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

AGIS SOFTWARE DEVELOPMENT LLC,

        Plaintiff,

   v.

HTC CORPORATION,

        Defendant.

CIVIL ACTION NO. 2:17-cv-514-JRG
(LEAD CASE)

JURY TRIAL DEMANDED

DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF AGIS SOFTWARE
DEVELOPMENT LLC'S *DAUBERT* MOTION TO EXCLUDE OPINIONS OF
W. CHRISTOPHER BAKEWELL RELATING TO DAMAGES

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

I.   INTRODUCTION

Plaintiff AGIS Software Development LLC's ("AGIS") *Daubert* Motion to Exclude Opinions of W. Christopher Bakewell Relating to Damages (Dkt. No. 128) ("Motion") does not challenge the methodology that Mr. Bakewell ████████████████████████████████████ ██ Instead, by express admission in its Motion, AGIS disputes the facts and some of the "data points" that ███████████ ██████████████████████████████████ Key examples of this that form the crux AGIS's arguments throughout its Motion are:

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This foundation of the Motion, littered with AGIS's own opinions and criticisms articulated in terms of degree (*i.e.* – "mainly," "or minimizes," "sufficient," "or glossing over," etc.), fails to comport with the most basic understanding of legitimate bases for a viable *Daubert* motion. AGIS does not agree with certain, limited conclusions ████████████████████████ based upon its interpretation of the facts underlying those conclusions. As such, Plaintiff's challenge to Mr. Bakewell's opinion goes to the weight of his testimony, not its admissibility, and is insufficient

grounds to exclude part of (and certainly not all of as requested by Plaintiff)[1] Mr. Bakewell's

testimony under *Daubert*[2] and Fed. R. Evid. 702. *See ActiveVideo Network, Inc. v. Verizon*

Commc'ns, Inc., et al., 694 F.3d 1312, 1333 (Fed. Circ. 2012); *see also Micro Chem., Inc. v.*

Lextron, Inc., 317 F.3d 1387, 1392 (Fed. Cir. 2003) ("When, as here, the parties' experts rely on

conflicting sets of facts, it is not the role of the trial court to evaluate the correctness of facts

underlying one expert's testimony"); Fed. R. Evid. 702, advisory committee notes (2000) ("When

facts are in dispute, experts sometimes reach different conclusions based on competing versions

of the facts. The emphasis in the amendment on 'sufficient facts or data' is not intended to

authorize a trial court to exclude an expert's testimony on the ground that the court believes one

version of the facts and not the other").

　　Furthermore, courts in this District properly steer these types of arguments to the

courtroom, where they belong, and where cross-examination can flesh out the weight of competing

opinions for the jury to fulfill their role as fact-finders.

> The Court's gate-keeping function under *Daubert* is not intended to replace the
> adversarial system and the jury's responsibility to evaluate and weigh the evidence
> presented by each party's experts. *See Daubert*, 509 U.S. at 596 ("Vigorous cross-
> examination, presentation of contrary evidence, and careful instruction on the
> burden of proof are the traditional and appropriate means of attacking shaky but
> admissible evidence."); *see also 14.38 Acres of Land Situated in Leflore Cty., Miss.*,
> 80 F.3d at 1078 [*United States v. 14.38 Acres of Land Situated in Leflore Cty.,*
> *Miss.*, 80 F.3d 1074 (5th. Cir. 1996)] (The trial court must act "with proper
> deference to the jury's role as the arbiter of disputes between conflicting opinions.
> *As a general rule, questions relating to the bases and sources of an expert's opinion*
> *affect the weight to be assigned that opinion rather than its admissibility and should*
> *be left for the jury's consideration.*")

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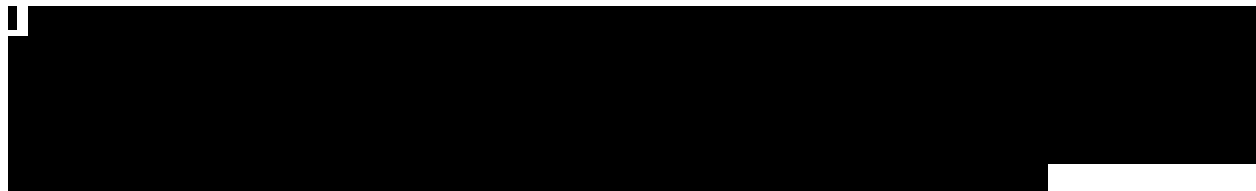
[2] *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

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