

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

MAXELL, LTD.,

Plaintiff,

v.

APPLE INC.,

Defendant.

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Case No. 5:19-cv-0036-RWS

JURY TRIAL DEMANDED

ORDER

Upon consideration of the Joint Motion to Partially Amend Docket Control Order (Docket No. 622), the Court finds that the motion should be **GRANTED**.

It is hereby **ORDERED** that the following schedule of deadlines is in effect until further order of this Court:

<p>3 DAYS after conclusion of Trial</p>	<p>Parties to file Motion to Seal Trial Exhibits, if they wish to seal any highly confidential exhibits.</p> <p>EXHIBITS: See Order Regarding Exhibits below.</p>
<p>March 22, 2021</p> <p>Court designated date – not flexible without good cause - Motion Required</p>	<p>9:00 a.m. JURY TRIAL before Judge Robert W. Schroeder III, Texarkana, Texas.</p> <p>For planning purposes, parties shall be prepared to start the evidentiary phase of trial immediately following jury selection.</p>
<p>March 22, 2021</p> <p>Court designated date – not flexible without</p>	<p>9:00 a.m. JURY SELECTION before Judge Robert W. Schroeder III, Texarkana, Texas.</p>

good cause - Motion Required	
To Be Determined Court designated date – not flexible without good cause - Motion Required	PRETRIAL CONFERENCE before Judge Robert W. Schroeder III, Texarkana, Texas. (if necessary) Discuss trial logistics and <i>voir dire</i> procedure. Resolve any pending motions or objections. Lead trial counsel must attend the pretrial conference.
March 4, 2021 [2.5 weeks before trial]	File a Notice of Time Requested for (1) voir dire, (2) opening statements, (3) direct and cross examinations, and (4) closing arguments.
March 1, 2021 [3 weeks before trial]	File pretrial objections. The parties are ORDERED to meet and confer to resolve any disputes before filing any objection to pretrial disclosures.
March 1, 2021 [3 weeks before trial]	File Amended Joint Final Pretrial Order, Amended Joint Proposed Jury Instructions with citation to authority and Amended Form of the Verdict for jury trials. Parties shall use the pretrial order form on Judge Schroeder's website. Proposed Findings of Fact and Conclusions of Law with citation to authority for issues tried to the bench.
February 25, 2021 [3.5 weeks before trial]	Deadline for Parties to meet and confer regarding remaining pretrial objections.
February 22, 2021 [4 weeks before trial]	Parties identify exhibits and deposition designations for which they maintain pretrial objections.
February 19, 2021 [4 weeks before trial]	Apple to serve response to Maxell's drafts of Amended Joint Final Pretrial Order, Amended Joint Proposed Jury Instructions, and Amended Form of the Verdict for jury trials.

February 15, 2021 [4.5 weeks before trial]	Deadline to File Motions Requesting Leave to Designate Exhibits in Excess of 250.
February 15, 2021 [4.5 weeks before trial]	Exchange Narrowed Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List). Parties may withdraw, but not supplement, witnesses, deposition designations, and exhibits from those previously exchanged. Remaining deposition designations and exhibits shall maintain previously exchanged objections. Video and Stenographic Deposition Designation due. Each party who proposes to offer deposition testimony shall serve a disclosure identifying the line and page numbers to be offered.
February 12, 2021 [5 weeks before trial]	Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings due. If a daily transcript or real time reporting of court proceedings is requested for trial or hearings, the party or parties making said request shall file a notice with the Court.
February 12, 2021 [5 weeks before trial]	Maxell to serve drafts of Amended Joint Final Pretrial Order, Amended Joint Proposed Jury Instructions, and Amended Form of the Verdict for jury trials.
February 10, 2021	File Notice of Compliance with Dkt. No. 619.
February 10, 2021 [5 weeks before trial]	File representative product stipulation.
February 8, 2021 [5.5 weeks before trial]	Apple to narrow its prior art invalidity challenges to one “ground” per patent, with a “ground” being one anticipatory reference or one obviousness combination, except that this narrowing will not apply to: (a) the prior art defenses to the three “navigation” patents (the ’317, ’498 and ’999 patents); or (b) Apple’s § 101 challenges.
February 8, 2021 [5.5 weeks before trial]	Parties to meet and confer on draft representative product stipulation.

February 5, 2021 [6 weeks before trial]	Maxell to serve response to Apple's draft representative product stipulation.
February 2, 2021 [6 weeks before trial]	Maxell to narrow its case to no more than six patents and 10 claims. Apple to serve draft representative product stipulation.

In the event that any of these dates fall on a weekend or Court holiday, the deadline is modified to be the next Court business day.

The parties are directed to Local Rule CV-7(d), which provides in part that “[a] party’s failure to oppose a motion in the manner prescribed herein creates a presumption that the party does not controvert the facts set out by movant and has no evidence to offer in opposition to the motion.”

A party may request an oral hearing on a motion filed with the Court. Any such request shall be included in the text or in a footnote on the first page of the motion or any responsive pleading thereto. The Court does not hold telephonic hearings absent unusual circumstances.

Other Limitations

- (a) The following excuses will not warrant a continuance or justify a failure to comply with the discovery deadline:
- (i) The fact that there are motions for summary judgment or motions to dismiss pending;
 - (ii) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
 - (iii) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.
- (b) Amendments to the Docket Control Order (“DCO”): Any motion to alter any date on the DCO shall take the form of a motion to amend the DCO. The motion shall include a chart in the format of the DCO that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a date the proposed date column should remain blank or indicate that it is unchanged). The motion to amend the DCO shall also include a proposed DCO in traditional two-column format that incorporates the requested changes and that also lists all remaining dates. In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines rather than needing to also refer to an earlier version of the DCO.

- (c) Indefiniteness: In lieu of early motions for summary judgment, the parties are directed to include any arguments related to the issue of indefiniteness in their *Markman* briefing, subject to the local rules' normal page limits.
- (d) Motions in Limine: Each side is limited to one (1) motion *in limine* addressing no more than ten (10) disputed issues. In addition, the parties may file a joint motion *in limine* addressing any agreed issues. The Court views motions *in limine* as appropriate for those things that will create the proverbial "skunk in the jury box," e.g., that, if mentioned in front of the jury before an evidentiary ruling can be made, would be so prejudicial that the Court could not alleviate the prejudice with an appropriate instruction. Rulings on motions *in limine* do not exclude evidence, but prohibit the party from offering the disputed testimony prior to obtaining an evidentiary ruling during trial.
- (e) Exhibits: Each side is limited to designating 250 exhibits for trial absent a showing of good cause. The parties shall use the exhibit list sample form on Judge Schroeder's website.
- (f) Deposition Designations: Each side is limited to designating no more than ten (10) hours of deposition testimony for use at trial absent a showing of good cause. As trial approaches, if either side needs to designate more than ten (10) hours, the party may file a motion for leave and show good cause. All depositions to be read into evidence as part of the parties' case-in-chief shall be EDITED so as to exclude all unnecessary, repetitious, and irrelevant testimony; ONLY those portions which are relevant to the issues in controversy shall be read into evidence.
- (g) Witness Lists: The parties shall use the sample form on Judge Schroeder's website.

ORDER REGARDING EXHIBITS, EXHIBIT LISTS AND WITNESS LISTS:

- A. On the first day of trial, each party is required to have:
 - (1) One copy of their respective original exhibits on hand. Each exhibit shall be properly labeled with the following information: Identified as either Plaintiff's or Defendant's Exhibit, the Exhibit Number and the Case Number.
 - (2) Three hard copies of each party's exhibit list and witness list on hand.
 - (3) One copy of all exhibits on USB Flash Drive(s) or portable hard drive(s). This shall be tendered to the Courtroom Deputy at the beginning of trial.
 - (4) One copy of all expert reports on CD. This shall be tendered to the Courtroom Deputy at the beginning of trial.
- B. The parties shall follow the process below to admit exhibits.
 - (1) *On the first day of trial*, each party shall tender a preadmitted list of exhibits it plans to admit into evidence. This list shall include all exhibits which are NOT objected to or to which the Court has already overruled an objection. To the extent there are exhibits with outstanding objections for which the parties need

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