

**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**

**MAXELL, LTD.’S OPPOSED MOTION FOR LEAVE TO FILE A SUR-REPLY IN  
OPPOSITION TO APPLE INC.’S RENEWED MOTION TO COMPEL LICENSING  
AND NEGOTIATION DOCUMENTS AND FOR SANCTIONS**

Plaintiff Maxell, Ltd. (“Maxell”), through undersigned counsel, respectfully submits this Opposed Motion for Leave to file a Sur-Reply, attached hereto at Exhibit A, in Opposition to Apple Inc.’s (“Apple”) Renewed Motion to Compel Licensing and Negotiation Documents and for Sanctions. (D.I. 254).

There is good cause for Maxell’s proposed filing of its Sur-Reply at this time. With respect to motions to compel, reply briefing is generally not permitted. *See* Standing Order Regarding “Meet and Confer” Obligations Relating to Discovery Disputes at ¶1. The Court, however, issued an Order stating: “Given the current climate, including General Order 20-03, it is ORDERED that Apple may file a reply brief in support of its motion” to Compel Licensing and Negotiation Documents. D.I. 286. Although not explicitly stated in the Court’s Order, it appears that reply briefing may have been permitted to enable Apple to respond to Maxell’s Opposition in lieu of a response that would typically be made at an in-person hearing on the motion. Assuming that is correct, and Maxell will not be permitted to address Apple’s Reply at a hearing, Maxell submits that it should be provided an equal opportunity to respond to the arguments raised in Apple’s

Reply. Maxell specifically seeks to file the attached Sur-reply of 5 pages, which is equal in length to the Reply filed by Apple. (D.I. 300).

Maxell's proposed Sur-reply is further warranted by the fact that Apple's motion is not merely a motion to compel, but also contains a request for a harsh sanction, namely precluding Maxell from relying on any documents that originated from Hitachi and testimony from any Hitachi or Hitachi subsidiary witnesses.

Maxell's proposed Sur-reply is also necessary in order to address mischaracterizations made by Apple in its Reply. For example, Apple continues to cite to excerpts of an agreement between Maxell and HCE and excerpts of inventor testimony, which are both misleading in the absence of a discussion of the broader agreement or testimony. Moreover, the Sur-reply is necessary to enable Maxell to present relevant testimony of Alan Loudermilk, whose deposition was held on April 28, 2020, after Maxell's Opposition was filed.

In view of the foregoing, Maxell submits that good cause exists to grant it leave to file the attached Sur-reply to its Opposition.

Dated: May 4, 2020

By: /s/ Jamie B. Beaber

Geoff Culbertson  
Kelly Tidwell  
Patton, Tidwell & Culbertson, LLP  
2800 Texas Boulevard (75503)  
Post Office Box 5398  
Texarkana, TX 75505-5398  
Telephone: (903) 792-7080  
Facsimile: (903) 792-8233  
gpc@texarkanalaw.com  
kbt@texarkanalaw.com

Jamie B. Beaber  
Alan M. Grimaldi  
Kfir B. Levy

James A. Fussell, III  
Baldine B. Paul  
Tiffany A. Miller  
Saqib Siddiqui  
Bryan Nese  
William J. Barrow  
Alison T. Gelsleichter  
Clark S. Bakewell  
MAYER BROWN LLP  
1999 K Street, NW  
Washington, DC 20006  
Telephone: (202) 263-3000  
Facsimile: (202) 263-3300  
jbeaber@mayerbrown.com  
agrimaldi@mayerbrown.com  
klevy@mayerbrown.com  
jfussell@mayerbrown.com  
bpaul@mayerbrown.com  
tmiller@mayerbrown.com  
ssidiqui@mayerbrown.com  
bnese@mayerbrown.com  
wbarrow@mayerbrown.com  
agelsleichter@mayerbrown.com  
cbakewell@mayerbrown.com

Robert G. Pluta  
Amanda S. Bonner  
MAYER BROWN LLP  
71 S. Wacker Drive  
Chicago, IL 60606  
(312) 782-0600  
rpluta@mayerbrown.com  
asbonner@mayerbrown.com

*Counsel for Plaintiff Maxell, Ltd.*

**CERTIFICATE OF CONFERENCE**

I hereby certify that Plaintiff Maxell, Ltd. has complied with the requirements of Local Rule CV-7(h) governing this case. Specifically, lead and local counsel for the parties discussed this request on a telephone conference held May 1, 2020. Maxell requested that it be given 5 pages to respond to Apple's Reply. Apple's counsel indicated that Apple would oppose the motion.

/s/ Jamie B. Beaber  
Jamie B. Beaber

/s/ Geoff Culbertson  
Geoff Culbertson

**CERTIFICATE OF SERVICE**

The undersigned certifies that all counsel of record who are deemed to have consented to electronic service are being served this 4th day of May, 2020, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Jamie B. Beaber  
Jamie B. Beaber