

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

AGIS SOFTWARE DEVELOPMENT LLC,

*Plaintiff,*

v.

HUAWEI DEVICE USA INC., *et al.*,

*Defendants.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**Civil Action No. 2:17-CV-513-JRG  
(LEAD CASE)**

---

AGIS SOFTWARE DEVELOPMENT LLC,

*Plaintiff,*

v.

APPLE INC.,

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**Civil Action No. 2:17-CV-516-JRG  
(CONSOLIDATED CASE)**

---

**APPLE INC.'S MOTION TO STRIKE THE UNTIMELY DECLARATION OF MR.  
ALAN RATLIFF ATTACHED TO DKT. 250 AS EXHIBIT C**



**TABLE OF CONTENTS**

	<u><b>Pages</b></u>
I. INTRODUCTION .....	1
II. FACTUAL BACKGROUND.....	1
III. LEGAL STANDARD.....	3
IV. ARGUMENT.....	4
A. Mr. Ratliff’s New Opinions Were Not Previously Disclosed.....	5
1. Mr. Ratliff Improperly Provided New Opinions Regarding The ██████████ .....	5
2. Mr. Ratliff Improperly Provided New Opinions In An Insufficient Attempt To Fix The Holes Apple Identified In His Analysis. ....	5
B. Mr. Ratliff’s New Opinions Are Not Substantially Justified.....	6
1. The Information Regarding The ██████████ ██████████ Was Available To Mr. Ratliff At The Time He Submitted His Opening Damages Report. ....	6
2. The Information Mr. Ratliff Relies On To Rehabilitate His Damages Analysis Was Available At The Time He Submitted His Opening Damages Report. ....	7
C. Mr. Ratliff’s Failure To Include His New Opinions In His Opening Damages Report Is Not Harmless At Least Because It Deprived Apple Of The Opportunity To Respond. ....	8
V. CONCLUSION.....	9



**TABLE OF AUTHORITIES**

**Pages**

**Cases**

*Avance v. Kerr-McGee Chem. LLC*,  
 No. 5:04CV209, 2006 WL 3484246 (E.D. Tex. Nov. 30, 2006)..... 3, 4, 7, 8

*Buxton v. Lil’ Drug Store Prod., Inc.*,  
 No. 2:02-cv-178KS, 2007 WL 2254492 (S.D. Miss. Aug. 1, 2007) ..... 7

*Reliance Ins. Co. v. Louisiana Land & Exploration Co.*,  
 110 F.3d 253 (5th Cir. 1997) ..... 8

*Sierra Club, Lone Star Chapter v. Cedar Point Oil Co.*,  
 73 F.3d 546 (5th Cir.1996) ..... 7

**Rules**

Fed. R. Civ. P. 26..... 3, 4, 7

Fed. R. Civ. P. 37 ..... 4, 7

**TABLE OF EXHIBITS**

<b><u>Exhibit Number</u></b>	<b><u>Description</u></b>
Ex. 1	Deposition of Brian Ankenbrandt, Aug. 30, 2018 (“Ankenbrandt Tr.”)
Ex. 2	Deposition of Alan Ratliff, Dec. 7, 2018 (“Ratliff Tr.”)
Ex. 3	Declaration of Cosmin Maier, Jan. 14, 2019 (“Maier Decl.”)
Ex. 4	Workpaper 21 to the Damages Expert Report of Alan Ratliff (“Ratliff Rep., Workpaper 21”)
Ex. 5	Rebuttal Damages Expert Report of Paul C. Meyer (“Meyer Rebuttal”)
Ex. 6	Apple’s Dec. 1, 2017 Invalidity Contentions (“Apple Invalidity Contentions”)
Dkt. No. 220	Ninth Amended Docket Control Order (“Dkt. Control Order”)
Dkt. No. 231	Apple’s <i>Daubert</i> Motion to Exclude the Opinions of Mr. Alan Ratliff Relating to Damages (“Daubert Mot.”)
Dkt. No. 250	Plaintiff AGIS Software Development LLC’s Opposition to Apple Inc.’s <i>Daubert</i> Motion to Exclude the Opinions of Mr. Alan Ratliff Relating to Damages (“Daubert Opp.”)
Dkt. No. 250, Ex. C	Declaration of Alan Ratliff, Dec. 31, 2018 (“Ratliff Declaration”)
Dkt. No. 268	Apple’s Reply In Support of Apple’s <i>Daubert</i> Motion to Exclude the Opinions of Mr. Alan Ratliff Relating to Damages (“Daubert Reply”)

[REDACTED]

[REDACTED]

## I. INTRODUCTION

Defendant Apple Inc. (“Apple”) filed a *Daubert* motion demonstrating that Plaintiff AGIS Software Development LLC’s (“AGIS”) damages expert’s opinions are unsupported and unreliable. In response, seeking to gloss over those shortcomings, AGIS’s damages expert, Mr. Ratliff, submitted new opinions masquerading as a “declaration.” Mr. Ratliff’s new submission also attempts to rebut the damages analysis by Apple’s expert, Mr. Meyer, on issues which Mr. Ratliff had ample opportunity to address in his opening expert report.

AGIS’s late submission does not fix the issues identified in Apple’s *Daubert* motion—instead, it reveals AGIS’s recognition of the flaws in Mr. Ratliff’s analysis. Even if they are intended to help to fix the flaws in his analysis—which, to be clear, they do not—those opinions are improper, untimely, and should be stricken.

## II. FACTUAL BACKGROUND

The parties were required to submit expert reports on issues for which they bear the burden of proof by October 29, 2018. (Dkt. No. 220 at 3.) Rebuttal expert reports were due on November 19, 2018. (Dkt. No. 220 at 3.) And expert discovery closed on December 7, 2018. (Dkt. No. 220 at 2.) That sequence of events was critical because the Court ordered the parties to file any motions to strike or exclude expert testimony by December 14, 2018. (Dkt. No. 220 at 2.)

Consistent with the Court’s schedule, AGIS served its damages expert report on October 29, 2018 (the “Ratliff Report”); Apple served its rebuttal damages expert report on November 19, 2018 (the “Meyer Report”); and the parties deposed each other’s damages experts on December 6 and 7, 2018. On December 14, 2018, Apple filed a *Daubert* motion seeking to exclude certain opinions of AGIS’s damages expert, Mr. Ratliff, as unsupported and unreliable. (Dkt. No. [Daubert Mot.] 231.) AGIS filed its opposition on December 31, 2018. (Dkt. No. 250.) But in

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.