



Expert Opinion on Reasonable Royalty Excluded As Unreliable Because It Was Based on a Litigation Verdict and Did Not Account for Litigation-Related Economic Circumstances

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The verdict at issue was a case between Mars and Heinz from 2003. The court noted, citing to *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860 (Fed. Cir. 2010), that the Federal Circuit has ruled that “litigation itself can skew the results of the hypothetical negotiation.” That is because the hypothetical reasonable royalty calculation occurs before litigation. Mr. Britven’s opinion did not establish whether the Heinz verdict was comparable to a hypothetical reasonable royalty. His opinion also failed to establish that the technology in the Heinz case was comparable, so the court struck the portions of Mr. Britven’s expert reports discussing the Heinz litigation and precluded any testimony regarding the same.

Mars, Inc. v. TruRX LLC, et al., 13-cv-526 (E.D. Tex. Apr. 18, 2016)

Categories

Expert Testimony

Eastern District of Texas

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