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

AGIS SOFTWARE DEVELOPMENT LLC,	§	Case No. 2:17-CV-0514-JRG
	§	(LEAD CASE)
Plaintiff,	§	
	§	**JURY TRIAL DEMANDED**
v.	§	
	§	
HTC CORPORATION,	§	[redacted]
	§	
Defendant.	§	

AGIS SOFTWARE DEVELOPMENT LLC'S
***DAUBERT* MOTION TO EXCLUDE OPINIONS**
OF W. CHRISTOPHER BAKEWELL RELATING TO DAMAGES

I. INTRODUCTION

Defendant HTC Corporation's ("HTC") damages expert, W. Christopher Bakewell, asserts that a reasonable royalty to compensate Plaintiff AGIS Software Development LLC ("AGIS") for HTC's alleged infringement of the patents-in-suit[1] is [redacted] Mr. Bakewell's conclusion rests largely on [redacted].[2] In short, Mr. Bakewell has failed to demonstrate sufficient economic comparability between these agreements and the hypothetical negotiation here. While there are numerous flaws in Mr. Bakewell's analysis, his almost total reliance on these agreements renders his damages conclusions unreliable and properly excluded in their entirety. In the alternative, those portions of Mr. Bakewell's report that address or rely on these agreements should be excluded.

[redacted]

[1] The "patents-in-suit" are U.S. Patent Nos. 8,213, 970 (the "'970 Patent"); 9,408,055 (the "'055 Patent"); 9,445,251 (the "'251 Patent"); and 9,467,838 (the "'838 Patent").

[2] [redacted]

[redacted]

Mr. Bakewell's analysis is fatally flawed because he does not establish that [redacted]

[redacted]

[redacted]

II. ARGUMENT

A. The Applicable Standards

Admissibility of expert testimony is a question of law governed by Federal Rule of Evidence 702. *See Daubert v. Merrell Dow Pharms. Inc*., 509 U.S. 579 (1993). Rule 702 provides that an expert witness may offer opinion testimony 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 fact of the case. Fed. R. Evid. 702; *see also Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 141 (1999); *Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.*, 711 F.3d 1348, 1372-74 (Fed. Cir. 2013) (finding expert testimony unreliable because of "speculative leaps"). However, the Court must determine that an expert's testimony "both rests on a reliable foundation and is relevant to the task at hand." *Daubert* at 594, 597. "The relevance prong [of *Daubert*] requires the proponent [of the expert testimony] to demonstrate that the expert's 'reasoning or methodology can be properly applied to the facts in issue.'" *Johnson v. Arkema, Inc.*, 685 F.3d 452, 459 (5th Cir. 2012) (quoting *Curtis v. M & S Petroleum, Inc.*, 174 F.3d 661, 668 (5th Cir. 1999)). "The reliability prong [of *Daubert*] mandates that expert opinion 'be grounded in the methods and procedures of science and . . . be more than unsupported speculation or subjective belief.'" *Johnson*, 685 F.3d at 459 (quoting *Curtis*, 174 F.3d at 668).

While the Federal Circuit has recognized the relevance of settlement agreements to prove the amount of a reasonable royalty, these licenses are not admitted without scrutiny. *Res-Q-Net.com, Inc. v. Lansa, Inc.*, 594 F.3d 860, 872 (Fed. Cir. 2010) (noting that because litigation settlement agreements are likely influenced to some degree by litigation, the hypothetical negotiation can be skewed); *see LaserDynamics, Inc. v. Quanta Computer, Inc.*, 694 F.3d 51, 79 (Fed. Cir. 2012) ("The propriety of using prior settlement agreements to prove the amount of a reasonable royalty is questionable."). Accordingly, "the Court assesses litigation licenses on a case-by-case basis in determining their admissibility." *ReedHycalog, UK, Ltd. v. Diamond Innovations Inc.*, 727 F. Supp. 2d 543, 547 (E.D. Tex. 2010).

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