IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NEC CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 22-987-CJB
	)	**REDACTED VERSION**
PELOTON INTERACTIVE, INC.,	)	
	)	
Defendant.	)	

MEMORANDUM ORDER

Presently pending before the Court is Defendant Peloton Interactive, Inc.'s ("Defendant" or "Peloton") *Daubert* motion to exclude the testimony of Plaintiff NEC Corporation's ("Plaintiff" or "NEC") damages expert, Dr. Christopher A. Vellturo, regarding reasonable royalty damages (the "Motion"). (D.I. 366) NEC opposes the Motion. For the reasons set forth below, the Motion is DENIED.

I. BACKGROUND

A. Procedural Background

NEC commenced this action on July 28, 2022. (D.I. 1) In April 2024, the case was stayed in light of a related *inter partes* review proceeding then pending in the United States Patent and Trademark Office; the stay was lifted in March 2025. (D.I. 210; D.I. 216)

The Motion was filed on February 13, 2026, (D.I. 366), and fully briefed as of March 27, 2026, (D.I. 506). The Court heard argument on the Motion on April 15, 2026. (D.I. 539 ("Tr.")) A trial is set to begin on July 27, 2026. (D.I. 220 at 2)[1]

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[1] The parties have jointly consented to the Court's jurisdiction to conduct all proceedings in this case, including trial, the entry of final judgment and all post-trial proceedings. (D.I. 25)

B. Factual Background

Peloton offers video streaming services that utilize adaptive bit rate ("ABR") streaming through Peloton Apps and Connected Fitness Products (such as its bikes and treads) (the "content streaming services"). (D.I. 372, ex. J at ¶¶ 29, 96) NEC asserts that Peloton's content streaming services infringe United States Patent Nos. 8,909,809 and 8,752,101 (the "asserted patents"), which relate to implementing ABR streaming of multimedia content over computer networks. (*Id.* at ¶¶ 5-6, 29, 80, 85; *see also* D.I. 382 at 2; D.I. 387 at 4-5)

NEC has established a licensing program for its multimedia content streaming patent portfolio, which includes the asserted patents (the "licensing program"). (D.I. 372, ex. J at ¶¶ 12, 99) The licensing program outlines pre-defined royalty rates that are structured as percentages of licensees' subscriber revenues, with different rates for different levels of subscribers. (*Id.* at ¶¶ 12, 99-100) NEC's "Rate Card" (the "Rate Card") sets out these royalty rates; for each of the asserted patents, they range from 1.5% to 1.7% depending on the monthly subscriber count. (*Id.* at ¶ 100; *id.*, ex. A at NEC_2022_DE_1054803) Pursuant to this licensing program, NEC entered into eight license agreements between January 2023 and November 2025 (the "eight licenses"). (*Id.*, ex. J at ¶ 100; D.I. 425, ex. 1 at ¶ 1; D.I. 425, ex. 2 at ¶ 1) Dr. Vellturo discusses each of the eight licenses in his reports. (D.I. 372, ex. J at ¶¶ 101-09; D.I. 425, ex. 1 at ¶¶ 2-5; D.I. 425, ex. 2 at ¶¶ 2-7)

For purposes of his reasonable royalty analysis, Dr. Vellturo assumes that the hypothetical negotiation would have taken place in July 2016. (D.I. 372, ex. J at ¶ 89) He opines that all of Peloton's subscription revenues, which "comprise revenues for subscriptions to digital content (including video content) accessed through its Connected Fitness Products and Peloton Apps[,]" constitute the appropriate royalty base for his reasonable royalty damages calculation. (*Id.* at ¶ 11) As for the appropriate royalty rate, Dr. Vellturo first evaluates the eight licenses in the context of *Georgia-Pacific* factor 1 and opines that the royalty rates from NEC's licensing program for the asserted patents "provide[] benchmark rates of 1.5-1.7% for the" asserted patents (and he then assesses the impact of the remaining *Georgia-Pacific* factors). (*Id.* at ¶¶ 10, 13, 168)

The Court here writes primarily for the parties, and so any additional facts relevant to this Memorandum Order will be discussed in Section III below.

II. STANDARD OF REVIEW

The Court has frequently set out the relevant standard of review for assessing a motion, like this one, filed pursuant to Federal Rule of Evidence 702 ("Rule 702") and *Daubert v. Merrell Dow Pharms, Inc.*, 509 U.S. 579 (1993). One such instance came in *Integra LifeScis. Corp. v. HyperBranch Med. Tech., Inc.*, Civil Action No. 15-819-LPS-CJB, 2018 WL 1785033, at *1-2 (D. Del. Apr. 4, 2018). The Court incorporates by reference those legal standards set out in *Integra*, and will follow them herein. To the extent that additional related legal principles regarding Rule 702 and *Daubert* are relevant, the Court will set those out in Section III.

III. DISCUSSION

With the Motion, Peloton seeks to exclude Dr. Vellturo's reasonable royalty calculation and all related opinions (the "reasonable royalty opinion") for two primary reasons. (D.I. 369 at 1; Tr. at 6-7) First, Peloton asserts that Dr. Vellturo's reliance on the eight recently-executed licenses renders his reasonable royalty opinion unreliable because Dr. Vellturo mischaracterizes their terms. (D.I. 369 at 1, 3-8)[2] Second, Peloton argues that the reasonable royalty opinion

[2] Peloton also briefly argues that Dr. Vellturo's reliance on NEC's Rate Card is flawed, unreliable and unhelpful to the jury because Plaintiff's corporate designee regarding licenses and royalty rates could not explain how it was developed, aside from noting that it was

should be excluded because in relying upon Peloton's total subscription revenue for all subscription tiers as the royalty base, Dr. Vellturo failed to apportion the value attributed to the patented feature of Peloton's multi-component product. (*Id.* at 1, 8-10) The Court will address these arguments in turn.

A. Dr. Vellturo's Reliance on the Eight Licenses

By the time of oral argument, Peloton's key argument with respect to the eight licenses was that: (1) Dr. Vellturo opines that all eight licenses demonstrate that Plaintiff has an established licensing program wherein all licensees agreed to pay a running royalty in line with the rates on the Rate Card; (2) but that is "demonstrably" not true; and (3) this renders Dr. Vellturo's reasonable royalty opinion unreliable. (Tr. at 34-37, 74-76, 80-82; *see also* D.I. 369 at 6-8; D.I. 506 at 2) So that is the argument that the Court will focus on here.[3]

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prepared by attorneys. (D.I. 369 at 4 (citing D.I. 372, ex. R at 40, 70); D.I. 506 at 1; Tr. at 29) But Peloton cites to no cases or opinions to support the notion that if attorneys are involved in crafting royalty rates for a licensing program—rates that third parties later accepted by taking a license implicating such rates—then an expert cannot rely on such rates in a scenario like this. (D.I. 424 at 3 n.3) And more importantly here, the record *does* indicate that third-party licensees *accepted* the rates at issue in the Rate Card, and so the Court does not understand why Dr. Vellturo relying upon it as a piece of evidence in support of his reasonable royalty opinion would be flawed. (*See* Tr. at 29-30) Because Peloton mainly focused upon Dr. Vellturo's reliance on the eight licenses in its Motion and argument, that is what the Court focuses upon herein.

[3] To the extent that Peloton's opening brief suggested that the eight licenses were not sufficiently comparable to the hypothetical license at issue, (D.I. 369 at 5; D.I. 424 at 9), Peloton subsequently confirmed during oral argument that it is not asserting a lack of technical or economic comparability here, (Tr. at 35-37).

In its briefing, Peloton also argued that the eight licenses are unreliable for the additional reason that they are litigation-related licenses, which at times can be disfavored by courts when it comes to assessing reasonable royalty damages. (D.I. 369 at 5-6; D.I. 506 at 2-3) But the United States Court of Appeals for the Federal Circuit has explained that when a litigation-related license agreement is the most reliable license in the record, that type of license may be utilized in the reasonable royalty analysis. *Optis Cellular Tech., LLC v. Apple Inc.*, 139 F.4th 1363, 1384 (Fed. Cir. 2025); *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860, 872 (Fed. Cir. 2010). Indeed, Peloton's own damages expert relies on a license agreement from 2023 that resulted from a

As an initial matter, the Court notes that Peloton fails to point to a particular paragraph or paragraphs of Dr. Vellturo's reports where he makes a blanket statement like "All eight licenses demonstrate that Plaintiff has an established licensing program wherein all licensees agreed to pay a running royalty in line with the rates on the Rate Card." (*See* Tr. at 82 (NEC's counsel asserting that "Dr. Vellturo did not just make a blanket statement in his report" and instead "analyzed each of [the eight] licenses"); *id.* at 85 ("I would in[v]ite [Peloton's counsel] to point to a paragraph where Dr. Vellturo said all of [the eight licenses] show running royalties. . . . He doesn't just make a conclusory assertion that they're all running royalty agreements[,]" but instead analyzes each license)) And the Court cannot find any such statement in his reports.

Dr. Vellturo does ultimately conclude that the eight licenses provide evidence of the fact that commercial entities accepted the royalty rates set out by NEC on its Rate Cards, (D.I. 372, ex. J at ¶ 111; D.I. 425, ex. 1 at ¶ 4; D.I. 425, ex. 2 at ¶¶ 3, 6), but he does so after describing each of the licenses at issue in detail, (D.I. 372, ex. J at ¶¶ 101-09; D.I. 425, ex. 1 at ¶¶ 2-3; D.I. 425, ex. 2 at ¶¶ 2-5). For each license, Dr. Vellturo explains, *inter alia*, whether it provides for a lump sum or running royalty, how the applicable royalty rates were calculated and whether the licenses were reached in the context of litigation. (D.I. 372, ex. J at ¶¶ 101-09; D.I. 425, ex. 1 at ¶¶ 2-3; D.I. 425, ex. 2 at ¶¶ 2-5) In several cases, the royalty rates were calculated by applying

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settlement of a litigation—a fact that seems to undercut Peloton's argument here. (D.I. 425, ex. 8 at 54 (*cited in* D.I. 424 at 11 n.6); Tr. at 51, 60) Moreover, as NEC retorts, the eight licenses at issue could be said to be the "closest market evidence tied to" the asserted patents—since they are licenses to the very patents asserted in this case—such that Dr. Vellturo's reliance upon them does not amount to the use of an unreliable methodology. (D.I. 424 at 11; *see also* Tr. at 45 (NEC's counsel pointing out that "it's very rare when you have a case like this, where there are eight real-world live licenses to the exact patents at issue in our case"); Tr. at 50-51) When pressed on whether the eight licenses could be considered the best evidence of a royalty rate in this case, Peloton's counsel simply moved on to Peloton's key argument here—i.e., that Dr. Vellturo's opinion regarding the eight licenses is nevertheless unreliable because he characterizes the licenses in a manner that is false. (Tr. at 33-34) the rates specified under Plaintiff's licensing program.[4] Otherwise, as Peloton itself acknowledges, Dr. Vellturo's analysis "admits that some licenses deviate from the Rate Card due to 'extenuating circumstances,' such as poor financial condition, limited use of the patented technology, and intentions to scale back video streaming products/services." (D.I. 369 at 6 (citations omitted); *see also, e.g.*, D.I. 372, ex. J at ¶¶ 104, 105-06 (noting that in the [redacted] and [redacted] licenses, Plaintiff agreed to a lower rate on certain past sales than that found in the Rate Card, due to the licensees' poor financial condition);[5] D.I. 425, ex. 2 at ¶¶ 2-3 (noting that the [redacted] license applied a royalty rate from the Rate Card, which was then adjusted to account for the assessment of the small contribution of video streaming to [redacted] subscription revenues); D.I. 425, ex. 2 at ¶¶ 4-5 (noting that the [redacted] license provided for a lump sum that was determined by applying the royalty rates from the Rate Card to the value of the video streaming

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[4] One of the licenses, the [redacted] license, requires the licensee to pay a running royalty on a quarterly basis in accordance with Plaintiff's Rate Card. (D.I. 372, ex. J at ¶ 109; *see also id.*, ex. F at §§ 4.1-4.2; Tr. at 47) Several of the other licenses, even though they do not utilize a running royalty structure (e.g., they involve a fully paid up, lump-sum license) explicitly acknowledge the licensees' agreement to a 3% royalty rate for a license to both patents (i.e., 1.5% per patent in accordance with the Rate Card) and/or include the Rate Card in the license and state that the Rate Table is the basis for calculating the royalty rate in the license. (D.I. 372, ex. B at §§ 1.4, 5.1 ([redacted] license); *id.*, ex. E at § 4.2 ([redacted] license); *id.*, ex. G at § 4.2 ([redacted] license); *see also id.*, ex. J at ¶¶ 102, 107; D.I. 425, ex. 1 at ¶ 2)

[5] The [redacted] and [redacted] licenses further specified that to the extent that the licensees recovered from their financial condition, they would begin paying an ongoing royalty on subscription revenues at the rates laid out in NEC's Rate Card. (D.I. 372, ex. J at ¶¶ 104, 106; *see also id.*, ex. C at § 6.1; *id.*, ex. D at §§ 5.2-5.3) The [redacted] license also required that [redacted] paid a lump sum representing royalties for one month of past subscription revenues at a rate of 2.8% and royalties for one month of future subscription revenues at a rate of 3.5% (with the latter rate corresponding to the Rate Card for the asserted patents). (*Id.*, ex. C at §§ 1.1, 5.1, 6.1)

services in the subscription revenue, but also that [redacted] planned to fully cease using the infringing product by December 31, 2025))[6]

Peloton relies heavily on the decision in *EcoFactor, Inc. v. Google LLC*, 137 F.4th 1333 (Fed. Cir. 2025) in support of its argument that Dr. Vellturo's opinions are "predicated on inaccurate license characterizations" and therefore must be excluded. (D.I. 506 at 2; *see also* D.I. 369 at 6-7; Tr. at 35-36, 74-76) But *EcoFactor* is distinguishable. In *EcoFactor*, the plaintiff's damages expert testified that the amounts in three lump-sum licenses between the plaintiff and three licensees "reflected an $X per unit rate applied to [the licensees'] sales" and concluded that the defendant "should pay the same rate" as $X per unit. 137 F.4th at 1341 (internal quotation marks and citations omitted). But the *EcoFactor* Court found that the plain language of the licenses did not support the expert's testimony that the three licensees agreed to pay the $X per unit royalty rate. *Id.* at 1341-43. More specifically, this was so at least because: (1) the $X per unit figure was mentioned only once in each agreement, and there it was

[6] Peloton failed to explain in any detail in its opening brief how Dr. Vellturo's conclusion about the licenses is "demonstrably" false. Instead, Peloton just broadly asserted that the plain language of the licenses "confirms Dr. Vellturo's *admission that they deviate from NEC's Rate Card*" without providing any pincites to the actual language of the agreements at issue. (D.I. 369 at 6-7 (emphasis added)) This was not helpful to the Court. Then in its reply brief, Peloton asserted that NEC and Dr. Vellturo "mischaracterize the payment terms of NEC's licenses in an attempt to identify something in the record purportedly supporting NEC's rates[.]" (D.I. 506 at 2) Yet instead of elaborating on this point in its brief, Peloton attached an eight-page chart in very small font that purports to set out "undisputed deviations in NEC's licenses from the royalty structure set forth in NEC's Rate Card." (D.I. 507, ex. V at 1) But it is not proper to make additional legal arguments in an exhibit to a brief, as that amounts to an end-run around the page limits for *Daubert* briefing, and so the Court will not consider Peloton's improper chart in resolving the Motion. *See, e.g.*, *Monec Holding AG v. Motorola Mobility, Inc.*, Civil Action No. 11-798-LPS-SRF, 2014 WL 4402825, at *1 (D. Del. Sept. 5, 2014) ("This court has recognized the impropriety of including legal analyses in charts attached as exhibits to the briefing, as opposed to including them in the briefing itself, for purposes of circumventing page limitations.") (citing cases); *see also Anna C. v. Colonial Sch. Dist.*, CIVIL ACTION NO. 24-6313, 2026 WL 313462, at *4 (E.D. Pa. Feb. 4, 2026); (Tr. at 85).

referenced only in a statement that the patentee/licensor (not the licensee) "believe[d]" that this amounted to a reasonable royalty calculation; and (2) nowhere did the agreements affirmatively state that the licensor agreed that $X per unit was a reasonably royalty, and in two of the agreements, the parties actually specifically stated that the payment amount at issue did *not* "reflect or constitute" a royalty. *Id*. In light of this, the Court concluded that the expert's testimony was not based on sufficient facts or data and was therefore unreliable and inadmissible. *Id.* at 1345-46; *see also Willis Elec. Co. v. Polygrp. Ltd. (Macao Com. Offshore)*, 166 F.4th 1363, 1383 (Fed. Cir. 2026) (describing *EcoFactor* as a case in which the Court "held expert testimony unreliable because it was predicated on an inaccurate characterization of the licenses (i.e., that the licensees in that case had agreed upon that rate)"). Here, in contrast to *EcoFactor*, the plain language of the licenses indicates *a joint acknowledgement* that the rates set out in NEC's Rate Card amount to applicable royalty rates that bear on the payment terms further described therein (even though, in some instances, there are further alterations needed to account for other specific circumstances). (*See* D.I. 424 at 8, 10; Tr. at 64)

In the end, the Court is not persuaded that Dr. Vellturo's reliance on eight licenses *to the very patents asserted in this case* is unreliable. To be sure, the license agreements seem like they could provide some fodder for Peloton's assertion that (contrary to what Dr. Vellturo concludes) certain of them do not show that commercial entities flatly accepted the royalty rates on NEC's Rate Card. But the content of those agreements, as set out above, also provide some *support* for that assertion. There are facts in reasonable dispute here as to this issue, and Peloton may take up those disputes with Dr. Vellturo on cross-examination. (*See* D.I. 424 at 10); *cf. Acceleration Bay LLC v. Activision Blizzard Inc.*, Civil Action No. 1:16-cv-00453-RGA, 2019 WL 4194060, at *6 (D. Del. Sept. 4, 2019) (declining to exclude a damages expert's reliance on a license to the asserted patents, where the license's content could support either side's position as to whether the license was technically comparable, and noting that "[t]he specific details of the Boeing/Panthesis License may be useful for cross-examination but are not a basis for exclusion"); *Orexo AB v. Actavis Elizabeth LLC*, Civil Action No. 17-205-CFC, 2019 WL 10060475, at *2 (D. Del. Mar. 19, 2019) (concluding that Dr. Vellturo's methodology was sound and reliable, where he considered several license agreements covering patents other than the patent-in-suit as relating to comparable technology, and where he discussed the similarities and differences between the hypothetical license and those other licenses); *Intel Corp. v. Future Link Sys., LLC*, C.A. No. 14-377-LPS, 2017 WL 2482881, at *2 (D. Del. June 1, 2017) ("Whether the prior license agreements Mr. Chandler relied on are sufficiently comparable to support his proposed reasonable royalty is a factual issue best addressed by examination, including cross-examination, at trial.").

B. Dr. Vellturo's Reliance on Peloton's Subscription Revenues as the Royalty Base

Peloton also asserts that Dr. Vellturo's damages opinions must be excluded because he utilized Peloton's total net subscription revenue for all subscription tiers as the royalty base and in doing so, failed to apportion the value attributed to the patented feature (i.e., the ABR feature used in video streaming)—even though the subscriptions cover many valuable, non-inventive features. (D.I. 369 at 8-10 (citing D.I. 372, ex. J at ¶ 11); D.I. 506 at 3-4)[7] NEC does not appear to dispute that Peloton's subscriptions implicate valuable features that are not covered by the

[7] Dr. Vellturo explains that Peloton's "subscription revenues, which comprise revenues for subscriptions to digital content (including video content) accessed through its Connected Fitness Products and Peloton Apps, represent the appropriate royalty base" and that he excluded all revenue for Peloton's hardware sales from the royalty base. (D.I. 372, ex. J at ¶ 11)

patented inventions, such as the quality of Peloton's instructors. (Tr. at 71) But NEC asserts that the eight licenses are sufficiently comparable to the hypothetical negotiation (as they cover the asserted patents and utilize subscription revenue as the royalty base), and therefore provide built-in apportionment. (*Id.* at 43, 45, 71-72; D.I. 424 at 14; NEC's Summary Judgment and *Daubert* Slides at Slides 26, 28-30)[8]

On that score, the Federal Circuit has explained that "[w]hen a sufficiently comparable license is used as the basis for determining the appropriate royalty, further apportionment may not necessarily be required." *Vectura Ltd. v. GlaxoSmithKline LLC*, 981 F.3d 1030, 1040 (Fed. Cir. 2020). "That is because a damages theory that is dependent on a comparable license (or a comparable negotiation) may in some cases have 'built-in apportionment.'" *Id.* (citation omitted). "Built-in apportionment effectively assumes that the negotiators of a comparable license settled on a royalty rate and royalty base combination embodying the value of the asserted patent." *Id.* at 1041.

In its briefing, Peloton argued that built-in apportionment does not apply here, because the eight licenses are not sufficiently comparable to the hypothetical license. (D.I. 369 at 10) But as discussed above, by the time of oral argument, Peloton had given up any argument that the eight licenses were not sufficiently economically or technologically comparable (and instead argued that Dr. Vellturo's reliance on them should be excluded because he mischaracterized the

8 For what it is worth, so far as the Court can tell, NEC did not direct the Court to a portion of Dr. Vellturo's relevant expert reports wherein Dr. Vellturo himself actually stated that he thinks that the eight licenses provide built-in apportionment (or explains why that is so). It may be that NEC is suggesting that Dr. Vellturo's reports implicitly convey this point in a sufficient manner. (D.I. 424 at 14; Tr. at 72) But in any event, for purposes of the present Motion, Peloton never argued that NEC's position here could not prevail because Dr. Vellturo never addressed this "built-in apportionment" issue in his expert reports. And so the Court could not find this to be a reason to grant the Motion.

content of the licenses). (Tr. at 35-37) As a result, the Court concludes that, if the jury deems them sufficiently comparable, then the eight licenses can provide built-in apportionment. *See, e.g. VirnetX Inc. v. Apple Inc.*, CIVIL ACTION NO. 6:12-CV-00855-RWS, 2020 WL 11714546, at *1 (E.D. Tex. Sept. 1, 2020) (denying the defendant's motion to exclude the plaintiff's damages expert's royalty rate, which was premised on the expert's failure to apportion, where the expert's damages model was based on comparable licenses and the defendant "does not contend those licenses are not sufficiently comparable to survive *Daubert*—either technically or economically—such that their 'built in' apportionment is inapplicable"); *RSB Spine, LLC v. DePuy Synthes Sales, Inc.*, Civil Action No. 19-1515-RGA, 2022 WL 17084156, at *2 (D. Del. Nov. 18, 2022) (rejecting defendants' assertion that the plaintiff's damages expert failed to apportion as part of his reasonable royalty calculation, where the expert "calculated his proposed reasonable royalty based on the first *Georgia-Pacific* factor" and "clearly stated why the licenses are comparable: [the plaintiff] had asserted the same patents against two of the Licensees, the licenses are also for spinal implant products, and the Licensees are [d]efendants' competitors"). The Court, therefore, declines to exclude Dr. Vellturo's reasonable royalty opinion for failure to apportion.

C. Conclusion

For the reasons set forth above, the Motion is DENIED.

Because this Memorandum Order may contain confidential information, it has been released under seal, pending review by the parties to allow them to submit a single, jointly proposed, redacted version (if necessary) of the Memorandum Order. Any such redacted version shall be submitted no later than **June 22, 2026** for review by the Court. It should be accompanied by a motion for redaction that shows that the presumption of public access to judicial records has been rebutted with respect to the proposed redacted material, by including a factually-detailed explanation as to how that material is the "kind of information that courts will protect and that disclosure will work a clearly defined and serious injury to the party seeking closure." *In re Avandia Mktg., Sales Pracs. & Prods. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019) (internal quotation marks and citation omitted). The Court will subsequently issue a publicly-available version of its Memorandum Order.

Dated: June 17, 2026

Christopher J. Burke

Christopher J. Burke
UNITED STATES MAGISTRATE JUDGE