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**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-00036-RWS

JURY TRIAL DEMANDED

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**MAXELL, LTD.'S SUR-REPLY IN OPPOSITION TO
APPLE INC.'S RENEWED MOTION TO COMPEL INFRINGEMENT CONTENTIONS
COMPLIANT WITH PATENT RULE 3-1(G) AND FOR SCHEDULE EXTENSION OR,
IN THE ALTERNATIVE, TO PRECLUDE MAXELL'S RELIANCE ON SOURCE
CODE FOR INFRINGEMENT**

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Apple's intentions are clear. Push trial by any means possible. Having been denied the ability by this Court twice and by the Federal Circuit, Apple is now trying to push the same goal by continuing to argue that Maxell's SSICs are non-compliant when Apple itself cannot dispute that [REDACTED] without the need for any further specificity. D.I. 306 at 4.¹ Surprisingly, Apple states that this fact is of "no moment." If [REDACTED] understand what functionalities the source code files (cited in the SSICs) within these directories provide. If Apple's counsel chooses not to [REDACTED] gain an understanding of how Apple's products function, that is their choice. Maxell should not be penalized for it.

Apple argues Maxell is trying to "run out the clock" by not providing compliant contentions. D.I. 306 at 1. If anything, Apple's own discovery delays caused the deadline for Maxell's P.R. 3-1(g) infringement contentions to fall on March 12, 2020.² D.I. 204 at 5. Had Apple produced all relevant source code earlier and taken time to provide Maxell with information identifying the accused products to which the source code belongs,³ Maxell could and would have complied with P.R. 3-1(g) earlier. Apple should not be rewarded for its own delays.

I. Maxell Provides Source Code Filenames With Explanation

Apple alleges that Maxell has cited to "large ranges of code without explanation," but this is not correct:

¹ Apple alleges that [REDACTED] D.I. 306 at 4-5. This is untrue. Every single example Maxell provided in its Opposition—and there are more—includes [REDACTED]

² Apple alleges that Maxell's discovery disputes were resolved "largely in *Apple's* favor" but omits the fact that many issues were denoted as resolved prior to the Court's order only because of productions made by Apple in **March 2020** (the month fact discovery closed) **after** Maxell filed its Motion. *See* D.I. 266.

³ [REDACTED]

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'493 Patent. Maxell is at a loss of what more information it can provide that will clue Apple in on the infringement theory for these claim elements. As this Court may recall, during *Markman*, counsel for Apple provided a tutorial over the meaning of the terms in this patent, including mixing and culling. Hr. Tr. at 135:10-22 (“an image sensor that includes 1200 lines in the vertical direction and those lines are **down converted** into 240 lines to match the number of lines within a field of display”); 145:6-147:3 (generally describing culling as selection of pixels). Clearly, Apple and its counsel had no problem understanding what image processing functions (e.g., downsampling/downscaling) the claims related to at that time. But when it comes to Apple’s products or code, Apple’s counsel fails to comprehend even simple operations as [REDACTED]. Indeed, to provide clear identification of its infringement theory, in June 2019, Maxell included pictures showing an iPhone capturing pictures and then outputting pictures after a reduced resolution and included a table identifying the mathematical ratios it believed applied to the image sensors when this operation occurs. Maxell’s SSICs include [REDACTED]. Then Maxell printed less than 20 pages⁴ of code for the entire '493 Patent. Maxell’s infringement theory for the '493 Patent has never changed from what was identified in June 2019 with screen shots showing the camera operations of an iPhone.⁵

'794 Patent. Even in its Complaint, Maxell explained that the accused functionalities are directed to “Low Power Mode.” D.I. 1 at ¶ 126 (including screenshot of “Low Power Mode”). In its June 2019 contentions, Maxell specifically pointed to screen dimming in low power mode for this claim element. D.I. 299 at 4-5. Further, in its SSICs Maxell included the following explanation of how the cited source code projects correspond to the various accused functionalities:

⁴With the exception of [REDACTED] code, Maxell has a page limit of 350 pages of source code across all ten patents. Meaning on average Apple would need to review a total of 35 pages per patent to get an understanding of the excerpts of source code Maxell’s experts consider most pertinent for all of the claim elements for a particular patent.

⁵ Apple’s complaint that Maxell’s contentions recite “non-limiting examples” is a red herring. If Apple believes Maxell’s expert opinions fall outside the scope of the contentions, Apple will be able to file a Motion to Strike.

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[REDACTED]

SSIC Appendix 8-A at 1. Again, short of providing pinpoint, expert-report-level citations, Maxell does not know what more it can do in the way of disclosing its infringement theory.

'317/'999/'498 Patents. Apple complains that it is somehow prejudiced because Maxell's SSICs are "[f]orcing Apple to look at product screenshots referred to in textual descriptions... to divine what functions" are accused.⁶ D.I. 306 at 4. The Court directed Apple to read code citations in light of the textual disclosures. D.I. 204 at 4. The screenshots identify the infringement theory with specificity by including actual evidence of the accused operation. Apple cannot refuse to look at the evidence and simultaneously complain that it cannot discern what is accused.

II. Maxell's Grouping Of Multiple Claim Elements Is Not Overbroad

Where applicable, Maxell has identified the same source code files for certain claim elements because Apple [REDACTED]

[REDACTED]. Apple's counsel summed it up perfectly: "[REDACTED]
[REDACTED]
[REDACTED]." Motions Hr. Tr. 48:13-15 (January 8, 2020). Thus Maxell must identify the complete

source code calls when a particular element is met by multiple files. Any differentiation between elements would be abundantly clear had Apple reviewed the screenshots included in the SSICs.

III. Maxell Has Not Hidden The Relevant Source Code

Apple misleadingly complains about the total number of source code files identified in Maxell's SSICs as evidence of Maxell trying to "hide" relevant source code. This is not true. First, the "1,300" number (D.I. 306 at 1) is misleading. The SSICs are directed to 87 accused products

⁶ In addition to these patents, Apple makes this argument about the '794 Patent as well.

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in different categories, spanning seven years, and a total of 40 claims⁷ across ten patents. Apple's count of "1,300" includes [REDACTED] [REDACTED] even though the infringement theory/functionality is the same (*e.g.*, counting [REDACTED] even though it is identified for the same theory *i.e.*, as a device for getting location information). When counted correctly, the SSICs include roughly 333 unique files,⁸ with a large number of files usually grouped together under the same directory for a particular patent. This amounts to an average of 33 unique files per asserted patent and/or 17 files per currently asserted 20 claims. The files are laid out in plain sight.

Second, the number of files is largely due to the fact that Apple has repeatedly refused to engage in a discussion about representative products. This is despite the fact that [REDACTED] [REDACTED] as it relates to material aspects of the accused functions (*e.g.*, AirDrop, Maps, Unlock, Find My Friends, Pairing, FaceTime, Low Power Mode, and/or Power Amplifier configuration upon boot-up). Thus, Apple forced Maxell to identify the same source code files across 87 products but now complains that Maxell has identified too much while also objecting strenuously when Maxell prints a source code file that is not identified specifically (*e.g.*, [REDACTED] [REDACTED]).

Third, Maxell's offer to provide more specificity with respect to a single claim element was an attempt to avoid motion practice and was raised during the meet and confer because that was the **only** example Apple would provide and meet and confer over.

Fourth, Apple's assertion that the cherry-picked examples provided in its motion are

⁷ The SSICs were served prior to Maxell's Final Election of Asserted Claims.

⁸ Counted manually so may include minor errors.

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