

No. 19-20799

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**In the United States Court of Appeals  
for the Fifth Circuit**

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HEWLETT-PACKARD COMPANY,  
*Plaintiff – Appellee*

v.

QUANTA STORAGE, INCORPORATED,  
*Defendant – Appellant*

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On Appeal from the U.S. District Court, Southern District of Texas  
No. 4:18-CV-00762, Hon. David Hittner

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**RESPONSE TO HEWLETT-PACKARD’S REQUEST FOR AN  
EXTENSION OF TIME TO FILE HEWLETT-PACKARD’S BRIEF OF  
APPELLEE**

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*Attorneys for Appellant Quanta Storage, Inc.*

Plaintiff-Appellee Hewlett Packard Company (“HP”) has notified Defendant-Appellant Quanta Storage, Incorporated (“Quanta”) that HP will request an extension of time to file its Brief of Appellee in the above-captioned appeal. Given the circumstances presented by the COVID-19 virus, Quanta would like to be able to agree to HP’s request for an extension of time. However, due to HP’s efforts to enforce the District Court’s judgment pending Quanta’s appeal, Quanta must continue to oppose HP’s desire for an extension of time to file its brief.

HP has known of Quanta’s opposition for weeks—since Quanta filed its March 6, 2020 letter with the clerk of this Court (attached as Exhibit 1 hereto) in which Quanta explained that (1) it opposes any extension-of-time request by HP because (2) HP’s efforts, during appeal, to execute on the judgment will cripple Quanta’s business before Quanta has an opportunity to complete this appeal.

**I. This is a single-issue appeal challenging HP’s failure to prove its damages—and the relevant portions of the record consist of very few pages.**

Quanta appeals from the District Court’s \$438,650,000 judgment in this antitrust case. The jury found \$176,000,000 in actual damages purportedly sustained by HP and the District Court trebled that amount in the judgment. Quanta’s appeal does not challenge liability. Rather, Quanta’s appeal challenges only HP’s failure to prove its damages because HP did not prove the amount of Optical Disk Drives (ODDs) purchases by HP itself, as opposed to ODDs purchased by HP’s foreign

subsidiaries. The jury charge, verdict, and judgment include *only* claims by HP itself, not claims by HP's foreign subsidiaries. However, HP apparently intended, at least at one point, to assert its foreign subsidiaries' claims because HP put in evidence assignments of claims by a number of HP foreign subsidiaries.

As the opinion written by Judge Posner in *Motorola Mobility LLC v. AU Optronics Corp.*, 775 F.3d 816 (7th Cir. 2015) makes clear, HP's foreign subsidiaries would not even have a claim under U.S. antitrust law. (In *Motorola*, purchases by foreign subsidiaries made up virtually all of the purchases at issue.) If purchases by only HP, as opposed to HP's foreign subsidiaries, had been included, the damages in this case may well have been a small fraction of the jury's damages finding. But HP's attempts to execute on this \$438,650,000 judgment could destroy Quanta's business before Quanta has the opportunity to complete this appeal.

There were only two live witnesses at trial: HP's head of procurement Russell Hudson and HP's damages expert Dr. Debra Aron. HP's head of procurement testified that (1) he could not say what quantity of ODDs was purchased by HP as opposed to HP's foreign subsidiaries because (2) HP does not track purchases in a way that would allow him to distinguish between purchases by HP, on the one hand, and HP's foreign subsidiaries, on the other hand.

Dr. Aron said she based her damages calculation (which the jury adopted) on data provided to her by HP as being “relevant to this litigation” and her “understanding” that the data all involved purchases by HP itself. The District Court overruled Quanta’s “no foundation” and hearsay objections to Dr. Aron’s testimony about her “understanding.” But despite Quanta’s objections putting HP on notice of the need to prove the basis for Dr. Aron’s “understanding,” HP never adduced evidence to identify the mystery out-of-court declarant who apparently gave Dr. Aron her “understanding.” While she testified that she spoke with Russell Hudson (HP’s head of procurement), Hudson’s testimony indicates that he could not have been the source of Aron’s “understanding.” And Dr. Aron’s description of the data she was provided did not indicate that the data would have supplied Dr. Aron with information allowing Dr. Aron to determine which purchases were by HP and which purchases were by HP’s foreign subsidiaries.

Seeking to move this appeal forward as rapidly as possible, Quanta filed its Brief of Appellant a month before this Court’s deadline and offered to file its Reply Brief within days of HP filing its Brief of Appellee, which is currently due on April 1, 2020.

**II. Meanwhile, HP is attempting to execute on this \$438,650,000 judgment pending appeal.**

During the pendency of this appeal, HP sought, in the District Court, to execute on the \$438,650,000 judgment. HP also sought to have the District Court appoint a receiver to sell Quanta's assets, including Quanta's US patents and trademarks that are critical to Quanta's business. Further, HP asks the District Court for a turnover order, ordering Quanta to turn over its assets in satisfaction of this judgment.

Quanta sought a stay of HP's attempted execution, citing as grounds that (1) this judgment against Quanta exceeds the value of Quanta's total assets, (2) Quanta's primary assets are factories and other real property in Taiwan and mainland China (making posting a supersedeas bond for the amount of this judgment not possible), and (3) execution on the judgment will cripple Quanta's business before Quanta has the chance to seek reversal of the judgment. Quanta instead offered alternative security: Quanta would agree to having the District Court enjoin Quanta not to dispose of any assets outside of the ordinary course of business during the pendency of the appeal.

The Honorable David Hittner held a hearing on HP's motion to execute and Quanta's motion to stay that execution on March 5, 2020. Upon Judge Hittner's request, HP filed a post-hearing motion in which HP proposed specific injunction

language and requested that Quanta post a supersedeas bond of \$133,000,000. Quanta filed a response with the District Court in which Quanta (1) accepted HP's proposed changes to the injunction language, and (2) reiterated that the posting of such a large bond would be impracticable and would cripple Quanta's business.

On March 12, Judge Hittner ordered that Quanta be enjoined from improperly disposing of its assets (as already agreed-to by Quanta) and that Quanta post a supersedeas bond of \$85,000,000. Quanta is also facing difficulties complying with such order because of several mandated closures and preventive measures for all non-essential businesses required by Taiwanese government. Thus, Quanta has not posted such a supersedeas bond for the same reasons Quanta has stated earlier. Therefore Quanta is at risk that HP will continue to pursue its request to have Judge Hittner appoint a receiver and issue a turnover order.

**III. Given HP's efforts to enforce this judgment pending appeal, this Court should deny HP's request for an extension of time to file its Brief of Appellee.**

Many lawyers and judges are working remotely, using laptops and home computers to review online records and prepare briefs and opinions. HP can do the same for its Brief of Appellee on this single-issue appeal. Given HP's insistence on attempting to enforce this judgment pending appeal, Quanta cannot agree to HP's motion to extend time to file its Brief of Appellee. Quanta again represents that,

once HP files its Brief of Appellee, Quanta will file its Reply Brief a few days later—  
in an attempt to bring this appeal to conclusion as rapidly as possible.

**PRAYER**

Quanta asks this Court to deny HP's request for an extension of time to file  
its Brief of Appellee.

DATE: March 23, 2020

Respectfully submitted,

/s/ Marie Roach Yeates

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# Exhibit 1



March 6, 2020

***Via Electronic Filing***

Lyle W. Cayce  
Clerk  
United States Court of Appeals for the Fifth Circuit  
600 S. Maestri Place  
New Orleans, Louisiana 70130-3408

Re: No. 19-20799; *Hewlett-Packard Company v. Toshiba Corporation*

Dear Mr. Cayce:

Appellant Quanta Storage, Inc. (“Quanta”) writes to notify the Court of Quanta’s opposition to any request by Appellee Hewlett-Packard Company (“HP”) for an extension of time to file its Brief of Appellee. While this appeal is pending, HP is attempting to execute on the \$438,650,000 judgment. Quanta has argued to the District Court that (1) this judgment against Quanta exceeds the value of Quanta’s total assets, (2) Quanta’s assets are all overseas in Taiwan and mainland China (making posting a supersedeas bond for the amount of this judgment not possible), and (3) execution on the judgment will cripple Quanta’s business before Quanta has the chance to seek reversal of the judgment from this Court. The District Court has not yet ruled on HP’s request to execute on the judgment, and Quanta has sought a stay of execution.

Quanta has taken several steps to move this appeal forward as quickly as possible. First, Quanta has raised a narrow complaint in this Court: Quanta contends that HP failed to prove its damages. The portions of the record going to this proof-of-damages issue are very few. Second, after HP sought to execute on the judgment, Quanta filed its Brief of Appellant more than a month early. Quanta seeks to move this appeal forward as quickly as possible because we believe that this judgment should be reversed, and we hope to avoid having HP execute on this judgment pending appeal. Quanta has offered that, once HP files its Brief of Appellee, Quanta will file its reply brief a few days later.

For all these reasons, Quanta opposes any request by HP for an extension of time to file its Brief of Appellee.

Sincerely,

/s/ Marie R. Yeates

Marie R. Yeates

*Attorney for Appellant Quanta Storage, Inc.*

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