

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EVOLVED WIRELESS, LLC,)
)
Plaintiff,)
)
V.) Civil Action No. 15-542-JFB-SRF
)
APPLE INC.,)
)
Defendant.)

EVOLVED WIRELESS, LLC,)
)
Plaintiff,)
)
V.) Civil Action No. 15-543-JFB-SRF
)
HTC CORPORATION and)
HTC AMERJCA, INC.,)
)
Defendants.)

EVOLVED WIRELESS, LLC,)
)
Plaintiff,)
)
V.) Civil Action No. 15-544-JFB-SRF
)
LENOVO GROUP LTD., LENOVO)
(UNITED STATES) INC., and)
MOTOROLA MOBILITY,)
)
Defendants.)

EVOLVED WIRELESS, LLC,)
)
Plaintiff,)
)
V.) Civil Action No. 15-545-JFB-SRF

SAMSUNG ELECTRONICS CO., LTD.
and SAMSUNG ELECTRONICS
AMERICA, INC.

Defendants.

EVOLVED WIRELESS, LLC,
Plaintiff,

V.

ZTE (USA) INC.,

Defendant.

Civil Action No. 15-546-JFB-SRF

EVOLVED WIRELESS, LLC,
Plaintiff,

V.

MICROSOFT CORPORATION,
MICROSOFT MOBILE OY and
NOKIA INC.,

Defendants.

Civil Action No. 15-547-JFB-SRF

MEMORANDUM AND ORDER

This matter is before the Court on the following motions in limine: defendant Apple Inc.'s ("Apple") motion in Limine No. 1 to exclude irrelevant and prejudicial unrelated matters involving Apple (D.I. 409 in 1:15cv542); defendants Apple Inc.'s, Samsung Electronics America Inc.'s, and Samsung Electronics Co. Ltd.'s ("Samsung") joint motion

in limine (D.I. 411 in *Evolved Wireless, LLC (“Evolved”) v. Apple*, 1:15cv542 and D.I. 403 in *Evolved v. Samsung*, 1:15cv545); and plaintiff Evolved’s motion in limine (D.I. 415).¹

I. LAW

Although the motion in limine is an important tool available to the trial judge to ensure the expeditious and evenhanded management of the trial proceedings, performing a gatekeeping function and sharpening the focus for later trial proceedings, some evidentiary submissions, cannot be evaluated accurately or sufficiently by the trial judge in such a procedural environment. *Jonasson v. Lutheran Child and Family Servs.*, 115 F.3d 436, 440 (7th Cir. 1997). A motion in limine is appropriate for “evidentiary submissions that clearly ought not be presented to the jury because they clearly would be inadmissible for any purpose.” *Id.* In other instances, it is necessary to defer ruling until during trial, when the trial judge can better estimate the impact of the evidence. *Id.*

“Evidentiary rulings made by a trial court during motions in limine are preliminary and may change depending on what actually happens at trial.” *Walzer v. St. Joseph State Hosp.*, 231 F.3d 1108, 1113 (8th Cir. 2000); see also *Leonard v. Stemtech Health Scis., Inc.*, 981 F. Supp. 2d 273, 276 (D. Del. 2013) (noting that evidentiary rulings, especially those that encompass broad classes of evidence, should generally be deferred until trial to allow for the resolution of questions of foundation, relevancy, and potential prejudice in proper context).

II. DISCUSSION

- A. Apple’s Motion in Limine To Exclude Irrelevant and Prejudicial Unrelated Matters Involving Apple (D.I. 409)

¹ All docket items (“D.I.”) refer to Civil Action No. 15-542-JFB-SRF unless otherwise stated.

Apple seeks exclusion of evidence of alleged past misconduct and the alleged poor character of Apple or Steve Jobs as irrelevant and unfairly prejudicial. Defendants state that Apple's motion is specific to an exhibit produced in this litigation—an excerpt of a PBS documentary titled "Triumph of the Nerds" featuring Apple's co-founder Steve Jobs. In the documentary, Mr. Jobs states that "[Apple] ha[s] always been shameless about stealing great ideas." Apple also seeks exclusion of prior unrelated litigations, investigations or accusations involving Apple or Mr. Jobs, arguing the evidence is irrelevant, unfairly prejudicial and may confuse the jury. The court grants the defendant's motion in limine to the PBS documentary excerpt.

Regarding other unspecified evidence characterized as "Apple-bashing," evidentiary rulings "that encompass broad classes of evidence should generally be deferred until trial to allow for the resolution of questions of foundation, relevancy, and potential prejudice in proper context." *Hologic*, No. 15-1031-JFB-SRF, D.I. 452 at 1. Apple's failure to specify the evidence or testimony to be excluded means deny without prejudice to reassertion.

In regards of reputation for litigiousness – it will be necessary to introduce evidence of Apple's prior litigation to explain the risk-adjusted purchase price, as contemplated by Dr. Putnam. That risk included the possibility that Evolved Wireless would be unable to license the asserted patents to Apple absent a finding of infringement and validity following lengthy and costly litigation.

III. DEFENDANTS' JOINT MOTION IN LIMINE (D.I. 411)

A. Motion In Limine No. 1: To Preclude Evolved From Offering Evidence Regarding How Evolved Arrived At Its \$0.25 Per-Device Figure

Defendants seek an order precluding Evolved from offering evidence as to the derivation of its \$0.25 royalty rate in pre-suit licensing negotiations. This topic was the subject of a motion to compel and two [Federal Rule of Civil Procedure 30\(b\)\(6\)](#) depositions. Defendants contend Evolved's two designated witnesses provided no or limited meaningful information about Evolved's derivation of the \$0.25 figure. Evolved asserted privilege as to much of the information about a previously-undisclosed, purported "starting-point rate." The record shows the defendants moved to compel answers after the first 30(b)(6) deposition and the magistrate judge granted the motion. Evolved designated a different 30(b)(6) witness in response to the magistrate judge's order. The defendants contend that the second witness gave a few limited answers beyond what the first witness had provided, but still failed to provide adequate testimony on the issue of the \$0.25 figure. Defendants argue that Evolved again asserted privilege and work product instructions to selectively shield from discovery most aspects of Evolved's formulation of the amount. Defendants also deposed Matt DelGiorno, counsel for Evolved who had engaged in the pre-suit negotiations with the defendants, but he too refused to answer numerous questions regarding the \$0.25 figure. There is no indication that the defendants moved to compel after the second 30(b)(6) deposition DelGiorno deposition.

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