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

MAXELL LTD.,		
Plaintiff,	CASE NO. 5:19-cv-00036-RWS	
V.		
APPLE INC.,	JURY TRIAL DEMANDED	
Defendant.		

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

TABLE OF CONTENTS

I.	INTRODUCTION1			
II.	BACI	BACKGROUND		
III.	ARGU	ARGUMENT4		
	A.		Non-Elected Patents Should Be Dismissed Without Prejudice, As Tles' Narrowing Proposals Contemplated.	
		1.	Dismissing non-elected patents without prejudice is the routine practice in this District, which balances the rights of the parties	4
		2.	Maxell's new request to sever the non-elected patents would was judicial resources and expand the litigation, not narrow it	
		3.	A second trial on the non-elected patents would be particularly wasteful here, because the Patent Office is reviewing all of them.	.5
	B.	Grant	ing Maxell's Motion Would Prejudice Apple	6
		1.	Apple would be prejudiced by a one-sided narrowing order	6
		2.	Maxell's "prejudice" argument is without merit.	7
	C.		amental Fairness Dictates that the Non-Elected Patents Be issed.	9
IV.	CONO	CLUSIC	ON	9

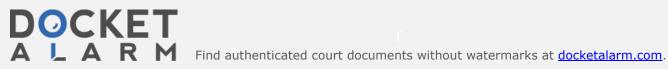


TABLE OF AUTHORITIES

Page((s)
Cases	
Alcon Research Ltd. v. Barr Labs., Inc., 745 F.3d 1180 (Fed. Cir. 2014)	4
Aylus Networks, Inc. v. Apple Inc., 856 F.3d 1353 (Fed. Cir. 2017)	8
CUPP Cybersecurity, LLC v. Trend Micro Inc., Case No. 3:18-cv-1251, Dkt. No. 87 (N.D. Tex. Jan. 12, 2021) (Lynn, C.J.)4, 7,	, 8
CyWee Grp. Ltd. v. Samsung Elecs. Co., No. 217-CV-140-WCB, 2019 WL 11023976 (E.D. Tex. Feb. 14, 2019)	5
IOENGINE, LLC v. PayPal Holdings, Inc., No. CV 18-452-WCB, 2019 WL 3943058 (D. Del. Aug. 21, 2019)	8
Maxell, Ltd. v. Apple Inc., 6:21-cv-158, Dkt. No. 1	9
Medtronic Vascular, Inc. v. Bos. Sci. Corp., No. CIV. A. 2:06-CV-78, 2008 WL 2744909 (E.D. Tex. July 11, 2008)	6
Mobile Telecomms. Techs., LLC v. Samsung Telecomm. Am., LLC, No. 2:13-CV-259-JRG-RSP, 2014 WL 7146971 (E.D. Tex. Dec. 12, 2014)	6
NFC Tech. LLC v. HTC Am., Inc., No. 2:13-CV-1058-WCB, 2015 WL 1069111 (E.D. Tex. Mar. 11, 2015)	6
Personalized Media Commc'ns v. Google LLC, Case No. 2:19-cv-90-JRG, Dkt. No. 476 (E.D. Tex. Jan. 26, 2021)	4
Ramot at Tel Aviv Univ. Ltd. v. Cisco Sys., Inc., No. 2:19-CV-00225-JRG, 2021 WL 121154 (E.D. Tex. Jan. 13, 2021)	, 7
Realtime Data LLC v. Echostar Corp., No. 6:17-CV-00084-JDL, 2018 WL 6267332 (E.D. Tex. Nov. 29, 2018)	4
VirtualAgility Inc. v. Salesforce.com, Inc., 759 F.3d 1307 (Fed. Cir. 2014)	6
Statutes	
35 U.S.C. §§ 252, 307(b)	7

Other Authorities

37 C.F.R § 1.550(a)	6
Federal Rule of Civil Procedure 15 amendment	4
Local Rule CV-5(a)(3)	12
Rule 41(a)	



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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