

PUBLIC VERSION

**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**

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**JOINT STIPULATION REGARDING AVERAGE SELLING PRICES OF  
ACCUSED APPLE PRODUCTS**

Plaintiff Maxell, Ltd. and Defendant Apple Inc. (“the Parties”) enter this Joint Stipulation Regarding Average Selling Prices of Accused Apple Products pursuant to the Court’s Order regarding motions *in limine* (Dkt. No. 634). The Parties hereby stipulate and agree as follows:

1. This Stipulation and the information it contains will be used only for purposes of complying with the Court’s order on Apple’s MIL #1 (Dkt. No. 634 at 13) and simplifying the issues for trial. Both this Stipulation and the fact that the parties have entered this Stipulation are inadmissible in the present case, except for the information contained in the chart in Paragraph 2, below. This Stipulation also shall not be admitted or used for any purpose in any other proceeding and shall not be binding on Apple, Maxell, or any other party for any other purpose or in any other judicial or administrative proceeding. Neither Apple nor Maxell waive the right to object to the admissibility of this Stipulation in any other such proceeding.

2. The Parties stipulate and agree, for purposes of this trial only, that the average selling price (“ASP”) that Maxell’s damages expert has used in her calculations for each class of accused Apple product is as follows:

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3. The Parties stipulate and agree they will not refer in this case to any individual ASP of any product model that varies or differs from the ASPs set forth in Paragraph 2 above.

4. The Parties stipulate that they will not refer to or seek to introduce evidence of (i) gross or net revenues, (ii) costs (excepting Carla Mulhern's use of costs of the implicated components as noted below), and/or (iii) profits or profit margin of the Apple accused products, either collectively or individually.

5. The Parties may refer to and seek to introduce evidence of Apple's market share in the relevant market segments (smartphone, tablet, and smartwatch), either on a percentage basis or based on relative market share vis-à-vis competitors, but the Parties may not refer to or seek to introduce evidence of aggregate dollar amounts or aggregate sales volumes in this regard.

6. As set forth in the Court's order on Apple's MIL #1 (Dkt. No. 634 at 13), the Parties stipulate and agree they will not refer to or seek to introduce evidence of Apple's overall revenues, sales, market capitalization, stock price, cash reserves, revenues associated with unaccused products, or Apple's ability to pay Maxell's alleged damages.

7. This Stipulation does not constitute, and will not be offered or construed as, an admission by Apple that it is liable for infringement under 35 U.S.C. § 271, which Apple denies. Nothing in this Stipulation shall be construed as an admission by Apple that the products identified in this Stipulation infringe any claim of the asserted patents or any other patent.

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8. This Stipulation does not constitute, and will not be offered or construed as, any admission by Apple that Maxell is entitled to any damages for alleged patent infringement under 35 U.S.C. § 284, which Apple denies. Maxell shall not represent to the jury that Apple approves the manner in which Maxell's damages expert, Carla Mulhern, uses the stipulated ASPs in her patent damages calculations for this case, which Apple expressly opposes.

9. This Stipulation does not, and is not intended to, prevent Ms. Mulhern from presenting her apportionment analysis, including the use and application of the costs of implicated components of the accused products in her analysis and testimony. However, nothing in this Stipulation shall be construed as a waiver of Apple's objections (which Apple expressly maintains) that the ASPs of the accused products, as used by Ms. Mulhern, are unapportioned, and that Ms. Mulhern does not apportion out the value attributable to unpatented components and technology. Apple reserves the right to contest and lodge objections to Ms. Mulhern's use of the ASPs in her in patent damages calculations, in motion practice, during trial, and on appeal, if necessary.

Dated: March 9, 2021

*/s/ Jamie B. Beaber*

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