

**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

**APPLE’S OPPOSITION TO MAXELL’S MOTION FOR LEAVE TO FILE A SUR-
REPLY IN FURTHER OPPOSITION TO APPLE RENEWED MOTION TO
COMPEL LICENSING AND NEGOTIATION DOCUMENTS AND FOR SANCTIONS**

No good cause exists for Maxell’s Sur-Reply (D.I. 308) to Apple’s Renewed Motion to Compel (D.I. 156). The Parties’ long-running dispute on Maxell’s refusal to produce documents from Hitachi—despite its close relationship with Hitachi—has already been the subject of five briefs (D.I. 156, 166, 254, 280, 300), one hearing, and one court order (D.I. 202). The factual record that Apple has established is plain.

First, Apple’s “continue[d]” citation in its reply to excerpts of the Maxell/HCE agreement and Hitachi inventor testimony do not create good cause. D.I. 308 at 2. Apple presented both in its opening Renewed Motion. D.I. 254. Apple’s Reply does not cite any new agreements or inventor testimony. If Maxell needed to “discuss[] the broader agreement or testimony,” it could have done so (and did) in its Opposition. D.I. 308 at 2.

Second, the relief Apple seeks does not create any good cause. Apple fully presented that request in its Renewed Motion, D.I. 254 at 7, to which Maxell fully responded, D.I. 280 at 7.

Finally, Mr. Loudermilk’s testimony also does not provide good cause even though Apple deposed him after Maxell filed its Opposition, and on the same day as Apple filed its Reply. While

skeptical and to avoid burdening the Court with this issue, Apple was willing to agree to consent to Maxell's sur-reply on the condition that Maxell agreed to a further reply from Apple of the same length. But Maxell refused. This confirmed that Mr. Loudermilk was a red herring, and unsurprisingly he only features in two sentences in its 5-page sur-reply. Indeed, Maxell's current request appears to be part of Maxell's new strategy to get the last word on Apple's recent motions, as Maxell informed Apple this morning that it also intends to seek (based on similarly tenuous grounds) a sur-reply to Apple's renewed motion to compel infringement contentions (D.I. 284).

The Court's Standing Order permits Apple's Opening Motion and Maxell's Opposition. D.I. 286. Here, the Court specifically allowed Apple to file a Reply, in lieu of a hearing, so that Apple—as the moving party—could reply to Maxell's Opposition. Apple did not understand the Court's order as an invitation for yet more briefing from Maxell (or Apple).

Accordingly, Apple respectfully requests that the Court deny Maxell's motion for leave to file a sur-reply. But if the Court is inclined to accept Maxell's sur-reply, Apple respectfully requests leave to file a response of the same length, attached hereto as Exhibit 1.

May 4, 2020

/s/ Luann L. Simmons

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CERTIFICATE OF SERVICE

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

/s/ Melissa R. Smith
Melissa R. Smith

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