

# 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 Hitachi<sup>1</sup> 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

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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."

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.*<sup>2</sup>

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.<sup>3</sup> 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]

<sup>2</sup> 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.

<sup>3</sup> [REDACTED]



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