

Nos. 2026-1271, 2026-1287

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

VIDSTREAM LLC,
Plaintiff-Cross-Appellant.

v.

TWITTER INC.
Defendant-Appellant

On Appeal from the United States District Court
for the Northern District of Texas
No. 3:16-CV-00764-N, Hon. David C. Godbey

**CORRECTED AMICUS CURIAE BRIEF
OF UNIFIED PATENTS, LLC IN SUPPORT OF
TWITTER INC. AND REVERSAL OF DAMAGES**

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CERTIFICATE OF INTEREST

Pursuant to Federal Circuit Rules 27(a)(3) and 47.4, counsel for amicus curiae Unified Patents, LLC certifies the following:

1. Represented Entities. Fed. Cir. R. 47.4(a)(1). Provide the full names of all entities represented by undersigned counsel in this case.

Unified Patents, LLC

2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2). Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.

None.

3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3). Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.

The following are parent corporates for Unified Patents, LLC: UP HOLDCO INC., Unified Patents Holdings, LLC, Unified Patents Acquisition, LLC, Unified Patents Management, LLC.

No publicly held companies own 10% or more stock in Unified Patents.

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

None.

5. Related Cases. Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

Yes (file separate notice; see below) No N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). Please do not duplicate information. This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

None.

March 31, 2026

/s/ Michelle Aspen

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INTEREST OF AMICUS CURIAE¹

Unified Patents, LLC is a membership organization dedicated, inter alia, to deterring non-practicing entities, particularly patent assertion entities (“PAEs”), from extracting litigation settlements from operating companies based on patents that are likely invalid. Unified has over 3,000 members,² including Fortune 500 companies, start-ups, crypto platforms, automakers, medical device manufacturers, retailers, cable companies, banks, financial companies, open-source software developers, U.S. manufacturers, and others dedicated to reducing the drain that baseless patent litigation has on the U.S. economy.

Unified studies the business models and practices of PAEs, monitors ownership data, secondary-market patent sales, demand letters, post-issuance proceedings, and patent litigation. Unified also files post-issuance challenges against patents it believes are unpatentable or invalid. Thus, Unified seeks to deter the assertion of poor-quality patents. Windfall verdicts are a significant driver of such assertions. As such, that district courts correctly apply Rule 702 to damages experts is relevant to Unified’s deterrence mission.

¹ All parties have consented to the filing of this brief. Fed. R. App. P. 29(a)(2). No parties’ counsel authored this brief in whole or in part; neither party nor party counsel contributed money that was intended to fund preparing or submitting the brief; no person other than the amicus curiae or its counsel contributed money that was intended to fund preparing or submitting the brief. Fed. R. App. P. 29(a)(4).

² <https://www.unifiedpatents.com/members>. X Corp., f/k/a Twitter, is a Unified member.

I. INTRODUCTION

The lay juror faces a daunting set of tasks in patent cases. In addition to riding the fast track to learning the relevant legal standards, they must get up to speed on what are often highly technical concepts. They have to step back in time into the shoes of a person of ordinary skill in the art at the time of the invention and decide if the claims would have been “obvious” to that hypothetical person. Then, they must go back to yet another, different point in time, put on their business leader hats, and figure out how the parties would have hypothetically negotiated as of the date of first infringement. Given how much is asked of them in such a short amount of time, it is critical that the district court weed out unreliable testimony and spurious damages theories to avoid windfall verdicts untethered to reality.

And here, the jury was confused. They asked if they could decide how the reward was “disburse[d] ...to the different plaintiff parties” (there was one plaintiff). Appx86. It’s not hard to see what the jury did for damages—they simply assumed, without evidence, that the six claims were equal in value and adjusted the \$630,000,000 anchor to the fraction (1/6) of claims they found valid and infringed. It does not appear they considered the overlap of claims deemed invalid as anticipated or obvious in valuing the sole surviving claim. Because VidStream’s demand was not based on fact or sound methodology, it never should have reached the jury. And the jury, of course, had no factual basis for its adjustment either.

This is a classic case of the anchoring effect—the jury, inexperienced with patent law and told that the nine-figure damages demand was the result of expert analysis, could not ignore the number no matter how shaky the analysis was. Cross-examination alone could not cure such prejudice. Rather, it is the district court’s responsibility to hold parties to their burden to show that the proffered expert testimony is based on sound methodology and has a reliable basis in fact. This is especially important in the damages context, where juries already are biased to punish, rather than compensate, after a finding of infringement.

A number of red flags should have prompted the district court to take a harder look at VidStream’s damages theory before it reached the jury. Mr. Weinstein’s theory was that a license two patents was worth over \$630,000,000 to Twitter when no one else ever paid even *a hundredth of that for full title* to the plaintiff’s predecessor’s entire portfolio. Mr. Weinstein opined that Twitter would have agreed to a per-user royalty structure without any evidence that (1) Twitter had ever agreed to such or (2) anyone had agreed to such a license for these patents or allegedly similar technology. Had the district court taken that harder look based on these red flags, it would have noticed several fatal flaws in Mr. Weinstein’s methodology that precluded its admissibility. The jury never should have heard this number, and it was prejudicial to Twitter for the court to allow VidStream to even mention it.

II. THE DISTRICT COURT MUST GATEKEEP UNRELIABLE DAMAGES TESTIMONY

A. The expert's proponent has the burden to show that a damages theory is admissible and represents compensatory damages

Rule 702 applies to the testimony of all witnesses who are “qualified as an expert by knowledge, skill, experience, training, or education.” Fed. R. Evid. 702. For expert testimony to be admitted, the proponent must show that it “is more likely than not that” the testimony “is based on sufficient facts or data,” “is the product of reliable principles and methods,” and “reflects a reliable application of the principles and methods to the facts of the case.” Fed. R. Evid. 702. For its part, the trial court “must responsibly exercise its gatekeeping role to ‘ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.’” *Jiaying Super Lighting v. Ch Lighting Tech.*, 146 F.4th 1098, 1111 (Fed. Cir. 2025) (quoting *Daubert v. Merrell Dow Pharms, Inc.*, 509 U.S. 579, 589 (1993)). Properly distinguishing between the roles of the gatekeeper and factfinder is “particularly essential in the context of patent damages.” *EcoFactor, Inc. v. Google LLC*, 137 F.4th 1333, 1340 (Fed. Cir. 2025) (*en banc*) (internal quotations omitted).

A patentee is only entitled to recover “damages adequate to compensate for the infringement” unless special circumstances apply. 35 U.S.C. § 284. “The patentee bears the burden of proving damages.” *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1315 (Fed. Cir. 2011). While calculating damages for infringement

is not an exact science, before hypothetical-negotiation testimony from a damages expert is admitted, the patentee must make certain showings:

- that the expert “tie[d] the reasonable royalty calculation to the facts of the hypothetical negotiation at issue,” (*Uniloc*, 632 F.3d at 1317);
- that the expert “apportion[ed] damages only to the patented features” of the accused products (*VirnetX, Inc. v. Cisco Systems, Inc.*, 767 F.3d 1308, 1329 (Fed. Cir. 2014)); and
- that the expert “apportion[ed] the license fees to account for licensed patents that were not asserted” (*Jiaying Super Lighting*, 146 F.4th at 1111).

Here, the district court worked backwards from the belief that “rejection of expert testimony is the exception, not the rule.” Appx21. As support, the district court cited a case that pre-dated the 2023 Amendments to the Rules of Evidence, which sought to correct misapplications of Rule 702 based on such liberal standards of admissibility. Fed. R. Evid. 702, Committee Notes on Rules—2023 Amendment, note 1. The district never even acknowledged that Vidstream had the burden of establishing admissibility. *EcoFactor*, 137 F.4th at 1339. By starting from the assumption that the testimony would likely be admissible, the district court improperly shifted the burden to Twitter to prove it was not.

B. *Daubert* scrutiny cannot be thwarted by platitudes of compliance

The Rule 702 inquiry obligates district courts to get into the weeds a bit to “‘scrutinize’ whether the ‘principles and methods’ employed by an expert ‘have been properly applied to the facts of the case.’” *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 157 (1999) (quoting Advisory Committee’s Note on Proposed Fed. Rule Evid. 702, Preliminary Draft of Proposed Amendments to the Federal Rules of Civil Procedure and Evidence: Request for Comment 126 (1998)).

Here, the district court applied no such scrutiny. Instead, the district court looked not at whether Mr. Weinstein’s *opinions themselves were tied to the facts*, but whether Mr. Weinstein *opined that his opinions were tied to the facts*. For example, in assessing whether documents were comparable in technology and scope, the district court simply accepted Mr. Weinstein’s testimony that they were. Appx24 (“Weinstein assesses the comparability of the technology covered by the Asserted Patents and the technology involved in the first three documents, noting that although the agreements do not contemplate licenses strictly to the Asserted Patents, they do involve ‘access to the technology embodied by the asserted patents.’”); *id.* (“Weinstein sufficiently assesses the economic comparability of the documents to the hypothetical negotiation.”). The court credited this assessment even though neither Mr. Weinstein nor VidStream’s technical expert ever analyzed whether any services under the agreements would be covered by the asserted patents. An expert

cannot evade *Daubert* scrutiny simply by “alleging a loose or vague comparability between different technologies or licenses.” *LaserDynamics, Inc. v. Quanta Computer, Inc.*, 694 F.3d 51, 79 (Fed. Cir. 2012). But by accepting his high-level “assessments” at face value, the district court allowed Mr. Weinstein to do just that.

The only conclusions the district court independently made about the documents cited by Mr. Weinstein were that (1) they were prepared within three years of the hypothetical negotiation date, and (2) they were not litigation settlement agreements. Appx21-22. However, neither of these observations address whether the documents are technologically or economically comparable to a hypothetical negotiation. The district court did not look at whether the documents were economically or technically comparable themselves, nor did it analyze whether Mr. Weinstein accounted for the differences in scope using sound methodology.

The district court’s error in adopting Mr. Weinstein’s claim of comparability is compounded by three facts. First, none of the documents are agreements to or even reference the asserted patents—the Youtoo-Asia TV agreement encompassed broad social media features and services not remotely comparable to a license to the patents, the two Verizon MOUs (including an unsigned MOU that at best reflected YouToo’s “unilateral belief” of value; *EcoFactor*, 137 F.4th at 1342) also far exceeded the scope of the patents, and the Twitter slide pertained to an ad insertion concept that never came to fruition, not a license to the patented technology.

Second, the documents Mr. Weinstein considered were selected in an outcome-oriented fashion, to manufacture a basis for a running per-user royalty, at the exclusion of more pertinent contradictory evidence that he ignored. “Subsumed within [the hypothetical negotiation factors] is the question of *whether the licensor and licensee would have agreed* to a lump-sum payment or instead to a running royalty based on ongoing sales or usage.” *Lucent Techs. v. Gateway, Inc.*, 580 F.3d 1301, 1326 (Fed. Cir. 2009) (emphasis added). Here, no facts showed that anyone ever agreed to a license³ for a per-user running royalty the asserted patents or similar technology. In fact, Mr. Weinstein ignored uncontroverted evidence that Twitter negotiated only lump-sum licenses as a matter of practice, as evidenced by eight such licenses. And, as this Court has explained, where “the relevant evidence is *contrary to a critical fact* upon which the expert relied, the district court fails to fulfill its responsibility as gatekeeper by allowing the expert to testify at trial.” *EcoFactor*, 137 F.4th at 1346. None of the documents Mr. Weinstein cited supported his per-user running royalty rate for a hypothetical license with Twitter, and Mr. Weinstein deliberately excluded evidence from his consideration demonstrating that Twitter only ever agreed to lump sum royalties in similar contexts.

³ MOUs are not licenses, and we can only speculate about why nothing more came of them. For all we know, Verizon backed out because of the per-user rate structure.

The distinction between a running royalty and lump sum payment is important, as “[s]ignificant differences exist between” the two types of compensation. *Lucent Techs*, 580 F.3d at 1326. And under Section 284, the reasonable royalty inquiry is directed to compensating the plaintiff for what they would have received but-for the infringement, “without regard” to an infringer’s gains or profits. *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 377 U.S. 476, 505 (1964) (“[T]he statute allows the award of a reasonable royalty, or of any other recovery ***only if such amount constitutes ‘damages’ for the infringement.***”) (emphasis added). Mr. Weinstein’s running-royalty theory did not reflect compensation to VidStream for damages suffered, but a windfall based on Twitter’s brand and popularity, untethered to the value of the claimed invention itself.

Third, the district court did not hold VidStream to its “obligation to apportion damages only to the patented features” of the accused products. *VirnetX*, 767 F.3d at 1329; *see also Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1324 (Fed. Cir. 2014) (“[P]roof of damages must be carefully tied to the claimed invention itself.”). First, Mr. Weinstein started from an arbitrary base—over 8.8 billion user-months for Twitter alone—without accounting for what could be massive fluctuations in usage of the allegedly infringing features. His adjustments cannot cure that (1) his starting rate was untied to the patented technology and (2) his base was untied to the frequency of any claimed infringement. For example, with the signed Verizon MOU,

the calculation would have simply resulted in a 11¢ royalty rate very loosely based on the number of mobile users who *watch* any videos on the Twitter app,⁴ regardless of whether the original video was live-streamed or uploaded using the claimed user interface alleged by VidStream to be met by Twitter’s in-app camera.

There are many ways people can upload videos to Twitter without potentially infringing claim 17. If a person captures a video outside the app’s user interface and later uploads it, then that video cannot have been uploaded according to the operations of claim 17. If a person sees a video on a different social media app, downloads it or records it on their screen, and then shares it, that also does not implicate claim 17. Only live-streamed videos recorded and uploaded via the in-app camera feature potentially infringe claim 17. Separate from the lack of any evidence that Twitter would have agreed to any form of a per-user royalty base, by relying on the number of users who *watch* videos regardless of source or method of upload, Mr. Weinstein’s result lacked a reasonable basis in fact because it was untethered to “how many [users] had ever performed the patented method or how many times.” *Lucent Techs.*, 580 F.3d at 1334-35 (overturning damages verdict). As a result, Mr. Weinstein failed to apportion as required by the law.

⁴ Whether downward adjustments are applied to the rate or the base results in the same product under the commutative property of multiplication:
 $(0.82 \times 0.9 \times [\text{rate}]) \times [\text{user-months}] = [\text{rate}] \times (0.82 \times 0.9 \times [\text{user-months}])$.

VidStream therefore did not meet its burden to show that the facts and methodology on which Mr. Weinstein relied reflected compensatory damages. Mr. Weinstein's royalty base was already suspect for being tied to Twitter's video-watching user base. Mr. Weinstein's failure to apportion for the various numbers of non-infringing ways users can and do capture and upload video makes his testimony less than useless or irrelevant; it makes it unreliable, misleading, and inadmissible.

The disparity between Mr. Weinstein's opinions and the facts is not just the result of damages being an inexact science. Rather, this disparity renders his opinions tantamount to nothing more than cherry-picked numbers arbitrarily multiplied together to throw an eye-popping number at a jury. Sound methodology and the law demand far more rigor and foundation than Mr. Weinstein employed. And Rule 702 requires that a district court demand such rigor from a plaintiff's expert before exposing the jury to their influential theories, "lest apparently scientific testimony carry more weight with the jury than it deserves." *DePaepe v. General Motors Corp.*, 141 F.3d 715, 720 (7th Cir. 1998).

C. The error was not harmless, as cognitive biases like anchoring prevent cross-examination from curing excessive demands

Cross-examination and contrary evidence generally cannot cure expert testimony that is prejudicial or exceeds the bounds of reasonableness and reliability—if they could, Rule 702 would be unnecessary. *Daubert*, 509 U.S. at 596. And in the context of patent damages, certain cognitive biases at play—including

the anchoring bias and punitive juror—make it particularly important that a court fulfills its gatekeeping duties.

At trial, the first number that a juror hears often becomes an anchor. Exposing the jury to an outrageously high demand as the starting number results in a cognitive bias, known as the *anchoring effect*, that prejudices the defendant by causing the jury to fixate on the high starting number, no matter how “obviously uninformative” the original basis for that number is:

an *anchoring effect* . . . occurs when people consider a particular value for an unknown quantity before estimating that quantity. What happens is one of the most reliable and robust results of experimental psychology: the estimates stay close to the number that people considered—hence the image of an anchor.

Daniel Kahneman, *Thinking Fast and Slow* at 119 (2011) (“Kahneman”).

Multiple studies confirm that the anchoring effect occurs in the context of litigation damages. *See, e.g.*, Chang, Yun-chien, Chen, Kong-Pin, Lin, Chang-Ching, *Anchoring Effect in Real Litigation: An Empirical Study* at 1-5 (Feb. 2017), University of Chicago Coase-Sandor Institute for Law & Economics Research Paper No. 744, SSRN: <https://ssrn.com/abstract=2726903>. Interestingly, experienced judges tend to be unaffected by anchoring attempts, as experience is “a powerful debiaser.” *Id.* at 5.

Even vigorous cross-examination cannot undue the prejudice resulting from hearing an unreasonably high royalty demand. Because the first number the jury

hears is very often from the patentee's damages expert, that value, whatever it is, anchors the jury. All subsequent testimony—including on cross—can only serve to as adjustments, which “are typically insufficient.” Kahneman at 427. Jurors are people, and “people make estimates by starting from an initial value that is adjusted to yield the final answer.” *Id.* Because of anchoring, “different starting points yield different estimates, which are biased toward the initial values.” *Id.*

The effect of this anchoring bias is particularly apparent in patent cases, where there is an enormous gap between what judges and juries award. Wesley A. Demory, *Patent Claim Obviousness in Jury Trials: Where's the Analysis?*, 6 J. BUS. & TECH. L. 449, 449 (2011),⁵ (observing that the disparity between jurors and judges in patent cases “skyrocketed” from nearly equal in the 1980s to “a staggering \$10.7 million for jury trials and \$700,000 for bench trials in the 2000s”). But the anchoring effect is just one explanation for the gap. Another explanation is that judges apply the law to limit damages to what is “adequate to compensate for the infringement” under 35 U.S.C. § 284, while jurors do not.

Specifically, studies have shown jurors approach the patent damages “calculus with a desire, or at least a perceived need, to punish the accused infringer” and employ a “wide array of ‘gross up’ strategies and rationales” to inflate the award

⁵<https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1168&context=jbtl>

from compensatory to punitive. Martha K. Gooding & William C. Rooklidge, *The Real Problem with Patent Infringement Damages*, 91 J. PAT. & TRADEMARK OFF. SOC'Y 484, 486-87 (2009).⁶ Because juries already struggle to deliberate “within the bounds of the evidence and the law” to calculate damages, it is especially important that judges “rigorously fulfill their role as gatekeeper” when admitting testimony from damages experts. *Id.* at 484-85.

This court has implicitly recognized the prejudicial nature of anchoring. In *Uniloc*, the Court emphasized that admitting large numbers like Microsoft’s \$19 billion revenue to support a claim of \$565 million in damages “cannot help by skew the damages horizon for the jury.” 632 F.3d at 1320-21. Here, VidStream also used enormous, irrelevant numbers to skew the damages horizon. By arbitrarily selecting “user-months” to calculate a royalty base, VidStream knew the jury would hear 8.8 billion and might think the \$630 million ask seemed reasonable in comparison. Cross-examination could never make the jury unhear those anchor numbers. *Id.* at 1320 (crediting the district court’s apt observation that “the \$19 billion cat was never put back into the bag even by Microsoft’s cross-examination”) (citation modified).

Here, the district court mistakenly believed that cross-examination could cure any prejudice from Mr. Weinstein’s unsound methodology and unreliable basis in fact. Appx22. But while *credibility* is properly left to a jury, a determination of

⁶<https://heinonline.org/HOL/P?h=hein.journals/jpatos91&i=516>

reliability and sound methodology “is an essential prerequisite” to admissibility in the first place. *EcoFactor*, 137 F.4th at 1340. And because of the anchoring effect and other biases defendants face, cross-examination would never be enough. Therefore, when district courts err in admitting unreliable expert testimony on patent damages, that error is not harmless and can lead to windfall verdicts.

D. How district courts can fulfill their gatekeeping role

Despite *EcoFactor* and many decisions from this Court emphasizing the importance of protecting juries from unsound damages theories, plaintiffs have largely been able to circumvent Rule 702 simply by making general statements of compliance that pay lip service to sound methodology. District courts need to require more—the expert needs to *show* the court *how*, not merely tell the court that, their methodology was sound. And district courts need to ensure that a damages theory reflects *compensatory* damages based on the facts of the case. *Apple v. Motorola*, 757 F.3d at 1324. Relevant to this case, there are a few things district courts must confirm before allowing a damages theory to reach a jury.

First, while the degree of comparability may go to weight, sufficient comparability is a threshold prerequisite to admissibility. *ResQNet.com v. Lansa, Inc.*, 594 F.3d 860, 871 (Fed. Cir. 2010) (finding legal error where district court allowed expert to rely on license that “was not commensurate to the patent in suit.”). Agreements that “arose from divergent circumstances and covered different

material” are not sufficiently comparable. *Wordtech Sys., Inc. v. Integrated Networks Solutions, Inc.*, 609 F.3d 1308, 1319 (Fed. Cir. 2010). Conclusory testimony does not establish comparability. *LaserDynamics*, 694 F.3d at 79. Further, an expert may not simply accept an “unsupported assertion from an interested party” in concluding that agreements are comparable. *EcoFactor, Inc.*, 137 F.4th at 1344.

Related to the comparability question, non-binding or unconsummated agreements, such as MOUs and letters of intent, should be met with suspicion due to their lack of finality and the potential for unilateral bias. *Id.* at 1342. Before allowing an expert to rely on them, the district should scrutinize whether the expert made specific adjustments, based on facts and not speculation, to reflect what both parties would have agreed to had they come to an agreement.

Second, where the scope covers more than a license to the asserted patent, “the damages expert must apportion among licenses.” *Jiaying Super Lighting*, 146 F.4th at 1112. Importantly, the threshold question of sufficient comparability must be met before the question of sound apportionment applies—if the expert relies on material that is not sufficiently comparable, no amount of apportionment can cure the defect in their analysis. Portfolio licenses, titles, and exclusive licenses are worth more than bare single-patent licenses. *Id.*; *see also Lucent Techs.*, 580 F.3d at 1328. Broad service contracts and technology agreements (assuming they could be considered comparable in the first place) that provide “access” to related technology

are also not the equivalent of patent licenses because the value typically reflects the costs in fulfilling the underlying service obligations. Finally, claims of having made “[b]lanket upward and downward adjustments” do not prove that it is more likely than not that the expert has used sound methodology to account for the disparity in value of different agreements *Jiaying Super Lighting*, 146 F.4th at 1112.

Third, where a party employs the hypothetical negotiation method, the royalty base/rate structure must be supported by specific facts that reflect what *both* parties would have agreed to. *Uniloc*, 632 F.3d at 1317. Where there is “no evidence that [the defendant] had ever agreed to pay” a hypothetical royalty structure “on an analogous patent,” and significant evidence that they would not agree to such an arrangement, it is unlikely that the proffered damages theory has a sufficient basis in fact. *Lucent Techs.*, 580 F.3d at 1338.

Reinforcing these principles will ensure that district courts fulfill their gatekeeping duty before unreliable testimony anchors juries to unreasonable royalty damages. When, as here, courts do not meaningfully engage with the factual record beyond accepting the expert’s self-serving statements at face value, they improperly shift the Rule 702 inquiry onto the jury and prejudice the defendant.

III. CONCLUSION

For the reasons discussed above, Unified Patents supports vacatur of the damages award.

Respectfully submitted,

March 26, 2026

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CERTIFICATE OF COMPLIANCE
WITH TYPE-VOLUME LIMITATIONS

1. This brief complies with the type-volume limitation of Fed. Cir. R. 29(b). It contains 4,072 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Fed. Cir. R. 32(b)(2).

2. This amicus brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font. As permitted by Fed. R. App. P. 32(g), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

March 26, 2026

/s/ Michelle Aspen

Michelle Aspen

CERTIFICATE OF SERVICE

I hereby certify that, on March 31, 2026, I caused to be electronically filed the foregoing CORRECTED AMICUS CURIAE BRIEF OF UNIFIED PATENTS, LLC IN SUPPORT OF TWITTER INC. AND REVERSAL OF DAMAGES using the Court's CM/ECF filing system. Other than the cover and date of the certificate of interest, no alterations to the original brief (ECF 29) were made.

I certify that all counsel of record in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system. *See* Fed. R. App. P. 25(d); Fed. Cir. R. 25(e).

March 31, 2026

/s/ Michelle Aspen

Michelle Aspen