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

UNILOC 2017 LLC,
 	
    Plaintiffs,
 	
v.
 	
SAMSUNG ELECTRONICS AMERICA, INC.
and SAMSUNG ELECTRONICS CO. LTD.
 	
    Defendants.
	Civil Action No. 2:18-cv-508-JRG-RSP
	
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SAMSUNG'S *DAUBERT* MOTION TO EXCLUDE
CERTAIN OPINIONS AND TESTIMONY OF UNILOC'S DAMAGES EXPERT
WALTER BRATIC

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I.   INTRODUCTION

The opinions of Uniloc 2017 LLC's ("Uniloc") damages expert, Walter Bratic, should be excluded because they are perfunctory, unreliable and biased. <u>First</u>, Mr. Bratic violated the golden rule of patent damages – apportionment – by failing to identify and separate the value of the allegedly infringing features of Samsung's accused products from the other features and components that Uniloc's own technical expert, Dr. Chuck Easttom, ███████████████████ ████████████ In fact, Mr. Bratic did no apportionment at all, relying instead on Dr. Easttom's "Apportionment Factor," which Dr. Easttom pulled from thin air without any supporting analysis, research, testing, data, or peer-reviewed publications. <u>Second</u>, Mr. Bratic cherry-picked one Samsung survey, ignored at least 18 others, and employed no discernible methodology in selecting and using survey data. <u>Third</u>, he███████████████████████████████ relates to the technology of the '654 patent. <u>Fourth</u>, Mr. Bratic improperly equated the percentage of consumer responses in the survey to the percentage of a feature's contribution to Samsung's overall profits for the accused products. He did no analysis to justify this one-to-one correlation for a single accused product, much less all 100+ accused products sold since 2012. <u>Fifth</u>, Mr. Bratic improperly relied on an inadmissible, ██████████████████████████ ██████████████████ to support his claim that, in a hypothetical negotiation, Samsung would have agreed to equally split the benefits from the licensed patent. <u>Sixth</u>, he improperly relies on admittedly non-comparable license agreements so he and Uniloc could prejudice the jury with high dollar figures. His damages opinions are beyond flawed and should be excluded.

II.   FACTUAL BACKGROUND

A.   Uniloc Contends That Samsung Sold Mobile Devices With Lock Screens That Infringe The '654 Patent, But Lock Screens Were Already Known In The Art.
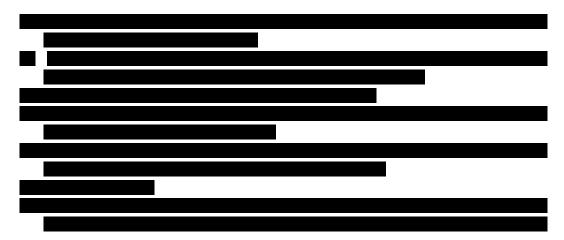
According to U.S. Patent No. 6,836,654 (the "'654 patent"), preventing unauthorized usage

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of a mobile phone between the time the phone is lost and the time the owner blocks the phone via the network was an "object of the invention." (Ex. 1, '654 patent at 1:40-41.)[1] The '654 patent purports to achieve this object of preventing unauthorized usage as follows: First, "a device [i.e., a phone] in accordance with the invention (1) verifies a user identification module [e.g., a SIM card] mounted inside the mobile radiotelephony device is linked to the mobile radiotelephony device," much like the prior art. (*Id*. at 1:39-43.) Then, the device "(2) detects a period of inactivity of the mobile radiotelephony device during a normal operation of the mobile radiotelephony device, wherein the normal operation includes a processing of all outgoing calls, and (3) prevents the normal operation of the mobile radiotelephony device in response to the verification of the user identification module and in response to the detection of the period of inactivity of the mobile radiotelephony device." (*Id*. at 1:43-51.) Once normal operation is prevented, a "deblocking code" must "be supplied to return to the normal operation mode." (*Id*. at 2:11-12.)

Uniloc's technical expert, Dr. Easttom, admitted that ▮▮ ▮▮▮▮▮▮▮ (Ex. 3, Easttom Dep. at 9:1-9, 10:23-12:13.) Mr. Bratic did not discuss any of these points with Dr. Easttom and did not know the incremental benefit provided by the '654 patent:

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