**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,	§ § §	
Defendant.	§	
LG ELECTRONICS INC.,	§ §	Case No. 2:17-CV-0515-JRG (CONSOLIDATED CASE)
Defendant.	§ § §	**JURY TRIAL DEMANDED**

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S REPLY TO
DAUBERT MOTION TO EXCLUDE THE OPINIONS OF
W. CHRISTOPHER BAKEWELL RELATING TO DAMAGES (DKT. 127)**

I.   INTRODUCTION

AGIS's motion to exclude the opinions of LG's damages expert W. Christopher Bakewell is not "a disagreement over how a piece of evidence in this case should be weighed," nor is it "picking at the edges" of Mr. Bakewell's discussion of an agreement that serves as a mere "data point" in his damages analysis, as LG would have this Court believe. (Dkt. 127 at 1, 2). Despite the 130 page bulk of Mr. Bakewell's Rebuttal Report,[1] ███████████████

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██ *Mr. Bakewell did not rely on any other agreement* to establish a concrete reference point for the outcome of the hypothetical negotiation between AGIS and LG.[2]

LG's opposition devotes much of its attention to whether a settlement agreement can be relied upon as a comparable license for the reasonable royalty analysis. Dkt. 127 at 1-4. AGIS already acknowledged in its opening brief that a settlement agreement may be relied upon as a comparable license, but only where the expert "account[s] for the 'technological and economic differences'" Dkt. 127 at 4; *see Wordtech Sys. v. Integrated Networks Sol'ns, Inc.*, 609 F.3d 1308 (Fed. Cir. 2010); *see also Res-Q-Net.com, Inc. v. Lansa, Inc*. 594 F.3d 860, 872 (Fed. Cir. 2010). ██

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[1]   Mr. Bakewell's Rebuttal Report in this matter is 137 pages long, not including another 49 pages of exhibits and attachments.

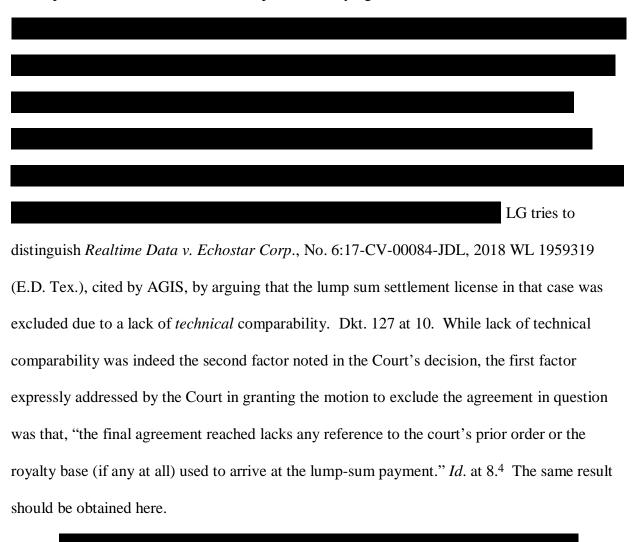[2]   ██

II.   ARGUMENT

A.   **LG Has Failed to Show That** ███████████████████████
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AGIS's motion focused on specific ways Mr. Bakewell failed to establish that ████████

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LG ducks the issue regarding the lack of evidence linking ███████████████████

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this explanation, nor Mr. Bakewell's report, shed any light on how this translates into the

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distinguish *Realtime Data v. Echostar Corp.*, No. 6:17-CV-00084-JDL, 2018 WL 1959319

(E.D. Tex.), cited by AGIS, by arguing that the lump sum settlement license in that case was

excluded due to a lack of *technical* comparability. Dkt. 127 at 10. While lack of technical

comparability was indeed the second factor noted in the Court's decision, the first factor

expressly addressed by the Court in granting the motion to exclude the agreement in question

was that, "the final agreement reached lacks any reference to the court's prior order or the

royalty base (if any at all) used to arrive at the lump-sum payment." *Id.* at 8.[4] The same result

should be obtained here.

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[4] As LG correctly notes, AGIS's motion inadvertently reversed its citations to Dkts. 271 and 272 in the *Realtime Data* case.

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Mr. Bakewell's report acknowledges that the context of the negotiations of the comparable license is relevant (Dkt. 127-2 at ¶ 158), yet he only mentioned in a footnote ████████

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████████████████████████████████ LG now dismisses this, arguing only that AGIS cites to no authority that this is relevant to ████████████████████████████████ ████████████████

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With respect to AGIS's point that Mr. Bakewell failed to account for the changing value of the licensed technology over time, ██

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