

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

MAXELL, LTD.,

Plaintiff,

vs.

APPLE INC.,

Defendant.

Civil Action No. 5:19-cv-00036-RWS

**EXPERT REPORT OF JACOB ROBERT MUNFORD
CONCERNING PUBLICATION AND PUBLIC ACCESSIBILITY**

I. INTRODUCTION

1. My name is Jacob Robert Munford. I have been asked to submit this report on behalf of Apple, Inc. (“Apple”). I have been retained as an expert by Apple to study and to provide opinions on when certain articles and reports were published and publicly accessible.

2. I am over the age of 18, have personal knowledge of the facts set forth herein, and am competent to testify to the same. This report and my opinions contained herein are subject to change or modification if additional relevant information becomes available that bears on my analysis.

II. EXPERIENCE AND COMPENSATION

3. Information concerning my professional qualifications, experience, publications, and presentations in the field of library sciences in which I have served as an expert are set forth in my current Curriculum Vitae, attached hereto as Exhibit 1.

4. I earned a Master of Library and Information Science (MLIS) from the University of Wisconsin-Milwaukee in 2009. I have over ten years of experience in the library/information science field. Beginning in 2004, I have served in various positions in the public library sector including Assistant Librarian, Youth Services Librarian and Library Director.

5. During my career in the library profession, I have been responsible for materials acquisition for multiple libraries. In that position, I have cataloged, purchased and processed incoming library works. That includes purchasing materials directly from vendors, recording publishing data from the material in question, creating detailed material records for library catalogs and physically preparing that material for circulation. In addition to my experience in acquisitions, I was also responsible for analyzing large collections of library materials, tailoring library records for optimal catalog search performance and creating lending agreements between libraries during my time as a Library Director.

6. I have been retained on behalf of the Apple to provide assistance in the above-illustrated matter in establishing the authenticity and public availability of the documents discussed in this declaration. I am being compensated for my services in this matter at the rate of \$100.00 per hour plus reasonable expenses. My statements are objective, and my compensation does not depend on the outcome of this matter.

III. LEGAL STANDARDS

7. I am not an attorney and have not been asked to offer my opinion on the law. As an expert offering an opinion on whether certain articles and reports qualify as printed publications, however, I understand that I am obliged to follow existing law. I understand the following legal principles apply.

8. Counsel has informed me that under 35 U.S.C. § 102, certain materials may qualify as prior art in patent litigation cases when that material constitutes a “printed publication.” I understand that to qualify as a printed publication, the material in question must be sufficiently accessible to the public interested in the art. In turn, material is sufficiently accessible if it was disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence can locate it. I further understand that accessibility goes to the issue of whether interested members of the relevant public could obtain the information if they wanted to and not whether any particular member of the public actually retrieved the material.

9. I understand that one way to demonstrate public accessibility is to show competent evidence of general library practices that indicates an approximate time when the material in question was published or became publicly accessible. For example, I understand that cataloging or indexing a material in a library can show the material was sufficiently accessible to those interested in the art. I also understand that this is not the only way to prove

public accessibility, and, among other ways, it can also be proven by the material's copyright date or citations to it by other materials.

IV. LIBRARY CATALOGING PRACTICES

10. I am fully familiar with the catalog record creation process in the library sector. In preparing a material for public availability, a library catalog record describing that material would be created. These records are typically written in Machine Readable Catalog (herein referred to as "MARC") code and contain information such as a physical description of the material, metadata from the material's publisher, and date of library acquisition. In particular, the 008 field of the MARC record is reserved for denoting the date of creation of the library record itself. As this typically occurs during the process of preparing materials for public access, it is my experience that an item's MARC record indicates the date of an item's public availability.

V. OPINIONS

A. Abowd

11. I have reviewed "Cyberguide: A mobile context-aware tour guide" by Gregory D. Abowd, Christopher G. Atkeson, Jason Hong, Sue Long, Rob Kooper and Mike Pinkerton (hereto referred to as 'Abowd') as presented in *Wireless Networks* October 1997 [APL-MAXELL_00710535 - APL-MAXELL_00775400].

12. Attached hereto as Exhibit 2A is a true and correct copy of the cover, spine, title page, table of contents and complete 'Abowd' from *Wireless Networks* October 1997 held by the University of Pittsburgh. I secured this Exhibit myself in person.

13. Attached hereto as Exhibit 2B is a true and correct copy of the MARC record describing *Wireless Networks* as held by the University of Pittsburgh. I secured this record myself from the library's online catalog. The 008 field of this MARC record indicates *Wireless*

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