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

DEFENDANT APPLE INC.'S OPPOSITION TO
MAXELL'S MOTION TO SEVER NON-SELECTED PATENTS

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I. INTRODUCTION

The situation Maxell faces is of its own making. It sued Apple on ten patents, asserting 90 claims against over 350 accused Apple products and 21 operating systems, for a total of over 3,900 accused systems—more than Maxell could ever fairly address in a single trial. As the case progressed and the Court indicated the parties would have only two weeks for trial, Maxell refused Apple's repeated requests to narrow its case. Only on the day before the November 2020 pretrial conference did it reveal it would dismiss a single patent, the '586 patent. Then later, Maxell revealed it would also drop the '193 patent as well. But Maxell never told anyone that it would merely try to sever these patents into a different trial. Nor did Maxell speak up when the Court asked the parties to narrow the case or when Maxell submitted its narrowing proposal to the Court. *See* Dkt. No. 603. Instead, Maxell waited until after the Court issued its narrowing order to first mention that it would only seek to sever the four non-elected patents, rather than dismiss them as it had previously said it would do.

Maxell candidly admits it reneged on dismissing patents after the Court adopted Apple's narrowing proposal. Dissatisfied with the Court's decision, Maxell drops all pretext and admits it wants to convert the Court's *narrowing* order into an order *expanding* this case into a second trial. But Maxell's new request would fundamentally frustrate the purpose of the narrowing order to actually *narrow* Maxell's bloated case. Because Maxell has already benefitted from Apple's compliance with Apple's portion of the narrowing order obligations, the Court should decline Maxell's invitation. Apple knows of no case, and Maxell cites no case, where a district court severed patents that were previously narrowed pursuant to a court order and set them for a second trial. Rather, the Court should, consistent with its narrowing order, exercise its inherent power to manage its docket and dismiss the non-elected patents without prejudice.

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