

**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'S RESPONSE TO MAXELL'S NOTICE OF SUPPLEMENTAL AUTHORITY  
REGARDING APPLE INC.'S OPPOSED MOTION FOR LEAVE TO CONDUCT TWO  
DEPOSITIONS AFTER THE FACT DEPOSITION DEADLINE**

Apple made its motion (D.I. 307) when it did because (1) Maxell agreed—before renegeing—to take Mr. Watrous's deposition out of time if Apple intends to call him at trial; and (2) it believed surprising the Court with opposed motion practice for Mr. Murphy's deposition, months after fact discovery closed, and once the pandemic subsides, was inappropriate.

In *Optis*, the parties jointly sought leave to conduct certain depositions after fact discovery closed, including for a witness in Germany (Mr. Faber), where remote depositions are not permitted and travel is restricted due to COVID-19. Nothing in Judge Gilstrap's order suggests (as Maxell does) that it is proper for Apple to have assumed (as Maxell does) that just waiting until later would have been acceptable to this Court. Apple submits that this issue remains ripe for the Court's consideration now, rather than at some later time at least because arrangements with the U.S. Embassy in Japan need to be made in advance. D.I. 307 at 2 n.1. Maxell's low-traveling implication that Apple was not forthcoming with the Court on this issue is also without merit. Apple therefore respectfully asks that the Court grant Apple leave to conduct these depositions as soon as is warranted under the circumstances. *Id.* at 1.

May 22, 2020

/s/ Luann L. Simmons

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*Attorneys for Defendant Apple Inc.*

**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 22, 2020.

*/s/ Melissa R. Smith*  
Melissa R. Smith