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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 RESPONSE TO APPLE INC.’S NOTICE OF SUPPLEMENTAL
FACTS IN SUPPORT OF APPLE’S RENEWED MOTION TO COMPEL LICENSING
AND NEGOTIATION DOCUMENTS AND FOR SANCTIONS D.I. 254**

On May 15, 2020, Apple filed a notice of supplemental facts in support of its Renewed Motion to Compel Licensing and Negotiation Documents and for Sanctions (D.I. 330). Apple alleges that there are “supplemental facts” relevant to its motion, suggesting there are some new facts the Court must consider, and presumably that Apple could not have brought these to the Court’s attention when it filed its renewed motion. In fact, Apple’s notice is, at the very least, a blatant and deliberate attempt to mislead the Court, and Apple’s filing of the Notice speaks volumes about Apple’s willingness to manufacture “facts” (or “supplemental facts”) in support of its baseless motion.

The new information Apple suggests is necessary for the Court to consider is Maxell’s

[REDACTED]

[REDACTED]. These are addressed in Carla Mulhern’s expert report (Maxell’s damages expert report). However, these “new” facts have been known to Apple since July of last year.

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First, Apple has the [REDACTED], and has had them for almost 10 months. Maxell produced them to Apple in an early production in this case on July 29, 2019. Apple has also had Maxell's 30(b)(6) testimony from the ZTE case, in which Maxell's witness discusses these agreements. Maxell produced those transcripts on July 10, 2019, more than 10 months ago. Maxell has also had Ms. Mulhern's expert report from the ZTE case, as well as her deposition testimony from that case, in which she discusses these same license agreements for about 7 months. Maxell produced them on September 16, 2019.

Second, Apple has known about Maxell's reliance on these agreements for almost 10 months. Maxell first identified the license agreements and its prior 30(b)(6) testimony discussing the agreements in response to Interrogatory Nos. 10 and 11, served July 29, 2019. Maxell identified Ms. Mulhern's prior report and testimony in supplemental response to Interrogatory No. 11 on October 19, 2019. There is no scenario in which Apple can honestly claim not to have known since last year about the agreements, Ms. Mulhern's use of the agreements, or Maxell's reliance on them. Apple's claim that these are "supplemental facts" now is troublingly disingenuous.

Third, these "new" facts are irrelevant to Apple's motion and have no bearing on whether Maxell controls Hitachi, Ltd. Maxell has been clear from the outset that it received these documents (and others) from HCEC in 2013 when Maxell acquired HCEC's consumer business and patent portfolio. Maxell timely produced all relevant documents in its possession, custody and control, in this case, which included these documents. But neither the fact that Maxell received these documents in 2013, nor their relevance to this case, establish control. They do not establish Hitachi ownership of Maxell or any right of Maxell to demand documents from Hitachi. All they show is that in 2013 HCEC did in fact transfer to Maxell relevant materials.

Apple's continued allegations of selective reliance, and raising of irrelevant "supplemental

PUBLIC VERSION

facts” furthers the knowing and deliberate gross misrepresentations that Apple has made in connection with this issue since it was first raised. Maxell is not Hitachi and does not have control over Hitachi, no matter how many times Apple says it. Maxell has produced the relevant materials it has within its possession, custody, or control. It cannot produce anything it does not have within its possession, custody or control. Finally, Maxell already asked Hitachi for the materials Apple seeks and Hitachi ignored the request.

Dated: May 18, 2020

By: /s/ Jamie B. Beaber

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CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who are deemed to have consented to electronic service are being served this 18th day of May 2020, with a copy of this document via electronic mail.

/s/ Jamie B. Beaber _____
Jamie B. Beaber

