

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

CYWEE GROUP LTD.,

Plaintiff

v.

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

Defendants.

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NO. 2:17-CV-00140-WCB-RSP

**DEFENDANTS SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG
ELECTRONICS AMERICA, INC.'S MOTION TO EXCLUDE THE OPINIONS AND
TESTIMONY OF PLAINTIFF'S DAMAGES EXPERT MR. WALTER BRATIC**

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I. INTRODUCTION

Plaintiff CyWee's damages expert, Mr. Walter Bratic, opines that Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively "Samsung") owe a reasonable royalty of [REDACTED] per accused device, amounting to at least [REDACTED] in damages through mid-2018, with substantial additional amounts to the time of trial, and potentially through the expiration of the Patents-in-Suit in 2031. Mr. Bratic's opinions as to alleged damages, however, are flawed and unreliable because they are untethered from the Patents-in-Suit and violate other fundamental principles of patent damages law. Accordingly, Mr. Bratic's opinions fail to meet the standard of admissibility for expert testimony set forth in Federal Rule of Evidence 702 and should be excluded.

II. BACKGROUND

CyWee asserts that Samsung infringes various claims of U.S. Patent Nos. 8,441,438 (the "'438 Patent") and 8,552,978 (the "'978 Patent") (collectively the "Patents-in-Suit") (Exs. 1–2). On October 8, 2018, CyWee served an expert report authored by Drs. Mihajlo Popesku, Thomas Richardson, and Arvind Raghu (the "Survey Report"), which purported "to determine the price premium that consumers of Samsung devices are willing to pay for the incremental benefit of [the Patents-in-Suit]." Ex. 3 ¶ 2. On the same day, CyWee also served the expert report of Mr. Walter Bratic setting forth his opinions regarding estimated damages for alleged infringement. Ex. 4 ¶ 2.

Mr. Bratic opines that a reasonable royalty of [REDACTED] per accused device is appropriate, relying primarily "upon the results of [CyWee's] Conjoint Survey as an indication of the 'price premium that consumers of Samsung decides are willing to pay for the incremental benefit' . . . provided by the Accused Functionality." *Id.* ¶ 160. Specifically, Mr. Bratic took the lowest price premium [REDACTED] directly from the Survey Report, subtracted material and incremental

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