**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.	§	

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S REPLY TO
DAUBERT MOTION TO EXCLUDE THE OPINIONS OF
W. CHRISTOPHER BAKEWELL RELATING TO DAMAGES (DKT. 128)**

AGIS's motion to exclude the opinions of HTC's damages expert W. Christopher Bakewell is not a matter of AGIS disputing "the facts and some of the data points" relied on by Mr. Bakewell, nor does AGIS's motion go to the weight rather than the admissibility of Mr. Bakewell's opinions. Dkt. 128 at 1. ████████████████████████████

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opposition to this motion cites to no authority whatsoever to show that such clear language, evidencing the intent of the parties, can be summarily disregarded, let alone by an expert for one of the very parties to that agreement. Dkt. 128 at 5. For this reason alone, ████████████████ and Mr. Bakewell's opinions based on it should be excluded from the case.

Instead of focusing on this, HTC devotes much of its attention to arguing a point not in dispute, *i.e.* that a settlement agreement can be relied upon as a comparable license for the

reasonable royalty analysis. Dkt. 128 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. 128 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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██████████████████████████████ his expert opinions based on them are unreliable

and should be excluded.

I.   HTC HAS FAILED TO SHOW THAT ████████████████████ ██████████████████████

AGIS's motion focused on specific ways Mr. Bakewell failed to establish that ██████

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HTC responds to AGIS's argument that Mr. Bakewell has ████████████████

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████████████████████████████████████ Yet nowhere in

Mr. Bakewell's report does he appear to have considered █████████████████████

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accepting as true HTC's position that the accused products in those cases were virtually the same

products accused by AGIS, ████████████████████████████████████

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██ As to this

point, HTC also tries to distinguish *Realtime Data v. Echostar Corp.*, No. 6:17-CV-00084-JDL,

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[1] ██

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[2] Exhibits A-D refer to Exhibits to the Declaration of Alfred Fabricant.

2018 WL 1959319 (E.D. Tex. Apr. 5, 2018) (E.D. Tex.) cited by AGIS, arguing that the lump-sum settlement license in that case was excluded due to a lack of *technical* comparability. Dkt. 128 at 9. 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. The same result should be obtained here.

 With respect to the litigation context in which each of the agreements was negotiated,

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