

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

WI-LAN INC.,

*Plaintiff,*

v.

HTC CORP., et al.,

*Defendants.*

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CASE NO. 2:11-CV-68-JRG

**CONSOLIDATED WITH**

CASE NO. 2:12-cv-600-JRG

**PRETRIAL ORDER**

The Court held pretrial hearings on September 26, October 1, 2013, and October 10, and heard argument on Defendants’ Motion to Strike Portions of the Expert Reports of Alexander Haimovich, Ph.D. and Geoffrey Orsak, Ph.D. (Dkt. No. 457), Defendants’ Joint Motion to Strike the Testimony of and Preclude the Opinion of Plaintiff’s Expert Jeffrey T. Prince Regarding His Surveys on Consumer Preference (Dkt. No. 495), Wi-LAN’s *Daubert* Motion to Exclude the Report and Testimony of Matthew B. Shoemake Regarding Issues Related to the IEEE 802.11 Standards Process (Dkt. No. 497), Plaintiff Wi-LAN’s *Daubert* Motion to Exclude the Report and Testimony of Matthew B. Shoemake Regarding patents Relevant, Related, or Essential to the IEEE 802.11n Standard and Patent Search Related Thereto (Dkt. No. 498), Plaintiff’s Motion to Exclude and Strike Portions of the Expert Report and Testimony of Dr. Kevin J. Negus on FCC-related Issues (Dkt. No. 499), Defendants’ Joint Motion to Strike and Preclude the Expert Reports and Testimony of Dr. Michael P. Akemann, Dr. David J. Teece, and Richard J. Holleman on FRAND (Dkt. No. 500), Defendants’ *Daubert* Motion to Exclude the Report and Testimony of Michael P. Akemann Regarding Damages (Dkt. No. 501), Plaintiff’s Motion to Exclude and Strike

Portions of the Expert Report of W. Christopher Bakewell and to Preclude Expert Testimony (Dkt. No. 504), Plaintiff's *Daubert* Motion to Exclude Certain Portions of the Invalidity Reports of Matthew Shoemake and Anthony Acampora (Dkt. No. 505), Defendants' Motion for Partial Summary Judgment on the Invention Dates of the Patents-in-Suit (Dkt. No. 502), Plaintiff's Motions *in Limine* (Dkt. No. 518), Defendants' Motions *in Limine* (Dkt. No. 513), and the parties October 9, 2013 Joint Notice of Outstanding Exhibits (Dkt. No. 607). The Court announced its rulings and reasoning into the record. Any clarification and/or modification to such motions, as stated by the Court during such hearing, fully applies to the rulings as stated below, and the ruling set forth herein do not exclude or supplant any clarification, reasoning, and/or modification as stated in the record.

**I. *Daubert* Motions and Motions for Summary Judgment**

Defendants' Motion to Strike Portions of the Expert Reports of Alexander Haimovich, Ph.D. and Geoffrey Orsak, Ph.D. (Dkt. No. 457) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Defendants' Joint Motion to Strike the Testimony of and Preclude the Opinion of Plaintiff's Expert Jeffrey T. Prince Regarding His Surveys on Consumer Preference (Dkt. No. 495) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Wi-LAN's *Daubert* Motion to Exclude the Report and Testimony of Matthew B. Shoemake Regarding Issues Related to the IEEE 802.11 Standards Process (Dkt. No. 497) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Plaintiff Wi-LAN's *Daubert* Motion to Exclude the Report and Testimony of Matthew B. Shoemake Regarding patents Relevant, Related, or Essential to the IEEE 802.11n Standard and

Patent Search Related Thereto (Dkt. No. 498) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Plaintiff's Motion to Exclude and Strike Portions of the Expert Report and Testimony of Dr. Kevin J. Negus on FCC-related Issues (Dkt. No. 499) is **DENIED**, except that Dr. Negus may not engage in speculation regarding the technological or commercial success or failure of Wi-LAN, pursuant to the Court's reasoning as fully set forth in the record.

Defendants' Joint Motion to Strike and Preclude the Expert Reports and Testimony of Dr. Michael P. Akemann, Dr. David J. Teece, and Richard J. Holleman on FRAND (Dkt. No. 500) is **DENIED-AS-MOOT**, pursuant to the Court's reasoning as fully set forth in the record.

Defendants' *Daubert* Motion to Exclude the Report and Testimony of Michael P. Akemann Regarding Damages (Dkt. No. 501) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Plaintiff's Motion to Exclude and Strike Portions of the Expert Report of W. Christopher Bakewell and to Preclude Expert Testimony (Dkt. No. 504) is **GRANTED-IN-PART** to exclude Mr. Bakewell's analysis of the Trip Report, but otherwise **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Plaintiff's *Daubert* Motion to Exclude Certain Portions of the Invalidity Reports of Matthew Shoemake and Anthony Acampora (Dkt. No. 505) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

Defendants' Motion for Partial Summary Judgment on the Invention Dates of the Patents-in-Suit (Dkt. No. 502) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

**II. Plaintiff's Motions *in Limine* (Dkt. No. 518) and Defendants' Motions *in Limine* (Dkt. No. 513).**

The Court reminds the parties that its ruling on a motion *in limine* is not a definitive ruling on the admissibility of evidence. An order granting a motion *in limine* is an order requiring the offering party to approach the bench and seek leave from the Court prior to mentioning the matter covered by the order to the jury or the jury panel during *voir dire*. Similarly, an order denying a motion *in limine* does not relieve a party from making an objection at trial.

**Plaintiff's Motion *in Limine* No. 1** (Private lives: religion, politics, marital status, family lives, recreation, spending or finances) is **GRANTED** as agreed.

**Plaintiff's Motion *in Limine* No. 2** (Profane, sexual, inflammatory, off-color or offensive statements in exhibits or testimony) is **GRANTED** as agreed.

**Plaintiff's Motion *in Limine* No. 3** (Testimony or evidence from or about a putative fact witness who was not timely disclosed) is **DENIED-AS-MOOT**, pursuant to the parties' agreement as stated on the record.

**Plaintiff's Motion *in Limine* No. 4** (Court orders, argument, evidence or testimony that is contrary to the Court's claim constructions or in support of a position previously rejected by the Court) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

**Plaintiff's Motion *in Limine* No. 5** (Outcome-oriented payments from prior litigations received by any Wi-LAN witness) is **GRANTED**, pursuant to the Court's reasoning as fully set forth in the record.

**Plaintiff's Motion *in Limine* No. 6** (Other litigations not involving the patents-in-suit, or foreign counterparts) is **GRANTED**, pursuant to the Court's reasoning as fully set forth in the

record.

**Plaintiff's Motion in Limine No. 7** (Interpretive evidence from authors or sponsors of prior art references) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record. However, the parties are reminded that fact witnesses are prohibited from offering opinion testimony within the purview of an expert witness pursuant to Federal Rule of Evidence 702.

**Plaintiff's Motion in Limine No. 8** (Wi-LAN being alleged to be an "NPE" or other derogatory or misleading term) is **GRANTED-IN-PART** as to preventing Defendants from characterizing Plaintiff as a "shell company" or other pejorative term that attempts to slur or negatively characterize any of the named parties or witnesses. The motion is **DENIED-IN-PART** with respect to factual statements, including statements that Plaintiff is a non-manufacturer or a non-practicing entity (a/k/a an "NPE").

**Plaintiff's Motion in Limine No. 9** (The Sunlight Report, TechIPm Report or Patent Café valuation) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

**Plaintiff's Motion in Limine No. 10** (The Qualcomm "patent wall") is **GRANTED**, pursuant to the Court's reasoning as fully set forth in the record. The parties are prohibited from publishing the photograph or picture of the "patent wall" to the jury, but may identify Qualcomm as an owner of many patents.

**Plaintiff's Motion in Limine No. 11** (Patents other than the patents-in-suit) is **DENIED**, pursuant to the Court's reasoning as fully set forth in the record.

**Plaintiff's Motion in Limine No. 12** (Reference in the jury's presence to the pending reexamination proceedings) is **GRANTED**, pursuant to the Court's reasoning as fully set forth in the record.

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