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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

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SAMSUNG ELECTRONICS CO., LTD.,

Plaintiff,

-v.-

NVIDIA CORPORATION,

Defendant.

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Civil Action No. 3:14-cv-757-REP

**FILED UNDER SEAL**

**NVIDIA’S MEMORANDUM IN SUPPORT OF ITS MOTION TO STRIKE THE THIRD  
SUPPLEMENTAL EXPERT REPORT OF DR. JEONGDONG CHOE AND  
PARAGRAPHS 10-13, 18-19, 23-24, 27, 30-31, 36, 42-43, AND 46 OF THE THIRD  
SUPPLEMENTAL EXPERT REPORT OF DR. RICHARD FAIR OR, IN THE  
ALTERNATIVE, ITS MOTION FOR LEAVE TO SERVE A REBUTTAL EXPERT  
REPORT IN RESPONSE**

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Defendant NVIDIA Corporation (“NVIDIA”) respectfully moves to strike the Third Supplemental Report of Dr. Jeongdong Choe, and paragraphs 10-13, 18-19, 23-24, 27, 30-31, 36, 42-43, and 46 of the Third Supplemental Report of Dr. Richard Fair, which rely on Dr. Choe’s Third Supplemental Report or offer a never before disclosed infringement theory. They are beyond the scope of the Court’s February 23, 2016 Consent Order and there is no basis under the Federal Rules to permit them.

**I. INTRODUCTION**

The Court ordered a mistrial because Samsung’s failed to comply with its disclosure obligations under Rule 26, and determined that Samsung should not benefit because of the mistrial it created. (Dkt. No. 829, Memorandum Opinion at 24 (“As such, the final sanction in this case must leave Samsung worse off than it would have been had it properly disclosed [in discovery all materials its expert relied on to form his opinion].”))

To mitigate the harm imposed on NVIDIA by Samsung expert Dr. Choe’s failure to disclose all of the images and materials relied on to form his opinions, the Court ordered Dr. Choe to submit a “limited” supplemental report “identifying all images and materials that he relied upon” to form his original opinions. (Dkt. No. 821 at 2.) But instead of mitigating the harm it already has caused, Samsung’s latest round of expert reports abuses the Court’s “curative discovery period” by attempting to inject new and previously undisclosed opinions and documents into this case.

On March 1, 2016, Samsung served Dr. Choe’s Second Supplemental Report in which Dr. Choe was required, by the Consent Order (*id.*), to identify “**all** images and materials” Dr. Choe relied on in forming his opinions disclosed in his September and October 2015 reports. Dr. Choe failed to do so. More than one month later on April 5, 2016, Samsung served Dr. Choe’s

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Third Supplemental Report. This report, which was not authorized by the Consent Order (*id.*), identified for the first time **new documents** and **new expert opinions** regarding the work described in Dr. Choe’s September and October 2015 reports. On April 5, Samsung also served a supplemental report from Dr. Fair, who opines that NVIDIA infringes based on Dr. Choe’s newly disclosed opinions and documents.

These new and untimely opinions should be troubling to the Court, and are anything but a trifling violation of the rules and procedures in this case. They go to the heart of NVIDIA’s non-infringement defense. This Court has recognized that “[t]he presence of [REDACTED] [REDACTED] is an important aspect of NVIDIA’s non-infringement defense in this case.” (Dkt No. 829 at 5.) In his Third Supplemental Report, served less than a month before the retrial begins, Dr. Choe opines **for the first time** that – contrary to what is set forth in his September 2015 Opening Report – there is no [REDACTED]

[REDACTED] But Samsung has known about this “false detection” problem since at least the January trial, long before it served Dr. Choe’s March 1 report. (*See* Ex. B, Apr. 11, 2016 Fair Dep. Tr. (Rough) at 42:3-7.) Similarly, realizing that none of the data supports Dr. Choe’s conclusions about material composition, Dr. Fair opines **for the first time** that the layer labeled [REDACTED] and therefore is a “different metal.” Samsung’s submissions aggravate, rather than mitigate, the damage it already has imposed.

Samsung and Dr. Choe could have, and should have, disclosed these **new documents** and **new opinions** last year, during the original expert discovery period. Samsung and Dr. Choe could have, and should have, disclosed at least the **new documents** in the Second Supplemental Report because the Court’s Order (Dkt. No. 821) required them to “identify[] all images and

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