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**

JOINT NOTICE OF STATUS OF MOTIONS IN LIMINE

Pursuant to the Court's Order (Dkt. No. 634), Plaintiff Maxell, Ltd. ("Plaintiff" or "Maxell") and Defendant Apple Inc. ("Defendant" or "Apple") hereby jointly submit to the Court their notice on the status of their agreement (or not) on the Parties' pending motions in limine:

Agreed

The parties agree on the following motions in limine as presented below.

- Maxell Motion in Limine #3: Apple agrees it will not present Google Maps as a noninfringing alternative to the asserted patents. Apple may seek relief from this order if Maxell opens the door on this issue.
- Maxell Motion in Limine #4: Apple agrees it will not assert a practicing the prior art defense to infringement.
- Maxell Motion in Limine #6: Apple agrees it will not present Apple's COVID-19 response efforts to the jury.

Possible Agreement

Although the parties have not agreed on the following motion in limine, they are still in discussions and may come to agreement before the pretrial conference.

- Apple Motion in Limine #1: The parties are currently discussing a stipulation to resolve the outstanding issues on this motion in limine.
- Maxell Motion in Limine #5: Apple agrees that it will not argue or present evidence denigrating the United States Patent and Trademark Office and its employees, including regarding overwork, quotas, and awards or promotions at the USPTO. To the extent, however, that Maxell opens the door on these issues by, for example, offering argument or testimony about the patent examination process in the USPTO or the quality of such process, Apple will seek leave from the Court to argue or present evidence of the issues identified above. The parties agree that testimony or argument going only to the fact that the USPTO issued the patents-in-suit and that once the USPTO issues a patent, the patent is presumed valid, do not themselves open the door to Apple arguing or presenting evidence denigrating the USPTO and/or its Examiners. However, Maxell believe that Apple's position on what constitutes opening the door here is still far too narrow. Merely "offering argument or testimony about the patent examination process at the USPTO" cannot open the door to argument or evidence by Apple denigrating the USPTO and its employees. Indeed, the Patent Video "The Patent Process: An Overview for Jurors" - that will be shown to the jury at trial - contains a summary of the patent examination process. Maxell should be able to refer to the Patent Video and its contents without opening the door to Apple denigrating the USPTO and its employees.

Not Agreed

The parties do not agree on the following motions in limine.

- Apple Motion in Limine #6:

Apple's Position: As Apple made clear at the November 12, 2020 hearing, Apple's damages expert, Lance Gunderson, will not provide any testimony about Steve Jobs or statements that Steve Jobs made. Nevertheless, Maxell still seeks to offer statements by Steve Jobs because Mr. Gunderson discussed in his report that Apple is a successful and innovative company. But statements from Steve Jobs that are at least a decade old, and in many cases much older, are simply not relevant to that issue. Courts in this District and elsewhere have routinely excluded testimony and argument about Steve Jobs and statements that he made because they pose a significant risk of undue prejudice to Apple and jury confusion. *See, e.g.*, *Contentguard Holdings, Inc. v. Amazon.com, Inc.*, No. 2:13-cv-01112-JRG, 2015 WL 11089490, at *5 (E.D. Tex. Sept. 4, 2015) (precluding plaintiffs from offering argument, evidence, or testimony about statements made by Steve Jobs to biography writer Walter Isaacson); *Apple iPod iTunes Antitrust Litig.*, No. 05-cv-0037-YGR, 2014 WL 12719192, at *4 (N.D. Cal. Nov. 18, 2014) (precluding plaintiffs from offering evidence or eliciting testimony regarding Steve Jobs's character). For these same reasons, Apple's MIL #6 should be granted here. To the extent that Maxell seeks to show, as it claims below, that Mr. Gunderson purportedly did not consider certain information in forming his opinions, it can do so without any reference to Steve Jobs or statements that Steve Jobs made. Similarly, statements that Steve Jobs made about the axis gyro in the iPhone 4 are not relevant to the invalidity of the '493 patent, and suffer from the same issues of undue prejudice and jury confusion.

Maxell's Position: An order completely prohibiting the mention of Apple's founder and longtime leader is wildly overbroad and inappropriate. Maxell agrees it will not offer evidence or make arguments about: (1) political positions taken by Apple or its leadership or (2) media reports unrelated to this litigation without first seeking Court approval. The one remaining issue is Apple's request to prohibit any evidence or argument "about Steve Jobs." Maxell agrees that no evidence or argument can be made "about Steve Jobs" without first seeking Court approval so long as this agreement or any order does not include evidence related to statements made by Steve Jobs. Maxell should be allowed to offer evidence related to statements made by Steve Jobs because, once Apple's expert Mr. Gunderson relied upon numerous magazines, articles, e-news and other documents to explain the reasons why Apple is one of the most successful and innovative companies in the world, Maxell is entitled to cross-examine him as to why he ignored some articles and considered others in reaching that opinion. The offer by Apple to not tender into evidence an article relied upon by Mr. Gunderson that references statements by Steve Jobs or the offer to not mention the name Steve Jobs is of no moment and does not resolve the remaining dispute as the expert's opinion about Apple is not being withdrawn. To prohibit full examination of the expert's bias or reason for "cherry picking" only the good fruit or evidence to reach an opinion, is fundamentally unfair. Additionally, statements by Steve Jobs relate to non-obviousness for Patent '493. *See, e.g.*, Madisetti Validity Rep. at ¶¶ 122, 239, 365. When Steve Jobs mentioned that "adding a 3 axis gyro [to the iPhone 4] is fantastic" and calling the gyro "a really cool piece of evidence", this is recognition by Apple of what the '493 Patent's inventors had disclosed a decade earlier. Apple's cases are no assistance. *Contentguard Holdings, Inc.* provides no information as to the statements in dispute though it appears that Walter Isaacson took statements about Mr. Jobs' childhood and character. *See* *https://www.latimes.com/books/la-et-1029-book-20111029-*

story.html. In *Apple iPod iTunes Antitrust Litig*, the court only limited evidence of Steve Jobs' character. Maxell does not intend to offer statements about the character of Steve Jobs.

- Apple Motion in Limine #8:

Apple's Position: Apple agrees that Maxell can offer argument or testimony about the simple fact that Apple's employee witnesses are indeed compensated by Apple. But Maxell should not be permitted to ask these Apple witnesses about the amount of their compensation, any other details about their compensation, such as sources of compensation, or how much Apple stock they own. This information is not relevant to any issue in the case, including because Apple's employees have no direct financial stake in the outcome of this case. Further, any alleged probative value of such information is substantially outweighed by the tendency of such questions to embarrass or harass the witness and confuse the jury. *See Droplets, Inc. v. Overstock.com, Inc.*, No. 2:11-CV-401-JRG-RSP, 2014 WL 11515642, at *1 (E.D. Tex. Dec. 10, 2014) (excluding references to net worth of individuals employed by plaintiff and references to payments to expert for work on behalf of plaintiff unrelated to current litigation); *Finjan, Inc. v. Blue Coat Sys., Inc.*, No. 13–cv–03999–BLF, 2015 WL 4129193, at *4 (N.D. Cal. June 8, 2015) (excluding under FRE Rule 403 references to compensation of plaintiff's consultants not related to case).

Maxell's Position: Maxell agrees not to ask any Apple witness the amount of that employee's annual salary. Maxell also agrees to ask any Apple witness if that employee owns Apple stock and the number of shares owned, but Maxell will not ask the value of the employee's shares. Otherwise, the fact that a witness is paid by Apple, excluding expert compensation, and the extent of any stock ownership is relevant to show bias. The over breadth of Apple's request is clear as it would preclude questioning regarding a fact witness being paid or otherwise compensated for their

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