachi's current relationships in footnotes, and arguing that Maxell's relationship with Hitachi is limited to certain subsidiaries, certain employees, and certain types of obligations.

I. [REDACTED]

Maxell's Rule 30(b)(6) corporate designee plainly testified that:

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>1</sup> This brief refers to Hitachi, Ltd. as "Hitachi," Hitachi Industry Control Solutions as "Hitachi ICS," Hitachi Consumer Electronics Co., Ltd. as "HCE," and combinations of more than one Hitachi subsidiary as "Hitachi subsidiaries."

[REDACTED]

[REDACTED]

Maxell offers no support for this narrow interpretation, contradicted by its sworn testimony. And Maxell never explains why Hitachi would refuse to hand over documents about patents it gave to Maxell to assert where Hitachi and its subsidiaries have repeatedly offered their help and employee's testimony to assist Maxell in this litigation. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Tellingly, neither Maxell's corporate witness nor counsel previously claimed such a limit. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Finally, Maxell never explains why the carefully worded letter it sent to Hitachi requesting documents was characterized as "a courtesy to Apple," an entity to whom Hitachi owes no contractual obligation. D.I. 166-2. [REDACTED]

[REDACTED]

[REDACTED]

## **II. Maxell's Selective Production Of Licenses Based on Sword-And-Shield Tactics**

While Maxell previously alleged it had "produced all prior licenses of which it was aware and had control," D.I. 166 at 6, Maxell does not appear to deny that it actually has the licenses Apple seeks, D.I. 280 at 6 (alleging that, of the requested documents, Maxell only does not have the "earlier sales negotiation materials"). Documents that show Hitachi (or Maxell) exhausted the patent rights Maxell now asserts or that show Hitachi (or Maxell) previously licensed the

patents are relevant to Apple's claims and defenses. Maxell should be ordered to produce them.

### **III. Maxell And Hitachi's Relationship Is Much Deeper Than Maxell Is Willing To Admit**

Hitachi is not an unrelated third party to this case. [REDACTED]

[REDACTED]

[REDACTED] Maxell's argument that its relationship is only with certain Hitachi subsidiaries and that each witness chose to participate, implying they personally desired to travel more than 20 hours for the sole purpose of being deposed, is not credible. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Indeed, some Hitachi subsidiaries' employees testified for Maxell because of their employers' relationships with Maxell. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Maxell's only rebuttal is to point out that Mr. Takizawa probably would not be fired for failure to attend and Mr. Nakano had the option to say no. D.I. 280 at 3-4. Maxell's rebuttals rely on the misconception that jobs are mere checklists of tasks to avoid being fired.

[REDACTED]

Maxell implies that the witnesses personally desired to fly to the U.S. to be deposed. But these depositions are not personal travel. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Companies with the separation that Maxell alleges exists between it and Hitachi do not reimburse each other's employees' business expenses. Maxell's only response is the conclusory statement that reimbursement "does not establish Hitachi involvement in the litigation or any arrangement with Hitachi related to the case." D.I. 280 at 4.

[REDACTED]

[REDACTED]

[REDACTED]

*Maxell prepared Hitachi witnesses for their depositions and gave them counsel.* Maxell orchestrated the six witnesses' depositions and preparation, and Maxell personnel and counsel prepared the witnesses and Maxell's counsel represented them. Ex. D1 at 93:11-19; Ex. D2.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] But this fact shows that Hitachi treats its employees and its subsidiaries' employees like one and the same. Even Maxell falls under this umbrella. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Maxell tries to argue this merely shows a relationship between Maxell and Hitachi ICS, but Maxell never answers how Maxell and Hitachi ICS are related if not



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