

EXHIBIT 1



**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 SUR-SUR-REPLY IN SUPPORT OF ITS
MOTION TO COMPEL LICENSING AND
NEGOTIATION DOCUMENTS AND FOR SANCTIONS**

Maxell's Sur-Reply (D.I. 308) is a last-ditch (and unsuccessful) attempt to further obfuscate its efforts to play "keep away" with materials from Hitachi that are plainly relevant to Apple's defenses. Indeed, on one hand, Maxell will apparently try to convince the jury that Hitachi invented iPhone before Apple did ("Hitachi was developing smartphone technology for almost 20 years before the first iPhone ever came out") and that Maxell and Hitachi are one-and-the-same ("Until recently, Maxell was actually affiliated with Hitachi"). *Maxell v. ZTE*, 5:16-179, Dkt. 293 at 57:9-10, 58:19-21. While on the other, Maxell's relationship with Hitachi¹ suddenly vanishes when Maxell is called to account for it through discovery. But the record is replete with instances of Maxell leveraging its business relationship with Hitachi concerning this litigation to get information it wants:

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

The prejudice to Apple is self-evident. But Maxell would not be the first plaintiff to play this game and lose. *See J.S.T. Corp. v. Robert Bosch LLC*, 2019 WL 2354631, at *8 (E.D. Mich. June 3, 2019). And it is hardly Apple's argument (as Maxell hypothesizes) that every corporate relationship, no matter how tenuous, is deep enough—like Maxell's is with Hitachi—to support

¹ 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."

discovery. The Court has “inherent authority to prevent unfairness to [Apple] resulting from [Maxell’s] proven, one-sided, access to” Hitachi and its subsidiaries, and Apple submits it should exercise that authority based on the record that Apple has established here. *Id.*²

I. [REDACTED]

[REDACTED] Its corporate witness, Mr. Kitagata, testified as such [REDACTED]

Mr. Kitagata’s testimony would otherwise be nonsensical. D.I. 300 at 1-2.

Maxell newly alleges that the support required by the MOU is limited to [REDACTED]

[REDACTED] But Maxell concedes that no witnesses (and Maxell’s own counsel) had ever argued that. *Id.* at 2 n.2; D.I. 300 at 2.³ The express language of the provision, permitting [REDACTED] does not support Maxell’s litigation-inspired interpretation. D.I. 300 at 2.

Maxell now also argues that the MOU [REDACTED]. D.I. 308 at 2. [REDACTED]

² While Hitachi is actively helping Maxell—it has no compelling interest in responding to *Apple’s* requests, including this Court’s Letters Rogatory. D.I. 146, D.I. 254-01, A4.

³ [REDACTED]

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.