

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

AGIS SOFTWARE DEVELOPMENT, LLC

Plaintiff,

v.

HTC CORPORATION, et al.

Defendant.

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CASE NO. 2:17-cv-514-JRG
(Lead Case)

JURY TRIAL DEMANDED

AGIS SOFTWARE DEVELOPMENT, LLC

Plaintiff,

LG ELECTRONICS INC.

Defendant.

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CASE NO. 2:17-CV-515-JRG
(Member Case)

JURY TRIAL DEMANDED

**DAUBERT MOTION TO EXCLUDE THE OPINIONS OF MR. JOSEPH C.
McALEXANDER, III RELATING TO INFRINGEMENT**

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I. INTRODUCTION

Plaintiff AGIS Software Development LLC's ("AGIS") technical expert, Joseph C. McAlexander, III, has offered conclusory testimony concerning [REDACTED]

[REDACTED] Mr. McAlexander's opinions in this regard fail to meet the admissibility standards of the Federal Rules of Evidence and should be excluded. Mr. McAlexander also offers improper "expert" testimony on a matter on which he is not qualified to testify, on which he did not examine sufficient facts and data, and on which he did not apply reliable principles and methods: [REDACTED] This testimony should also be excluded under Rule 702.

II. ARGUMENT

An expert witness may provide opinion testimony only if "(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case." Fed. R. Evid. 702. Rule 702 requires a district court to make a preliminary determination as to whether a particular expert's proposed testimony satisfies the rule's requirements. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 149 (1999); *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592-93 (1993).

A. Mr. McAlexander's Bare-Bones Opinions Concerning [REDACTED] Are Conclusory and Unsupported by Any Facts or Data.

Mr. McAlexander's opinions concerning [REDACTED] are subject to exclusion as conclusory and unsupported.¹ To prevail under a doctrine of equivalents theory, AGIS is required to provide "particularized testimony and linking argument as to the 'insubstantiality of the differences' between the claimed invention and the accused device, or with respect to the 'function, way, result test.'" *See AquaTex Indus., Inc. v. Techniche Sols.*, 479 F.3d 1320, 1324, 1328-29 (Fed. Cir. 2007). Conclusory expert opinions unsupported by "facts or data" and based on no discernable "principles and methods" are not admissible. *See Genband US LLC v. Metaswitch Networks Corp.*, No. 2:14-cv-33-JRG-RSP, 2016 WL 3475688, at *2 (E.D. Tex. Jan. 7, 2016) (striking plaintiff's expert's opinions regarding doctrine of equivalents). Broad and scant discussions of law are similarly not sufficient. *See, e.g., Akzo Nobel Coatings, Inc. v. Dow Chem. Co.*, 811 F.3d 1334, 1343 (Fed. Cir. 2016).

Mr. McAlexander first asserts that, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] He then asserts:

¹ Mr. McAlexander does not offer [REDACTED].

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