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Magistrate Judge Denies Daubert Motion, Finding Alleged Reasonable Royalty Apportionment Deficiencies an Issue for the Jury.

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In the underlying litigation, the plaintiff, Red Rock Analytics, asserted U.S. Patent No. 7,346,313 directed to a system and method for transceiver calibration, against Samsung's devices containing 802.11n and LTE transceivers. Red Rock's damages expert, Roy Weinstein, calculated a reasonable royalty damages figure of $75.9 million through the expected date of trial and additional damages through the 2025 expiration date of the patent based in part on the analysis of Red Rock's technical expert, Dr. Christopher Jones. Samsung moved to exclude Weinstein's opinion as unreliable under *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993) and Federal Rule of Evidence 702. Samsung based this motion in part on alleged flaws in the experts' apportionment methodology—that is, Samsung alleged that the plaintiff's experts credited the asserted invention with an excessive portion of the accused devices' overall value. Samsung also challenged Weinstein's calculation of future damages through the expiration of the patent, as well as his application of the *Georgia-Pacific* factors.

Samsung's first argument attacked Weinstein's reliance on prior licenses. According to Samsung, the rates in these prior licenses fall within a range that the federal circuit directed the district court to evaluate for their value to standardization. Red Rock responded that there was no evidence that the licenses were impacted by standardization, and therefore, the rates contained in those licenses should be viewed as reflecting an actual negotiation of the patent's value. The district court sided with Red Rock, finding that "[m]any of these arguments are really about comparability, more so than apportionment." As a result, the district court declined to exclude Weinstein's opinions on this basis and held that "whether

these licenses are sufficiently comparable [...] **goes to the weight of the evidence, not its admissibility**." *Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1326 (Fed. Cir. 2014) (emphasis added).

Samsung's second argument attacked Dr. Jones's analysis based on an alleged failure to connect the value of the accused devices to the patented features. Specifically, Samsung argued that it could have received comparable transceiver calibration benefits in the accused devices from the prior art systems and methods rather than from the asserted invention, and that Dr. Jones failed to subtract out the value attributable to features in the prior art. Red Rock argued that Dr. Jones considered the prior art processes but found that they did not contribute to the performance enhancements attributed to the patent. Again, the district court found the heart of Samsung's arguments went more to the conclusions reached by Red Rock's experts than their methodology. According to the district court, the methodology employed by Dr. Jones and Weinstein, by extension, was sufficiently reliable and grounded in the facts of the case. And, because Dr. Jones considered the claimed invention's footprint in the marketplace, the testimony is admissible.

Samsung also took issue with Weinstein's use of lump-sum payment licenses as a basis for determining a running royalty. In particular, Samsung argued that Weinstein inappropriately calculated an equivalence between a lump-sum license payment and a running royalty despite evidence showing that Samsung had a clear preference for the lump-sum payment. But again, the district court found Weinstein's methodology reliable and refused to exclude his opinions on this basis.

Lastly, Samsung argued that Weinstein's calculations of future sales of accused products through the expiration of the patent was unreliable because it held steady based on 2017 sales data and failed to account for the possibility of decreases in the overall market. In response, Red Rocks noted that Weinstein intended to revise his calculations based on additional evidence Samsung agreed to produce for 2018 sales, but that Weinstein's model accounts for both increases and decreases in sales by holding sales constant. The district court denied Samsung's motion as to this argument, holding that Samsung had not demonstrated that Weinstein's calculation was based on pure speculation.

Throughout its decision, the district court emphasized that Samsung's arguments primarily went to how the evidence should be weighed, rather than whether Red Rock's experts' opinions were unreliable. Consequently, the district court found that Samsung's concerns

were more appropriately addressed through traditional means of attacking evidence, i.e., vigorous cross-examination.

Practice Tip: As the district court emphasized in the decision discussed here, the admissibility of expert opinions turns on the reliability of the methodology used, not the strength of the conclusions an expert ultimately reaches. And, although there may be more than one reliable approach in a single case, each particular approach must be evaluated for its relative strengths and weaknesses both for the purposes of admissibility and for its potential susceptibility to attack on cross-examination.

Red Rock Analytics, LLC v. Samsung Elecs. Co., No. 2:17-CV-101-RWS-RSP (E.D. Tex. Feb. 6, 2019)

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