

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

JAWBONE INNOVATIONS, LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

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Case No. 6:21-cv-00984-ADA

**JURY TRIAL DEMANDED**

**PLAINTIFF JAWBONE INNOVATIONS, LLC'S RESPONSE IN OPPOSITION  
TO DEFENDANT APPLE INC.'S MOTION FOR LEAVE  
TO SUPPLEMENT THE RECORD ON APPLE'S MOTION TO TRANSFER (DKT. 78)**

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## I. INTRODUCTION

Defendant Apple, Inc. (“Apple”) filed a motion seeking to introduce six new declarations into the record on its motion to transfer. (Dkt. 78, “Motion.”) The Court should deny the Motion because Apple has not shown good cause.

## II. BACKGROUND

Jawbone filed its initial Complaint in this action on September 23, 2021. *See* Dkt. 1. Jawbone filed an Amended Complaint on December 23, 2021. *See* Dkt. 19. Apple filed the instant Motion to transfer on May 2, 2022. *See* Dkt. 38. Pursuant to the Court’s Order Governing Proceedings – Patent Cases, the Parties then engaged in venue discovery. On May 17, 2022, the Court issued an Order granting Apple’s Motion to Transfer in *Scramoge Technology Ltd. v. Apple Inc.*, No. 21-cv-00579, ECF No. 77 (May 17, 2022, W.D.T.X.) (“*Scramoge*”). Venue discovery has been extended to account for Apple’s insufficient responses and to allow Jawbone time to depose Apple’s witnesses, which is still ongoing. (Dkt. 71.) On August 2, 2022, Apple filed this Motion.

## III. LEGAL STANDARD

Motions for leave to supplement are evaluated under a “good cause” standard. *Al-Khawaldeh v. Tackett*, No. 1:20-CV-01079-RP, 2021 WL 2322930, at \*1 (W.D. Tex. June 7, 2021) (citing *Shepherd ex rel. Estate of Shepherd v. City of Shreveport*, 920 F.3d 278, 287 (5th Cir. 2019)). “Four factors are relevant to a showing of good cause: (1) the explanation for the failure to timely comply with the scheduling order; (2) the importance of the evidence; (3) potential prejudice in allowing the evidence; and (4) the availability of a continuance to cure such prejudice.” *Id.* at \*2.

#### IV. ARGUMENT

The Court should deny Apple's Motion to Supplement because it cannot show good cause.

##### A. Apple Has No Explanation for Its Delay

Apple tacitly admits it had all of the facts it seeks to add to the record in its possession as of the time it filed its original transfer motion. Motion at 3. At that time, however, it made the strategic choice not to include them with the motion. The only reason it cites for including those facts now (more than three months later) is the Court's *Scramoge* Order. *Id.* The *Scramoge* Order does not supply good cause to supplement; indeed, the gravamen of the Court's Order is that Apple's pro forma declarations are not reliable because Apple's witness, Mr. Rollins, would not have sufficient time to perform the necessary research to reliably make the statements in his declarations. *Scramoge* Order at 9 ("In summary, the scope, content, and frequency of declarations submitted by Mr. Rollins shows that they are attorney-crafted documents full of hearsay with little to no evidentiary value."). The Order nowhere suggested that Apple was allowed to supplement its transfer motion to include statements it should have included originally.

Even if the *Scramoge* Order could supply good cause to supplement, Apple's supplement is untimely and there is no justifiable explanation for its delay. The *Scramoge* Order issued on May 17, 2022, shortly after Apple filed its transfer motion. Apple did not seek leave to supplement the record at that point. Instead, it waited until August 2, long after the originally scheduled close of venue discovery. *See generally* Motion. Apple's only explanation is that "Apple promptly evaluated the effect and impact of the *Scramoge* Order on the present Transfer Motion and Rollins Declaration to determine whether supplementation here was needed; scheduled time with each of the witnesses submitting supplemental declarations to prepare, review, and finalize their declarations; contacted opposing counsel to meet and confer on the present motion; and diligently prepared and filed the present motion." Motion at 3. Apple does not provide any evidence of when

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