



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

AGIS SOFTWARE DEVELOPMENT, LLC

Plaintiff,

v.

HTC CORPORATION, et al.

Defendant.

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

JURY TRIAL DEMANDED

AGIS SOFTWARE DEVELOPMENT, LLC

Plaintiff,

v.

LG ELECTRONICS INC.

Defendant.

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CASE NO. 2:17-CV-515-JRG
(CONSOLIDATED CASE)

JURY TRIAL DEMANDED

**LG ELECTRONICS INC.'S SUR-REPLY IN OPPOSITION TO AGIS SOFTWARE
DEVELOPMENT LLC'S *DAUBERT* MOTION TO EXCLUDE THE OPINIONS OF W.
CHRISTOPHER BAKEWELL RELATING TO DAMAGES**



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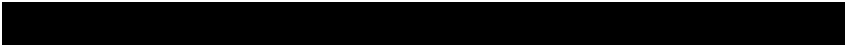


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Flexuspine, Inc. v. Globus Med., Inc.,
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Other Authorities

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[REDACTED]

AGIS’s reply demonstrates yet again that it has not brought a proper *Daubert* motion. *Daubert* motions concern unreliable methodology, not complaints about the weight to be given to a particular license agreement. AGIS concedes that settlement agreements can be relied upon as comparable licenses. AGIS also apparently concedes that [REDACTED] is technically comparable, as it must when its own expert [REDACTED]. Thus, AGIS’s only complaint is whether [REDACTED] is economically comparable. Each of AGIS’s complaints regarding the economic comparability of [REDACTED] are issues for cross-examination, not exclusion. The jury can weigh the economic comparability. Because AGIS’s motion goes to the weight of Mr. Bakewell’s opinions and not their admissibility, AGIS’s motion should be denied.

I. [REDACTED] IS RELIABLE

As stated in *Flexuspine*, a key element in assessing the comparability of licenses is “whether more reliable licenses for the patents in suit are available.” *Flexuspine, Inc. v. Globus Med., Inc.*, No. 6:15-cv-201-JRG-KNM, 2016 WL 9276023, *4 (E.D. Tex. July 6, 2016). Here, there is no dispute that there are no more reliable licenses. AGIS has produced no licenses to its patents, indicating it has been unable to license its patents. And the licenses relied on by AGIS’s expert are much less reliable on the very metrics cited by AGIS as criticism for the Zoltar Agreement. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] It is clear that, on the record available here, [REDACTED] is the most reliable license presented by the parties.

II. MR. BAKEWELL HAS SHOWN ECONOMIC COMPARABILITY

AGIS criticizes Mr. Bakewell for not explaining [REDACTED]

[REDACTED] There is no express requirement that how the lump sum amount in comparable licenses was negotiated is a prerequisite consideration, and AGIS cites no authority for such a requirement. AGIS further criticizes Mr. Bakewell for not [REDACTED]

[REDACTED] AGIS presumes that [REDACTED] [REDACTED] but no evidence supports this assumption. AGIS’s criticism goes to the weight, not admissibility, of Mr. Bakewell’s report.

The case AGIS relies on, *Realtime*, upholds the proposition LG Korea advocates—that degree of comparability is a jury issue, not a methodological flaw, and thus is “best addressed by cross examination, rather than exclusion.” *Realtime Data LLC v. EchoStar Corp.*, No. 6:17-CV-00084-JDL, 2018 WL 6266300, at *3 (E.D. Tex. Nov. 15, 2018) (citing *Virnetx, Inc. v. Cisco Sys., Inc.*, 767 F.3d 1308, 1331 (Fed. Cir. 2014)). As noted in *Realtime*, “[a] jury may hear testimony regarding the differences between the alleged comparable licenses and the hypothetical negotiation, evaluate its credibility, and ultimate[ly] determine whether to accept or

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