

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

TOT POWER CONTROL, S.L.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 21-1302-MN
	)	<b>REDACTED</b>
APPLE INC.,	)	
	)	
Defendant.	)	
<hr/>		
TOT POWER CONTROL, S.L.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 21-1304-MN
	)	
LG ELECTRONICS INC. and LG	)	
ELECTRONICS U.S.A., INC.,	)	
	)	
Defendants.	)	
<hr/>		
TOT POWER CONTROL, S.L.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 21-1305-MN
	)	
SAMSUNG ELECTRONICS CO., LTD.	)	
and SAMSUNG ELECTRONICS	)	
AMERICA, INC.,	)	
	)	
Defendants.	)	
<hr/>		

**MEMORANDUM ORDER**

At Wilmington this **30th** day of **April, 2025**, the court having considered: (1) the motions to strike the allegedly untimely expert opinions of Lawrence E. Larson and Mark Chandler filed by defendants Apple Inc. (“Apple”), LG Electronics Inc. and LG Electronics U.S.A., Inc. (“LG”), and Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (“Samsung,”

collectively, “Defendants”), (C.A. No. 21-1302-MN, D.I. 334; C.A. No. 21-1304-MN, D.I. 272; C.A. No. 21-1305-MN, D.I. 251);<sup>1</sup> (2) plaintiff TOT Power Control, S.L.’s (“TOT”) motion to strike the allegedly irrelevant testing opinions and untimely disclosed invalidity opinions of Dr. Harry Bims, Nitin Kasturi, and Christopher Riddle on behalf of Samsung and the associated filings, (C.A. No. 21-1305-MN, D.I. 250; D.I. 253; D.I. 256; D.I. 257); and (3) Apple’s motion for leave to serve the supplemental expert report of Dr. Wayne Stark or, in the alternative, to strike the untimely expert opinions of Dr. Larson, (D.I. 365; D.I. 366; D.I. 367); IT IS ORDERED that the pending motions are resolved as follows:

**1. Defendants’ motions to strike Dr. Larson’s new doctrine of equivalents infringement theory are GRANTED.** Defendants move to strike certain paragraphs of Dr. Larson’s reply expert reports<sup>2</sup> that raise new infringement opinions under the doctrine of equivalents (“DOE”) for the term “outer loop power control” (“OLPC”) as used in the preambles of asserted U.S. Patent Nos. 7,496,376 (“the ’376 patent”) and 7,532,865 (“the ’865 patent;” together, the “Asserted Patents”) and limitation 1[a] of the ’865 patent. (D.I. 334 at 1) According to Defendants, TOT failed to show good cause under Federal Rule of Civil Procedure 16(b)(4) for the late disclosure of its DOE theory after the scheduling order deadline for final

---

<sup>1</sup> The answering briefs associated with the pending motions to strike are found at D.I. 337 in C.A. No. 21-1302-MN, D.I. 275 in C.A. No. 21-1304-MN, and D.I. 255 in C.A. No. 21-1305-MN. All citations to case filings in this Memorandum Order refer to those made in C.A. No. 21-1302-MN unless otherwise noted.

<sup>2</sup> In C.A. No. 21-1302-MN, Apple seeks to strike paragraphs 28 to 29, 36 to 38, 83, 91 to 93, 120, and 135 of Dr. Larson’s reply expert report. (D.I. 334, Ex. 1) In C.A. No. 21-1304-MN, LG seeks to strike paragraphs 26 to 27, 33 to 35, and 74 of Dr. Larson’s reply expert report. (C.A. No. 21-1304-MN, D.I. 272, Ex. 1) In C.A. No. 21-1305-MN, Samsung seeks to strike paragraphs 22 to 23, 30 to 32, 70, and 81 of Dr. Larson’s reply expert report. (C.A. No. 21-1305-MN, D.I. 252, Ex. 1)

infringement contentions expired. (*Id.* at 1-2) Defendants also contend that the *Pennypack* factors support exclusion of Dr. Larson's late-disclosed DOE theory. (*Id.* at 2)

2. TOT responds that the DOE theory in Dr. Larson's reply expert report was timely disclosed under Rule 16(b)(4) because it is responsive to the court's claim construction ruling on the OLPC term, which issued after opening expert reports were served. (D.I. 337 at 1) TOT further contends that the *Pennypack* factors weigh against striking the DOE opinions because Defendants have not shown prejudice or surprise, and they have not specified any additional discovery required to cure the prejudice. (*Id.*) TOT alleges that the DOE opinions "may prove pivotal in TOT's case" if its *Daubert* motions are denied. (*Id.* at 1-2)

3. The DOE theory in Dr. Larson's reply expert report was not timely disclosed under Rule 16(b)(4), which states that "[a] schedule may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). Under the scheduling order, final infringement contentions were due on February 16, 2024. (D.I. 112) On August 17, 2022, the court entered an oral order instructing the parties to serve final contentions before claim construction briefing, specifying that those final contentions "shall include a party's contentions under its proposed construction(s), as well as under the opposing construction(s) (if such an alternative contention exists)." (D.I. 40)

4. There is no dispute that TOT did not timely disclose any DOE theory when it served its final infringement contentions in February of 2024. (D.I. 138; D.I. 334, Ex. 3 at 122:19-22) Instead, TOT disclosed a DOE theory of infringement for the first time six months later in Dr. Larson's opening expert report served on August 23, 2024. (D.I. 287; D.I. 334, Ex. 2 at ¶¶ 115, 320) In his report, Dr. Larson opines that the accused products featuring a power control step performed exclusively in the inner loop are equivalent to the OLPC step recited in the Asserted

Patents because “[i]nner and outer loop are both part of a broader power control algorithm and are inextricable[.]” (D.I. 334, Ex. 2 at ¶¶ 115, 320)

5. During the *Markman* hearing on September 25, 2024, the court noted that the parties did not identify OLPC as a disputed term and sought to confirm that the parties agreed on the term’s meaning. (D.I. 334, Ex. 3 at 7:24-8:7) The parties agreed that OLPC refers to the process of setting the target signal to interference ratio (“SIR<sub>target</sub>”) to maintain a preset quality objective. (*Id.*, Ex. 3 at 9:7-10:5) This stipulated definition is consistent with the one provided in Dr. Larson’s opening expert report, which defines OLPC as “set[ting] the desired SIR<sub>target</sub> to maintain a pre-set quality objective.” (*Id.*, Ex. 2 at ¶ 56) At the conclusion of the *Markman* hearing, counsel for Defendants argued that TOT’s disclosure of its DOE theory in Dr. Larson’s opening expert report was untimely. (D.I. 334, Ex. 3 at 121:23-124:20) In response, TOT defended the timing of Dr. Larson’s DOE theory by tying it to Defendants’ claim construction argument that the OLPC term in the preamble of the asserted claims is limiting. (*Id.*, Ex. 3 at 123:6-124:4)

6. On October 7, 2025, TOT agreed to withdraw the portions of Dr. Larson’s opening expert report describing his DOE theory of infringement while “reserv[ing] the right to have Dr. Larson opine in his Reply Report on aspects of the Court’s constructions of terms that were not previously presented by the parties.” (*Id.*, Ex. 4 at 4) The following week, the court issued its claim construction decision holding that the OLPC term in the preamble of the asserted claims is limiting. (D.I. 297 at 2) When TOT’s reply expert report was due on October 22, 2024, Dr. Larson reintroduced and expanded upon the DOE theory first disclosed in his opening expert report. (D.I. 301; D.I. 334, Ex. 1) Dr. Larson’s DOE theory continues to be rooted in his position that even if the relevant portions of the infringing code “are deemed exclusively part of

the inner loop . . . and [ ] the claim preamble excludes any element that is not wholly within the outer loop,” those differences are insubstantial because “[i]nner and outer loop are both part of a broader power control algorithm and are highly interrelated.” (D.I. 334, Ex. 1 at ¶ 28; *see also id.* at ¶¶ 29, 36-38, 91-93, 120, 135)

7. TOT’s course of conduct does not support a finding of good cause for the untimely disclosure of Dr. Larson’s DOE theory without leave of court. *See Intell. Ventures I LLC v. AT&T Mobility LLC*, C.A. No. 13-1668-LPS *et al.*, 2017 WL 658469, at \*6 (D. Del. Feb. 14, 2017) (excluding portions of expert report that violated court’s scheduling order by injecting new infringement theories two months after deadline for final contentions). Early in the case, the court expressly instructed the parties to include all infringement and invalidity theories in their final contentions, including theories relating to anticipated alternative claim construction positions. (D.I. 40) Yet TOT’s final infringement contentions did not include its DOE theory of infringement, which is responsive to Defendants’ claim construction position that the OLPC term in the preamble of the asserted claims is limiting. (D.I. 337, Ex. A; D.I. 334, Ex. 3 at 122:19-22; D.I. 228 at 4-9, 54-56) TOT’s disclosure and subsequent withdrawal of the DOE theory in Dr. Larson’s opening expert report suggests TOT implicitly recognized that it lacked good cause for the untimely disclosure. (D.I. 334, Ex. 2 at ¶¶ 115, 320; Ex. 4 at 4) Moreover, TOT’s disclosure of the DOE theory in the opening expert report undercuts its position that the nearly identical DOE theory included in the reply report were needed to address the court’s “previously-unadopted claim construction and a new argument.” (D.I. 337 at 1)

8. On balance, the *Pennypack* factors also favor exclusion of the portions of Dr. Larson’s reply expert report addressing his DOE theory of infringement. *See Konstantopoulos v. Westvaco Corp.*, 112 F.3d 710, 719 (3d Cir. 1997) (citing *Meyers v. Pennypack Woods Home*

*Ownership Ass'n*, 559 F.2d 894, 904-05 (3d Cir. 1977)). “[I]n sophisticated, complex litigation involving parties represented by competent counsel, courts have been less indulgent in applying the *Pennypack* factors and more willing to exclude evidence without a strict showing that each of the *Pennypack* factors has been satisfied.” *TQ Delta, LLC v. 2Wire, Inc.*, C.A. No. 13-1835-RGA, 2021 WL 3525234, at \*2 (D. Del. Aug. 11, 2021) (quoting *Bridgestone Sports Co. v. Acushnet Co.*, 2007 WL 521894, at \*4 (D. Del. Feb. 15, 2007) (internal quotation marks omitted)).

9. The first factor, regarding the prejudice or surprise to the party against whom the evidence is offered, weighs in favor of exclusion because TOT failed to disclose the DOE theory in its final infringement contentions as required by the court’s oral order and scheduling order, and it withdrew its subsequent disclosure of the theory in Dr. Larson’s opening expert report. *Id.* By reintroducing the theory in Dr. Larson’s reply report, TOT deprived Defendants’ experts of the opportunity to address the DOE theory in their own reports.

10. The second and third factors regarding a cure for the prejudice and the disruption of trial also weigh in favor of exclusion. Although Defendants made efforts to address Dr. Larson’s DOE theory of infringement in their briefing on summary judgment, there is insufficient time remaining in the case schedule to cure the prejudice by conducting additional fact or expert discovery before trial begins on June 23, 2025. (D.I. 316 at 11-13, 16-18; D.I. 283) Even if the prejudice could be cured by permitting additional fact and/or expert discovery between now and June of 2025, TOT’s failure to “provide a convincing explanation for the timing of the disclosure of its new theory of infringement” weighs in favor of exclusion. *Intell. Ventures*, 2017 WL 658469, at \*6.

11. Finally, TOT's "shifting sands" approach to the pursuit of its DOE theory undermines its position regarding the importance of the DOE theory to its overall infringement case. *Id.* TOT was on notice that its final infringement contentions should include any infringement theories that might arise during claim construction, yet it did not disclose its DOE theory of infringement in the final contentions despite Defendants' position in the joint claim construction brief that the OLPC term in the preamble of the asserted claims was limiting. (D.I. 40; D.I. 228 at 4-9, 54-56) Moreover, the DOE theory in Dr. Larson's reply expert report mirrors the one raised in his opening expert report, which was subsequently withdrawn after Defendants challenged the disclosure as untimely. (D.I. 334, Ex. 2 at ¶¶ 115, 320; Ex. 1 at ¶¶ 28-29, 36-38, 83, 91-93, 120, 135; Ex. 4 at 4) TOT's withdrawal and reassertion of its DOE theory support a conclusion that the DOE theory is not critical to its infringement case.

**12. Apple's motion to strike Dr. Larson's method claim infringement theory is DENIED without prejudice.** Apple moves to strike paragraphs 16 to 17 and 118 of Dr. Larson's reply expert report for allegedly raising new infringement opinions regarding the asserted method claims. (D.I. 334 at 2) Dr. Larson's reply report alleges the accused Apple devices infringe the asserted method claims because they operated on UMTS/WCDMA<sup>3</sup> 3G networks. (D.I. 334 at 2; Ex. 1 at ¶¶ 16-17, 118) According to Apple, TOT failed to assert this infringement theory in its final contentions or opening expert report even though it is based on publicly available statistical data. (*Id.* at 2) TOT responds that the theory was disclosed in its final infringement contentions, which state that the accused products "perform the claimed

---

<sup>3</sup> "UMTS/WCDMA" refers to the Universal Mobile Telephone Service cellular standard and Wideband Code Division Multiple Access. (D.I. 34 at ¶ 15)

methods each and every time an Accused Product is powered on and used as intended (i.e., to receive wireless signals, including cellular CDMA signals).” (D.I. 337 at 2; Ex. A at 26)

13. A review of the record supports TOT’s position that its theory of infringement for the method claims was timely disclosed. Apple’s final noninfringement contentions acknowledge that TOT’s contentions allege the accused products “perform the claimed methods each and every time an Accused Product is powered on and used as intended,” including by receiving cellular CDMA signals. (D.I. 337, Ex. A at 26) TOT also represents that Dr. Larson’s opening expert report discloses how the accused Apple products infringe the method claims when powered on and in normal use, even if those products are used in a non-WCDMA network.<sup>4</sup> (D.I. 337 at 2) Apple has not persuasively explained why these disclosures were not sufficient to put it on notice of TOT’s position that the accused products infringe the asserted method claims simply by operating on UMTS/WCDMA 3G networks. Because the disclosures were timely, there is no basis to strike the challenged portions of Dr. Larson’s reply expert report.

**14. Apple’s motion to strike Dr. Larson’s “transition to 4G networks” and “continued infringement after 3G networks shut down in 2022” theories is DENIED without prejudice.** Apple also moves to strike paragraphs 203 to 206 of Dr. Larson’s reply expert report, which allegedly disclose new theories regarding how Apple’s accused products continue to infringe after the 3G networks were shut down in 2022 and how the 3G networks continue to add value. (D.I. 334 at 3; Ex. 1 at ¶¶ 203-06) According to Apple, TOT’s reply expert report alleges for the first time that: (1) foreign use of the accused Apple products on a 3G

---

<sup>4</sup> TOT cites to paragraphs 100 and 104 of Dr. Larson’s opening expert report, which were not among the paragraphs included in the excerpt at D.I. 334, Ex. 2. (D.I. 337 at 2)

network infringes, and (2) accused Apple devices operating on 4G networks may “fall back” to 3G networks in certain circumstances, causing infringement. (*Id.*) TOT responds that these portions of Dr. Larson’s reply expert report were not intended to assert new infringement theories, but rather to rebut Apple’s expert opinions that the value of the Asserted Patents is limited due to the discontinuation of 3G networks in the United States in 2022. (D.I. 337 at 2)

15. Apple’s motion to strike the portions of Dr. Larson’s reply expert report addressing the ongoing value of the Asserted Patents following the discontinuation of 3G networks in the United States is denied without prejudice. The challenged paragraphs respond to arguments made by Apple’s experts, as opposed to presenting a new theory of infringement. *See In re Entresto*, C.A. No. 22-1395-RGA, 2024 WL 3756787, at \*2 n.7 (D. Del. Aug. 12, 2024). Dr. Larson’s reply expert report describes his understanding that two Apple experts, Dr. Stark and Mr. Bakewell, “have opined that the value of the Asserted Patents is limited because they relate to 3G networks, which began to be replaced by 4G (LTE) networks in the U.S.” (D.I. 334, Ex. 1 at ¶ 201) The ensuing paragraphs describe why Dr. Larson disagrees with Apple’s experts’ opinions about the value of the Asserted Patents, explaining that “3G functionality remains an important feature for mobile devices even today” so the accused products can roam on overseas 3G networks or fall back to a 3G network when 4G network coverage is not available. (*Id.*, Ex. 1 at ¶¶ 203-06) These opinions are responsive to the opinions of Apple’s experts. To the extent that they could be construed to introduce new infringement theories, Apple has not shown how it is prejudiced by these opposing opinions and has not otherwise addressed the remaining *Pennypack* factors as to these portions of Dr. Larson’s reply expert report.

**16. Samsung's motion to strike Dr. Larson's SIR<sub>req</sub> infringement opinion is**

**DENIED without prejudice.** Samsung moves to strike paragraph 34 of Dr. Larson's reply expert opinion, which states that the signal to interference ratio ("SIR<sub>req</sub>") limitation of the '865 patent is satisfied by functionality on the dedicated physical channel ("DPCH") alone. (C.A. No. 21-1305-MN, D.I. 252 at 1; Ex. 1 at ¶ 34) According to Samsung, this opinion conflicts with the one expressed in Dr. Larson's opening expert report, which states that the SIR<sub>req</sub> limitation is satisfied by fractional DPCH ("F-DPCH") functionality. (C.A. No. 21-1305-MN, D.I. 252, Ex. 2 at ¶ 126) TOT responds that the opinion in Dr. Larson's reply expert report is not new because his opening expert report included SIR<sub>req</sub> infringement opinions based on DPCH functionality in the accused products. (*Id.*, D.I. 255 at 1-2)

17. Dr. Larson's reply expert opinion on the SIR<sub>req</sub> limitation of the '865 patent is not new. In paragraphs 118 to 124 and 127 of his opening expert report, Dr. Larson describes how the SIR<sub>req</sub> limitation in claim 1 of the '865 patent is met by citing to documents and source code relating to DPCH functionality in the accused products. (C.A. No. 21-1305-MN, D.I. 252, Ex. 2 at ¶¶ 118-24, 127; D.I. 228 at ¶¶ 14-16) Samsung cites to paragraph 128 of Dr. Larson's opening expert report to suggest that Dr. Larson previously relied only on F-DPCH functionality to satisfy the SIR<sub>req</sub> limitation, without addressing the preceding paragraphs of his opening report pertaining to the SIR<sub>req</sub> limitation. (*Id.*, D.I. 252 at 2) Because paragraph 34 of Dr. Larson's reply report is not a late-disclosed infringement theory, it should not be stricken. *Personal Audio, LLC v. Google LLC*, C.A. No. 17-1751-CFC-CJB, 2021 WL 765763, at \*1 (D. Del. Feb. 19, 2021). Even if Dr. Larson's reply expert opinion on the SIR<sub>req</sub> limitation of the '865 patent was untimely, any prejudice to Samsung was cured when it deposed Dr. Larson on this opinion

and addressed the issue in its briefing on summary judgment. (C.A. No. 21-1305-MN, D.I. 210 at 43-45)

**18. Defendants’ motions to strike Chandler’s new royalty calculations in his reply expert reports are DENIED without prejudice.**<sup>5</sup> In all three related cases, damages expert Mark Chandler served opening expert reports calculating damages based on a percentage royalty rate from TOT’s 2012 OLPC Solution License Agreement with Huawei (the “Huawei Agreement”) and applying that rate to all accused product revenue. (D.I. 334, Ex. 6 at ¶ 402 & Ex. 8; C.A. No. 21-1304-MN, D.I. 272, Ex. 8 at ¶¶ 107-08; C.A. No. 21-1305-MN, D.I. 252, Ex. 8 at ¶¶ 368, 372, 374) The royalty sheet from the Huawei Agreement discloses an average royalty per unit of \$14.50. (*Id.*) However, Chandler used a 0.121% royalty rate applied to the selling prices of the accused devices to calculate the royalty rate per device. (*Id.*) This calculation resulted in a royalty rate of less than one dollar per device. (*Id.*)

**19.** After Defendants’ experts criticized Chandler’s analysis in their rebuttal damages reports for his alleged lack of apportionment, Chandler served reply expert reports in each case that exponentially increased the amount of damages sought by applying the \$14.50 royalty rate per unit disclosed in the Huawei Agreement. (D.I. 334, Ex. 7 at ¶¶ 118-21, 132; C.A. No. 21-1304-MN, D.I. 272, Ex. 8 at ¶¶ 107-08 & Ex. 11; C.A. No. 21-1305-MN, D.I. 252, Ex. 9 at ¶ 98 & Ex. 11) Unlike Chandler’s damages calculation in his opening expert report, the \$14.50 royalty rate per unit disclosed in his reply expert report is independent of price and cost factors for the accused devices. (*See, e.g.*, C.A. No. 21-1305-MN, D.I. 252, Ex. 10 at 169:24-171:8)

---

<sup>5</sup> Apple moves to strike paragraphs 118 to 121, 132, and Exhibit 12 of Chandler’s reply expert report. (D.I. 334, Ex. 7) LG moves to strike paragraphs 107 and 108, as well as Exhibit 11, of Chandler’s reply expert report. (C.A. No. 21-1304-MN, D.I. 272, Ex. 8) Samsung moves to strike paragraph 98 and Exhibit 11 of Chandler’s reply expert report. (C.A. No. 21-1305-MN, D.I. 252, Ex. 9)

Below is a comparison of the total amount of Chandler's damages calculations for each

Defendant in his opening and reply expert reports:

DEFENDANT	OPENING REPORT	REPLY REPORT
<i>Apple</i>		
<i>LG</i>		
<i>Samsung</i>		

(D.I. 334, Ex. 7 at ¶¶ 118-21, 132; C.A. No. 21-1304-MN, D.I. 272, Ex. 8 at ¶¶ 107-08 & Ex. 11; C.A. No. 21-1305-MN, D.I. 252, Ex. 9 at ¶ 98 & Ex. 11)

20. Chandler's opening expert reports did not timely disclose his damages opinions based on the \$14.50/unit royalty. As previously discussed, the damages opinions in Chandler's opening expert reports rested on the cost of each accused device multiplied by 0.121%, which was then multiplied by the number of units sold. (*See, e.g.*, D.I. 334, Ex. 6 at Ex. 8) Although the average royalty per unit of \$14.50 under the Huawei Agreement was disclosed in an exhibit to Chandler's opening expert reports, Chandler's initial damages calculations did not account for this rate. (*Id.*); *see Wirtgen Am., Inc. v. Caterpillar, Inc.*, C.A. No. 17-770-JDW, 2024 WL 531234, at \*2-3 (D. Del. Feb. 9, 2024) (finding supplemental expert opinion was untimely despite prior disclosure of method in opening expert report because the expert's theory of how to use that method was new). Chandler's deposition testimony confirms that he could have, but did not, disclose his damages calculation based on the \$14.50 royalty rate per unit in his opening expert reports. (D.I. 334, Ex. 8 at 162:25-164:7; C.A. No. 21-1304-MN, D.I. 272, Ex. 9 at 18:12-20:6; C.A. No. 21-1305-MN, D.I. 252, Ex. 10 at 181:5-11)

21. Nonetheless, the *Pennypack* factors weigh against the extreme sanction of excluding Chandler's proposed royalty rate in his reply expert report. *See ZF Meritor, LLC v. Eaton Corp.*, 696 F.3d 254, 297 (3d Cir. 2012). Defendants have not shown significant prejudice resulting from the untimely damages calculations in Chandler's reply expert reports, and TOT correctly

states that the \$14.50/unit royalty rate was disclosed in Chandler's opening expert reports even though it did not form the basis for his opinions. Defendants do not identify any additional discovery required to address Chandler's newly disclosed damages calculations, and they depose Chandler on his new opinions applying the \$14.50/unit royalty rate after Chandler served the reply expert reports, largely curing any prejudice caused by the late-disclosed damages calculations. (D.I. 334, Ex. 8; C.A. No. 21-1304-MN, D.I. 272, Ex. 9; C.A. No. 21-1305-MN, D.I. 252, Ex. 10); *see Vectura Ltd. v. GlaxoSmithKline LLC*, C.A. No. 16-638-RGA, 2019 WL 1352767, at \*4-5 (D. Del. Mar. 26, 2019) ("Any prejudice that may have existed was cured by the ability of Plaintiff's counsel to further question [the expert] about his opinions at the deposition[.]"). Any remaining prejudice can be cured by questioning Chandler on cross-examination at trial.

22. Defendants offer no more than conclusory arguments that a failure to strike Chandler's reply expert reports would disrupt the trial schedule, and they do not suggest that Chandler's untimely damages calculation was the result of bad faith. (D.I. 334 at 3; C.A. No. 21-1304-MN, D.I. 272 at 3; C.A. No. 21-1305-MN, D.I. 252 at 3) The final *Pennypack* factor, regarding the importance of the information withheld from Chandler's opening expert reports, is neutral. Alternative damages calculations are generally considered to be critical evidence. *See ZF Meritor*, 696 F.3d at 299. However, the importance of Chandler's untimely damages calculations in this case is offset by the fact that his opening expert reports included the necessary data to timely provide the alternate calculations. *Id.* Moreover, TOT could continue to pursue the damages calculations raised in Chandler's opening expert reports even if those in his reply reports were excluded.

23. On balance, the *Pennypack* factors weigh against excluding the damages calculations in Chandler's reply expert reports. Consequently, Defendants' motions to strike the portions of Chandler's reply expert reports calculating damages based on the \$14.50/unit royalty rate are DENIED without prejudice.

24. TOT's alternative proposal to permit Defendants' experts leave to serve narrow sur-reply reports is also DENIED without prejudice. Defendants had the opportunity to depose Chandler on his new opinions applying the \$14.50/unit royalty rate after Chandler served the reply expert reports, largely curing any prejudice caused by the late-disclosed damages calculations. (D.I. 334, Ex. 8; C.A. No. 21-1304-MN, D.I. 272, Ex. 9; C.A. No. 21-1305-MN, D.I. 252, Ex. 10); *see Vectura*, 2019 WL 1352767, at \*4-5. Any remaining prejudice can be cured by questioning Chandler on cross-examination at trial. At this late stage of the case, with the first trial scheduled to begin on June 23, 2025, service of sur-reply reports on Chandler's royalty calculation would be of limited utility. (D.I. 377)

25. **LG's motion to strike Chandler's opinions regarding a 2014 hypothetical negotiation date is DENIED.** In his opening expert report, Chandler based his opinions on an October 2011 hypothetical negotiation date. (C.A. No. 21-1304-MN, D.I. 272, Ex. 7 at ¶¶ 167-68) After LG's rebuttal report suggested that the hypothetical negotiation date cannot be earlier than the date of first infringement in March of 2014, Chandler served his reply expert report with opinions based on a March 2014 hypothetical negotiation date. (*Id.*, Ex. 8 at ¶¶ 16, 104, 112-13) Because Chandler did not previously base his opinions on a March 2014 hypothetical negotiation date, LG moves to strike paragraphs 16, 104, 112, and 113 of Chandler's reply expert report setting forth a hypothetical negotiation date in March of 2014. (C.A. No. 21-1304-MN, D.I. 272 at 3) Alternatively, LG seeks leave to serve a supplemental declaration from its own damages

expert, Bakewell, to respond to the opinions and evidence in paragraphs 16, 104, 112, and 113 in Chandler's reply expert report. (*Id.*)

26. Chandler's use of the March 2014 hypothetical negotiation date in his reply expert report is proper rebuttal because it responds to an argument raised for the first time in LG's rebuttal expert report. LG did not provide its position on a specific hypothetical negotiation date in response to TOT's Interrogatory No. 15. (C.A. No. 21-1304-MN, D.I. 275, Ex. 2) Instead, LG disclosed the March 2014 hypothetical negotiation date for the first time in the rebuttal report of its damages expert, W. Christopher Bakewell, who opined that the date of first infringement occurred in March of 2014, "when LG sold certain non-accused phones that incorporated an accused Qualcomm chip." (*Id.*, D.I. 254, Ex. S at ¶ 113) By failing to disclose its proposed hypothetical negotiation date in its discovery responses and waiting until Bakewell's rebuttal report to specify its position on the date of the hypothetical negotiation, LG opened the door to a reply opinion by Chandler discussing a March 2014 hypothetical negotiation date.

27. In his reply report, Chandler expressly states that he "do[es] not agree that March 2014 is the correct date for the hypothetical negotiation," and he maintains his opinions based on an October 2011 hypothetical negotiation date. (C.A. No. 21-1304-MN, D.I. 272, Ex. 8 at ¶ 16) Chandler specifies that, "[i]f it were to be determined that the date of the hypothetical negotiation was March 2014, [his] opinions would not change." (*Id.*) Consistent with this representation, Chandler opines that a 4G/LTE compatible mobile device in either 2011 or 2014 would have the functionality to operate on both a 4G network and WCDMA. (*Id.*, Ex. 8 at ¶ 112) Chandler's discussion of the March 2014 hypothetical negotiation date in his reply expert report is directly responsive to Bakewell's rebuttal report on damages. "It is proper for a reply expert report to 'contradict or rebut evidence on the same subject matter identified by the opposing party's expert

report[;]' in doing so, it may cite to new evidence and data, so long as this is 'offered to directly contradict or rebut the opposing party's expert.'" *Personal Audio, LLC v. Google LLC*, C.A. No. 17-1751-CFC-CJB, 2021 WL 765763, at \*4 (D. Del. Feb. 19, 2021) (quoting *Withrow v. Spears*, 967 F. Supp. 2d 982, 1001-02 (D. Del. 2013)). Consequently, LG's motion to strike paragraphs 16, 104, 112, and 113 of Chandler's reply expert report is DENIED without prejudice.

28. LG alternatively seeks limited relief in the form of a supplemental declaration from its damages expert, Bakewell, responding to paragraphs 16, 104, 112, and 113 of Chandler's reply expert report. (C.A. No. 21-1304-MN, D.I. 272 at 3) As previously discussed, however, LG bears some responsibility for Chandler's failure to discuss the March 2014 hypothetical negotiation date in his opening report because LG did not clearly disclose its position on the hypothetical negotiation date in its discovery responses. (C.A. No. 21-1304-MN, D.I. 275, Ex. 2) At this late stage of the case, with case dispositive motions and *Daubert* motions fully briefed and trial in Civil Action No. 21-1302-MN set to begin in less than two months, a supplemental declaration by Bakewell would be of limited utility. (D.I. 377) Consequently, LG's request to serve a supplemental declaration by Bakewell is DENIED without prejudice.

**29. TOT's motion to strike the invalidity opinions of Samsung's experts based on the Qualcomm MSM6250 chipset and related devices<sup>6</sup> is DENIED without prejudice.** TOT moves to strike certain paragraphs of the opening and reply expert reports served by Dr. Bims and Kasturi, arguing that those reports raise new invalidity opinions for anticipation and obviousness based on the Qualcomm MSM6250 chipset that were not timely disclosed in

---

<sup>6</sup> TOT moves to strike the portions of Dr. Bims' expert reports at D.I. 253, Ex. C at §§ IX.A.4.f, IX.B.7.e, and IX.B.7.i; and Ex. D at §§ IX.F, X.D, and X.H. (C.A. No. 21-1305-MN, D.I. 250 at 1-2) TOT moves to strike the portions of Kasturi's expert reports at D.I. 253, Ex. E at § X and Ex. F at § III. (*Id.* at 1)

Samsung's final invalidity contentions. (C.A. No. 21-1305-MN, D.I. 250 at 1-2) Samsung responds that the expert opinions of Dr. Bims and Kasturi are proper because they further elaborate on anticipation and obviousness opinions regarding the prior art MSM6250 chipset that were disclosed in its final invalidity contentions. (*Id.*, D.I. 256 at 1)

30. Samsung's final invalidity contentions broadly state that the asserted patent claims "are anticipated or rendered obvious" by the MSM6250 chipset and other prior art devices. (*Id.*, D.I. 253, Ex. G at 51-52) The final contentions present a theory of anticipation in a narrative description of how the MSM6250 chipset meets each claim limitation of the asserted claims in U.S. Patent No. 7,532,865 ("the '865 patent").<sup>7</sup> (*Id.*, Ex. G at 52-54) This disclosure is sufficient to put TOT on notice of Samsung's theory of anticipation by the MSM6250 chipset.

31. However, there is no dispute that Samsung's final contentions do not disclose the MSM6250 chipset in combination with other prior art references for purposes of an obviousness analysis. (*Id.*; D.I. 256 at 3) Samsung's failure to chart the MSM6250 chipset in combination with other prior art references in its final invalidity contentions is inconsistent with the intended purpose of final contentions. *See Pharmacyclics LLC v. Cipla Ltd.*, C.A. No. 18-192-CFC *et al.*, 2020 WL 6581643, at \*1 (D. Del. Nov. 10, 2020) ("The purpose of final invalidity contentions is to give fair notice to the patentee of the theories of invalidity the accused infringer will pursue at trial. Notice of the facts underlying those theories is insufficient.").

---

<sup>7</sup> TOT's position that Samsung's disclosure in its final invalidity contentions must take the form of a claim chart with detailed source code analysis and citations is not supported by analogous case authority. In *Speyside Medical, LLC v. Medtronic Corevalve, LLC*, the court acknowledged that "a party is not required to cite every piece of evidence that will be used to support a given theory" in its invalidity contentions, and "it is proper for an expert to expand upon such theories in his expert report." (C.A. No. 21-1305-MN, D.I. 257, Ex. 2)

32. Although Samsung's obviousness theories based on the MSM6250 chipset are untimely, the *Pennypack* factors disfavor the exclusion of those theories from the expert reports of Dr. Bims and Kasturi on the particular facts of this case. See *TQ Delta, LLC v. ADTRAN, Inc.*, C.A. No. 14-954-RGA, 2021 WL 3728919, at \*2 (D. Del. Aug. 23, 2021). Under the first *Pennypack* factor regarding prejudice or surprise, TOT contends that Samsung's late disclosure of its obviousness positions regarding the MSM6250 chipset deprived it of third-party discovery, including deposition testimony, from Qualcomm. (C.A. No. 21-1305-MN, D.I. 250 at 3) But TOT's articulation of prejudice does not specify the additional discovery it would have sought during the Qualcomm deposition to refute Samsung's obviousness theories. (*Id.*) TOT contends it must "attempt to debunk" Samsung's obviousness combinations on an incomplete factual record without showing that it is precluded from exploring Samsung's obviousness theories on cross-examination based on the existing factual record. (*Id.*) Samsung's final invalidity contentions previewed all prior art references disclosed in the expert reports, and Samsung's opening expert reports expanded on those theories. See *TQ Delta*, 2021 WL 3728919, at \*3.

33. To the extent that TOT was prejudiced by Samsung's belated disclosure of the MSM6250 chipset obviousness contentions, such prejudice was cured when TOT's expert, Dr. Larson, fully responded to those opinions in his rebuttal expert report. (D.I. 257, Ex. 14 at ¶¶ 317-21, 354-61) Thus, there is also no likelihood of disruption to the trial schedule.

34. The court finds no bad faith by Samsung. See *Integra Lifesciences Corp. v. Hyperbranch Med. Tech., Inc.*, C.A. No. 15-819-LPS-CJB, 2017 WL 11558096, at \*11 (D. Del. Dec. 11, 2017) (noting that "courts have tended to reserve such a finding for clear, egregious examples of misconduct."). TOT argues that Samsung acted in bad faith because "it stated in the [final invalidity contentions] that if it intended to rely on MSM6250 it would submit a chart, and

by not doing so misled TOT into believing it was not asserting it.” (C.A. No. 21-1305-MN, D.I. 250 at 3) But Samsung’s final invalidity contentions state only that “Defendants reserve the right to supplement these contentions with a claim chart directed to the Qualcomm MSM6200 and/or MSM6250 prior art.” (*Id.*, D.I. 253, Ex. G at 12 n.2, 33 n.4) The statement falls short of suggesting that Samsung’s failure to further supplement its contentions with a claim chart signals that it would not rely on this prior art in its invalidity case.

35. Finally, the expert opinions are important evidence in support of Samsung’s invalidity case. *Id.* at \*4. The fact that Samsung timely disclosed eight other prior art references in support of its invalidity arguments does not change the fact that the MSM6250 chipset, either alone or in combination with other references, may establish the invalidity of the ’865 patent. Moreover, “the exclusion of critical evidence is an ‘extreme sanction’” that is not warranted under these circumstances. *Konstantopoulos v. Westvaco Corp.*, 112 F.3d 710, 719 (3d Cir. 1997).

36. The cases cited by TOT in support of its motion to strike are distinguishable from the facts before the court in the instant case because each of those cases involved the disclosure of a new accused product or prior art reference for the first time in expert reports. *See Equil IP Holdings LLC v. Akamai Techs., Inc.*, C.A. No. 22-677-RGA, 2024 WL 3967388, at \*1-2 (D. Del. Aug. 28, 2024) (striking infringement theory based on product accused of infringement for the first time in opening expert report); *Bridgestone Sports Co. Ltd. v. Acushnet Co.*, C.A. No. 05-132-JJF, 2007 WL 521894, at \*4-5 (D. Del. Feb. 15, 2007) (precluding reliance on untimely disclosed prior art references where the defendant was aware of those prior art references prior to the deadline for invalidity contentions). Here, in contrast, Samsung disclosed its reliance on the MSM6250 chipset as a prior art reference in its final invalidity contentions served more than a

year ago on February 23, 2024. (C.A. No. 21-1305-MN, D.I. 253, Ex. G at 52-54) Samsung's final invalidity contentions also disclosed the prior art references cited in combination with the MSM6250 chipset in the expert reports. (*Id.*, Ex. G at 13, 33) For the foregoing reasons, the *Pennypack* factors weigh against excluding Samsung's invalidity opinions based on the MSM6250 chipset.

**37. TOT's motion to strike all evidence of testing of alleged prior art phones is DENIED without prejudice.** TOT moves to strike portions of the reports by Christopher Riddle that describe his lab tests of various alleged prior art cell phones,<sup>8</sup> including the Nokia 6651 and other phones that allegedly incorporate the Qualcomm MSM6250 chipset. (C.A. No. 21-1305-MN, D.I. 250 at 2-3) According to TOT, exclusion is warranted because Samsung did not timely disclose any theory based on the MSM6250 chipset or any other prior art phone in its final invalidity contentions. (*Id.*) TOT acknowledges Samsung alluded to the possibility that it would "rely on testing of prior art products and systems to establish anticipation and/or obviousness of the asserted claims of the '865 patent" in its final contentions. (*Id.*; D.I. 253, Ex. G at 54)

**38.** On balance, the *Pennypack* factors weigh against exclusion of Samsung's evidence of testing on alleged prior art phones. TOT argues that it is prejudiced by Samsung's failure to disclose its reliance on testing of the physical devices prior to the deposition of Qualcomm's witness in May of 2024. (D.I. 250 at 3) But TOT provides no specifics on what additional lines of questioning it would have pursued during the Qualcomm deposition. The court is persuaded

---

<sup>8</sup> TOT also seeks to strike the opinions of Dr. Bims and Kasturi that rely on Riddle's testing, but TOT does not attach a proposed order or otherwise specify which portions of the Bims and Kasturi reports are subject to its request for relief on this topic. (C.A. No. 21-1305-MN, D.I. 250 at 3)

that any prejudice is minimal because Samsung's testing of physical devices followed nearly the same protocol applied to TOT's own testing. (D.I. 256 at 2; D.I. 257, Exs. 8, 10, 12) Moreover, Dr. Larson was able to respond to Riddle's testing in his rebuttal report, which was served over a month later. (See, e.g., D.I. 257, Ex. 14 at ¶¶ 356, 358; D.I. 253, Ex. H) Thus, any prejudice stemming from the late disclosure of physical device testing has already been cured, and there is no risk of disruption to the trial schedule.

39. TOT suggests that Samsung acted in bad faith because it was in possession of the physical devices before the close of fact discovery in April of 2024. (D.I. 250 at 3; D.I. 253, Ex. J at 2) Although these devices were obtained shortly before Samsung's final invalidity contentions were due in February of 2024, they were not sent to Riddle for testing until May and June of 2024, after the close of fact discovery and after the Qualcomm deposition. (D.I. 253, Ex. J at ¶¶ 3-5, 9-10) On this record, the facts do not support a finding of bad faith based solely on the timing of the testing. See *Integra Lifesciences*, 2017 WL 11558096, at \*11 (noting that "courts have tended to reserve such a finding for clear, egregious examples of misconduct."). Finally, the testing information TOT seeks to strike is important to establishing the invalidity or non-infringement of the '865 patent. Consequently, the *Pennypack* factors weigh against exclusion.

40. **TOT's motion to strike the rebuttal report opinions of Riddle and Dr. Bims responding to phone testing opinions offered by TOT's expert in his opening report is DENIED without prejudice.** TOT contends that the court should strike all of Riddle's rebuttal report and paragraphs 102 to 106 of Dr. Bims' rebuttal report because these opinions respond to phone testing opinions in Dr. Larson's opening report which TOT has since withdrawn. (D.I. 250 at 3) TOT argues that the rebuttal opinions are therefore irrelevant to the remaining issues in

the case, without citing a rule or case authority governing a motion to strike expert opinions on relevance grounds. (*Id.*) TOT's motion presents an evidentiary issue to be resolved by the trial judge, and it cannot properly be addressed on a motion to strike. Dr. Larson's trial testimony may open the door to opinions contained in the rebuttal reports of Riddle and Dr. Bims, and excluding those opinions at this stage based only on a paper record would be premature. TOT's request for relief is therefore DENIED without prejudice.

**41. Apple's motion for leave to serve the supplemental expert report of Dr. Stark or, alternatively, to strike Dr. Larson's allegedly new infringement theory, is DENIED without prejudice.** Apple contends that it should be permitted to serve the proposed supplemental non-infringement expert report of Dr. Stark (the "Stark Supplemental Report") because it is necessary to address the allegedly new infringement theory raised by TOT's expert, Dr. Larson, for the first time in his deposition on November 11, 2024. (D.I. 365 at 1-2) Claim element [1.f] of the '865 patent recites a limitation "wherein the desired signal to interference ratio target ( $SIR_{target}$ ) is modified at the start (403) of the outer loop unwinding, to match it to the outer loop power control in normal mode just prior to the start of the outer loop wind up." (D.I. 366, Ex. 2 at 122-23) Dr. Larson's opening expert report served on August 23, 2024 alleges that the accused Apple products containing Intel baseband processors infringe claim element [1.f] of the '865 patent when those products "determine[ ] when unwinding has been detected in order to leave SRB tracking mode." (D.I. 365 at 1-2; D.I. 366, Ex. 2 at ¶¶ 258, 264) According to Apple, Dr. Larson modified this opinion during his deposition by testifying that the accused products infringe when they leave SRB tracking mode, regardless of whether they first detect unwinding. (D.I. 365 at 2; D.I. 366, Ex. 3 at 154:18-155:4, 162:22-164:21)

42. TOT responds that Dr. Larson did not present a new opinion regarding claim element [1.f] during his deposition testimony because his opinion “has always been that exiting SRB tracking mode in combination with exiting wind-up infringes[,]” regardless of whether the accused products first detect unwinding. (D.I. 367 at 1-2) But the portions of Dr. Larson’s opening expert report excerpted by TOT confirm that Dr. Larson’s deposition testimony differs from the opinion in his expert report. For example, paragraph 258 of Dr. Larson’s opening expert report explains that SRB tracking function “can determine when unwinding has been detected in order to leave SRB tracking mode.” (*Id.* at 1; D.I. 366, Ex. 2 at ¶ 258) This language indicates that Dr. Larson viewed the detection of unwinding as a prerequisite to leaving SRB tracking mode, and TOT does not explain how “the surrounding context that discusses both the OLPC wind-up detection code . . . as well as the separate SRB tracking mode code” changes its meaning. (D.I. 367 at 1) In contrast, Dr. Larson’s deposition testimony suggests that the accused products may exit wind-up and SRB tracking mode at the exact same time, and they infringe when they leave SRB tracking mode regardless of whether they first detect unwinding. (D.I. 366, Ex. 3 at 154:18-155:4, 164:17-165:11)

43. Although Dr. Larson’s deposition testimony is not altogether consistent with the opinions disclosed in his expert report, the *Pennypack* factors weigh against striking Dr. Larson’s testimony or granting Apple leave to serve the Stark Supplemental Report. *See Konstantopoulos v. Westvaco Corp.*, 112 F.3d 710, 719 (3d Cir. 1997) (citing *Meyers v. Pennypack Woods Home Ownership Ass’n*, 559 F.2d 894, 904-05 (3d Cir. 1977)). Apple contends that it is prejudiced by Dr. Larson’s testimony because it had no opportunity to take relevant fact discovery on the infringement theory or serve a responsive expert report. (D.I. 365 at 4) But Apple acknowledges that it deposed Dr. Stark on Dr. Larson’s testimony during his own deposition on

November 15, 2024, and Dr. Stark noted his disagreement with Dr. Larson's opinion that the accused products could simultaneously exit SRB tracking mode and wind-up. (*Id.* at 2; D.I. 366, Ex. 5 at 45:5-46:13)

44. The court is unpersuaded by Apple's position that service of the Stark Supplemental Report is necessary to cure the prejudice allegedly caused by Dr. Larson's deposition testimony. (D.I. 365 at 4) There is no dispute that Dr. Stark had an opportunity to refute the challenged portions of Dr. Larson's deposition testimony during his own deposition, and the challenged opinions expressed in Dr. Larson's deposition testimony never appeared in his written reports. Any remaining prejudice caused by Dr. Larson's deposition testimony can be cured through cross-examination. The Stark Supplemental Report goes beyond the scope of Dr. Larson's deposition testimony, which was "mainly directed to claim element [1F]," by devoting entire subsections to other claim elements. (D.I. 366, Ex. 1; Ex. 6 at 1-2)

45. In support of its proposed cure, Apple cites *Robocast, Inc. v. Apple, Inc.*, which permitted service of a supplemental expert report to address new opinions disclosed during the infringement expert's deposition. C.A. No. 10-1055-RGA, 2013 WL 12155379, at \*2 (D. Del. Sept. 30, 2013). But the ruling in *Robocast* was based on the premise that the supplemental report was necessary to give the defendant an opportunity to rebut the new opinions offered during the expert deposition. *Id.* Here, Apple had an opportunity to rebut Dr. Larson's new testimony during the deposition of its own non-infringement expert, Dr. Stark. (D.I. 366, Ex. 5 at 45:5-46:13) Apple has not persuasively shown why a supplemental expert report is also needed to cure the prejudice caused by circumscribed portions of Dr. Larson's deposition testimony. See *TQ Delta, LLC v. Adtran, Inc.*, C.A. No. 14-954-RGA, 2023 WL 5333197, at \*6 (D. Del. Aug. 18, 2023) (finding any prejudice from new opinions in supplemental expert report

“is curable by additional depositions.”). The importance of the information in the Stark Supplemental Report is lessened by the fact that Apple had the opportunity to depose Dr. Stark on Dr. Larson’s new infringement position.

**46.** Finally, granting the relief requested by Apple is likely to disrupt the trial schedule because the Stark Supplemental Report is significantly more expansive than the challenged portions of Dr. Larson’s deposition testimony. Although TOT was served with the Stark Supplemental Report on December 18, 2024, it has not had an opportunity to respond to its contents and may seek leave to serve its own supplemental expert report or depose Dr. Stark. (D.I. 366, Ex. 6) The scope of the Stark Supplemental Report goes beyond what is needed to cure any prejudice resulting from Dr. Larson’s elaboration of his opinion during his deposition. As previously discussed, any prejudice resulting from Dr. Larson’s deposition testimony was largely cured when Dr. Stark was deposed. Permitting the supplementation at this stage, when summary judgment and *Daubert* motions are fully briefed and trial is less than two months away, would likely delay the jury trial scheduled for June 23, 2025. (D.I. 377) The risk of disrupting the trial schedule outweighs any benefit to be gained by permitting the Stark Supplemental Report in the court’s balancing of the *Pennypack* factors.

**47. Conclusion.** For the foregoing reasons, IT IS ORDERED that:

**A.** Defendants’ motions to strike Dr. Larson’s new doctrine of equivalents infringement theory are GRANTED.<sup>9</sup>

---

<sup>9</sup> In C.A. No. 21-1302-MN, Apple seeks to strike paragraphs 28 to 29, 36 to 38, 83, 91 to 93, 120, and 135 of Dr. Larson’s reply expert report. (D.I. 334, Ex. 1) In C.A. No. 21-1304-MN, LG seeks to strike paragraphs 26 to 27, 33 to 35, and 74 of Dr. Larson’s reply expert report. (C.A. No. 21-1304-MN, D.I. 272, Ex. 1) In C.A. No. 21-1305-MN, Samsung seeks to strike paragraphs 22 to 23, 30 to 32, 70, and 81 of Dr. Larson’s reply expert report. (C.A. No. 21-1305-MN, D.I. 252, Ex. 1)

- B.** Apple’s motion to strike paragraphs 16 to 17 and 118 of Dr. Larson’s reply expert report regarding his method claim infringement theory is DENIED without prejudice.
- C.** Apple’s motion to strike Dr. Larson’s “transition to 4G networks” and “continued infringement after 3G networks shut down in 2022” theories at paragraphs 203 to 206 of the reply expert report is DENIED without prejudice.
- D.** Samsung’s motion to strike Dr. Larson’s SIR<sub>req</sub> infringement opinion at paragraph 34 of the reply expert report is DENIED without prejudice.
- E.** Defendants’ motions to strike Chandler’s new royalty calculations in his reply expert reports are DENIED without prejudice.<sup>10</sup> TOT’s alternative proposal to permit Defendants’ experts leave to serve sur-reply reports is DENIED without prejudice.
- F.** LG’s motion to strike paragraphs 16, 104, 112, and 113 of Chandler’s reply expert report regarding a 2014 hypothetical negotiation date is DENIED without prejudice. LG’s alternative request to serve a supplemental declaration by Bakewell is DENIED without prejudice.

---

<sup>10</sup> Apple moves to strike paragraphs 118 to 121, 132, and Exhibit 12 of Chandler’s reply expert report. (D.I. 334, Ex. 7) LG moves to strike paragraphs 107 and 108, as well as Exhibit 11, of Chandler’s reply expert report. (C.A. No. 21-1304-MN, D.I. 272, Ex. 8) Samsung moves to strike paragraph 98 and Exhibit 11 of Chandler’s reply expert report. (C.A. No. 21-1305-MN, D.I. 252, Ex. 9)

- G. TOT's motion to strike the invalidity opinions of Samsung's experts based on the Qualcomm MSM6250 chipset and related devices<sup>11</sup> is DENIED without prejudice.
- H. TOT's motion to strike all evidence of testing of alleged prior art phones is DENIED without prejudice.
- I. TOT's motion to strike the rebuttal report opinions of Riddle and Dr. Bims responding to phone testing opinions offered by TOT's expert in his opening report is DENIED without prejudice.
- J. Apple's motion for leave to serve the supplemental expert report of Dr. Stark or, alternatively, to strike Dr. Larson's allegedly new infringement theory, is DENIED without prejudice.

IT IS FURTHER ORDERED that the discovery dispute teleconference scheduled for **May 1, 2025 at 2:00 p.m.** is CANCELLED.

48. Given that the court has relied upon material that technically remains under seal, the court is releasing this Memorandum Order under seal, pending review by the parties. In the unlikely event that the parties believe that certain material in this Memorandum Order should be redacted, the parties shall jointly submit a proposed redacted version by no later than **May 6, 2025**, for review by the court, along with a motion supported by a declaration that includes a clear, factually detailed explanation as to why disclosure of any proposed redacted material would "work a clearly defined and serious injury to the party seeking closure." *See In re Avandia Mktg.*,

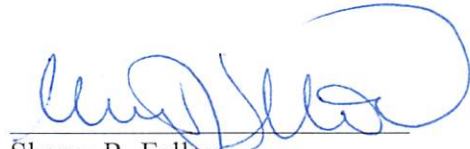
---

<sup>11</sup> TOT moves to strike the portions of Dr. Bims' expert reports at D.I. 253, Ex. C at §§ IX.A.4.f, IX.B.7.e, and IX.B.7.i; and Ex. D at §§ IX.F, X.D, and X.H. (C.A. No. 21-1305-MN, D.I. 250 at 1-2) TOT moves to strike the portions of Kasturi's expert reports at D.I. 253, Ex. E at § X and Ex. F at § III. (*Id.* at 1)

*Sales Practices & Prods. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019) (quoting *Miller v. Ind. Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994) (internal quotation marks omitted)). If the parties do not file a proposed redacted version and corresponding motion, or if the court determines the motion lacks a meritorious basis, the documents will be unsealed within fourteen (14) days of the date the Memorandum Order issued.

**49.** This Memorandum Order is filed pursuant to 28 U.S.C. § 636(b)(1)(A), Fed. R. Civ. P. 72(a), and D. Del. LR 72.1(a)(2). The parties may serve and file specific written objections within fourteen (14) days after being served with a copy of this Memorandum Order. Fed. R. Civ. P. 72(a). The objections and responses to the objections are limited to four (4) pages each.

**50.** The parties are directed to the court's Standing Order For Objections Filed Under Fed. R. Civ. P. 72, dated March 7, 2022, a copy of which is available on the court's website, [www.ded.uscourts.gov](http://www.ded.uscourts.gov).



Sherry R. Fallon  
United States Magistrate Judge