

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ANCORA TECHNOLOGIES, INC.,

Plaintiff,

v.

LG ELECTRONICS INC. and LG
ELECTRONICS U.S.A., INC.,

Defendants.

CIVIL ACTION NO. 1:20-CV-00034-ADA

JURY TRIAL DEMANDED

ANCORA TECHNOLOGIES, INC.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD.,
and SAMSUNG ELECTRONICS
AMERICA, INC.,

Defendants.

CIVIL ACTION NO. 1:20-CV-00034-ADA

JURY TRIAL DEMANDED

**DEFENDANT LG ELECTRONICS INC. AND LG ELECTRONICS U.S.A., INC.'S
DAUBERT MOTION TO EXCLUDE AND STRIKE
CERTAIN OPINIONS OFFERED BY DR. DAVID MARTIN**

PUBLIC VERSION

TABLE OF CONTENTS

I. INTRODUCTION 1

II. LEGAL STANDARDS 1

III. ARGUMENT 1

 A. Dr. Martin’s opinions that Samsung’s E-FOTA are “identical or near identical” to LGE’s OTA Update are unsupported and unreliable. 1

 B. Dr. Martin’s opinions relating to LGE’s alleged direction or control of third parties must be excluded because they are not sufficiently reliable..... 3

 1. Dr. Martin does not analyze LGE’s alleged direction or control of [REDACTED] 4

 2. Dr. Martin does not analyze LGE’s alleged direction or control of [REDACTED] 5

 3. Dr. Martin does not analyze alleged direction or control of end users. 7

 4. Dr. Martin does not have any industry experience and is not qualified to opine on direction or control. 7

 C. Dr. Martin’s opinions relating to the “agent” limitation should be excluded. 8

 D. Dr. Martin should be precluded from testifying about X509 certificates. 9

IV. CONCLUSION..... 10

TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>Amazon.com, Inc. v. Barnesandnoble.com, Inc.</i> , 239 F.3d 1343 (2001).....	8
<i>Daubert v. Merrell Dow Pharm., Inc.</i> , 509 U.S. 579 (1993).....	1, 9
<i>Grecia v. VUDU, Inc.</i> , No. C-14-1220-EMC, 2015 WL 538486 (N.D. Cal. Feb. 9, 2015)	4, 6
<i>Johnson v. Arkema, Inc.</i> , 685 F.3d 452 (5th Cir. 2012)	7
<i>Supply & Bldg. Co. v. Estee Lauder Int'l.</i> , No. 95 CIV. 8136(RCC), 2001 WL 1602976 (W.D.N.Y. Dec. 14, 2001)	8
RULES	
Fed. R. Evid. 702	1, 2, 8

I. INTRODUCTION

Defendants LG Electronics Inc. and LG Electronics U.S.A., Inc. (collectively, “LGE”) move to exclude certain unreliable opinions offered by Ancora Technologies, Inc.’s expert, Dr. David Martin. Dr. Martin’s opinions that Samsung’s E-FOTA is “identical or near identical” to [REDACTED] functionality are speculative and unsupported. Further, Dr. Martin is unqualified to opine on whether LGE directs or controls relevant third parties, and he provides no factual or legal basis for his opinions. Dr. Martin does not apply the Court’s construction for the “agent” limitation in his Rebuttal Report, and he applies different constructions for this term in his affirmative and rebuttal reports. Lastly, Dr. Martin mentions the X509 standard in passing, but does not rely on it in any proffered opinion.

II. LEGAL STANDARDS

“Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it.” *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 595 (1993). Rule 702 thus bars expert testimony unless: (1) “the testimony is based on sufficient facts or data;” (2) “the testimony is the product of reliable principles and methods;” and (3) “the expert has reliably applied the principles and methods to the facts of the case.” FED. R. EVID. 702.

III. ARGUMENT

A. Dr. Martin’s opinions that Samsung’s E-FOTA are “[REDACTED] are unsupported and unreliable.

Dr. Martin opines in his report that Samsung’s E-FOTA solution is “[REDACTED] [REDACTED] Ex. A, ¶ 82 (“Martin Main Rpt.”). However, his opinion is not based on any source code or reliable technical documents describing how Samsung’s E-FOTA operates. Instead, he cites various high-level, public websites that provide only overviews with roughly the same few paragraphs describing, only generally, how

Samsung's E-FOTA works. *Id.*, ¶ 82, n.20. Notably absent is any meaningful analysis based on technical documents supporting his conclusion that [REDACTED]
[REDACTED]
[REDACTED] e.” *Id.*, ¶ 83 (emphasis added).¹

Dr. Martin further concludes that Samsung's Enterprise Mobile Management (“EMM”) solutions uses a FOTA Client that “[REDACTED]
[REDACTED]. *Id.*, ¶ 84 (emphasis added). He vaguely states that “the documentation suggests [Samsung's E-FOTA] *may* have included additional settings to permit [] a silent update” and “[e]ven if the [] E-FOTA solution is slightly different than LG's [REDACTED]
[REDACTED]” *Id.* (emphasis added). He fails to describe what “[REDACTED] is or how “[REDACTED] would infringe [REDACTED]
[REDACTED]” The only ostensible support for any of his conclusions are [REDACTED]
[REDACTED].” *Id.*

Finally, Dr. Martin makes a passing statement that Samsung's E-FOTA product includes an “EMM Console” that “appears to primarily offer businesses the ability to control the timing of (and whether to update) *Samsung-issued and Samsung-developed software for Samsung devices.*” *Id.*, ¶ 85 (emphasis added). There is no connection or comparison to the accused *LGE* devices or the accused OTA Update process. Based on the above deficiencies, Dr. Martin's conclusions are fatally flawed because they lack any analysis or support for his opinions.

¹ For reasons stated more fully in LGE's motion to exclude and strike certain opinions by Mr. Robert Mills, LGE also seeks to have Dr. Martin's opinion regarding Samsung's E-FOTA functionality excluded because information regarding E-FOTA was not disclosed to LGE during fact discovery.

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