

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

JAWBONE INNOVATIONS, LLC,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., ET AL.

Defendants.

NO. 2:21-CV-0186-JRG-RSP

SAMSUNG DEFENDANTS' MOTION TO EXCLUDE
THE OPINIONS OF MR. JIM W. BERGMAN



TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 3

 A. The Accused Products..... 3

 B. Mr. Bergman’s September 19, 2022 and November 18, 2022 Expert Reports Regarding Damages..... 3

 1. Mr. Bergman’s Income Approach Analysis With Respect to the DOMA Patents..... 3

 2. Mr. Bergman’s Income Approach Analysis With Respect to the VAD Patents 6

 3. Mr. Bergman’s Conclusions Regarding Damages..... 8

III. LEGAL STANDARD..... 8

IV. MR. BERGMAN’S DAMAGES OPINIONS SHOULD BE EXCLUDED 9

 A. Mr. Bergman’s Damages Opinions Should Be Excluded Because Mr. Bergman Unreliably Assumed That Jawbone Would Receive [REDACTED] [REDACTED]..... 9

 B. Mr. Bergman’s Damages Opinions With Respect to the DOMA Patents Should Be Excluded Because Mr. Bergman Failed to Apportion [REDACTED] [REDACTED]..... 11

 C. Mr. Bergman’s Damages Opinions Regarding Smartphones Should Be Excluded Because Mr. Bergman Unreliably Based His Opinions on [REDACTED] [REDACTED]..... 12

 D. Mr. Bergman’s Damages Opinions Should Be Excluded Because Mr. Bergman Unreliably Calculated Incremental Profits Based on [REDACTED] [REDACTED]..... 14

 E. Mr. Bergman’s Damages Opinions Should Be Excluded Because Mr. Bergman Unreliably Calculated Incremental Profits Based on [REDACTED] [REDACTED]..... 15

V. CONCLUSION..... 15



TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Baxter Int’l, Inc. v. CareFusion Corp.</i> , No. 15-C-9986, 2022 WL 952276 (N.D. Ill. Mar. 30, 2022)	12
<i>Daubert v. Merrell Dow Pharmaceuticals, Inc.</i> , 509 U.S. 579 (1993).....	1, 8
<i>IP Innovation, LLC v. Red Hat, Inc.</i> , 705 F. Supp. 2d 687 (E.D. Tex. 2010).....	14
<i>Johnson v. Arkema, Inc.</i> , 685 F.3d 452 (5th Cir. 2012)	8, 9
<i>Knight v. Kirby Inland Marine Inc.</i> , 482 F.3d 347 (5th Cir. 2007)	9
<i>Looksmart Grp., Inc. v. Microsoft Corp.</i> , No. 17-cv-04709-JST, 2019 WL 4009263 (N.D. Cal. Aug. 5, 2019).....	11
<i>MLC Intellectual Prop., LLC v. Micron Tech., Inc.</i> , 10 F.4th 1358 (Fed. Cir. 2021)	12
<i>Power Integrations, Inc. v. Fairchild Semiconductor Int’l, Inc.</i> , 711 F.3d 1348 (Fed. Cir. 2013).....	9
<i>Salazar v. HTC Corp.</i> , No. 2:16-CV-01096-JRG-RSP, 2018 WL 1783157 (E.D. Tex. Apr. 13, 2018).....	10
<i>SimpleAir, Inc. v. Google Inc.</i> , No. 2:14-CV-11-JRG, 2015 WL 5895401 (E.D. Tex. Oct. 6, 2015).....	10
<i>Sound View Innovations, LLC v. Hulu, LLC</i> , 33 F.4th 1326 (Fed. Cir. 2022)	14
<i>Uniloc USA, Inc. v. Microsoft Corp.</i> , 632 F.3d 1292 (Fed. Cir. 2011).....	9
<i>Vaporstream, Inc. v. Snap Inc.</i> , No. 17-CV-00220-MLH-KSX, 2020 WL 2543814 (C.D. Cal. Jan. 10, 2020).....	10
<i>Versata Software Inc. v. SAP Am., Inc.</i> , No. 2:07-cv-153 CE, 2011 WL 4017939 (E.D. Tex. Sept. 9, 2011)	14



Virnetx, Inc. v. Cisco Sys., Inc.,
767 F.3d 1308 (Fed. Cir. 2014).....9, 11

Other Authorities

Federal Rule of Evidence 702.....1, 8

[REDACTED]

I. INTRODUCTION

Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, “Samsung”) move to exclude the opinions of Jawbone Innovation, LLC’s (“Jawbone”) damages expert Mr. Jim W. Bergman. Ex. 1 (Mr. Bergman’s September 19, 2022 report); Ex. 2 (Mr. Bergman’s November 18, 2022 corrected report).¹

Jawbone accuses certain Samsung smartphones and/or earbuds of infringing two categories of patents: (1) the DOMA patents² (smartphones and earbuds); and (2) the VAD patents³ (earbuds) (collectively, the “Patents-in-Suit”). Based on the income approach, the market approach, and the *Georgia-Pacific* factors, Mr. Bergman concludes that the parties to the hypothetical negotiation [REDACTED]

[REDACTED]. In reaching this conclusion, however, Mr. Bergman’s report is replete with methodological flaws that render his damages opinions unreliable. The Court should exclude Mr. Bergman’s opinions because they do not satisfy the reliability requirements of Federal Rule of Evidence 702 or *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

First, Mr. Bergman’s income approach analysis concludes that the incremental profit allocable to the DOMA and VAD patents [REDACTED]

[REDACTED] Yet, following a *Georgia-Pacific* analysis, Mr. Bergman ultimately concludes that [REDACTED]

¹ The changes to Mr. Bergman’s corrected report do not affect the bases for exclusion discussed in this motion. Instead, the changes to the corrected report relate to amending the alleged damages period for the DOMA patents to begin on October 26, 2015, which is six years before Jawbone first asserted the DOMA patents in an amended complaint filed October 26, 2021. *See* Ex. 2, ¶¶ 13, 39, 39 n.31–32, 41, 372, 394, 404, 405. Citations in this motion are to Mr. Bergman’s November 18, 2022 corrected report, but they apply equally to Mr. Bergman’s September 19, 2022 report.

² U.S. Patent Nos. 8,503,691, 10,779,080, and 11,122,357.

³ U.S. Patent Nos. 8,019,091 and 8,467,543.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.