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

AGIS SOFTWARE DEVELOPMENT LLC, Plaintiff, v. HTC CORPORATION, Defendant.	§ § § § § § § § § §	Case No. 2:17-CV-0514-JRG (LEAD CASE) **JURY TRIAL DEMANDED** [redacted]
LG ELECTRONICS INC., Defendant.	§ § § § §	Case No. 2:17-CV-0515-JRG (CONSOLIDATED CASE) **JURY TRIAL DEMANDED**

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

I. INTRODUCTION

Defendant LG Electronics Inc.'s ("LG") damages expert, W. Christopher Bakewell, asserts that a reasonable royalty to compensate Plaintiff AGIS Software Development LLC ("AGIS") for LG's alleged infringement of the patents-in-suit[1] is [redacted] While there are numerous flaws in Mr. Bakewell's analysis, his almost total reliance on this agreement renders his damages opinions unreliable and properly excluded in their entirety. In the alternative, [redacted] 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").

[redacted]

[redacted]

[3] LGE_00454766.

[4] In reaching his reasonable royalty calculation, Mr. Bakewell relies on the opinions of Mr. Edward Tittel, LG's technical expert, regarding the technical comparability of [redacted] Exh. A at ¶ 214-216. While Mr. Bakewell merely repeats the statements made by Mr. Tittel without performing any analysis, the issue of technical comparability need not be reached because Mr. Bakewell fails to establish economic comparability between [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 facts 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, 77 (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).

The Federal Circuit has held that "alleging loose or vague comparability between different technologies or licenses does not suffice." *LaserDynamics,* 694 F.3d at 79. Where an expert relies on comparable licenses that differ in some respects from the hypothetical agreement, he must "account for the 'technological and economic differences' between them." *See Wordtech Sys. v. Integrated Networks Sol'ns, Inc.*, 609 F.3d 1308, 1320 (Fed. Cir. 2010). "Testimony relying on licenses must account for such distinguishing facts when invoking them to value the patented invention." *ResQNet*, 594 F.3d at 869 (holding that it is improper to rely on a license with no relationship to the claimed invention).

B. [redacted] In his report, Mr. Bakewell provides almost no additional insight into this, omitting or glossing over other salient facts that undoubtedly played a role in the parties' decision to settle for this sum, such as the fact, [redacted]

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