EXHIBIT A

Jenkins, Dawn

From: Geoff Culbertson <gpc@texarkanalaw.com>
Sent: Thursday, March 11, 2021 7:50 PM
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Subject: 5:19-cv-00036-RWS Maxell Ltd. v. Apple Inc.
Attachments: Bosch v Ball-Kell.pdf; Rembrandt Wireless Technologies LP v Samsung Electronics Co Ltd.pdf

[EXTERNAL]

Ms. Stradley –

Maxell's submits the following summaries of the attached authorities in response to the Court's request related to Apple's objections to PX80, 81, 83, 84 & 86 (Made for iPod agreements).

- As seen in, for example *Rembrandt Wireless Techs., LP v. Samsung Elecs. Co.*, No. 2:13-CV-213-JRG-RSP, 2015 WL 627430, at *5 (E.D. Tex. Jan. 31, 2015), courts admit evidence in order to rebut or challenge a position taken by party. Here, Apple's damages expert, Mr. Gunderson, relies on Apple's alleged preference for lump sum payments as opposed to running royalties in rendering his damages opinion for this case, and similarly criticizes Ms. Mulhern for utilizing a running royalty calculation as part of her damages analysis, as is evident from, for example, Apple's Daubert Motion to Exclude opinions and testimony of Maxell's expert Carla Mulhern, (See, e.g., Apple Motion to Exclude Opinions and Testimony of Ms. Mulhern, Dkt. No. 362). The Made for iPod licenses, however, contain running royalties.

- As seen in *Bosch v. Ball-Kell*, No. 03-1408, 2007 WL 601721, at *6 (C.D. Ill. Feb. 21, 2007), courts have also declined to preclude evidence regarding acts that took place prior to the relevant time period of infringement in order to provide, for example, chronology, background, and to outline the relationship between the parties: "However, their argument ignores the fact that the question of what evidence is admissible for purposes of determining damages is not the same as the question of what evidence is admissible for purposes of establishing chronology, providing background, outlining the relationship between the parties…"

- Furthermore, "[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." FED. R. EVID. 401. Apple denies willful infringement in this case. *See, e.g.*, Pretrial Order (Dkt. 637) at 15. Willfulness looks at, for example

whether infringement was "done in bad faith." *See* Proposed Jury Instructions (Dkt. 638-2) at 20. In determining whether Apple acted willfully, the jury is directed to "consider all facts," including "[w]hether or not Apple acted consistently with the standards of behavior for its industry." *Id.* Prior agreements between the parties are relevant to this consideration.

Based on Maxell's understanding of Apple's objections and arguments from yesterday's conference, Maxell is agreeable to a limiting order prohibiting the direct comparison between the licensing rates in the Made for iPod agreements and it damages request.

Best regards,

Geoff

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