No. 26-1902

United States Court of Appeals for the Federal Circuit

G+ COMMUNICATIONS, LLC,

Plaintiff-Appellee,

v.

SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC.,

Defendants-Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, IN NO. 2:22-CV-00078-JRG

DEFENDANTS-APPELLANTS' NONCONFIDENTIAL OPENING BRIEF

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EXEMPLAR CLAIMS AT ISSUE ON APPEAL

Claim 1 of U.S. Patent No. 8,761,776 (Appx468-69 (6:58-7:16))

1. A cell reselection method, by which a terminal, which is currently associated with a serving cell on a serving frequency with a first priority, performs reselection among cells on multiple frequencies, other than the serving frequency, with a second priority, the method including:

setting the cells on multiple frequencies with the second priority as same-priority cells;

selecting cells on multiple frequencies with the second priority according to a priority-based reselection principle when a terminal performs cell reselection; and

selecting a cell as a reselected cell by the terminal from among the same-priority cells based on a best-cell reselection principle,

wherein the same-priority cells include one of the following:

cells on multiple frequencies with the second priority that is higher than the first priority;

cells on multiple frequencies with the second priority that is lower than the first priority; and

a serving cell, and cells on the serving frequency and on one or more frequencies having the same priority with the serving frequency,

wherein the priority of the same-priority cells is equal to the absolute priority of corresponding frequencies, and

wherein the best-cell reselection principle is an offset-based cell reselection principle.

Claim 2 of U.S. Patent No. 8,761,776 (Appx469 (7:17-8:18))

2. A terminal used to perform reselection among cells on multiple frequencies with the same priority, wherein the terminal is currently associated with a serving cell on a serving frequency with a first priority, the terminal including:

a first reselection module, used to select cells on multiple frequencies, other than the serving frequency, with a second priority according to a priority-based reselection principle when a terminal performs cell reselection; wherein the cells on multiple frequencies with the second priority are same-priority cells; and

a second reselection module, used to select a cell as a reselected cell from among the same-priority cells based on a best-cell reselection principle,

wherein the same-priority cells specifically include one of the following:

cells on multiple frequencies with the second priority that is higher than the first priority;

cells on multiple frequencies with the second priority that is lower than the first priority; and

a serving cell, and cells on the serving frequency and on one or more frequencies having the same priority with the serving frequency,

wherein the priority of the same-priority cells is equal to the absolute priority of corresponding frequencies, and

wherein the best-cell reselection principle is an offset-based cell reselection principle.

CERTIFICATE OF INTEREST

Counsel for Defendants-Appellants certifies the following:

1. Provide the full names of all entities represented by undersigned counsel in this case.

Samsung Electronics Co., Ltd.; Samsung Electronics America, Inc.

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/Not Applicable.

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.

Samsung Electronics America, Inc. is a wholly owned subsidiary of Samsung Electronics Co., Ltd.

4. 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).

Fish & Richardson P.C.: Julianne Campbell,* Bryan J. Cannon, Kenton W. Freeman, Jr.,* Aleksandr Gelberg, Thad C. Kodish, Sun Young Park, Thomas H. Reger, Rodeen Talebi, Linhong Zhong

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* *No longer with firm.*

5. 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)?

No.

6. 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/Not Applicable.

Dated: October 2, 2026

/s/ Lauren A. Degnan
Lauren A. Degnan

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Under Federal Circuit Rule 25.1(e)(1)(B), Samsung states as follows: The material redacted from this brief contains information filed or issued under seal by the Eastern District of Texas. The redaction on page 9 involves the identities of parties to a confidential license agreement. The redactions on pages 41 (final two redactions), 42, 48 (first redaction), and 50 (third redaction) involve dollar values or percentages that directly or indirectly reveal confidential financial information of Samsung. The redactions on pages 12-13, 41 (first two redactions), 46-47, 48 (final two redactions), 50 (first, second, fourth, and fifth redactions), and 64 involve materials designated confidential by Appellee G+ Communications, as to which Appellee has indicated that it believes the information should remain confidential on appeal. The material redacted from the documents at Appx416-20 and Appx443-61 involves confidential license agreements and technical and financial information of Samsung.

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STATEMENT OF RELATED CASES

No appeal from the same civil action has previously been brought before this or any other appellate court. Counsel for Samsung are unaware of any other cases that may directly affect or be directly affected by the Court's decision in this appeal.

JURISDICTIONAL STATEMENT

The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1338(a). It entered final judgment on June 17, 2024, as amended on July 3, 2024, and decided the last tolling post-judgment motion on April 30, 2026. Samsung timely filed this appeal on May 29, 2026. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4. This Court's jurisdiction is invoked under 28 U.S.C. § 1295(a)(1).

STATEMENT OF THE ISSUES

1. Are claims 1 and 2 of the '776 patent directed to ineligible subject matter under 35 U.S.C. § 101, where the district court granted partial summary judgment that the claims are directed to an abstract idea, the patentee never identified any alleged "inventive concept" under *Alice* step two, and the '776 patent itself admits that the remaining claim elements were a well-understood, conventional part of the pre-existing 3G standard?

2. Should the term "offset-based cell reselection principle" be construed according to its explicit definition in the specification?

3. Is judgment as a matter of law of no damages or a new trial on damages required where (a) the district court permitted the plaintiff to present an unreliable incremental profits approach to the jury; (b) the jury awarded damages an order of magnitude higher than comparable licenses based on faulty assumptions and inadequate apportionment; (c) the linchpin of the plaintiff's damages theory was the opinion of a survey expert who never testified; (d) the court permitted the plaintiff to skew the damages horizon upward by repeatedly emphasizing the value of the 5G standard as a whole; and (e) the court erroneously treated royalty stacking exclusively as an affirmative defense in refusing to permit Samsung to educate the jury about the concept?

STATEMENT OF THE CASE

This appeal arises from two jury trials resulting in a $61 million award for a single standard-essential patent (SEP) among nearly 70,000 declared 5G patent families. Appx435. In the initial trial, the jury addressed liability for three patents (the '776, '130, and '443 patents) asserted by G+ Communications (GComm) against Samsung and damages for two patents (the '776 and '130 patents). Appx443; Appx445; Appx27175.[1] Afterwards, the district court *sua sponte* vacated the damages award and ordered a new damages trial for the '776 and '130 patents. Appx30638-44. After the retrial, the Patent Trial and Appeal Board determined that the only asserted claim of the '130 patent was unpatentable, so the district court severed and stayed the '130 patent proceedings. Appx445. This Court affirmed the unpatentability of the challenged '130 patent claims. *G+ Commc'ns, LLC v. Samsung Elecs. Co.*, No. 24-2048, 2026 WL 2198601 (Fed. Cir. July 30, 2026) (nonprecedential). This appeal thus concerns only the '776 patent.

I. The '776 Patent

A. The '776 Patent Describes That Cell Reselection Methods Were Well Known Before the Purported Invention

The '776 patent, titled "Cell Reselection Method and Terminal," relates to mobile wireless communications. Appx462; Appx466 (1:5-7). In particular, it

[1] The jury found the asserted '443 patent claim not infringed and that it involved only well-understood, routine, and conventional activities. Appx424-25. The district court entered judgment of noninfringement and invalidity. Appx440.

involves how a mobile device, connected to a cell tower and in an idle state (i.e., not actively in a call or data session), can select a new nearby cell tower to connect to. *Id.* For example, as a mobile device moves, it periodically evaluates which nearby cell tower provides the best signal and, if appropriate, switches its connection to that tower. Appx466 (1:11-26). The patent calls this process "cell reselection," where a "cell" is the area covered by an individual cellular base station. *See* Appx466 (1:6-7).

As the patent's background section explains, cell reselection was well known by at least the development of third-generation (3G) cellular communications. Appx466 (1:27-33). The patent admits that 3G cell reselection involved both "select[ing] the best cell when performing reselection" and using "offset-based cell reselection." Appx466 (1:47-65). The '776 patent provides a specific definition of "offset-based" reselection. Appx466 (1:51-65) ("calculate Rs=Qmeas,s+Qhysts, Rn=Qmeas,n−Qoffset, wherein . . ."). This approach allows a device to account for considerations like how busy a given tower is, or to implement "hysteresis" to avoid rapid, inefficient switching. *See id.*

The patent indicates that "offset-based" reselection requires assessing both "intra-frequency and inter-frequency neighbouring cells," i.e., neighboring cells with both the same frequency as the current cell and those with different frequencies. Appx466 (1:66-2:1); *see also* Appx30206-07 (1040:13-1041:23). For

inter-frequency comparisons, the patent states that, in 3G networks, the device "firstly ranks the frequencies based on their absolute priority and finds out the frequency with top priority, and then selects a cell on this frequency by the offset-based cell reselection method," which is called a "priority-based reselection method." Appx466 (2:2-10). The patent further describes how the device, in 3G, transfers to a cell "on a frequency with higher priority," Appx466 (2:23-26), and uses "the offset-based reselection method" for "reselection among ***intra***-frequency cells and cells on the frequencies with the same priority," Appx466 (2:42-44).[2]

B. The Purported Invention

The '776 patent purports to identify a narrow gap in this admitted prior art: "how to perform cell reselection among cells when several cells on each of [multiple] frequencies with the same priority meet reselection conditions." Appx466 (2:61-64). The patent proposes filling this alleged gap by simply applying two different criteria sequentially to choose the new cell: first, applying known priority-based selection to aggregate all the cells across multiple frequencies with the same priority; and second, applying known best-cell reselection principles to choose among that group. Appx464.

Notably, beyond this two-step framework, the patent makes no claim to having invented any new reselection algorithm or formula. *See generally*

[2] All emphasis is added unless noted otherwise.

Appx466-68. Instead, the patent's three-column detailed description states that the "best-cell reselection principle" of step S104 "is an offset-based cell reselection principle . . . described in detail[] in the background of the present invention." Appx467 (4:61-67).

The claims reflect this level of generality. Claim 1, which is representative, is reproduced on the inside cover of this brief. Appx468-69 (6:58-7:16).

II. Pretrial Proceedings and the Initial Trial on Damages and Liability

Before trial, the district court construed the term "offset-based cell reselection principle" to cover any method of "using Qoffset as a variable for reselection," rejecting Samsung's lexicography argument. Appx56-57.

Samsung sought summary judgment on patent-eligibility for the '776 patent. Appx13203-09. Samsung explained that the '776 patent claims are directed to an abstract idea because they embody the "abstract concept of selecting 'according to a priority-based reselection principle' followed by selection according to 'a best-cell reselection principle,'" i.e., "[e]mploying multiple evaluation criteri[a] to select one option out of numerous possible options." Appx13205. Samsung highlighted that, beyond this abstract concept, the claimed elements "were well understood, routine, and/or conventional in the wireless industry" as shown by the "disclosures from the '776 patent" itself, thus demonstrating the lack of an inventive concept. Appx13209. GComm's opposition primarily disputed whether

the patent was directed to an abstract idea, without addressing the '776 patent's own admissions or identifying any specific, alleged "inventive concept." Appx17709-13.

The district court granted summary judgment in part. Appx225-26 (138:22-139:6). It held that the claims "are directed at the step 1 analysis to an abstract idea," but determined that it was "appropriate to present" step two "to the jury" because it is "a mixed question of law and fact." *Id.* The court did not address the admissions in the '776 patent's background section or identify what potential "inventive concept" it thought raised a genuine issue of material fact. *Id.*

The case proceeded to trial on three patents, and the jury returned a verdict in relevant part finding the '776 patent infringed and not invalid, and awarding $45 million in damages. Appx424-27. After this verdict, the district court *sua sponte* ordered a new damages trial. Appx30638-44.

III. Damages Retrial

A. GComm's Damages Case

GComm presented its damages case through its expert, Stephen Dell. Appx32453 (347:5-16). Samsung had moved to exclude Dell's testimony for disregarding comparable licenses and calculating a royalty rate based on a novel "incremental profit" methodology that, Dell claimed, "demonstrates [the] portion of the profit (on a per unit basis) that is directly isolated and apportioned to the

economic benefits enabled by the Patents at Issue." Appx13227-35; Appx13241; Appx38674 (¶354). The court denied Samsung's motion. Appx418; *see* Appx218-19.

At the damages retrial, Dell repeatedly emphasized the overall value of 5G to Samsung. Appx32470-71 (364:6-365:22); Appx32474 (368:1-17). He acknowledged that the '776 patent is a declared SEP for the 5G standard. Appx32474 (368:22-369:3); *see* Appx32245-48 (143:23-144:2, 145:6-146:5); Appx32749 (604:2-8). Thus, GComm was bound to license the patents to Samsung on a fair, reasonable, and non-discriminatory (FRAND) basis. Appx32474 (368:23-369:3); *see* Appx32248 (146:6-12); Appx32749 (604:9-18).

Dell purported to apply factors relevant under *Georgia-Pacific Corp. v. U.S. Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970). Appx32478-88 (372:2-382:20). Yet despite calculating FRAND royalty rates based on numerous relevant patent licenses, Dell asserted that the parties at the hypothetical negotiation would have regarded the licenses as "not directly economically comparable." Appx32497-500 (391:23-394:17); *see* Appx32478-88 (372:2-382:20).

Dell accordingly turned to his incremental profits analysis. *See* Appx32500 (394:4-17); Appx32502 (396:15-19). Under this framework, he determined that

Samsung and ZTE,[3] at a hypothetical negotiation, would have agreed to a lump-sum royalty payment for the '776 patent. Appx32503 (397:15-19). To calculate this royalty, Dell (1) started with a per-unit incremental profit allegedly attributable to the '776 patent, (2) applied a first (alleged) apportionment factor, and then (3) applied a second (alleged) apportionment factor. Appx32494-501 (388:3-395:4). Dell ultimately calculated the lump sum for the '776 patent to be $102.6 million. Appx32503 (397:5-19).

B. Samsung's Damages Case

Samsung's damages expert, Paul Meyer, testified that real-world comparable licenses would have resulted in a FRAND royalty no greater than $3.125 million. Appx32640-41 (534:17-535:5); *see* Appx32629-41 (523:8-535:5). In his FRAND licensing experience, Meyer had never encountered Dell's "incremental profit" approach and, instead, had observed the industry primarily rely on comparable licenses. Appx32618-20 (512:7-514:15). In Meyer's view, all record evidence—including Dell's own analysis—demonstrated that GComm's $102.6 million demand was non-FRAND, particularly given the nearly 70,000 patent families in the 5G standard stack. Appx32615 (509:7-11); Appx32622-28 (516:2-522:19).

[3] GComm acquired the '776 patent from ZTE, the assignee when Samsung's infringement allegedly began. Appx32613-14 (507:3-508:11).

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Meyer further explained that key comparable licenses—the ZTE-Samsung license (involving the same parties to the hypothetical negotiation) and the ZTE-Apple license (involving the '776 patent)—demonstrated a FRAND lump-sum royalty of only $165,000 for the '776 and '130 patents combined. Appx32634-39 (528:19-532:12, 533:5-23). According to Meyer, an even higher lump-sum royalty of $3.125 million for a license to both patents remained consistent with Samsung's prior license with CONF LICENSE AGMT—a non-practicing entity that, like GComm, purchased and licensed ZTE patents for 4G/5G. Appx32629 (523:8-23); Appx32632 (526:3-7); *see* Appx32629-31 (523:24-525:10); Appx32632-34 (526:3-528:17).

The jury returned a verdict of $61 million for the '776 patent and $81 million for the '130 patent.[4] Appx435.

IV. Post-Trial Proceedings

Samsung moved for judgment as a matter of law (JMOL), a new trial, remittitur, and/or amendment of the judgment. Appx31148. Samsung challenged, *inter alia*: (1) the jury's findings with respect to patent-eligibility of the '776 patent and (2) the jury's damages award. Appx31161-72; Appx31185-218.

[4] GComm had requested and presented evidence supporting only $40 million in damages for the '130 patent. Appx32503 (397:20-23); Appx32675 (569:5-9).

Regarding patent-eligibility, Samsung highlighted that GComm's expert, Dr. Robert Akl, never disputed or even addressed the '776 patent's admissions concerning what was conventional before the alleged invention. Appx31162-65. Samsung emphasized that the only aspect of the '776 patent claims that the patent asserted was new—grouping cells of different frequencies into a set of same-priority cells—was part of the abstract idea on which the district court had already granted summary judgment, such that it cannot also be the inventive concept. Appx31166-69.

Samsung's challenge to the damages verdict raised several defects. Appx31185-218. ***First***, Samsung sought JMOL of no damages—or, in the alternative, a reduction of damages as a matter of law, a new trial, or a new trial conditioned on a remittitur—because the record evidence does not support the royalty rate derived from Dell's incremental profits analysis. Appx31188-201; Appx31211-12. ***Second***, Samsung asserted that the district court erred in failing to exclude Dell's opinions on the incremental profits analysis, therefore warranting a new trial. Appx31201-02. ***Third***, Samsung sought a new trial because GComm repeatedly and improperly referred to the total value of the 5G standard. Appx31202-07; Appx31209-10. ***Fourth***, Samsung argued that the court prejudicially erred by precluding Samsung from presenting evidence and refusing a jury instruction on royalty stacking. Appx31207-09.

The district court denied Samsung's post-trial motions. Appx443.

SUMMARY OF THE ARGUMENT

This Court should set aside the district court's judgment on several independent grounds.

Patent-Eligibility. Claims 1 and 2 of the '776 patent are ineligible under 35 U.S.C. § 101. The district court properly granted summary judgment in Samsung's favor at *Alice* step one because the patent merely applies the abstract concept of using two criteria to select among options to the context of choosing a cell tower to connect to. It erred, however, in upholding the claims at step two based entirely on the jury's narrow, unsupportable finding that Samsung had not shown the remaining claim elements to be well-understood, routine, and conventional.

Two independent errors compel reversal on step two. First, contrary to the district court's analysis, the narrow issue put to the jury—whether the elements of claims 1 and 2 are purely well-understood, routine, and conventional—is not dispositive of the step-two inquiry. Instead, an inventive concept must be identified, the abstract idea must be filtered out of the analysis, and a legal determination must be made as to whether any non-conventional elements beyond the abstract idea are "significantly more" than that idea. The court did not perform this analysis and, when the proper standard is applied, the claims fail at step two as a matter of law. Second, the '776 patent itself is dispositive of the underlying

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factual issues actually put to the jury and was wholly unrebutted by GComm. Where, as here, the specification's own admissions establish without rebuttal what was conventional, a jury simply has no role to play.

Claim Construction. The district court erroneously construed "offset-based cell reselection principle." The specification defines this term with precision: it describes a method requiring computation of Rs and Rn values, defines every variable, explains how the device ranks all R values (Rs and Rn), and labels this method "offset-based cell reselection" using paradigmatic lexicographic language. The detailed description twice cross-references that definition, confirming that it governs the claimed invention. The district court's construction allowed the jury to find infringement without analyzing all of the aspects of the claimed "offset-based" principle, necessitating a new trial under the correct construction.

Damages. The district court deprived Samsung of a fair trial on damages through defective gatekeeping, asymmetric SEP rulings, and cumulative prejudicial errors—producing an excessive $61 million verdict for a single SEP that was [redacted] to [redacted] times higher than any comparable license of record.

The court abdicated its Rule 702 gatekeeping duty by admitting an "incremental profits" framework that was unreliable at every level and ignored the FRAND framework. Dell's $5.83 per-unit profit baseline rested on the uncritical adoption of other experts' opinions—including one who never testified at the

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retrial—without independent economic evaluation or any tie to the claim limitations. His apportionment factors were arbitrary: the first averaged two economically unrelated figures; the second was justified by only vague references to Samsung's "bargaining strength." Throughout, Dell disregarded comparable licenses establishing per-patent rates of [redacted] to [redacted], offering only *ipse dixit* to justify a rate [redacted] times higher than his own benchmarks.

The district court compounded these errors through asymmetric evidentiary rulings. It permitted GComm to repeatedly parade the unapportioned value of the entire 5G standard before the jury—directly undercutting the principle that an SEP royalty must reflect the patented feature's value, not standardization value, while skewing the damages horizon severely. The court simultaneously precluded Samsung from educating the jury about royalty stacking, depriving the jury of the context needed to evaluate GComm's inflated demand against the backdrop of nearly 70,000 declared 5G patent families. The damages award, therefore, is not supported by substantial evidence and is against the great weight of the evidence in the record of the retrial.

This Court should reverse on patent-eligibility, reverse the decision denying JMOL of no damages, or at a minimum vacate and remand for further proceedings on infringement, invalidity, and damages.

ARGUMENT

I. Standard of Review

This Court applies regional circuit law—here, the Fifth Circuit—for issues not unique to patent law. *i4i Ltd. P'ship v. Microsoft Corp.*, 598 F.3d 831, 841 (Fed. Cir. 2010). The denial of a JMOL motion is governed by regional circuit law, *Transocean Offshore Deepwater Drilling, Inc. v. Maersk Drilling USA, Inc.*, 699 F.3d 1340, 1346-47 (Fed. Cir. 2012), and the Fifth Circuit reviews JMOL decisions de novo. *Ford v. Cimarron Ins. Co.*, 230 F.3d 828, 830 (5th Cir. 2000). The Fifth Circuit requires reversing the jury's determination if the "jury's factual findings are not supported by substantial evidence or [] the legal conclusions implied from the jury's verdict cannot in law be supported by those findings." *Echeverry v. Jazz Casino Co.*, 988 F.3d 221, 228 (5th Cir. 2021) (alteration in original) (quoting *Am. Home Assur. Co. v. United Space All., LLC*, 378 F.3d 482, 486-87 (5th Cir. 2004)). "Substantial evidence is that relevant evidence—more than a scintilla but less than a preponderance—that would cause a reasonable person to accept the fact finding." *Id.* (quoting *Coastal Prod. Servs. Inc. v. Hudson*, 555 F.3d 426, 430 (5th Cir. 2009)).

This Court reviews a "district court's ultimate conclusion on patent eligibility de novo." *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1342 (Fed. Cir. 2018). Likewise, this Court reviews patent "claim construction based on

intrinsic evidence de novo." *Promptu Sys. Corp. v. Comcast Corp.*, 92 F.4th 1372, 1377 (Fed. Cir. 2024).

"The Fifth Circuit reviews a trial court's decision to admit expert testimony for abuse of discretion." *EcoFactor, Inc. v. Google LLC*, 137 F.4th 1333, 1338 (Fed. Cir. 2025) (en banc) (citing *In re MBS Mgmt. Servs., Inc.*, 690 F.3d 352, 354 (5th Cir. 2012)), *cert. denied*, 146 S. Ct. 333 (2025). The Fifth Circuit also reviews the denial of a new trial motion for abuse of discretion. *Echeverry*, 988 F.3d at 236. A district court may grant a new trial if the verdict is against the weight of the evidence, the damages are excessive, the trial was unfair, or prejudicial error occurred. *Smith v. Transworld Drilling Co.*, 773 F.2d 610, 612-13 (5th Cir. 1985); *see Cates v. Creamer*, 431 F.3d 456, 460 (5th Cir. 2005).

II. The Asserted '776 Patent Claims Are Not Patent-Eligible

The district court correctly held that claims 1 and 2 are directed to an abstract idea under *Alice* step one. Appx225-26 (138:22-139:6); Appx418.[5] Two independent reasons compel reversal of the judgment upholding the claims at step two. First, neither GComm nor the district court ever identified any inventive concept in the claims beyond the abstract idea itself. That alone should be dispositive because *Alice* requires a legally sufficient inventive concept at step two. Second, the '776 patent's own admissions concerning what was well-understood,

[5] *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014).

routine, and conventional are binding on the patentee and dispositive of step two's factual underpinnings. This Court, therefore, should reverse the district court's patent-eligibility judgment. Holding the asserted claims invalid would moot the remaining arguments herein.

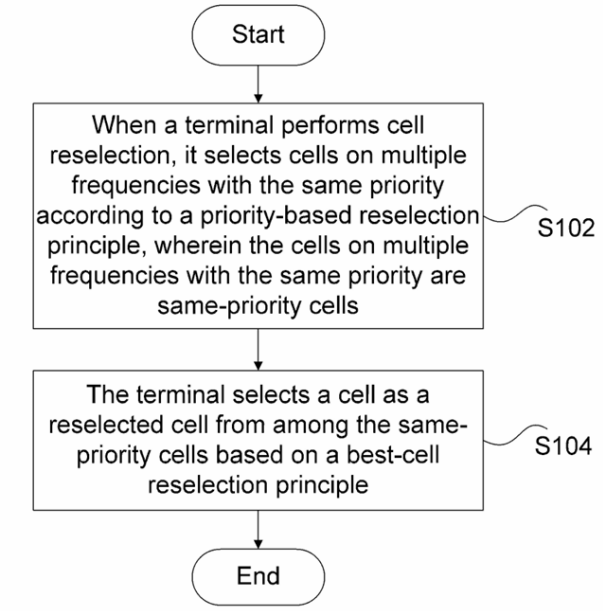
A. The District Court Properly Granted Partial Summary Judgment at Step One

This Court need not revisit the district court's determination that the asserted '776 patent claims are directed to an abstract idea. However, Samsung is mindful that step two cannot be evaluated in a vacuum. *E.g.*, *Ollnova Techs. Ltd. v. ecobee Techs. ULC*, 177 F.4th 1343, 1357 (Fed. Cir. 2026). Thus, to provide sufficient context for the step-two analysis, Samsung briefly reiterates the step-one analysis.

The abstract idea here is a simple one that humans have practiced in their own minds for all known history: using multiple criteria to make a decision—specifically, by first creating a subset of candidates with one criterion, and then selecting from that set using a second criterion. *See* Appx13204-05. For example, a person choosing a restaurant might first create a set of options based on the type of cuisine they want, then choose among those options based on a second criterion (e.g., proximity, reviews). *See id.*; Appx33770-73; Appx33851.

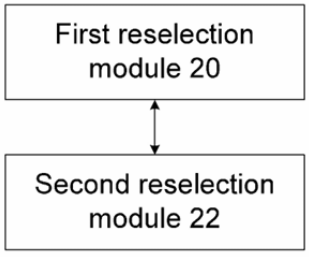
The '776 patent merely applies this fundamental decision-making paradigm to the process of selecting the cell tower to which a mobile device should connect. First, the patent states that the device selects a set of potential cells spanning

multiple frequencies based on a criterion already commonly used in the field: priority. Appx464 (Fig. 1); Appx467 (4:43-60). Second, the patent describes selecting from among those options using a second known criterion: an offset-based best-cell reselection principle. Appx464 (Fig. 1); Appx467 (4:61-67). That is the method the patent purports to have invented:



Appx464.

The patent illustrates the parallel system claim at an even higher level of abstraction—just two black boxes, one that performs the first selection, and another that performs the second selection:



Appx465.

This two-criterion selection process is precisely the type of mental process that "can be performed in the human mind or using a pencil and paper," *e.g.*, *Broadband iTV, Inc. v. Amazon.com, Inc.*, 113 F.4th 1359, 1371 (Fed. Cir. 2024), making it "essentially [a] mental process[] within the abstract-idea category," *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016). Indeed, the patent provides specific, written examples demonstrating that the claimed method can be performed on paper. Appx468 (5:4-63). In that regard, this case is materially indistinguishable from *Synopsys, Inc. v. Mentor Graphics Corp.*, where the patent specification itself illustrated the claimed method on paper. 839 F.3d 1138, 1147-48 (Fed. Cir. 2016).

More generally, this concept sits firmly within the Court's myriad cases holding that "selecting," organizing, or choosing among elements are abstract ideas under step one of the *Alice/Mayo* framework. *E.g.*, *Broadband iTV*, 113 F.4th at 1365, 1368 (holding abstract "selection of video on demand programs" based on previous-session data); *In re Rudy*, 956 F.3d 1379, 1384 (Fed. Cir. 2020) (holding abstract selecting a fishing hook based on the criterion of observed water conditions); *Trading Techs. Int'l, Inc. v. IBG LLC*, 921 F.3d 1084, 1092 (Fed. Cir. 2019); *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) ("The focus of the claims . . . is on selecting certain information, analyzing it using

mathematical techniques, and reporting or displaying the results of the analysis. That is all abstract."); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1095-97 (Fed. Cir. 2016) (holding claims directed to "selection of at least one criterion" in the context of detecting unauthorized data access abstract); *Elec. Power Grp.*, 830 F.3d at 1355.

B. Step Two Did Not Present a Genuine Factual Dispute for the Jury To Resolve

Once a claim is found directed to an abstract idea, step two asks whether the remaining elements—individually or as an ordered combination—supply an "inventive concept" sufficient to "transform the nature of the claim into a patent-eligible application." *Alice*, 573 U.S. at 217. Although this inquiry can involve subsidiary factfinding into whether claim elements are "well-understood, routine, and conventional," the ultimate determination at step two is a question of law. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018). Here, GComm never identified an "inventive concept," and no facts the jury reasonably could have found would support finding an "inventive concept" in the claims.

1. GComm's Threshold Failure To Identify an Inventive Concept Beyond the Abstract Idea Itself Should Be Dispositive

a. *Alice* Requires Identifying an Inventive Concept

"It has been clear since *Alice* that a claimed invention's use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the

invention 'significantly more' than that ineligible concept." *BSG Tech. LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018); *see also Chamberlain Grp., Inc. v. Techtronic Indus. Co.*, 935 F.3d 1341, 1349 (Fed. Cir. 2019) ("Wireless communication cannot be an inventive concept here, because it is the abstract idea that the claims are directed to."). The "inventive concept" must come from "additional elements" that operate in some unconventional or innovative manner. *See Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1301 (Fed. Cir. 2016).

This determination can involve underlying factual determinations regarding what was "well-understood, routine, and conventional" at the time of the invention, but it is not coextensive with those factual issues. *E.g.*, *BSG*, 899 F.3d at 1290. Even where claims recite an element or combination of elements that is novel, *Alice* demands a separate ***legal*** determination of whether those elements constitute an "inventive concept" that is "significantly more" than the abstract idea. *Alice*, 573 U.S. at 217-18.

This further legal determination under *Alice* serves multiple purposes. It ensures that the inventive concept is sufficiently specific "to ensure that the patent in practice amounts to significantly more than a patent upon the" ineligible concept "itself." *Mayo Collaborative Servs. v. Prometheus Lab'ys, Inc.*, 566 U.S. 66, 72-73 (2012). It also prevents upholding a patent based on limitations that—no matter

how unconventional—do no more than apply the abstract idea to a "particular field of information" or technological environment. *E.g.*, *SAP*, 898 F.3d at 1169; *see also Parker v. Flook*, 437 U.S. 584, 594 (1978).

Bare assertions that the claims are novel or the combination is vaguely inventive are not sufficient. *E.g.*, *Constellation Designs, LLC v. LG Elecs. Inc.*, ___ F.4th ___, 2026 WL 2561781, at *9 (Fed. Cir. Aug. 31, 2026) (holding that the patentee "fails to identify what in the claim provides the inventive concept other than the abstract idea" where it merely "conflates the separate novelty and obviousness inquiries . . . with the search for an inventive concept" (emphasis omitted)); *Yu v. Apple Inc.*, 1 F.4th 1040, 1045 (Fed. Cir. 2021); *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1057 (Fed. Cir. 2017) (holding patent ineligible at step two where the patentee did "not clearly identify any particular inventive concept in the ordered combination").

b. GComm Did Not Identify an Inventive Concept Apart from the Abstract Idea Itself

The arguments GComm preserved in district court fall short of meeting *Alice*'s fundamental requirement for an inventive concept. GComm's summary judgment opposition was silent on the issue. Appx17716-17. Its attached expert report offered no elucidation beyond the bare assertion that the claims "provide an inventive concept found in the non-conventional and non-generic arrangement of

claimed components." Appx17919 (¶185). GComm's counsel did not even argue step two at the pretrial conference. Appx222-23 (135:6-136:10).

At trial, the extent of GComm's presentation on step two was its expert's disagreement with Samsung's expert's assessment of various corroborating prior art references. Appx30490-92 (1281:10-1283:11). He provided no rebuttal concerning the subject matter that the '776 patent itself admitted was conventional, and did not identify an inventive concept significantly more than the abstract idea itself. *Id.* As in *Constellation*, he adopted an approach that conflates step two with § 102's novelty requirement and "fails to identify what in the claim provides the inventive concept other than the abstract idea." 2026 WL 2561781, at *9.

During Rule 50(a) arguments, GComm's counsel criticized Samsung's expert's testimony, but neither addressed the '776 patent's own admissions nor identified an inventive concept. Appx30556-57 (1347:18-1348:9). GComm's Rule 50(b) opposition alleged that Samsung failed to evaluate the claim elements "as an ordered combination," but stopped short of providing any substantive explanation of what about the "ordered combination" supposedly adds significantly more to the two-step abstract idea itself, Appx31469-71, exactly the failing that was dispositive in *Credit Acceptance*, 859 F.3d at 1057 ("not clearly identify any particular inventive concept in the ordered combination"). GComm similarly asserted that the claims "are directed to a particular way in which the reselection of

cells is accomplished which improves cellular communications," without identifying any specific claim elements. Appx31469-71. GComm concluded by seemingly identifying the "inventive concept" as "the unique ordered combination of the elements" and "the novel process of grouping cells of different frequencies into same-priority groups." Appx31472. The former is itself so abstract as to be indecipherable, and the latter merely "restates" the "abstract idea" as applied to selecting a cell tower, which "does not add 'significantly more' to it." *See BSG*, 899 F.3d at 1291. None of GComm's assertions meets *Alice*'s fundamental legal requirement that the claims supply an inventive concept significantly more than the abstract idea itself. 573 U.S. at 221-24.

Two principles make this failure dispositive on appeal. First, under basic rules of forfeiture, a patentee cannot identify an "inventive concept" for the first time on appeal. *See Trs. of Columbia Univ. in the City of N.Y. v. Gen Digital Inc.*, 169 F.4th 1320, 1331-32 (Fed. Cir. 2026). Second, the principle of party presentation establishes that it is not this Court's role to scour the claims for an inventive concept GComm failed to identify below. *Clark v. Sweeney*, 607 U.S. 7, 10-11 (2025) (per curiam). *Alice* itself demonstrates these limits, confining its step-two analysis to the inventive concept alleged there (implementation on a computer) rather than evaluating every possible combination of claim limitations

in which some unarticulated "inventive concept" might have been lurking. 573 U.S. at 221-24.

The arguments GComm preserved and presented below, even taken at face value, fail to satisfy *Alice*'s command for an inventive concept at step two. As summarized above, they are either the type of conclusory assertions that fail even at the pleading stage, *see Simio, LLC v. FlexSim Software Prods., Inc.*, 983 F.3d 1353, 1365 (Fed. Cir. 2020); *Credit Acceptance*, 859 F.3d at 1057, or simply directed to the abstract idea itself, which is equally unavailing, *BSG*, 899 F.3d at 1291. Even GComm's most specific statement concerning the inventive concept, that it allegedly includes "the novel process of grouping cells of different frequencies into same-priority groups," Appx31472, does no more than restate the first step of the abstract idea, *see* Appx13206 ("[T]he '776 patent's first step is nothing but the abstract idea of narrowing the universe from which an item is selected by grouping items having prioritized characteristics together.").

Ultimately, the inability of GComm to identify any specific element or combination of elements constituting an "inventive concept"—at any point before, during, or after the verdict—confirms what is apparent from the face of the patent: the purported invention here was the abstract idea, and no more. This Court should reverse.

c. The District Court's Step-Two Analysis Was Also Incomplete

The district court likewise never identified an inventive concept. At summary judgment, it explained its decision to submit step two to the jury merely by observing that "the step 2 analysis" is "a mixed question of law and fact." Appx225-26 (138:22-139:6). At JMOL, it reasoned only that the jury could have rejected the testimony of Samsung's expert, Dr. Paul Min, regarding the content of the prior art and instead credited GComm's expert; the court ended the analysis there—never identifying the alleged "inventive concept." Appx447-49.

That approach is fundamentally problematic. *Alice* requires at step two not just a determination of what claim elements are, alone or in combination, well-understood, routine, and conventional, but also an ultimate legal determination whether the "inventive concept" is "significantly more" than the underlying abstract idea. *Alice*, 573 U.S. at 217-18, 225; Appx31162 (Samsung arguing "[d]etermining whether claims recite an inventive concept is a ***legal determination***" (original emphasis)).

This problem is closely related to, but not coextensive with, the one this Court recently confronted in *Ollnova*. *See* 177 F.4th at 1356-58. There, the jury was asked to resolve underlying factual questions concerning step two without being given the context of what the abstract idea was. *Id.* at 1356-57. This Court reasoned that the jury "was effectively asked to determine whether the claim

contained an inventive concept without being instructed on the underlying abstract concept required to frame that analysis under *Alice*." *Id.* at 1356 n.5. *Ollnova* explains that "this Court's precedent evaluates the alleged inventive concept at step two in light of the abstract idea identified at step one." *Id.* at 1357.

Here, the district court itself committed the same error, just at the JMOL stage: treating the jury's narrow evaluation of what the prior art taught as dispositive of the step-two inquiry without doing so "in light of the abstract idea." *Id.*; *see* Appx447-49. That error alone requires at least vacatur and remand, but the district court's failure to identify an "inventive concept" also results in a second, analogous problem. Just as the "inventive concept" must be understood in light of the "abstract idea," whether the "inventive concept" is "significantly more" than that idea depends on knowing what the "inventive concept" allegedly is. *Cf. Ollnova*, 177 F.4th at 1357-58.

Where GComm never even alleged an "inventive concept" beyond the abstract idea itself with sufficient specificity to satisfy *Alice*, step two can be evaluated as a matter of law and the appropriate course is simply to reverse. However, at a minimum, the district court's failure to address the legal components of the step-two inquiry in its JMOL decision requires setting that decision aside.

2. The ’776 Patent Admits That the Claimed Elements, Beyond the Abstract Idea Itself, Were Well-Understood, Routine, and Conventional

Even if it were appropriate or necessary to scour the claims in search of an inventive concept GComm never identified, the ’776 patent itself independently resolves any underlying factual disputes, and there is no need to consider how the jury might have weighed the experts’ competing analyses of the disputed corroborating references.

This Court has consistently held that admissions in a patent’s specification can be dispositive at step two, irrespective of the extrinsic evidence. *CareDx, Inc. v. Natera, Inc.*, 40 F.4th 1371, 1381 (Fed. Cir. 2022); *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 774 (Fed. Cir. 2019); *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 613-14 (Fed. Cir. 2016). Indeed, “[i]n a situation where the specification admits the additional claim elements are well-understood, routine, and conventional, it [is] difficult, if not impossible, for a patentee to show a genuine dispute” at step two. *Berkheimer v. HP Inc.*, 890 F.3d 1369, 1371 (Fed. Cir. 2018) (Moore, Dyk, O’Malley, Taranto, & Stoll, JJ., concurring in the denial of rehearing en banc).

This case sits firmly within that precedent. The ’776 patent systematically walks through nearly every component of the asserted claims and describes each not only as individually known, but as conventionally used in combination in 3G: a

wireless standard conventionally used by billions of people before the purported invention. Appx466 (1:5-2:57); *see also* Appx29733 (Kowalski) (describing work in 3G); Appx30153-55. Specifically:

Cell reselection. The patent explains that "cell handover and reselection performed by a terminal is an important technique in a cellular mobile communication system," and describes how in 3G "mobile communication system[s]," terminals measure signal quality in neighboring cells and perform reselection based on a quality threshold. Appx466 (1:10-33); Appx30213 (1047:4-19); Appx33841-42.

Best-cell and offset-based cell reselection. The patent describes how 3G devices compare "the signal level or signal quality of its serving cell and neighbouring cells," Appx466 (1:34-40), and that the "one ranked first is the best cell," but that the device will also consider a parameter called "Qoffset." Appx466 (1:47-65). The patent explains, furthermore, that "the foregoing reselection method . . . is also called an offset-based cell reselection method." *Id.*; Appx30213 (1047:4-19); Appx33841-42.[6]

Priority-based reselection using absolute priority of corresponding frequencies. The patent explains that, in LTE (an admittedly conventional cellular

[6] Because the patent's entire definition of "offset-based cell reselection" was admittedly conventional, the Court's resolution of the claim-construction question discussed *infra* does not alter the § 101 analysis. Appx466 (1:34-65).

standard), "the terminal firstly ranks the frequencies based on their absolute priority and finds out the frequency with top priority, and then selects a cell on this frequency by the offset-based cell reselection method. This reselection method is called a priority-based reselection method." Appx466 (1:47-51, 2:2-10); Appx30213-15 (1047:20-1049:5); Appx33843-44.

Combining offset-based reselection with priority-based reselection. The specification explains that selecting a cell based on offset-based reselection was already applied in the context of priority-based reselection—just limited to cells on the "same frequency." Appx466 (2:48-53); Appx30213-15 (1047:20-1049:5). The only alleged improvement in the patented method is extending that exact same approach to cells across multiple frequencies with the same priority. Appx466 (2:53-57). Further, when describing its purported solution—applying the already-known offset-based reselection to cells grouped by shared frequency priority—the specification expressly disclaims any new offset-based technique, stating that "the offset-based cell reselection principle has been described in . . . the background of the present invention, so it will not be described here again." Appx467 (4:63-67).

These are binding admissions of the patentee—not mere recitations that can be controverted by expert testimony. This Court's decision in *CareDx* is controlling. There, the specification admitted that the claimed laboratory techniques were "conventional" and used "off-the-shelf technology." 40 F.4th at

1381. This Court affirmed summary judgment of ineligibility, holding that the patent's "explicit" admissions rendered any purported factual disputes about conventionality "non-genuine." *Id.* Moreover, extrinsic evidence of unconventionality could not overcome the "numerous admissions of conventionality in the intrinsic record." *Id.*

That reasoning applies with even more force here, where GComm's expert stopped short of actually identifying any unconventional combination of claim elements. *See* Appx30490-92 (1281:10-1283:11). Indeed, whereas Min walked through and explained the '776 patent's admissions, Appx30210-15 (1044:23-1049:5); Appx33841-44, Akl provided no competing opinions concerning the patent's background section, Appx30490-92 (1281:10-1283:11). He did not dispute the accuracy of the background section's statements about 3G or Min's explanations of those statements, and he did not identify any "inventive concept" in the claims. *Id.*

Instead, Akl's entire rebuttal was that the prior art references Min used to ***corroborate*** the background section's admissions (*see* Appx30215-19 (1049:6-1053:17)) related to "load balancing" rather than frequency-based priority. Appx30490-92 (1281:10-1283:8). Even assuming the jury could have reasonably credited that testimony, it addresses only what those specific references show—not the ultimate question of whether the claimed techniques were well known. *See id.*

It does not, and cannot, undo the patentee's own admissions that every building block of the claims was already routinely performed by billions of mobile devices around the world implementing 3G. *See CareDx*, 40 F.4th at 1381.

In denying JMOL, the court reasoned that the jury could have credited Akl's "load balancing" testimony, characterizing the step-two question as turning on "competing evidence." Appx447-48. Yet, despite acknowledging Samsung's evidence rooted in the background section of the '776 patent in passing, the district court never explained how Akl's testimony limited to the content of those corroborating references could have rebutted the patentee's own admissions or Min's uncontroverted interpretation of them. *Id.*

That was legal error under this Court's case law, which properly treats admissions like those present in the '776 patent as dispositive of step two's underlying factual inquiries—not as a mine-run factual dispute for the jury based on expert testimony. *E.g.*, *AI Visualize, Inc. v. Nuance Commc'ns, Inc.*, 97 F.4th 1371, 1380 (Fed. Cir. 2024); *CareDx*, 40 F.4th at 1381; *ChargePoint*, 920 F.3d at 774. Even viewed through the lens of substantial-evidence review, the district court's judgment cannot stand. The accuracy of the background section's admissions was never disputed at trial. And the only aspect of the claims that the patent itself identifies as new—grouping cells across frequencies sharing the same priority—is part of the abstract idea, which cannot supply the inventive concept.

BSG, 899 F.3d at 1290. Thus, even if the issue were one for the jury, no reasonable jury could have found an inventive concept on this record.

This Court, therefore, should reverse the district court's denial of JMOL of patent ineligibility.

III. The District Court Erred by Failing To Give the Term "Offset-Based Cell Reselection Principle" the Patentee's Explicit Meaning

The claim construction issue on appeal boils down to a single question: whether the patentee acted as its own lexicographer as to the term "offset-based cell reselection principle." As explained below, it did.

A. The Specification Expressly Defines the Disputed Phrase

The patent specification "'is the single best guide to the meaning of a disputed term'" and "'[u]sually, it is dispositive.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (en banc) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). One common way that specifications inform claim construction is when a patentee "act[s] as its own lexicographer and assign[s] to a term a unique definition." *Thorner v. Sony Comput. Entm't Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). This standard is met whenever the specification "clearly set[s] forth a definition of the disputed claim term." *Id.* (citing *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002)). Although definitional language is sufficient to invoke this rule, no formal language is required; "[t]he specification acts as a dictionary when

it expressly defines terms used in the claims or when it defines terms by implication." *Vitronics*, 90 F.3d at 1582.

That is the case here for the term "offset-based cell reselection principle." The '776 patent describes a specific, multi-cell reselection method requiring the computation of Rs and Rn values, defines each variable, and explains how the mobile device ranks all R values and selects the best cell:

> [C]alculate Rs=Qmeas,s+Qhysts, Rn=Qmeas,n−Qoffset, wherein s stands for a serving cell, n stands for a neighbouring cell, Qmeas,s stands for a measured level of a serving cell, Qmeas,n stands for a measured level of a neighbouring cell, Qhysts stands for the hysteresis of a serving cell, and Qoffset stands for a level offset of a neighbouring cell. After the calculation is completed, the terminal will rank all R values. The one ranked first is the best cell, the terminal will select the best cell when performing reselection.

Appx466 (1:51-60). The specification then concludes this discussion by stating "the ***foregoing reselection method*** through ranking R values ***is also called an offset-based cell reselection method***." Appx466 (1:60-65).

This language is definitional. The phrase "is also called" is the hallmark of lexicography. *See Sinorgchem Co., Shandong v. Int'l Trade Comm'n*, 511 F.3d 1132, 1136 (Fed. Cir. 2007). It assigns the label "offset-based cell reselection" to the specific, fully described method. When a patentee describes a process in detail and assigns it a name, that name carries the full description. *Kyocera Senco Indus. Tools, Inc. v. Int'l Trade Comm'n*, 22 F.4th 1369, 1376 (Fed. Cir. 2022).

Were there any doubt, the rest of the specification reconfirms that this definition is the '776 patent's exclusive meaning of "offset-based cell reselection." The detailed description of the invention—despite spanning fewer than three columns—***twice*** cross-references back to this definition to explain the meaning of "offset-based cell reselection." It states that "the ***offset-based cell reselection principle has been described in detail[] in the background of the present invention***, so it will not be described here again." Appx467 (4:61-67); Appx468 (6:35-38). Notably, these passages use the limiting phrase "the present invention," confirming that the preceding definition defines the scope of "offset-based cell reselection" in the context of the claimed invention. *Id.*; *Verizon Servs. Corp. v. Vonage Holdings Corp.*, 503 F.3d 1295, 1308 (Fed. Cir. 2007); *Honeywell Int'l, Inc. v. ITT Indus., Inc.*, 452 F.3d 1312, 1318 (Fed. Cir. 2006).

B. The District Court Failed To Justify Departing from the Specification's Express Definition

The district court acknowledged the lexicography dispute but concluded that the phrase "is also called," Appx466 (1:60-65), "is not clearly defining 'offset-based cell reselection principle' to mean the specifically recited formula." Appx57. It reasoned that the first half of the paragraph's concluding sentence—which reads, "[h]owever, considering that the difficulty of reselection among neighbouring cells lies on not only the radio quality of these cells but also on the value of Qoffset," Appx466 (1:60-63)—"links the disputed phrase not to the

specific formula recited earlier, but on the radio quality of the neighboring cells and the value of Qoffset," and that the term therefore means simply "using Qoffset as a variable for reselection." Appx57. That reasoning is erroneous for three reasons.

First, the court artificially severed the "is also called" sentence from the passage it summarizes. The sentence does not stand alone—it is the capstone of the paragraph reciting the Rs and Rn formulas, defining every variable, and explaining the ranking and selection process. Appx466 (1:47-65). The "foregoing reselection method through ranking R values" is the ***entire*** method, and that entire method is what the patent labels "an offset-based cell reselection method." *Id.* Isolating the transitional clause about Qoffset from the definition it concludes contravenes this Court's instruction that claim terms must be construed "in the context of the entire patent." *Phillips*, 415 F.3d at 1313.

Second, the court applied an overly narrow interpretation of the lexicography framework. By asking only whether the "also called" sentence, viewed in isolation, constrains the term to the full formula, it failed to address the proper inquiry: whether the specification ***as a whole*** "set[s] forth a definition." *Thorner*, 669 F.3d at 1365. Here, the background section recites a method, the "also called" sentence assigns that method the name "offset-based cell reselection," and the detailed description of the invention closes the loop by twice equating the

claim term with that very same method. Appx466 (1:47-65); Appx467 (4:61-67); Appx468 (6:35-38). Taken as a whole, the intrinsic evidence unmistakably defines the term.

Third, the court's reasoning contradicts its own adopted construction. The transitional phrase upon which the court relied refers to not only using Qoffset, but also "considering . . . the ***radio quality*** of these cells." Appx466 (1:60-63); Appx466 (1:27-46) (describing measuring "the quality of signals in different cells," which are mapped to R values). Yet the court's construction requires only "using Qoffset as a variable for reselection"—inexplicably ignoring the express reference to considering the cells' radio quality as well. Appx56-57. The court seemingly recognized this omission, *see* Appx57 n.1 (citing Appx6368 (15:2-4)), but did not explain why it did not incorporate the radio quality rankings into the term's construction. Appx56-57. Once the additional details about the radio quality of the cells (i.e., R values) are included, no daylight remains between the resulting construction and adopting the specification's full definition of "offset-based cell reselection." *See* Appx466 (1:47-65).

C. The Claim Construction Error Requires Vacatur and a New Trial

"Vacatur and remand for a new trial is necessary when a legally erroneous claim construction had a prejudicial effect on the jury's verdict." *Wash World Inc. v. Belanger Inc.*, 131 F.4th 1360, 1368 (Fed. Cir. 2025). A claim construction

error is prejudicial unless it "could not have changed the result." *E.g.*, *Ecolab, Inc. v. Paraclipse, Inc.*, 285 F.3d 1362, 1374 (Fed. Cir. 2002).

Here, the district court's construction expanded claims 1 and 2 beyond the offset-based cell reselection principle defined in the specification. The jury had no occasion to analyze whether the accused products perform the specific R-value calculations, rankings, and selection methods the patent requires. As just one example, GComm's trial evidence never addressed whether the accused products implement the hysteresis factor expressly recited in the specification's definition of "offset-based cell reselection." Appx466 (1:47-65); Appx29524-26 (441:12-443:12); Appx29534-38 (451:3-455:21).

To be sure, the court incorporated ***portions*** of the specification's definition of "offset-based cell reselection" into its separate construction of the "second reselection module" term of claim 2. Appx65-66. Yet, because the court omitted other portions of that definition from the "second reselection module" construction (such as the hysteresis factor), the jury's findings on claim 2 do not render the court's claim construction error harmless.[7] Indeed, claim 2 separately recites that

[7] The court apparently omitted the hysteresis aspect because it thought that the phrase "other than the serving frequency" in the claim's earlier "first reselection module" clause categorically excluded the serving cell from the claimed "same-priority cell[s]." Appx66 n.3. That reasoning cannot be squared with the rest of claim 2, which explicitly states that the "same-priority cells specifically include . . . a serving cell." Appx469 (8:6-14). In any event, correcting the construction of "offset-based cell reselection" renders that discrepancy moot.

"the best-cell reselection principle is an offset-based cell reselection principle." Appx469 (8:16-18). Thus, adopting the '776 patent's definition of "offset-based cell reselection" would require proof of the serving cell R-value calculation, including the hysteresis factor, for both claims, necessitating a new trial.

Because the court neither instructed the jury to apply the correct construction of "offset-based cell reselection" nor construed the "second reselection module" to impose all of the same requirements, the jury never analyzed the hysteresis factor or other details required by the patent's definition. That is precisely the type of prejudicial, scope-altering error that compels vacatur and remand for a new trial on infringement, invalidity, and damages. *E.g.*, *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 381 F.3d 1371, 1383 (Fed. Cir. 2004).

IV. This Court Should Reverse the District Court's Damages Decisions

GComm's unreliable damages theory, GComm's skeletal trial presentation of the same, and the district court's asymmetric evidentiary rulings regarding the 5G standard each contain a multitude of errors, any one of which merits a new trial and/or JMOL of no damages. These errors pervaded the district court proceedings and, in aggregate, lead to a single conclusion: The excessive $61 million damages verdict for a single SEP must be set aside. These errors manifested in three principal ways.

First, the court should not have permitted GComm to present Dell's incremental profits analysis to the jury in the first instance. This multi-step incremental profits analysis was flawed and unreliable at each step. Dell started from an unexamined, unvalidated, and unapportioned $5.83 per-unit profit figure, applied an unsupported 22.5% apportionment factor, and ended with another arbitrary 23.7% apportionment factor. *See infra* Section IV.A.1. Under Rule 702, the court was obligated to exclude such economically unsound and speculative analysis and prevent it from unduly influencing the jury's verdict.

Second, GComm presented to the jury this unreliable analysis (which the court should have excluded) but was, as expected, unable to marshal sufficient evidence to support each of the critical $5.83, 22.5%, and 23.7% numbers that underpinned GComm's damages case. *See infra* Section IV.A.2. Confronted with this evidentiary vacuum, the court should have set aside the jury's verdict and ordered JMOL of no damages or a new trial.

Finally, apart from failing to remedy the errors arising from Dell's incremental profits analysis, the court imposed one-sided bounds on what the parties could present at trial about the 5G standard. *See infra* Section IV.B. The court erroneously permitted GComm to speak to the value of the entire 5G standard and yet cut short Samsung's royalty stacking defense that would have educated the jury on the risk of excessive royalties paid for use of the nearly

70,000 patent families of the 5G standard. Allowing GComm to leverage the aggregate value of the 5G standard while suppressing a counter-defense prejudiced Samsung, and the district court should accordingly have required a new trial under balanced ground rules for the parties.

A. Dell's Incremental Profits Analysis Was Not Reliable or Supported by the Trial Record, Particularly for an SEP

1. The District Court Abused Its Discretion by Denying Samsung's Motion To Exclude and Admitting Dell's Fundamentally Unreliable Incremental Profits Framework

Under Rule 702, expert testimony must be "based on sufficient facts or data" and must be "the product of reliable principles and methods." Fed. R. Evid. 702. The expert must "sufficiently tie [his] testimony on damages to the facts of the case." *Exmark Mfg. Co. v. Briggs & Stratton Power Prods. Grp., LLC*, 879 F.3d 1332, 1349 (Fed. Cir. 2018) (cleaned up). "While the credibility of an expert's damages calculation is properly left to a jury, a determination of reliability under Rule 702 is an essential prerequisite." *EcoFactor*, 137 F.4th at 1340.

Although Dell's expert report presented three distinct approaches for calculating a reasonable royalty—the market comparable approach (Appx38606-33 (¶¶136-224)), the top-down approach (Appx38661-64 (¶¶296-308)), and the incremental profits approach (Appx38665-69 (¶¶314-24))—Dell concluded that the parties in the hypothetical negotiation would have placed "significant weight on the royalty rates based on" the incremental profits approach. Appx38676 (¶363).

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This approach lacked any factual basis, relied on arbitrary adjustments to an unverified per-unit baseline, and parroted the opinions of GComm's other experts—yielding a rate drastically higher than any other methodology in Dell's report and leading the jury to award GComm damages [redacted] to [redacted] times higher than any rate derived from comparable licenses. *See* Appx435; Appx32503 (397:5-19); Appx32518-22 (412:14-416:7); Appx38664 (¶¶308-10); *infra* Section IV.A.2.a.

a. The Apportionment Factors of Dell's Incremental Profits Framework Were Neither Reliable nor Supported by Sufficient Facts or Data

Dell applied two arbitrary sequential apportionment factors to the $5.83 incremental profit to reach his $1.00 per-unit royalty rate.

For the first apportionment factor, Dell averaged two unrelated figures: ZTE's retained share of royalties from its agreement to sell its patents to GComm (20%) and his calculation of Samsung's [redacted] profit across Samsung Electronics America and Samsung Electronics Co. ([redacted]%). Appx38667-68 (¶¶321-23). According to Dell, these figures were "the relevant contemporaneous economic metrics." *Id.*; Appx38675 (¶358).

Dell did not explain, however, why the single 20% royalty share provision in the agreement between GComm and ZTE—an arrangement for outsourcing litigation and monetization of ZTE's patents to GComm—would influence the hypothetical negotiation for a commercial license to a device manufacturer.

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Additionally, Dell never explained how Samsung's [redacted] corporate profit margin—encompassing products as diverse as appliances, displays, and electronic parts, among others—is relevant to valuing a single 5G feature allegedly in the accused devices, which represent only a fraction of Samsung's product catalog. *See Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1317 (Fed. Cir. 2011) (criticizing the 25% rule of thumb for not accounting for the technology at issue). His conclusory assertion that the [redacted] profit is a "reasonable economic comparator" is impermissible *ipse dixit*. Appx38667-68 (¶321); *see also* Appx38675 (¶359); *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997).

Furthermore, the 20% and [redacted]% figures bear no relation to one another: The former is a royalty-sharing split recited in a patent purchase agreement between ZTE and GComm, and the latter is a company-wide profit margin for Samsung. Combining these completely disparate metrics, as Dell did, is pure speculation, backed by nothing but Dell's bare assertion that the parties "would consider the [redacted]." Appx38668 (¶323); Appx38675 (¶359).

Dell's second apportionment factor was likewise arbitrary. This second factor purported "to give Samsung credit for its contributions and risks that Samsung provides to sales of the Accused Products," producing the final $1.00 rate for the '776 patent. Appx38675-76 (¶¶361-65). Dell provided no quantitative justification for this factor, instead gesturing at "vague qualitative notions" of

Samsung's business risk. *LaserDynamics, Inc. v. Quanta Comput., Inc.*, 694 F.3d 51, 69 (Fed. Cir. 2012) (rejecting an apportionment "plucked out of thin air based on vague qualitative notions of the relative importance of the ODD technology"); Appx38675-76 (¶361). Moreover, Dell inexplicably varied this factor across the then-asserted patents, applying a 23.7% adjustment for the '776 patent alongside 23.1%, 28.6%, and 32.7% adjustments for other patents. Appx13235; *see* Appx38676 (¶365). Such unexplained variation exemplifies the fundamental unreliability of Dell's methodology. Appx32500-02 (394:18-396:14).

b. Dell's Starting Point of a $5.83 Incremental Profit Was Unreliable and Unfounded

"Rule 702 and *Daubert* require an expert witness independently to validate or assess the basis for his or her assumptions." *In re Taxotere (Docetaxel) Prods. Liab. Litig.*, 26 F.4th 256, 268 (5th Cir. 2022). In the context of reasonable royalty patent damages, the expert must tie the relevant *Georgia-Pacific* factors to the proposed royalty rate. *See Exmark*, 879 F.3d at 1349. For example, the expert must "apportion damages and sufficiently tie the royalty rate to the facts of the case." *Id.* at 1351. Here, Dell's $5.83 starting point for his incremental profits analysis relied on unvalidated assumptions and failed to properly apportion damages attributed to the '776 patent.

First, to establish the $5.83 incremental profit baseline, Dell conducted no independent economic evaluation and, instead, uncritically adopted inputs from

GComm's other experts. Dell parroted (1) Dr. John Kowalski's conclusion that "at least approximately a 5% reduction in throughput or 5G speeds would occur if '776 was not infringed and instead the next closes [*sic*] alternative was used"; and (2) Dr. Rebecca Reed-Arthurs's survey results claiming a decrease of $5.83 for a consumer's willingness to pay for a smartphone for a 5% loss of throughput speed. Appx38665-66 (¶314); Appx38667 (¶320). Although a damages expert may reasonably rely on other experts' opinions,[8] Dell's passive adoption of Kowalski's and Reed-Arthurs's opinions exhibits a "complete lack of economic analysis" anathema to Rule 702. *LaserDynamics*, 694 F.3d at 69; Appx38665-67 (¶¶314-20).

Second, Dell never tied the $5.83 incremental profit to the '776 patent's claims or to profits of patented features apportioned from unpatented features. Appx38665-67 (¶¶314-20); *Exmark*, 879 F.3d at 1348 ("[T]he patent owner must apportion or separate the damages between the patented improvement and the conventional components[.]"). At most, Dell imported into his testimony Kowalski's opinion that a 5% reduction in throughput speeds would occur if the '776 patent were not infringed. Appx13233. Dell did not link throughput speeds to the asserted '776 patent claims—which do not recite throughput speeds—or

[8] *Carnegie Mellon Univ. v. Marvell Tech. Grp., Ltd.*, 807 F.3d 1283, 1303 (Fed. Cir. 2015).

establish that this (alleged) speed reduction is the sole economically relevant feature resulting from the purported invention. Appx468-69 (6:58-7:16); *see* Appx13233.

Third, Dell selected the $5.83 figure without accounting for the applicable FRAND obligations. Beyond failing to address the patented features themselves, Dell did not explain how the patented features were "apportioned from all of the unpatented features ***reflected in the [5G] standard***" and how the incremental profit value did not include "any value added by the [5G] standard's adoption of the patented technology." *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1232 (Fed. Cir. 2014).

The seven paragraphs of Dell's report establishing this $5.83 starting point thus lack any economic analysis, completely ignore the value of the ***patented*** technology, and disregard core apportionment principles required for SEPs. Appx38665-67 (¶¶314-20).

c. Dell Disregarded Relevant Agreements with No More Than a Conclusory Explanation

Dell failed to consider properly the ZTE-Samsung and ZTE-GComm agreements. Dell cast aside the ZTE-Samsung license as not comparable, even though that license involved the same parties (Samsung and ZTE) and similar technology (4G) as the hypothetical negotiation. Appx38606-08 (¶¶136-42). As for the ZTE-GComm patent purchase agreement, Dell acknowledged that GComm

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paid only $600,000 in cash to purchase ZTE's entire patent portfolio. Appx38604 (¶¶49-50). Even though it is difficult to conceive of a better barometer of a patent's real-world commercial value than what the real-world market actually paid for it, Dell wholly omitted this price from his incremental profits analysis. Appx38667-68 (¶¶321-22). Instead, he cherry-picked a single part of this agreement—namely, ZTE's 20% retained share of royalties—for performing his incremental profits analysis. *Id.*; *see supra* Section IV.A.1.a. Dell never explained the discrepancy between GComm's lump-sum payment for the '776 patent and his proposal for Samsung's lump-sum payment for use of the '776 patent. *See* Appx38678 (¶368). Dell's analysis that relied on only one part of the ZTE-GComm agreement is therefore "incompatible with the [ZTE-GComm] agreement as a whole." *MLC Intell. Prop., LLC v. Micron Tech., Inc.*, 10 F.4th 1358, 1368 (Fed. Cir. 2021).

Dell also failed to reconcile the chasm between the royalty rates calculated from his alternative damages models (ranging from GCOMM CBI to GCOMM CBI) and the inflated royalty rate from his incremental profits approach ($1.00). Under the market comparable approach, Dell analyzed Samsung's "comparable" agreements with Ericsson, InterDigital, and Qualcomm, deriving rates between GCOMM CBI and GCOMM CBI per patent family. Appx38632 (¶220); *see* Appx38612 (¶¶151-52); Appx38615 (¶161); Appx38631-32 (¶218); Appx38633 (¶224); Appx38672-73 (¶349). Under

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the top-down approach, Dell calculated per-patent family royalty rates between GCOMM CBI and GCOMM CBI that "would be available to the parties for informing a range of offered FRAND royalty rates at the hypothetical negotiation." Appx38664 (¶¶308-10). In fact, Dell identified GCOMM CBI per patent as "the baseline royalty rate from which Samsung would seek to start negotiations" yet offered no explanation for why his incremental profits model yielded a rate GCOMM to GCOMM CBI times higher than his own market benchmarks. Appx38673 (¶351).

Rather than factoring these real-world royalty rates into his conclusion, Dell discarded them in favor of the $1.00 rate driven by his incremental profits approach. His sole justification was the assertion that "[t]he parties would acknowledge, and Samsung would concede, that the incremental profits margin analysis demonstrates [the] portion of the profit . . . directly isolated and apportioned to the economic benefits enabled by the Patents at Issue." Appx38674 (¶354). This explanation is pure *ipse dixit*, merely acknowledging the obligation to apportion and asserting, without analysis, that his preferred approach achieves it. *See Exmark*, 879 F.3d at 1350 (disapproving expert remarks that do "no more than tell the jury what factors a damages analysis could take into consideration" (quoting *Whitserve, LLC v. Comput. Packages, Inc.*, 694 F.3d 10, 31 (Fed. Cir. 2012))).

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In doing so, Dell improperly brushed aside comparable licenses—evidence that "most clearly reflect[s] the economic value of the patented technology in the marketplace"—and maintained at trial that the parties would have disregarded these licenses. *LaserDynamics*, 694 F.3d at 79; Appx32502 (396:7-14); *see* Appx32518-21 (412:14-415:24). Although Dell asserted that the parties would have considered the per-patent royalty rates in negotiating the second apportionment factor, this assertion is conclusory and fails to explain how the parties would have considered these rates in determining the (unreliable) second factor. Appx38676 (¶364); *see supra* Section IV.A.1.a. Therefore, Dell's proposed royalty rate based on his incremental profits approach "lacked sufficient ties to the facts of the case." *Exmark*, 879 F.3d at 1351.

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The district court's failure to exclude Dell's incremental profits approach prejudiced Samsung. Appx32503 (397:15-19). By permitting Dell's deeply flawed methodology, the court gave GComm carte blanche to seek an inflated damages award up to the unsubstantiated $5.83 per-unit incremental profit figure—creating an inflated pool of allegedly [redacted] million of profits for GComm to attempt to capture. *Id.* This plainly influenced the jury's decision to award damages ($61 million) [redacted] to [redacted] times higher than any comparable license in the

record and nearly 20 times higher than proposed damages from Meyer's rate. *See supra* Section IV.A.1.c; Appx32629 (523:8-23); Appx32632 (526:3-7).

The district court abused its discretion by admitting Dell's incremental profits approach. Appx418; *see* Appx218-19. This Court, therefore, should at a minimum reverse the denial of Samsung's motion to exclude Dell's testimony and order a new trial.

2. The Jury Verdict of $61 Million Lacks Substantial Evidence and Is Against the Great Weight of Evidence

If this Court affirms the district court's denial of Samsung's motion to exclude Dell's testimony, the Court should nevertheless reverse the denial of Samsung's JMOL motion and instruct the district court to enter JMOL of no damages because GComm failed to introduce substantial evidence legally sufficient to support the award, having relied exclusively on Dell's flawed incremental profits approach. *See Promega Corp. v. Life Techs. Corp.*, 875 F.3d 651, 666 (Fed. Cir. 2017) (affirming JMOL of no damages because the patentee "abandon[ed] valid theories of recovery in a singular pursuit of an ultimately invalid damages theory"). At a minimum, the Court should remand for the district court to determine whether GComm forfeited alternative damages theories, and whether to order a new damages trial. *See Finjan, Inc. v. Blue Coat Sys., Inc.*, 879 F.3d 1299, 1312 (Fed. Cir. 2018).

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In the alternative, the Court should order a new trial because the jury's award is excessive and is against the great weight of the evidence. *Oiness v. Walgreen Co.*, 88 F.3d 1025, 1028-29 (Fed. Cir. 1996).

a. Dell Ignored Relevant Licenses in Favor of a Theory Yielding Royalty Rates Up to [redacted] Times Higher Than the Rates Derived from These Licenses

At the damages retrial, as he did in his expert report, Dell ignored comparable market licenses that supported dramatically lower royalty rates. *See* Appx32494-503 (388:3-397:9); *supra* Section IV.A.1.c. He admitted three Samsung licenses—agreements with Ericsson, InterDigital, and Qualcomm—were comparable. Appx32514-16 (408:25-410:10). He further acknowledged that the calculated royalty rates for comparable licenses and in his top-down analysis ranged from [redacted] to [redacted]—a range that would at its high end result in a lump-sum royalty of [redacted] million. Appx32518-22 (412:14-416:7). Yet in Dell's view, the parties to the hypothetical negotiation would have ignored these benchmarks and relied exclusively on his incremental profits analysis to arrive at a $1.00 per-unit royalty—an amount [redacted] to [redacted] times higher than the rates from comparable licenses and his top-down analysis. Appx32502 (396:7-14); *see* Appx32518-21 (412:14-415:24).

This Court has not hesitated to set aside damages awards that are higher than established licensing rates by multiples as low as three. *See Whitserve*, 694 F.3d at

30-31; *Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1332 (Fed. Cir. 2009). Because Dell's testimony was "out of line with economic reality," the jury's $61 million award lacks sufficient evidentiary support and cannot stand. *Whitserve*, 694 F.3d at 30-31.

b. The Record Lacks Sufficient Evidence Supporting Dell's Application of Apportionment Factors

At trial, Dell never explained the quantitative methodology behind his 22.5% first apportionment factor or connected this factor to the 20% retained share in the ZTE-GComm patent purchase agreement—the key data point for calculating this apportionment factor. *See supra* Section IV.A.1.a.

In post-trial briefing, GComm attempted to explain away this evidentiary gap by arguing that the 22.5% split was "highly similar to the 20% split ZTE negotiated with [GComm]" in selling its patents to GComm. Appx31510. The district court credited this post-hoc explanation, citing Dell's trial testimony discussing the ZTE-GComm patent purchase agreement. Appx455 (citing Appx32488 (382:8-20)). But that cited testimony addressed the *Georgia-Pacific* licensing factors (i.e., Factors 1-7) rather than the *Georgia-Pacific* apportionment factors (i.e., Factors 12-14). *Compare* Appx32476-92 (370:6-386:8) ("licensing factors"), *with* Appx32494-503 (388:3-397:9) ("apportionment" factors). When testifying about his incremental profits analysis and apportionment, Dell never

mentioned the purchase agreement or the 20% split. Appx32494-504 (388:3-398:14).

At most, Dell defended this factor by asserting that he "considered Samsung's position that it would want to keep a majority of the incremental profits as part of the negotiation." Appx32500 (394:15-17). Beyond this unsubstantiated assertion, Dell offered no factual or economic analysis grounded in the facts of the case. Thus, in his presentation of this 22.5% apportionment factor, Dell applied an arbitrary apportionment divorced from the facts of this case that this Court has repeatedly rejected. *See VirnetX, Inc. v. Cisco Sys., Inc.*, 767 F.3d 1308, 1332-33 (Fed. Cir. 2014); *Uniloc*, 632 F.3d at 1317.

Dell's second apportionment factor rests on a similarly flawed rationale, citing "again, Samsung's negotiation position" and "bargaining strength." Appx32500-01 (394:24-395:4). Such vague, "conclusory," and "[s]uperficial" explanations for a downward adjustment are insufficient to support a verdict. *VirnetX*, 767 F.3d at 1325; *Whitserve*, 694 F.3d at 32 (quoting *Lucent*, 580 F.3d at 1329).

Furthermore, Dell inexplicably applied disparate apportionment adjustments across the patents at issue—applying a 23.7% factor to the '776 patent and a 32.7% factor to the '130 patent—without offering any economic rationale for the divergence. Appx32500-02 (394:23-396:14); *see supra* Section IV.A.1.a; *see also*

Appx13235 (calculating the effective apportionment factor). This "complete lack of economic analysis to quantitatively support" his adjustment renders the second apportionment factor arbitrary. *LaserDynamics*, 694 F.3d at 69.

c. The Record Does Not Support Dell's Determination That the Per-Unit Incremental Profit for the '776 Patent Was $5.83

"Conclusory or speculative expert opinions cannot support a verdict." *Johnston v. Ferrellgas, Inc.*, 96 F.4th 852, 858 (5th Cir. 2024). "Courts are to rigorously examine the validity of facts and assumptions on which the expert testimony is based." *Id.* (cleaned up); *see also Taxotere*, 26 F.4th at 268 (requiring an expert, in the admissibility context, "independently to validate or assess the basis for his or her assumptions"). Dell offered no independent analysis for the district court to examine in assuming the $5.83 per-unit incremental profit baseline for the '776 patent and, instead, relied entirely on the underlying opinions of GComm's technical expert Kowalski and survey expert Reed-Arthurs—opinions that themselves lack record support.

First, the record does not support the $5.83 per-unit profit starting point for Dell's incremental profits analysis because this analysis relied on the opinion of Reed-Arthurs—an expert whom GComm strategically elected not to call at the damages retrial and who endured at the first trial a difficult cross-examination revealing her failure to consider several key factors in designing her survey.

Appx30068-72 (902:11-906:16). Based solely on Reed-Arthurs's survey, Dell concluded that "a five percent loss in speed would result in at least a $5.83 loss in profit to Samsung." Appx32496 (390:2-6). Rather than evaluating, validating, or otherwise analyzing this survey result, Dell simply regurgitated Reed-Arthurs's out-of-court conclusion. Appx32495-96 (389:19-390:10). Dell's reference to Reed-Arthurs's survey result is entirely conclusory and therefore cannot sustain the jury's verdict. *See Whitserve*, 694 F.3d at 33.

Nor could Dell have supplied any testimony other than conclusory testimony. Qualified strictly "as an expert in the field of patent valuation, licensing negotiation, and damages"—not survey design or analysis—Dell possessed no expertise to explain, evaluate, or validate the survey results or Reed-Arthurs's methodology for obtaining those results. Appx32460 (354:5-10). Instead, Dell impermissibly acted as a "mouthpiece" to parrot the conclusions of other experts. *See Factory Mut. Ins. Co. v. Alon USA L.P.*, 705 F.3d 518, 524 (5th Cir. 2013); *see also Robroy Indus.-Tex., LLC v. Thomas & Betts Corp.*, No. 2:15-CV-512-WCB, 2017 WL 1319553, at *9 (E.D. Tex. Apr. 10, 2017) (Bryson, J., sitting by designation) ("Denominating a witness as an expert does not give that witness leave to simply read materials such as exhibits and depositions in the case and then testify as to their contents[.]"). Worse still, Reed-Arthurs never took the stand at the retrial, and GComm did not introduce any evidence on this survey other than

Dell's testimony referencing the results. Appx32495-96 (389:19-390:10). Had GComm done so, Samsung would have exposed the survey's failure to account for numerous factors that consumers consider when purchasing a phone—including brand, price, screen size, storage capacity, battery life, charging speed, and camera quality—thus further underscoring that Dell's incremental profits analysis, by relying on the survey result, did not properly apportion the value of the patented feature. Appx30071-72 (905:18-906:14); Appx30571 (1362:1-5); *see VirnetX*, 767 F.3d at 1329 (criticizing the damages expert for "fail[ing] to apportion value between the patented features and the vast number of non-patented features contained in the accused products").

The district court excused GComm's reliance on the survey because Samsung "declined to call Reed-Arthurs at the damages retrial to address her survey data, despite her appearing in the courtroom." Appx455. This reasoning impermissibly shifted the burden of proof on damages from GComm to Samsung. *Rex Med., L.P. v. Intuitive Surgical, Inc.*, 156 F.4th 1289, 1298-99 (Fed. Cir. 2025). Samsung was under no obligation to call GComm's survey expert to cure evidentiary gaps resulting from GComm's strategic missteps at the damages retrial.[9] Because GComm presented no non-conclusory testimony validating the

[9] These fatal evidentiary gaps were self-inflicted, and GComm's will-they-won't-they approach to calling Reed-Arthurs at trial smacks of the exact "gamesmanship"

survey results, it failed to supply sufficient evidence supporting the baseline incremental profit value that led to the jury's inflated damages award.

Second, Dell's $5.83 baseline fails the threshold requirement for valuing SEPs: isolating the patented invention from alternative unpatented technology ***in the standard***. *Ericsson*, 773 F.3d at 1232. To establish this baseline, Dell relied exclusively on Kowalski's opinion that practicing the '776 patent yields a "five percent benefit with respect to loss in speed" over his alleged noninfringing alternatives. Appx32494-95 (388:21-389:1). But Kowalski's testimony was deficient because it failed to address the claimed features or separate their contribution from noninfringing alternatives that could be written into the 5G standard. *Ericsson*, 773 F.3d at 1232.

Indeed, Kowalski's testimony lacked any nexus to the asserted claims. His entire opinion rested on an IEEE study that was published more than ten years after the filing of the '776 patent and evaluated dual-SIM smartphone ping-ponging across cell towers. Appx32400-02 (298:13-300:6). That article, according to Kowalski, was evidence that the '776 patent's invention would yield speed benefits

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that the court intended to discourage. Appx32437 (335:12-20). GComm's counsel repeatedly told the jury that Reed-Arthurs would testify but strategically declined to call her, ostensibly due to time constraints of GComm's own making. Appx32273 (171:15-17); Appx32436-37 (334:24-335:1, 335:12-17). Once GComm's case-in-chief concluded, Samsung identified GComm's failure to call Reed-Arthurs. Appx32678 (572:17-23).

between 5% and 30%. Appx32400 (298:13-16). But he failed to establish any link between the study's dual-SIM configuration and the '776 patent, which does not claim dual-SIM technology. Appx32401 (299:3-13); Appx468-69 (6:58-7:16). Nor did he supply any rationale bridging the study's throughput metrics with the actual claim limitations, which do not recite speed. Appx32401-02 (299:14-300:6); Appx468-69 (6:58-7:16); *see supra* Section IV.A.1.b.

Kowalski further failed to address whether his asserted noninfringing alternative could be "written into the [5G] standard." *Microsoft Corp. v. Motorola, Inc.*, No. C10-1823JLR, 2013 WL 2111217, at *19 (W.D. Wash. Apr. 25, 2013); Appx32751-53 (606:2-5, 607:24-608:3). Relying on the IEEE study to claim speed advantages over allegedly noninfringing alternative designs, Kowalski never identified relevant characteristics of these noninfringing alternatives, including whether these alternatives were reflected in the 5G standard or could have been written into it. *Ericsson*, 773 F.3d at 1232; Appx32400-02 (298:13-300:15); Appx32751-53 (606:2-5, 607:24-608:3); *see also Commonwealth Sci. & Indus. Rsch. Org. v. Cisco Sys., Inc.*, 809 F.3d 1295, 1305-06 (Fed. Cir. 2015) ("CSIRO") (vacating a damages award because the district court "did not account for standardization").

Because Kowalski's testimony and Reed-Arthurs's survey—critical underpinnings of Dell's $5.83 starting point—were legally deficient and because

Dell did not provide ***any*** economic analysis of their conclusions, substantial evidence does not support a per-unit incremental profit of $5.83.

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In view of the deficiencies in Dell's testimony at the damages retrial, Samsung respectfully asks this Court to reverse the denial of its motion for JMOL of no damages or, in the alternative, its motion for a new trial. Appx454-55. Alternatively, this Court should vacate the damages award and remand to the district court to determine whether GComm forfeited alternative damages theories and whether to order a new damages trial.

B. The District Court Gave GComm at the Damages Retrial Unfettered Latitude To Capture the Entire Value of the 5G Standard While Materially Restricting Samsung's Ability To Present a Royalty Stacking Defense

Beyond the errors grounded in Dell's incremental profits analysis, Samsung is entitled to a new trial on damages because Samsung was subjected to prejudicial error and the trial was unfair. The district court erroneously permitted GComm to parade the vast, unapportioned value of the entire 5G standard before the jury while also improperly silencing Samsung's royalty stacking defense that would have detailed the risk of SEP royalty stacking across the 70,000-family 5G stack. Either error independently mandates a new trial.

1. The District Court Abused Its Discretion in Allowing GComm To Emphasize the Overall Value of the 5G Standard

For an SEP, "the patentee's royalty must be premised on the value of the patented feature, not any value added by the standard's adoption of the patented technology." *Ericsson*, 773 F.3d at 1232. This requirement "ensure[s] that the royalty award is based on the incremental value that the patented ***invention*** adds to the product, not any value added by the standardization of that technology." *Id.* (original emphasis). Because standard adoption artificially inflates a technology's worth, "the value of the patented invention . . . is distinct from any value that artificially accrues to the patent due to the standard's adoption." *CSIRO*, 809 F.3d at 1305. Without strict enforcement of this rule, a patentee could capture "all of the benefit created by standardization—benefit that would otherwise flow to consumers and businesses practicing the standard." *Id.*

To prevent GComm from capturing the economic value of the 5G standard, Samsung had a running objection to GComm's assertions as to the benefits and value of 5G standardization. Appx32239-41 (137:10-139:6). Despite this objection, GComm repeatedly injected references to the 5G standard's value, including in (1) its opening statement (Appx32266-67 (164:12-165:1));
(2) GComm's corporate witness testimony (Appx32305-06 (203:16-204:1));
(3) GComm's technical expert testimony (Appx32371 (269:2-4)); and (4) Dell's

testimony (Appx32470 (364:6-24); Appx32474 (368:1-17); Appx32481-82 (375:20-376:6)).

For example, Dell started his testimony by emphasizing to the jury that ZTE and Samsung would have bargained over the entire value of the 5G standard generated from sales of Samsung's 5G-enabled devices. Appx32470-71 (364:6-365:22); Appx32474 (368:1-17). He echoed GComm's assertion in its opening statement that Samsung allegedly charges $200 more for 5G functionality. Appx32266-67 (164:12-165:1); Appx32474 (368:1-17). Dell's demonstratives likewise referenced the value of the 5G standard as a whole and Samsung's charge for this functionality. Appx34278; Appx34283. Dell made such references even while acknowledging that "the portion of the profit that should be credited to the invention" is distinct from "the value of the ['776 patent's] incorporation into the [5G] standard." Appx32494 (388:5-9). Similarly, GComm's corporate witness, Jeremy Pitcock, underscored GComm's efforts on 5G as a whole rather than the asserted patents, testifying that ZTE "spent more than $300 million a year on research and development and had over 3,000 engineers working on 5G." Appx32305-06 (203:16-204:1).

In denying Samsung's new trial request, the district court cited portions of Dell's testimony addressing the profitability of the '776 patent, the advantages of the patents to the infringing products, and the $5.83 per-unit incremental profit that

Dell identified for his incremental profits analysis. Appx456 (citing Appx32492-97 (386:11-391:17)). But the presence of other testimony and a generic limiting instruction, Appx32749 (604:19-25), cannot cure the prejudice caused by GComm's overall-value evidence. Once GComm placed the full monetary scale of the 5G standard before the jury, the "cat was never put back into the bag . . . in spite of a final instruction that the jury may not award damages based on [value of the 5G standard]." *Uniloc*, 632 F.3d at 1320 (internal quotation marks omitted).

2. The District Court Erred in Sustaining GComm's Objection to Samsung's Royalty Stacking Defense and Refusing Samsung's Request To Instruct the Jury on Royalty Stacking

"Royalty stacking can arise when a standard implicates numerous patents, perhaps hundreds, if not thousands," and so "[i]f companies are forced to pay royalties to all SEP holders, the royalties will 'stack' on top of each other and may become excessive in the aggregate." *Ericsson*, 773 F.3d at 1209. This Court has warned that there is "considerable risk" when too high a royalty base—for example, one based on the entire market value of a product—is presented to the jury because an overly large base "cannot help but skew the damages horizon for the jury" and "make a patentee's proffered damages amount appear modest by comparison." *Id.* at 1227 (quoting *LaserDynamics*, 694 F.3d at 67-68). Thus, "where a multi-component product is at issue and the patented feature is not the item which imbues the combination of the other features with value, care must be

taken to avoid misleading the jury by placing undue emphasis on the value of the entire product." *Id.* at 1226.

The district court erred by refusing to instruct the jury on royalty stacking and preventing Samsung from more fully developing its royalty stacking defense, thus erroneously treating it as an affirmative defense. Samsung's damages expert presented concrete evidence of stacking, testifying that the 5G standard contains nearly 70,000 declared patent families (with 20% to 35% estimated as essential) and explaining how GComm's damages demand created a stacking problem. *See, e.g.*, Appx32615-16 (509:4-510:2) (Meyer describing Samsung having a 7.2% share of that stack); Appx32616-17 (510:18-511:23); Appx32622 (516:2-23) (Meyer describing the difference in the assumptions about the 5G stack in his and Dell's market comparables analyses). Yet, when GComm objected that "[t]here's no royalty stacking defense that was raised in this case," the district court erroneously sustained this objection and curtailed Meyer's testimony. Appx32628-29 (522:24-523:6). Compounding this error, the court refused to instruct the jury on royalty stacking, over Samsung's objection. Appx32730 (585:1-12); *see also* Appx38411 (¶42) (Meyer's report stating that "extending Mr. Dell's royalty opinion . . . across the entire 5G indicates an [aggregate royalty burden] of approximately $36,667 per [allegedly infringing] unit").

This ruling was legally unsound and contradicted by the record. Indeed, the district court largely ***denied*** GComm's motion to strike portions of Meyer's rebuttal report presenting a royalty stacking defense. Appx10334 (GComm motion to strike); Appx417 (striking only one of six paragraphs of Meyer's royalty stacking discussion); Appx38411 (¶41) (struck paragraph describing the legal treatment of royalty stacking). Contrary to the district court's determination that Samsung "failed to evidence that they paid any royalties on the 5G standard" (Appx456), Meyer testified that Samsung paid for other 5G patents in its license agreements identified to the jury. Appx32629-31 (523:8-525:6).

Finally, the court's error prejudiced Samsung. Had Samsung been permitted to present a royalty stacking defense, Meyer would have presented examples of royalty stacking, and this royalty stacking defense would have cautioned the jury against awarding damages significantly higher than FRAND rates indicated by the comparable licenses. *See supra* Section IV.A.2.a; *see, e.g.*, Appx38399 (¶21); Appx38410-13 (¶¶40-43); Appx38453 (¶137).

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Either one of the foregoing errors independently requires reversal of the district court's denial of Samsung's motion for a new trial on damages. Appx456-57.

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C. The Cumulative Effect of the Foregoing Prejudicial Errors Resulted in an Excessive Damages Verdict and Thus Warrants, at a Minimum, a New Trial on Damages

Each error above independently merits a new trial, if not JMOL of no damages. But even if no single error alone constitutes an abuse of discretion, the "cumulative effect" deprived Samsung of a fair trial. *Meyer Intell. Props. Ltd. v. Bodum, Inc.*, 690 F.3d 1354, 1377 (Fed. Cir. 2012). The jury awarded an excessive damages verdict of $61 million for a single SEP—a sum [redacted] to [redacted] times higher than any comparable license in the record and nearly 20 times the damages figure supported by Samsung's expert, Meyer. *See supra* Section IV.A.2.a; Appx32629 (523:8-23); Appx32632 (526:3-7).

To circumvent established market rates for the '776 patent and capture unearned 5G standard value, GComm presented the inflated royalty rates of Dell's incremental profits approach while repeatedly stressing the entire value of the 5G standard—a presentation to the jury the district court endorsed. *See supra* Sections IV.A, IV.B.1. Yet when Samsung sought to counter this flawed narrative for an inflated royalty rate by demonstrating the real-world risk of aggregate royalty stacking inherent in SEPs, the court silenced Samsung. *See supra* Section IV.B.2. These errors produced a "one-sided trial" that prejudiced Samsung, leading to the $61 million damages verdict for alleged infringement of GComm's single SEP among nearly 70,000 declared 5G patent families. *Meyer*

Intell., 690 F.3d at 1377. This Court should reverse the district court's denial of JMOL of no damages or, at a minimum, vacate the damages award and remand for a new trial.

CONCLUSION

For the foregoing reasons, the Court should reverse or, in the alternative, vacate and remand to reassess infringement under the correct claim construction, invalidity, and damages, if any, in a manner that comports with this Court's law.

Dated: October 2, 2026

Respectfully submitted,

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ADDENDUM

ADDENDUM INDEX

G+ Communications, LLC v. Samsung Electronics Co., Ltd.
Fed. Cir. No. 26-1902

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

G+ COMMUNICATIONS, LLC Plaintiff, v. SAMSUNG ELECTRONICS CO., LTD.; SAMSUNG ELECTRONICS AMERICA, INC.; Defendants.	§	Case No. 2:22-cv-00078-JRG **JURY TRIAL DEMANDED**

PROTECTIVE ORDER

WHEREAS, Plaintiff G+ Communications, LLC and Defendants Samsung Electronics Co., Ltd. ("SEC") and Samsung Electronics America, Inc. ("SEA") (hereafter collectively referred to as "the Parties" or "Party" when referring to one side) believe that certain information that will likely be encompassed by discovery demands by the Parties discloses or reflects trade secrets, confidential business information, or other proprietary information;

WHEREAS, the Parties seek the entry of a protective order to limit the disclosure of any such information in accordance with Federal Rule of Civil Procedure 26(c);

THEREFORE, it is hereby stipulated among the Parties and **ORDERED** that:

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information or material. Each party may also designate as confidential for

protection any information that a Party or Non-Party reasonably believes to be subject to federal, state or foreign Data Protection Laws or other privacy obligations (including, without limitation, The Gramm-Leach-Biley Act, 15 U.S.C. § 6801 et seq. (financial information); The Health Insurance Portability and Accountability Act ("HIPAA") and the regulations thereunder, 45 CFR Part 160 and Subparts A and E of Part 164 (medical information); Regulation (EU) 2016/679 Of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, also known as the General Data Protection Regulation ("GDPR")). In this stipulated order, the foregoing documents, information and materials are referred to as "Protected Material." Protected Material shall be designated by the Party producing it by affixing a legend or stamp on such document, information or material as follows: "CONFIDENTIAL," "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY," OR "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SOURCE CODE." The appropriate legend or stamp shall be placed clearly on each page of the Protected Material (except deposition and hearing transcripts) for which such protection is sought. For deposition and hearing transcripts, the appropriate legend or stamp shall be placed on the cover page of the transcript (if not already present on the cover page of the transcript when received from the court reporter) by each attorney receiving a copy of the transcript after that attorney receives notice of the designation of some or all of that transcript.

2. Any document produced under Patent Rules 2-2, 3-2, and/or 3-4 before issuance of this Order with the designation "Confidential" or "Confidential - Outside Attorneys' Eyes Only" shall receive the same treatment as if designated "HIGHLY CONFIDENTIAL—

ATTORNEYS' EYES ONLY" under this Order, unless and until such document is redesignated to have a different classification under this Order.

3. With respect to documents, information or material designated "CONFIDENTIAL," "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SOURCE CODE" ("DESIGNATED MATERIAL"),[1] subject to the provisions herein and unless otherwise stated, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Federal Rules of Civil Procedure; (b) all pretrial, hearing or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pretrial pleadings, exhibits to pleadings and other court filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests and complete or partial summaries prepared from any DESIGNATED MATERIALS shall also be considered DESIGNATED MATERIAL and treated as such under this Order.

4. A designation of Protected Material (i.e., "CONFIDENTIAL," "RESTRICTED - ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SOURCE CODE") may be made at any time. Inadvertent or unintentional production of documents, information or material that has not been designated as DESIGNATED MATERIAL shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Any party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request

[1] The term DESIGNATED MATERIAL is used throughout this Protective Order to refer to the class of materials designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SOURCE CODE," both individually and collectively.

destruction of that Protected Material by notifying the recipient(s), as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure, and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Materials and any documents, information or material derived from or based thereon.

5. "CONFIDENTIAL" documents, information and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the designating party, upon order of the Court, or as set forth in paragraph 14 herein:

(a) outside counsel of record in this Action for the Parties, including the partners, members, associates and contract attorneys of such counsel;

(b) employees or other members of the staff of such counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action;

(c) in-house counsel for the Parties who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action and legal support staff assigned to and reasonably necessary to assist such counsel in the litigation of this Action;

(d) up to and including three (3) designated representatives of each of the Parties who are officers or employees of a Party, to the extent reasonably necessary for the litigation of this Action, provided such person has agreed to be bound by the terms of this Order by signing the agreement attached hereto as Appendix A, which shall be provided to the producing Party before disclosure of Protected Material to the designated representative at least three business days in advance. Either party may in good faith request the other Party's consent to designate one or more additional representatives, the other party shall not unreasonably withhold such consent, and the requesting party may seek leave of Court to designate such additional representative(s) if the requesting party believes the other party has unreasonably withheld such consent;

(e) outside consultants or experts[2] (*i.e.*, not existing employees or affiliates of a Party or an affiliate of a Party) retained for the purpose of this litigation, provided that:

[2] For the purposes of this Protective Order, an outside consultant or expert is defined to include the outside consultant's or expert's direct reports and other support personnel within the

(1) such consultants or experts are not presently employed by the Parties hereto for purposes other than this Action; (2) before access is given, the consultant or expert has completed the Undertaking attached as Appendix A hereto and the same is served upon the producing Party with the following materials:

i. the name and current address of the Person;
ii. an up-to-date curriculum vitae of the Person;
iii. the present employer and title of the Person;
iv. an identification of all of the Person's past and current employment and consulting relationships in the past five (5) years, including direct relationships and relationships through entities owned or controlled by the Person, including but not limited to an identification of any individual or entity with or for whom the person is employed or to whom the person provides consulting services and a description of any job responsibilities or consulting services relating to product design, development, sales, marketing, pricing, patenting, or licensing;
v. an identification of all patents and pending patent applications on which the Person is named as an inventor, has been involved in prosecuting, or in which the Person has any ownership or pecuniary interest;
vi. a list of the cases in which the Person has worked on in any capacity in the last five (5) years; and
vii. such other information regarding the Person's professional activities reasonably requested by the Producing Party for it to evaluate whether good cause exists to object to the disclosure of Protected Material to the outside expert or consultant.

Such information will be provided to the producing Party at least ten (10) calendar days before access to the Protected Material is to be given to that consultant. Upon receipt of such disclosure, the producing Party may object to and notify the receiving Party in writing that it objects to disclosure of Protected Material to the consultant or expert. The Parties agree to promptly confer and use good faith to resolve any such objection. If the Parties are unable to resolve any objection, the objecting Party may file a motion with the Court within fifteen (15) days of the notice, or within such other time as the Parties may agree, seeking a protective order with respect to the proposed disclosure. The objecting Party shall have the burden of proving the need for such a protective order. No disclosure shall occur until all such objections are resolved by agreement or Court order;

(f) independent litigation support services, including persons working for or as court reporters, stenographers, videographers, translators, graphics or design services, jury or trial consulting services, and photocopy, document imaging, and database services retained by counsel and reasonably necessary to assist counsel with the litigation of this Action, and mock jurors, provided they are only exposed to

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consultant's or expert's firm, such that the disclosure to a consultant or expert who employs others within his or her firm to help in his or her analysis shall count as a disclosure to a single consultant or expert

DESIGNATED MATERIAL during the course of a mock exercise, have completed the Undertaking attached as Appendix A hereto, and agree to be bound by its terms prior to the mock exercise. Mock jurors signing this Order need not be disclosed to the producing Party; and

(g) the Court and its personnel and the jury;

(h) any mediator who is assigned to hear this matter, and his or her staff, subject to their agreement to maintain confidentiality to the same degree as required by this Protective Order;

(i) any other person with the prior written consent of the producing Party.

6. A Party shall designate documents, information or material as "CONFIDENTIAL" only upon a good faith belief that the designation for the documents, collection of documents, information or material is appropriate as set forth in this Order.

7. Documents, information or material produced pursuant to any discovery request in this Action, including but not limited to Protected Material designated as DESIGNATED MATERIAL, shall be used by the receiving Parties and other receiving persons authorized to access DESIGNATED MATERIAL under this Order only in the litigation of this Action and shall not be used for any other purpose. Any person or entity who obtains access to DESIGNATED MATERIAL or the contents thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries or descriptions of such DESIGNATED MATERIAL or any portion thereof except as may be reasonably necessary in the litigation of this Action. Any such copies, duplicates, extracts, summaries or descriptions shall be classified DESIGNATED MATERIALS and subject to all of the terms and conditions of this Order.

8. To the extent a producing Party believes that certain Protected Material qualifying to be designated CONFIDENTIAL is so sensitive that its dissemination deserves even further limitation, the producing Party may designate such Protected Material "HIGHLY

CONFIDENTIAL—ATTORNEYS' EYES ONLY," or to the extent such Protected Material includes computer source code and/or live data (that is, data as it exists residing in a database or databases) ("Source Code Material"), the producing Party may designate such Protected Material as "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SOURCE CODE." For the avoidance of doubt, "source code" includes human-readable programming language text that defines software, firmware, and/or circuits, as well as layout or schematics files defining circuit layout and/or layers. Source Code Material further includes the text of any comments associated with any of the foregoing, any files containing any of the foregoing and all directory and folder structures in which such files are maintained. Source Code Material further includes graphic data system ("GDS") and LiveData files.

9. For Protected Material designated HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY, access to, and disclosure of, such Protected Material shall be limited to individuals listed in paragraphs 5(a-b) and (e-i).

10. For Protected Material designated HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SOURCE CODE, the following additional restrictions apply, unless the producing Party and the receiving Party agree otherwise:

(a) The receiving Party shall provide written notice to the producing Party of its intent to inspect source code at least four (4) business days in advance. The written notice must include the names of the person(s) intending to inspect source code at least 2 business days in advance of the inspection.

(b) Access to a Party's Source Code Material shall be provided only on "stand-alone" computer(s) (that is, the computer may not be linked to any network, including a local area network ("LAN"), an intranet or the Internet). The stand-alone computer(s) may not be connected to a printer for any purpose (printouts shall be requested from the Producing Party as specified in 10(k and l) below). The stand-alone computer(s) shall have an external mouse and an additional monitor. The stand-alone computer(s) will be placed in a secured room at the office of the

Producing Party's outside counsel or other location as agreed upon by the Parties. The Producing Party shall make its best effort to make a breakout room available within a reasonable distance to the secured room where the Receiving Party may use the Internet and personal electronic devices. No recordable media, recordable devices, computers, cell phones, or other electronic devices may be brought into the secured room. The Producing Party shall also be entitled to have a person who is not an attorney visually monitor, from outside of the secured room, the Receiving Party's actions in the secured room to ensure compliance with the provisions of this Order governing source code provided, however, that said person shall not be permitted to view, from outside the secured room, the screen of the standalone computer, shall not be permitted to view any work product generated by the receiving Party's representative(s), and shall not be permitted to monitor the Receiving Party's actions outside of the secured room. The producing Party may not configure its Source Code in a manner that unreasonably impedes or slows the receiving Party's ability to inspect the Source Code.

(c) The producing Party shall install a reasonable number of non-redundant commercially available software tools of the receiving Party's choice for viewing and searching Source Code on the secure computer(s) containing Source Code at the requested date and time of inspection, provided, however, that such other software tools are in compliance with all of the terms, conditions, and protections herein. Such software tools may include, but are not limited to, Eclipse, Microsoft Visual Studio, Source-Navigator, PowerGrep, ExamDiff Pro, Understand, Notepad++, Windows GREP, dtSearch, Beyond Compare, Crimson Editor, or similar programs. In the event that there are issues concerning the installation or use of any such tool, the Parties and their technical staff shall meet and confer promptly to resolve such issues. If, after meeting and conferring, the Parties cannot resolve an objection to a source code tool, the receiving Party shall seek Court intervention within five (5) days. In no event shall the receiving Party use said software tools to compile the source code or otherwise attempt to execute the source code. At least five (5) business days in advance of the inspection, the receiving Party must provide the Producing Party with the software tool(s) either via a CD or DVD containing such software tool(s) or directions for downloading the software tool(s). The receiving Party is responsible for the cost of and for obtaining any necessary licenses for any such software tool(s). The software tool(s) provided by the receiving Party shall not be modified by the producing Party prior to or after installation.

(d) No copies of all or any portion of the source code may leave the room in which the source code is inspected except as otherwise provided herein. Except to request printouts of source code pursuant to Paragraph 10(k) below, the receiving Party will not copy, remove, or otherwise transfer any source code from the source code computer including, without limitation, copying, removing, or transferring the source code onto any recordable media or recordable device. The receiving Party's outside counsel and/or experts shall be entitled to take notes relating to the source code but may not copy the source code into the notes and may not take such notes

electronically on the source code computer itself or any other computer.

(e) The receiving Party shall make reasonable efforts to restrict its requests for such access to the stand-alone computer(s) to normal business hours, which for purposes of this paragraph shall be 9:00 a.m. through 5:30 p.m. local time. However, upon reasonable notice from the receiving Party, the producing Party shall make reasonable efforts to accommodate the receiving Party's request for access to the stand-alone computer(s) outside of normal business hours. The Parties agree to cooperate in good faith such that maintaining the producing Party's Source Code Material at the offices of its outside counsel shall not unreasonably hinder the receiving Party's ability to efficiently and effectively conduct the prosecution or defense of this Action.

(f) The producing Party shall provide the receiving Party with information explaining how to start, log on to, and operate the stand-alone computer(s) in order to access the produced Source Code Material on the stand-alone computer(s).

(g) The producing Party will produce Source Code Material in computer searchable format on the stand-alone computer(s) as described above.

(h) Access to Protected Material designated HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SOURCE CODE shall be limited to outside counsel and their employees as defined by paragraphs 5(a) and 5(b) above, and up to five (5) outside consultants or experts (but not existing employees or affiliates of a Party or an affiliate of a Party) retained for the purpose of this litigation and approved to access such Protected Materials pursuant to paragraph 5(e) above. A receiving Party may include excerpts of Source Code Material in a pleading, exhibit, expert report, infringement contentions, discovery document, deposition transcript, other Court document, provided that the Source Code Documents are appropriately marked under this Order, restricted to those who are entitled to have access to them as specified herein, and, if filed with the Court, filed under seal in accordance with the Court's rules, procedures and orders.

(i) To the extent portions of Source Code Material are quoted in a Source Code Document, either (1) all source code materials will be redacted from pages containing quoted source code material and the document will be stamped and treated as HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY, or (2) those pages containing quoted Source Code Material will be separately stamped and treated as HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SOURCE CODE. Images or copies of source code shall not be included in correspondence between the Parties (references to production numbers shall be used instead), and shall be omitted from pleadings and other papers whenever possible. If an electronic or other copy needs to be made for contentions, an expert report, a Court filing (subject to the terms of the preceding paragraph), or any other document, which pursuant to the Court's rules, procedures, or orders must be filed

or served electronically, the receiving Party's entire submission, communication, and/or disclosure containing any portion of source code (paper or electronic) shall be marked HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SOURCE CODE and access at all times shall be limited solely to individuals who are expressly authorized to view source code under the provisions of this Order.

(j) Except as set forth elsewhere in paragraph 10, no written or electronic copies of Source Code Material shall be made without prior written consent of the producing Party.

(k) The receiving Party shall be permitted to request from the producing Party a reasonable number of printouts of Source Code Material, which shall be limited to 300 pages per accused instrumentality or 10% of the source code for each accused instrumentality, whichever is less, with no contiguous block greater than 40 pages. Within three (3) business days of request, the producing Party shall either (i) provide two (2) copy sets of such pages to the receiving Party on Bates numbered, watermarked paper designated and clearly labeled HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SOURCE CODE, or (ii) inform the requesting Party that it objects that the printed portions are excessive and/or not done for a permitted purpose. If, after meeting and conferring, the producing Party and the receiving Party cannot resolve the objection, within three (3) business days, the receiving Party shall seek a Court resolution of whether the printed source code in question is reasonable and was printed for a permitted purpose. The receiving Party may request to print additional pages beyond the aforementioned limits and the Parties will meet and confer in good faith regarding such a request.

(l) The receiving Party shall maintain a log of all paper copies of the Source Code including the names of the custodian(s) or location(s) where the paper copies are stored when the paper copies are not in use. No more than a total of ten (10) individuals identified by the receiving Party shall have access to the printed portions of Source Code (except insofar as such code appears in any court filing or expert report). The receiving Party shall provide a copy of this log to the producing Party in the event of a breach by receiving Party of any of the Source Code specific provisions of the Protective Order or upon request of the producing Party.

(m) Proper identification of all authorized persons shall be provided prior to any access to the secure room or the computer(s) containing Source Code. Proper identification requires showing, at a minimum, a photo identification card sanctioned by the government of any State of the United States or by the government of the United States. Access to the secure room or the Source Code Computer(s) may be denied, at the discretion of the supplier, to any individual who fails to provide proper identification until such proper identification is provided.

(n) If the receiving Party's outside counsel, consultants, experts, or any other authorized person obtain printouts or photocopies of Source Code Material or

notes, the receiving Party shall ensure that such outside counsel, consultants, experts, or person keeps the printouts or photocopies in a secured locked area in the offices or home of such outside counsel, consultants, expert, or other authorized person. The receiving Party may also temporarily keep the printouts or photocopies in a secured location under lock and key at: (i) the Court for any proceedings(s) relating to the Source Code Material, for the dates associated with the proceeding(s); (ii) the sites where any deposition(s) relating to the Source Code Material are taken, for the dates associated with the deposition(s); and (iii) any secure intermediate location reasonably necessary to transport the printouts or photocopies.

(o) A producing Party's Source Code Material may only be transported by the receiving Party at the direction of a person authorized under paragraph 10(h) above to another person authorized under paragraph 10(h) above, on paper via secure and reliable hand carry. Source Code Material may not be transported or transmitted electronically over a network of any kind, including a LAN, an intranet, or the Internet except as provided in paragraph 10(h) above and as necessary to create documents which, pursuant to the Court's rules, procedures and order, must be filed or served electronically.

(p) Copies of source code that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers, unless otherwise agreed by the producing Party. All paper copies of source code brought to the deposition must be returned to the receiving Party's counsel following the deposition for secure transport back to the secured locked area in the offices of the receiving Party's counsel.

(q) If any Party comes into possession of code that it purports to be the source code of any other Party through any means outside the discovery process in this case, and produces, introduces, or relies upon that source code in any way in this case, it shall be designated and treated as HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SOURCE CODE and subject to all the applicable protections of this Order as if it had been produced in this case with such designation.

(r) In the case of any conflict between a provision of Paragraph 10 (regarding source code) and any other provision in this Order, the provision in Paragraph 10 (regarding source code) shall govern.

11. The parties agree that productions of certain DESIGNATED MATERIAL may require additional safeguards pursuant to Federal, State or foreign statutes, regulations or privacy obligations and will meet and confer to implement these safeguards if and when needed.

12. Absent written consent from the producing Party, any attorney representing a Party, whether in-house or outside counsel, and any person associated with a Party permitted to receive the other Party's Protected Material that is designated HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY and/or HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SOURCE CODE (collectively "HIGHLY SENSITIVE MATERIAL"), who obtains, receives, has access to, or otherwise learns, in whole or in part, the other Party's HIGHLY SENSITIVE MATERIAL under this Order shall not prepare, prosecute, supervise, assist or otherwise be involved in the preparation or prosecution of any patent application pertaining to the field of the invention of the patents-in-suit during the pendency of this Action and for one year after its conclusion, including any appeals. To ensure compliance with the purpose of this provision, each Party shall create an "Ethical Wall" between those persons with access to HIGHLY SENSITIVE MATERIAL and any individuals who, on behalf of the Party or any acquirer, successor, predecessor, or other affiliate, prepare, prosecute, supervise or assist in the preparation or prosecution of any patent application pertaining to the field of the invention of the patents-in-suit.

13. Nothing in this Order shall require production of documents, information or other material that a Party contends is protected from disclosure by the attorney-client privilege, the work product doctrine, or other privilege, doctrine, or immunity. If documents, information or other material subject to a claim of attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity is inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any such privilege, doctrine, or immunity in this or any other federal, state or other

proceeding. Any Party that inadvertently or unintentionally produces documents, information or other material it reasonably believes are protected under the attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity may obtain the return of such documents, information or other material by notifying the recipient(s) and providing a privilege log for the inadvertently or unintentionally produced documents, information or other material. The recipient(s) shall destroy all copies of such documents, irrespective of other potential remedies provided in Federal Rule of Civil Procedure 26(b)(5)(B).

14. There shall be no disclosure of any DESIGNATED MATERIAL by any person authorized to have access thereto to any person who is not authorized for such access under this Order. The Parties and all persons authorized to have access to DESIGNATED MATERIAL are hereby ORDERED to safeguard all such documents, information and material to protect against disclosure to any unauthorized persons or entities. This Order does not restrict the producing Party's rights as to its own DESIGNATED MATERIAL.

15. If a receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the receiving Party must immediately (a) notify in writing the producing Party of the unauthorized disclosures, and provide all known, relevant information concerning the nature and circumstances of the disclosure; (b) use its best efforts to retrieve all unauthorized copies of the Protected Material and to ensure that no further or greater unauthorized disclosure and/or use thereof is made, including securing the agreement of the recipient(s) not to further disseminate the Protected Material in any form; (c) inform the person or persons to whom unauthorized disclosures were made of all the

terms of this Order; and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" attached hereto as Appendix A. Compliance with the foregoing shall not prevent the producing Party from seeking further relief from the Court. Unauthorized or inadvertent disclosure does not change the status of Protected Material or waive any right to hold the disclosed document or information as Protected Material.

16. Nothing contained herein shall be construed to prejudice any Party's right to use any DESIGNATED MATERIAL in taking testimony at any deposition or hearing provided that the DESIGNATED MATERIAL is only disclosed to a person(s) who is: (i) eligible to have access to the DESIGNATED MATERIAL by virtue of his or her employment with the designating party, (ii) identified in the DESIGNATED MATERIAL as an author, addressee, or copy recipient of such information, (iii) although not identified as an author, addressee, or copy recipient of such DESIGNATED MATERIAL, someone who has, in the ordinary course of business, seen such DESIGNATED MATERIAL; (iv) a current or former officer, director or employee of the producing Party or a current or former officer, director or employee of a company affiliated with the producing Party; or (v) another person entitled hereunder to access to DESIGNATED MATERIAL. DESIGNATED MATERIAL shall not be disclosed to any other persons unless prior authorization is obtained from counsel representing the producing Party or from the Court.

17. Parties may, at the deposition or within thirty (30) days after receipt of a deposition transcript, designate the deposition transcript or any portion thereof as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SOURCE CODE"

pursuant to this Order. Access to the deposition so designated shall be limited in accordance with the terms of this Order. If not designated at the deposition, until expiration of the 30-day period, the entire deposition shall be treated as "HIGHLY CONFIDENTIAL—ATTORNEY' EYES ONLY".

18. Any DESIGNATED MATERIAL that is filed with the Court shall be filed under seal and shall remain under seal until further order of the Court. The filing party shall be responsible for informing the Clerk of the Court that the filing should be sealed and for placing the legend "FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER" above the caption and conspicuously on each page of the filing. Exhibits to a filing shall conform to the labeling requirements set forth in this Order. If a pretrial pleading filed with the Court, or an exhibit thereto, discloses or relies on confidential documents, information or material, such confidential portions shall be redacted to the extent necessary and the pleading or exhibit filed publicly with the Court.

19. The Order applies to pretrial discovery. Nothing in this Order shall be deemed to prevent the Parties from introducing any DESIGNATED MATERIAL into evidence at the trial of this Action, or from using any information contained in DESIGNATED MATERIAL at the trial of this Action, subject to any pretrial order issued by this Court. However, each of the parties reserves the right to request that the Court seal the courtroom or, if allowed by the Court, during the presentation of any testimony relating to or involving the use of any Protected Material.

20. A Party may request in writing to the other Party that the designation given to any DESIGNATED MATERIAL be modified or withdrawn. If the designating Party does not agree to redesignation within ten (10) days of receipt of the written request, the requesting

Party may apply to the Court for relief. Upon any such application to the Court, the burden shall be on the designating Party to show why its classification is proper. Such application shall be treated procedurally as a motion to compel pursuant to Federal Rules of Civil Procedure 37, subject to the Rule's provisions relating to sanctions. In making such application, the requirements of the Federal Rules of Civil Procedure and the Local Rules of the Court shall be met. Pending the Court's determination of the application, the designation of the designating Party shall be maintained.

21. Each outside consultant or expert to whom DESIGNATED MATERIAL is disclosed in accordance with the terms of this Order shall be advised by counsel of the terms of this Order, shall be informed that he or she is subject to the terms and conditions of this Order, and shall sign an acknowledgment that he or she has received a copy of, has read, and has agreed to be bound by this Order. A copy of the acknowledgment form is attached as Appendix A.

22. To the extent that any discovery is taken of persons who are not Parties to this Action ("Third Parties") and in the event that such Third Parties contended the discovery sought involves trade secrets, confidential business information, or other proprietary information, then such Third Parties may agree to be bound by this Order.

23. To the extent that discovery or testimony is taken of Third Parties, the Third Parties may designate as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SOURCE CODE" any documents, information or other material, in whole or in part, produced or given by such Third Parties. The Third Parties shall have ten (10) days after production of such documents, information or other materials to make such a designation. Until that

time period lapses or until such a designation has been made, whichever occurs sooner, all documents, information or other material so produced or given shall be treated as "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY" in accordance with this Order.

24. Within thirty (30) days of final termination of this Action, including any appeals, all DESIGNATED MATERIAL, including all copies, duplicates, abstracts, indexes, summaries, descriptions, and excerpts or extracts thereof (excluding excerpts or extracts incorporated into any privileged memoranda of the Parties and materials which have been admitted into evidence in this Action), shall at the receiving Party's election either be returned to the producing Party or be destroyed. The receiving Party shall verify the return or destruction by affidavit furnished to the producing Party, upon the producing Party's request. However, notwithstanding this requirement, outside counsel may retain DESIGNATED MATERIAL incorporated into court filings, pleadings, written discovery responses, and communications for archival purposes and are not required to delete information that may reside on their respective back-up systems; however, outside counsel agree that no Protected Material shall be retrieved from the electronic back-up systems or archives to be used as reference materials for business operations after conclusion of this litigation.

25. The failure to designate documents, information or material in accordance with this Order and the failure to object to a designation at a given time shall not preclude the filing of a motion at a later date seeking to impose such designation or challenging the propriety thereof. The entry of this Order and/or the production of documents, information and

material hereunder shall in no way constitute a waiver of any objection to the furnishing thereof, all such objections being hereby preserved.

26. Any Party knowing or believing that any other party is in violation of or intends to violate this Order and has raised the question of violation or potential violation with the opposing party and has been unable to resolve the matter by agreement may move the Court for such relief as may be appropriate in the circumstances. Pending disposition of the motion by the Court, the Party alleged to be in violation of or intending to violate this Order shall discontinue the performance of and/or shall not undertake the further performance of any action alleged to constitute a violation of this Order.

27. Production of DESIGNATED MATERIAL by each of the Parties shall not be deemed a publication of the documents, information and material (or the contents thereof) produced so as to void or make voidable whatever claim the Parties may have as to the proprietary and confidential nature of the documents, information or other material or its contents.

28. Nothing in this Order shall be construed to effect an abrogation, waiver or limitation of any kind on the rights of each of the Parties to assert any applicable discovery or trial privilege.

29. An initial failure to object to a Person under Paragraph 5(e) shall not preclude the non-objecting Party from later objecting to continued access by that Person for good cause. If an objection is made, the Parties shall meet and confer via telephone or in person within five (5) business days following the objection and attempt in good faith to resolve the dispute informally. If the dispute is not resolved, the Party objecting to the disclosure will have seven (7) business days from the date of the meet and confer to seek relief from the

Court. The designated Person may continue to have access to information while the objection is being resolved.

30. Nothing in this Protective Order shall be construed to prevent counsel from advising their clients with respect to this case based in whole or in part upon Protected Materials, provided counsel does not disclose the Protected Material itself except as provided in this Order.

31. Each of the Parties shall also retain the right to file a motion with the Court (a) to modify this Order to allow disclosure of DESIGNATED MATERIAL to additional persons or entities if reasonably necessary to prepare and present this Action and (b) to apply for additional protection of DESIGNATED MATERIAL.

So ORDERED and SIGNED this 10th day of August, 2022.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

G+ COMMUNICATIONS, LLC Plaintiff, v. SAMSUNG ELECTRONICS CO., LTD.; SAMSUNG ELECTRONICS AMERICA, INC.; Defendants.	§	Case No. 2:22-cv-00078-JRG **JURY TRIAL DEMANDED**

APPENDIX A
UNDERTAKING OF DESIGNATED REPRESENTATIVES, EXPERTS OR CONSULTANTS REGARDING PROTECTIVE ORDER

I, _____, declare that:

1. My address is _____.

   My current employer is _____.

   My current occupation is _____.

2. I have received a copy of the Protective Order in this action. I have carefully read and understand the provisions of the Protective Order.

3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action any information designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SOURCE CODE" that is disclosed to me.

4. Promptly upon final termination of this action, I will return all documents and things designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SOURCE CODE" that came into my possession, and all documents and things that I have prepared relating thereto, to the outside counsel for the party by whom I am employed.

5. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Signature _____

Date _____

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

G+ COMMUNICATIONS, LLC, Plaintiff, vs. SAMSUNG ELECTRONICS CO., LTD.; SAMSUNG ELECTRONICS AMERICA, INC., Defendants.	Case No. 2:22-cv-00078-JRG

STIPULATED SUPPLEMENTAL PROTECTIVE ORDER BETWEEN NON-PARTY QUALCOMM INCORPORATED, PLAINTIFF AND DEFENDANT

WHEREAS, the Court entered a Protective Order to protect Party and Non-party confidential business information in the above referenced action on August 10, 2022 ("Protective Order"); and

WHEREAS, G+ Communications, LLC ("Plaintiff"); Samsung Electronics Co., Ltd., Samsung Electronics America, Inc. ("Defendants") (together, hereinafter referred to as "the Parties"); and Qualcomm Incorporated ("QUALCOMM"), a non-party to this action, may produce confidential source code, chip-level schematics or integrated circuit layouts and other documents in this action that include or incorporate CONFIDENTIAL INFORMATION belonging to QUALCOMM ("QUALCOMM Confidential Information"); and

WHEREAS the Parties and Non-Party QUALCOMM have agreed to provisions in addition to those contained in the Protective Order to protect against misuse or disclosure of such QUALCOMM Confidential Information;

WHEREFORE, IT IS HEREBY ORDERED that source code, chip-level schematics, integrated circuit layouts or documents that incorporate QUALCOMM Confidential Information

produced in connection with the above-captioned matter that are designated as "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" and "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" shall be subject to the following restrictions:

I. DEFINITIONS

1. "QUALCOMM MATERIAL" means Confidential information (regardless of how generated, stored, or maintained) or tangible things that include or incorporate Non-Party QUALCOMM Confidential Information, that Non-Party QUALCOMM (i) would not normally reveal to third parties except in confidence, or has undertaken with others to maintain in confidence, (ii) believes in good faith is significantly sensitive, or (iii) protected by a right to privacy under federal or state law, or any other applicable privilege or right related to confidentiality or privacy. QUALCOMM MATERIAL includes all information, documents, source code, chip-level schematics, integrated circuit layouts or testimony, and things produced, served, or otherwise provided in this action by any Party or by Non-Party QUALCOMM, that include or incorporate QUALCOMM Confidential Information.

2. "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" Material means information, documents, and things that include or incorporate QUALCOMM MATERIAL.

3. "Source Code" means human-readable representations of actually completed, implemented, and/or realized software, firmware, and integrated circuits. Source Code includes, but is not limited to, programming language text, symbolic representations of integrated circuits ("Chip-Level Schematics") or graphical depictions of physical configuration of semiconductor material within integrated circuit die or chip ("Integrated Circuit Layouts"). Source Code includes, but is not limited to, programming language text in "C," "C++," BREW, Java ME, J2ME, assembler, digital signal processor ("DSP"), Hardware Design Language ("HDL"), VHDL, or Verilog programming languages. Source Code in the form of programming language text shall be made available for inspection in ASCII text files. File formats within which Source Code in the form of Chip-Level Schematics or Integrated Circuit Layouts may be made available for inspection include, but are not limited to, pdf file format.

4. "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" Material means QUALCOMM MATERIAL that includes Source Code that constitute proprietary technical or commercially sensitive competitive information that Non-Party QUALCOMM maintains as highly confidential in its business, the disclosure of which is likely to cause harm to the competitive position of Non-Party QUALCOMM. This includes Source Code, Chip-Level Schematics, and Integrated Circuit Layouts in the Producing Party's possession, custody, or control, and made available for inspection by the Producing Party.

5. "Designated QUALCOMM Material" means material that is designated "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" under this Supplemental Protective Order.

6. "Designated Source Code Material" means material that is designated "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" under this Supplemental Protective Order.

7. "Personnel Retained by a Receiving Party in this Action" means any consultants, experts, or outside counsel (including their support staff) that have been and continue to be retained by a Receiving Party in this action. For the sake of clarity, any person who was retained by a Receiving Party in this action will no longer fall under this definition if that person ceases to be retained by a Receiving Party in this action.

8. "Party" means any Party to the above-captioned action, including all of its officers, directors, employees, consultants, retained experts, and all support staff thereof.

9. "Producing Party" means a party or non-party that discloses or produces Designated QUALCOMM Material in the above-captioned actions.

10. "Receiving Party" means a Party that receives Designated QUALCOMM Material from a Producing Party in the above-captioned actions.

11. "Authorized Reviewer(s)" means person(s) authorized to review "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" and "QUALCOMM – OUTSIDE ATTORNEYS'

EYES ONLY – SOURCE CODE" Materials in accordance with this Supplemental Protective Order and the Protective Order.

12. "Counsel of Record" means (i) Outside Counsel who appears on the pleadings, or has entered an appearance in this action, as counsel for a Party, and (ii) partners, principals, counsel, associates, employees, and contract attorneys of such Outside Counsel to whom it is reasonably necessary to disclose the information for this litigation, including supporting personnel employed by the attorneys, such as paralegals, legal translators, legal secretaries, legal clerks, and shorthand reporters.

13. "Outside Consultant" means a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by Counsel of Record to serve as an expert witness or a litigation consultant in this action (including any necessary support personnel of such person to whom disclosure is reasonably necessary for this litigation), and who is not a current employee of a Party, of a competitor of a Party, or of Non-Party QUALCOMM, and who, at the time of retention, is not anticipated to become an employee of, or a non-litigation consultant of: 1) a Party, 2) a competitor of a Party, 3) a competitor of Non-Party QUALCOMM, or 4) Non-Party QUALCOMM.

14. "Professional Vendors" means persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; designing and preparing exhibits, graphics, or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors who have been retained or directed by Counsel of Record in this action, and who are not current employees of a Party, a competitor of a Party, or Non-Party QUALCOMM, and who, at the time of retention, are not anticipated to become employees of: 1) a Party, 2) a competitor of a Party, 3) a competitor of Non-Party QUALCOMM, or 4) Non-Party QUALCOMM. This definition includes ESI vendors, and professional jury or trial consultants retained in connection with this litigation to assist a Party, Counsel of Record, or any Outside Consultant in their work. Professional vendors do not include consultants who fall within the definition of Outside Consultant.

II. RELATIONSHIP TO PROTECTIVE ORDER

15. This Supplemental Protective Order shall not diminish any existing restriction with respect to Designated QUALCOMM Material. The Parties and QUALCOMM acknowledge and agree that this Supplemental Protective Order is a supplement to the Protective Order entered in this action on August 10, 2022 in the United States District Court, Eastern District of Texas, in this action.

16. The Protective Order applies to all material designated pursuant to this Supplemental Protective Order. To the extent that there is any confusion or conflict between protective orders with respect to Designated QUALCOMM Material, then this Supplemental Protective Order governs.

17. In addition to the restrictions outlined in this Supplemental Protective Order, materials designated as "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" shall be subject to obligations with respect to "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SOURCE CODE," respectively, as outlined in the Protective Order.

III. SCOPE

18. The protections conferred by this Supplemental Protective Order cover not only Designated QUALCOMM Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof. Nothing herein shall alter or change in any way the discovery provisions of the Federal Rules of Civil Procedure or any applicable local rules or Court Orders. Identification of any individual pursuant to this Supplemental Protective Order does not make that individual available for deposition, or any other form of discovery outside of the restrictions and procedures of the Federal Rules of Civil Procedure or any applicable rules or Court Orders.

19. This Supplemental Protective Order shall not prevent a disclosure to which Non-Party QUALCOMM consents in writing before that disclosure takes place.

20. This Supplemental Protective Order shall apply to all Designated QUALCOMM Material that is produced or provided for inspection in this action, including all Designated QUALCOMM Material that is in the possession, custody or control of Non-party QUALCOMM or any Party in this action, or that is otherwise relevant to this action.

IV. ACCESS TO DESIGNATED QUALCOMM MATERIAL

21. Access to "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" Material: Unless otherwise ordered by the Court or permitted in writing by Non-Party QUALCOMM, a Receiving Party may disclose any information, document or thing designated "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" only to:

a. Persons who appear on the face of Designated QUALCOMM Material as an author, addressee, or recipient thereof, or persons who have been designated under FRCP 30(b)(6) to provide testimony on behalf of a Producing Party;

b. Counsel of Record;

c. Outside Consultants of the Receiving Party to whom disclosure is reasonably necessary for this action, and who have, after the date of this Supplemental Protective Order, signed the "Acknowledgement And Agreement To Be Bound By Supplemental Protective Order Governing Confidential Information of Non-Party Qualcomm In This Case" attached hereto as Exhibit A, and the "Certification Of Consultant Re Supplemental Protective Order Governing Confidential Information of Non-Party Qualcomm In This Case," attached hereto as Exhibit B;

d. Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the Parties, and his or her staff; who have, after the date of this Supplemental Protective Order, signed the "Acknowledgement And Agreement To Be Bound By Supplemental Protective Order Governing Confidential Information of Non-Party

Qualcomm In This Case" attached hereto as Exhibit A, and the "Certification Of Consultant Re Supplemental Protective Order Governing Confidential Information of Non-Party Qualcomm In This Case," attached hereto as Exhibit B, as well as any arbitrator's or mediator's staff who have also signed Exhibits A and B;

e. Court reporters and videographers employed in connection with this action; and

f. Professional Vendors to whom disclosure is reasonably necessary for this action, and a representative of which has signed the "Acknowledgement And Agreement To Be Bound By Supplemental Protective Order Governing Confidential Information of Non-Party Qualcomm In This Case" attached hereto as Exhibit A, subject to the following exception: Designated QUALCOMM Material shall not be disclosed to mock jurors without Non-Party QUALCOMM's express written consent;

g. The Court, its personnel, and the jury.

22. Access to "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" Material: Unless otherwise ordered by the Court or permitted in writing by Non-Party QUALCOMM, a Receiving Party may disclose any information, document, or thing designated "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" only to:

a. Persons who appear on the face of Designated QUALCOMM Material as an author, addressee, or recipient thereof, or persons who have been designated under FRCP 30(b)(6) to provide testimony of behalf of a Producing Party or Qualcomm regarding the same;

b. Counsel of Record;

c. Outside Consultants of the Receiving Party to whom disclosure is reasonably necessary for this litigation, and who have, after the date of this Supplemental Protective Order, signed the "Acknowledgement And

Agreement To Be Bound By Supplemental Protective Order Governing Confidential Information of Non-Party Qualcomm In This Case" attached hereto as Exhibit A, and the "Certification Of Consultant Re Supplemental Protective Order Governing Confidential Information of Non-Party Qualcomm In This Case," attached hereto as Exhibit B;

d. Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the Parties, and his or her staff; who have, after the date of this Supplemental Protective Order, signed the "Acknowledgement And Agreement To Be Bound By Supplemental Protective Order Governing Confidential Information of Non-Party Qualcomm In This Case" attached hereto as Exhibit A, and the "Certification Of Consultant Re Supplemental Protective Order Governing Confidential Information of Non-Party Qualcomm In This Case," attached hereto as Exhibit B, as well as any arbitrator's or mediator's staff who have also signed Exhibits A and B, provided, however, that before such disclosure, QUALCOMM is provided notice including: (a) the individual's name and business title; (b) business address; (c) business or professions; and (d) the individual's CV. QUALCOMM shall have five (5) business days from receipt of the notice to object in writing to such disclosure (plus three (3) extra days if notice is given other than by hand delivery, e-mail delivery or facsimile transmission). After the expiration of the 5 business days (plus 3 days, if appropriate) period, if no objection has been asserted, then "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" materials may be disclosed pursuant to the terms of this Supplemental Protective Order;

e. Court reporters and videographers employed in connection with this action, subject to the provisions provided in subparagraph 31(h) herein;

f. Professional Vendors to whom disclosure is reasonably necessary for this action, and a representative of which has signed the "Acknowledgement And Agreement To Be Bound By Supplemental Protective Order Governing Confidential Information of Non-Party Qualcomm In This Case" attached hereto as Exhibit A, subject to the following exception: Designated QUALCOMM Material shall not be disclosed to mock jurors without Non-Party QUALCOMM's express written consent; and

g. The Court, its personnel, and the jury.

23. Notwithstanding the Protective Order, unless otherwise ordered or agreed in writing by Non-Party QUALCOMM, Designated QUALCOMM Material may not be disclosed to employees of a Receiving Party, including its in-house attorneys and support staff.

24. Notwithstanding the Protective Order, unless otherwise ordered or agreed in writing by Non-Party QUALCOMM, Designated QUALCOMM Material may not be disclosed to mock jurors.

25. The Parties acknowledge that Designated QUALCOMM Material also may be subject to the US government export control and economic sanctions laws ("Export Controlled Information"), including the Export Administration Regulations ("EAR", 15 CFR 730 et seq., http://www.bis.doc.gov/) administered by the Department of Commerce, Bureau of Industry and Security, and the Foreign Asset Control Regulations (31 CFR 500 et seq., http://www.treas.gov/offices/enforcement/ofac/) administered by the Department of Treasury, Office of Foreign Assets Control ("OFAC"). Receiving Parties may not directly or indirectly export, re-export, transfer, or release (collectively, "Export") any Designated QUALCOMM Material to any destination, person, entity, or end user prohibited or restricted under US law without prior US government authorization to the extent required by regulation. The US government maintains embargoes and sanctions against the countries listed in Country Groups E:1/2 of the EAR (Supplement 1 to part 740) Export Controlled Information disclosed in this action will be used only for the purposes of this action. Outside Counsel or other individuals authorized

to receive Export Controlled Information will not disclose, export, or transfer, in any manner, Export Controlled Information to any foreign person except as permitted by U.S. law, and will not transport any such document outside of U.S. territory, without prior written approval of the Bureau of Industry and Security or other appropriate U.S. government department or agency, except as permitted by U.S. law.

26. Receiving Party may host "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" Material only on either 1) any system inside the firewall of a law firm representing the Receiving Party, or 2) inside the system of a professional ESI Vendor retained by Counsel of Record of the Receiving Party. "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" Material also cannot be sent or transmitted to any person, location, or vendor outside of the United States except to Counsel of Record and Outside Consultants designated pursuant to subparagraphs 21(c) and 22(c) above. To the extent that any "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" Material is transmitted from or to authorized recipients outside of the Receiving Party's Outside Counsel's office, or outside of the ESI Vendor's system, the transmission shall be by hand (and encrypted if in electronic format), by a secure transport carrier (e.g., Federal Express), or by secure electronic means, such as email using an encrypted password protected container (other than Truecrypt), or download via secure FTP. "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" may not be transmitted by electronic means; however, this should not be understood to prohibit the electronic transmittal of testifying experts' expert reports or drafts, court filings, and trial demonstratives, thereof that may refer to QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE, subject to the limitations set forth in paragraph 31(g) herein, and as long as such electronic transmittal is by secure electronic means, such as email using an encrypted password protected container (other than Truecrypt), or download via secure FTP. Court filings containing QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY and QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE may be submitted via the Court's ECF filing system subject to the limitations set forth in paragraphs 31(g) and 38 herein.

27. Each person to whom Designated QUALCOMM Material may be disclosed, and who is required to sign the "Acknowledgement And Agreement To Be Bound By Supplemental Protective Order Governing Confidential Information of Non-Party Qualcomm In This Case" attached hereto as Exhibit A and, if applicable, the "Certification Of Consultant Re Supplemental Protective Order Governing Confidential Information of Non-Party Qualcomm In This Case," attached hereto as Exhibit B, shall do so, prior to the time such Designated QUALCOMM Material is disclosed to him or her. Counsel for the Receiving Party who makes any disclosure of Designated QUALCOMM Material shall retain each original executed certificate and, upon written request, shall provide copies to counsel for Non-Party QUALCOMM at the termination of this action.

28. Absent written permission from Non-Party QUALCOMM, persons not permitted access to Designated QUALCOMM Material under the terms of this Supplemental Protective Order shall not be present at depositions while Designated QUALCOMM Material is discussed or otherwise disclosed. Pre-trial and trial proceedings shall be conducted in a manner, subject to the supervision of the Court, to protect Designated QUALCOMM Material from disclosure to persons not authorized to have access to such Designated QUALCOMM Material. Any Party intending to disclose or discuss Designated QUALCOMM Material at pretrial or trial proceedings must give advance notice to the Producing Party to assure the implementation of the terms of this Supplemental Protective Order.

V. ACCESS BY OUTSIDE CONSULTANTS

29. Notice. If a Receiving Party wishes to disclose Designated QUALCOMM Material to any Outside Consultant, Receiving Party must, prior to the Outside Consultant being granted access to any Designated QUALCOMM Material, provide notice to counsel for Non-Party QUALCOMM, which notice shall include: (a) the individual's name and business title; (b) country of citizenship; (c) business address; (d) business or profession; (e) the individual's CV; (f) any previous or current relationship (personal or professional) with Non-Party QUALCOMM or any of the Parties to this action; (g) a list of other cases in which the individual has testified (at trial or

deposition) within the last six years; (h) a list of all companies with which the individual has consulted or by which the individual has been employed within the last four years, the dates of the consultancy or employment, a brief description of the subject matter of the consultancy or employment, and (i) copies of the "Acknowledgement and Agreement To Be Bound By Supplemental Protective Order Governing Confidential Information of Non-Party Qualcomm In This Case," attached as Exhibit A, and the "Certification Of Consultant Re Supplemental Protective Order Governing Confidential Information of Non-Party Qualcomm In This Case," attached hereto as Exhibit B, that have both been signed by that Outside Consultant.

30. Objections. With respect to Outside Consultants that have not been previously disclosed to Non-Party QUALCOMM, Non-Party QUALCOMM shall have five (5) business days, starting from the first business day following the date upon which Receiving Party provides the notice and all information required by paragraph 29 to Non-Party QUALCOMM, to object for good cause in writing to such disclosure (plus three (3) extra days if notice is given in any manner other than by hand delivery, e-mail delivery or facsimile transmission). After the expiration of the 5 business days (plus 3-days, if appropriate) period, if no objection for good cause has been asserted by Non-Party QUALCOMM, then Designated QUALCOMM Material may be disclosed to the Outside Consultant pursuant to the terms of this Supplemental Protective Order. Any objection by Non-Party QUALCOMM must be made for good cause, and must set forth in detail the grounds on which it is based. Should Receiving Party disagree with the basis for the objection(s), Receiving Party must first attempt to resolve the objection(s) informally with Non-Party QUALCOMM. If the informal efforts do not resolve the dispute within five (5) business days from the date upon which Receiving Party was first notified of any objection for good cause by Non-Party QUALCOMM, Receiving Party may file a motion requesting that the objection(s) be quashed after that five (5) day period has passed. Non-Party Qualcomm shall have the burden of proof by a preponderance of the evidence on the issue of the sufficiency of the objection(s). Pending a ruling by the Court upon any such objection(s), or the subsequent resolution of the

objection for good cause by Receiving Party and Non-Party QUALCOMM, the discovery material shall not be disclosed to the person objected to by Non-Party QUALCOMM.

VI. PRODUCTION OF QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE MATERIAL

31. Non-Party QUALCOMM's Source Code:

a. To the extent that a Producing Party makes Non-Party QUALCOMM's Source Code available for inspection:

(i) The Producing Party shall make all relevant and properly requested Non-Party QUALCOMM Source Code available electronically and in text searchable form (1) if produced by Non-Party QUALCOMM, in a separate room at a secure facility selected by Non-Party QUALCOMM or (2) if produced by Defendants, at the offices of Counsel of Record for the producing Defendant or at a secure facility approved by QUALCOMM. The Producing Party shall make the Source Code available for inspection on a stand-alone, non-networked personal computer running a reasonably current version of the Microsoft Windows operating system ("Source Code Computer"). Alternatively, solely at the option of the Producing Party, the Producing Party may make such source code available on a Source Code Computer that is networked, in a configuration deemed secure by Non-Party QUALCOMM. The Source Code Computer shall be configured to permit review of the Source Code through a password-protected account having read-only access. To facilitate review of the Source Code at the secure facility, the Receiving Party may use appropriate tool software on the Source Code Computer, which shall be installed by the Producing Party, including at least one text editor like Visual Slick Edit that is capable of printing out Source Code with page and/or line numbers, a source code comparison tool like Winmerge, and at least one multi-text file text search

tool such as "grep." Should it be necessary, other mutually agreed upon tools may be used. Licensed copies of other mutually agreed upon tool software shall be installed on the Source Code Computer by the Producing Party and paid for by the Receiving Party.

(ii) In the event a Producing Party makes Chip-Level Schematics or Integrated Circuit Layouts available for review, the Producing Party shall ensure that the Source Code Computers include software sufficient to allow a user to view the Chip-Level Schematics and Integrated Circuit Layouts.

b. The Producing Party shall provide access to the Source Code Computer during the normal operating hours of the secure facility.

c. The Source Code Computers shall be equipped to print PDF copies of the Source Code so that the Receiving Party can designate the Source Code for which it would like hard-copy printouts which shall be printed by the Producing Party on watermarked pre-Bates numbered paper after the review. Additionally, the Receiving Party may not print any continuous block of source code that results in more than 50 consecutive printed pages, except that Authorized Reviewer(s) may request the printing of a continuous block of more than 50 pages, which request shall not be unreasonably denied by the Producing Party. Counsel for the Producing Party will keep the original printouts, and shall provide copies of such original printouts to counsel for the Receiving Party within seven (7) days of (1) any request by the Receiving Party, or (2) otherwise being notified that such original printouts have been made or designated. Counsel of Record for the Receiving Party may request up to 10 copies of each original printout of Source Code. No more than 10% or 500 pages of the total Source Code (not including copies of original printouts) whichever is greater, for any software release (or in the case of hardware Source Code, for any hardware product), no more than

500 pages of Chip-Level Schematics, and no continuous blocks of Source Code or Chip-Level Schematics that exceed 50 pages, may be in printed form at any one time, without the express written consent of Non-Party QUALCOMM, which shall not be unreasonably denied. All printed Source Code shall be logged by Receiving Party's Counsel of Record and/or other Personnel Retained by a Receiving Party in this action as noted in subparagraph 31(j) below. No additional electronic copies of the Source Code shall be provided by the Producing Party. Hard copies of the Source Code also may not be converted into an electronic document, and may not be scanned using optical character recognition ("OCR") technology. Only printouts of Source Code may be made, and such printouts must include (1) directory path information and filenames from which the Source Code came and (2) line numbers. The Producing Party may refuse to provide copies of Source Code printouts that fail to comply with this section.

d. Authorized Reviewer(s) in this action shall not print Source Code which have not been reviewed on the Source Code Computer, or in order to review the Source Code elsewhere in the first instance, i.e., as an alternative to reviewing that Source Code electronically on the Source Code Computer, as the Parties and QUALCOMM acknowledge and agree that the purpose of the protections herein would be frustrated by such actions.

e. Authorized Reviewer(s) are prohibited from bringing outside electronic devices, including but not limited to laptops, floppy drives, zip drives, or other hardware into the secure room, except as outlined in Paragraph 31(f). Nor shall any cellular telephones, personal digital assistants (PDAs), Blackberries, cameras, voice recorders, Dictaphones, external or portable telephone jacks or other outside electronic devices be permitted inside the

secure room, except for medical devices, implants, or equipment reasonably necessary for any legitimate medical reason.

f. If any Authorized Reviewer(s) reviewing Non-Party QUALCOMM's Source Code seeks to take notes, all such notes will be taken on bound (spiral or other type of permanently bound) notebooks. No loose paper or other paper that can be used in a printer may be brought into the secure room. In addition to taking notes on bound notebooks, an Authorized Reviewer may also bring a USB memory device to the secure room, to be inserted into a notetaking laptop computer provided by the Producing Party or the Producing Party's vendor. The notetaking laptop computer shall be configured with Microsoft Word, such that the Reviewing Party can create or modify documents directly on the USB memory device plugged into the notetaking laptop computer. The Receiving Party shall encrypt any file on the USB memory device that contains confidential material subject to this Supplemental Protective Order using Microsoft Word's "Encrypt with Password" functionality accessible through the File->Info->Protect Document menu in Microsoft Word. The Receiving Party's Outside Counsel and/or experts may not copy the Source Code Material into the notes and may not take such notes electronically on the Source Code Computer itself. Unless otherwise agreed in advance by the Parties in writing, following each day on which inspection is done under this Order, the Receiving Party's Outside Counsel and/or experts shall remove all notes, documents, USB memory devices, and all other materials from the Source Code Review Room. The Producing Party shall not be responsible for any items left in the room following each inspection session, and the Receiving Party shall have no expectation of confidentiality for any items left in the

room following each inspection session without a prior agreement to that effect.

g. If Qualcomm's Source Code is quoted or set forth in a confidential pleading, infringement contention, or expert report, the Party including the Source Code will limit the amount of such Source Code to what is reasonably necessary for the party to make its point and will designate such documents QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE. Absent Qualcomm's consent (which will not be unreasonably withheld), an excerpt of programming language text will not exceed five (5) continuous lines of code, and an excerpt of Chip-Level Schematics or Integrated Circuit Layouts will not exceed five (5) sequential pages of printouts of such material.

h. Except as approved by QUALCOMM, longer excerpts shall not be copied for use in court documents but shall be referred to by citation to production page numbers and lines. A Receiving Party shall provide notice to QUALCOMM or its counsel for each occasion on which it submits portions of Designated Source Code Material in a pleading or other Court document. In the event copies of Source Code printouts are used as exhibits in a deposition or trial, printouts shall not be provided to the court reporter, and the further copies of the original QUALCOMM Source Code printouts made for the deposition or trial shall be destroyed at the conclusion of the deposition or trial. The original copies of deposition exhibits designated "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" will be maintained by the deposing party under the terms set forth in this Supplemental Protective Order.

i. In addition to other reasonable steps to maintain the security and confidentiality of Non-Party QUALCOMM's Source Code, printed copies

of the Designated Source Code Material maintained by the Receiving Party must be kept in a locked storage container when not being actively reviewed or otherwise being transferred as permitted by the Protective Order and/or this Supplemental Protective Order.

j. The Receiving Party's Counsel of Record shall keep log(s) recording the identity of each individual to whom each hard copy of each Producing Party's QUALCOMM Source Code is provided and when it was provided to that person in the first instance, and within thirty (30) days after the issuance of a final, non-appealable decision resolving all issues in this action, the Receiving Party must serve upon Non-Party QUALCOMM the log. In addition, any Outside Consultants of the Receiving Party to whom the paper copies of the QUALCOMM Source Code were provided must certify in writing that all copies of the QUALCOMM Source Code were destroyed or returned to the counsel who provided them the information and that they will make no use of the Source Code, or of any knowledge gained from the source code in any future endeavor.

VII. PROCEDURE FOR DESIGNATING MATERIALS

32. Subject to the limitations set forth in the Protective Order and in this Supplemental Protective Order, any Party or Non-Party QUALCOMM may: designate as "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" or information that it believes, in good faith, meets the definition set forth in paragraph 2 above; and designate as "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" information that it believes, in good faith, meets the definition set forth in paragraph 4 above.

33. Except as provided above in paragraph 32 with respect to "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" Material, any material, including (including physical objects) made available by Non-Party QUALCOMM for initial inspection by counsel for the Receiving Party prior to producing copies of selected items shall initially be

considered, as a whole, to constitute "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" information, and shall be subject to this Order. Thereafter, Non-Party QUALCOMM shall have seven (7) calendar days from the inspection to review and designate the appropriate documents as "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" prior to furnishing copies to the Receiving Party.

34. Designation in conformity with the Protective Order and this Supplemental Protective Order shall be made as follows:

a. For information in documentary (including "electronically stored information") form (apart from transcripts of depositions or other pretrial or trial proceedings): the Designating Party shall affix the legend "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" conspicuously on each page that contains Protected Material.

A party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the Receiving Party has indicated which material it would like copied or produced. Before and during the inspection, all material made available for inspection shall be deemed "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY." After the Receiving Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order and, before producing the specified documents, the Producing Party must affix the appropriate legend to each page that contains Designated QUALCOMM Material.

b. For Testimony Given in Deposition: For deposition transcripts, the Designating Party shall specify any portions of the testimony that it wishes to designate, by line and page number, no later than 20 business days after

the final transcript of the deposition has been received. The Party or Non-Party may identify the entirety of the transcript as "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE," but all deposition transcripts not designated during the deposition will nonetheless be treated as "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE," until the time within which it may be appropriately designated as provided for herein has passed. Any Protected Material that is used in the taking of a deposition shall remain subject to the provisions of this Supplemental Protective Order and the Protective Order in these actions, along with the transcript pages of the deposition testimony dealing with such Protected Material. In such cases the court reporter shall be informed of this Supplemental Protective Order and shall be required to operate in a manner consistent with this Supplemental Protective Order. Transcript pages containing Designated Material must be separately bound by the court reporter, who must affix to the top of each such page the legend "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" and/or "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE." An encrypted, password protected copy of deposition transcripts containing Designated Qualcomm Material made pursuant to this paragraph may be hosted electronically by the Receiving Party on any system inside the firewall of a law firm representing the Receiving Party, however, all other restrictions in this Supplemental Protective Order pertaining to Designated Source Code Material apply. In the event the deposition is videotaped, the original and all copies of the videotape shall be marked by the video technician to indicate that the contents of the videotape are subject

to this Supplemental Protective Order and the Protective Order, substantially along the lines of "This videotape contains confidential or outside counsel eyes only confidential testimony used in this case and is not to be viewed or the contents thereof to be displayed or revealed except pursuant to the terms of the operative protective orders in this matter or pursuant to written stipulation of the parties." Counsel for any Designating Party shall have the right to exclude from oral depositions, other than the deponent, deponent's counsel, and the reporter and videographer (if any), any person who is not authorized by the Protective Orders in this action to receive or access Protected Material based on the designation of such Protected Material.

c. For information produced in some form other than documentary, and for any other tangible items, the Designating Party shall affix, in a prominent place on the exterior of the medium, container or containers in which the information or item is stored, the appropriate legend.

d. The provisions of subparagraphs 34(a-c) do not apply to documents produced in native format. For documents produced in native format, the parties shall provide written notice to the Receiving Party of any confidentiality designations at the time of production.

VIII. USE OF DESIGNATED QUALCOMM MATERIAL

35. Use of Designated QUALCOMM Material By Receiving Party: Unless otherwise ordered by the Court, or agreed to in writing by Non-Party QUALCOMM, all Designated QUALCOMM Material, and all information derived therefrom, shall be used by the Receiving Party only for purposes of this action, and shall not be used in any other way, or for any other purpose, including the acquisition, preparation or prosecution before the Patent office of any patent, patent application, for drafting or revising patent claims, or in connection with patent licensing or product development work directly or indirectly intended for commercial purposes

related to the particular technologies or information disclosed in the Designated QUALCOMM Material. Information contained or reflected in Designated QUALCOMM Material shall not be disclosed in conversations, presentations by parties or counsel, in court or in other settings that might reveal Designated QUALCOMM Material, except in accordance with the terms of the Protective Order or this Supplemental Protective Order. No Designated QUALCOMM Material shall be transmitted or transported outside of the United States, communicated to any recipient who is located outside of the United States, or communicated to any recipient who is not a citizen or lawful permanent resident of the United States for any purpose whatsoever without the express written permission of QUALCOMM. Nothing in this Supplemental Protective Order shall prohibit the transmission or communication of Designated QUALCOMM Material between or among qualified recipients located in the United States who are citizens or lawful permanent residents of the United States, by hand delivery or, subject to the other requirements of this Supplemental Protective Order, by telephone, facsimile, or other electronic transmission system, where, under the circumstances, there is no reasonable likelihood that the transmission will be intercepted or misused by any person who is not an Authorized Reviewer.

36. Use of Designated QUALCOMM Material by Non-Party QUALCOMM: Nothing in this Supplemental Protective Order shall limit Non-Party QUALCOMM's use of its own documents and information, nor shall it prevent Non-Party QUALCOMM from disclosing its own confidential information, documents, or things to any person. Such disclosure shall not affect any designations made pursuant to the terms of this Supplemental Protective Order, so long as the disclosure is made in a manner that is reasonably calculated to maintain the confidentiality of the information.

37. Use of Designated QUALCOMM Material at Deposition: Non-Party QUALCOMM shall, on request prior to the deposition, make a searchable electronic copy of the QUALCOMM Source Code available on a stand-alone computer connected to a printer during depositions of QUALCOMM personnel otherwise permitted access to such Source Code. To the extent required, the party conducting the deposition may print additional pages of Source Code

printouts to be marked as exhibits at such depositions consistent with other provisions and limitations of the Protective Order and this Supplemental Protective Order. Except as may be otherwise ordered by the Court, any person may be examined as a witness at depositions and trial, and may testify concerning all Designated QUALCOMM Material of which such person has prior knowledge.

38. Use of Designated Qualcomm Material in Motions or Briefs: The parties will give Non-Party QUALCOMM prior notice of, and an opportunity to object to, any intended use of or descriptive reference to (such as a descriptive citation made by experts in their expert reports) Designated QUALCOMM Material in any motion, brief, or pre-trial submission in this case. Said notice shall, (a) using best efforts, be served on counsel for Non-Party QUALCOMM three days prior to filing of the motion or brief, (b) identify the Designated QUALCOMM Material with specificity while redacting any other Party's Confidential Business Information, and (c) identify the measures the party intends to rely upon to protect the Designated QUALCOMM Material when used in any motion or brief consistent with this Supplemental Protective Order. The parties shall take all necessary steps to protect and maintain the confidentiality of any such Designated QUALCOMM Material, including but not limited to redacting the confidential material and applying for or seeking an order to seal such material, which Non-Party Qualcomm will support by providing an appropriate declaration in support thereof if requested to do so. Should such a party-filed application or motion to seal, or any portions thereof, be denied by the court, the parties shall immediately notify Non-Party QUALCOMM so it can assess the situation and, if necessary, file appropriate motions to maintain or protect the confidentiality of any Designated QUALCOMM Material left unsealed by such an order.

39. Use of Designated QUALCOMM Material at Hearing or Trial: The parties will give Non-Party QUALCOMM prior notice of, and an opportunity to object to, any intended use of the Designated QUALCOMM Material at any hearing or trial in this case. Said notice shall (a) be served by facsimile or email on counsel for Non-Party QUALCOMM at least five (5) business days prior to the hearing or first day of trial, (b) identify the Designated QUALCOMM Material

with specificity while redacting any other Party's Confidential Business Information and (c) identify the measures the party intends to rely upon to protect the Designated QUALCOMM Material when used at any hearing or trial consistent with this Supplemental Protective Order. This section shall not limit in any way the use of Designated QUALCOMM Material during the cross-examination of any witness otherwise permitted access to such Designated QUALCOMM Material, as long as the parties take all necessary steps to protect and maintain the confidentiality of any such Designated QUALCOMM Material.

IX. PROSECUTION AND DEVELOPMENT BAR

40. Unless otherwise permitted in writing between Producing Party and Receiving Party, any individual who personally receives, other than on behalf of Producing Party, any material designated "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" shall not participate in amending or drafting patent specifications or claims before a Patent Office of any patent or patent application related to the information disclosed in the Designated QUALCOMM Material, from the time of receipt of such material through the date the individual person(s) cease to have access to materials designated "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE," as well as any materials that contain or disclose Designated QUALCOMM Material. This provision shall not apply to post-grant proceedings, including without limitation reexamination, covered business method (CBM), inter partes review (IPR), post grant review (PGR), or opposition proceedings.

41. Unless otherwise permitted in writing between Non-Party QUALCOMM and Receiving Party, any Outside Consultant retained on behalf of Receiving Party who is to be given access to Non-Party QUALCOMM's documents, Source Code, Chip-Level Schematics or Integrated Circuit Layouts designated as "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" must agree in writing, using the form in Exhibit B, not to perform hardware or software development

work or product development work directly or indirectly intended for commercial purposes related to the information disclosed in the Designated QUALCOMM Material, which is not publicly known, from the time of first receipt of such material through the date the expert consultant ceases to have access to any material designated "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE," as well as any materials that contain or disclose Designated QUALCOMM Material.

X. DESIGNATED QUALCOMM MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

42. If a Receiving Party is served with a subpoena or a court order that would compel disclosure of any information, documents or things designated in this action as "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE," Receiving Party must notify the Producing Party and Non-Party QUALCOMM of such information, documents or things, in writing (by fax and email) promptly, and in no event more than ten (10) calendar days after receiving the subpoena or order. Such notification must include a copy of the subpoena or order. Receiving Party also must immediately inform, in writing, the party who caused the subpoena or order to issue that some or all of the material covered by the subpoena or order is subject to this Supplemental Protective Order and the Protective Order. In addition, the Receiving Party must provide a copy of this Supplemental Protective Order and the Protective Order promptly to the party in the other action that caused the subpoena or order to issue. The purpose of imposing these duties is to alert the interested parties to the existence of this Supplemental Protective Order and the Protective Order, and to afford the Party whose Designated QUALCOMM Material in this case is at issue in the other case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. Producing Party shall bear the burdens and the expenses of seeking protection in that court of its Designated QUALCOMM Material. Nothing in these provisions should be construed as authorizing or encouraging any Receiving Party in this action to disobey a lawful directive from another court.

XI. UNAUTHORIZED DISCLOSURE OF DESIGNATED QUALCOMM MATERIAL

43. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Designated QUALCOMM Material to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately (a) notify in writing Producing Party and Non-Party QUALCOMM of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Designated QUALCOMM Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound By Supplemental Protective Order Governing Confidential Information of Non-Party Qualcomm In This Case" that is attached hereto as Exhibit A. Nothing in these provisions should be construed as limiting any Producing Party's rights to seek remedies for a violation of this Supplemental Protective Order.

XII. DURATION

44. Even after the termination of this action, the confidentiality obligations imposed by this Supplemental Protective Order shall remain in effect following the termination of this action, or until Non-Party QUALCOMM agrees otherwise in writing or a court order otherwise directs.

XIII. FINAL DISPOSITION

45. Unless otherwise ordered or agreed in writing by Producing Party, within sixty (60) days of the termination of all of this action, whether through settlement or final judgment (including any and all appeals therefrom), each Receiving Party, including Outside Counsel for each Receiving Party, will destroy all Designated QUALCOMM Material produced by Non-Party QUALCOMM or any other Party in this action and will destroy or redact any such Designated QUALCOMM Material included in work product, pleadings, motion papers, legal memoranda, correspondence, trial transcripts and trial exhibits admitted into evidence ("derivations") and all copies thereof, with the exception of copies stored on back-up tapes or other disaster recovery media. This destruction obligation includes all files on USB memory devices used while inspecting Qualcomm's Source Code. Within sixty (60) days of the date of settlement or final judgment, each Receiving Party shall serve Non-Party QUALCOMM with a certification stating that it, including

its Outside Counsel, has complied with its obligations under this paragraph. With respect to any copy of Designated QUALCOMM Material or derivation thereof that remains on back-up tapes and other disaster storage media of an Authorized Reviewer(s), neither the Authorized Reviewer(s) nor its consultants, experts, counsel or other party acting on its behalf shall make copies of any such information available to any person for any purpose other than backup or disaster recovery unless compelled by law and, in that event, only after thirty (30) days prior notice to Producing Party or such shorter period as required by court order, subpoena, or applicable law.

So ORDERED and SIGNED this 7th day of June, 2023.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

G+ COMMUNICATIONS, LLC, *Plaintiff*, v. SAMSUNG ELECTRONICS CO. LTD., SAMSUNG ELECTRONICS AMERICA, INC., *Defendants*.	§ § § § § § § § § § § §	CIVIL ACTION NO. 2:22-CV-00078-JRG

CLAIM CONSTRUCTION MEMORANDUM OPINION AND ORDER

G+ Communications, LLC, alleges infringement by Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc., (together "Samsung") of claims from U. S. Patents 8,761,776, 9,184,881, 10,448,430, 10,594,443, and 10,736,130. Generally, the patents relate to wireless communications, such as LTE systems. *See* '776 Patent at 1:6–7 ("The present invention relates to the field of communications, particularly to a cell reselection method and terminal."); '881 Patent at 1:13–15 ("The present invention relates to communication field [sic], and in particular to a method for feeding back confirmation information on a physical uplink shared channel[.]"); '430 Patent at 1:6–8 ("The present disclosure relates to . . . the field of communications, and in particular to a random access method, device and system."); '443 Patent at 1:16–20 ("The present disclosure relates to . . . wireless communication technology, particularly to a method for transmitting [and receiving HARQ] information[.]"); '130 Patent at 1:7–10 ("The disclosure relates to an uplink control signal transmission technology, and in particular to a method and device for uplink control signal transmission, a user terminal and a storage medium.").

In their briefing, the parties dispute the scope of fifteen terms and phrases, with Samsung challenging many of the terms as indefinite. Having considered the parties' briefing and arguments of counsel during a June 1, 2023 hearing, the Court resolves the disputes as follows.

I. GENERAL LEGAL STANDARDS

A. Generally

"[T]he claims of a patent define the invention to which the patentee is entitled the right to exclude." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc). As such, if the parties dispute the scope of the claims, the court must determine their meaning. *See, e.g.*, *Verizon Servs. Corp. v. Vonage Holdings Corp.*, 503 F.3d 1295, 1317 (Fed. Cir. 2007); *see also Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 390 (1996), *aff'g*, 52 F.3d 967, 976 (Fed. Cir. 1995) (en banc).

Claim construction, however, "is not an obligatory exercise in redundancy." *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997). Rather, "[c]laim construction is a matter of [resolving] disputed meanings and technical scope, to clarify and when necessary to explain what the patentee covered by the claims . . . ." *Id.* A court need not "repeat or restate every claim term in order to comply with the ruling that claim construction is for the court." *Id.*

When construing claims, "[t]here is a heavy presumption that claim terms are to be given their ordinary and customary meaning." *Aventis Pharm. Inc. v. Amino Chems. Ltd.*, 715 F.3d 1363, 1373 (Fed. Cir. 2013) (citing *Phillips*, 415 F.3d at 1312–13). Courts must therefore "look to the words of the claims themselves . . . to define the scope of the patented invention." *Id.* (citations omitted). The "ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Phillips*, 415 F.3d at 1313. This "person of ordinary

skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Id.*

Intrinsic evidence is the primary resource for claim construction. *See Power-One, Inc. v. Artesyn Techs., Inc.*, 599 F.3d 1343, 1348 (Fed. Cir. 2010) (citing *Phillips*, 415 F.3d at 1312). For certain claim terms, "the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." *Phillips*, 415 F.3d at 1314; *see also Medrad, Inc. v. MRI Devices Corp.*, 401 F.3d 1313, 1319 (Fed. Cir. 2005) ("We cannot look at the ordinary meaning of the term . . . in a vacuum. Rather, we must look at the ordinary meaning in the context of the written description and the prosecution history."). But for claim terms with less-apparent meanings, courts consider "those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean . . . [including] the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art." *Id.*

B. Means-Plus-Function Claiming

A patent claim may be expressed using functional language. *See* 35 U.S.C. § 112 ¶ 6 (pre-AIA); *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1347–49 & n.3 (Fed. Cir. 2015) (en banc in relevant portion). Under 35 U.S.C. § 112 ¶ 6, a structure may be claimed as a "means . . . for performing a specified function," and an act may be claimed as a "step for performing a specified function." *Masco Corp. v. United States*, 303 F.3d 1316, 1326 (Fed. Cir. 2002). When it applies, § 112 ¶ 6 limits the scope of the functional term "to only the structure, materials, or acts described

in the specification as corresponding to the claimed function and equivalents thereof." *Williamson*, 792 F.3d at 1347.

But § 112 ¶ 6 does not apply to all functional claim language. There is a rebuttable presumption that § 112 ¶ 6 applies when the claim language includes "means" or "step for" terms, and a rebuttable presumption it does *not* apply in the absence of those terms. *Masco Corp.*, 303 F.3d at 1326; *Williamson*, 792 F.3d at 1348. These presumptions stand or fall according to whether one of ordinary skill in the art would understand the claim with the functional language, in the context of the entire specification, to denote sufficiently definite structure or acts for performing the function. *See Media Rights Techs., Inc. v. Capital One Fin. Corp.*, 800 F.3d 1366, 1372 (Fed. Cir. 2015) (noting § 112 ¶ 6 does not apply when "the claim language, read in light of the specification, recites sufficiently definite structure" (quotation marks omitted) (citing *Williamson*, 792 F.3d at 1349; *Robert Bosch, LLC v. Snap-On Inc.*, 769 F.3d 1094, 1099 (Fed. Cir. 2014))); *Williamson*, 792 F.3d at 1349 (noting § 112 ¶ 6 does not apply when "the words of the claim are understood by persons of ordinary skill in the art to have sufficiently definite meaning as the name for structure"); *Masco Corp.*, 303 F.3d at 1326 (noting § 112 ¶ 6 does not apply when the claim includes an "act" corresponding to "how the function is performed"); *Personalized Media Commc'ns, LLC v. I.T.C.*, 161 F.3d 696, 704 (Fed. Cir. 1998) (noting § 112 ¶ 6 does not apply when the claim includes "sufficient structure, material, or acts within the claim itself to perform entirely the recited function . . . even if the claim uses the term 'means.'" (quotation marks and citation omitted)). *See also Williamson*, 792 F.3d at 1350 (noting "'[m]odule' is a well-known nonce word that can operate as a substitute for 'means' in the context of § 112, para. 6").

C. Indefiniteness

"[A] patent is invalid for indefiniteness if its claims, read in light of the specification

delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instruments, Inc*., 572 U.S. 898, 901 (2014). The claims "must be precise enough to afford clear notice of what is claimed," but that consideration must be made while accounting for the inherent limitations of language. *Id.* at 908; *see also Williamson*, 792 F.3d at 1352 ("Under 35 U.S.C. § 112, paras. 2 and 6, . . . if a person of ordinary skill in the art would be unable to recognize the structure in the specification and associate it with the corresponding function in the claim, a means-plus-function clause is indefinite."). "Indefiniteness must be proven by clear and convincing evidence." *Sonix Tech. Co. v. Publ'ns Int'l, Ltd.*, 844 F.3d 1370, 1377 (Fed. Cir. 2017).

II. THE LEVEL OF ORDINARY SKILL IN THE ART

The level of ordinary skill in the art is the skill level of a hypothetical person who is presumed to have known the relevant art at the time of the invention. *In re GPAC*, 57 F.3d 1573, 1579 (Fed. Cir. 1995). In resolving the appropriate level of ordinary skill, courts consider the types of and solutions to problems encountered in the art, the speed of innovation, the sophistication of the technology, and the education of workers active in the field. *Id.* Importantly, "[a] person of ordinary skill in the art is also a person of ordinary creativity, not an automaton." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007).

Here, G+ asserts a skilled artisan "would have had a bachelor's degree in electrical engineering, computer engineering, computer science, or a related field, and three to four years experience in the design and development of wireless communications systems." Dkt. No. 98 at 1. Samsung does not dispute that skill level. Accordingly, the Court adopts G+'s characterization of a skilled artisan for its analysis.

III. U.S. PATENT 8,761,776

A. Background

In 3G wireless systems, terminal devices measure the signal quality of different potential cells and compare those measurements to the signal quality of the cell currently serving the device. *See* '776 Patent at 1:27–30. If the measured signal quality of a neighboring cell is "better" (as determined by the system settings) than the serving cell, the terminal will opt for the better quality cell. *See id.* at 1:30–33.

This process works by mapping the measured values of the serving and neighboring cells to "cell reselection assessment values," designated "R_s" and "R_n," respectively. *See id.* at 1:34–39. R_s is compared with each R_n, and the cells are ranked according to R values. *Id.* If the highest ranked cell is not the serving cell, the terminal moves to the best cell. *See id.* at 1:39–42.

In certain systems, the terminal calculates R_s as the sum of the measured signal quality of the serving cell ($Q_{meas,\,s}$) and a hysteresis parameter (Q_{hysts}). In other words,

$$R_s = Q_{meas,\,s} + Q_{hysts}.$$

See id. at 1:47–57. Similarly, the terminal calculates R_n for each neighboring cell as the difference between the measured signal quality of the cell ($Q_{meas,\,n}$) and a level offset parameter (Q_{offset}), so

$$R_n = Q_{meas,\,n} - Q_{offset}.$$

Id. After the terminal calculates R_s and each R_n, the terminal ranks all R values and determines whether to transfer to a new cell. *See id.* at 1:57–60. Because this process depends "on not only the radio quality of these cells but also on the value of Qoffset, the foregoing reselection method through ranking R values is also called an offset-based cell reselection method." *Id.* at 1:60–65. Terminals, however, only select the best cell using this method if the selection is performed among cells on the same frequency, because "inter-frequency measurement requires the terminal to switch

the resonant frequency of a receiver." *Id.* at 2:2–9.

The patent, however, purports to teach a method of reselection among cells on *multiple* frequencies using a "priority-based reselection method." According to that method, the terminal first selects cells on multiple frequencies with the same priority according to a priority-based re-selection *principle*, and cells on multiple frequencies of the same priority become "same-priority cells." *See generally id.* at 2:36–67.

The patent only has three claims, all of which are at issue. Claim 1 recites the method and includes three of the five disputed terms from the '776 Patent:

> 1. A cell reselection method, by which a terminal, which is currently associated with a serving cell on a serving frequency with a first priority, performs reselection among cells on multiple frequencies, other than the serving frequency, with a second priority, the method including:
>
> setting the cells on multiple frequencies with the second priority as *same-priority cells*;
>
> selecting cells on multiple frequencies with the second priority according to a priority-based reselection principle when a terminal performs cell reselection; and
>
> selecting a cell as a reselected cell by the terminal from among the *same-priority cells* based on a best-cell reselection principle,
>
> wherein the *same-priority cells* include one of the following:
>
> cells on multiple frequencies with the second priority that is higher than the first priority;
>
> cells on multiple frequencies with the second priority that is lower than the first priority; and
>
> a serving cell, and cells on the serving frequency and on one or more frequencies having the same priority with the serving frequency,
>
> *wherein the priority of the same-priority cells is equal to the*

absolute priority of corresponding frequencies, and

wherein the best-cell reselection principle is an *offset-based cell reselection principle*.

'776 Patent at 6:58–7:16 (disputed terms italicized). Claim 2 is directed to a terminal that implements the method and includes first and second "reselection modules" used to select cells. *See id.* at 7:17–8:18.

B. Disputed Terms From the '776 Patent

1. "offset-based reselection principle" (Claims 1–2)

G+'s Construction	Samsung's Construction
"using Qoffset as a variable for reselection"	"Rs=Qmeas,s+Qhysts, Rn=Qmeas,n−Qoffset, wherein s stands for a serving cell, n stands for a neighbouring cell, Qmeas,s stands for a measured level of a serving cell, Qmeas,n stands for a measured level of a neighbouring cell, Qhysts stands for the hysteresis of a serving cell, and Qoffset stands for a level offset of a neighbouring cell. After the calculation is completed, the terminal will rank all R values. The one ranked first is the best cell, the terminal will select the best cell when performing reselection."

This dispute concerns lexicography. Samsung contends the specification provides an express definition for this term in the Background, which it proposes as its construction. Dkt. No. 101 at 1–2 (citing '776 Patent at 1:47–64). G+ argues Samsung's construction imports limitations, and the "offset-based reselection principle" requires only that Q_{offset} be used as a variable for reselection. *See* Dkt. No. 98 at 2–3. Further, G+ contends the specification does not define the term. *Id.*

The Court agrees with G+. "To act as its own lexicographer, a patentee must 'clearly set

forth a definition of the disputed claim term' other than its plain and ordinary meaning." *Thorner v. Sony Comput. Entm't Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012) (citing *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002)). Here, the last sentence of the cited passage links the disputed phrase not to the specific formula recited earlier, but on the radio quality of the neighboring cells and the value of Q_{offset}. *See* '776 Patent at 1:61–63 ("the difficulty of reselection among neighbouring cells lies on *not only the radio quality of these cells but also on the value of Qoffset*" (emphasis added)). Thus, the method is "called an offset-based cell reselection method." *Id.* at 1:63–65. This comports with the ordinary meaning of words making up the phrase—that is, "an offset-based cell reselection method" is "a reselection method based on an offset." That does not require the method to be based on *more* than Q_{offset}, nor does it exclude that possibility. This phrase is not clearly defining "offset-based cell reselection principle" to mean the specifically recited formula. Accordingly, the Court adopts G+'s construction for this term: "using Qoffset as a variable for reselection."[1]

2. "same-priority cells" (Claims 1–2)

G+'s Construction	Samsung's Construction
Plain and ordinary meaning	"cells assigned a same cell priority"

Samsung argues its construction "simply clarifies what the intrinsic record requires"—that to practice the claimed method, cells "must be assigned a priority in addition to the established priorities associated with the frequencies on which [they] operate." Dkt. No. 101 at 3. It points to alleged disavowal from the prosecution history. *Id.* at 4. G+ counters that Samsung's construction

[1] During the hearing, Samsung criticized G+'s construction for not "even contemplate[ing] calculating R values," Hr'g Tr., Dkt. No. 117 at 11:20–21, but G+ agreed "the best cell reselection principle is described by calculating the R values," *id.* at 15:2–4.

would confuse the jury and contradicts the claim language. Dkt. No. 98 at 4.

The Court rejects Samsung's construction for two reasons. First, although Samsung asserts the patent repeatedly teaches "setting" cells *to* a same priority, Dkt. No. 101 at 2, the patent never uses that language. Rather, the patent teaches "setting" cells *as* "same-priority cells." *See, e.g.*, '776 Patent at [57] ("The method includes: cells on multiple frequencies with the same priority *are set as* same-priority cells." (emphasis added)); *id.* at 4:18–21 ("[T]he present invention provides a technical solution for cell reselection, wherein cells on multiple frequencies with the same priority *are set as same-priority cells*." (emphasis added)). In other words, "same-priority cells" are simply a grouping of cells with the same priority into a logical "bucket." While the claims later limit the priority of "same-priority cells" to a value, *see* '776 Patent at 7:13–14, the claim language does not require that value be established through "assignment." Notably, neither example from the specification describes an "assignment" of a cell priority to the same-priority cells. *See id.* at 5:4–63.

Second, the Court is not persuaded by Samsung's "disavowal" argument. Samsung emphasizes two statements made during prosecution: (1) the cited reference's "disclosure of 'equal priority' relates to the priority of the frequency of the cell, rather than the priority of the cell"; and (2) "the priority of the frequency of the cell and the priority of the cell are distinct concepts." Dkt. No. 101 at 4 (citing Dkt. No. 98-5 at GCOM000891). In the same paragraph, the applicants wrote:

> Huawei does not disclose or suggest searching and ranking based on the priority of the cell. *In other words, Huawei does not disclose or suggest which cells are considered by the UE as cells of equal priority prior to ranking*. Accordingly, Huawei does not disclose or suggest, at least, "setting the cells on multiple frequencies with the second priority as same-priority cells[.]"

Dkt. No. 98-5 at GCOM000891–892 (emphasis added).

None of these statements are inconsistent with G+'s position. That is, nothing in these

statements requires the "same-priority cells" to be *assigned* a priority—only that they be considered equal. Consistent with that notion, the specification discloses which cells are considered as cells of equal priority prior to ranking. Moreover, these arguments were made with respect to the entire "setting" limitation, not just the phrase "same-priority cells."

The Court does not find clear and unmistakable disavowal justifying Samsung's construction that "same-priority cells" are cells that have been assigned a value. Accordingly, the Court rejects Samsung's construction and will give this term its plain and ordinary meaning.

3. "wherein the priority of the same-priority cells is equal to the absolute priority of corresponding frequencies" (Claims 1–2)

G+'s Construction	Samsung's Construction
Not Indefinite. Plain and Ordinary meaning	Indefinite

This dispute overlaps with the dispute discussed *supra* over "same-priority cells." Samsung argues a skilled artisan "would not understand how the priority of a cell relates to priority of the frequency, which are two distinct concepts." Dkt. No. 101 at 4–5. Moreover, says Samsung, because the patent describes the method as an improvement of a prior-art "priority-based reselection method," a skilled artisan would not understand that "priority of the same-priority cells" is the absolute priority of the corresponding frequency. *Id.* at 5 (citing Min Decl., Dkt. No. 98-3 ¶ 71).

This term is not indefinite. Although certain cells were known to have the "same priority," the *value* of that priority is not specified. Instead, it is generally referred to as a "second priority" relative to the "first priority" of a serving frequency. The disputed phrase gives the cells' priority a value—the absolute value of the corresponding frequencies. That answers the question asked by Samsung: How does the priority of a cell relate to the priority of the frequency? They are equal.

Despite its "indefiniteness" challenge, Samsung appears to have the same understanding

of the claim language. During the hearing, Samsung noted the concept of ranking based on frequency (rather than cell) was well-known in the prior art. *See* Hr'g Tr., Dkt. No. 117 at 27:10–12. It argued that, despite the prosecution-history statements that the cell priority and frequency priority are "distinct concepts," the disputed "wherein" clause effectively negates that distinctiveness by making them equal:

> [Y]ou have this specification purposefully not equating these two things saying—and then the claim language, when you get through the claim language you're creating this second same-priority cell, and then you get to this ['wherein'] clause, and now all of the sudden I'm going backwards, I'm equating the two, that's the problem. . . . So either you're conflicting with the absolute requirements of the spec and the claim and the prosecution history, or you're creating an element that's not even—who cares about it. The 'wherein' clause, why would you have it? If we're just going to do the ranking based on frequency, why have that clause?
>
> . . . [T]he whole point of the claim and this invention is the idea that we're going to create this second level of selection, same-priority cells, and from that create the best one. And now all of the sudden we hit the 'wherein' clause and we're going backwards, but we're equating the two again. So that's our fundamental problem.

Hr'g Tr., Dkt. No. 117 at 28:8–29:5. In other words, (1) grouping cells from same-priority frequencies into a "bucket," (2) setting the priority of the grouped cells as equal to the priority of the frequencies, and then (3) ranking the cells is functionally the same as ranking the cells based on the frequencies as disclosed in the prior art.

Although this may later prove a persuasive argument for invalidity, it's not persuasive here. Samsung urges the Court to ignore what appears to be an apparent meaning of the disputed phrase because it would result in a claim functionally the same as the prior art. Samsung contends that because this is the only apparent meaning of the phrase, the claim must be indefinite. The Court, however, knows of no binding authority supporting such reasoning. Accordingly, the Court rejects Samsung's indefiniteness challenge and will give this term its plain and ordinary meaning.

4. "first reselection module, used to select cells on multiple frequencies, other than the serving frequency, with a second priority according to a priority-based reselection principle when a terminal performs cell reselection" (Claim 2)

G+'s Construction	Samsung's Construction
Not Indefinite **Governed by 35 U.S.C. § 112(6).** **Function**: "selects cells on frequencies with higher priority based on the priority of frequencies" **Structure:** a processor or part of an integrated processor within the terminal operating executable code and comprises a combination of hardware and/or software, and equivalents thereof.	Indefinite. **§ 112 ¶ 6 governs this claim element**. **Function:** "selecting cells on multiple frequencies, other than the serving frequency, with a second priority according to a priority-based reselection principle when a terminal performs cell reselection" **Corresponding structure**: none.

The parties agree this term is governed by 35 U.S.C. § 112 ¶ 6 and generally agree on the claimed function, but disagree on the corresponding structure. According to Samsung, "the specification does not mention any structure that performs the recited function." Dkt. No. 101 at 6. G+ asserts that "module" refers to a processor and the specification discloses well-known techniques and algorithms for performing the function. Dkt. No. 98 at 8–9.

As an initial matter, the "wherein" clause following the recited "first reselection module" is important, as a skilled artisan would understand the *second* reselection module is selecting a best cell from the output of the *first* reselection module. *See* '776 Patent at 8:3–5. Accordingly, the Court concludes the claimed function is "selecting cells on multiple frequencies, other than the serving frequency, with a second priority according to a priority-based reselection principle when a terminal performs cell reselection, wherein the cells on multiple frequencies with the second

priority are same-priority cells."[2]

Regarding the corresponding-structure inquiry, the focus is not merely whether a structure can perform the recited function, but also whether the corresponding structure is "clearly linked or associated" with that function. *Medtronic*, 248 F.3d at 1311. Here, the Background generally explains the prior-art method of selecting a frequency (rather than cells on frequencies) as "firstly rank[ing] the frequencies based on their absolute priority and find[ing] out the frequency with top priority, and then select[ing] a cell on this frequency by the offset-based cell reselection method." *See* '776 Patent 2:5–10 (noting "[t]his reselection method is called a priority-based reselection method"). After setting forth several technical conditions that must be met, the patent elaborates:

> [I]f a cell on a frequency with higher priority meets the foregoing conditions and the terminal has camped in a serving cell for more than one second, then the terminal will perform reselection and transfer to this cell; [but] if no reselectable cell exist[s] on the serving frequency or on the frequencies having the same priority with the serving frequency, and no cell on the frequencies with higher priority meets the foregoing conditions . . . then the terminal will perform reselection and transfer to [a cell on a lower priority frequency].

'776 Patent at 2:10–35. In other words, the terminal should choose cells on higher-priority frequencies first, cells on same priority frequencies next, and cells on lower-priority frequencies last, provided all the other conditions are met.

This general explanation is consistent with the two examples in the Detailed Description. Example 2 explains selection to a frequency with a lower priority is an option because there is no frequency with a higher priority than the frequency on which the terminal resides, and the other cell on a same-priority frequency does not satisfy the reselection conditions. *Id.* at 5:42–49 (noting

[2] At the hearing, neither party objected to including the "wherein" clause as part of the identified function. *See* Hr'g Tr., Dkt. No. 117 at 35:16–25, 37:22–38:2.

cell C_b2_1, a cell on a frequency with the same priority as the serving frequency, "does not satisfy reselection conditions. As there is no frequency with priority higher than the priority of F_b1 here, the terminal needs to consider performing reselection among lower priority frequencies"). Example 1, however, goes no further than describing selection to cells on higher-priority frequencies than the serving frequency. *See generally id.* at 5:3–31. This makes sense: Because in Example 1 cells on higher-priority frequencies are available and meet the reselection conditions, there is no need to consider cells on frequencies with the same or lower priority as that of the serving frequency.

In addition to the general notion of choosing cells on higher-priority frequencies first, same-priority frequencies second, and lower-priority frequencies last, both the Background and examples describe different conditions that must be met for reselection. Generally, the signal level of the cell on a frequency ($S_{cell, x}$) must be greater than some threshold for the corresponding frequency ($Thresh_x$) within a certain time ($Treselection_{RAT}$). *See* '776 Patent at 2:9–21. For example, when considering reselection to a higher-priority frequency, a non-serving cell is only considered for reselection if

$$S_{nonServingCell, x} > Thresh_{x, high} \text{ within } Treselection_{RAT}.$$

See id.; *see also id.* at 5:13–21. Similarly, a non-serving cell is only considered for reselection to a lower-priority frequency if

$$S_{nonServingCell, x} > Thresh_{x, low} \text{ within } Treselection_{RAT}.$$

See id. at 2:30–41; *see also id.* at 5:46–52. Thus, the Court rejects Samsung's contention a skilled artisan "would not understand these disclosures as algorithms because they do not describe how priority-based reselection actually occurs." Dkt. No. 101 at 7.

Samsung alternatively argues "these disclosures correspond with [only] two of the three

possible situations for the recited function." Dkt. No. 101 at 7. Example 1, according to Samsung, only selects "cells on multiple frequencies with the second priority that is higher than the first priority," and Example 2 only selects "cells on multiple frequencies that is lower than the first priority." *Id.* Samsung contends the specification does not address selecting cells on frequencies having the same priority as the serving cell's frequency. *Id.*

The Court disagrees with Samsung for two reasons. First, Samsung ignores the language from Example 2 explaining *why* cells on a lower-priority frequency are even being considered—that the only cell on a *same-priority* frequency "does not satisfy reselection conditions" and "there is no frequency with priority higher than the priority" of the serving cell's frequency. '776 Patent at 5:45–49. In other words, Example 2 uses the "priority-based reselection principle" by considering higher-priority frequencies first (there were none), same priority cells next (the only cell didn't meet reselection conditions), before finally finding "same-priority cells" on the lower-priority frequencies. Example 1 also used the "priority-based reselection principle," but did not reach the same- or -lower-priority frequencies. Second, although Samsung correctly notes the specification does not disclose an express example of selection to cells on same-priority frequencies, the algorithm is the same as that used in the two express examples—that is, the signal level of a measured cell on the same-priority frequency must be greater than some threshold for the corresponding frequency within a certain time.

In sum, the Court finds sufficient structure corresponding to the recited function. That structure is "a processor programmed to:

(1) For any cells on multiple frequencies with the second priority when the second priority is higher than the first priority, set each cell that exceeds a threshold value for that cell's frequency within a measured time for cell reselection ($T_{reselection-RAT}$) as a "same-priority cell";

(2) If there are no "same-priority cells" after Step 1: For any cells on multiple frequencies with the second priority when the second priority is the same as the first priority, set each cell with a signal level exceeding a threshold value for that cell's frequency within the measured time for cell reselection ($T_{reselection_{RAT}}$) as a "same-priority cell";

(3) If there are no "same-priority cells" after Steps 1 and 2: For any cells on multiple frequencies with the second priority when the second priority is lower than the first priority, set each cell with a signal level exceeding a threshold value for that cell's frequency within the measured time for cell reselection ($T_{reselection_{RAT}}$) as a "same-priority cell."

5. "second reselection module, used to select a cell as a reselected cell from among the same-priority cells based on a best-cell reselection principle" (Claims 2)

G+'s Construction	Samsung's Construction
Not Indefinite **Governed by 35 U.S.C. § 112 ¶ 6.** **Function:** selects a cell as a reselected cell from among the same-priority cells based on a best-cell reselection principle. **Structure:** a processor or part of an integrated processor within the terminal operating executable code and comprises a combination of hardware and/or software, and equivalents thereof.	Indefinite **§ 112 ¶ 6 governs this claim element**. **Function:** "selecting a cell as a reselected cell from among the same priority cells based on a best-cell reselection principle" **Corresponding structure**: none.

As with the prior term, the parties mainly dispute whether the specification sufficiently discloses a corresponding structure. Samsung's briefing concerns the alleged absence of specialized hardware or software. Dkt. No. 101 at 8–9. At the hearing, however, Samsung alleged the validity of this term rises or falls with the validity of "first reselection module":

> [W]e're not disputing that the best cell reselection principle is not disclosed in terms of [an] algorithm—it is—but if you look at the claim language, the claim language says that you're reselecting a cell from among the same-priority cells, and that—those same-priority cells come from the result of the first reselection module. And

> because the first reselection module does not have an algorithm and does not have any disclosure of an algorithm, the second reselection module, which keys off of that one, also does not have the necessary algorithm.

Hr'g Tr., Dkt. No. 117 at 46:15–25.

As with the prior term, additional language should be added to the parties' agreed-to claimed function—specifically, the last "wherein" clause which limits the scope of best-cell reselection principle." The Court thus finds the function of the module as "selecting a cell as a reselected cell from among the same priority cells based on a best-cell reselection principle that is an offset-based cell reselection principle."

As for corresponding structure, column 1, lines 47–65 provide the algorithm. Using that algorithm, the Court construes the corresponding structure as: "a processor programmed to: (1) for each of the same-priority cells, calculate R=Qmeas−Qoffset, where Qmeas stands for a measured level of the cell and Qoffset stands for a level offset of the cell; (2) after the calculation is completed, rank all R values, where the one ranked first is the best cell; and (3) select the best cell."[3]

IV. U.S. PATENT 10,448,430

A. Background

In wireless communications, user equipment (UE) cannot uplink to a node until it synchronizes with the system using a "random access" process. '430 Patent at 1:22–25. The random access

[3] Column 1, lines 47–65 also include the step of calculating R_s for the *serving* cell. Because the "first reselection module" "select[s] cells on multiple frequencies, *other than the serving frequency*, with a second priority," '776 Patent at 7:21–23 (emphasis added), the serving cell cannot be a "same-priority cell." Accordingly, the algorithm need not include that step, which is consistent with both Example 1 and Example 2 in the specification. *See id.* at 5:25–8 (calculating and ranking $R_{C_a1_1}$, $R_{C_a1_2}$, and $R_{C_a2_1}$, but not $R_{C_b1_1}$), 5:57–60 (calculating and ranking $R_{C_c1_1}$ and $R_{C_c2_1}$, but not $R_{C_b1_1}$).

is a basic function, but as more people use wireless communication systems, the potential for conflict during the synchronization process increases. *See id.* at 2:16–31.

The '430 Patent "provides a random access method, device and system, intended to save . . . resources and meet requirements for a huge number of machine communications." *Id.* at 2:38–41. Rather than having a one-to-one relationship between UEs and random accesses, "one or more UEs in a UE group send a preamble to an eNB . . . so as to instruct the eNB to execute random accesses of some or all UEs in the UE group. Thus, a group of UEs only needs to occupy a [resource] in a random access, so that . . . resources can be greatly saved, thereby meeting requirements for a huge number of machine communications." *Id.* at 8:52–60.

B. Disputed Terms From the '430 Patent

1. "UE group" (Claims 1–18)

G+'s Construction	Samsung's Construction
"a set of one or more UE(s)"	"a plurality of UEs configured to jointly perform a single random access"

The claims repeatedly refer to "User Equipment (UE) in a UE group." *See, e.g.*, '430 Patent at 30:11; *see also id.* at 30:16–17 ("the first UE or a second UE in the UE group"). G+ argues a UE group can be only one UE, pointing to the specification's explanation that (1) the first UE may be at least one UE in the group; (2) the first UE can be representative of that group; and (3) the second UE may be all or some UEs in the UE group. Dkt. No. 98 at 12 (citing '430 Patent at 9:36–40, 11:59–64); *see also* Dkt. No. 106 at 5 (suggesting these excerpts amount to lexicography). G+ also points to Claim 1, which recites similar language. Dkt. No. 98 at 12. Samsung counters that such an interpretation is inconsistent with the ordinary meaning of "group" and the stated purpose of the patent. Dkt. No. 101 at 10.

The Court agrees with Samsung and construes "UE group" as "two or more UEs." The ordinary meaning of "group" requires more than one thing. *See, e.g.*, *group*, https://www.merriam-webster.com/dictionary/group, Dkt. No. 101-1 ("a number of individuals assembled together or having some unifying relationship"; "an assemblage of objects regarded as a unit"). G+ appears to agree with that notion by arguing lexicography, *see* Hr'g Tr., Dkt. No. 117 at 49:14–50:3, but points to nothing that clearly sets forth any intent to redefine the term. As Samsung correctly states, "that the second UE may contain, among other UEs, the first UE . . . does not otherwise indicate that there could be just one UE in a group." Dkt. No. 101 at 11. The invention's stated purpose only bolsters this conclusion. *See* '430 Patent at 2:16–31 (noting "[f]uture communication requirements for a huge number of machines" may not be sufficient for existing systems); *see also id.* at 8:51–60 (noting the embodiments "provide a random access method, device and system" so "a group of UEs only needs to occupy a PRACH resource . . . in a random access, so that PRACH resources can be greatly saved, thereby meeting requirements for a huge number of machine communications").

2. "pre-set UE number" (Claims 1, 4, 18)

G+'s Construction	Samsung's Construction
Not Indefinite. Plain and Ordinary meaning	Indefinite

Claim 1 requires sending a message that "comprises [1] a number of UEs having random access requests in the UE group or [2] a number of UEs contained in the UE group or [3] a *pre-set UE number.*" '430 Patent at 30:25–30 (emphasis added); *see also id.* at 32:51–56 (reciting the same language in Claim 18). Likewise, Claim 4 recites "wherein at least one of the preamble, the time domain resource or the frequency domain resource corresponds to [1] the number of UEs having random access requests in the UE group or [2] the number of UEs contained in the UE group or

[3] the *pre-set UE number*." *Id.* at 30:40–44 (emphasis added).

Samsung questions whether "pre-set UE number" pertains to a quantity, an identifier, or something else. Dkt. No. 101 at 11. It suggests this language is the result of a translation error, as a certified translation of the underlying foreign application shows the term referred to a preset quantity of UEs. *Id.* at 12. Asserting the term could include a quantity, an identifier, or something else, G+ accuses Samsung of confusing breadth with indefiniteness. Dkt. No. 98 at 13–14.

The Court disagrees that this term, as G+ argues, is "a broad term that could cover many things." *See* Hr'g Tr., Dkt. No. 117 at 68:18–19. While "number" could function as either an identifier or quantity depending on context, the scope of the claim would be fundamentally different depending on which definition a factfinder were to use. Although G+ suggests the term could have both or even other meanings, given the specificity with which other identifiers and quantities are described and claimed in the patent, a skilled artisan would not view this claim term as simply some number generally "associated with the UE." Ultimately, the Court is persuaded the term is either an identifier (e.g., a driver license number) or a quantity (e.g., the number of drivers), but not both.

The Court is of the opinion that a skilled artisan would understand the term as a quantity for at least three reasons. First, the surrounding claim language pertains to other quantities, and a skilled artisan would consider the meaning of the term considering that language. Second, given the nature of the invention as a whole—"*group based* random access method device and system"—quantities of UEs are important. Third, when the patent refers to an identifier, it does so with "identifier" or "ID." Accordingly, the Court construes "pre-set UE number" as "pre-set number of UEs."

3. "monitoring unit configured to: monitor a Random Access Response (RAR) corresponding to the preamble and sent by the eNB" (Claim 18)

G+'s Construction	Samsung's Construction
Not Indefinite. **Governed by 35 U.S.C. § 112(6).** **Function:** monitor an RAR corresponding to the preamble and sent by the eNB. **Structure:** a processor or part of an integrated processor within the terminal operating executable code and comprises a combination of hardware and / or software, and equivalents thereof.	Indefinite. **§ 112(f) governs this claim element.** **Function:** "monitor a Random Access Response (RAR) corresponding to the preamble and sent by the eNB" **Corresponding structure**: none.

Claim 18 is directed to a UE with:

> a sending unit and a monitoring unit,
>
> wherein the sending unit is configured to: send a preamble to an evolved Node B (eNB) over a time-frequency resource, the time-frequency resource comprising a time domain resource and a frequency domain resource;
>
> the monitoring unit is configured to: monitor a Random Access Response (RAR) corresponding to the preamble and sent by the eNB; and
>
> the sending unit is further configured to: send a message 3 according to a Uplink (UL) grant allocated to the UE, wherein the message **3** comprises a number of UEs having random access requests in a UE group or a number of UEs contained in the UE group or a pre-set UE number.

'430 Patent at 32:41–56. The parties agree "monitoring unit" and "sending unit" are governed by 35 U.S.C. § 112(f) and agree on the recited function.[4]

[4] The '430 Patent has an effective filing data after the effective date of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, § 3, 125 Stat. 284, 285-93 (2011). Therefore, the current version of § 112 controls. *See Fleming v. Escort, Inc.*, 774 F.3d 1371, 1374 n.1 (Fed. Cir. 2014).

The sole dispute about "monitoring unit" is whether the specification identifies corresponding structure performing the identified function. Samsung contends the recited function is unconventional and a skilled artisan would not know how to implement it without additional guidance. Dkt. No. 101 at 13–14 ("the specification fails to disclose any computer algorithm or an integrated circuit design that could perform . . . group-based monitoring by one or more UEs"). G+ contends the specification points to at least two algorithms for performing the recited function. Dkt. No. 98 at 14–15 (pointing to, *inter alia*, '430 Patent at 2:62–3:4, 3:22–28).

In general, "the disclosure must be of 'adequate' corresponding structure to achieve the claimed function." *Williamson*, 792 F.3d at 1352 (citing *Noah Sys., Inc. v. Intuit Inc.*, 675 F.3d 1302, 1311 (Fed. Cir. 2012)). Here, however, the claimed function does not concern "group-based monitoring by one or more UEs." Rather, the claimed function simply requires monitoring an RAR corresponding to a preamble, and the specification discloses two algorithms for doing so. *See* '430 Patent at 2:62–3:4, 3:22–28. Accordingly, the Court finds the corresponding structure as "a processor programmed to either (1) descramble a Cyclic Redundancy Check (CRC) of Downlink Control Information (DCI) for scheduling the RAR according to a pre-set RA-RNTI or an RA-RNTI corresponding to the preamble, and receive the RAR, the RAR including at least one TC-RNTI and/or at least one Uplink (UL) grant, or[5] (2) determine corresponding RA-RNTIs according to respective IDs and/or preambles, descramble a CRC of DCI for scheduling the RAR according to the corresponding RA-RNTIs, and receive corresponding RARs, the RAR including a TC-RNTI and/or a UL grant allocated to the first UE or second UE."

[5] "When multiple embodiments in the specification correspond to the claimed function, proper application of § 112, ¶ 6 generally reads the claim element to embrace each of those embodiments." *Micro Chem., Inc. v. Great Plains Chem. Co.*, 194 F.3d 1250, 1258 (Fed. Cir. 1999).

4. *"sending unit . . . configured to: send a preamble to an evolved Node B (eNB) over a time-frequency resource . . . comprising a time domain resource and a frequency domain resource; . . . and . . . further configured to: send a message 3 according to a Uplink (UL) grant allocated to the UE, wherein the message 3 comprises a number of UEs having a random access requests in a UE group or a number of UEs contained in the UE group or a pre-set UE number" (Claim 18)*

G+'s Construction	Samsung's Construction
Not Indefinite. **Governed by 35 U.S.C. § 112(6).** **Function:** send a preamble to an eNB over a time-frequency resource, the time-frequency resource including a time domain resource and a frequency domain resource, and send a message 3 according to a Uplink (UL) grant allocated to the UE, the message 3 comprising a number of UEs having random access requests in a UE group or a number of UEs contained in the UE group or a pre-set UE number. **Structure:** a processor or part of an integrated processor within the terminal operating executable code and comprises a combination of hardware and / or software, and equivalents thereof.	Indefinite. **§ 112(f) governs this claim element.** **Function:** "send a preamble to an evolved Node B (eNB) over a time frequency resource, comprising a time domain resource and a frequency domain resource; and further send a message 3, comprising a number of UEs having random access requests in a UE group or a number of UEs contained in the UE group or a pre-set UE number, according to a Uplink (UL) grant allocated to the UE" **Corresponding structure**: none.

As with the prior term, the parties agree this is a means-plus-function term and generally agree on the recited function. Samsung contends "[t]he specification fails to provide sufficient corresponding structure for the claimed function." Dkt. No. 101 at 16. Although it acknowledges the disclosed embodiments may be implemented in a processor, Samsung claims the specification fails to disclose any algorithm or circuit design for the function. *Id.* (citing '430 Patent at 28:46–29:62). G+ does not point to an algorithm, but argues "[t]he '430 Patent describes the sending unit using terms of art that convey to a POSITA how to program the

processor to perform the sending function." Dkt. No. 98 at 17.

According to the specification, the physical structure of the "sending unit" is the combination of a processor and a transmitter, despite that "transmitter" is never expressly mentioned in the patent. The patent relates to wireless communication between a UE and an eNodeB. *See, e.g.*, '430 Patent at [57] (noting the eNB transmits the RAR in response to the preamble). The specification further provides, "[t]he UE includes: a sending unit . . . configured to: send a preamble to an eNB over a time-frequency resource, the time-frequency resource including a time domain resource and a frequency domain resource[.]" '430 Patent at 6:7–11; *see also id.* at 7:7–21 ("the sending unit is configured to: send a preamble over a frequency domain resource periodically"). A processor alone would be incapable of sending data over a time-frequency resource. Thus, a skilled artisan would interpret these and other excerpts as requiring a transmitter controlled by a processor to send the required message at the appropriate time. *See Atmel Corp. v. Info. Storage Devices*, 198 F.3d 1374, 1378 (Fed. Cir. 1999) ("For purposes of § 112 P 2, it is the disclosure in the specification itself, not the technical form of the disclosure that counts."); *see also* Part III *supra* (concluding a skilled artisan at the time of invention "would have had a bachelor's degree in electrical engineering, computer engineering, computer science, or a related field, and three to four years experience in the design and development of wireless communications systems"). Put differently, "[i]t is well within the realm of common experience" that transmitters are used to communicate between UEs and eNodeBs. *Accord In re Kullmann*, 115 F.3d 942 (Fed. Cir. 1997) ("[W]e note that, in the medical imaging field, it is well within the realm of common experience that computers are used to generate images for display by mathematically processing digital input.").

However, sufficient disclosure of structure by itself is not enough as the specification must still link this structure to the claimed function. Here, the sending unit performs two distinct

functions: (1) sending a preamble; and (2) sending a "message 3." So far as sending the preamble, a well-known LTE function, the patent explains "[t]he UE includes: a sending unit . . . configured to: send a preamble to an eNB over a time-frequency resource, the time-frequency resource including a time domain resource and a frequency domain resource[.]" '430 Patent at 6:7–11; *see also id.* at 25:59–61"[I]in an embodiment, the sending unit 501 is configured to: send a preamble over a frequency domain resource periodically."); *id.* at 27:7–9 ("[I]n an embodiment, the sending unit 501 is configured to: send a preamble over a frequency domain resource periodically."). This links the first function to the "sending unit." For sending the "message 3," "[i]n an embodiment, the sending unit 501 may be further configured to: send a message 3 according to the UL grant allocated to the UE." *Id.* at 26:30–32.

Based on the forgoing, the Court finds the corresponding structure as "a processor connected to a transmitter, the processor programmed to, using the transmitter, send a preamble to an eNB over a time-frequency resource, the time-frequency resource including a time domain resource and a frequency domain resource, and send a message 3 according to a Uplink (UL) grant allocated to the UE, the message 3 comprising a number of UEs having random access requests in a UE group or a number of UEs contained in the UE group or a pre-set UE number."

V. U.S. PATENT 9,184,881

A. Background

The '881 Patent explains that, in some configurations of certain wireless networks, the number of allocated downlink sub-frames is greater than the number of allocated uplink sub-frames. In those configurations, the system may transmit acknowledgement (ACK) and no-acknowledgement (NACK) information with uplink data on the Physical Uplink Shared Channel (PUSCH). But if the control channel corresponding to the downlink data is not correctly detected,

the eNodeB might mistake an ACK for *other* data, which will cause delay as the system corrects the mistake. '881 Patent at 2:52–3:21. The patent teaches a specific method of sending the ACK/NACK of a plurality of downlink sub-frames on an uplink PUSCH that increases the feedback efficiency of the system and helps solve the problem of the loss of downlink data. *Id.* at 5:65–6:3.

B. Disputed Terms From the '881 Patent

1. *"a number value of the downlink sub-frame" (Claim 1)*

G+'s Construction	Samsung's Construction
Plain and Ordinary meaning	"a number identifying how many downlink sub-frames are used to transmit data"

The parties dispute whether this phrase covers (1) the number of sub-frames used to transmit data (as Samsung urges), or (2) in addition to the number of subframes, a specific sub-frame by number (G+'s position). Samsung argues the term warrants a "clarification" because "[t]he choice of words in the claim term is unclear." Dkt. No. 101 at 17. It then points to the specification's description that "the number of downlink sub-frames corresponding to the confirmation information" is sent with the data. *Id.* at 18 (citing '881 Patent at 7:24–40). G+ argues Samsung's construction is inconsistent with the evidence and suggests the term can mean either a quantity or a position. Dkt. No. 98 at 18–20.

For several reasons, the Court agrees with G+ that this term relates to a position in a frame. First, although Samsung correctly notes "the number of downlink subframes" appears throughout the specification, the disputed term includes the additional word "value" and refers specifically to "the sub-frame" (singular) rather than multiple "sub-frames." Moreover, the specification uses these phrases in different ways. For example, "in addition" to the "signaling representing the

number (k) of the downlink sub-frames,"

> the eNodeB determines *a set of number values* of all the downlink sub-frames corresponding to information which is fed back by the one uplink sub-frame according to a configuration pattern for the current number of downlink/uplink sub-frames, and *selects corresponding number values from the set* according to an amount of the data actually required to be transmitted to be carried in the DCI.

'881 Patent at 7:24–47 (emphasis added).

The claim language supports this conclusion by differentiating between the number of downlink subframes and the number *value* of the downlink subframes in the same limitation. Specifically, the claim language following the disputed phrase links the term to "the confirmation information." *Id.* at 11:12–14. Later, the limitation notes "the number of downlink subframes is equal to the number of the downlink subframes corresponding to the confirmation information." *Id.* at 11: 17–20. Thus, these claim terms presumptively have different meanings. *See Bd. of Regents of the Univ. of Tex. Sys. v. BENQ Am. Corp.*, 533 F.3d 1362, 1371 (Fed. Cir. 2008) ("Different claim terms are presumed to have different meanings.").

Samsung also points to the prosecution history as support for its construction. Dkt. No. 101 at 18. When distinguishing their invention over a cited reference (Gao), the applicants argued:

> the eNodeB can inform the user equipment how many downlink sub-frames are used to transmit the data (i.e., a number value of the downlink sub-frame) and the position of the downlink sub-frames which transmit data (i.e., continuous downlink sub-frames after the subframe carrying the downlink control information), which are both not disclosed by Gao.

'881 Patent File Wrapper, Dkt. No. 98-2 at GCOM000221–000222 (emphasis in original). Samsung understandably focuses on the first parenthetical, which it says defines the preceding phrase and conflicts with the specification.

But "[w]hen the prosecution history appears in conflict with the specification, any

ambiguity must be resolved in favor of the specification. The specification is the best source for understanding a technical term, to be supplemented, as needed, by the prosecution history." *Lydall Thermal/Acoustical, Inc. v. Fed.-Mogul Corp.*, 344 F. App'x 607, 614 (Fed. Cir. 2009) (citing *Biogen, Inc. v. Berlex Labs., Inc.*, 318 F.3d 1132, 1140 (Fed. Cir. 2003)).

Here, the Court finds no need to supplement the specification with the prosecution history.[6] Importantly, however, the applicants used both phrases in their prosecution-history argument, first referring to "a number value of the downlink subframe" and then to "the number of the downlink sub-frames," further showing a clear distinction between the two phrases.

Finally, for the same reasons set forth *supra*, the Court rejects that this term *also* refers to a quantity, as urged by G+. The distinction between "number of the downlink subframes" and "number value of the downlink subframe" is clear from the intrinsic record, and adopting a construction for the disputed term that would include both a quantity and a position would render other claim language superfluous. Accordingly, the Court construes this term as "a number identifying the downlink sub-frame."

2. "the downlink sub-frame" / "this downlink sub-frame" (Claims 1, 9)

G+'s Construction	Samsung's Construction
Not indefinite. Plain and Ordinary meaning	Indefinite

Samsung contends a skilled artisan would not know if the various references to "downlink sub-frame" in Claims 1 and 9 refer to the same or different subframes. Dkt. No. 101 at 19. Relying

[6] Even if it did find such a need, this is not clear lexicography because a skilled artisan would at least question whether the parentheticals were transposed. "[T]he position of the downlink sub-frames which transmit data" seems better suited to how the specification uses "number value," whereas "how many downlink sub-frames are used to transmit the data" better relates to "continuous downlink sub-frames after the subframe carrying the downlink control information."

on an expert declaration, it argues Claims 1 and 9 recite multiple possible antecedent bases for the terms at issue. *Id.* at 20–21 (citing Wicker Decl., Dkt. No. 98-4 ¶¶ 70–73). It also criticizes G+ for failing to explain how any of the "different types of 'the downlink subframe[s]' . . . relate to the one and only recitation of 'a downlink subframe' that appears in the claim 1 preamble." *Id.* at 21.

Samsung's position is not persuasive. For one, it ignores the surrounding claim language that provides the requisite clarity. *See, e.g.*, '881 Patent at 11:12–13 ("a number value of the down-link-subframe corresponding to the confirmation information"), 11:16–17 (the "plurality of continuous downlink sub-frames after the sub-frame carrying the downlink control information"); *id.* at 11:47 ("the sub-frame which transmits the data"). Perhaps Samsung's best argument relates to recitation of "this down-link subframe," *see, e.g.*, *id.* at 11:25, 11:34, 11:50, but Samsung does not show how even those references are unclear to a skilled artisan.

Tellingly, Samsung's expert on this issue makes no attempt to analyze the claim language from the perspective of a skilled artisan. Instead, he simply notes "the claims contain multiple recitations of the terms 'the downlink sub-frame' and 'this downlink sub-frame,'" and then concludes "there is no clarity as to whether those limitations refer to *the same or different downlink sub-frames*." Wicker Decl., Dkt. No. 98-4 ¶ 70 (emphasis in original). He further opines "a POSITA would be able to interpret the claims in multiple ways," but doesn't enumerate those "ways" nor how he reaches that conclusion. *See id.* ¶ 72.

Ultimately, Samsung and its expert attempt to shift their burden to G+, concluding Claims 1 and 9 are indefinite because they use "downlink sub-frame" in many different contexts. The Court, however, concludes Samsung has not carried its "clear and convincing" burden of showing this term is indefinite and will therefore give this term its plain and ordinary meaning.

3. "an amount of the confirmation information" (Claims 1, 9)

G+'s Construction	Samsung's Construction
Not indefinite. Plain and Ordinary meaning	Indefinite

In its briefing, Samsung argues a skilled artisan would not understand if "amount" refers to the volume of confirmation information or the number of distinct pieces of confirmation information. Prior to the hearing, however, the parties agreed this term is not indefinite and should be given its plain and ordinary meaning. Hr'g Tr., Dkt. No. 117 at 103:1–9.

VI. U.S. PATENT 10,736,130

A. The Disputed Term From the '130 Patent

1. "a processor arranged . . . " (Claim 20)

G+'s Construction	Samsung's Construction
Not Indefinite Not governed by 112(f) Plain and Ordinary meaning Plaintiff objects to this as Defendants identified nearly an entire claim and not a claim term for construction.	Indefinite § 112(f) governs this claim element. **Function**: "to execute the stored processor- executable instructions to perform steps of: sending K predefined sequences on M transmission symbols in a Transmission Time Interval (TTI) to send B-bit uplink control information, wherein M is a positive integer, K is an integer, $1 \leq K \leq 2B$, B is an integer greater than or equal to 1, on each of the M transmission symbols, one of the K predefined sequences is sent, and each of the K predefined sequences has a length of N and is mapped to N subcarriers of the corresponding transmission symbols corresponding to the each of the K predefined sequence, wherein $N=2n$ with n being a positive integer" **Corresponding Structure**: none

Relying on *In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1315–16

(Fed. Cir. 2011), Samsung asserts "[t]he mere disclosure of a general-purpose processor is not sufficient structure" to avoid invoking 35 U.S.C. § 112(f).[7] Dkt. No. 101 at 24. "To hold otherwise," says Samsung, "would be contrary to Federal Circuit precedent because it would permit functional claiming of software by reciting that a 'processor' is 'configured' or 'operable' to perform those functions." *Id.* (citing *Williamson*, 792 F.3d at 1349).

But neither *Katz* nor *Williamson* support Samsung's position here. The *Katz* analysis cited by Samsung relates to whether there was corresponding structure—the second of *Williamson*'s two-step analysis. The *Katz* court recognized the limitations at issue were subject to § 112 ¶ 6. *See Katz*, 639 F.3d at 1313 (noting that, for the claims in means-plus-function format, "the [trial] court concluded that the claims were invalid for indefiniteness because the only corresponding structure disclosed in the specification was a general purpose computer and the specification did not disclose an algorithm by which the general purpose computer performed the recited function"). Samsung's citation to *Williamson* relates to the Federal Circuit's decision to "abandon characterizing as 'strong' the presumption that a limitation lacking the word 'means' is not subject to § 112, para. 6." *Williamson*, 792 F.3d at 1349. As noted in *Williamson*, § 112 ¶ 6 (or § 112(f)) does not apply when "the words of the claim are understood by persons of ordinary skill in the art to have sufficiently definite meaning as the name for structure." *Williamson*, 792 F.3d at 1349. The same is trye here as "processor" undoubtedly connotes structure to an electrical engineer, computer engineer, and computer scientist. The limitation includes even more "structure" in the form of a detailed algorithm. Finally, there is a rebuttable presumption that § 112(f) does not apply because the

[7] The '130 Patent has an effective filing data after the effective date of the Leahy-Smith America Invents Act. Therefore, the current version of § 112 controls. *See Fleming v. Escort, Inc.*, 774 F.3d 1371, 1374 n.1 (Fed. Cir. 2014).

limitation does not use "means." *Masco Corp.*, 303 F.3d at 1326; *Williamson*, 792 F.3d at 1348. Samsung has not rebutted that presumption. Accordingly, the Court concludes § 112(f) does not govern this claim term and will otherwise give the term its plain and ordinary meaning.

VII. U.S. PATENT 10,594,443

A. Background

The '443 Patent relates to a method for transmitting and receiving hybrid automatic repeat request (HARQ) information, '443 Patent at 1:16–20. This is a combination of forward error correction (FEC) and automatic repeat request (ARQ) error-control. In a typical system a receiving device (e.g., a terminal or base station) receives data from a sending device over several carriers. The receiving device feeds back HARQ information to the sending device, which indicates whether the transmission on the carriers is correct. The patent provides a method of improving system throughput relative to the prior art while reducing HARQ overhead. *Id.* at [57].

B. Disputed Terms From the '443 Patent

1. "blind detection" (Claims 8, 17)

G+'s Construction	Samsung's Construction
Plain and Ordinary meaning	"decoding on the premise of assuming k as a specific value and correspondingly assuming M as a specific value"

Claim 8 requires:

> receiving . . . M bits of HARQ information . . . ; the M bits of HARQ information being used to indicate whether N transmission blocks transmitted to the first node by the second node be correctly received by the first node; among the M bits, M2 bits being used to indicate positions of k erroneous transmission blocks in the N transmission blocks, M2≤M[.]

'443 Patent at 17:15–26. Under a certain condition—specifically, when M2=M—the claim requires "blind detection" to obtain the desired information. *Id.* at 17:27–30; *see also id.* at 18:55–58 (reciting, in Claim 17, "a processor configured to obtain the M bits of HARQ information through a blind detection").

The parties dispute the scope of "blind detection." According to Samsung, the patentee defined the term. Dkt. No. 101 at 27. Samsung acknowledges that "blind detection" techniques were known in the art, but contends those techniques would not work with the recited inventions. *Id.* G+, however, asserts the patentee did *not* define the term and Samsung's proposed construction imports limitations into the claims. Dkt. No. 98 at 27. Moreover, G+ contends Samsung's construction for the term would not work technically. *Id.*

Although there are scattered references to "blind detection" throughout, the patent first explains the term with any detail when describing the first embodiment:

> After receiving the HARQ information from the node 1, the node 2 performs decoding through *a blind detection*. The blind detection refers to that the node 2 performs decoding on the premise of assuming k as a specific value and correspondingly assuming M as a specific value. If the node 1 adds a cyclic redundancy check (CRC) code to the HARQ information, then the node 2 may judge whether the assumption concerning k and M is feasible by checking through CRC after decoding. If feasible, then the HARQ information as obtained after decoding is just the one as expected; otherwise, repeating the above steps by assuming k as other values until the node 2 is correctly decoded.

'443 Patent at 11:10–21 (emphasis added). The patent provides a similar description with reference to the fourth embodiment, but doesn't use the phrase "blind detection" in that explanation. *Id.* at 13:7–18.

The Court does not find this language clearly sets forth a definition of the term. For one, the passage could reasonably be read as "[t]he blind detection of this embodiment refers to . . . ."

The patent's other scattered references in the summary do not suggest the blind detection of the first embodiment applies to all embodiments.

That said, the Court agrees this term requires a construction, but G+ does not propose one. Instead, it explains the *purpose* of blind detection is "to gather control information" and that it is "a well-known process." Dkt. No. 98 at 26. Having considered the parties' briefing and arguments during the hearing, the Court construes "blind detection" as used in these claims as "decoding based on one or more predefined rules using trial and error." In the first embodiment, for example, the predefined rules are the assumption of k as a specific value and the assumption of M as a specific value.

2. *"a length type of M2 including a first length type or a second length type; the first length type indicating a value of M2 being predefined, and the second length type indicating a value of M2 being determined based on k" (Claims 1, 8, 10)*

G+'s Construction	Samsung's Construction
Not Indefinite. Plain and Ordinary meaning	Indefinite

Prior to the hearing, the parties agreed this term is not indefinite and should be given its plain and ordinary meaning. *See* Hr'g Tr., Dkt. No. 117 at 109:1–10.

VIII. CONCLUSION

Disputed Term	The Court's Construction
U.S. Patent 8,761,776	
"offset-based reselection principle" (Claims 1–2)	"using Qoffset as a variable for reselection"
"same-priority cells" (Claims 1–2)	Plain and ordinary meaning

"wherein the priority of the same-priority cells is equal to the absolute priority of corresponding frequencies" (Claims 1–2)	Plain and ordinary meaning.
"first reselection module, used to select cells on multiple frequencies, other than the serving frequency, with a second priority according to a priority-based reselection principle when a terminal performs cell reselection" (Claim 2)	**§ 112 ¶ 6 Function:** "selecting cells on multiple frequencies, other than the serving frequency, with a second priority according to a priority-based reselection principle when a terminal performs cell reselection, wherein the cells on multiple frequencies with the second priority are same-priority cells" **§ 112 ¶ 6 Structure:** "a processor programmed to: (1) For any cells on multiple frequencies with the second priority when the second priority is higher than the first priority, set each cell that exceeds a threshold value for that cell's frequency within a measured time for cell reselection ($T_{reselection_{RAT}}$) as a "same-priority cell"; (2) If there are no "same-priority cells" after Step 1: For any cells on multiple frequencies with the second priority when the second priority is the same as the first priority, set each cell with a signal level exceeding a threshold value for that cell's frequency within the measured time for cell reselection ($T_{reselection_{RAT}}$) as a "same-priority cell"; (3) If there are no "same-priority cells" after Steps 1 and 2: For any cells on multiple frequencies with the second priority when the second priority is lower than the first priority, set each cell with a signal level exceeding a threshold value for that cell's frequency within the measured time for cell reselection ($T_{reselection_{RAT}}$) as a "same-priority cell."

"second reselection module, used to select a cell as a reselected cell from among the same-priority cells based on a best-cell reselection principle" (Claim 2)	**§ 112 ¶ 6 Function:** "selecting a cell as a reselected cell from among the same priority cells based on a best-cell reselection principle that is an offset-based cell reselection principle" **§ 112 ¶ 6 Structure: "**a processor programmed to: (1) for each of the same-priority cells, calculate R=Qmeas−Qoffset, where Qmeas stands for a measured level of the cell and Qoffset stands for a level offset of the cell; (2) after the calculation is completed, rank all R values, where the one ranked first is the best cell; and (3) select the best cell."
U.S. Patent 10,448,430	
"UE group" (Claims 1–18)	"two or more UEs"
"pre-set UE number" (Claims 1, 4, 18)	"pre-set number of UEs"
"monitoring unit configured to: monitor a Random Access Response (RAR) corresponding to the preamble and sent by the eNB" (Claim 18)	**§ 112(f) Structure:** "a processor programmed to either: (1) descramble a Cyclic Redundancy Check (CRC) of Downlink Control Information (DCI) for scheduling the RAR according to a pre-set RA-RNTI or an RA-RNTI corresponding to the preamble, and receive the RAR, the RAR including at least one TC-RNTI and/or at least one Uplink (UL) grant, or (2) determine corresponding RA-RNTIs according to respective IDs and/or preambles, descramble a CRC of DCI for scheduling the RAR according to the corresponding RA-RNTIs, and receive corresponding RARs, the RAR including a TC-RNTI and/or a UL grant allocated to the first UE or second UE."

"sending unit . . . configured to: send a preamble to an evolved Node B (eNB) over a time-frequency resource comprising a time domain resource and a frequency dome resource; . . . and . . . further configured to: send a message 3 according to a Uplink (UL) grant allocated to the UE, wherein the message 3 comprises a number of UEs having a random access requests in a UE group or a number of UEs contained in the UE group or a pre-set UE number" (Claim 18)	**§ 112(f) Structure:** "a processor connected to a transmitter, the processor programmed to, using the transmitter, send a preamble to an eNB over a time-frequency resource, the time-frequency resource including a time domain resource and a frequency domain resource, and send a message 3 according to a Uplink (UL) grant allocated to the UE, the message 3 comprising a number of UEs having random access requests in a UE group or a number of UEs contained in the UE group or a pre-set UE number."
U.S. Patent 9,184,881	
"a number value of the downlink sub-frame" (Claim 1)	"a number identifying the downlink sub-frame"
"the downlink sub-frame" / "this downlink sub-frame" (Claims 1, 9)	Plain and ordinary meaning.
"an amount of the confirmation information" (Claims 1, 9)	Plain and ordinary meaning.
U.S. Patent 10,736,130	
"a processor arranged . . . " (Claim 20)	Not governed by 35 U.S.C. § 112(f). Plain and ordinary meaning.
U.S. Patent at 10,594,443	
"blind detection" (Claims 8, 17)	"decoding based on one or more predefined rules using trial and error"

"a length type of M2 including a first length type or a second length type; the first length type indicating a value of M2 being predefined, and the second length type indicating a value of M2 being determined based on k" (Claims 1, 8, 10)	Plain and ordinary meaning.

The Court **ORDERS** each party not to refer, directly or indirectly, to its own or any other party's claim-construction positions in the presence of the jury. Likewise, the Court **ORDERS** the parties to refrain from mentioning any part of this opinion, other than the actual positions adopted by the Court, in the presence of the jury. Neither party may take a position before the jury that contradicts the Court's reasoning in this opinion. Any reference to claim construction proceedings is limited to informing the jury of the positions adopted by the Court.

So ORDERED and SIGNED this 13th day of July, 2023.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

G+ COMMUNICATIONS, LLC.,	(	CAUSE NO. 2:22-CV-078-JRG
	)	
Plaintiff,	(	
	)	
vs.	(	
	)	
SAMSUNG ELECTRONICS CO., LTD., et al.,	(	
	)	MARSHALL, TEXAS
	(	NOVEMBER 30, 2023
Defendants.	)	9:00 A.M.

VOLUME 1

PRETRIAL CONFERENCE

BEFORE THE HONORABLE RODNEY GILSTRAP
UNITED STATES CHIEF DISTRICT JUDGE

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THE COURT: Be seated, please.

All right. This is the time set for pretrial matters before the Court in the case of G+ Communications versus Samsung Electronics Company, Limited, et al. This is Civil Case No. 2:22-CV-078.

Let me ask for announcements on the record.

What says the Plaintiff?

MS. TRUELOVE: Good morning, Your Honor. Jennifer Truelove, Mr. Jason Sheasby, and Mr. Sam Baxter here on behalf of the Plaintiff G+Comm. And we're ready to proceed.

THE COURT: All right. Thank you.

What's the announcement from the Defendants?

MS. SMITH: Good morning, Your Honor. Melissa Smith on behalf of Samsung. I'm joined by Mr. Ruffin Cordell, Mr. Mike McKeon, Mr. Tom Reger, Ms. Lauren Degnan, Mr. Bryan Cannon, Mr. Will Freeman, Mr. Ralph Phillips, and Mr. Leonard Davis. We also have two client representatives in the Court today Mr. Tim Jezek and Mr. Arvind Ivengar. And Your Honor, we are ready to proceed.

THE COURT: All right. Thank you.

Counsel, let me go over some housekeeping matters with you before we get to the opposed or contested pretrial matters before the Court.

As you're aware and as I discussed with you earlier this morning in chambers, this case has previously been set as the

number two case to go to trial on December the 11th of this year. As of yesterday, the number one case has been continued, and you are now the number one case for December the 11th.

When we select the jury in this case, each side will be afforded 30 minutes per side to address the panel, and each side will be afforded four peremptory challenges, as the Court intends to seat eight jurors to hear the evidence in this case, four strikes per side.

Clearly, in the last 24 hours or thereabouts, the case has substantially narrowed. The Plaintiff, without objection from the Defendant, has reduced the number of asserted claims from 35 to 6. Prior to that reduction in the number of claims, Plaintiff had requested 12 hours per side to present the evidence to the jury and the Defendant had requested 20 hours per side.

In light of the substantial reduction and the scope of the case and understanding that there are counterclaims brought by the Defendants, the Court is going to allow each side 13 hours per side to put on their evidence. That's not including jury selection, opening statements, or closing arguments.

With regard to opening statements, each side will be afforded 30 minutes per side to present their opening statements. As is typical practice here, each side will be

given the latitude, should they elect to exercise it, of giving a very high-level, non-argumentative overview of the issues in the case within the first three minutes of their opening statement simply to provide some context for the jury. I remind you that's a three-minute limit, and I remind you it's not to be argumentative. Opening statements are not opening arguments, and if they become argumentative, I will stop you in front of the jury, and I suspect that's not how you want to start the trial.

Each side will be afforded 40 minutes per side for closings arguments, and the Plaintiff must use at least 50 percent of its time in its first closing argument. Samsung in the pretrial order made some request to limit the Plaintiff to not more than 10 minutes in its rebuttal argument or second closing argument, and there was no authority or basis for that other than the naked request. The Court's going to deny that. Plaintiff can reserve up to 20 minutes for its second closing argument. The only requirement is it must use 20 minutes or 50 percent of its total time in its first closing.

The Court's going to direct the parties to follow the established and usual practice in this court with regard to a continuing obligation to meet and confer with regard to overnight disputes, whether they involve demonstratives or other matters. You're to report to the Court each evening, and any disputes that can't be resolved with further meet and

confer efforts I'll take up the next morning before we bring in the jury. I will typically bring the jury in at 8:30 each day, and I will be in chambers by 7:30 with an hour there to deal with any disputes that survive the ongoing meet and confer process.

If there are disputes that, despite the evening report, can't be worked out between then and the next morning, then you're directed to deliver to chambers by 7:00 the next morning a jointly prepared three-ring binder containing whatever is in dispute. If it's a demonstrative, put a copy of the slide in there; if it's something else, to put whatever is in dispute in there together with a single narrative paragraph from each side as to what the dispute is. It doesn't do the Court a lot of good if I get a slide with nothing that tells me what's in dispute. Then I have to guess, and it's inefficient. And though I'm happy to afford the parties that additional hour each morning, if necessary, in an effort to maximize the effect of their designated trial time, there's not time to waste, so make sure I know what the actual dispute is that comes in the next morning and then I'll meet with you and give you guidance where applicable, again, in an effort to maximize the effect of your designated but limited trial time.

With regard to any disputes over deposition designations or counterdesignations, I'll follow my usual practice there.

I'm not going to require that you submit those as a group before the trial begins. I will take them up on a rolling basis, but I will require that any such disputes reach me not later than the day before the day you're going to present that deposition testimony to the jury. I do not want to risk having to delay the trial based on logistical issues with regard to recutting or formatting or preparing edited deposition testimony when the disputes weren't brought to me in enough time to allow for that. So bring those to me not later than the day before the day they're intended to be presented.

I'll also defer any motions for judgment as a matter of law until all the evidence has been presented and after both sides have closed their evidence, then I'll take up motions from either party under Rule 50(a).

After I have conducted a hearing on any motions under Rule 50(a) of the Federal Rules of Civil Procedure, then I will hold an informal charge conference in chambers where I can then review the most current iteration of the proposed final jury instructions and verdict form with counsel and get their fulsome and informal input on the issues where they're not in agreement or on any issues that the Court raises with the parties.

After I have had the benefit of that input through the informal charge conference process, then I will prepare what I

believe to be the appropriate and final charge to the jury and verdict form and submit it to counsel with an adequate time to review it, and then I'll conduct a formal charge conference on the record where any resulting objections can be taken up and heard.

Let me remind you that the Court's policy and practice is to avoid referring to individuals in front of the jury and on the record by first name only. The Court finds that to be inherently confusing both to the jury and in the record, and the Court finds that it simply fails to maintain an appropriate decorum for a United States District Court. So don't do that, and make sure your witnesses know not to do that. And if your witnesses can't do that, then I will attribute their failure to you. So make sure that's gone over carefully with your witnesses.

I'll refer you to the Court's standing order on protecting proprietary and confidential information by sealing the courtroom. That's a practice well-known to both sides and to counsel for all the parties. I would simply ask that you try to structure your examinations that might require sealing so that as much information that needs to be presented while the courtroom is sealed can be grouped together so that we don't have the on and off, on and off sealing and unsealing back and forth process that's disruptive and wastes time. I'm not saying that you have to put them all together--I know

that's sometimes difficult--but let's -- let me ask both sides to endeavor to group that in as few sections as possible so that we can avoid the problems of sealing and unsealing.

And I'll also make it clear, too, when the courtroom is sealed, that's not a signal to co-counsel who's not examining the witness to leave the courtroom and get a drink of water and come back in. If the courtroom is sealed and counsel leaves the courtroom, the Court Security Officers aren't going to let you back in until the courtroom is reopened and unsealed. I can't have members of the public who are prohibited from coming and going and they see lawyers coming and going while the courtroom is sealed, so just bear that in mind, please.

I'm going to direct that the parties jointly prepare juror notebooks for use by the jury in this trial. I want 12 copies of these notebooks delivered to chambers not later than noon on Wednesday December the 6th. And these notebooks should be contained in simple three-ring binders with a complete copy printed on single-side paper of the patents-in-suit followed by a side-by-side chart setting forth the Court's adopted claim constructions, the claim language on the left side the adopted construction on the right side, side-by-side presentation with only the actual adopted constructions put forth.

Following that section in the notebooks, there should be

a section of tabbed pages for witnesses. Each witness who might be called should have a tabbed separate page with their head-and-shoulders photograph imposed at or near the top of the page and their complete name identifying them underneath the photograph. Do not characterize the witnesses. Dr. John Smith is fine; Dr. John Smith, Plaintiff's expert on damages is not fine. So simply identify them by name. The remainder of those pages should be ruled lines for note-taking by the jury.

And then behind these tabbed witness pages, include a new three-ring hole-punched legal pad for additional note-taking. And please put a pen in the front pocket, preferably one that doesn't click and make noise.

There's already been a juror questionnaire I think prepared in this case. I'm going to refer you to Ms. Clendening, the Deputy-In-Charge for the Marshall Division, with regard to access to the answered questionnaires. Her instructions to you should be taken as instructions from me. Clearly the practice in this Court is that those questionnaires are to be used and returned, but they are not to be copied, and the data or information is not to be retained in any way.

If you have a jury consultant who wants to see these questionnaires, they need to come see them in hard copy form. You're not going to be allowed to scan them and email them to

an off-site jury consultant because that retains the data from those questionnaires, and we go to great lengths to assure the public that they do not need to be concerned about their candid answers being retained in some law firm's databank or in any other way. So you are going to be prohibited from retaining in any form the information in those questionnaires, but with regard to how to receive them, use them in hard copy form, and return them to Ms. Clendening, I'll defer to her on timing and other particulars in that regard.

Do we have witnesses we anticipate are going to testify with the aid of an interpreter in this trial?

Any on the Plaintiff's side?

MR. SHEASBY: None from Plaintiff, Your Honor.

THE COURT: I assume we may have some on the Defendants' side?

MR. CORDELL: Yes, Your Honor.

THE COURT: Well, make sure that the Court's aware of exactly who may need the aid of an interpreter so we can make sure we arrange the courtroom appropriately. And I will assume that's a fairly common practice in this type litigation with parties from outside the United States, so I'll assume there should be no problems with both sides working together in that regard.

If there are going to be check interpreters, I do not want some check interpreter standing up and correcting an

interpreter in the middle of the trial in front of the jury. If for some reason the interpreter that's been sworn by the Court and is working with the non-English-speaking witness interprets something where your check interpreter believes they made an error, then you need to raise it with the Court outside the presence of the jury. But I'll leave whether or not to implement that kind of check interpreter to each side. I just don't want interruptions. I don't want a battle of the interpreters in front of the jury over whether this phrase means this or that. And I don't anticipate that kind of problem, but I just want to be clear on that.

MR. SHEASBY: Your Honor, may I be heard briefly on the issue of the interpreter.

THE COURT: What is it, Mr. Sheasby?

MR. SHEASBY: Historically with Samsung we've done something that has let to efficiency, which we've jointly agreed on a single translator who doesn't prep the witness but knows the subject matter and we both are comfortable with, and I intend to propose that same procedure again.

THE COURT: All right. Well, certainly where you-all can streamline things and avoid any probable areas for potential disagreement, I'm in favor of that. I'll leave that to you and Mr. Cordell to discuss and hopefully pursue later.

Are there questions from either side with regard to those instructions and housekeeping matters?

MR. CORDELL: Not from Defendants, Your Honor.

MR. SHEASBY: Not from Plaintiff, Your Honor.

THE COURT: All right. Let's turn to the disputed motions before the Court.

The Court's allowed both sides to tender their preference for the order in which these will be taken up, and we're going to start with -- pursuant to that response, we're going to start with Document No. 228, which is also identified as Document 194. This is Plaintiff's corrected motion for summary judgment on Samsung's breach of FRAND counterclaim.

Let me hear from the moving Plaintiff on this first.

MR. SHEASBY: May it please the Court, Your Honor. Jason Sheasby for Plaintiff.

I think that one of the teachings of the Federal Circuit in *Voda* and *Bonzel* and the Fifth Circuit in *Syndicate* is that one of the greatest expressions of Article III power is its wise restraints, and I believe this motion touches upon just that exact issue.

The motion from the Plaintiff involves what I'll describe as three areas of alleged wrongful conduct. One area relates to access to process in Brazil and the Netherlands as well as through proceeding to access evidence under a statute in this Court, the second area of dispute relates to the actual rates that were provided in FRE 408 settlement, and the third area of dispute relates to the behavior of the parties in the

settlement itself, and each of those has a different level of analysis associated with them.

With your Court's permission, that's the order in which I'll take them, unless the Court instructs otherwise.

THE COURT: That's fine.

Before you do, I want to clarify on the record you previously filed a partial motion for summary judgment on Samsung's system art. I think that's Document 203, and in light of where we are now, it's my understanding that Plaintiff believes that's now moot. Is that correct?

MR. SHEASBY: This morning we received a communication from Samsung that they're withdrawing that as prior art which would make that motion moot.

THE COURT: Okay. Document 203 is deemed moot by the Court. Thank you for helping me clarify that on the record.

Go ahead with your proposed argument.

MR. SHEASBY: So, Your Honor, at a basic level, these patents are patents that G+ contends are standard essential, and that may be adjudicated at trial. If the patents are ultimately found standard essential, there are certain obligations that associate with that under ETSI policy.

I should also disclose to you that although we're disclosing the patents are standard essential, we are

presenting two infringement theories--one, a straight technical infringement theory, and one an essentiality theory. So that's the procedural posture of the case. That influences a number of the arguments I'm going to make.

The -- as to the German proceedings, the Dutch proceedings, and the proceeding to seek discovery before this Court, we're a creature of contract, and contract is very clear that assuming these patents are found by the jury to be standard essential, that national law is the sole governing authority as to any assertion of the patents or as to any proceeding involving the patents. And the reason why I say that is because the national law in this case would be Dutch national law and Brazil national law, which are the forum in which we proceeded.

And so at a very basic level what the Defendant is saying is you acted improperly by seeking an injunction in Brazil and the Netherlands. And they are perfectly willing -- they are perfectly welcome to make that argument; the forum they need to make that argument is Brazil and the Netherlands. This area is of acute sensitivity, because in Brazil in particular, a preliminary injunction was granted, that was appealed, on appeal the FRAND argument was made as a basis for denying the preliminary injunction, and the appeals court in Brazil did not accept that. And so at a very basic level anything that relates to the Brazilian proceedings or the Dutch proceedings

is an affront to the authority of the Dutch court and the Brazilian court. And particularly as this court sits in the Fifth Circuit and this will be appealed to the Federal Circuit, the *Bonzel* decisions and the *Syndicate* decisions are controlling.

Now, I do want to flag one thing, and I think this is the best argument that they have, which is there is a decision out of the Ninth Circuit, it's *Microsoft versus Motorola,* in which the -- in that case Judge Robart upheld a claim that it was improper for an injunction to be sought, and the Ninth Circuit, which is not controlling authority in that court -- in this court affirmed that.

Now, the difference is that was under a different contractual standard. That was under the ITU. The ITU forbids the granting of injunctions. In this case it's exactly the opposite. We know the ITU -- we know that the ETSI does not forbid granting injunctions. That's an undisputed fact.

Go to 2.15.

Friedhelm Rodermund, which is a Samsung's expert, admits that ETSI does not enjoin the seeking of injunctions. Doctor Molfessis, who is Samsung's FRAND expert, French law expert, admitted the same--that there's no violation of injunction, and Mr. Rodermund confirmed that at his deposition.

So as to the Dutch action and the Brazilian action, there

are two bases for motion for summary judgment. One is that Your Honor is charged with interpreting a contract. The contract has no provision that forbids seeking an injunction. Their witnesses admit that injunctions are allowed under ETSI. Even Your Honor believed there was a question as to whether injunctions are allowed. Under *Voda*, under *Bonzel*, and under *Syndicate 420* in the Fifth Circuit, Your Honor should decline to entertain that under a *forum non conveniens*.

So that's the first bucket of issues. Your Honor, may I move onto the second bucket?

THE COURT: You may.

MR. SHEASBY: The second bucket I want to skip around is the 1782 action.

If we could go to slide 42.

The 1782 action was an action in which we sought discovery from the court in support of our Brazilian action. That was denied, but the judge in that case, it was Judge Payne, didn't make any finding that it was in any sense done in bad faith or tortious. And under *Noerr-Pennington* --

If we go to slide 43.

-- the petitioning activity before the -- before a court in the United States is protected by the First Amendment.

Now, there's an interesting move that Samsung makes. They say, Well, yes, we understand that petitioning activity is protected under the First Amendment, but they said

petitioning activity can still violate a contract, and so we're in the money because now we have a contract. Well, the problem with that is you have to find a contract that says you can't file a 1782 action. There's nothing in the ETSI contract that says you can't file a 1782 action. There is nothing in the ETSI contract that forbids the seeking of discovery in front of a federal court, and as a matter of law the Court should conclude that.

Now, here's an interesting nuance. The predicate for why they think the 1782 action was improper is because of the Brazil action. If the Brazil action was proper, the 1782 is improper. That's not my reasoning; that's their reasoning. But the Brazil action is proper for two reasons--one, because the ETSI contract does not forbid seeking injunctions or filing legal process; and two, under *forum non conveniens*, it's not appropriate for this Court to determine the issue of whether the Brazil action was proper. Wise restraint--greatest expression of power.

So I'll stop on those two things. With Your Honor's permission, I'll move onto the third bucket of delicts.

If we go to slide 2.18.

These are the attempt --

SLIDE 2.18.

These are the delicts that relate to the negotiation process and the offers that were actually made. And I want to

start here, which is under French law--and this is undisputed by Plaintiff--a contract action under French law only exists if there is damage.

Let's go to slide 2.52.

THE COURT: Doesn't French law allow for nominal damages?

MR. SHEASBY: There is nothing in the record that says French law allows for nominal damages, Your Honor.

THE COURT: I recall that coming up in a different context in an earlier case.

MR. SHEASBY: It was an earlier case, but in front of this Court there is no evidence that French law allows for nominal damages. And, in fact, what French law says is that if you're negotiating a contract, the expectancy that you'd get from that contract is not an appropriate measure of damages. So there's no such thing of, Oh, what I would have gotten if they would have negotiated.

So why do I say that? So I say that because if we go to slide 2.19, the only damages that are sought in this case are legal fees. And, in fact, they had an expert who calculated the damages that they are seeking. These are the only damages that they are seeking in this case, and they are damages associated with the legal fees with the Brazilian litigation, the Netherlands litigation, and the 1782 action. Each of those three measures of damages are improper and *ultra vires*

in the Court because they involve *forum non conveniens* and they involve an undisputed issue, which is that seeking legal process, seeking an injunction in a country does not violate ETSI.

THE COURT: Let me be clear on something, Mr. Sheasby. You're not suggesting that there is a request from any party before this Court for this Court to review the decisions of courts in other countries or to somehow usurp their authority or to overrule their decisions; you're simply trying to move the Court to prohibit the introduction of those actions and the interaction that related to those litigations as a part of the trial in this case? I'm trying to understand exactly what you're concerned about protecting with your arguments in the First Amendment and everything else.

MR. SHEASBY: Yes, Your Honor.

So I'm doing both.

THE COURT: Is it your understanding that Samsung is asking the Court to substantively review and potentially overrule the decisions of a foreign jurisdiction?

MR. SHEASBY: No. In fact, I think Samsung is asking the jury to do that, and I think that's the whole point, which is Samsung wants all these issues to be tried to a jury. Samsung wants to tell --

THE COURT: Well, that's my question. What specific issues are we talking about? Is it simply evidentiary

testimony about these actions outside the United States as a part of determining whether there has been good faith and fair dealing or a meeting of the FRAND commitment, or are you going further than that and saying this Court or the jury in this case before this Court should decide whether the Brazil court made the right decision or wrong decision in granting injunction relief, et cetera, et cetera.

MR. SHEASBY: I want to be a fair in my characterization of their argument as possible. I think they will tell Your Honor, No, Your Honor, We're not asking you to second guess Brazil or the Netherlands or Judge Payne at all; don't worry about that. All we're saying is that they clearly acted in bad faith because they filed these proceedings and that's the only thing we want the jury to decide. But the predicate of that is whether those proceedings were filed in bad faith is not properly in front of this Court for two reasons--one, because the ETSI contract does not forbid seeking an injunction in other forums; and two, because the question as to whether it violates an ETSI predicate to file proceedings in Brazil and the Netherlands and in discovery are issues under *forum non conveniens*, which should be solely decided by the Brazilian Court and by the Dutch court. In effect they are trying to move the dispute about whether those proceedings are proper under ETSI from the court that hears them to this Court.

And so they're going to say, It's up here; oh, it's just about good faith; don't worry, Your Honor. But the underlying argument of necessity requires answering the question was it improper to file in Brazil, was it improper to file in the Netherlands, was it improper to seek discovery. That is of essence what the argument does.

And so they are in effect tortifying or writing into a contract a clause that says you can't seek an injunction in Brazil, you can't file a Dutch proceeding unless you go through X, Y, and Z, and there's nothing in the contract that says that. To the contrary, the contract -- they admitted the contract doesn't say those things at all. Mr. Rodermund admits that the contract does not forbid filing an injunction and their French law expert states it as well.

THE COURT: Am I correct that part of the original counterclaim urged by Samsung involved some type of tort theory here, but they've since conceded that they're going to abandon that and proceed only on a contract theory?

MR. SHEASBY: Right. And that's what I'm saying is dispositive, because if the Court finds as a matter of law that the ETSI contract does not forbid seeking an injunction or filing legal process, this part of the claim is over. If the Court finds that it needs to follow *Voda* or *Binzel* or *Syndicate 420* and leave it to the Dutch court and the Brazilian court to decide whether it was proper to file this

process, the claim is over as to these proceedings.

THE COURT: All right. Why don't you continue with your argument.

MR. SHEASBY: Sure.

So the second aspect of it is -- so the only damages that they seek are damages associated with the legal process. So this has two issues--if the only damages are associated with filing the legal process, and this Court as a matter of summary judgment on *forum non conveniens* or based on the contract or based on the First Amendment concludes that these can't be a basis for a breach of the FRAND obligation in this court, then there's no damages. If there's no damages, it's not for the jury; it's at best for the judge.

And so the -- this is sort of a deeply practical issue which is that we're going to have a trial in which we assert that the patents are essential, in which Samsung disputes that the patents are essential, and which we assert the patents are infringed even if non-essential. At the end of that, the jury will be instructed on FRAND and the jury will reach a verdict as to whether those patents are infringed, whether they are valid, and what the FRAND damage will be.

At that point all of this will either become moot or it will already be decided because the jury will know what the -- the jury decide will decide what FRAND damages are, and that a subsequent point in time the Court, if there's anything left,

can make a decision as to whether there was a violation of a FRAND duty and a declaration but there's no damages.

So at a minimum, even if this Court is inclined not to dismiss these outright based on the argument I made, the fact that the only damages that they've cited are damages for the legal proceedings strongly indicates that this is an issue that is not appropriate before the jury. At a minimum it should be tried to the bench afterwards if the Court wants to hold its power on whether to resolve it right now.

Now --

THE COURT: Why isn't this something that can be deferred from the summary judgment stage to the 50(a) stage --

MR. SHEASBY: Yeah. So the reason --

THE COURT: -- and let the Court have the benefit of seeing actually what comes in before the jury?

MR. SHEASBY: Yeah. So the reason being, Your Honor -- and this is what I want to get to. Every offer -- what Samsung wants to do is Samsung wants to put in front of the jury the settlement offers that we made regarding --

Let's go to slide 31.

-- the settlement offers that we made under FRE 408 for a global patent resolution. In effect, Samsung wants to poison the damages well by using our settlement offers in the friend negotiation which were significantly less than the damages numbers we're presenting to the jury, because it's a different

construct, and say, Use this as a foil to suppress the numbers. In effect, by letting FRAND be a part of this case, FRE 408 becomes meaningless because the offers in compromise get to come in and taint the jury.

Now, that is the practical reason as to why Rule 50(a) is not appropriate because it defeats the whole purpose of FRE 408, but there's a legal basis as well. The Court has previously held that when there is -- based on *Voda* is that when issues are only based on worldwide rights and there's no U.S.-specific right, that it is not appropriate for this Court to adjudicate a worldwide FRAND rate. Every single offer that G+ made was a worldwide rate, every single offer that Samsung made was a worldwide rate, and if you go to the testimony of --

Let's go to slide --

And if you go to the testimony of their expert, you see everything he talks about are worldwide license agreements and he was not asked to calculate U.S.-only patent rights.

So the issue here, in addition to the practical issue of the destruction of the FRE 408 benefit and the reason why these are being injected -- these claims are being injected is because of the destruction of FRE 408 and getting the settlement offers in before the jury the only things that the parties discussed was worldwide rates. And so under this court's decision in *Optis Wireless*, based on *Voda*, it would be

inappropriate for this Court or a jury to sit and calculate the worldwide rates.

And let me explain to you the bizarreness of this. We would have to be presenting evidence showing that the foreign patents cover their products, the foreign patents would relate to these products. It's in effect trying our entire portfolio, which is a worldwide portfolio, in front of the jury. Now, that is the reason why from an -- subject matter jurisdiction, the issue of the offers that were made from each side should not be before this jury. It should not be before this jury as a matter of subject matter jurisdiction because it requires a value of worldwide rate, which *Voda* forbids courts to do; and the second thing it should not be in front of this jury is because it puts us in an impossible situation in which FRE 408 becomes meaningless. You are never going to have a standards essential case that could settle or on which offers could be made if every single time there's a subsequent litigation those FRE 408 settlement offers get used and presented to the jury making FRE 408 meaningless by just bringing a claim for breach of FRAND.

There is -- separate from a subject matter jurisdiction, there is another issue, and the Court has spoken to this -- spoken about this previously, which is that in the *HTC* proceeding there is no obligation that a given offer is FRAND; there is only a dispute as to whether the behavior and whether

there was good faith negotiations. And so even if this Court were inclined to let an issue of good faith negotiation be in front of this jury, it would not merit or justify the injunction of our offers because this Court in *HTC* has already held that you don't need to make to, quote, FRAND offer to comply with FRAND; you need to participate in a good faith process.

And so, in effect, them allowing to put these offers in front of the jury and saying these offers are non-FRAND makes the jury, in effect, think that the ETSI contract requires any one offer to be FRAND, which requires you to read that limitation into the ETSI contract.

And so the second -- the third issue that Your Honor can decide on these negotiation issues is that as a matter of law the contract does not require any one offer to be FRAND, which is what Your Honor found in *HTC*. And because of that, making this dispute by saying our offers are or are not FRAND is not a proper claim on contract, especially since they dropped tort.

I'll stop there and see if Your Honor has any questions about that series of delicts.

THE COURT: The question I have, Mr. Sheasby, is--and correct me if I'm wrong--but it sounds like at the end of the day, if you boil this all down, what you're suggesting to the Court is in determining whether your client has

conducted itself in a manner that comports with FRAND and has engaged in good faith and fair dealing, only conduct within the borders of the United States can properly be considered. It sounds like what you're telling me is you can be reasonable in the United States, but if you go outside the United States border you can act like a pirate but that can't come in because it didn't happen in the United States, and quite honestly I'm having a hard time seeing how that is, A, proper; and B, how it comports with the totality of the circumstances analysis that goes into determining whether a FRAND obligation has or hasn't been met.

MR. SHEASBY: Yeah. So Your Honor, I think that I would respond to that in three ways, which is that the 'it stops at the U.S. border' is not a fair characterization of what I'm saying. In other words, if we have a dispute about worldwide behavior in which we are acting in a way that is not in good faith, that is an issue this Court can fairly resolve.

THE COURT: But you only want the jury to hear about the conduct that happened in the United States.

MR. SHEASBY: No.

THE COURT: Okay.

MR. SHEASBY: No, I don't. The jury can hear about the conduct that happened in Korea, the jury can hear about the negotiations everywhere. What the jury should not be hearing about is the filing -- is a Brazilian or Dutch action

being a basis for a violation of FRAND because, as a matter of contract, which is for you to decide, the ETSI contract does not forbid the issue, that from happening. It's a contract issue. It doesn't go to the jury unless the contract is ambiguous. There is no place in the contract that says you can't seek an injunction. There's no place in the contract that says you have to --

THE COURT: Does the rubric of FRAND encompass and align itself completely with good faith and fair dealing? It sounds like what you're saying is as long as you don't do something FRAND prohibits, that *ipso facto* is good faith and fair dealing, and I'm not sure that you can't do a lot of things that are bad faith but yet they're not expressly prohibited by the guidance coming from ETSI. It sounds like you're telling me that anything you do that's not prohibited by ETSI is in and of itself not bad faith. Is that the position you're taking?

MR. SHEASBY: No. I'm taking a much more precise position, which is that the seeking of an injunction in the Netherlands and Brazil is not forbidden by FRAND, it's not forbidden by the FRAND policy, and because of that, if there is impropriety with that process, the court who should decide whether there's impropriety with that process is the Dutch court and the Brazilian court, not this Court, because it treads upon their legal authority, in the same way that a

Chinese court should not be deciding whether this Court's adjudication of U.S. -- this Court's adjudication of U.S. patents is a violation of FRAND. In other words, you would be deeply dissatisfied, Your Honor, if a Brazil court tomorrow decided to take up the issue about whether this process that Samsung's engaged in here violated FRAND. That's solely for Your Honor to decide based on this case.

And so Your Honor has in the past historically recently allowed issues of breach of FRAND to go to the jury. I recognize that. But there is two questions--should breach of FRAND go to the jury is one question; the second question is what are the proper predicates as a matter of law that can go in front of the jury. And what I'm trying to tell you is that the Dutch proceeding, the Netherlands proceeding, the 1784 proceeding -- the 1782 proceeding, and the FRE 408 offers that we have made are not appropriately presented to this jury--First Amendment reasons, *forum non conveniens* reasons, the fact that it is undisputed that the injunctions are not improper under FRAND law and the presenting our FRE 408 offers in effect destroys the value of 408.

Now, I have to tell you there is behavior that I'm going to have a lot of trouble convincing Your Honor is not in front of the jury. They have an allegation that we did not negotiate in good faith because we did not agree to an NDA, because we drew out the NDA, and because we filed suit shortly

after they proposed the NDA. I recognize that under this Court's precedent those issues are before the jury. But the other issues -- to say that this jury can consider FRAND behavior is fine; to say that this jury can consider issues that destroy the purpose of FRE 408 tread on the authority of the Brazilian and Dutch court, that -- and that we're being sued for liability for First Amendment petitioning is, in my mind, a bridge too far.

THE COURT: Let's drill down a little further. In the deposition of your employee, G+'s employee Mr. Pitcock, he says in so many words, We only went to Brazil to get an injunction to use as a bargaining chip in the United States with Samsung; we really never cared about having an injunction down there in the first place. Now, I'm paraphrasing what I read in his deposition, but that's the takeaway, at least in my view.

MR. SHEASBY: Yes.

THE COURT: Now, how is allowing that to be presented in this trial treading on the rights of the Brazilian court overviewing -- overseeing their adjudicative process or somehow inserting myself into the Brazilian judge's position? I don't see that.

MR. SHEASBY: So that was the -- that was Samsung's gloss on what Mr. Pitcock said. What Mr. Pitcock says --

THE COURT: I've read the deposition. I may have

not paraphrased it accurately, but it's pretty close to an admission, at least from my reading. And I'm not the fact finder here, but it's pretty close, in my view, to saying, We went down there for strategic purposes to get something to use as leverage in our negotiations with Samsung on these U.S. patents in the U.S., and if that's how it's viewed or if it reasonably could be viewed that way, what basis do I have to prohibit that from being considered by this jury in determining whether you've complied with your FRAND obligation or breached it pursuant to the counterclaim from Samsung?

MR. SHEASBY: Well, the Brazilian --

THE COURT: How is that treading on the First Amendment? How is that treading on the rights of the Brazilian judiciary? You know, let's take this specific example. Show me how this violates all the arguments you just made.

MR. SHEASBY: If you go to slide 7, Mr. Svenson.

The Brazilian court granted our preliminary injunction. The Brazilian court said there was no evidence that we refused to negotiate a license or that we acted improperly by taking this step. If you're going to allow them to say we acted improperly by filing the Brazilian action, even though ETSI does not forbid you from filing actions to gain leverage, whatever phrase you want to use, then we're going to have to present the Brazilian verdict that says we acted

appropriately, that the preliminary injunction is in force, and that there was no evidence that we acted in bad faith or we refused to negotiate. And so what Your Honor has in effect done, it seems to me, is tortify the filing of lawsuits, which is if this lawsuit wasn't appropriate they could have sought antisuit injunction in this Court.

THE COURT: Well, we may differ on where you draw the law between tort and contract. We've got a contract obligation to conduct activities in good faith and fair dealing, and what you're telling me is that the action of filing the injunctive suit in Brazil somehow must be viewed through the lens of tort and isn't properly viewable through the lens of breach of contract.

MR. SHEASBY: I am, Your Honor, because the filing of an injunction is not forbidden by the contract.

THE COURT: But it seems like to me what you're in essence saying, Mr. Sheasby, is if you don't violate some express directive from ETSI, then you have conducted yourself in good faith and engaged in fair dealing regardless of anything else you may have done, and I don't know how you make that leap from 'We didn't violate ETSI's rules' to 'We acted in good faith', because the determination of whether you've met the good faith fair dealing standard is not cabined only within the written guidance of ETSI, to my knowledge.

Now, if you have authority that says that, tell me that,

but that seems to me to be the flaw in your argument that you're telling me that unless we violate ETSI rules we automatically have put ourselves in a position of good faith and fair dealing, and I don't know where the support for that is.

MR. SHEASBY: So it's 16 -- slide 16, Your Honor. It's their own expert. If ETSI patent policy does not forbid seeking injunctions in federal courts, then how could it possibly be the case that we violated an obligation that it permitted under the contract? The contract doesn't say good faith and fair dealing; the contract is a French law contract.

THE COURT: It just seems to me that there is a tremendous amount of potential conduct that's not addressed directly by ETSI that might fairly read on whether as a totality of the circumstances a party's composite actions and conduct are fair or unfair or good faith or bad faith. And I fail to see the limitation you're trying to impose here tying conduct to compliance with the ETSI rules as giving you a shield from any other conduct being taken into account in the determination of good faith or bad faith, if that makes sense.

MR. SHEASBY: It does, Your Honor.

The only other thing I would point to is the dispute resolution clause that says that ETSI does not place any limits -- ETSI does not specify what the terms that should be offered should be. ETSI does not specify any aspect of the

negotiation, and if there are disputes you go to the national courts to resolve those disputes. And so, in effect, you're saying we have a contract that says if you can't decide you go to the national courts. We went to the national courts and they're trying to say that's a violation of the contract.

So it's not just that ETSI is silent, Your Honor; ETSI has expressly said that we have the right to go to the national courts because they have the sole authority to resolve IPR disputes. And so there is a -- I am -- there is no way that I'm going to get Your Honor to conclude that it doesn't have authority to decide -- to hear breach of FRAND obligation. The Court is -- it's well-settled law in this Court that it does, and I understand that. But to go from that to these very, very unique tactics they're using where they're trying to say we breached our obligation by filing lawsuits that the contract doesn't just remain silent on, it expressly says we get to go to national courts to resolve IPR disputes. That is a dramatic expansion of this Court's authority and a dramatic reworking of this contract.

Let me give you another example. To say that they can take our FRE 408 settlement offers and use them against us in a patent litigation when the NDA we signed -- the contract we signed with them expressly prohibits that. And I'll show you that language, Your Honor. This is slide 33. We signed an NDA with them that says our communications will be governed by

Rule 408. That NDA expressly says that those communications can only be used to defend against an accusation of FRAND breach, not to be used as a basis for FRAND breach. And by them bringing this breach of FRAND obligation, they're destroying not only FRE 408; they are also destroying the exact contract we entered in them on November 3rd, 2022.

And so in terms of the area of behavior, Your Honor is right that it can't just be everything we do outside of the United States is irrelevant. I accept that. Having said that, when it comes to filing legal process that is expressly authorized by ETSI, and when it comes to our FRE 408 arguments that we signed a contract with them saying will not be used for this purpose, their bringing this claim effectively destroys both the ETSI provision giving us the right to sign and it destroys the NDA that we signed with them.

THE COURT: Well, it sounds like to me what you're saying, Mr. Sheasby, is if the Court cracks the door open, then the door's automatically going to come off the hinges and they'll be able to drive anything they want to, Samsung will, through that door. That's an argument that is I think well-made when you're asking me to keep the door locked completely. I'm not necessarily convinced that the door has either got to be completely locked or it's got to be opened all the way and taken off the hinges. The ruling -- or a ruling that denies your motion is not a blessing on violating

an NDA or violating the 408 provisions or necessarily doing what you're telling me you're afraid they're going to do. Those are issues that if the door remains -- if the door does not remain completely closed, those are issues that then have to be dealt with--how much goes through the door, how little goes through the door, what doesn't go the through the door. But to say that if you crack the door at all everything here is going to automatically flow through this trial in front of the jury's not necessarily true. But that doesn't necessarily persuade the Court that the only answer is to keep the door locked completely.

MR. SHEASBY: I understand, Your Honor. Let me be very precise, then, about what I think is the appropriate summary judgment to be granted here.

If we go to slide 2.6.

We have a contractual right to go to the national courts to settle IPR disputes. Any suggestion that we breached the contract by going to the Netherlands or going to Brazil to settle an IPR dispute is *ab initio* improper as a matter of law because the contract expressly gives us the right to do so. If they want to say that was in bad faith, they can make that argument in Brazil because it's the national courts that is the sole authority to decide that issue.

And the second summary judgment window that is appropriate is the issue of the settlement offers.

If we go to slide 31.

They are bringing a claim for breach of FRAND based on FRE 408 settlement offers. They are using the claim to drive a truck through FRE 408, and it violates the NDA the parties signed which says their communications will be governed by FRE 408 in which grants as an exception only to defend against an accusation of FRAND.

So I believe, Your Honor, based on the feedback today, those two narrow summary judgments and Rule 56 does allow Your Honor to grant summary judgment in part, not in whole, as to a claim of removing this sort of Damocles of having to relitigate Dutch and Netherlands law and using our FRE 408 communications against us is appropriate.

And let me tell you the sort of -- the sort of the surreal world in which we are a part of. Even though they're trying to bring a claim against us that we violated the law by filing in Brazil, they have a motion in limine to preclude us from presenting the judgment in Brazil that we prevailed. This is done for the express purpose of not having a good faith claim of FRAND breach, but to inject settlement offers and to use something that we are absolutely entitled as a matter of law to do under the contract. It's not silent; it's express. We can sue them in the Netherlands and Brazil, and if they have a problem with that, the foreign -- the national courts decide that.

Your Honor, I've taken up a lot of your time. I think it's best for me to reserve some time in reply, with your permission.

THE COURT: Well, we'll see about that.

But let me hear from Samsung in reply.

MR. SHEASBY: Thank you.

MR. McKEON: Good morning, Your Honor. Mike McKeon for Samsung.

May I approach to hand out some slides?

THE COURT: You may.

MR. McKEON: Okay.

THE COURT: I know you paid close attention to Mr. Sheasby's argument, so if we can get down to the actual points at issue.

MR. McKEON: Yes, Your Honor. Thank you. And I plan on doing that. I do plan on streamlining a bit, because I think in that exchange with Your Honor the motion has already been narrowed to its core.

You asked a question that was very intriguing and that was something I was going to say. If you take the argument to the logical conclusion, when we started this morning what they were saying was if it's not in the United States, if it didn't happen here, you can't even mention it to the jury, it can't happen. And I think the concessions today, I think he's walked that back. But that's where they started, Your Honor.

They don't want these FRAND issues going to the jury, and they've said as much in this case to Your Honor.

THE COURT: Well, this is not about whether they go to the jury or they're decided by the Court; this is what is the appropriate evidence to present to whoever the fact finder is.

MR. McKEON: Exactly. And also, Your Honor, what's important here is the standard that applies, because what is the standard, what is the jury going to have to consider, and what is the evidence that supports our view of the world. And the standard is very clear. Your Honor has said it very clearly in the *HTC/Ericsson* case. What is the FRAND commitment under French law--either offering a license on FRAND terms and conditions or negotiating in good faith towards a FRAND license. So that's the standard. So it's the good faith component here that's primary, what we're talking about here. The question is did they operate in good faith and that's the issue, and that's really the issue that we're talking about.

Now, when Mr. Sheasby said, Oh, the ETSI standard doesn't mention you can't get an injunction or doesn't say you can't go file lawsuits. Of course, it doesn't say that. It's not explicit on that point. But what we do know from the ETSI standard is this good faith component, that's a standard. You've got to operate in good faith because you have a

responsibility, if you have SEPs, to operate in good faith and work towards a FRAND license. So where do they go wrong here? Where do they not operate in good faith, and I think that's the question for the Court. And there's plenty of evidence we plan on presenting on this point, Your Honor.

Mr. Sheasby acknowledged today that the refusing to negotiate the NDA for U.S. patents, we say that's unjustified, he acknowledged here this morning that that certainly is a fact that can go to the jury, so that's in. What we're saying about these injunctions, Your Honor, the Brazilian injunction, the key there is they went and sought an injunction, and that is a lack of good faith. It's not that they filed the lawsuit in Brazil; that's not the issue; it's that they went and sought an injunction in violation of the good faith behavior.

And one of the primary, you know -- back over a decade ago there was sort of a couple of cases that were -- you know, the patent bar were all excited about in this SEP area, and was the *D-Link/Ericsson* case out of this Court that folks were paying a lot of attention to, and the other one was the *Motorola* case that counsel mentioned, the *Microsoft/Motorola* case that was in Seattle Judge Robart did. It got a lot of attention, a lot of amicus briefs were filed, so it was important. The SEP law was sort of developing then. And do you know what the primary basis was in that *Motorola* case for violation of FRAND? It was they didn't give the FRAND offers,

they weren't FRAND, and they sought an injunction in Germany, and that was a violation of the rubric. To be sure, it's not ETSI, but conceptually, Your Honor, it's all the same we're talking about here; it's about good faith, and they weren't operating in good faith. So the fact that they sought an injunction in Brazil is absolutely an important fact here.

And we're not -- just to end this debate here on whether -- what we're going to try to the jury, we're not going to try a trial within a trial about what happened in Brazil or what's going on in the Netherlands. There's nothing that's coming in about that. This Court's not going to be in conflict about what's going on there. That Brazil proceeding is still going on. There's a lot of things still happening there. But what did happen is they went and sought an injunction, and in fact-- and actually obtained an injunction against Samsung, and that's part of the bad faith that we plan on presenting.

THE COURT: And the bad faith issue, the obligation of good faith and fair dealing, the obligation to negotiate and license or accept a license on FRAND terms, that's only coming in this trial based on contract theory. There is no tort allegation that you're going to go forward on. Correct?

MR. McKEON: That is correct, Your Honor. That is correct. And what the contract requires -- again, those two elements, it's not disputed that it requires as good faith component or to actually offer a FRAND license on, you know,

fair and reasonable conditions.

So those are the two requirements that we're going to be litigating, those are the ones that are going to be tried that we have been litigating, those are the ones that are going to be tried to the jury. And we have the facts, Your Honor, to support that.

And this is just -- to level-set on some of the facts, Your Honor, the initial offer that came in from GComm was in September of '21, and then Samsung immediately responded with, Okay, let's have a discussion; we need to do it under an NDA. And then there was a subsequent offer, some claim charts, they refused to sign the NDA, and then they filed a lawsuit, and then went to Brazil to get the injunction, again, before any negotiation. They didn't even start the negotiation process; they just went and filed a lawsuit and went to Brazil. We think that, Your Honor, that's bad faith conduct. We think that's a violation of the duty of good faith.

And, you know, in terms of the NDA, of course, it's, common in this business, Your Honor, to operate under an NDA. We have testimony from ZTE, who's the actual original owner of the patents in this case, and the head of IP there testified, Yeah, I've done -- 20 years I've done an NDA every time. We plan on presenting this to the jury as part of our breach claim.

In terms of the offers, Your Honor, the offers need to

come in. Again, this is evidence, evidence of the bad faith. It goes to the notion that they never made an offer under FRAND terms. And what we have here on the slide, Your Honor, the analysis in red is the analysis that Mr. Dell did. He's their expert. And I'm going to get to the 408 issue in a minute, but at the minimum it comes in, Your Honor, as -- on cross examination of Mr. Dell because Mr. Dell says -- every one of these things you have -- you see here in the red that Mr. Dell puts forth in his opinions is FRAND.

So he says in his analysis that we have, the damage case is $2.20, and that analysis, Your Honor, is an incremental profit analysis. And all these other offers that were prepared were done by Mr. Dell. He was the -- behind the scenes working with Mr. Pitcock to get these offers. So these offers are very important in the case. And I want to demonstrate the breach but also to -- as a cross examination for Mr. Dell and his opinions.

And of course, we're going to bring into evidence, Your Honor, that the other licenses that are at issue in this case, you know, if you look at the per-unit royalty in those licenses, it is vastly different, vastly different. And again, that's a breach because the offers they made were not, were not FRAND offers, and that is a basis for a breach of the FRAND contract.

So Your Honor, we think that these facts, Your Honor,

certainly are facts that should go to the jury. It certainly precludes summary judgment. This is a classic factual dispute. And as Your Honor knows and as Mr. Sheasby acknowledged, Your Honor has sent these to the jury many times *HTC/Ericsson*, you know, *Apple/Ericsson*, a couple of weeks ago Your Honor in the *Evolved* case you sent it to the jury to decide this. These are things that Your Honor has done again and again, and rightfully so, because these are really ripe with a lot of fact questions because it really is a totality of the circumstances question--you know, good faith; was there good faith here, and that's a classic jury question, Your Honor.

And in terms of damages, Mr. Borghetti, GComm's own expert, acknowledges that under French law damages caused by a bad faith SEP holder from defending a lawsuit that's brought in bad faith, that's grounds for damages. And that's our --

THE COURT: I think it's interesting that the parties here are proposing to bring two professors from the same French law school to testify to completely different results on what French law means. These two experts both teach at the same law school in France.

MR. McKEON: Yes, that's right, Your Honor. So I don't know if it's the French legal system that's the problem, but the -- you know, there actually is a lot of a joinder in terms of what they're saying. There's really some disputes

about the NDA and around the edges, but a lot of what they say there's a commonality here, and I think that will be streamlined at trial. But yeah, I think there's -- certainly they have different viewpoints on a few things for sure, and --

THE COURT: What else, Mr. McKeon.

MR. McKEON: All right. Let me -- I've already covered this so I'm not going to go through this again. Of course, Your Honor, you know that GComm brought -- has a claim against us for breach of contract, too. They brought it in the case. It was -- in their initial complaint they discussed it, and then they had the counterclaims, they brought it, so -- and they said the Court has jurisdiction to resolve this. So now they're saying the Court doesn't have jurisdiction to resolve this. So I think that's -- you know, that the Court should take that into consideration as you think through this issue.

The *Optis* case is, Your Honor, a completely different setting. That was one of the major cases they relied on. I didn't hear much about it today, but a completely different setting there. There was a declaratory judgment request by the SEP holder that they didn't violate the FRAND contract, you know. And it's completely different. Here we have both sides requesting that there be a ruling on -- from the jury on the breach of FRAND issue, at least in the pleadings. So

different -- the case is situated much differently from the *Optis* cases.

And, of course, even in the *Optis* cases, the Court let the jury hear about -- in the Court's pretrial rulings sent the U.S. FRAND -- the violation of ETSI in the context of the U.S. patents, that did go to the jury in the end.

So in terms of the evidence, Your Honor, let me just march through it quickly. Of course we have the NDA. We have the breach related to the non-FRAND offers. And, of course, as Your Honor alluded to, the testimony from Mr. Pitcock on these points is very important. This was centered on the U.S. This was about the U.S. And the offers that were provided were based on the U.S. FRAND analysis. This is what his testimony is, and we quoted that here on slide 27.

And the original letter, Your Honor--and I won't put it on the elmo but it's an exhibit in the briefing--the original letter is a chart and it's U.S. patents, U.S. patents, and then, you know, all the way to the right they have some foreign patents, corresponding patents, and the letter from Mr. Pitcock was based in New York, the company GComm is a Delaware company, they have an office here in Texas, it was about United States -- all about the United States cases and that was what was driving it.

And, of course, the testimony Your Honor referred to, we read it, Your Honor, the same way you read it, which is it's

saying that we were using this--and I'll get to the second point here--they were using this to put pressure on Samsung. The injunction was really to put pressure on Samsung and to bring them to the table for a FRAND license. And we have a quote from Mr. Pitcock's deposition here and then another quote here that he really didn't have any interest in, you know, preventing Samsung from selling products; he wanted to force the FRAND issue. And, of course, that itself, Your Honor, is a violation. You can't use injunctions to do that. And that's why that's not good faith, and that's the evidence we plan on presenting to the jury.

And again, Your Honor, the *Optis Wireless* case, the *Apple* case--sorry--the *HTC* case, on slide 30 we cite this idea that these FRAND negotiations are always global. There's always global components to them. And as Your Honor knows--you've done a lot of these--there's cases all around the world often in these disputes, and so there's always a global component and the settlements are always global.

And, you know, under the rubric that Mr. Sheasby's presenting is that you can never -- never present a FRAND breach claim because all the discussions may have evolved in global resolution, but you can unpack that and you can center that on the U.S. patents that are issued in the case, and that's what our experts have done in this case. And the Court notes this approach in the *HTC* and *Optis Wireless/Apple* case.

All right. 408 briefly, Your Honor. The *Microsoft/Motorola* case that I mentioned, you know, that was an issue in that case. And again, you know, these offers really are quintessential to the concept of the breach. The offer -- these offers are not being used to demonstrate that there's infringement or liability or no infringement; the offers are being -- themselves go to the breach of contract.

So it's not a 408 issue; it's going to -- the breach and the offer itself is a breach because it's part of the behavior of refusing to negotiate in good faith, it's part of the behavior of not offering a -- providing a FRAND offer. And that's not Rule 408. That's not Rule 408, Your Honor.

So these offers should come in, I think they need to come in, and 408 does not prevent them from coming in. We're not going to talk about liability in any way with respect to the infringement issues or anything of that sort with respect to the offers; what we'll be talking about is the basis of the breach in part are these offers, and Rule 408, of course, does not preclude that. That's the *Motorola* case. It's a specific holding on that point when they dealt with that issue.

And, you know, and the irony is, of course -- if Mr. Sheasby's telling us that, Well, none of these offers --

THE COURT: Mr. McKeon, let me stop you. You've called opposing counsel Mr. 'Cheesby'.

MR. McKEON: Oh, sorry.

THE COURT: His name is Sheasby.

MR. McKEON: I apologize, Your Honor.

THE COURT: In the *Netlist* case I specifically instructed you to pronounce the man's name correctly. You would not appreciate it if he pronounced your name clearly in an erroneous fashion time after time after time. I've had my last name mispronounced to me more times than I can count and I don't like it either. Nobody would. And I can only take it that you're doing it intentionally to irritate opposing counsel when we've had this discussion in an earlier case and the first bat out of the box you can't call the man his name and pronounce it properly. I have to take it that that's some kind of intentional jab or act on your part and I'm not going to put up with it.

MR. McKEON: My apologies, Your Honor.

THE COURT: You can pronounce Mr. Sheasby's name correctly, and you will.

MR. McKEON: Yes, Your Honor.

THE COURT: Do you understand me?

MR. McKEON: I apologize, Your Honor. Yeah.

THE COURT: This is not the first time we've had that discussion.

MR. McKEON: I recall, Your Honor. It's --

THE COURT: It's just -- it doesn't reflect well on you or your firm. It doesn't reflect a professional attitude

or conduct.

MR. McKEON: I apologize, Your Honor. And I can tell you it's definitely not intentional.

THE COURT: Then you didn't listen to me in the *Netlist* case.

MR. McKEON: It's burned in my brain because that's how I originally pronounced it.

THE COURT: Reprogram your brain.

MR. McKEON: I will do that, Your Honor. I will do that.

So -- well, so counsel argued, Your Honor, you know, if he wants the offers out, you know, then what is the basis to say that they provided offers that were FRAND before they filed the lawsuit and before they filed the injunction request in Brazil. They would have no evidence on that if their view is that these offers shouldn't come in. So I think it's -- the offers should come in, and we think they're very relevant, and we don't think 408 is a burden on them.

And finally, Your Honor, *Noerr-Pennington*. And again, this is an issue that was addressed in the *Microsoft/Motorola* case, and it -- this is a situation where the breach of contract -- you know, the liability is standing from the breach of contract, and part of going to Brazil and seeking the injunction, you know, that is the breach of contract, and that's the basis. So *Noerr-Pennington* is not -- does not

preclude that. And, you know, that won't come in. It comes in for the fact that it is itself a breach of the contract. And there's good discussion, frankly, by the Ninth Circuit at this point that we've cited on our briefing and have repeated here that really *Noerr-Pennington* really is beside the point because the breach itself flows from the fact that they went to the court and sought an injunction.

And that's really what we're going to be telling the jury, Your Honor. We're not -- you know, we're not getting into any of the details of Brazil, we're not going to get into the details of Netherlands, of course not; it's going to be focused purely on the litigation activities, without signing the NDA they ran off and filed lawsuits, and then they went and got that injunction before there was even a negotiation period, and that's really the problem. We think that's a breach, Your Honor, and we think the jury should hear that, and we think that there's -- at minimum there's factual disputes that the jury should decide.

Unless you have any questions, Your Honor, I'll pass --

THE COURT: I don't.

MR. McKEON: And again, Your Honor, I apologize.

THE COURT: Well, you owe Mr. Sheasby an apology.

MR. McKEON: I will apologize to him off the record.

THE COURT: All right. Do you have any brief follow-up, Mr. Sheasby? We've spent over an hour on this

motion. I understand this is a significant part of the pretrial dispute, but we do have a lot of ground to cover.

MR. SHEASBY: Yes. 2.34.

I significantly narrowed the motion to two issues. One is --

Can I have 2.34?

One is our offers that are FRE 408, and we signed a contract that forbids them from using those. Summary judgment should be granted enforcing this contract.

And the second issue is that the Brazil and Dutch actions, the filing of those actions and the behavior in those actions are expressly authorized under ETSI contract law. And I'm particularly concerned by this fact, Oh, we just want to tell about the fact that they filed the action, but the jury won't hear that we won it. That behavior is pernicious and exactly why the ETSI contract expressly says national courts decide IPR issues. It's not silent; we did what the contract expressly allows us to do. On those two narrow issues summary judgment should be granted.

Thank you, Your Honor.

THE COURT: All right. Well, in light of the fact that Samsung has on the record withdrawn and waived their tort recovery theory here and that this comes to the Court solely in the context of breach of contract claim, noting that there are competing -- substantively the same competing

counterclaims and claims between the parties as to whether the other violated the obligation to act in good faith and fair dealing and to act in compliance with the FRAND obligation, I am not prepared to grant the relief the motion asks for. These are fact questions, and I'm going to deny the motion.

Now, I earlier used the analogy about the door being locked, the door being opened part way, and the door being taken off the hinges. Mr. Sheasby in the motion has asked me to effectively in that analogy keep the door locked and bolted, period. I'm denying that. That does not mean that Samsung can take the door off the hinges and do anything it wants to do any way it wants to do it.

That leaves me with a conundrum that the Court is going to have to be a very active and engaged gatekeeper through this trial and there are going to have to be clear discussions between the parties and the Court as to what the evidence is going to be before it's presented to the jury. We've all heard the expression that once rung a bell can't be unrung, and I'm not going to have things thrown out in front of the jury, because I've denied this summary judgment motion, that then prejudices the Plaintiff and can't be unrung. I don't want to have to declare a mistrial, but I will if Samsung takes this as some kind of blank check to do anything they want to do.

Now, there is not going to be any evidence that there was

something improper in filing an action in Brazil or the Netherlands or anywhere else on the planet, and the Plaintiff clearly has the right to make it clear to the jury under the guidance of ETSI that they are directed to go to the national courts in the jurisdictions where those patents emanate from. And those were those worldwide -- this worldwide portfolio of patents only includes Brazilian patents regarding the Brazilian action and Dutch patents regarding the Netherlands action. So there is not going to be any inference that going to those jurisdictions and filing an action by the Plaintiff was wrong or improper or violated the ETSI rules. It comports with the ETSI rules.

That doesn't mean that the conduct and the decision to go and file the lawsuit is not something the jury can't take into account in determining within the totality of the circumstances whether on balance the Plaintiff has or has not breached its FRAND obligation or failed or not failed to act in good faith and fair dealing. Those facts -- those lawsuits were filed. Those are facts. We're not going to go into the merits of those lawsuits.

I think there's no reason why Plaintiff can't say that it prevailed, to the extent it prevailed in those lawsuits. The Plaintiff can recite and put in front of the jury the ETSI guidance that you go to the national courts, but they went -- Plaintiff went to those courts and filed those lawsuits and

sought an injunction, and there's going to be no evidence or argument to the jury that the fact they sought an injunction is inherently bad faith or wrong, but they did go, they did seek an injunction, they got an injunction.

And if their corporate representative is on the record saying, We did it for leverage in the United States, that's coming in, too. But the evidence is going to have to tie to the issue -- the underlying issue of whether the conduct is good faith or bad faith, whether it complies or doesn't comply with the FRAND obligation.

And there is a fine line to walk here, counsel, and I am going to do my best to police that fine line. I am concerned that Samsung and Samsung's counsel will take this as a blank check to drive a Mack truck through this open doorway. And if they do that, they're going to be in hot water with me, seriously hot water.

And if there's any doubt, Mr. McKeon or Mr. Cordell or Ms. Smith, or whoever else is at the table, if there's any doubt that what you intend to put in front of this jury is going to run afoul of the guidance I'm giving you now, then you come to me before you do it. If I'm sitting up here and you jump out there with something that clearly goes further than the guidance I am giving you and tries to take some unfair swipe at the Plaintiff and the jury's heard it, there will be seriously consequences. So if you have one scintilla

of doubt as to the propriety of what you want to offer to the jury, you get guidance from the Court before you do it.

And I'm going to have to answer a lot of questions--Can we do this, can we do that. I'm prepared to do that, and I'll make every call I can make the best way I can make it, but what G+ -- and halfway through the briefing you-all called them G+ and then you call them GComm. We're going to have to get straight on what we call the Plaintiff in this case. But whatever the Plaintiff's done the Plaintiff's done, and whatever the Plaintiff's corporate representative has said he has said, and those facts are coming in. But you're not going to characterize conduct as improper if it's not, and you're not going to impute some bad motive to conduct if, in fact, the guidance from ETSI says that's what you're supposed to do. But that doesn't mean that that conduct didn't happen and that conduct will and properly can be taken into account within the totality of the circumstances by the finder of fact.

So I'm not going to bolt the door, Mr. Sheasby, and I'm denying your motion. I am not taking the door off the hinges, Mr. McKeon, and I am making it clear to everybody that the Court intends and expects to monitor the evidence. The same facts can be presented one way where they are proper and they can be presented one way where they're improper. This is going to have to hue closely to a clear line of what is good faith conduct and what is bad faith conduct. And if it strays

from that line, then we're going to have problems.

I don't hoe to be any clearer, and I can't sit here today in pretrial with a crystal ball and know everything Samsung thinks it's going to present to this jury by way of testimony or other evidence and say this is okay, that's not okay. But I am putting everybody on notice, particularly the Defendant and the Counter Plaintiff in this case that if there's any doubt that what you want to present, either by evidence or argument, goes further than what I have permitted, then you better review it with me first before you do it. And I can't be any clearer about it than that.

I wish I could sit here and give you a laundry list of multiple things and tell you this is all right and this is not all right. I can't do that from where I am right now. But I do expect it to be accomplished somehow, some way in advance of the jury hearing about it through this trial.

Everybody clear on the Court's ruling?

MR. McKEON: Your Honor, just one clarification?

THE COURT: Yes, sir.

MR. McKEON: You said something and I wanted to just make sure I'm clear on it.

You know, we intend to argue -- would like to argue that the -- of course, filing the lawsuit in Brazil, you know, we've never said that's not proper; they could do that. The timing of it, you know, without -- doing it without the

negotiation happening we think was improper. And we also think the fact that they sought the injunction, particularly before the negotiation even started, was improper. Those things we'd like to say and say it the way I've said it. And then again, the totality of the circumstances would support the bad faith finding that we're asking the jury to make.

THE COURT: Well, you need to stay away from characterizing things as proper or improper, Mr. McKeon, because 'improper' indicates it violated some rule or guidance. You need to characterize what you're going to present, the conduct you're going to present as that was done in good faith or that was done in bad faith. This is a bad faith/good faith determination; it's not whether you complied with a statute or a rule or guidance from ETSI. So 'improper' or 'proper' I think is a poor way of characterizing what you're going to put in front of the jury. Now, what they did, when they did it, how that relates to something else that occurred, that's all part of the totality of the circumstances. Okay?

MR. McKEON: Okay. Thank you, Your Honor. That's helpful. I appreciate that.

THE COURT: All right. Let's do this, counsel. Let's take a five- to 10-minute recess, and then we'll come back and take up the next matter.

Court stands in recess.

(Brief recess.)

THE COURT: Be seated, please.

All right. Let's next move to Defendants' motion to exclude under *Daubert* the testimony of John Kowalski and reliance on such testimony by other GComm experts. This is Document 195.

Let me hear from the moving Defendants.

MR. CORDELL: Thank you, Your Honor. Ruffin Cordell for Samsung.

You know, this motion, the Court has heard many, many like it, but it's remarkable in really two particular aspects.

We have very precise opinions being offered by Doctor Kowalski that -- typically we see experts do experiments, they do large-ranging studies, but in this case we don't. What we have is Doctor Kowalski either citing hearsay sources, and not really for general background or for information, but for very precise facts that he then testifies is gospel; or, where he lacks those hearsay sources, he just makes up numbers. And that's our primary complaint.

Your Honor, may I approach with some slides?

THE COURT: You may.

MR. CORDELL: So there are three different opinions for each of the three patents-in-suit, so I'll take them each in series.

THE COURT: Let's do that. If you can present them

by way of each patent, that will be easier.

MR. CORDELL: I will, Your Honor.

So beginning with the '766 [sic], his fundamental opinion about the '766 is that it provides a five percent speed improvement for 4G and 5G communications. And that five percent, again, is a very precise number. Right? It's not like he said it should be better and, you know, at the end of the day I'll, you know, take all of the various data sources and I'll aggregate them and come up with five percent. He said it's five percent, that's it, gospel truth, five percent if you use the '776 Patent.

The problem that he faces is that although he could have -- he admits he could have--I'll show you this later--he could have done tests, he could have done simulations, he could have done things to actually look at the technology, what he did instead is he looked out and found a hearsay source, a single paper, a hand cell reselection scheme for dual SIM dual standby user equipment in 5G networks that included the number five percent. And he said, Aha, that's it.

So this isn't a case where an expert is relying on hearsay generally or using it by way of forming his opinions; he is presenting that hearsay to the jury, plain and simple. So his entire opinion is based on this one hearsay paper, and it's a paper that was written by some Samsung employees, and admittedly so, but that doesn't make it a party admission.

These are Samsung engineers that are contributing to the art and the IEEE literature, and they did an analysis of a completely different system and found that one of the possibilities for improvement was a five percent throughput improvement.

Critically here what we're talking about is not the patented system or the accused system. So Your Honor may be familiar that, at least for a time, you could buy a phone that had more than one SIM card in it, so if you happened to be somebody who lives in an area with poor cell service, you would subscribe to both AT&T and Verizon. And depending on where you were, sometimes you are in a rural location. You know, when we go to the mountains, we have this problem--you can't talk to AT&T because there's a Verizon tower there. Well, a dual SIM phone would allow you to talk to both.

And the paper that Doctor Kowalski relies on is this -- is a dual SIM device. Again, they're not very popular these days because the networks have gotten so big and so ubiquitous you don't really have that problem anymore, but that's what the paper is talking about. It's not talking about you using your phone that you drive between Longview and Tyler; it's talking about this dual SIM case where you've got two SIM carts and you're describing which network to use and how you go back and forth between them. It's a completely different situation. So it's not just hearsay; he relies on a

completely wrong approach.

But more than that, at slide 8, the only thing he says about it, he doesn't justify his reliance on this completely different system, he doesn't explain his analysis or tell us the basis for his opinion; he simply says, Well, it does cell selection and that's good enough. But Your Honor, that's like relying on a diesel engine to explain the behavior of a hybrid automobile. Those are different things. The fact that you both go through a cell collection process doesn't mean it's in the same context.

And the sentence I have on slide 8 is the entirety of his justification for making this apples to oranges comparison--the entirety--and yet we're expected to allow him to present to the jury that precise datapoint that he pulls out of the literature from the wrong system without any explanation or justification.

So the reality is there is -- there should be a fit between the opinion and the evidence, and it's Your Honor's role as the gatekeeper to keep a trained expert, someone who is given this great education and all these credentials, from taking the stand and representing something to the jury as absolute fact when he hasn't done his basis. And so we would ask that he be excluded.

He also tells us at the end of the day that, Oh, don't worry about the imprecision in my analysis; the five percent

could have been much more. So you should excuse the fact that I just pulled this out of the literature that's from a completely unanalogous system and just be thankful that I didn't make up a bigger number. Well, that's not the way this works, so conservative gestures don't save them.

At slide 11, your Honor, critically he could have tested. He knew how to do simulations that would have allowed him to evaluate this hearsay number, he could have formed his own opinion if he wanted to, but he decided not to. So it's hard for me to imagine how we can allow that man to represent this fact to the jury when he could have verified it but chose not to.

And we asked him, you know, specifically squared up, Did you confirm that there was a relationship between this system and the '776 Patent, and he said no. He said, It simply says cell selection and that's good enough for me, and that's just wrong.

So unless there's any questions, I'll move on to the '443.

THE COURT: Not at this juncture.

MR. CORDELL: So the '443 is a little bit different, but he starts out with kind of the broad opinion that a four percent reduction in throughput would happen if you don't use the '443. Once again, we find that he begins with a hearsay source. This is the Yeo article cited at the bottom of slide

13, and this time he says it's a 0.095 probability of a code block being an error, and that's a key metric.

So again, he didn't test this; he pulls it out of a hearsay source. But this is where he kind of resorts to what I call voodoo math, because when you look back through the hearsay you don't see the .095 anywhere. So this isn't a case like in the last patent where he can at least seize on that number from the hearsay. It's not there. You can search throughout the Yeo article and you don't that .095 probability number anywhere.

So what do they do? Well, he then takes that .095 and he does a little voodoo math on it and he says, Well, I can convert this to an 18 percent throughput probability; again, not explaining why or how he's justified in doing that. But he performs these calculations without really any explanation; he just -- he says that, I can estimate the number of errors that would happen and that would double the probability of this being a problem and double probability of the throughput for the '443. He then takes that back down using some more voodoo math to four percent, and again, says he's being conservative and, therefore, that somehow allows him to do it. But, critically, Your Honor, this .095 number that he starts with is nowhere in the literature. He doesn't tell us where it comes from.

So what does GComm do or G+ -- you're right, Your Honor.

We need to settle on a term for them. What do they do? Well, you know, they offer some other -- they point to his expert -- the things that are outside of his expert report to suggest that somehow all of this is justified; that he -- even though he doesn't link the 18 percent retransmission figure to the claimed invention, you could look at other sources that are not in his expert report to do that. He doesn't tell us how it becomes a proxy for speed reduction. There's just gap after gap after gap in his opinions. And again, he's got to be able to justify that opinion before he's entitled to offer it to this jury.

And then, finally, for the '881, once again, we begin with a number, a .5 reduction -- .5 percent reduction in throughput speeds for 5G. He starts with a probability of 0.01, but doesn't tell us how he arrived at that figure. This time he doesn't look at hearsay at all, he doesn't point to any papers; he just ups that number, that .01.

And we pointed that out and we said, You know, GComm or G+, whatever you are, you can't offer an opinion without a basis. So what do they do? Well, they looked outside of his report and they said, Well, there is some 3GPP documents that suggest that that .1 -- or one percent, .01 or one percent number is an actual number. The problem is, of course, he didn't cite this in his report, once again. So he's going outside of his report to try to justify his opinions, and

again, that's not permitted.

He also looked at a Globecom 2019 article, but it doesn't have the data in it, it doesn't have this 1 percent number, and, therefore, you know, he can't get any comfort by looking at that hearsay.

So with that, Your Honor, we ask that these very precise opinions not be permitted to be paraded out in front of the jury absent adequate justification and side adequate support.

THE COURT: Are these the sole bases for the relief you're requesting here?

MR. CORDELL: Our motions go on to, quote, the damages experts primarily who rely on these numbers, but it's really the derivation of the numbers that is our issue.

THE COURT: You're not telling me there is just an inherent math error; you're just telling me he's pulling stuff out of the air and coming up with things that don't have a basis.

MR. CORDELL: Correct. He's pulling -- he's taking hearsay, which he's entitled to rely on, but he's not entitled to be a conduit for that hearsay for the jury. And that to the extent he isn't relying on hearsay, he just made up the numbers.

THE COURT: All right.

MR. CORDELL: There's got to be a basis.

THE COURT: All right. Let's move on.

MR. CORDELL: That's it, Your Honor.

THE COURT: All right. Thank you.

Let me hear a response, then, from the Plaintiff.

MR. SHEASBY: May it please the Court, Jason Sheasby.

Let's have deck 14. And let's go to slide 7.

The '776 Patent, Doctor Kowalski speaks about the fact that it avoids issues called ping-ponging, which is excess reselections. Doctor Min, Samsung's expert, also concedes that the '776 Patent is about avoiding this ping-pong effect.

Doctor Kowalski then discusses what the next best alternative is in his report, and he talks about the benefits of what happens by not using the next best alternative, which is that it slaves -- saves delay time and avoids energy. There is no doubt; Doctor Wicker concedes that there is a benefit associated with the '776 Patent.

Now, what Doctor Kowalski did is he did have two choices. He could have done a simulation, which Samsung would have attacked as completely irrelevant and flawed in deep ways, or he could do something which was even better, which was a group of Samsung engineers acting as Samsung engineers in their capacity as Samsung engineers published a paper--which is not hearsay against Samsung and is not hearsay generally because it was published in accepted periodical--and what that shows is that there is throughput gains of 5, 26, 31, and 33 percent

that were modeled based on improving selection in avoiding the ping-pong, using the exact methodology that is described in the patent. And after discussing the study, Doctor Kowalski properly concludes that that study is analogous to the '77 [sic] Patent in the context of a single SIM device.

And it's not just an accident that he says that. If you look at the conclusions of the Samsung paper, it talks about preventing unnecessary measurements and reselections, which is the exact goal of the '776 Patent. It talks about avoiding the ping-ponging effect in the Samsung article itself, which is exactly what Doctor Kowalski says is the issue that the '776 Patent achieves, and the data -- the throughput gains are between 5 and 33 percent. Doctor Kowalski picks 5 percent and he explains why he picks the 5 percent.

The paper as well says that the study at issue can be expanded to any intrafrequency and interfrequency system with similar results. In other words, the study itself indicates that it's not an idiosyncratic design. And based on that, he concludes that the result is at least 5 percent.

So you're right: If an expert will -- just off the top of their head say 5 percent, that would be something that would be quite pernicious. This is a study that was done by Samsung, published by Samsung, using the exact design that Doctor Kowalski said is analogous to the patent --

THE COURT: Could you slow down a little bit,

Mr. Sheasby?

MR. SHEASBY: Yes. Using the exact design that is analogous to the patent in this case, which he opines on, and on that basis it's proper for Doctor Kowalski to opine on this issue using the 5 percent number.

THE COURT: Talk to me about the '443, please.

MR. SHEASBY: Yes, Your Honor. On the 443, patent --

If we could have slide 17.21.

He first defines the next available -- next best alternative. He then says that the next best alternative would be only having one bit of information using formats 0 and 1. He then calculates exactly what the probability of a codeblock error being, using accepted, peer-reviewed publications. Counsel didn't disclose this, but those accepted, peer-reviewed publications are actually Samsung peer-reviewed publications, once again.

Based on that probability, which you can see right here is from the Samsung calculation he -- is how he got the .095 percent, which they say is the made-up one percent. He then calculates the performance benefit of 18 percent based on that. He gets his result of an 8 percent performance improvement based explicitly on the data that's provided in the Yeo article.

Doctor Min agrees the same codeblock error rate of 10

percent, or .01, which they said is the made-up number, comes from -- is accepted in the field. And based on that, he gets a calculated loss.

So, once again, using a peer-reviewed publication, taking the data from the peer-reviewed publication, and applying it to the facts of this case, same rigorous methodology. In other words, using peer-reviewed studies as opposed to prepared-for-litigation simulations is the gold standard under *Daubert* for assessing scientific issues.

May I move on to the '881, Your Honor?

THE COURT: Please do.

MR. SHEASBY: '881, same issue. He says that there is a probability of error of 0.1 percent. He has been a 3GPP member for over 18 years and has designed these systems. It's his professional opinion that that is the rate of the error. If they want to cross examine him on why he believes that, they are welcome to do so. It's -- they will not cross examine him on it because their expert will also concede that that's the rate error as well because it is in the 3GPP standards themselves. On *Daubert* you are allowed to use extrinsic documents to show why an expert is reliable.

And then the Globecom paper also is used, once again, peer-reviewed, to get the final calculation of the end-to-end delay.

This is not an outside -- this is not voodoo math; this

is the gold standard of how experts should calculate scientific issues--using peer-reviewed studies and applying those peer-reviewed studies and explaining why those facts are analogous to the issue before him and drawing the conclusions based on those peer-reviewed studies.

Thank you, Your Honor.

THE COURT: To your understanding, opposing counsel hasn't challenged the actual implementation mathematically of these components; they've simply challenged the origin of them and whether they are supported by proper methodology and authority in the field.

MR. SHEASBY: That's right. They're, in effect, challenging the underlying articles.

THE COURT: All right. What else, Mr. Sheasby?

MR. SHEASBY: Your Honor, that's all I have, unless Your Honor has any questions.

THE COURT: No.

Anything further, Mr. Cordell?

MR. CORDELL: Briefly, Your Honor.

THE COURT: Okay.

MR. CORDELL: So fundamentally an expert is allowed to survey the literature and come up with the support for his opinions, but he's got to express that. He's got to tell us why that particular number is apt. He's got to tell us why his analysis of this patent and this technology is relatable

back to the literature, and that's what's missing here.

So I take vigorous issue with the idea that a paper published by Samsung engineers somehow binds the company, but setting that aside, the idea that he can take a paper from a different context--again, a dual SIM phone--and somehow use it to give this jury a precise number of what this patent is going to save the platform in terms of throughput is absurd. He's got to make that linkage. He's got to provide us with the basis for his opinion.

And sure, I can cross examine him all day and allow him to fill the record with God knows what, but we're supposed to get notice of this. We're supposed to know on the front end from his report why it is that he's choosing that number and why it's apt here, and that's what's missing here. And so we have it over and over again.

And the idea that after the fact we can come in and pull in documents that somehow justify a number that he pulls out of thin air, again, violates the whole purpose of the expert disclosure requirement. I'm supposed to know where he got the 5 percent, I'm supposed to know whether he got the .12 percent. And the fact that others in the industry might recognize it later might be okay, might not be okay, but I'm entitled to know that before I have to examine him, before I have to depose him, and certainly before I have to put him on the stand.

And so for those reasons, we ask that he not be allowed to take this rank hearsay and put it in front of the jury.

THE COURT: All right. Thank you.

Well, considering the arguments and the briefing from the parties and limiting the Court's decision to those inputs, I am persuaded that the criticisms brought forward by the Defendants, in essence, go more to weight than they do to whether or not they are so pernicious as to support actual exclusion of these opinions.

I'm going to deny the motion. As I say, I think the issues can be dealt with as a matter of weight and what's appropriate as preferred to actually excluding the opinions offered.

All right, counsel. Let's take up next Document 191, the Plaintiff's motion to strike the rebuttal report of Paul Meyer.

Let me hear from Plaintiff first.

MR. SHEASBY: Jason Sheasby for Plaintiff.

If I could have deck 12, Mr. Svenson.

Your Honor, there are a number of issues. I'll try to go through them as efficiently as I can. The number of issues I acknowledge is quite large, but I believe that a number of these are meritorious and deserve the Court's attention.

The first issue is Mr. Meyer is injecting what are clearly FRAND settlement offers into his calculation of

damages. He incorporates all this into a second report which is the infringement report on damages. He does so in light of the -- even in the face of an NDA that expressly forbids the use of FRE 408 settlement communications for not just liability but for any purpose. In fact, the only purpose -- we signed a contract in which they promised that our offers to them could only be used if, if, if we use to defend against an accusation of violation of FRAND, and what we have is a contract that has been rendered meaningless by Defendant and by Mr. Meyer by being used for the purpose that is outside the scope of the NDA.

So this sort of how many angels can dance on the head of a pin argument that We're not using FRE, we're not using it for the purposes of liability, we're using it for the purposes of FRAND violation is utterly irrelevant because the NDA says can't be used for any purpose offensively against us.

I'll move on to the next issue, with your permission, Your Honor.

THE COURT: All right.

MR. SHEASBY: The next issue, which is there is a vast discussion of legal authority in Mr. Meyer's report, including, bizarrely, that he thinks a foreign UK decision in which he was the expert is a proper basis on which to opine on what FRAND means and what the FRAND methodology is.

There are a vast number of paragraphs that deal with this

issue, and in addition to violating a MIL, his discussion of UK law is utterly irrelevant because the ETSI policy makes clear that the national law applies. This Court will decide what FRAND is and what legal instructions to give on FRAND. There shouldn't be a publication of all these foreign proceedings.

Your Honor, would it be helpful if I recite the paragraphs at the beginning of each of these, or is that too prolix? It's in the briefs, but I didn't --

THE COURT: It won't hurt. I mean, I'm following you with the references in the briefing, but it won't hurt to be more precise in the record.

MR. SHEASBY: Sure. So I just -- the first argument I made was on page 1 of the brief, and it's the second bullet -- the third bullet point. It's for paragraph 28, note 58, paragraphs 33 and 35, 42 to 43, 87, and 127. This is the first --

If I could have --

THE COURT: You need the elmo?

MR. SHEASBY: This is the first set of bullet points. These are the first set of issues I'll be discussing. They are on page 1 of the brief.

THE COURT: I have that.

MR. SHEASBY: Okay. Thank you, Your Honor.

We can go back to -- thank you.

So the next issue is discussions of foreign proceedings before the parties. I think the Court has already ruled on this in the sense that the fact that there was a foreign proceeding, the fact that we prevailed on the foreign proceeding is going to come in; but other than that, I don't think that any discussions of the nuances -- I don't think there's any reason for Mr. Meyer, who is transparently not a legal expert, to be discussing foreign proceedings at all. He's not an expert on FRAND or an expert on legal proceedings.

The next issue is discussions of hold-up and patent royalty stacking. *CSIRO* makes clear you can't say patent hold-up or patent royalty stacking in abstract; you actually have to disclose it. In this case Samsung was asked in an interrogatory whether there was any issue with -- what issues it was presenting for damages. This was the window for it to say hold-up or patent stacking, and it did not do so. It makes a reference to the 5G stack without saying anything about that it would be -- that the royalties would be onerous if it paid this amount. Mr. Meyer made clear that -- he didn't testify -- he didn't calculate what the royalty burden was for 5G.

And so in light of that, his vague abstract recitations in his papers of prohibitively high royalties and aggregating royalties are simply not appropriate, Your Honor. He does this fanciful calculation where he says that the amount that

they would have to pay is $36,000, but he has no calculation of how much Samsung actually pays for its royalties to base that on.

I'll move on to the next issue, with your permission, Your Honor.

THE COURT: All right.

MR. SHEASBY: Discussions of non-comparable or non-disclosed agreements. This is a major issue that I think is worth addressing.

So one of the dynamics that Samsung intends to present at trial through Mr. Meyer is that GComm is a nothing and that Mr. Pitcock is a nothing, and because they're nothings, they shouldn't get a lot of money. And you see this come out in these pernicious statements.

So, for example, Mr. Meyer says that license agreements with Ox Mobile and with 5G are most comparable licensors to GComm. In other words, these are small companies, these are companies that don't have major resources behind them, and he is using that as a basis for comparability. That is forbidden under the Federal Circuit law. G Party [sic] is not a hypothetical -- not a party to the hypothetical negotiation, and so an assertion that somehow we should -- we get to take table scraps or nothing because we're small like these other licensees is utterly irrelevant under the Federal Circuit precedent.

THE COURT: Let me ask for a point of clarification, Mr. Sheasby. What we have before us is the motion to strike regarding Meyer's rebuttal report. You previously had a *Daubert* motion on this witness' opening report, and that was withdrawn. Correct?

MR. SHEASBY: That's correct.

THE COURT: So if I'm hearing some of the arguments in this motion that are carried forward from the prior motion on the opening report, I should disregard those?

MR. SHEASBY: Your Honor, so we did flag this in our motion. The problem is, is that Mr. Meyer incorporated a -- vast portions of his opening report into his rebuttal report, and so we have to -- because he's using them for his rebuttal report and the calculation of damages, we have to -- there's no practical way that we can defend against this. If he is presenting a thousand pages of reports and -- for damages, patent damages, because he's incorporating his opening report into his rebuttal report, there's no other way for us to do this.

But I will move on if Your Honor --

THE COURT: I'm just trying to make sure I know where the line is here.

MR. SHEASBY: So that's the line. The line is only if you -- so this --- to show our bona fides, when we address this issue, this was before the Court's ruling, and

so we did this precisely picking out specific paragraphs that he's incorporating by reference and trying to engage them.

THE COURT: All right.

MR. SHEASBY: The next issue is -- the Ox Mobile agreement that he's relying on was not an agreement that was disclosed and we couldn't take discovery on that, and that is improper. And then the -- and all of the agreements that he's using -- so the Ox Mobile was not disclosed, and it's a 4G agreement. The ZTE/Samsung agreement was not a 5G agreement; it was only a 4G agreement. He did not do an analysis on which 4G and 5G are comparable, and in light of that, he should be forbidden from using the -- at a minimum the ZTE/Samsung agreement from the damages case.

And so let me focus on that because it's really the most precise one. There's a number of paragraphs here, but this is the one I want to focus on.

ZTE versus Samsung. It's a 4G, not a 5G agreement. He did not analyze whether 4G is the same as 5G. And for ZTE the experts, Dr. Paul Min and Stephen Wicker, did not testify that the 4G versus 5G -- that the ZTE 4G patents were comparable to the patents at issue in this case. And so precisely on the issue of the ZTE/Samsung agreement, there is no technical evidence that a 4G license is comparable to 5G. Mr. Meyer doesn't do it, and Mr. Wicker -- Doctor Wicker and Doctor Min don't do it as well.

So on this precise issue of the ZTE versus Samsung agreement, the motion to strike should be granted because -- I acknowledge that the bar is low--in other words, having an expert discuss the similarity who's technical is usually considered appropriate, and I agree with that--but in this case it is pretty dramatic that there was no discussion of the ZTE patents as being comparable to the patents at issue in this case.

THE COURT: All right.

MR. SHEASBY: Let me show you what they do say. What they say is they do a boiler plate language talking about ZTE, Ericsson, InterDigitial, and Nokia, and you'll notice something about them. These are identical boiler plate statements without engaging the issue of 4G versus 5G and why 4G patents in ZTE are comparable.

I think the next issue -- this is a small issue, which is -- I'll skip that one. That can be decided on the briefs.

Mr. Meyer has access to confidential information from a number of other cases. He's Apple's go to SEP expert as well. And one of the things he tries to inject into his reports is facts that are ultra -- they're outside the factual record. So he says Qualcomm has a policy of no license/no chip; in effect, you can ignore the Qualcomm evidence because it's extortion. The problem is none of that is in evidence. The only way he got it is because it's something that Apple says

in a subsequent litigation.

There's no evidence that Qualcomm required Samsung to take license to Qualcomm chips. There was no discovery of Qualcomm and no discovery of Apple. And so what you end up having is a situation in which we have no way of testing what Mr. Meyer says because he just says it and then claims it's from something he learned in another case, which he shouldn't even be disclosing.

I'll now move on. Those were the incorporated by reference issues, Your Honor. I don't know if you want to deal with those first before I dig into the new ones, or if you just want me to drive through.

THE COURT: Let's just keep going.

MR. SHEASBY: Thank you, Your Honor.

Okay. So the next issue is an issue that comes from *Apple versus WiLAN*, Your Honor. In *Apple versus WiLAN*, the Federal Circuit sort of created a sea change in how you deal with portfolio licenses. And basically what you have to say -- to use portfolio licenses you have to understand the facts of the case and determine what patents were actually driving the value of that portfolio license.

Mr. Kennedy in this context was found in error because he placed all the value on patents that were not of relevance to the case; not of relevance in the actual negotiation. Mr. Meyer does the exact opposite, which is he ignores the

evidence as to the value of the case.

We don't have to take my word for it. This is from Samsung's opposition. Mr. Meyer -- they openly admit that Mr. Meyer takes the portfolio values without placing any analysis on what is the patents that drove the particular value. In other words, he takes the licenses as treating each value as equal without actually investigating the facts, and the Federal Circuit has said that that's inappropriate.

We asked him about this; did he ask what patents were at issue -- were actually driving the 5G settlement, for example. He said, It's not important to my analysis. We asked him what patents were driving the Apple versus ZTE. He said, It's not important to my answer. It's not important to my analysis. In fact, this -- in each one of these cases he was willfully blind to the prescription of the Federal Circuit that the -- you have to ask what were the patents that were actually driving value.

What -- in fact, because I was being glib, I actually used the exact language from the Federal Circuit: "What is the wheat versus the chaff in these patents?" And Mr. Meyer's answer was, "I cannot answer that." And "It wasn't important to me."

And the reason why I say it is because this evidence actually does exist. So the 5G IP complaint lists three patents that were the basis for the settlement. This is what

the Federal Circuit said should have been driving Mr. Kennedy in the *WiLAN* case. The 5G license agreement actually lists those three patents as well, but he treats all 38 patents as of equal value.

And so what we have here is something very different. We require a party to account for differences in technologies and the economic circumstances of the contracting parties. It is no more improper for one of my experts to say Qualcomm and Samsung did a license for X amount, so that means that X amount should be for one patent. If he did that, you would *Daubert* him in the blink of an eye. It is just as improper, just as -- does just as much violence to the Federal Circuit guidance to say all patents are equally valued and I don't care about the wheat versus chaff.

I don't see how someone who can so glibly make clear that he is ignoring the Federal Circuit's precedent gets to say these things in front of a jury. There's lots of stuff in his report that he can properly say, but to willfully flout the guidance of the Federal Circuit and present a methodology that is now no different from the Nash bargaining theory strikes me as beyond the pale.

Does Your Honor have any questions, or should I proceed?

THE COURT: No., I don't have any questions, other than I thought you told me you were the one being glib in the question you asked him.

MR. SHEASBY: I think both statements are true.

THE COURT: Okay. Let's continue.

MR. SHEASBY: So this is just a legally improper issue.

This is the third topic. This is also in the brief. This is in our table of contents, Your Honor, now. And if I was to look at table of contents, this is Issue No. 3 in the table of contents -- sorry. This is issue No. 3 in our table of contents--improper opinions that future damages are not recoverable.

He -- Mr. Meyer has this claim that -- where he says future damages may not be permitted by a law of the court. Mr. Meyer should not be saying anything about what the law or a court forbids or doesn't forbids; he should not be saying the law doesn't allow us to get a lump sum amount for future list; he should be staying within the confines of what the Court instructs.

The Court will not give an instruction, I would expect, that lump sum is improper because the Federal Circuit has made clear that a fully-paid-up license on future sales is proper, and so for Mr. Meyer to say that's -- that it's--sorry--is proper for Mr. Meyer to say it's legally improper for a lump sum paid up contradicts Federal Circuit law.

This is another issue which is, is that Mr. Meyer goes through this issue in which these pages of his reports and

effectively say we are discriminating against Samsung, but the Court made clear that Samsung is forbidden from presenting any issue of discrimination. They cannot claim that we discriminated against them because in the Court's memorandum and order at Docket No. 348 you said that Mr. Meyer may not make a discrimination argument. And so this whole discussion of discrimination, this whole discussion of the rights as being not FRAND, is not properly before the jury because the Court found that Samsung did not disclose in its counterclaims or contentions a discrimination argument.

I'll move on to the next issue, Your Honor.

The next issue is the illustrative purposes argument, and basically what he does is he takes a number of absurdly low and absurdly unreasonable damages analyses to make his look -- his numbers look reasonable. It's analogous to Mr. Dell saying, Well, if I gave Micron -- if I gave G+ 50 percent of the royalties, that would be $5 billion, and, therefore, my damages number is reasonable. What Mr. Meyer does is the exact opposite--he creates absurdly low numbers that he doesn't even accept as being relevant while on the same hand -- while on the same side he doesn't -- he uses them to bolster his own opinion without them actually being something that he would agree to. And you can see that I think most starkly at paragraph 75.

I will skip No. 6. No. 6 I will submit on the paper,

which is discussion of Samsung's technology and papers. That's a relatively prosaic one. Actually having said that, I will skip it. It's purely this, which is that -- sorry. Let me -- it's purely this. Mr. Meyer throws out into the universe the thousands and thousands of patents that Samsung has without tying them in any way to the facts of this case or without tying them in any way that they relate to the technologies that are accused of infringement. This is purely for the purposes of saying that -- to get the jury to think that there's lots of patents so how can one patent be relevant, and that's not appropriate.

In fact, we asked him whether -- you'll see here is he includes in his list of patents 2G, 3G, 4G, and 5G. We asked him whether any of those 2G, 3G, and 4G were comparable, and he said he had not done the analysis.

The next issue, which is that -- actually it's No. 6 that I will -- No. 7 that I will submit on the papers, Your Honor, because we are running out of time and I want to spend a goodly amount of time on this, which is there is an agreement where G+ signed -- purchased with -- purchased the patents from ZTE and gives them a percentage of the royalty. And he doesn't believe it's comparable, but he's going to tell the jury, Oh, my number is completely reasonable because GComm only paid blank amounts of money for these patents. And the problem with that is the following: He doesn't say the

agreement is comparable. Nowhere in his opinion does he say this agreement is comparable.

And so this argument -- it's like saying, Your Honor, oh, they only spent a thousand dollars on these patents from the PTO, so how could they possibly be valuable. You can not use a non-comparable agreement, present it to the jury, use it to justify your damages award when it is not under your basis even comparable.

So this is -- once again, there is a low bar, there is a low bar and I recognize that, but when a witness under oath says -- is asked is this agreement economically comparable and he says, I don't have an opinion on the subject, what possible basis could this witness have for discussing that agreement in front of a jury.

The next issue is conversations with Mr. Jeon. He published a number of hearsay conversations with Mr. Jeon that we were not able to examine him on. He should not be telling the jury -- and he can rely on the hearsay conversations. He should not be publishing it to the jury at all. This is section 9.

And the last issue is an Ofinno license agreement that was not disclosed as relevant in their interrogatory responses and should not be used at the -- as a comparable agreement in this case since it wasn't disclosed during fact discovery.

THE COURT: They did disclose several other

agreements in that interrogatory response; they just did not include this Ofinno reference?

MR. SHEASBY: That's correct. And we're not objecting to the ones they properly disclosed based on the failure to disclose.

THE COURT: All right.

MR. SHEASBY: Your Honor, thank you for your patience.

THE COURT: All right. Mr. Reger, are you going to argue for Samsung on this?

MR. REGER: I am, Your Honor.

THE COURT: I need to break at this point. It's 11:30. I've already visited with counsel about the noon hour today. I'm going to extend it a little bit to cover some other matters. We'll hear from you as soon as we reconvene. All right?

The Court stands in recess.

(Lunch recess.)

THE COURT: Be seated, please.

All right. We'll reconvene the pretrial hearing in G+ versus Samsung.

We were at a point where I was about to hear responsive argument from Samsung on the motion regarding the rebuttal report of Mr. Meyer.

So Mr. Reger, I'm ready to hear from you on behalf of

Samsung.

MR. REGER: Thank you, Your Honor.

May I proceed, Your Honor?

THE COURT: You may.

MR. REGER: Thank you, Your Honor.

Now, before the break we heard a lot of different issues raised by Mr. Sheasby with respect to Mr. Meyer's reports. It actually got a little confusing, at least to me, as to actually which report Mr. Sheasby was actually talking about at times. His slides actually cited and quoted his opening report oftentimes when this -- the only pending motion before Your Honor is the motion to strike portions of his rebuttal report.

And that's an important issue, Your Honor, because as Your Honor, of course, understands, the opening report and rebuttal report serve two very different purposes. While they're related in the fact they are economics reports, the first report involves Mr. Meyer's FRAND opinions and they are an analysis of their GComm offers and why they did not meet the fair, reasonable, and non-discriminatory obligations from an economics standpoint.

The rebuttal report serves a different purposes. One of the primary reasons of the rebuttal report is, of course, to criticize and rebut Mr. Dell's opinions that were provided in his opening report. It also provides a reasonable royalty

number based on the four patents at issue in this case. Again, there were a lot of different issues that were covered in 30 pages of briefing and 117 slides.

With Your Honor's permission, I'd like to focus on the critical issues and maybe pepper a few of the others as they are appropriate within those.

THE COURT: I'm happy to see what you think are the critical issues.

MR. REGER: All right. Thank you, Your Honor.

What I'd like to start with, of course, is the market comparable approach. That is the approach that they are seeking to strike in his rebuttal report where Mr. Meyer calculates a reasonable royalty range for the patents at issue in this case.

Now, at the outset, really what we're talking about here are market comparables or using market comparables as an accepted methodology in this court across the country and around the world. As this Court has found, the rates contained in licenses are highly probative, and using comparable licenses is a reliable method of establishing fair and reasonable royalties consistent with its FRAND commitment.

And what we did not really hear much about from Mr. Sheasby and GComm in its briefing is what Mr. Meyer actually did; what analysis did he put into his rebuttal report and his opening report when it comes to unpacking

licenses. First, of course, you have to identify the market comparable license agreements. That is a step that is performed by the expert, not by the parties. The parties seek production of and actually produce what they -- the agreements that they believe are relevant, and then the expert identifies what he believes to be an economically comparable license.

Here are three examples, Your Honor, of what Mr. Meyer found when he reviewed the 70 licenses produced by Samsung. There's ZTE/Apple agreement, the ZTE/Samsung agreement, the Ox Mobile/Samsung. Now, there are other agreements as well, but for those three agreements --

THE COURT: Mr. Reger, slow down just a little bit.

MR. REGER: Thank you, Your Honor. Will do.

Once Mr. Meyer identified the market comparable agreements, including the three we see on the screen here, he then had to perform an economic adjustment. And part of what he did is he considered one-way consideration, he identified the covered products, the patents at issue, and he adjusted it as necessary. So, for example, there's an InterDigitial agreement. He actually did an adjustment of the InterDigitial agreement based on the various technologies at issue in that agreement.

The final step requires technical input from the experts, and Mr. Meyer did that. He did -- he had the experts conduct a technical assessment of the patents at issue in the license

agreements and compared them to the technical footprint, the technical value, the technical quality of the GComm patents. He performed that step for every one of the agreements in this case.

And I just want to -- again, the market comparables approach has been accepted across the country. And Mr. Meyer's specific methodology that he has implemented here with respect to his recall opinion has been adopted in other courts. For example, in the *Lenovo* decision, a worldwide rate was set based upon Mr. Meyer's analysis. Mr. Meyer was cited by Justice Mellor over 200 times in his decision, and he repeatedly said that the -- Mr. Meyer's approach, the one we just talked through here, is the most reliable way to come up with rates, and it approximates far better what someone in the market would do with the available information.

Now, this is where I need to take a slight detour from my market comparables discussion and address one of the many issues that Mr. Sheasby raised. Mr. Sheasby suggested that we're going to present Mr. Meyer to talk to the jury about UK law, UK courts, UK decisions, and thins like that. Nothing of the sort. But what an expert is required to do, both to the court and what he should do in front of the jury, is to talk about his experience, to talk about his methodology, and to talk about whether or not his methodology has been accepted.

Mr. Meyer is qualified. I don't believe his

qualifications are being challenged. His methodology has also been accepted. It's -- again, so he should be able to present to the jury to explain and convince the jury that his methodology is an appropriate methodology for valuing patents. But he will not get into the details of that Lenovo --

THE COURT: Is it his methodology or is it a methodology under these facts and in this case that he's relying on?

MR. REGER: That is an even better way of phrasing it, and I appreciate it. It is actually -- market comparables approach has been around for a long time. It is an accepted methodology that Mr. Meyer has used repeatedly, particularly in the FRAND context, and he is renowned as a FRAND expert, Your Honor. But you are absolutely correct--it is an accepted methodology.

And when we get to the next motion with respect to Mr. Dell, we're going to find out there's really two approaches to valuing FRAND licenses, and that is the market comparable approach and a top-down approach, and Mr. Meyer used the market comparable approach here.

As I mentioned, Your Honor, there is an Apple/ZTE agreement. That agreement is important because it includes the patents in this case. It is a *Georgia-Pacific* factor 1 agreement. Mr. Meyer appropriately unpacked that agreement to figure out how much the patents that were licensed from ZTE to

Apple were worth, and he did that following the methodology at issue there.

Now, one thing to point out is within the black and white context of this -- the black and white -- the four corners of this agreement, no license--excuse me--no licensed patents are identified as special or asserted because there was no litigation. To the contrary, they say that there are thousands and thousands of patents that are licensed. And so Mr. Meyer appropriately follows the methodology that's been accepted, and he unpacks this agreement to come up with a per-unit rate.

And the two other comparable agreements I mentioned are also relevant and he follows the same methodology. Now, one of the things here -- one of the licenses here is ZTE/Samsung. Now, not only is that comparable because it is the parties, ZTE and Samsung, to the hypothetical negotiation, but it includes, again, thousands of patents. This is one of those little detours again, Your Honor, if I may.

Mr. Sheasby suggested that this cannot be a comparable agreement. Setting aside the fact that it has the same parties as the hypothetical negotiation, he argued to Your Honor that this cannot be a comparable agreement because it excludes 5G. Well, that could not be further from the truth. Mr. Sheasby showed you one section of the agreement, section 1.23, if I remember correctly, and 1.23 did say if it's 5G

only it is not licensed. What Mr. Sheasby did not show Your Honor was section 1.21 that talked about the license standards. The license standards expressly say if it's a 2G patent, if it's a 3G patent, if it's a 4G patent, and it also applies to 5G, then you're licensed to it.

So just like the patents in this case that were declared to 4G and then became relevant to 5G, according to GComm's allegations, the patents at issue and that were licensed by ZTE/Samsung are LTE 5G patents, and they are licensed under that, so it could not be more technically comparable if they tried.

And Mr. Sheasby also mentioned the Ox Mobile/Samsung agreement. He threw some grand language at us saying that we're trying to minimize GComm and put them in the same shoes as Ox Mobile. We do not need to do that. The agreement itself puts GComm in the same shoes as Ox Mobile. What we have is Ox Mobile licensed Samsung, again, for some patents that were declared for LTE, licensed to Samsung, and then became 5G patents as well. They were declared to 5G, just like we have with the GComm patents.

More importantly, the Ox Mobile patents came from ZTE. So just like GComm's patents came from ZTE, Ox Mobile's did. So not only are these technically comparable from the same standards, their economically comparable and they literally come from the same original patent holder, the same declarant

to the ETSI standards.

Now, going again -- after Mr. Meyer conducted his economic adjustments to account for the different -- differences between the FRAND obligations or the hypothetical negotiation and the agreements in place, he turned to the technical experts. Now, Mr. Sheasby showed you one paragraph, the conclusion paragraph for each of the experts. What he did not show you and what they do not address in their briefing is there's actually numerous paragraphs where the experts actually analyzed the licensed patents and the GComm patents. And again, they're measuring technical quality; they're trying to figure out how do these GComm patents measure up. They are doing what they need to do. That way if there is a -- some sort of technical adjustment that needs to be in GComm's favor, Mr. Meyer could do that. If they came back and said, You know what, these patents are the bee's knees, and they really need to be valued as such, Mr. Meyer would have done an upward adjustment. That's not what whey found. What they found was these are, at best, average quality, and in many cases less than average quality.

For example, the Ox Mobile agreement, they looked at that and they said those patents, which are also LTE 5G patents, involve critical technology, like handovers--as you're traveling going from base station to base station, those patents cover that. The patents at issue in this case don't

cover that kind of core technology, they are not as high a quality, they are not as valuable from a technical standpoint. So they provided the technical input from then -- from which Mr. Meyer conducted his analysis and finalized his unpacking.

Now, one other thing Mr. Meyer relied on is, of course, the license -- the GComm patents and some of the licenses are from ZTE. What Mr. Meyer did is in comparing the ZTE patents to the other, such as InterDigitial, Qualcomm, and such, that Mr. Dell relied on, he's saying, Wait a minute, the ZTE patents, according to a CCI study, they're not nearly as high a quality. You've got Qualcomm at 39 percent.

Now, it's important here to note that this, again, is where some of the discussions by GComm's counsel kind of gets off the rails a little bit. And we'll get to this 39 percent in just a little bit, because what Mr. Meyer also uses this for is to criticize and critique Mr. Dell, because what Mr. Dell does in some of his calculations is says Qualcomm's percentage -- essential percentage is actually 10 percent. Mr. Meyer goes, No, wait a minute, the document you refer to says 39 percent. And that's one of the criticisms we'll get to when Mr. Sheasby says that we're trying to adjust Mr. Dell's numbers. We're pointing out mathematical errors. And again, I'll get to that in just a moment, Your Honor.

Really, at the end of the day when it comes to market comparables, they really identify two reasons. One is they

say Mr. Meyer never identifies a reasonable royalty. That's just flatly not true. Mr. Meyer right here identifies these are the reasonable royalties for the asserted patents, and this is in his rebuttal report. What Mr. Sheasby mentioned just briefly is he said, Well, they're the same number. That is true--they are the same number. What Mr. Meyer did was after doing adjustments, downward adjustments for the size, downward adjustments for the technical value that were less than average, he did an upward adjustment on the assumption that they're valid and infringed.

What that means is, what he assumed is based on essentiality ratios and such, is that these four patents, if they are valid and infringed, then they are essential and they would drive the value of the entire portfolio. So that is -- he explains this in his report, as we see here--the upward adjustment for the assumption of valid and infringed.

Now, really what it boils down to in market comparables is GComm makes much of the *WiLAN* case. They could not be further from the holding of the *WiLAN* case if they tried, Your Honor. The *WiLAN* case is very clear. What happened in *WiLAN* case was Mr. Kennedy attempted to treat a few patents as key patents. What Mr. Kennedy did is he took the asserted patents and said, I'm going to view them as the wheat from the chaff, and I'm going to view them as critical, and I'm going to value them more than all the other patents in the case, including

--I'm going to reduce everything; I'm going to get rid of all the other patents and reduce the royalty rate by only 25 percent.

The issue with that was if you're going to apply special value to the patents, the Federal Circuit's clear you must -- you must either identify something within the agreement that identifies special value, or you have to look to the contracting parties and their negotiations--did they in some fashion -- is there some parole evidence suggesting that a patent is given greater value than others within an agreement.

At no point does *Apple v. WiLAN* require an expert conducting a FRAND analysis of a portfolio agreement containing thousands of patents to conduct an analysis of those thousands of patents to identify any that particularly drove the negotiation.

To the contrary, GComm is actually arguing the opposite of what *WiLAN* holds. Mr. Meyer did not attribute special value to particular patents. In fact, when you're trying to license thousands of patents, you do not look at a particular patent, you don't focus on a particular patent; you're looking at the entire portfolio, because when it comes to standards, you need the entire standard, you need to have all the standard essential patents that a party may have so that you can actually practice the standard.

And don't take my word for it, Your Honor. Again,

GComm's patents come from ZTE. The licenses we're talking about are ZTE. This is what Mang Zhu, I believe, Dr. Mang Zhu, if I recall it correctly, this is what she said. She said, When we were negotiating with Samsung, there were 25 patents that we charted and shared with Samsung.

Were they the most important?

She says, Not really. We're just trying to give Samsung a taste.

And they also, again, consistent with their negotiating practices -- as we know, again, we have this in the record, we have Mr. Meyer's report talking about Doctor Zhu, she says, We license all of our declared patents; not just essential patents, not key patents; our goal is to license all of our patents because -- all of our declared patents because we're required to do so, and we would do all the family members all of our declared patents on FRAND terms. That is the context for what Mr. Meyer did.

And with that, Your Honor, do you have any questions on the market comparables?

THE COURT: No, I don't.

MR. REGER: Thank you, Your Honor.

And Your Honor, I told you I would get to this, and I'll be very brief. Mr. Sheasby was brief and I will try to be equally as brief.

The long and short of it is they challenge Mr. Meyer for

coming up with low numbers based on Mr. Dell's analysis. Mr. Sheasby suggested that that is Mr. Meyer coming up with low numbers just to give cover for a low damages number. Well, what Mr. Meyer actually does is pointing out mathematical errors made by Mr. Dell. So mathematical errors made by an expert are not only appropriate for cross examination; they're also appropriate for rebuttal. It's good for the jury to hear from an expert that he reviewed the analysis, he reviewed the numbers, and Mr. Dell made numerous errors.

THE COURT: Do you typically scan these reports for mathematical accuracy as a part of your analysis?

MR. REGER: Your Honor, actually sometimes I do. And more importantly, these -- some of these, Your Honor, are actually not mathematical -- let me back up.

The mathematical errors are where he's grabbing the wrong numbers and putting them into the equation, or he's discounting numbers, intentionally or not. And so this is not a one plus would be equals three situation, Your Honor.

THE COURT: You are not saying that the mathematical calculations are wrong; you're saying the selections --

MR. REGER: Fair enough. That's right.

THE COURT: -- that go into the calculation are wrong.

MR. REGER: Yes, sir. That's right.

And so what Mr. Meyer does is he walks through Mr. Dell's analysis and he says, Wait a minute, you picked the wrong number here, you chose the wrong number here, you did something wrong here. If you'd done it correctly, then this is the appropriate per-unit rate that you would come up with. And in the slides Mr. Sheasby highlighted for illustrative purposes only. That means nothing more than Mr. Meyer is talking about Mr. Dell's analysis. Mr. Meyer is not adopting Mr. Dell's analysis; he's just pointing out clear errors.

So just as an example here, we have Mr. Dell ignores thousands of SEP families. That's one critical error made by Mr. Dell. He misconstrues a study. I mentioned that Qualcomm essentiality of 39 percent. For whatever reason, Mr. Dell said it's 10 percent, so he chose -- he ignored something in the study that he said -- it's 39 percent, not 10. That makes a critical difference. It actually brings it down to one penny a unit at the maximum.

And we see here, again, once you look at Mr. -- this is what Mr. Meyer proposed, is that there are a number of issues that Mr. -- with what Mr. Dell did, and this is -- if he did it appropriately with the right inputs, this is what the output would be.

Here Mr. Sheasby suggested something along the lines of discrimination, that Mr. Meyer is not allowed to talk about discrimination. And Your Honor, if Your Honor's order, which

was talking about a different theory of liability, also applies to Mr. Meyer's rebuttal report, we will certainly not mention discrimination in any way, shape, or form, but the issue I have is that they are actually -- their brief seemed to go farther than that and seemed to suggest that Mr. Meyer cannot even mention FRAND, the phrase 'FRAND', which, of course, would be backwards because we will hear -- they will -- the jury will be hearing about it from GComm's lawyers, GComm's witnesses, GComm's experts, and that will be hamstringing Mr. Meyer to not be able to say the phrase 'FRAND'.

And so I'm not sure if there's actually an issue here; it's just the way the briefing was written. We pointed it out and they did not respond to our concern that they were trying to keep Mr. Meyer from saying 'FRAND'.

I mean, ultimately, to the extent it was a question, Mr. Meyer is not offering legal conclusions. He's not going to be talking about FRAND principles or -- as such, he's not a lawyer, he's not a French law expert, he's not an ETSI expert. He turned to others for those opinions. He looked to Mr. Rodermund for ETSI practices, he looked at Professor Molfessis for French law, and so he's relying on others for principles. He's not going to be providing any legal conclusions; merely economic opinions.

Here is a -- I was a bit unclear if Mr. Sheasby actually

covered this or not, so I'll quickly cover it.

Ultimately what we have is we have Samsung's patents, how are they relevant. Mr. Sheasby suggested, I believe, that Mr. Meyer did not tie this to anything; that that is, again, not quite accurate. Here is Mr. Meyer's discussion of the number of patents held by Samsung, and what he says is -- in the same paragraph talking about the number of SEP patent families that Samsung owns, he says, Mr. Dell does not account for the significant contributions to the 5G standard made by Samsung's thousands of SEPs. He is expressly criticizing Mr. Dell for Mr. Dell not considering that.

Now, why does that matter? Because *Ericsson v. D-Link* requires the expert to consider that. You are required to look at all the different technologies, all the different patents that -- within the standard and make sure that your technical footprints, your economic value of your asserted patents aren't overstepping--they're not claiming the value of the entire standard, they're not claiming the value of other standard patents and other standard sections. You have to narrowly identify your footprint and ensure you're not stepping on others' toes when it comes to the rest of the standard. So Mr. Meyer points out that Samsung has 5,000 patents that and Mr. Dell doesn't even mention. That's where this comes into play, Your Honor.

I believe this one was skipped by Mr. Sheasby, and I'll

equally skip it.

This one, there's no question -- and actually for CBI purposes, I'll quickly move on. What we know is this Court has addressed this issue before as to whether or not the purchase price is actually even allowed to be considered as part of the hypothetical negotiation. The clear answer is yes. In the *PUMA* case, the *Parthenon Unified Memory Architecture* case, this Court has found that there is no brightline rule saying you cannot refer to a patent purchase agreement, and it actually with refused to exclude Mr. Meyer's opinions referencing the patent purchase agreement and explained it's up to the jury to decide the way to afford it. And Your Honor -- let me go back.

What we have here, again, Your Honor, is Mr. Meyer tying the patent purchase agreement to the hypothetical negotiation under *Georgia-Pacific* factor 15. The parties would be aware of this agreement. They'd be aware that -- sorry. There's confidential information. They'd be aware of all the confidential information that's part of the agreement, they'd be aware of the economic impact of that confidential information, and they'd be aware that ZTE did not value these patents very highly. And that's clear from the black and white record, and it's also clear from Dr. Mang Zhu's testimony regarding when it sells patents and when it doesn't.

The Ofinno purchase agreement, Your Honor, I'll be brief.

The long and short of it is that was one of 70 agreements that we produced, it's one of the 70 agreements we identified in a ROG response, it's one of the 70 agreements that we presented a the 30(b)(6) witness on. Ultimately, the comparability of that agreement was identified by Mr. Meyer and he ultimately responded to it. If -- in our interrogatory response we were clear that comparability is a question for the experts, not for the individual party, and they did not object or move to compel a more detailed answer on that, Your Honor.

THE COURT: You're not telling me that you identified the Ofinno agreement expressly in that ROG response, are you?

MR. REGER: Your Honor just to be clear, there were two different ROG responses. One was a -- I apologize. I don't remember the exact language, but basically Identify your licenses that are relevant to the case. And we identified the Ofinno agreement as one of those. The other one was talking about effectively comparable agreements, and we said, Hey, these are some comparables, but comparability are -- is an issue for the expert. When we said, Here are the examples, Ofinno was not one of those examples, Your Honor.

THE COURT: I think it was ROG 20 you were directed to explain in detail how you contend damages should be computed, including methodology, nature, and sources of

inputs, and identify persons and documents relevant thereto, and then the ROG expressly says this includes identification of any agreement you believe is comparable, and that ROG response did not identify the Ofinno --

MR. REGER: I believe that's right, Your Honor. At that point in time. We did identify the methodology and we identified example agreements that we thought were relevant, but we said the ultimate question of comparability is a question for Mr. Meyer.

THE COURT: Okay.

MR. REGER: Thank you, Your Honor.

THE COURT: Thank you.

Mr. Sheasby, do you have anything else?

MR. SHEASBY: Your Honor, I just have a few brief comments. I'll make them extremely brief.

THE COURT: Well, try to be as succinct as you can.

MR. SHEASBY: This is the slide my brother showed, and he said what could possibly be wrong with this. It's exactly what the Federal Circuit engaged. The problem is not over here; the problem is here. What Mr. Meyer did was treat every single patent that was licensed by every single one of these entities as equally valuable to Samsung. That is exactly what the Federal Circuit forbids. That's the problem. And there was no cogent answer to that.

The idea that the Federal Circuit opinion only applies to

plaintiffs is transparently inaccurate in light of that holding. What the Federal Circuit says is when you use an agreement and you try to extract a rate from an agreement that the -- in this case Samsung paid to each of these entities, you have to understand what patents in that agreement drove the value. You have to engage and investigate that. And that's what Samsung in this case did not do.

I understand that Mr. Meyer is very proud that a judge in the United Kingdom thinks he is a great expert, and he should be rightfully proud of that. We are not in the United Kingdom. The jurisprudence that controls in this case is the Federal Circuit's jurisprudence.

And if we could have slide 12.53. 12.65. Excuse me.

We require a party to account for differences in the technologies and economic circumstances of the contracting parties. This is not talking about the G+ patents; this is talking about the Samsung versus ZTE, what patents drove that deal, and that's what Mr. Meyer did not do. The rules don't just apply to me as a plaintiff; you must show just as much rigor if you are going to use these agreements as a defendant.

The second issue is on the 5,000 patents. Mr. -- my brother has it exactly right. 5,000 patents on 5G, 4G, 3G, 2G have no relevance whatsoever to this case. This case is about the economic footprint of just the technology at issue. We should not be talking about these 5,000 generic patents. What

Mr. Meyer doesn't do is doesn't say that any of those 5,000 patents relate to the functionality that we are valuing this case.

Thank you, Your Honor.

THE COURT: All right. Thank you, counsel.

With regard to Plaintiff's motion to strike the rebuttal report of Paul Meyer, who is Defendants' damages expert, I'll try to navigate the issues of dropping the objections to the opening report and then lodging objections to the rebuttal report but trying to pull into that second objection portions of the first -- or the opening report.

During Mr. Sheasby's argument, his first argument, he used a bullet point chart with multiple bullet points on it. I'm going to reference that because I think it was shown to both sides and the Court and I think both sides probably have it before them.

Bullet point 4, discussions of legal authority, e.g., the discussion of UK case law in paragraph 72 and rebuttal paragraphs 10, 28n, 58, 36, 41, 72 to 73, 89, 91, 93, 95, 112, 114, 128, 132, 133, 135, and 147, the motion is granted with regard to those particular paragraphs and that particular topic--discussions of legal authority regarding foreign UK case law.

With regard to the rebuttal report itself, looking at paragraph 17 of Mr. Meyer's rebuttal report and beginning

about two-thirds of the way down, the sentence that begins, "I understand from counsel for Samsung that royalty damages for future infringement may not be permitted by law and/or the Court", and then continuing with the next sentence, "I also understand that the Court will address post-trial issues, including potential ongoing royalties, for some period if there was to be a finding of infringement and validity by the Court," those two sentences are struck from paragraph 17.

With regard to the Ofinno license agreement, notwithstanding Plaintiff's failure to seek an affirmative order compelling from the Court, it seems unfair to me that in response to a ROG request that specifically calls out any agreement you believe is comparable to omit the Ofinno agreement and then later use it as a comparable license source, I'm going to strike that agreement, I'm going to strike paragraphs 139 through 145, paragraph 152, and any portions of paragraph 38 that reference the Ofinno agreement.

Other than that, all the remaining portions of Meyer's rebuttal report that have been challenged, those challenges are denied.

Any questions from counsel on the Court's ruling?

MR. SHEASBY: Your Honor, I just had one question.

We still have this issue of the FRE 408 enforcement of that contract. Was Your Honor intending to rule on that issue via this motion?

THE COURT: Not via this motion at this time.

MR. SHEASBY: Okay. Thank you, Your Honor.

THE COURT: Okay. Let's move next to Samsung's motion to exclude under *Daubert* the expert report of Mr. Stephen dell. This is Document 206.

And let me hear from the moving Defendant.

And let me just say, counsel, when I've given you guidance on one expert's report, the corresponding expert and his report is, in all likelihood, going to follow the same guidance. So to the extent we can take that into account, it is not my intention to be inconsistent between competing experts.

Go ahead, Mr. Reger.

MR. REGER: Thank you, Your Honor. I appreciate the guidance, and as well as the earlier guidance to slow down. I'll endeavor to do that this time as well.

THE COURT: Let me hear your argument when you're ready.

MR. REGER: Thank you, Your Honor.

With respect to Mr. Dell, I would like to focus on really two key issues. And while there were four issues at issue that were mentioned in our briefing, really I'd like to focus the Court, if I may, on the damages methodology followed by Mr. Dell as well as his unadjusted *Georgia-Pacific* factors 8 through 10. Both of those are different from Mr. Dell as they

would be from Mr. Meyer, and there would be no inconsistency in ruling against Mr. Dell's opinions and ruling for Mr. Meyer.

The primary reason --

THE COURT: Let me stop you at that point.

MR. REGER: Yes, sir.

THE COURT: I'm a little bit confused in that *Georgia-Pacific* factors 8, 9, and 10 have been presented in the parties' proposed final jury instructions without alteration or change, and yet now we're talking about they should be modified in the standard essential posture or position. Which way is it? Is it your position that these factors should be charged as they originally existed, should be charged at all, or should be charged in the modified form given the standard essential position that we're in?

MR. REGER: Your Honor, part of this is I know that the parties had submitted an initial set of jury instructions. We were going to continue to work together to revise them, particularly after this pretrial conference.

Generally speaking, Your Honor, when it comes to *Georgia-Pacific* factors 8 through 10, and maybe others, the Federal Circuit is clear--they are either irrelevant or they need to be adjusted. And so there's -- it's a clear mandate, Your Honor, that we need to consider when it comes to the jury instructions and we need to consider when it comes to the

expert reports.

THE COURT: Are you asking me to strike the use of those factors altogether now, or are you asking me to permit their usage with the appropriate modification, given the SEP context?

MR. REGER: Your Honor, in this case alone I'm not aware of any discussion of *Georgia-Pacific* factors 8 through 10 except through Mr. Dell, which again, we believe is inappropriate because it was not adjusted. So without that testimony, you really have nothing out there so there's really nothing to adjust, the ultimate conclusion, Your Honor, so I believe --

THE COURT: Well, you said they're not addressed by anybody but Mr. Dell. This is a *Daubert* motion with Mr. Dell. Are you asking me to strike his discussion of those factors?

MR. REGER: Oh, I apologize, Your Honor. I thought you were asking if you wanted those factors stricken from the jury instructions.

THE COURT: No. I just note that in the jury instructions that I have, the most current iteration, they don't seem to be struck and they don't seem to be modified, yet that seems to be an issue in this motion, so --

MR. REGER: That's exactly right.

THE COURT: -- There is an inconsistency here. That's all I'm calling out.

MR. REGER: That's right, Your Honor. We are seeking unabashedly, according to the Federal Circuit mandate, we're asking Your Honor to strike his analysis of *Georgia-Pacific* factors 8 through 10.

THE COURT: Okay. Now that I know what you want me to do, give me your argument.

MR. REGER: All right. Thank you, Your Honor. And I apologize for our confusing presentation of that.

Your Honor, if I may, let me just go ahead and jump forward to the *Georgia-Pacific* factors, and then we'll --

Your Honor, there's no question, as Your Honor is already well aware from today and on prior briefing and everything else that's happened in this case already, the patents at issue are alleged to be standard essential. GComm has -- from its opening salvo through their expert reports have claimed that the patents at issue are standard essential and they are FRAND encumbered. That's part of their complaint and it's part of their expert report. There is no dispute that these are FRAND-encumbered patents.

What is equally clear is the Federal Circuit has said that many of the *Georgia-Pacific* factors, many of them simply are not relevant, and several other *Georgia-Pacific* factors would need to be adjusted for FRAND or RAND-encumbered patents, and, indeed, for SEP patents generally. We have both here, of course, SEP -- alleged SEPs as well as FRAND

encumbered.

The *CSIRO* case, Your Honor, went even further. It just identified three examples. It said, Let's be clear. Factors 8, 9, and 10 are either irrelevant or misleading in cases involving standard essential patents. What we know from GComm's response to our motion to strike these discussions of these factors is there's no -- there's nothing there. Mr. Dell of course talks about factors 8, 9, and 10, and if they're relevant then that's improper. And the second point is if they're supposed to be adjusted, he failed to do so. And we know that, again, because what GComm did when they challenged them on this is they pointed to paragraphs from a completely different factor. They pointed to paragraphs 232 and paragraph 242, which are under Mr. Dell's discussion of factor 5.

At the end of the day, Your Honor, you could look through every page, every paragraph, every line of Mr. Dell's discussion of factors 8, 9, and 10 and not see the word 'FRAND', not see the word 'essential', not see any suggestion that he has modified, adjusted, or accounted for the Federal Circuit's mandate.

Now, with that I'd like to go back to --

If I could have slide 4, please.

I'd like to go back ultimately to Mr. Dell's damages conclusions. And we're going to talk a little bit -- with

Your Honor's permission, I'll get into the methodology that was found to create that in just a moment, but what I'd first like to talk about is why we believe this is an appropriate *Daubert* motion.

I mean, ultimately this is not a question for vigorous cross examination or some such thing; instead, what we're talking about is that the damages conclusions, the damages methodology that is used by Mr. Dell and the GComm experts to present the numbers to the jury, they have not been accepted by anybody, especially not in the context of an SEP in a FRAND-encumbered patent. There is nothing that could be or tested peer-reviewed that can be -- there is no -- no one has accepted their methodology.

And one of the ways we know that their numbers not only have not been accepted and peer-reviewed and their methodology of approved is when you look at what else has happened in the case and you look at what Mr. Dell has done. So again, you don't need to take Samsung's word for it or Mr. Meyer's word for it; let's take Mr. Dell at his word. Every other time that he has offered numbers in this case, whether it's the offers that GComm has made on its portfolio or other numbers in his own report, they are vastly smaller than his damages numbers in this case. And the issue that GComm has, Your Honor, is all of these other numbers were performed using accepted methodologies.

So ultimately, when you use accepted methodologies, peer-reviewed methodologies, court-accepted methodologies, methodologies that are used in real-world negotiations between sophisticated parties, you end up with all the numbers on the left, and all of these end up with ultimately pennies per patent. The $1.37 on the left is for GComm's entire portfolio. That was 16 families, or more than 50 -- I believe it was more than 70 patents. Again, that's two pennies a patent. So when you look at everything Mr. Dell has done using accepted methodologies, you end up with a consistent range.

Now we have critiques of his numbers. He makes mistakes as I pointed out earlier, but he at least started with an accepted methodology. It's only when you get to his damages conclusions that he goes off -- took the left turn at Albuquerque, Your Honor. What we end up with is going from pennies to 10 cents a patent, according to his own methodologies, and you end up at $2.20 for just four.

Now I'd like to -- and again, this is Mr. Dell's own words. This is his report. This is where he's summarizing his approach in his expert report. He did a market comparables approach and calculated 6 cents per patent as a maximum. He used a top-down methodology and calculated 10 cents per patent. Then when it comes to the damages conclusions, he actually comes up originally--he reduces it

later--but he comes up with $1.31 for just the '776 Patent. That's 13 times an accepted methodology, Your Honor. And GComm in its responsive briefing never identified any case that has accepted the approach that Mr. Dell follows here.

Again, Your Honor mentioned it earlier, the market comparable top-down approaches, those are accepted methodologies. Mr. Dell even talks about how his top-down approach follows a case approved by Judge Holderman, and he followed that top-down approach. So he's talking about accepted methodologies and he comes up with certain numbers.

And the offers, like I mentioned, Your Honor, Mr. Pitcock with GComm admitted that Mr. Dell was responsible for those numbers. He's the one who calculated those numbers. And he did it -- according to GComm's letters, did it according to published benchmark rates and past FRAND cases; again, cases that have followed a market comparable, cases that followed a top-down approach.

The speculative, unreliable, untestable nature of this, the unworldly nature of his damages conclusion is best shown right here. The GComm patents are .006 percent of the 5G stack. That's minuscule. There are thousands and thousands -- tens of thousands of patents. We're talking about four, four patents.

While Samsung has not fully identified the complete royalty burden that they bear for 5G, what we do know from

looking at comparable agreements that have been produced in this case and analyzed by the experts, Samsung pace $3.84 for just six license agreements. Well, six license agreements cover thousands of patents from companies as varied as Qualcomm to InterDigitial, Ericsson, and ZTE. Many of those patents are considered, you know, high quality. We paid $3.84 for thousands of high quality patents from some of the leading companies in the world. GComm comes in here and is demanding $2.20.

That in and of itself, Your Honor, especially based on the fact that the other methodologies, just looking at the number itself, just looking at the numbers, the accepted methodologies are all consistent, they're within a range of pennies to 10 cents a patent, then you get to $2.20? That is just in and of itself shows how Mr. Dell's ultimate conclusion should be stricken.

Now, what I would like to talk a little bit about more is to dig into his methodology. I believe it's fully briefed, so I will be brief.

This is GComm's representation to the Court. When we challenged the damages methodology, they wanted the Court to know that Mr. Dell had already performed a proper apportionment analysis--their language--and then they said, and then he took two additional steps--he did a profit apportionment and then did a black-box downward adjustment.

So according to GComm, Mr. Dell already did something but then he took two additional steps. That's not based in reality, Your Honor.

What really happened, and what we heard a little bit about from Doctor -- during the Doctor Kowalski motion is Mr. Dell wholly adopted the numbers from Doctor Kowalski, wholly adopted the numbers from Doctor Reed-Arthurs, and then did two little steps. This is Mr. Dell's explanation of what he took from Doctor Kowalski. Doctor Kowalski reviewed and analyzed things. Doctor Kowalski concluded for the patents these numbers based on his analysis and assessment, I understand. And he did that over and over for Doctor Kowalski he. Does the same thing for Doctor Reed-Arthurs. She measured it, she conducted the survey based on her analysis, she adjusted those numbers.

And ultimately what we end up with, Your Honor, is in Mr. Dell's chart you have the loss of throughput speed--5 percent .5 percent that Mr. Cordell talked about earlier--those are 100 percent Mr. Kowalski's numbers, not Mr. Dell's. Then we have the next column in Mr. Dell's chart of how to value these patents under his damages methodology. Those numbers, the $5.83, 58 cents, those are entirely Doctor Reed-Arthurs' numbers. Mr. Dell didn't adjust them at all. He didn't touch them.

So the real numbers that are based -- that these numbers

are based on come from Doctor Reed-Arthurs and Doctor Kowalski, not Mr. Dell. They are not his opinions. He did nothing on these. The only thing he did was he came up with a 22.5 percent profit share. That's it. He did no real analysis of the numbers, no real analysis of the patents, he said, I'm going to take numbers from other people where they did all the work and I'm going to split it -- I'm going to give 22 and a half percent to GComm. That's it.

That's really all he did, with one exception. He did this downward -- he just -- he ended up with $1.31 based on this profit sharing and then, without explanation in his report, he just dropped it to a dollar. So here for the '776 Patent, we see $1.31. It went down to a dollar. The '881 Patent, 13 cents, 10 cents. And did that for all four patents without explanation.

So when GComm is representing to the Court that Mr. Dell had already done an apportionment analysis and the two extra steps, that's not true. The two steps -- the only two steps Mr. Dell did for those two, quote unquote, additional steps, the profit sharing and the ultimate black -- we call it a black-box downward adjustment because we didn't know what else to call it. He doesn't explain it. It just comes out of the blue.

Ultimately Mr. Dell contributes nothing to the damages methodology. The damage numbers in this case are not his own.

The only thing he should be allowed to talk about, Your Honor, are these two steps, if that. And again, we contend that Doctor Kowalski's opinions were improper, but we understand Your Honor -- you know, it made it through the fires of *Daubert*, so we appreciate that, Your Honor. But Mr. Dell should not be able to get up there and sponsor Doctor Kowalski's numbers. He did nothing with those numbers, Your Honor.

Any questions, Your Honor?

THE COURT: No.

MR. REGER: All right. So again, for brevity and consistency, I'll sit down, Your Honor. Thank you.

THE COURT: All right. Let me hear from G+.

MR. SHEASBY: If I could have slide 18.6, Mr. Svenson.

The teaching on how to measure damages with standard essential patents comes from *Ericsson versus D-Link*. And what it says is that anything that you need to focus solely on incremental benefit from -- derived from the invention, and any -- to the extent a *Georgia-Pacific* factor and analysis is focused on the value of standardization as a whole, it is improper.

What Mr. Dell does--in fact, what his entire methodology is--is to focus solely on the value of the patents. Doctor Kowalski has calculated the value of the patents, the

performance they give as compared to the next closest non-infringing alternative, and he gives specific loss numbers. Doctor Reed-Arthurs then does a conjoint-based survey to specify what are the value of those speed benefits.

What Mr. Dell then does is calculate based on that what the incremental profit is for each of the patents-in-suit based solely on the difference between the next closest non-infringing alternative and the asserted patents.

And then what he does is he performs an analysis of the hypothetical negotiation. And as part of that analysis with the hypothetical negotiation, what he starts with, actually--and I think this is responsive to something he said--is he said there's all these different ways that you could look at it. You could look at effective rates from relevant Samsung agreements, you could look at announced 5G rates per patent and look at the technical benefits analysis that Mr. Dell did with Mr. -- Doctor Kowalski and Doctor Reed-Arthurs. And he ultimately concludes that the parties would start at the low rates, the rates that are advocated by Mr. Meyer, but ultimately end up using the portfolio rates. And they may be dissatisfied with that and they may think that is not something that should be acceptable, but the Federal Circuit in *Ericsson* just disagrees with them. The Federal Circuit in *Ericsson* doesn't say all patents are equal when they're SEPs and you divide it; it says just the opposite--you

focus on the value solely on the patent.

Now, this question, which is dramatically different -- there was no request to strike every *Georgia-Pacific* -- every discussion -- all the discussions in the *Georgia-Pacific* factors; there was a very precise challenge.

If I may approach the table, Your Honor?

THE COURT: You may.

MR. SHEASBY: They complain Mr. Dell did not adjust any of his discussion of the *Georgia-Pacific* factors 8 to 10 to account for the asserted patents being allegedly essential or FRAND encumbered. That was their challenge. I just showed you 10 slides how he went specifically through each of these elements to make sure he was focused not on the value of standardization, but based solely on the value of the patents.

Now, Your Honor has to deal with I think a procedural question, and that procedural question is what sort of *Georgia-Pacific* factors should the jury be instructed on. Now, I express no opinion on this stage other than the fact that I know that Mr. Meyer, who is their expert, used the same *Georgia-Pacific* factor language that Mr. Dell did, and so both experts used that original unaltered language. What Mr. Dell did is he engaged with it --

If I could have slide 24, please, Mr. Svenson.

Factor 8 is inflated, factor 9 is also skewed, factor 10 is irrelevant. What Mr. Dell does is he engages with every

single one of these issues and he does it at the beginning of his report. He acknowledges that there is a FRAND obligation, he acknowledges that the patents for his purposes of analysis he's deeming the patents as essential, and then this is the important factor--he talks about the fact, for example, that the commercial relationship between the licensee and the licensor, he expressly -- in the sections they say he talks about nothing, he expressly says that he is not weighing the factor; he's taking into account that some of these factors do not apply because of the FRAND obligation.

The problem is they give this big headline--he doesn't adjust according to *Ericsson versus D-Link*, but they don't cite to any specific paragraphs that they want stricken, they don't cite to any language that actually is violating the spirit of *Ericsson versus D-Link*.

Let me give you another example. He -- for factors 8 and 11, these factors are not forbidden; these factors are something that may need to be adjusted. And he did adjust. He said specifically they have to be -- that the commercial success has to be leavened because of the telecommunications standards that are at issue. Once again, their whole challenge to you was he doesn't discuss it at all. They set a very low bar. I'm telling you, that bar has been satisfied. They may not like the discussion he gives of the issues, but he carefully discusses each of the issues.

And in summary of the *Georgia-Pacific* factors, what he talks about at every single evidence -- step is solely based on the performance improvement of the patents over the next closest prior art reference.

I have no problem with the Court adjusting language based on *Georgia-Pacific* factors based on the guidance of *Ericsson versus D-Link*. That's something that may happen. For right now both experts have used the unaltered language, but they have not pointed to one, one, one sentence in any section of his report that violates the prohibition of *Ericsson versus D-Link* that you don't take advantage of the standard; you take advantage of the technical impact. The entire premise of his report is to do just that.

Your Honor, I know we're late in the day. If Your Honor doesn't have any questions, I will sit.

THE COURT: All right.

MR. SHEASBY: Thank you.

THE COURT: Mr. Reger, anything else?

MR. REGER: Just one quick thing, Your Honor.

THE COURT: One quick thing.

MR. REGER: Thank you, Your Honor.

If I could have the elmo, please.

THE COURT: Let me ask you, Mr. Sheasby concluded by saying that your expert used the same discussion of these *Georgia-Pacific* factors as is being challenged with his

expert. Do you agree with that or do you dispute that?

MR. REGER: Mr. Sheasby chose his language very carefully, Your Honor. Both experts identified there are *Georgia-Pacific* factors 1 through 15. Mr. Meyer did not conduct an analysis. He criticized Mr. Dell for conducting the analysis of factors 8, 9, and 10 without adjusting for them and considering them at all. So Mr. Meyer criticized Mr. Dell for doing that.

THE COURT: Well, I can tell everybody that my reading of the Circuit's guidance here is that factors 8, 9, and 10 should not be charged without appropriate modification in the standard essential setting.

MR. REGER: Yes, sir.

THE COURT: And I'm not going to charge this jury with those factors without modification; I'm not sure I'm going to charge them on those three factors at all. It depends on what the evidence is. But they're not going to be charged without, at a minimum, an alteration to adjust for the reality that we're in a standard essential setting. So I don't know if we're fighting just to be fighting with each other or what. You-all don't seem to be able to agree what the other one's expert said, but I can just tell you I know well enough not to go down the path of charging this jury on factors 8, 9, and 10 without some modification. And again, I may not charge them on those factors at all depending on what

the evidence is.

So what is it that we're really fighting about here, Mr. Reger?

MR. REGER: Your Honor, if I may, that's exactly the point I was going to --

THE COURT: Jump right in there.

MR. REGER: Thank you, Your Honor.

Your Honor, the ultimate question is the one Your Honor just raised. Factors 8, 9, and 10, at a minimum, should be adjusted or removed from the analysis of the experts and not presented through the jury instructions. We agree with that, Your Honor, and that's why we criticized Mr. Dell for failing to do so. We 100 percent agree with Your Honor. And it would be consistent for Your Honor to issue instructions that no one is going to be talking about factors 8, 9, and 10 at all, especially without adjustment.

Now, Mr. Sheasby does not agree with that and he is fighting to keep the factors 8, 9, and 10 in Mr. Dell's report. He said that we never talked about where that stuff was found.

THE COURT: Well, Mr. Sheasby told me that 8, 9, and 10 needed to be properly adjusted under *Ericsson versus D-Link* and other authority in the standard essential setting.

MR. REGER: Yes.

THE COURT: The fight seems to be you say he didn't

make any adjustments, or his expert didn't make any adjustments when the lawyer tells me they need to be adjusted to be properly presented to the jury, and then he tells me your expert used the same unadjusted factors as his did. I'm just hearing so many different stories, I don't really know what's what, other than to be clear to tell you-all I'm not going to charge on those factors, if at all, unless they're modified because of -- to fit this standard essential setting.

And, you know, maybe I need to get the actual two reports out and hold those sections up side-by-side and see who's not telling me the right story, but it can't be both ways.

MR. REGER: Well, Your Honor, I'm certainly -- Your Honor's busy and I'm not trying to give Your Honor any work, but in our motion we specifically identified the sections and the paragraphs that need to be stricken. We say paragraphs 240 to 288 and his concluding paragraph 344 of Mr. Dell's report, those are the sections in Mr. Dell's report that supposedly talk about 8, 9--not supposedly; excuse me--that expressly talk about 8, 9, and 10; that it's his discussions. He labels them--this is factor 8, factor 9, and 10. They are found within paragraphs 240 and 288. We identified them in our motion.

Mr. Sheasby did -- spoke a lot about this, and he showed you a lot of slides of Mr. Dell acknowledging they're standard essential and acknowledging they're FRAND encumbered. He

never showed you any adjustment, he never showed you any actual work that Mr. Dell did within these paragraphs. Within factors 8, 9, and 10, Mr. Dell did nothing.

And Your Honor, again, I'm not trying to encourage you to add any work to your schedule, but 240 to 288 is where that work is found by Mr. Dell and does not adjust.

THE COURT: Is it 240 to 288 or is it 240 and 288?

MR. REGER: I'm sorry.

THE COURT: You said it both ways.

MR. REGER: Let me rephrase, then. 240 through 288. And there's no adjustment in there, Your Honor.

And Mr. Meyer, when he talks about factors, 9, and 10, I'm not -- to be blunt, I'm not sure what Mr. Sheasby's talking about. What Mr. Meyer does is criticize Mr. Dell for not adjusting factors 8, 9, and 10.

And I apologize. I don't have Mr. Meyer's report in front of me, but I'd be happy to file a supplemental notice where we talk about -- where we show you Mr. Meyer's criticisms of Mr. Dell for doing that.

MR. SHEASBY: I have it right here.

THE COURT: I'll tell you what we're going to do, in the interest of time, counsel. I'm going to carry the issue of paragraphs 240 through 288 and potentially paragraph 344. I'm going to deny the challenge as to the remaining portions of Mr. Dell's report as challenged by the Defendant, and I

will let you know what you can expect, whether those paragraphs 240 through 288 and 344 survive or they don't survive.

MR. REGER: Thank you, Your Honor.

THE COURT: Okay? Everything else is denied.

MR. SHEASBY: Your Honor, can I just say one other thing?

THE COURT: I guess you can, Mr. Sheasby.

MR. SHEASBY: If you look at appendix -- this is from the appendix of Mr. Meyer's report, and you'll see that he goes through every single factor in unaltered form and discusses the impact of it. He did the exact same thing we did. Look at factor 8. He didn't change the language. He didn't change it at all. And what I'm trying to explain is that the magic is not whether you use the exact same language; the magic is if in those factors are you taking into account the value of standardization. And that's why I issued the challenge--show me the section where Mr. Dell is using the value of the standard as a whole as a basis for his analysis.

THE COURT: What you're showing me is Meyer -- coming from Meyer's rebuttal report?

MR. SHEASBY: Yes, Your Honor.

THE COURT: All right. I'm going to carry this *Georgia-Pacific* factors 8 through 10 issue and I will give you guidance on it.

I will say this, counsel. I don't expect either expert to testify to this jury about those three factors without appropriate modification and without prior approval of that modification by the Court. So whether these paragraphs stay in or they don't, whether the other experts do the same thing and make the same mistake or don't, neither expert is going to testify about factors 8 through 10 without counsel approaching the bench first, showing me what the actual testimony and the characterization of those factors is going to be, and getting leave from the Court. Okay?

MR. SHEASBY: Thank you.

THE COURT: That way we don't get hurt whether something improper stays in or something proper comes out.

MR. SHEASBY: Thank you, Your Honor.

THE COURT: All right?

MR. REGER: Your Honor, may I briefly be heard? I understand Your Honor's instructions --

THE COURT: Go to the podium.

MR. REGER: Thank you.

Your Honor, just to level set things, briefly, we agree neither expert should talk about factors 8, 9, and 10, and that's what I was saying about the jury instructions.

THE COURT: And I'm telling you neither party is going to talk about factors 8 through 10 without any approval first.

MR. REGER: Thank you, Your Honor. And one point. The only reason why I asked to get up here, really, was there was some suggestion that Mr. Meyer talks about factor 8--was the example used--unadjusted, and he showed you a summary chart. There's a footnote in Mr. Meyer's report that I can read right here where Mr. Meyer goes, I adjusted this and, in fact, I don't -- so anyway.

THE COURT: I'll look at everything. You don't need to have the last word to point out the error of your opposing counsel.

MR. REGER: Thank you, Your Honor.

THE COURT: I'm telling you I'm going to deal with this issue by precluding any discussion of *Georgia-Pacific* factors 8 through 10 before the jury without prior approval of the Court.

MR. REGER: Thank you, Your Honor.

THE COURT: And, quite honestly, with that I'm not going to strike those paragraphs out of the Dell report because they're effectively covered by that gatekeeping function. And for purposes of Dell's report, all the objections are overruled. Okay? Everybody understand where we are?

MR. SHEASBY: Yes, Your Honor.

THE COURT: All right. Let's move on.

I know that you were primarily prepared to take up these

four lengthy multiple subpart motions that we've now somehow waded through, but there are four other motions--three other motions; I'm sorry--effectively before the Court, and while I have the benefit of you here, I'd like to hear five minutes of argument from each side on these motions.

And the next one is G+'s summary judgment motion on the § 101 issue, and there's a competing Samsung summary judgment motion under § 101. I'd like five minutes of argument from both sides on this.

And I'll hear from you first, Mr. Sheasby, unless Ms. Truelove is going to argue it, but I'm assuming you're the one-man band today.

MR. SHEASBY: Yes, Your Honor.

Can I have deck 3, please?

The motion should be denied at step 1, and the reason is because the undisputed record is that it solves -- each of the patents solve a technical benefit. Dr. Paul Min, who's their expert, speaks to the fact that the '776 addresses a technical problem of the ping-ponging effect. Mr. Wicker says that the reselection across frequencies, which is what the patent is directed to, have a real-world performance impact; therefore, at step 1 there is no abstractness under *Alice*.

As to the '443, the same issue. Mr. Wicker said the '443 Patent covers using different lengths of data depending on the errors to more precisely address the errors, and he admitted

under oath that that makes the system more reliable and more efficient when it's used. Once again, not abstract under step 1 of *Alice* because it is addressing a technical improvement to a technical problem.

And then as to the '881, same issue. Again, '881 allows you to more precisely transmit to a node whether there's been an acceptance or a failure. And he admitted that that has a technical benefit to improve cellular systems; therefore, not abstract under step 1.

Thank you, Your Honor.

THE COURT: All right. What's Samsung's argument on this?

MR. PHILLIPS: Good afternoon, Your Honor. Ralph Phillips from Fish on behalf of the Samsung Defendants.

THE COURT: Please proceed, counsel.

MR. PHILLIPS: May I approach with some slides, Your Honor?

THE COURT: You may.

MR. PHILLIPS: All right. May I proceed?

THE COURT: Please do.

MR. PHILLIPS: All right. Thank you, Your Honor.

Real quickly, I wanted to discuss -- address GComm's counsel's representations regarding purported admissions by our experts.

And let's start with Mr. Wicker's testimony on page 25 of

the slides. Here we go.

All right. Now, as you heard counsel for GComm represent also in their briefing you'll see, the representation that somehow Mr. Wicker -- Doctor Wicker admitted that the '776 claims provide improvement. In truth, if you look at the actual content of his testimony, he was not talking specifically about the '776 Patent. In fact, he's not an expert on that patent for Samsung. Doctor Wicker's testimony is actually untethered to that patent and it generally discusses frequency and allocation and selectivity as part of cell reselection; so again, not tied to that specific patent.

Similarly, if we look at page 48 in the slide deck, here we see testimony again from Doctor Wicker regarding the '443 Patent, and once again, despite representations to the contrary, the comments, the testimony that's here are not specifically directed to the '443 Patent; rather, Doctor Wicker's talking generally about dynamic -- about the advantages of dynamically indicating correctness of transmitted data. Again, not the specific claims of the '443 Patent and the comments that opposing counsel's relying on.

And then, further, with regard to the '881 Patent --

If we go to page 65 in the slide deck.

Here Doctor Wicker's testimony provides no opinion on industrial performance, which he's alleged to have testified is improved via the '881 Patent. So once again, the

testimony, if you look at the testimony of the experts, it does not support the allegations from GComm in their briefing.

Relatedly, it's worth noting that --

If we go to claim -- if we go to slide 40.

And particularly the *Bancorp* case cited in our briefing, the benefits of practicing an abstract idea do not make the claim less abstract. So this -- GComm seems to suggest in their briefing that if there is some benefit to the claim that renders it patent eligible, that's not actually the case. For example, in the *Bancorp* case, a claim covering a system for administering and tracking the value of life insurance policies was found abstract despite the fact that the calculations could be performed more efficiently via computer. So if the purported benefit is a function of and derived from an abstract concept, an abstract procedure or methodology, again, it does not save the claim from being patent ineligible.

And I think that's probably about my five minutes, Your Honor, so unless you have any questions, thank you.

THE COURT: No. Take a minute more if you're not finished but -- thank you.

Well, with regard to the § 101 issue concerning the patents-in-suit, the Court's persuaded that they are directed at the step 1 analysis to an abstract idea; however, the step 2 analysis, being a mixed question of law and fact, is one

that the Court believes is appropriate to present to the jury, and I intend to submit the step 2 question as a part of the jury's fact-finding in this case. And that will be the ruling on these competing motions. We're also, I'm sure, going to hear expert testimony on the step 2 issue before the jury makes their decision.

All right. Let's talk briefly about the motion to strike Doctor Min's rebuttal report. That's Document 189, I believe. And when I say briefly, this is a single motion that, to my imprecise counting, has at least 13 subparts to it and some of the subparts have multiple parts to them. I really, really don't care for motions that are 15 motions crammed into one and they're just presented as a single motion with multiple subparts rather than being candid with the Court and making them stand-alone motions. But nonetheless, I'd like tailored argument along the same lines on this.

MR. SHEASBY: Sure. I'll focus on what I think are the two most --

THE COURT: That's what I think would be most helpful, Mr. Sheasby.

MR. SHEASBY: 8.52, please.

Mr. Min in his rebuttal infringement report talks about the fact that a prior art reference would invalidate the patents under the Court's claim construction. That reference -- he did not do a claim chart showing why that reference

would invalidate. His arguments on invalidation was in his opening report and he was obligated to address that issue in his opening report.

And just to flag, Your Honor, this is -- this relates to the third bullet -- the third section of our brief related validity opinions related to paragraphs 210 to 213.

THE COURT: All right. Anything further you want to call to my attention?

MR. SHEASBY: Yes. The other one I want to call your attention to, Your Honor, is Mr. Min--Doctor Min--excuse me --

Let's go to 8.101.

-- does a number of things in which he relies on -- he relies on -- excuse me. He relies on in his infringement analysis statements about another -- other things were known in the prior art. He talks about prior art references that were not disclosed. He said if you look at the claims the way Doctor Akl looks at them, the claims would be invalid without doing an element-by-element infringement analysis.

This is just for -- I can tell you the section of the motion. This is section 9 of the motion, paragraphs 31 through -- 30 through 31 and 72 through 73 in which he's just literally doing a situation and saying, Oh, it would be invalid if you did this, it would be invalid if you did that, without actually going through the analysis.

Now, sometimes what experts say is -- what litigants say is that something would be valid -- something is -- the fact that known elements are in their prior art would be relevant for damages. He's clearly not using it for damages; he's using it as a surreptitious validity argument. But more to the point, it's not the law that conventional elements don't need to be subtracted from the value of the invention as a whole. That's not how you do damages. So this would not be relevant to damages either.

But the whole emphasis is these paragraphs are starkly presenting legally defective validity analyses because there's no element-by-element analysis and they talk about, Oh if you accept infringement, then the patent is invalid, which is forbidden as a matter of law.

Those are the highest priority issues.

THE COURT: All right. Let me hear corresponding argument from Samsung.

MS. DEGNAN: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. DEGNAN: May I approach with some slides? I appreciate we don't really have time to have them, but --

THE COURT: You may approach.

MS. DEGNAN: Thank you.

All right. So unless the Court has questions on other portions of the brief, I'm going to just hit the two issues

that Mr. Sheasby addressed.

THE COURT: That's your call.

MS. DEGNAN: Okay. We'll go to slide 18.

So this is No. 3 in the motion, Your Honor. And, you know, to be very clear, we understand that the rebuttal report which was filed --

Go to the next slide, please.

No. 19, that was filed shortly after your Court's claim construction, does address an issue that was highlighted in the claim construction order, meaning that under the claim construction there could be issues of invalidity, but it was not grounds for rendering the claim indefinite.

And so we appreciate that one approach could have been to file immediately on July 19th with the rebuttal report a supplemental invalidity report and then make a motion for leave. Given the timing, and -- we ultimately just put the theory in the rebuttal report. So I understand it's not a pristine resize following of this Court's rules, but it was a more efficient approach and ultimately resulted in fewer motions being filed.

And so I believe that is the main challenge is that the formalities weren't all followed, but in terms of could this argument have been put into the opening report since it was -- arose from this Court's claim construction order, the way it came about in the rebuttal report was to be done just in that

report that was served, as I said, six days after the ruling. And so we don't think there's prejudice here, and there was ample opportunity for the other side to be put on notice of this position that, again, arose from statements in your court's order.

THE COURT: All right.

MS. DEGNAN: The next issue --

If we could have slide 45. And we'll go to 46. Slide 46, if you don't mind.

So here I think -- and what we have on the slide, Your Honor, is paragraph 72 and 73. Paragraphs 30 and 31 are similar. It's merely talking about the background of the invention. The subject matter paragraphs 30 and 31 is very similar to the subject matter that shows up in the opening report in paragraph 29, just sort of the background of the invention, what was the state of the art and the problems being solved.

And so here the patent itself admits that cell reselection was a known thing, and it's purporting to improve the way cell reselection is done. And so what we have in the expert report here is sort of a iteration of the context of the patent. It is the -- I think it's entirely appropriate for an expert to be able to highlight admissions of the patentee in the patent itself and to avoid any suggestion that might be made to the jury that any form of cell reselection is

sufficient to meet the claims. And so I think that is really an appropriate use of background information in the patent.

We're not -- there's no suggestion that this is a practicing the prior art defense. There's nowhere in the expert report at all, if you read the paragraphs. And we think this is just a blatant attempt to prevent our expert from just discussing the background and highlighting admissions that are right in the face of the patent to the jury, and it would be inappropriate to strike it.

THE COURT: All right. Of course, background is one of those terms that can be a lot of things to a lot of different people. Sometimes it truly is background only, sometimes there are things hidden in what's portrayed to be background that shouldn't be in the background section, and it's somewhat in the eye of the beholder, to be honest with you. I've seen it used properly and I've seen background being used improperly, and you never really know until you see it played out.

MS. DEGNAN: I appreciate it, Your Honor. And I -- we intend to use it in the proper way, and we certainly take your instruction on that. And we may have objections to slides in the morning if we can't work it out in advance, but our goal is not to present sort of the back-of-the-envelope invalidity opinion on this. It's just context to make sure the jury is not misled, so-to-speak, that any reselections --

these concepts are technical, unfamiliar, and the jury should be told that there's some parts of basic cell reselection that was old and this is supposedly an improvement thereon.

THE COURT: Well, let me touch on what I'm particularly thinking about, Ms. Degnan. Background is background when it's given as a preparatory explanation prior to engaging in an element-by-element defense for prosecution of whatever the claim might be. Building in background while you're talking about why this element is met or not met, that's misusing background.

MS. DEGNAN: Understood, Your Honor.

THE COURT: So I will leave in paragraph 72 and 73, but I do not expect to hear about what's in those paragraphs during the element-by-element analysis. Understood?

MS. DEGNAN: Understood.

THE COURT: Okay. Anything further?

MS. DEGNAN: No, Your Honor.

THE COURT: Thank you.

All right. Let me go through this multifarious motion as best I can.

With regard to paragraphs 106, 108 through 139, I'm going to strike these--Doctor Min's definition conflicts with the claim language. He leaves out 'in a time transmission interval' when that he talks about K predefined sequences, and that's inconsistent with what the claim language requires.

Therefore, I think those opinions are flawed and those paragraphs are struck.

From the briefing it looks like to me that with regard to his discussion concerning prior statements made during an IPR proceeding--this is paragraphs 140, 142 through 147 and 214--it really looks like from the briefing here that there is no real disagreement between the parties. The use of a statement by a different witness that's used one way in one context and one way in another context can be talked about without identifying an alternate proceeding, such as an IPR proceeding. And in reading both sides' briefing, when you get down to it, I don't really see that you-all are in much disagreement with regard to this section, so I'm going to leave it like it is.

I -- you're well aware of my typical practice with regard to motions in limine, and we're not going to talk about PTAB proceedings or IPR proceedings or other litigations in other jurisdictions or courts, without prior leave of the Court. But I think the way that the briefing comes out at the end, you're basically on the same page there. I just want to make it clear to you what I expect with regard to foregoing any direct references to other tribunals without the Court's prior permission.

Paragraphs 152 to 155, here Doctor Min limits his non-infringement argument to a failure of the independent

claim from which the dependent claim depends. And if the arguments limited to the failure of the independent claim, that makes an attempt to later discuss failures of the dependent claim and its elements improper, and that's what I think Doctor Min is doing here.

If he wants to attack the claims 2 and 3 of the '130 Patent by saying they depend on claim 1 and claim 1 doesn't apply and isn't met, then that's fine, but he can't, then having limited his argument to that then go into failure to meet various elements or limitations of the dependent claims themselves, and that's what it looks like is going on here. So paragraphs 152 to 155 are struck.

I've already talked to counsel about background being background and not being a part of any element-by-element analysis either of the asserted claims or prior art or anything else. If it's going to be background, it needs to be in the background. And that applies across the board.

In paragraphs 55 through 61, doctor Min summarizes the prosecution history and various amendments made during the prosecution. I don't see any relevance here. I think this is probably excludible under Rule 402. I'm going to strike paragraphs 55 through 61.

Paragraphs 248 through 255, he argues that the doctrine of equivalents are not available because the claims were amended during prosecution. If he wants to argue prosecution

history estoppel, that's an argument for the Court and not the jury. I think paragraphs 248 and 49 are informative. It's paragraphs 250 through 252 where I think he crosses the line, and I'm going to exclude paragraphs 250 through 252.

Paragraphs 217 through 218 touch on the Ofinno license, and consistent with my prior ruling and the failure to identify where it was expressly called for in prior interrogatories, I'm going to strike those two paragraphs. All the other provisions of Doctor Min's rebuttal report that have been challenged are denied.

All right. The last substantive motion before we get to the motions in limine is Document 190, Plaintiff's motion to strike portions of rebuttal report of Stephen Wicker, who is Samsung's technical expert on two of the three patents -- or two of the patents-in-suit, I should say.

Let me hear targeted argument on this one as well.

What do you really care about in here, Mr. Sheasby?

MR. SHEASBY: I think what I really care about is the prior art issues, which is subsection 4 in the motion.

And if we could have slide 72 -- slide 7. Let's go to slide 60, 7.60.

So this is the rebuttal report of Doctor Wicker, and yet what Doctor Wicker is doing is he is trying to surreptitiously make invalidity arguments expressly. If he wants to point to things that were known in the prior art, he should be limited

to what's in his rebuttal report.

So this is a perfect example. On slide 7.61 he says that the patent is not novel because of a 3GPP contribution made by Ericsson. If he wants to argue that the patent was not novel because of a 3GPP contribution by Ericsson, that needed to be in his opening report so it could be responded to. We have no ability to respond. This is not background; this is expressly engaging issues of novelty in the actual body of the report.

So you see him doing that with -- let me show you where it becomes the most egregious.

THE COURT: This is 73 through 79, 103 to 107, 123 to 124 --

MR. SHEASBY: 80 through 84.

THE COURT: -- 80 through 84, and 108 through 110?

MR. SHEASBY: Yes. And 209 through 234, and 252 to 261 and 264. It's the same thing every single time, which is he is not just talking about background art saying, for example, Oh, everyone knew about HARQ for many years, I published many papers on HARQ; that, I think, comes close to the line. But then when you go to paragraph 57 and he's saying things are not -- what ZTE contributed is not novel or original, and then citing to prior art documents, that needed to have been in the opening report so we have the ability to respond to it, Your Honor.

And so there's got to be a line somewhere, as Your Honor

said, and the line has been crossed with any time he's pointing to a reference and saying it's not novel because of X. First off, that's not even legally valid for him to be saying that because it requires him to do an element-by-element analysis of validity, which he's not doing. And to do it in the rebuttal report so that we have no ability to even engage it is particularly improper.

That's my five --

THE COURT: Anything further?

MR. SHEASBY: That's the most important thing, Your Honor.

THE COURT: All right. Let me hear from Samsung.

What have you got for me, Mr. Phillips?

MR. PHILLIPS: All right. Some slides to begin with, if I could approach, Your Honor.

THE COURT: You may hand up your slides.

MR. PHILLIPS: All right. If I could, I'd like to direct you to slide 31 in the deck, which goes right to the point that counsel for GComm was just discussing--mainly Doctor Wicker's discussion and rebuttal, particularly with respect to Doctor Kowalski.

Here we see paragraph 284. It's one of the ones that was highlighted in the prior discussion. And this is not prior art analysis; what this is, very clearly -- and actually, as you know from the argument earlier, Doctor Kowalski offered

many opinions about the value of these patents--their throughput advantages, I should say--and in doing so made many statements about this and that. He also made comments -- he also opined on non-infringing alternatives that were suggested in -- being relied upon by Samsung, and in many cases said, you know what, this is no good because it doesn't have X, or it doesn't have Y, or in the case of paragraph 284, didn't have what's in pink -- highlighted in pink.

What Doctor Wicker's doing in this paragraph, as highlighted in green, is simply responding to that position. He's not saying it's -- this patent is invalid over this 3GPP contribution that he's citing; he's simply rebutting this notion that there's this giant gaping hole in the capabilities of these non-infringing alternatives that render them, you know, ineffective for this analysis. So again, this is proper rebuttal, it's clearly relevant, and it should be allowed.

One other quick thing I did just want to touch on in terms of things that matter to me, there are a number -- at least two different subparts of this motion--one regarding enforcement, the other I believe regarding benefits, both of which I think can be addressed by looking at slide 3. This is just a little reminder of how things went down throughout the course of the last year.

THE COURT: Yeah, I'm aware of this.

MR. PHILLIPS: Okay.

THE COURT: Things were compressed.

MR. PHILLIPS: They were. And, in particular, with respect to the contentions, the infringement contentions as to the '443 and the '881 Patents, the one's that Doctor Wicker addresses, from July 5th, 2022, until June 16th of this year, GComm's infringement contentions as to these two patents were solely anchored on 4G or, if you prefer, the 36 series, 3GPP functionality. It was not until June 16th, with a June 28th close of fact discovery looming, that they dropped new contentions adding 5G or, again, if it's less controversial, 38 series 3GPP functionality.

Again, discovery closed on the 28th. Opening expert reports were served then, at which point Doctor Akl also made these same -- you know, adopted these same positions with regard to these newly adopted 5G infringement allegations. And it wasn't actually until July 19th, the same day we had a motion hearing here before you, Your Honor, that the Court actually granted leave to amend these contentions. So these things weren't even part of the case until the 19th, which is the same day Doctor Wicker submitted his rebuttal report responding to these new contentions. So the idea that somehow he should be precluded from responding to these newly and belatedly added positions is -- well, it should be rejected.

THE COURT: What else, Mr. Phillips?

MR. PHILLIPS: That's all I have, Your Honor.

THE COURT: Okay. Thank you.

All right. With regard to Document 190, Plaintiff's motion to strike portions of the expert rebuttal report of Stephen Wicker, you both argued to me about effectively the same provisions of this report, which would cover more or less paragraph 73 through 79, 103 through 107, 123 through 124, 80 through 84, 108 through 110, 209 through 234, 252 through 261, 264. I do find that Doctor Wicker has come forward with new materials here. I'm also cognizant of the compressed time frame that the parties were functioning under. I'm not willing to say that it's the Court's fault that that time frame was compressed. I think probably the fault for the compression of the time frame falls on the parties and counsel. But nonetheless, none of us are perfect, and it was clearly a very tightly compacted time frame. While perhaps there should have been a request for relief on July the 19th, that probably wasn't practically doable given the circumstances.

I'm not going to strike these provisions. What I am going to do, though, in what I think is an equitable solution is I'm going to grant leave to G+ to file a supplemental report from Doctor Akl responding to only the new arguments in these particular paragraphs that Doctor Wicker included in his rebuttal report that weren't earlier raised, and I'm going to limit this supplemental report to not more than eight pages,

and I want it filed within the next seven days.

Now, looking at the remainder of what's at issue in this motion, paragraphs 30 through 33 and 164 through 169, Doctor Wicker launches into a discussion of the prosecution history, the amendments to the claims. If this relates to anything, it relates to prosecution history estoppel, which is not an issue for the jury, and I'm going strike it from his report.

Now, let me say this. With regard to anything I've identified as being struck as a part of the jury trial, assuming the outcome of the jury trial is such that the equitable defenses that have been raised are properly arguable to the Court, I'm not precluding you from presenting those arguments at that time and that context, but there's no place for this before the jury, and I'm going to strike paragraphs 30 through 33 and 164 through 169.

In paragraphs 295 through 298, Doctor Wicker launches into his understanding of the law and his opinions about the doctrine of equivalents. This is not helpful and it is effectively a layperson offering legal conclusions. I'm going to strike those three paragraphs.

And then, finally, the same issue that we've dealt with multiple times today presents itself in this context again, and that is the Ofinno allegedly comparable agreement where the earlier ROG requests specifically directed to identify any agreement you believe is comparable. That agreement wasn't

comparable, and I'm not going to allow it to be brought in after the fact. So consistent with my prior rulings, those provisions of this rebuttal report, which would be paragraphs 217 and 218, those are struck.

The remainder of the provisions in Doctor Wicker's rebuttal report that have been challenged are denied. Those challenges are overruled.

Okay, counsel. That gets us to motions in limine. It's almost 3:30. We're going to take a short recess. When I come back, we'll turn to motions in limine.

The Court stands in recess.

(Brief recess.)

THE COURT: Be seated, please.

All right, counsel. Let's turn to the disputed motions in limine. As the parties are aware, the Court has a standing order on limine practice in cases like this, and the Court adopts the 26 itemized limine orders contained in the Court's standing order, but allows the parties the latitude to put forward up to five additional limine issues that are disputed and need the Court's guidance on, so we'll turn to those at this point.

We'll begin with the proposed limine orders offered by the Plaintiff. The first one is Samsung should be precluded from offering evidence or testimony that G+'s licensing efforts or offers were discriminatory to Samsung.

I thought that's what this trial was about--whether there was something that was fair, reasonable, or discriminatory.

MR. SHEASBY: Your Honor, if you go to slide 21.3.

THE COURT: If you'll go to it, I'll look at it.

MR. SHEASBY: Yes, thank you, Your Honor.

21.3, Mr. Svenson.

So the jury will be heard -- will be told that our rates must be fair, reasonable, and non-discriminatory, but as this Court held in a memorandum order that Samsung never disclosed that any one of our particular offers discriminated against Samsung vis-a-vis another party, such as Apple, such as another entity. And so the purpose of this is not to preclude them from saying our offers must be fair, reasonable, and non-discriminatory; the purpose of this is to enforce this Court's order that they never disclosed that any particular offer or terms we gave to a third party discriminated against Samsung, which is what your Court -- what the Court said was not disclosed in their counterclaims or contentions.

So they can say our offer has to be FRAND--fair, reasonable, and non-discriminatory--they can't say, Ladies and gentlemen of the jury, we've been discriminated against vis-a-vis Apple. That's exactly what the Court ruled was not in the case and should not be presented to the jury. And that's the narrowness of the motion in limine.

THE COURT: Let me hear from Samsung.

MR. McKEON: Good afternoon, Your Honor. Mike McKeon again for Samsung.

THE COURT: Yes, sir.

MR. McKEON: So you may recall, Your Honor, the history -- and this all, by the way, relates to Apple, the Apple agreement. So the discrimination argument is related to the Apple agreement.

And the history here is, as you know, as soon as the case got started and discovery got started, we asked for the ZTE/Apple agreement. And eventually it was produced months later. We asked for it in August of '22, they produced it if February of '23, and they produced it in redacted form. So there was a bunch of back and forth on that, and then we finally got it from Apple. We subpoenaed Apple and actually got the agreement. And we got it, Your Honor, April 3rd, 2023, and it was sort of either -- I think it was after -- actually after discovery, and that's when we first sort of realized and did the analysis, our expert did the analysis on the agreement, and how, you know, we have the biggest sort of the two competitors in the world that -- you know, you say who are the biggest competitors, Samsung and Apple as -- we know that, and the jury's going to understand that. So we think the issue's really important in the case.

And it is true, Your Honor, that in the interrogatory responses we didn't lay this out, but frankly, Your Honor, we

didn't get this until after -- until the end of discovery or after the close of discovery. We weren't able to revise this. And, of course, this was -- we supplemented our expert report, so there's no surprise here.

And one of the things that's happening, Your Honor, it happened in this case, it's happening in other cases, and we're seeing it more and more, where you have these operating companies that the best patents into investment companies, you know, for purposes of enforcement, and sometimes, like in this case, they're keeping a piece of the action, and yet when we litigate against the NPE, we say, Hey, give us all your licenses, give us the inventor notebooks and all of the inventor-related documents, and they say every time, We don't have that. And so the burden, like, is shifting on these sort of core documents, and that -- because not only does it go to FRAND issues or damages issues; it goes to liability issues. I mean, do we have a license? Are components supplied a license.

And, you know, so the -- this is an important issue in this case is -- and the burden now is shifting to the defendants because the plaintiff says, We don't have it and we don't have a right to get it in the contract that we made in the sale agreement. And, Well, was that done on purpose, or is this -- because we're seeing it in all these cases now where there's never a right to ask for, there's never a right

to request these materials, and they're always relevant.

THE COURT: Rather than go through a litany of what the challenges of being a defense lawyer are, let's try to focus on the particulars of this case.

MR. McKEON: Well, I'm saying in this case --

THE COURT: Why is this not effectively a back-door *Daubert* motion? Why are you trying to *Daubert* out this agreement from the damages opinions through a MIL? That's what it sounds like, Mr. Sheasby.

MR. SHEASBY: No, Your Honor. It's already been *Dauberted* out. I think Mr. McKeon misspoke.

If you go to 21.3.

Your Honor struck the supplemental Meyer report that presented a discrimination analysis based on the Apple report. This is just to enforce the *Daubert* that's already been granted. Your Honor's already struck this report. That was what I was trying to explain. There is no part of Mr. Meyer's report --

THE COURT: Well, do you think you need a MIL order for me to keep out a report I've already struck?

MR. SHEASBY: Based on what Mr. --

THE COURT: Do you think if they try to put on evidence from a struck report and you object to it I'm going to overrule your objection?

MR. SHEASBY: No. I think they're going to try to

make the argument just on their own without having any expert support for it, as Mr. McKeon just rehearsed.

And so it's a very narrow thing, which is that the allegation that Apple is -- the Apple agreement is discriminatory, that allegation is not in the case, based on the Court's order, and it should be extended out through all elements of the case, except with leave.

THE COURT: All right. Do you have anything else on this, Mr. McKeon?

MR. McKEON: I'd just say, Your Honor, we understand the Court's ruling on the *Daubert* issue, but we would like to be able to tell the jury in argument through cross examination and closing, you know, that there is a disparity between what Apple got and what they're proposing to do in the offers.

And then the other point I want to make one more, Your Honor, is their MIL doesn't relate to the damages case itself; it's only directed to offers. So we would, of course -- as I understand the scope of the MIL, it's just related to offers. The damages case, Your Honor, is highly discriminatory. It's orders and orders and orders of magnitude different than Apple.

So just for clarification, as I understand the scope of this ruling -- this motion, it doesn't include the damages case itself; it only relates to the offers.

And with that Your Honor, I'll rest unless you have

questions.

THE COURT: What's your understanding on that, Mr. Sheasby? Are you somehow excluding this from the damages case and to just offers that weren't accepted.

MR. SHEASBY: No. It's just -- I think Mr. McKeon has it backwards. There is no Apple -- we're discriminating against vis-a-vis Apple in the damages case because that was stricken. Mr. Meyer has no report on that. What we're trying to do now is having them back-door the -- or saying our Apple's -- our offers discriminated against them vis-a-vis Apple, because that wasn't disclosed either in their interrogatory response.

If we go to slide 21.3.

I don't even -- there is no Apple discriminatory theory in the case as to damages. The Court struck it from Mr. Meyer's report. And there's no foundation for it --

THE COURT: Did I strike it or did I preclude them from filing an additional supplement that would have raised it?

MR. SHEASBY: You precluded them from filing an additional supplement --

THE COURT: That's what I thought.

MR. SHEASBY: The issue you now is can they go and just say it out loud about something else without any expert supporting it that we've been discriminated against, if that's

not in any of their counterclaims or contentions, discrimination is not alleged, and there's no expert who can support the discrimination as vis-a-vis Apple because that -- because he's got no report on the subject.

THE COURT: All right. As to the Apple/ZTE license and the characterization of the same as discriminatory in some way, I'm going to grant the MIL, but I'm going to circumscribe it to those particular circumstances. And that is primarily to comport with the Court's earlier order denying a request for leave to supplement by Samsung after this license was produced.

And I'll be a gatekeeper here. I mean, if I could be persuaded there's some reason to act differently, fine, but it's much safer for me to put myself in the position of being a gatekeeper than just to leave the door open. So I'm going to grant this.

All right. Let's move to Plaintiff's MIL No. 2.

MR. SHEASBY: Your Honor, this is -- if we can go to slide 26.

THE COURT: Let me just say this. I assume you're going to call Mr. Pitcock early in your case, Mr. Sheasby?

MR. SHEASBY: Yes.

THE COURT: And you're going to introduce him to the jury and identify who he is and what he does and his position with the Plaintiff company, and that's all well and good.

I -- you know, I don't think it's anymore appropriate to attack Plaintiff's corporate representative beyond his knowledge and experience than it is to attack Samsung's witnesses because they don't know about something they weren't noticed on as a 30(b)(6) witness is what Samsung wants me to grant as far as MILs go.

So certainly Mr. Pitcock needs to be introduced, he needs to be identified factually and not pejoratively, but I don't know what you're concerned that Samsung's going to do that needs to be addressed with a MIL.

MR. SHEASBY: So let me --

THE COURT: We're not going to characterize G+ as a troll or a pirate or an NPE. I guess you can say they are a non-practicing entity, but they're not going to be pejoratively characterized, nor is Mr. Pitcock. But what is your real concern here, Mr. Sheasby?

MR. SHEASBY: Sure. The hypothetical negotiations between ZTE and Samsung, they start asking questions about whether GTE [sic] has any employees, whether GTE makes any products, and they start getting into Mr. Pitcock's expertise with regard to 4G and 5G. And the sole purpose of this is to suggest to the jury these patents can't be valuable because this guy doesn't know what he's doing.

The damages analysis is between ZTE and Apple -- Samsung in the hypothetical negotiation. Mr. Pitcock's experience

with licensing these patents in the past and attacking him because he don't have any employees or because there's something wrong with his qualifications and he's never done this before has no place as a relevant issue for damages. And if it's not relevant for damages, it's not relevant for any other purpose.

So to be quite precise, we do not want -- the MIL would say that there can be no aspersions based on the absence or presence of employees or based on the absence or presence of Mr. Pitcock's experience with 5G licensing or 4G licensing.

THE COURT: All right. Let me hear from Samsung in light of that clarification.

MR. McKEON: Thank you, Your Honor.

Your Honor has a standing MIL on this, what parties -- how they can refer to each other. There's limits. We know that. We understand that.

With respect to G+ and the number of employees, I mean, these are important factual -- they're going to come in here and say, Oh, we're from -- we have a Texas office and, you know, we've got a lawyer here who's -- by the way, the only person affiliated with the company is Mr. Pitcock; known else. He has all this experience; they're going to go through all that. And, you know, we're entitled to lay some context here about really what's going on with this company--the number of employees, they have no products.

And this is not really different than any other case, Your Honor. We really plan on staying in the normal lane in this area; it's just for what this company really is within the confines of the standing MIL that we have.

With respect to his experience, Your Honor, with 4G and 5G and ETSI, we actually think that's very relevant in this case. He is responsible for implementing the direction and requirement that these licenses be done under FRAND conditions and that there be FRAND offers, and if he has no experience, he's never, ever dealt with this before in the past, I think the jury's entitled to know that.

THE COURT: Well, let me say this, Mr. McKeon. The knife's going to cut both directions. You want me to MIL out G+ from exploring whether your Samsung witnesses have ever read the patents at issue and things like that. I'm not going to shield them and allow you to go after Mr. Pitcock and I'm not going to do the reverse either. It's going to be both ways for both parties.

And even having said that, the fact that G+ is what it is, the number of employees it has, where it's based, whether it does or doesn't make a product that's offered in the marketplace, those are facts that can be produced and not violate this or the Court's standing MIL.

They can't be unduly emphasized. You can't later slip in this one-horse shop and make little disparaging comments as

you go. That's the kind of cheap shot that the MIL is meant to exclude. But the fact that Mr. Pitcock may be the sole employee, the fact that they are the size company they are, that's a relevant fact, just as the tens of thousands of employees that work for Samsung is a fact. But those facts, once established, don't need to be gone back to over and over again for undue emphasis.

So if you're going to inquire about what Mr. Pitcock knows, then your Samsung employees are going to have to tell the jury what they know. If you don't want them to have to tell the jury what they know, then you're not going to get to probe Mr. Pitcock on what he knows. What's good for the goose is good for the gander here.

MR. McKEON: I understand that, Your Honor. I do understand it. I think it is a little different, if I may quibble with the premise.

THE COURT: I'm used to quibbling.

MR. McKEON: It's just the -- you know, the fact that, you know, he's charged with this obligation of licensing and negotiating under FRAND conditions and the fact that he doesn't have that experience, you know, that's a different situation when you have these engineers, and we've got thousands of them, that have nothing to do with patents at the company. We have a whole department at the company that deals with patents. And, you know, to tell them, Oh, this engineer

didn't read the patent, well, of course they didn't read the patent. They don't deal with patents. They don't know about patents.

So it's a little different issue, and I understand the Court's joining the issues the way you have, but I do think it's a little different in terms of the prejudice.

THE COURT: Well, let's say it this way. I'm going to grant this MIL, but if you can persuade me at the bench that there is a difference and it warrants you having more latitude in a certain context in real-time, then I might anticipate now I'll grant you leave, but you're going to have to ask it and show me.

MR. McKEON: Understood, Your Honor.

THE COURT: I often say my mother is from Missouri, it's the Show Me State, and you're going to have to show me.

MR. McKEON: Got it, Your Honor. Thank you.

THE COURT: Let's go to Plaintiff's MIL No. 3.

MR. SHEASBY: Your Honor, there has been some suggestion in deposition --

And I'll go to 21.37.

-- and it was actually in their briefing that the heart of the case is that ZTE sold a small number of its LTE portfolio to GComm without notifying Samsung. So basically what they want to tell the jury is Samsung was tricked into signing its agreement with ZTE, and ZTE had withheld patents,

and somehow that was improper, and that ZTE acted inappropriate. And the reason why that's so noxious is because it is something that takes on a life of its own without having any truth. Mr. Jeon testified that Samsung was aware of the ZTE/G+ transaction in advance.

THE COURT: Let me ask you this, Mr. Sheasby. Do you anticipate any witnesses from ZTE during this trial or is it just going to be Samsung telling their side of this story and G+ telling their side of the story.

MR. SHEASBY: There is a ZTE witness who's being called by video, but -- who is being -- they may call by deposition. We are not calling them in our case in chief.

THE COURT: Is that anticipated testimony to touch on this ZTE/Samsung agreement?

MR. SHEASBY: Unfortunately it's not because that witness did not negotiate the ZTE/Samsung agreement.

THE COURT: So what you're telling me is that there's not going to be a ZTE witness who's going to address the ZTE/Samsung negotiations in this trial.

MR. SHEASBY: No. And so what they're just trying to do is make this about trickery. And, by the way, there's not going to be a Samsung witness who addresses that because Mr. Jeon, who's their corporate representative, he didn't do the ZTE/Samsung negotiation. He admitted to that. They haven't disclosed the name of the witness who did do it.

And so what we have is we have them saying, Oh, ZTE tricked us, but they didn't disclose the name of their witness who negotiated with ZTE, so we couldn't take that witness. The ZTE employee in the United States who's subject to process didn't negotiate the agreement either.

And their excuse for why they get to do this when, we file a motion in limine, is, Oh, this shows that we're not a willful infringer because we thought we had the rights from ZTE, but then when we look at their interrogatory on willful infringement, it says nothing about the fact that the ZTE negotiations or ZTE license were a basis for non-willfulness.

So it's not in any of the expert reports; it's just this thing that someone's going to say that we don't have the ZTE witness and we don't have the Samsung witness. So the 'we've been tricked' and 'we've been acting' -- and 'this is improper', that has no place in this trial.

THE COURT: To your knowledge, is there an effort underway to tie ZTE's conduct with Samsung to G+? Is there an allegation that they were in cahoots during the time the negotiations on the Samsung license were going on?

MR. SHEASBY: There's not an allegation in -- there was never an allegation on that in discovery, Your Honor. There's an allegation of it in the opposition to the motion in limine. So where I hear it for the first time is in their opposition to the motion in limine when we talk -- the hearts

of this case is that ZTE and G+ colluded to trick Samsung into accepting these patents and then jumped on them. And that's the concern we have.

You said exactly right--it's nowhere in the case; it was it was never developed. If it was developed, we would have compelled them to give us the name of the Samsung/ZTE employee who actually -- Samsung employee who negotiated with ZTE, which they didn't disclose, so that this could have been tested. None of this is in the record, none of this is testable; it's just an argument that can be made by a lawyer without any factual support.

THE COURT: All right. What's Samsung's position on this?

MR. CORDELL: Ruffin Cordell for Samsung.

So I obviously dispute pretty much everything Mr. Sheasby just said. The fact that he is telling us he was surprised by our opposition to the motion in limine where he heard this for the first time portends that he didn't have a reason to file the motion in limine, which he obviously did. He knew this was coming.

The witness -- the ZTE witness testified -- we are looking for the quote. Mang Zhu is her name. She testified that she wasn't really hiding the patents, and that testimony will stand or fall by itself. The jury will be able to hear it and go with it for whatever it's worth.

But let me just talk about inconvenient truths here. So it is undisputed that there was a two-and-a-half year negotiation between Samsung and ZTE--undisputed. It is undisputed that these patents, the ones in this case, were squarely part of that negotiation. Those are undisputed facts. Those will be admitted. It is undisputed that during the negotiation ZTE transferred the patents to G+, unbeknownst to Samsung. It is undisputed that GTE--I'm sorry --

THE COURT: ZTE.

MR. CORDELL: ZTE. Thank you. ZTE consciously did not tell Samsung about this. Now, we can impute whatever motives you want to, and maybe we won't have evidence of their actual motives, short of Ms. Zhu's testimony where she said, Well, she wasn't really hiding them, but those are the facts.

It is undisputed that they licensed the patents to Apple, the entire portfolio to Apple, including the patents in this case, and making -- and again, I don't want to get into the confidential information here--they did some things with the dates so that Apple would have the benefit of these patents, but that Samsung and its license that they ultimately reached would not. Those are the facts. There is no question that Samsung --

THE COURT: So are you saying ZTE is a puppet in the Apple/Samsung wars? Is that the implication?

MR. CORDELL: I hadn't thought about it that way,

Your Honor, but --

THE COURT: And what does this have to do with ZTE, who's standing -- I mean--excuse me--G+ who's over here on the sidelines who's not a party to those negotiations and just simply receives the patents in a transfer from ZTE?

MR. CORDELL: Because it does go to Samsung's subjective good faith. They thought they were getting a license to the entirety of the 4G portfolio. That's what they thought they were getting. And we're not pressing a breach of contract action or a license action because it turns out that -- at least we haven't to date; let's just put it that way.

The evidence from Mr. Jeon was not just that they learned something about this, but they dispute it; they protested. That was the word he used; that when Samsung learned about this, they protested because they thought they were getting the entirety of the 4G portfolio which would have included these patents because they were declared to both.

THE COURT: So does that mean that Samsung's willing to admit that without these patents it's infringing the claims that are assert against it?

MR. CORDELL: Not likely, Your Honor. But what we are willing to say is that we had a subjective good faith belief that this was not going to be a problem, and that goes directly to their willfulness case. It also bears directly on

the damages case. All experts in this case have relied on the negotiations between ZTE and Samsung. Our expert and their expert did. Their expert looked specifically at the negotiations when he talked about whether the parties would have expected a lump sum. He looked specifically at the ZTE/Samsung negotiations when he talked about whether or not there would be an SSPPU analysis that would obtain. He looked specifically at the negotiation to see whether particular claims were discussed between Samsung and ZTE.

THE COURT: And nobody's complained about that in the *Daubert* practice that we've had. What seems to be at issue here is going beyond the facts of what was involved in the ZTE/Samsung negotiation to some kind of characterization of ZTE's conduct as misleading or tricking Samsung in some way and slipping the crowned jewels out the back door to G+ who drove away in the getaway car.

I mean, this can become a story that takes on a life of its own and is highly distractive and probative without evidence, and we don't have a ZTE person who's going to come testify about the --

MR. CORDELL: Well, we do. We have Ms. Zhu. Mang Zhu is going to testify by deposition. Now, albeit, by deposition, she is going to testify and she is going to lay these facts out.

If I might make a suggestion, Your Honor, until there's

context it's going to be somewhat difficult to confront these things. I agree with you if I said, you know, ZTE and G+ got together and filled up, you know, the bank car with guns and robbed Samsung, that would be pejorative, and we're not going to do that, but the inconvenient truths of these facts are what happened. And I'm sorry that they find them pernicious, I think was the word that Mr. Sheasby used, or noxious, but they are unfortunate because they shouldn't have done these things, not because they shouldn't be part of the record.

And if I can just make one more point.

THE COURT: Who is this 'they' there--they shouldn't have done these things. Is it G+ or is it ZTE?

MR. CORDELL: It's both of them. So G+ --

THE COURT: How do you join G+ and ZTE in this tale?

MR. CORDELL: Because G+ was set up by ZTE and ZTE retained an interest.

THE COURT: So is G+ a victim as well as Samsung?

MR. CORDELL: No, because, you see -- and again, I don't want to get into the confidentiality here, but the idea here is that when they set up G+, they retained an interest. If G+ wins a verdict in this case, a judgment, and is paid off, ZTE gets a chunk of that money. That is undisputed. That is -- you heard Mr. Sheasby say that earlier today, and I was relieved because that way I didn't have to go into the confidential record.

Put all of this, Your Honor, into another context which is the FRAND analysis. Those negotiations were supposed to be fair and reasonable at all times. Is it fair and reasonable for ZTE to have negotiated for two and a half years, including these patents, and then take them out of the case *sub rosa*.

THE COURT: Well, the hypothetical negotiation goes to the issue of reasonable royalty, and I understand that ZTE is at the table in the hypothetical negotiation. G+ is not. But the allegation of FRAND is that you're asserting that G+ breached its FRAND obligations. That's not ZTE; that's G+.

MR. CORDELL: I take issue with that, Your Honor. They stand in the shoes of ZTE because ZTE made the declarations to ETSI. They are the ones that signed the 4G and the 5G declarations.

THE COURT: Maybe as far as being able to enforce a third-party beneficiary of contract, but not as to the subjective nature of the conduct.

MR. CORDELL: I disagree, Your Honor, because it's a continuum. So for these patents, the conduct began with ZTE, and it spanned years. They then take the patents and port them over to G+, and now G+ continues that --

THE COURT: I have real concerns about trying an empty chair with ZTE; perhaps maybe one hard-to-understand deposition witness as the only person in the room and you're somehow going to tell this story that, you know, ZTE and G+

are Butch Cassidy and the Sundance Kid standing shoulder to shoulder.

MR. CORDELL: And I won't do that. I won't do that. But what I have to be able to do --

THE COURT: Here's what I'm going to do. I am going to grant this MIL because it would be improper and inherently risky for me to just turn you-all loose in front of the jury on this issue. You're going to have to show me a lot more than I know now. And if I can be persuaded that this does, in fact, have probative weight on the willfulness issue and it's not overly prejudicial for the Plaintiff in a way that this can be presented, then fine, but I'm going to have to know a lot more than I know now.

MR. CORDELL: Well, just to -- not to belabor it, Your Honor, but I've got to lay out my FRAND case. Right? I've got to lay out that negotiation between Samsung and ZTE and then suddenly it becomes a negotiation between Samsung and G+.

THE COURT: Well, you're going to have to persuade me that ZTE's conduct is chargeable to G+ in a FRAND context; anymore than somebody who purchases a product suddenly becomes a guarantor for the functionality of the product itself in lieu of the manufacturer.

MR. CORDELL: So I'll take a flier at it now, if I might, because we know patents are burdened by whatever

contracts the patentee signs. So if you and I signed a license and then I sell the patents to Mr. Sheasby, it is burdened by your license and there's nothing he and I can do in that transaction to defeat that. And that's what the ETSI commitment is. It's a FRAND burden on the patents. They run with the patents.

THE COURT: I understand that. But those licenses are non-exclusive and each licensee acquires the full rights to use the patented technology, and that right is not limited or reduced by the rights of some other licensee who's licensed on FRAND terms.

I'm going to have to be shown that somehow you can impute ZTE's evil conduct, as you portray it, to G+ just -- and the fact that there is a contractual obligation to negotiate in good faith and act in fair dealing and provide a FRAND context for licenses, I don't, as I sit here, see that that means you can put G+ in the shoes of ZTE as you tell this jury that ZTE is the evil wrongdoer that tricked poor little unsuspecting Samsung who didn't have the understanding and knowledge of what was in the license they finally got.

MR. CORDELL: Again, I don't mean to suggest that they were picking on poor Samsung. They just have to face the facts of the transaction as it unfolded, and if it were possible to extinguish your FRAND obligation -- so let's take the case where we have a party that is as nefarious a FRAND

licensor as you can possibly imagine. Could you extinguish that conduct by simply selling the patents to a third party? I think not. I think it runs with the entire transaction.

THE COURT: Well, the allegation is not that the nefarious actor violated a FRAND obligation; the allegation is that the third party -- perhaps a third-party purchaser for value, a bona fide purchaser purchases or acquires license rights or acquires the patents. You're somehow saying that the fact that G+ acquired them from ZTE takes all the bad acts and all the malicious intent of ZTE and infuses it into G+ simply because G+ was the assignee of the patents from ZTE. And understanding that that doesn't extinguish a FRAND obligation, but how you impute the bad conduct of ZTE to G+ is what I'm concerned about, and that fact could easily get glossed over without some guidance from the Court.

And you would know more want to be tarred and feathered if you were G+ than Mr. Sheasby does if he's going to -- he's going to want -- clearly he's going to want to build all the separation he can between ZTE and G+, and you're going to want to tear down any separation and join them together as co-actors in these bad acts. And I don't know which set of facts the jury might ultimately accept, but I'm going to have to have a deeper understanding of the evidence and what each of you are going to do before I'm just going to turn you loose without any guidance.

MR. CORDELL: Understood.

THE COURT: So this is granted.

All right. Let's go to Plaintiff's MIL No. 4.

Tell me what this is, Mr. Sheasby, and why it's appropriate.

MR. SHEASBY: Sure, Your Honor.

We served preliminary infringement contentions. Those preliminary infringement contentions are not evidence and should not be submitted into evidence, and we withdrew them and they're no longer active. We anticipate that in attempting to cross examine our witnesses or attempting to make certain arguments with our fact witnesses, they're going to rely on the unamended contentions that have changed dramatically.

And I know the Court generally does not allow contentions at all to go in front of the jury, and I don't think unamended infringement contentions should be properly in front of the jury -- non-final infringement contentions that have been superseded and withdrawn should be properly subject to any consumption by the jury.

THE COURT: Correct me if I'm wrong. Is there an existing Court MIL that prohibits use of things that have been superseded or withdrawn or otherwise are no longer the active matters?

MR. SHEASBY: I think there's something close to it,

Your Honor, but I couldn't find anything, to be candid, that was exactly on point. I was thinking it may relate to filings, legal filings in the case.

THE COURT: All right. Let me hear a response from Samsung.

MR. CORDELL: So Ruffin Cordell for Samsung.

Perhaps I misread the Plaintiff's motion in limine. I did not read it as centered on whether or not we could use prior pleadings before the jury; I read it as challenging our ability to say that if you apply the claims as the Plaintiff asserts, then it makes the claims invalid. And as I read their papers, they say you can't do that. Well, that's not correct.

THE COURT: So you're telling me Samsung does not intend to raise or offer infringement contentions or other positions that have been superseded by a subsequent position anymore than you want what you originally took a position on and where later had amended or changed to be presented. Is that what you're telling me?

MR. CORDELL: We are going to abide by the Court's standing MIL that we are not to use, you know, prior pleadings before the jury, and we're not going to do that, but that doesn't mean that the positions have been abandoned; that just means we're not going to use the pleadings. If their expert gets up here and says, Any phone that can communicate with a

Verizon network infringes, we're going to produce prior art that shows phones that communicate with a Verizon network, and that which --

THE COURT: That which infringes if earlier anticipates.

MR. CORDELL: Thank you, yes. I was going to cough it out.

THE COURT: I understand.

MR. CORDELL: But the *01 Communique* case was my case. They took exactly the same position that they did in the papers here. And Judge May -- although it was Judge Newman who took them to task and said that is a perfectly acceptable approach; if you as a plaintiff stretch those claims to cover technology that is prior art, you suffer that.

THE COURT: As long as that stretches is compared to current pleadings, current infringement contentions, and you're not trying to resurrect something that's dead and gone and replaced by something else, I don't think I have a problem with that.

MR. CORDELL: Then I have nothing further, Your Honor. Thank you.

THE COURT: Well, then based on that I'm going to deny Plaintiff's MIL 4.

All right. Plaintiff's MIL 5, geographical locations.

Let me just say this. There are certain facts that are

undisputed here. Samsung is based in the Republic of Korea. ZTE comes from the People's Republic of China. G+ is not located in either one of those two countries. Facts are facts, and I don't have any problem with facts being presented. I have problems with facts being used repetitiously for effect or undue emphasis. I have problems with, rather than a reference to the People's Republic of China, communist China.

We're not going to try this case by slinging mud on somebody else. So the fact that Samsung is based in the Republic of Korea is fine, but we're not going to say it 10 times, we're not going to say five times, we're not going to try and evoke some kind of prejudice against Asia or Asian companies or Asian people. The same thing with ZTE, the same thing with G+. So I don't know what we're fighting about here.

MR. SHEASBY: Sure.

21.68.

We're fighting about two things. One is that there has been repeated harassment of our witnesses about ZTE being sanctioned by the U.S. government and being part of the Chinese communist party, and I want to make very clear that that has been an area of live communication, including harassing ZTE employees about it.

And the second aspect of it is that historically Samsung

has talked up its, quote, Texas roots, and I wanted to be clear to the Court if they're going to talk about the Texas roots, I do think that opens up to the fact that all the manufacturing of these products occurs outside of the United States, in Vietnam and China.

And so I did want to flag those two issues, and that's the only purpose of this MIL, so the Court was aware of what I think was pretty sharp examination, and my concern --

THE COURT: I can't imagine there would be any appropriate basis to mention Iran or North Korea in this trial, I can't imagine under any circumstances.

MR. SHEASBY: And the other thing, Your Honor, is Mr. Cordell --

THE COURT: And I can't imagine that there would be any probative value to say that Samsung manufactures their phones in Vietnam.

MR. SHEASBY: Well, if they talk about their great Texas manufacturing facilities.

THE COURT: And they do have a substantial presence in this district and the state of Texas. If you want to characterize it as manufacturing versus research or versus administration or something else, I don't know what the probative value of that is.

MR. SHEASBY: Well, the issue is none of these products are researched, designed, or manufactured here, so

them talking about their presence in Texas would be telling only half the story.

THE COURT: Well, I'm not going to preclude Samsung from laying out its presence in this state and this district. That's not, in my view, going to open the door to everything they do in any part of the globe. And I can't imagine -- you know, I do not intend this trial to be about evil ZTE. It sounds like that's where the Defendant wants to go. And we're not going -- I can't imagine any basis upon which a mention of Iran or North Korea would be appropriate. I can't imagine any context in the word 'communist' would be appropriate in this trial. I think everybody in the room understands where the Court is coming from and the guidance that I'm giving you.

MR. SHEASBY: I agree, Your Honor.

THE COURT: I'm going to do this. I'm going to modify Plaintiff's MIL 5. Each party should be precluded from discussing geographical locations of Samsung and ZTE facilities and G+ facilities -- well, I'm going to grant this motion. And as long as you stay within the clear guidelines that I'm giving you, you're not going to have a problem, but I am not going to have this trial devolve into an empty chair with ZTE in it, and I'm not going to have parties attacking somebody who's not here, and I'm not going to have attacks on Samsung because they are a Korean company with their headquarters and thousands of employees outside of the United

States.

MR. SHEASBY: I understand, Your Honor.

THE COURT: Those aren't probative, and there's no reason to go there. I unfortunately feel like I need to grant this because I'm not sure the parties can stay within these parameters without me having a position to be a gatekeeper. I hope I'm wrong about that, but out of an abundance of caution I'm going to grant this.

MR. SHEASBY: Thank you, Your Honor.

Your Honor, there was one other issue Mr. Cordell did flag that I inadvertently showed terms of the ZTE/G+ agreement and I realized there were some non-attorneys in there, and I'm going to actually seek leave to have that portion of the transcript sealed because that was a mistake, and ZTE does have confidentiality obligations. So I just want to flag I will be filing that motion.

THE COURT: Well, I assume you two can get together and I can get a very tailored, targeted motion I can grant.

MR. SHEASBY: Yes, Your Honor. Thank you.

MR. CORDELL: Your Honor, can I just ask a question --

THE COURT: Yes, you may.

MR. CORDELL: -- just to make sure I have the confines --

THE COURT: Yes.

MR. CORDELL: So, as I understand the Court's ruling, it's okay for us to talk about the location of these parties benignly. Right? We're not to say that Korea is a bad place or China's a bad place or -- I don't know where -- g+ I guess is from New York.

THE COURT: You're going to need to persuade me before you ever mention ZTE.

Now, Samsung is a party to this case and G+ is a party to this case, and we've had some back and forth today. I'm not satisfied that we've had enough back and forth. The story you want to tell about ZTE and Samsung is one that if it is connected to G+ is highly prejudicial. And perhaps there is a pathway for you to do that, but as I sit here today, I'm not persuaded that that is a clear path to do that and I want to know that you're on solid ground legally and factually before I give you the authority to go into ZTE and the agreement with Samsung.

MR. CORDELL: We'll give you that, Your Honor. But keep in mind that the hypothetical negotiation is between Samsung and ZTE.

THE COURT: On the issue of damages.

MR. CORDELL: The FRAND declarations are all on the hand of ZTE.

THE COURT: Nobody's questioning the existence of the obligation; it's who breached the obligations

requirements, and I'm very concerned about the effort to impute the conduct of ZTE to G+. And maybe you have a solid basis to do that, but I'm going to have to be more satisfied than I am now before I just give you an open road to do that.

MR. CORDELL: Understood.

THE COURT: Okay.

All right. Does that bring us to Defendants' motions in limine? I think it does. Let's take these up.

Here we go again with the goose and gander--asking me to preclude inquiring whether Samsung witnesses have read the patents or formed opinions about them. I intend to have the representatives of parties treated equally in this regard, and I think I've talked about that in the context of Mr. Pitcock already.

Is there more that needs to be said here?

MR. CORDELL: I don't think so, Your Honor.

THE COURT: All right. Well, the earlier one was granted, as I believe, so I'll grant this one to act consistently.

MR. SHEASBY: Your Honor, we had agreed to this as to their corporate representative. The confusion is --

If you'll go to 22.3.

-- is they put up witnesses who were designated to speak on behalf of the patents and said things like, Samsung doesn't infringe the patents, and then we elicited testimony that they

had never actually read the patents after claiming Samsung doesn't infringe it. And so the issue is not with the corporate representative who's going to testify on day one about him not being an expert; the issue is them putting up 30(b)(6) witnesses on why they don't infringe and those witnesses --

THE COURT: I understand that. And if that witness has been noticed on what you want to cross them about, then you're probably going to be able to.

MR. SHEASBY: Understood, Your Honor.

THE COURT: If they haven't been noticed on something, then that may be a different situation.

MR. SHEASBY: Understood, Your Honor.

THE COURT: All right. Let's talk about Defendants' MIL No. 2. Why is this just not another motion of summary judgment on the FRAND issue?

MR. McKEON: Well, Your Honor, the way this played out is we had no expert report on it in terms of the damages issue, and they've never pled it; never gave us any information about damages.

THE COURT: You want me to preclude evidence from G+ related to Samsung's alleged failure to negotiate a FRAND license in good faith. I mean, G+ has an affirmative claim against Samsung that they breached their FRAND obligation. Samsung has an affirmative counterclaim against G+ that they

breached their FRAND negotiation. How in the world should I preclude under limine practice either party from discussing the other party's failure to act in a manner that comports with FRAND?

MR. McKEON: Your Honor, it's a very narrow request here.

THE COURT: It doesn't read narrowly.

MR. McKEON: Okay. We're just focusing on the damages aspect. You know, as Mr. Sheasby noted earlier, we had put an expert report in on the damages that we suffered based on the breach of the FRAND commitment. They never did that. They've never alleged damages, they've never served discovery responses on damages, and pled damages, as far as we know.

THE COURT: So you think they're going to then put on a witness who's going to talk about something they never pled or put in a report?

MR. McKEON: Your Honor, this is just belt and suspenders. We don't want in opening or closing some kind of argument that, you know, damages is inherent. And I'm not sure what they would say, frankly, Your Honor; we just want to have a protective motion granted so this can be prevented at trial.

THE COURT: Well, Mr. McKeon, if the other side is going to put on evidence, or attempt to, about something they

never pled and they never put in an expert's report on, you're -- if they're going to do that in the light of those facts, a MIL order from me is not going to stop them. I mean, if somebody purports to offer evidence on a topic they haven't pled, is not an issue, calls for opinion and they don't have an expert on it, all you've got to do is object.

I'm not going to MIL out something that's highly -- I mean, that's totally improper under the rules anyway. Comply with all the rules of Federal Rules of Civil Procedure--that's in essence what you're asking me to do. Raise your objection if it happens.

MR. McKEON: Got it, Your Honor.

THE COURT: I'll be surprised if it does, but this is denied.

MR. McKEON: Thank you.

THE COURT: Okay. Defendants' MIL No. 3. Is this not same song second verse? Exclude evidence or testimony regarding Samsung's alleged violation of the parties NDA.

MR. CANNON: Good afternoon, Your Honor. Bryan Cannon.

THE COURT: Yes, sir.

MR. CANNON: This one's slightly different in that it's not related to the breach of FRAND claim; this is related to a separate breach of NDA claim which doesn't appear on the verdict form, it doesn't appear in the jury instructions; it's

this side issue in the case that has a very little -- no real bearing on anything. And here there was a previous TRO.

THE COURT: Tell me about -- what NDA are we talking about? Who is it between? Where did it exist?

MR. CANNON: So G+ and Samsung, as you're aware, took a long time to argue about an NDA. There was finally an NDA signed in November of 2022. The next day in the Brazil action the NDA was submitted just as an exhibit. It was under seal, it wasn't publicly submitted, it wasn't provided; it was just in the Brazilian court case. G+ has a claim that that breached the contract of the NDA. And they filed a request for preliminary injunction at that time--if you recall, this was, you know, about a year ago--that was denied because there was no harm, and our position is that that has never changed; there was never any harm from an NDA that was filed under seal in a Brazilian court case, and this is essentially a sideshow that has no kind of business being in this case.

THE COURT: All right. Let me hear from G+ at this juncture.

MR. SHEASBY: Slide 22.21.

We have a claim for breach of FRAND and breach of its ETSI obligation. As part of that breach of ETSI obligation, we have -- we speak about the fact that Samsung improperly tried to induce us to file an NDA which then it attempted to use in Brazil to show that it acted in good faith. And when

it was, in fact, not acting in good faith because that NDA was a pretext and they never negotiated in good faith on it, it's pled expressly. And we have expert analysis on the subject of that NDA, and he talks about the fact that seeking an NDA -- our expert talks about the fact that seeking an NDA in a way that's improper or not used for negotiating in good faith is a breach of duty of good faith. And he talks about the fact that as a result of that, we are able to suspend performance because of the --

I'm on the wrong slide. Slide 32. Excuse me. That's the problem.

We have a claim for breach of contract. That claim -- the Court denied the motion to dismiss, and we talk about the NDA in that express context. And on that basis the MIL is effectively a motion for summary judgment that they didn't breach their obligations by filing the NDA in Brazil, which is a claim that is live and is intimately related to their injection of Brazil into this case, which we spent all morning arguing how I thought it was outrageous, and I find it striking that having spent all morning and the Court saying that -- granting them leave to talk about Brazil, that now the actual facts of Brazil and their behavior in Brazil they're trying to immunize through a motion in limine practice.

THE COURT: All right. Anything further from Samsung on this?

MR. CANNON: Just one final thought, Your Honor.

Everything counsel just said related to their breach of FRAND claim and how this NDA in Brazil shows bad faith. That claim is part of the case and is unchallenged. But the actual breach of NDA and the filing of it in Brazil and the whole analysis we just think is not pertinent to any issue in this case.

MR. SHEASBY: Your Honor, we have a claim that's in this case alleging breach of the NDA. That was a motion to dismiss. The motion to dismiss was denied. This is a MIL to move on summary judgment for a claim that's live in this case.

THE COURT: All right. Well, what I'm concerned about, and the reason I'm taking my time, I can't imagine the benefit, probative value, or the wisdom of going into how this did or didn't impact the actual internal proceedings of the action in Brazil, and I am not comfortable just leaving that as an open issue. And I think I've probably already covered that adequately in the morning session, whereas everybody knows we spent between an hour and two hours going through the issue of whether action taken by G+ outside the United States was appropriate to come in before this jury.

And I think I made it abundantly clear that the fact that action was taken is appropriate, but to try to step into the shoes of the litigants and reargue the issues before a foreign jurisdiction's court is not. And I'm not at all comfortable

with some allegation of this NDA being violated being visited as a part of the evidence and testimony before the court in Brazil.

That doesn't mean the fact that whether the NDA was violated between these parties is not an issue in this trial and whether there was and wasn't a violation of it. It's the application of it or an allegation of its violation as a part of the actual litigation in Brazil that gives me pause.

MR. SHEASBY: Your Honor, I actually was thinking about this at lunch, and I don't know how that -- how they draw the line as thin as they can. Here's what I mean. They want to tell the jury we filed a lawsuit in Brazil and that's evidence that we acted in bad faith. That's what they want to argue. We filed a lawsuit in Brazil. The Brazilian court granted our preliminary injunction. The appellate court said, You did not breach your FRAND obligation by filing this action. They expressly rejected the argument that we breached our FRAND obligation. One of the steps that they took to try to argue that they were in good faith was this NDA.

And so I wish none of this was in the case. You know, that is my view. But there is no conceivable way you can tell the jury under a due process standard they filed in Brazil, they breached their FRAND obligation, and the jury not hear the entire story which was we filed in Brazil, we were successful, Brazil said we didn't breach our FRAND obligation,

and they rejected that we did anything improper with the NDA. It, of essence, is connected together. It's impossible. You are in effect tying our hands. These MILs are designed to tie our hands and allow Samsung to say, They filed in Brazil; they're horrible.

THE COURT: Mr. Sheasby, I'm not at all saying, and I haven't said, that the limits of what the appropriate evidence here will be that G+ filed an action in Brazil, period, stop. I have not said that that doesn't allow you to go into what the effect of that litigation was. You certainly can show the jury the allegation -- the guidance from ETSI that you showed me that you are to go to the national courts of that country to enforce your rights under ETSI.

What I'm concerned about is relitigating what was litigated in a foreign jurisdiction and rearguing what was argued in a foreign jurisdiction. I'm not saying that the results of the action taken can't come in, but we are not going to retry the preliminary injunction issue over again that was tried by the Brazilian court. So --

MR. SHEASBY: I think I should approach with leave on this one, Your Honor. I think you should grant it and you should let me -- I think in light of what you said, in good faith --

THE COURT: You know, the only person that's going to draw lines here, unfortunately, is going to have to be me.

And I may draw them improperly, but I'm going to do my best to draw them in a way that's consistent with what I've told you-all today.

I think I will grant this simply as a safety valve to make sure I know what's going to happen before it happens.

MR. SHEASBY: Okay.

THE COURT: All right. Let's go to MIL 4, Defendants' MIL 4. We're back in Brazil, it looks like.

MR. CANNON: Back in Brazil.

So there's been extensive discussion about the NDA and especially in Brazil and FRAND this morning. The point of this MIL is that we believe it is proper for Samsung to reference the testimony that Your Honor discussed this morning from Mr. Pitcock saying, We sued -- we filed for an injunction in Brazil to pressure Samsung to negotiate a U.S. FRAND license. If we say that, we don't believe it's proper for G+ to get up and say, We were awarded a preliminary injunction, which opens the door for us having to explain that it was a different patent, it's a different jurisdiction, it's on appeal -- it's currently right now. We just got word that there's an expert slated to submit a report in the appellate courts on infringement and invalidity. We have to give all that context because a preliminary injunction isn't -- you know, it's the reason that Your Honor has the Court's MIL 13. We don't really want any of that in. We think that the fact

that they sought an injunction with nothing further but to pressure the U.S. FRAND negotiations is something that is part of our breach of FRAND claim for the reasons Mr. McKeon explained earlier.

MR. SHEASBY: Your Honor, I feel -- I am -- feel as emphatic about a MIL as I felt about a MIL in front of you. I spent all morning begging this Court that the Brazil litigation should not come in. The idea that they're going to say Mr. Pitcock acted improperly by seeking an injunction in Brazil in violation of FRAND, where the Brazil court accepted the injunction and the appellate court expressly said there is no violation of FRAND is a complete derailment of due process. To let them tell the first half and not the second half is, in my mind, Your Honor, outrageous.

THE COURT: Well, I'm surprised if you think I'm going to let anybody tell one half and not tell the other half. If you're not going to tell the second half you don't get to tell the first half.

MR. SHEASBY: Thank you, Your Honor.

THE COURT: Let me just say this. I don't want either party to bring up any issue before this jury regarding either ZTE/Samsung license or litigation outside the United States, including the Brazil litigation, without clearing it with me first. These are two highly volatile issues that could easily get out of hand and cause harm that might not be

able to be cured. They're going to be a part of this trial, but I'm going to have to supervise closely how they're presented.

MR. SHEASBY: Thank you, Your Honor.

THE COURT: And I don't know any other way to do it than just give you a global instruction that I'm going to have to know what Samsung wants to put on about the ZTE contract with Samsung, and I'm going to have to know what is going to be talked about regarding outside the United States litigation before anybody does it.

MR. SHEASBY: Thank you, Your Honor.

THE COURT: All right? And I can assure you, to the best of my ability, if one side is not going to get to tell their story, the other side is going to be prohibited from telling theirs. I'm not going to let one side have that kind of advantage over the other either direction, to the best of my ability.

MR. SHEASBY: Thank you, Your Honor.

THE COURT: But I'm giving you this guidance to make sure that doesn't happen inadvertently.

MR. SHEASBY: Thank you, Your Honor.

THE COURT: All right? So, for the record, MIL 4 is granted.

All right. Defendants' MIL 5.

MR. CANNON: So this one, Your Honor, may fall into

the buckets of MIL 1 and --

THE COURT: It looks like it does.

MR. CANNON: So I don't know that any further comments are warranted, unless there's questions.

THE COURT: All right. Well, I've granted MIL 1, have I not?

MR. SHEASBY: You have, Your Honor.

THE COURT: Then I'll grant this for the same reasons to be treated in the same way.

All right. That completes the disputed motions in limine before the Court. That brings us to exhibits.

There was an issue I took up outside the courtroom this morning with counsel with regard to some late-breaking positions on exhibits. I directed you to meet and confer on that. You probably haven't had time to do that, given what we've been doing all day long today. We're scheduled to pick back up at 9:00 in the morning. We will take up exhibits beginning at 9:00 in the morning.

I want you to meet and confer over the issues that are subject of the disputes that we took up in chambers this morning. I also want you to meet and confer, in light of the guidance I've given you both on limine orders and dispositive motions, and that should reasonably allow a significant narrowing of any surviving disputes on exhibits. You should know now what the right and proper exhibits are going to be

and what doesn't need to be on the exhibit list in this case.

So I'll be here in the morning at 9:00. I'll expect to see a significantly narrowed list of exhibit disputes by then if you conscientiously do what you're now able to do. But whatever result we have in the morning, we will work through exhibit disputes and get those resolved tomorrow. We will finish the pretrial process tomorrow.

Is there anything else I need to hear from you on before we recess for the day?

MR. SHEASBY: Nothing for Plaintiff, Your Honor.

MR. CORDELL: Your Honor, on behalf of Defendants, we did go ahead and file a motion to continue based on my trial conflict, and we attempted to engage the Plaintiff in expediting a response so Your Honor would have it quickly. I think it's in everyone's interest to get this resolved one way or the other as quickly as we can. I think Plaintiff said they were going to do what they can to file it as early as they can, but I'm wondering if tomorrow would be too much to ask at this point.

MR. SHEASBY: Your Honor --

THE COURT: No, go ahead.

MR. SHEASBY: Your Honor, here is the tension. And we don't even need to file an opposition, perhaps. I can explain the issue because it's pretty precise, which is that Mr. Cordell had the opportunity to tell Judge Hall and Chief

Judge Connolly that he had another trial scheduled on the 11th. He chose not to. That is perfectly his prerogative.

My client is a small client who has paid for a lease and has paid for people to come out and try this case. And so the fact that this Court is being asked to continue a trial, and the other dates the Court gave don't even work; they've just filed -- you haven't seen this, but they just filed a motion saying that the January 8th date doesn't work. And so all they're doing is prejudicing GComm and benefiting -- Judge Connolly and Judge Hall aren't facing a motion to continue.

I don't understand why we are the people who have to take the short straw when we have worked diligently to prepare for this case, and that pushing it into the new year causes significant prejudice to my other clients as well in those January settings, and the -- and we are being asked to carry this burden.

Judge Hall just got assigned to this case. It would have been costless for Mr. Cordell to say, Judge Hall, I have another trial on December 11th; can we push this two weeks. And that wasn't done. And I just -- I feel quite strongly that the idea that this Court is the only court that has to arrange its schedule for the benefit of Mr. Cordell's other clients in another court is neither fair nor equitable.

If a trial should move, the trial should move to the new judge who was assigned -- should be moved by the new judge who

was assigned, who literally just got the case. It was a perfect opportunity for Mr. Cordell's client to tell -- to flag this issue and it wasn't done.

And so Your Honor's going to do what Your Honor thinks is right, but Samsung -- it's irrelevant how many times they come out here. For my client it's profoundly, profoundly costly in a way that creates significant due process issues. And that's the issue that I have.

THE COURT: I understand.

Well, quite honestly, the sooner we get through exhibit disputes tomorrow, the more time we'll have to talk about this issue.

MR. CORDELL: Certainly, Your Honor.

THE COURT: And I have no problem visiting or revisiting that issue, if time allows tomorrow, and certainly it should.

MR. CORDELL: Well, to the extent that it's --

THE COURT: I gather, Mr. Cordell, none of the other trial team that's here is involved in the Delaware action.

MR. CORDELL: Correct.

THE COURT: Mr. McKeon is available, as are all the other lawyers here from --

MR. CORDELL: They are, but as Your Honor knows, I have taken this case to heart and that would be a difficult transition.

I will dispute a couple of things that Mr. Sheasby offered. The Delaware case has been continued twice. It was originally scheduled for the fall of '22. It got continued to July. Our main witness in the case passed away suddenly, and as a result it was continued. And Judge Connolly made it quite clear --

THE COURT: That was the expert witness?

MR. CORDELL: It was -- he was a hybrid witness, Your Honor. He was an expert from whom the patentee had taken, we say, the most significant part of the patent, and he wasn't credited, so having him on the stand to testify would have been very valuable.

The transition from Judge Connolly to Judge Hall was not one that I think even Judge Hall expected, but it was profound, and he was quite -- I'm sure Your Honor knows, quite clear that the case was going to go forward.

And so that's the position I find myself in. I could have told him, I suppose, that we were number two for this setting back, you know, when we were before him awhile back, but I didn't do it knowing that that would have been a difficult speech to make, for lack of a better term. So that's the position I find myself in. I wish it was different, but it's not, and I've got to deal with what I have to deal with.

THE COURT: Well, it would be helpful to me if you

could query your client, and if there's a mediator in that case, if there is a possibility of some movement there, I need to know about it. If there is no possibility under the sun, I need to know that, too.

MR. CORDELL: My client would be happy to put this off indefinitely. We're the defendant. We're not in any hurry. The difficulty is that the plaintiff has insisted, and we have attempted to settle, I thought we had something substantial last week, but as of yesterday it has stopped.

THE COURT: Well, get me a current reading as of tomorrow. Things can change quickly.

MR. CORDELL: Understood.

THE COURT: We'll talk about this tomorrow.

MR. CORDELL: Understood.

THE COURT: Okay?

All right, counsel. I will see you in the morning at 9:00, and we will take up exhibit disputes then. It would please me to no end if you say you resolved all the exhibit disputes, but we'll wait and see if that happens. Meet and confer strenuously.

Court stands in recess.

(The proceedings were concluded at 5:05 p.m.)

I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER. I FURTHER CERTIFY THAT THE TRANSCRIPT FEES FORMAT COMPLY WITH THOSE PRESCRIBED BY THE COURT AND THE JUDICIAL CONFERENCE OF THE UNITED STATES.

S/Shawn McRoberts 12/04/2023

_____DATE_____
SHAWN McROBERTS, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

G+ COMMUNICATIONS, LLC.,	(	CAUSE NO. 2:22-CV-078-JRG
Plaintiff,	)	
vs.	)	
SAMSUNG ELECTRONICS CO., LTD., et al.,	)	MARSHALL, TEXAS
Defendants.	)	DECEMBER 1, 2023
	)	9:00 A.M.

VOLUME 2

PRETRIAL CONFERENCE

BEFORE THE HONORABLE RODNEY GILSTRAP
UNITED STATES CHIEF DISTRICT JUDGE

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THE COURT: Be seated, please.

All right, counsel. We are going to continue with the pretrial conference in the G+ versus Samsung matter from yesterday, and we're going to turn to the unfinished business of disputed exhibits.

As the parties are well aware, the Court has a standing order regarding the pre-admission of exhibits in a case such as this directing that the parties may jointly submit a list of 75 agreed-upon exhibits, which the Court will deem pre-admitted, and each party may then submit up to 30 separate exhibits which are disputed by the other side which the Court will take up and hear and rule on. Those that survive that objection process will be pre-admitted as well. Those that don't will not be pre-admitted. And that should give us a finite and fixed universe of pre-admitted exhibits in advance of the start of the trial.

Those items from the list of pre-admitted exhibits, having already either been agreed to or scrutinized by the Court on an evidentiary basis, can then be used by either party before the jury without a predicate or an offer on the record. However, those used before the jury -- those pre-admitted exhibits used before the jury will then become admitted exhibits and a part of the evidence in the case. Those items on the list of pre-admitted exhibits that don't see the light of day during the trial and aren't used before

the jury remain only pre-admitted; they're not part of the evidence, and they are not admitted exhibits in the case.

To keep up with the process of using pre-admitted exhibits before the jury and during the trial, each morning beginning on the second day I will ask the parties in advance of bringing the jury into the courtroom to read into the record those items from the list of pre-admitted exhibits used during the preceding day's portion of the trial, and we'll do that on a rolling basis throughout the trial so that we can keep a current and accurate list of the items from the list of pre-admitted exhibits that are then admitted exhibits having been used previously before the jury during the trial process.

So with that in mind, I directed the parties to meet and confer at the end of the day yesterday regarding disputes concerning each party's submitted list of proposed exhibits, and I've directed that they narrow their disputes as much as possible. I now am told that the Samsung Defendants have a total of four categories or groups, sometimes called buckets, of exhibits that are in dispute with Plaintiff, and that Plaintiff G+ has a group of seven or eight, I believe the most recent information I had was seven categories, groups, or buckets of exhibits proposed by Samsung that they are objecting to. I don't see any reason why we can't take these one at a time and work through them, and that's what we'll do at this juncture.

Let's start with the proposed exhibits by Samsung that G+ objects to. We'll work through those four categories or buckets first, and then we'll turn to the other seven.

It appears from the list I've been furnished by counsel that the first category of those disputes is identified as Samsung presentations, and the proposed representative exemplar from that category is Exhibit 15 with the objections being raised by Plaintiff as being 402, 403.

Let me hear from Plaintiff on their objections first and then I'll hear a response from Defendants.

MR. SHEASBY: Yes, Your Honor.

Just for clarification, and it's our fault because we didn't title the blocks, which is that buckets 1 through 4 are Plaintiff's objections to Defendants' exhibits.

THE COURT: Okay.

MR. SHEASBY: Just for clarification. I'm happy -- it's completely -- we apologize, Your Honor, but do you want us to proceed with that, or do you want to do Plaintiff's exhibits first?

THE COURT: It really makes no difference, Mr. Sheasby. We're going to have to get through them all sooner or later, so let's stay where we are.

MR. SHEASBY: Thank you, Your Honor. May it please the Court. Jason Sheasby.

If I could have slide 2.11, Mr. Svenson. And if I could

have slide 11, please.

So the documents that are part of this bucket are a series of offers that were made to Samsung, and the offers fall into two categories. They were an offer before an NDA was signed. That offer was designated as FRE Rule 408. There were then two offers that were made after an NDA was signed. That NDA was signed after this litigation was filed, after claims of breach of FRAND were raised.

And if you go to slide 2.12.

The parties expressly, expressly negotiated that an offer made under the November 3rd, 2022, NDA could only be used to defend against an accusation of FRAND, not as a basis for breach of FRAND.

And so I draw the distinction and I think there's a policy distinction that the Court needs to deal with. The first is can you send an FRE 408 letter and have it used against you in a litigation. Now, Samsung -- if I may approach the --

THE COURT: You may.

MR. SHEASBY: Thank you.

Samsung has stated that this -- the pre-NDA letter is not being used for the purpose of establishing liability, but of course it is. It's being used for the purposes of establishing liability that we breached our FRAND obligation. And the case they cite that they say FRE 408 must give away in

a FRAND context -- if I may approach the bench, Your Honor, with a copy of the case?

THE COURT: You may.

Q. (BY MR. SHEASBY) The case they cite for this prospect is *Microsoft versus Motorola*. And in *Microsoft versus Motorola*, the issue was not whether a previous offer made by the defendant in a breach of FRAND claim could be used against them; the issue was whether a previous consent decree that they'd entered into would be used -- could be used against them. And so the only case they cite that suggests that FRE 408 gives way in the context of FRAND has nothing to do with the issue of an offer made under FRE 408.

THE COURT: This is the Western District of Washington case with Judge Robart that was reviewed by the Ninth Circuit?

MR. SHEASBY: That is correct. So this is not binding authority on Your Honor. And the Fifth Circuit -- in the briefing we sent last night, the Fifth Circuit is much more aggressive than the Ninth Circuit and has never allowed the type of exception, as far as we can tell, that Samsung is seeking to draw. But I will --

THE COURT: You're not telling me that the Fifth Circuit has actually ruled squarely on this issue.

MR. SHEASBY: The Fifth Circuit -- the best cases we found on the Fifth Circuit are the cases we sent you last

night in which an offer to compromise on a contract claim was forbidden. That's the closest we could find.

And so this is not a situation in which they're using that original letter, which was pre-NDA, for notice, it's not a situation in which they were using that original letter for knowledge of something or a false statement, it's not a situation in which they're saying there was extortion or a tort based on this original letter; they're literally saying this proves that they're liable because the amount they offered is unreasonable.

And let me go to that -- it's on 2.13.

This is that original offer which was --

Sorry. Let's go to 2.14. Excuse me.

This was that original offer that was made which says as clear as day it was pursuant to Rule of Evidence 408. So this is solely an FRE 408 decision that Your Honor has to make, and the distinction they're drawing that this is not for liability, it's for some other purpose, it is directly to prove liability. It's directly to say the offer we made was large.

Now, they're welcome to say that we didn't make an -- that -- they're welcome to sort of say that the damages we're asking now are not FRAND, but to turn an FRE 408 offer against us, no one is ever going to have a negotiation again, Your Honor, in an SEP case if this is the rule that you adopt here.

Why would I ever advise my client, ever advise my client to put in writing an offer under FRE 408 if the rule is it can be turned around and used against us purely by someone raising a claim of breach of FRAND? It is the exact reason why FRE 408 was created. And I did show -- quote a portion of the advisory opinion.

So that's the pre-NDA letter. The post-NDA letter -- and I acknowledge that there is a distinction between the Court's treatment of these two letters.

If you go to 2.12.

We negotiated a contract that expressly says the communications we use in this letter cannot be used against us in court; they can only be used to defend against an accusation of breach of FRAND. They cannot be used to present an accusation of breach of FRAND. This contract was signed with eyes wide open after the lawsuit began, after there was a breach of FRAND. It is utterly inappropriate to not enforce the express terms of this contract.

Even if you believe FRE 408 is inapplicable, that is an issue that was, respectfully, taken away from Your Honor via contractual agreement between the parties that should be enforced strictly. I don't think there is any question that this is an ambiguous contract. It's not an ambiguous contract. You can use the offers to defend against; you can't use them to attack. That's the contract we signed after

litigation was signed.

Once again, the precedent here is stunning. How could I ever advise my client to make any written offer or to enter any NDA in the context of SEPs if the NDA that we enter into is utterly worthless. This is not a tort. They're not saying we extorted them. They're not saying -- they waived their tort claim. This is purely a contract claim, and the agreement is unambiguous that it cannot be used.

I'm just repeating myself again and again, Your Honor.

THE COURT: Let me see if I'm reading this provision from the NDA correctly. What you've put on the screen seems to say "Settlement confidential information shall be used for the purpose, except as necessary in court, to defend against an accusation that one of the parties breached an IPR policy, including specifically the fair, reasonable, and non-discriminatory (FRAND) license standard."

Am I reading this incorrectly? It looks like it says confidential information shall be used for the purposes identified in this NDA, except as necessary in court to defend against an accusation of a breach of FRAND. Isn't that exactly what this is being used for? Doesn't it fall within the exception here?

MR. SHEASBY: No, it's not being used to defend an allegation of breach of FRAND; it's being used to advance a breach of FRAND.

THE COURT: Well, in this case we have your counterclaim for breach of FRAND and we have the Plaintiff's [sic] claim against you for breach of FRAND, so we have it going both ways. So somebody's defending against breach of FRAND. In all likelihood both of you are defending against an allegation of breach of FRAND. Is that not correct?

MR. SHEASBY: Your Honor, the way I read this is that each party gets to use their own materials to defend, and our breach of FRAND allegation has nothing to do with the offers they made. And so that would be reading it out of the context of what is actually going on.

In other words, what I'm saying is we don't have a FRAND obligation that that says -- has anything to do with the type of offers they made or the type of offers they didn't make. Our FRAND allegation is solely based on the fact they wouldn't agree to an NDA and the NDA they agreed -- they presented an unreasonable NDA to us. It has nothing to do with the terms of the offers they made or based on the offers that were made to us. And they're not using this to say they're FRAND; they're using this to say we are not FRAND. That's how this document is being used.

There's no use of it by Mr. Meyer or any expert or any witness to say this shows we were FRAND, ladies and gentlemen of the jury. In fact, it couldn't be because these rates are dramatically higher than the rates that Samsung offered. This

is being used -- I'll be very transparent. This is being used surreptitiously to suppress our damages number by putting out the settlement numbers for a, quote, breach of FRAND purpose, in which they are accusing us of breach of FRAND because our numbers were so high.

So FRE 408--and then if you always say, Oh, this is being used to defend against a FRAND allegation--becomes meaningless because it's not being -- we don't have a FRAND allegation based on the terms of the offer we made. They're using it to say we are in breach of our FRAND allegation. Our FRAND allegation has nothing to do with the terms that we offered them, nor the terms that they specifically offered us.

THE COURT: All right. Let me hear from Samsung on this.

MR. CORDELL: Good morning, Your Honor. Ruffin Cordell for Samsung.

THE COURT: Good morning.

MR. CORDELL: I guess the place I'll begin -- I'll try to track Mr. Sheasby's arguments. He began with the *Moto* case. We all know the *Moto* case well. Judge Robart took extensive evidence. He had full trials on the FRAND allegations. He did, in fact, examine the good faith negotiation behavior of the parties, and that's what we're really talking a about here. This Court has had numerous cases where we have introduced extensive evidence -- for

example, a year ago we were in the Apple/Ericsson trial, and we had days and days of evidence about the actual offers that were exchanged because that is the gravamen of the claims.

And as the Court points out, they're going in both directions. Good faith is not a one-way street, so in a negotiation the good faith is evaluated based on the exchanges between the parties.

So Mr. Sheasby struggles to somehow slice the bologna very thin here and suggest that he can use the documents but we can't for particular claims or defenses. But again, it's a good faith negotiation; it's not a one-way street.

The best analogy we have for this is a breach of a settlement agreement. So in a breach of a settlement agreement, we have offers that are exchanged under 408. They enjoy protection against their use in proving or disproving the underlying liability claim. So if we have a slip-and-fall in a grocery store, the law says you can't use an offer to compromise the slip-and-fall as an admission of liability, and that's what 408 is there for.

Here we're talking about the agreement itself. And when there is a breach of a settlement agreement, of course the offers come in, of course there's parole, of course there's extensive analysis of the settlement agreement itself.

THE COURT: Well, we're -- as I understand the issues, we're really talking about a 408 argument with regard

to communications that occurred before an NDA was entered into, and then we are talking about communications between the parties that were undertaken after this NDA that was shown on the screen was entered into. So there's a before and an after, as I understand it, unless you see the facts differently.

MR. CORDELL: I don't, Your Honor. I was attacking the 408 arguments clearly. It's simply not applicable because we are not talking about the underlying liability here; we are talking about a breach of FRAND. We are talking about an obligation to negotiate in good faith. Did they satisfy it? Yes/no. Did we satisfy it? Yes/no. The offers are the evidence used to evaluate that claim.

And again, Your Honor has heard these cases several of them now. We have the Apple/Ericsson case, you had the -- I'm blanking on the parties, but you had another big one the year before. It's not -- this is not unusual. It's not out of the ordinary. It is, in fact, the core evidence that should be heard.

Now, getting to the agreement itself, Your Honor, the point is you can't make an agreement that allows you to shield your bad faith, and nothing in that agreement that Mr. Sheasby put on the stand -- on the screen suggested that that was true.

Can I have I guess it's your slide --

THE COURT: What's your response to Mr. Sheasby's argument that if the Court allows, especially these pre-NDA letters in, in contravention of Rule 408 there will never be another 408 letter sent between parties?

MR. CORDELL: So the answer to that is very simple--negotiate in good faith. So if you negotiate in good faith, you have nothing to worry about. If ultimately they become relevant in a FRAND dispute, you have nothing to hide, you have nothing to worry about; otherwise, they are still protected under 408, you can't use them to prove or disprove the underlying liability claim--in this case it would be patent infringement. But they -- we've lived under this rubric for several years now. We've had case after case. And again, Your Honor heard it last year in the Apple/Ericsson case where the negotiations do come out and then the question is were they in good faith.

So the answer is very simple. There's not a policy issue here. The policy is simply behave, do it correctly, and then you enjoy protections of 408 for the underlying claim, but if a dispute breaks out over your behavior in the negotiation, then the offers become evidence.

THE COURT: All right.

MR. SHEASBY: Your Honor, if I could just clarify?

THE COURT: If you're finished, Mr. Cordell.

MR. CORDELL: Unless the Court has other questions,

I guess the other thing that I would just add is that I agree with the Court's analysis of that contract that, in fact, it is -- the evaluation of FRAND and good faith is a two-way street, and in this case it's particularly acute because you have claims and defenses going back both ways, so you can't cut it that finely.

THE COURT: All right.

MR. SHEASBY: Your Honor --

THE COURT: What would you add, Mr. Sheasby?

MR. SHEASBY: In our mind it's the letters that are under the NDA that are the most noxious because the original letter was our FRAND calculation. The emails under the NDA are the emails where we say, Well, maybe we're right about this, maybe we're wrong about this, we'll cut back if you move up. It's the nuts and bolts of negotiation, trying to settle a case that's already been pending.

And so in my mind, FRE 408 is that its apogee after the case has signed. It's those post-NDA letters where the 408 is at its apex because then the FRE 408 -- and the agreement says the purpose that these letters are treated as FRE 408 --

If we can put up the slide. If you can go to one earlier.

THE COURT: I see that.

MR. SHEASBY: It expressly says they are governed by 408. It is -- it's Kafka-esque to sign an agreement that says

let's have an FRE 408 discussion after a claim of breach of FRAND has already been raised.

And, by the way, that's a whole other issue. The claim of breach of FRAND in the complaint had already been raised by this point. Stuff that occurred after that claim has been raised is not even arguably before this Court. And so the idea that we can sue each other for breach of FRAND, we can enter into an NDA that says it's governed by FRE 408 and then have it turned around and used against us and it will be used --

THE COURT: Well, you entered into the NDA long before you sued each other for breach of FRAND.

MR. SHEASBY: No, Your Honor.

THE COURT: No?

MR. SHEASBY: No. This post-dates the breach of FRAND claims.

THE COURT: Okay.

MR. SHEASBY: So we sued each other for breach of FRAND, we entered an NDA to try to settle it. This is our attempt at settlement, and they're literally using our attempt to settle a live litigation on breach of FRAND against us.

Now, if this was a bench trial in which the only issue was FRAND, I could understand how the Court would entertain something differently. That's how Judge Robart did it. But the idea that I'm going to be in front of a jury on an

infringement claim and I'm going to have my settlement offers used against me --

Mr. Baxter made a settlement offer to Mr. Cordell last night. Under this regime, that settlement offer comes out in front of the jury. That is exactly what you're allowing to happen. And the fact they're going to be selectively choosing which ones they do and do not want to have in is beyond, in my mind, the sort of the reasoned expression of justice.

THE COURT: What difference, if any, does it make if these documents are used before the jury, the courtroom is sealed, the record is sealed, and the only people besides the parties to those exchanged communications are the members of the jury?

MR. SHEASBY: Because it's the jury who's deciding liability, Your Honor. In some sense they are the people --

THE COURT: I'm talking about from a perspective of protecting the information and treating it confidentially.

MR. SHEASBY: Obviously sealing addresses the confidentiality issue, but that's not the point. FRE 408 is not designed to protect confidentiality; FRE 408 is designed to be stop documents from being used against us. They sued us for breach of contract, we entered an NDA to settle it, and now they're trying to use what we said in settlement against us. That is forbidden by FRE 408.

The stuff that was before the NDA, I get it--that was

pre-suit. I understand how Your Honor can say that's not a good faith FRE 408 letter. I am very weak there. A contract that says this is for 408, we're trying to settle the claim, and they're going to use it against us when we enter the contract after the complaint is filed, that has no place in this case, and it's utterly irrelevant because things that happened after the lawsuit was filed are not even the basis for the complaint.

THE COURT: Well, let me ask you this, Mr. Sheasby. In this case we have allegations of patent infringement and we have allegations of breach of FRAND. There are lawsuits where solely the allegation is patent infringement, and there are lawsuits where the allegations are solely breach of FRAND, but we have them both together in this lawsuit. It seems like to me the infringement allegations are being argued to be a sword or a shield as to why the FRAND information can't come in. If the Court instructed the jury that the use of this information applied only to the allegations between the parties for breach of contract based on the FRAND obligation and not the issue of patent infringement, doesn't that --

MR. SHEASBY: Yes.

THE COURT: -- address some of your concerns?

MR. SHEASBY: It does, Your Honor.

THE COURT: And I'm happy to do that, but I'm going to admit these -- pre-admit these. I don't think your

argument that they'll never be another 408 letter sent if I rule against you on this, I think that's overreach. And I do think that these are being offered to prove a breach of contract at this point when they were offered originally to settle a patent infringement dispute, and they are different. And I don't know how we can litigate the FRAND issue if some letters are in and some letters are out and we have to draw a line every time the evidence is pre-tried before the Court. They've either got to come in across the board or they don't come in across the board.

I am going to allow them, pre-admit them; I'm going to limit their use only before the jury where previously counsel has requested and the Court has sealed the courtroom and the transcript, and I'm going to instruct the jury that their use is limited to the issue of breach of FRAND and has no application to the issue of patent infringement. But otherwise, I think those steps will accord G+ a reasonable level of protection, but I don't know how we can litigate the FRAND issue without both sides' conduct and communications back and forth across the board coming in so the jury can make a determination based on the totality of what happened as to whether one party or the other party acted in bad faith or good faith.

MR. SHEASBY: I understand the Court's ruling. May I ask one point of clarification?

THE COURT: Okay. I'm trying to be as clear as I can.

MR. SHEASBY: It was the timing instruction. We would ask that the instruction be given before the first time the letters are -- the offers are actually used.

THE COURT: I think that's appropriate. And what I'll do is I'll instruct lead counsel in both -- for both parties to meet and confer and agree that before they're used for the first time you'll approach the bench and advise the Court that you're about to do that, at which time I can then give that instruction.

MR. SHEASBY: Thank you, Your Honor.

THE COURT: Okay. But with those limitations, the first category of exhibits objected to by Plaintiff and proposed by Defendants are pre-admitted.

Okay. That brings us to the second category or bucket entitled "other litigation documents." That's extremely informative. The representative exhibit here is No. 22.

What's the situation here?

MR. FREEMAN: Your Honor, I believe that's actually Defendant's second bucket of objections. I'm a little confused on the order. I'm more than happy to --

THE COURT: Well, let me put it this way. I may have said it wrong every time I've said it, but I've got one list that came from one side and I've got another list that

came from the other side. I'm on this list with the four buckets. That's the second one on that list and that's what we're doing.

MR. FREEMAN: Correct.

THE COURT: And I don't care which order I hear. I'm going to hear from both sides fully --

MR. FREEMAN: Excellent.

THE COURT: -- on each of those.

MR. FREEMAN: Thank you, Your Honor. Will Freeman on behalf of the Samsung Defendants.

THE COURT: All right, Mr. Freeman. Go ahead.

MR. FREEMAN: If I may have the elmo, please.

This is just a Samsung pleading--apologies; this is my first time using the system, so give me a second--from an International Trade Commission investigation, and it runs squarely afoul of the Court's Motion in Limine No. 13. This is another litigation document between Samsung and other parties that the facts and circumstances were quite different. Your Honor has a standing motion in limine to keep such other -- referenced other litigations out for precisely that reason, that there are different facts, different circumstances. And how -- we don't precisely know how G+ intends to use this document, but there is the extreme potential to mislead the jury as to what, you know, Samsung attorney arguments may have said in one litigation could be

used in --

THE COURT: How does this align with the litigation in Brazil and the Netherlands that we talked about yesterday?

MR. FREEMAN: Sure. So the Brazilian --

THE COURT: Is this another version of the interactions between the parties outside the parameters of this Court?

MR. FREEMAN: It is not, Your Honor. This has nothing to do with -- G+ was not involved at all in this International Trade Commission investigation. It has nothing to do with the FRAND issues between the parties in this case. It's a completely different case between Samsung and I believe it was Apple in this investigation. I may be getting that wrong. But it's completely unrelated. It's not an example of interactions between the parties that has any bearing on the FRAND issues in this case.

I should also add, Your Honor, this is not something like a witness statement or sworn testimony of any witness such that it could be, you know, used as cross examination, you know, of another sworn statement.

THE COURT: Tell me what the relevance, as you understand it, or what the alleged relevance, as you understand it, is, if it has no connection to the other party and no connection with the accused products here.

MR. FREEMAN: Sure. So within -- based on my best

read of this, there were some allegations as to whether a delay in responding within this case -- as to whether a delay in responding to an offer constituted -- was FRAND or not. So if one party sent an offer and the other party waited several months to respond, whether that had any -- whether that was FRAND conduct.

And my best guess, Your Honor, is that G+ may try to take Samsung's statements relating to a delay that may have occurred in that case for completely other reasons to something that may have occurred in this case. And as Your Honor knows, there was some -- it took time before the negotiations in this case got started in substance because of G+'s refusal to enter into the NDA. And I had -- my best guess is that there is potential for misuse to try to analogize the timing between offers that were made based on something that Samsung may have said related to this other case.

I should add, Your Honor, late last night we received some redactions to this document that could have an effect on what their purpose is, and I -- candidly, I -- just based on what we received last night, that -- it's hard for me to understand exactly how they intend to use that.

THE COURT: Why don't you have a seat and let me hear from G+ on this. Maybe they can clarify some of this. And then if you need to present further argument, I'll let you

do it then.

MR. SHEASBY: Thank you, Your Honor.

THE COURT: What's this all about, Mr. Sheasby?

MR. SHEASBY: Your Honor, in the unstricken portion of Mr. Dell's declaration on FRAND--so this doesn't have to do with damages; this has to do with the FRAND case--he actually discusses extensively these positions that Samsung took in the ITC. This is unstricken. It wasn't even objected to. He talks about the fact that Samsung pursued an injunctive relief against Apple. Apple after -- delayed in a five-month period of filing suit. And the document -- and we're going to -- we don't need to say it was a lawsuit against Apple. We don't need to say it was an illegally proceeding. All we're trying to do --

And Mr. Svenson, if you can pull up the document now.

The sole purpose of it--and this is all we're going to produce--is "nor does the existence of FRAND commitment warrant precluding remedial relief in this investigation." And it talks about the fact that when there's a delay in seeking and negotiating a license, you're entitled to seek an injunction.

And so Your Honor has heard -- and it's heard us very badly over the last two days about the totality of the circumstances. The reason why this is relevant is I handed up you that case from Motorola versus -- the *Motorola* case, Judge

Robart in the Ninth Circuit. That -- the Ninth Circuit allowed a consent decree that was entered against Motorola to come in.

THE COURT: Let me ask you this, Mr. Sheasby. If Stephen Dell has this in his report, it wasn't attacked, it wasn't stricken, and he's going to testify about it, why do you actually need to introduce the supporting documents?

MR. SHEASBY: Because I want to show this language in closing, Your Honor, because it's extremely powerful language. They're accusing us of breaching a FRAND commitment by seeking an injunction. They in a public document -- this is a public document. They stated that you can seek an injunction when the other side delays in negotiating a license. It is exactly the same thing that the Ninth Circuit affirmed when they affirmed the *Motorola* decision. It's going to be very narrow, but this is a key piece of our evidence and our defense, which is that Samsung has different rules against -- different rules for us than they apply themselves.

THE COURT: All right. I understand the issue now.

Mr. Freeman, what else can you add from your side?

MR. FREEMAN: Briefly, Your Honor.

This would be inviting a classic trial within a trial, Your Honor. There's a MIL directly on point for exactly this reason.

I'll just add briefly, this case was from -- this was

signed in 2013, 10 years ago. A lot could substantially change. Samsung said that it was okay to seek remedial relief at the ITC in that case. The International Trade Commission, remedial relief there is a different concept entirely from what may be asked to be granted in this Court. The circumstances that led to that investigation would have to be explained to explain why Samsung made those statements. There's a huge fact pattern underlying all that, and there is a MIL exactly on this precisely to prevent that, to prevent a trial within a trial relating to other cases involving the parties.

THE COURT: I'm going to pre-admit this with the following limitation: Only the portion relating to the FRAND issue is to be used, the redactions are going to be applied to avoid anything else, particularly the parties to that litigation before the ITC.

Also, Mr. Sheasby, I'm going to prohibit the use of this by the Plaintiff until such time as Samsung actually does accuse you before the jury of breach of FRAND by seeking an injunction in Brazil. If they open that door, then you can use this document. And based on everything I've heard yesterday and today, I fully expect that door to be opened, probably early in the process.

But this is responsive to an allegation that you're anticipating. It hasn't been made yet. Once it's made, then

I think the issue's joined. But it needs to be redacted and limited to just what you've shown me today for that purpose. But with those limitations, this is pre-admitted.

All right. What's next on this list? Is this Exhibit 11--hearsay article?

Tell me what we have here, Mr. Freeman.

MR. FREEMAN: Your Honor, we actually -- there's a quick point of clarification. We actually did not cover the first item on this list. The first argument related to the first item on Plaintiff's list. Of course I'll cover this one, but I just wanted to clarify that.

THE COURT: We'll go back to the first one before we finish.

MR. FREEMAN: Excellent.

MR. SHEASBY: Your Honor, may I just say something briefly?

THE COURT: What's that?

MR. SHEASBY: Mr. Freeman also had an objection to PTX 23. I don't know if he's withdrawing that objection. That's the EU document. And so I just didn't want him to inadvertently miss it if he still had an objection.

THE COURT: That's why we have a representative exhibit so that I can look at one exhibit and see an issue that covers whatever is in this category.

MR. SHEASBY: Well, PTX 23 is different.

THE COURT: Well, then it either needs to be treated the same way because it's subject to the same dispute or it needs to be in a different category. If it's litigation elsewhere that stands for the same purpose, then that's one thing, but you're telling me that's not the case?

MR. SHEASBY: It's not litigation, Your Honor.

THE COURT: Well, what is Exhibit 23?

MR. SHEASBY: Sure. Exhibit 23 --

If you can pull it up Mr. Svenson.

Oh, you're no longer objecting to the --

MR. FREEMAN: I received the email last night from your counsel -- from (unintelligible) and this exhibit was being withdrawn and substituted for a different exhibit.

MR. SHEASBY: We're talking about the EU document, the EU -- sorry. There's some confusion, Your Honor.

THE COURT: Wait a minute. Let's go off the record.

(Discussion held off the record.)

THE COURT: Let's go back on the record.

Where are we, counsel?

MR. SHEASBY: PTX 23 should be treated in the same way as PTX 22. I understand the objection to the EU DG of competition exhibit that I was referring to has been withdrawn.

THE COURT: All right. Well, both Exhibit 22 and 23 in this category are subject to the same limitations I gave

you with regard to the exemplar No. 22.

MR. SHEASBY: Thank you, Your Honor.

THE COURT: All right. Let's pick back up where we left off, Mr. Freeman.

MR. FREEMAN: Thank you, Your Honor. Will Freeman for Samsung.

DTX 11- excuse me--PTX 11 is a document relating to Apple's acquisition of Intel's smartphone modem business. G+'s damages expert Mr. Dell takes a number of inferences based on this article to reach certain conclusions about the perceived value of ZTE's patents.

And Mr. Svenson, do you happen to -- I know you discussed -- do you have Mr. Dell's rebuttal report at footnote 86? It should be on page 22 of the PDF. The 7/19 rebuttal report of Mr. Dell. And if it's an issue I can skip it. Page 22, please. Okay. I must be looking at different things.

I can just proceed based on what I have here.

So in a lengthy footnote --

I'll try this trick that Mr. Sheasby tried yesterday with the laptop here.

Mr. Dell -- you know, it's a simple press release announcing that Apple acquired Intel's smartphone business.

THE COURT: The wheel on the top there will zoom in or zoom out. Thank you.

MR. FREEMAN: Thank you very much.

So Mr. Dell concludes, you know, from this simple press release that no meaningful assets were transferred to Apple, and then that Intel's attempt at creating a 5G modem business ultimately failed, and, therefore, that Apple placed a significant value on ZTE's patent portfolio based on this press release.

So it is -- this is a 403 objection based on Mr. Dell just simply taking way too many inferential steps on this article, and based on that we know that it intends to be used in a way that's prejudicial and not relevant for these purposes.

THE COURT: Let me ask you this. Why wasn't this raised in the *Daubert* practice yesterday with regard to Mr. Dell? I mean, this sounds to me like a *Daubert* motion, not an objection to the pre-admission of an exhibit on evidentiary grounds.

MR. FREEMAN: Understood, Your Honor. And I can't answer the question.

THE COURT: I mean --

MR. FREEMAN: Yeah. So it's an issue here is that he can rely on hearsay to make that analysis, but admitting the hearsay is a completely different question.

THE COURT: All right. Do you have anything on this, Mr. Sheasby?

MR. SHEASBY: I do, Your Honor.

THE COURT: I mean, I don't typically admit or pre-admit as exhibits every item referenced in an expert's report that they've relied upon. That's why we have the report that can be challenged under *Daubert* and that's why we have a live witness that's going to testify. That doesn't necessarily support everything listed in their report as supporting material being an exhibit in the case.

Why is this something that rises to the level of being an appropriate exhibit in the case, given the expert's testimony comporting with what's in his report on this subject?

MR. SHEASBY: So, Your Honor, this is by far the least important of the ones that we're seeking to admit, which are some references, Samsung references that -- and so I can tell you that if you have any discomfort, I do not want to push your discomfort on this one.

THE COURT: Okay.

MR. SHEASBY: I will tell you that it's principled, which is that there is no hearsay issue to this. It's a 402, 403 objection. He says 602, but maybe he meant 802. And the reason why we thought it's relevant is because it's not for the truth of the matter asserted; it's that Intel was publicly saying it has a billion-dollar patent portfolio, and that's why we thought it was not such an egregious violation of the hearsay rule, Your Honor.

THE COURT: All right. I'm going to exclude PTX 11. The expert covered it in his report; the expert's fully capable of testifying about it in the relevant way. There's no need to admit as an exhibit what's clearly hearsay that the expert took into account. This is excluded.

All right. Let's talk about the last item, which is PTX 21.

What's the basis of the objection here? And here apparently it is 802.

MR. FREEMAN: Yes. And apologies for that typo, Your Honor.

Here it's precisely the same issue. This is the article. There was extensive discussion on this one yesterday in the context of the motion to strike, *Daubert*, certain opinions from Doctor Kowalski. You heard those from -- arguments from Mr. Cordell. This article is hearsay. I believe during yesterday's arguments I heard Mr. Sheasby articulate the learned treatise exception to hearsay for this document, but the learned treatise exception allows the expert, you know, to read the statement into the record but not permit the exhibit itself to be admitted. So it's precisely the same hearsay issue here with this paper, Your Honor.

THE COURT: All right. What's different about this, Mr. Sheasby, if anything?

MR. SHEASBY: Your Honor, this is profoundly

different.

If we can pull up the exhibit, Mr. Svenson.

This is an article by Samsung Electronics -- Samsung Electronics engineers talking about their work on 5G in a peer-reviewed journal. This is not hearsay; it is the statement of a party opponent. This is not some salesperson talking about the technology; this is Samsung 5G engineers talking about the testing they performed at Samsung regarding 5G performance. This is no different, and, in fact, has greater gravity than an internal document that Samsung prepared because this is peer-reviewed. This is not a hearsay document.

THE COURT: All right.

MR. FREEMAN: Briefly, Your Honor?

THE COURT: It's an out-of-court statement. It may be relevant, it may be properly characterized as an admission against interests or statement of a party opponent, but I don't know -- why is it not hearsay, Mr. Sheasby?

MR. SHEASBY: Your Honor, I'm speaking in loose language. This would fall into the -- whether you call it an exception to hearsay or the non-hearsay -- a statement of a party opponent would remove it from the bar that normally applies to hearsay. I spoke loosely and I apologize for that, Your Honor.

THE COURT: We're saying the same thing.

Mr. Freeman, what's your input on this?

MR. FREEMAN: Respectfully, Your Honor, it's not a statement of a party opponent. These are Samsung engineers working in the context of their normal work contributing to the scientific literature. These individuals are not called as witnesses, have not been identified as witnesses in every way. You heard the arguments from Mr. Cordell yesterday about dual SIM cards and dual SIM phones. Because 5G is in the title, it doesn't mean that it relates to, even remotely, the technology that's at issue here or the asserted patents at issue here.

So this, respectfully, is not a statement of a party opponent that would be admissible as an exception to hearsay.

THE COURT: All right. Samsung's objection is overruled. This is pre-admitted.

And I guess that brings us back to the top of the list with PTX 15 as the representative exhibit of what's in dispute here.

MR. FREEMAN: Thank you, Your Honor.

THE COURT: So what do we have, Mr. Freeman?

MR. FREEMAN: So we have here PTX 15, and I believe there are nine total exhibits that are similar. These are examples of sort of Samsung internal business presentations directed to various aspects of Samsung marketing. Within them there are lots of surveys results as to what consumers find to

be important about various aspects of features; you know, what do we want to market about the phone, do we want to market the color, do we want to market screen, do we want to market that it has 5G --

THE COURT: Slow down a little bit, please.

MR. FREEMAN: Yes. Apologies.

Which aspects of the phone that they should market. Mr. Dell relies on these surveys extensively to sort of talk about how -- the alleged importance to Samsung of 5G.

The problem, Your Honor, is that, as you heard from Mr. Reger yesterday, Mr. Dell's opinions are very specific. He has effectively two ways that he considers damages. The first and the primary is the incremental profits analysis in which he relies on a very specific study from Doctor Reed-Arthurs and very specific opinions from Doctor Kowalski and applies certain adjustments to those results. That's the first way that he gets the damages. The second is a comparable license analysis. He looks at some other comparable licenses.

These studies simply have no relevance to either of those damages theories.

THE COURT: Let me ask you a question.

MR. FREEMAN: Of course.

THE COURT: These documents in this category, are these addressed specifically by the competing damages experts

in their reports? And if so, why were these not challenged as a part of the *Daubert* process? And if they were challenged and survived, why shouldn't the actual supporting materials come in? Tell me what the interplay is here.

MR. FREEMAN: Mr. Dell does address these reports. I do not believe that Mr. Meyer also does, but -- I think it's possible, but I don't believe so. It was not challenged on *Daubert*. But again, a similar issue where Mr. Dell reaching the opinion that, you know, 5G may be something that Samsung values in its marketing is a different story than introducing all of these different survey results that can be used in quite a misleading way, or if you see in a survey -- if you'll allow me to show sort of an example page here.

THE COURT: I would appreciate an --

MR. FREEMAN: Absolutely. So page 31 is an example --

THE COURT: Let's go off the record a minute.

(Discussion off the record.)

THE COURT: All right. We're back on the record. Go ahead Mr. Freeman.

MR. FREEMAN: Sure.

So page 31 here at the top, this survey you can see that speed and performance is kind of listed towards the top. We suspect that G+ may point to something like that as saying that 5G is highly important.

And then page 30 -- sorry. I flipped one too many pages there. Page 32 shows features that are important for marketing purposes. '5G internet' you'll see is at the top of this list. 5G internet is not the issue in dispute here. There's very specific aspects that relate to 5G within the asserted patents, very specific technologies. You'll see in the survey it's the only thing that results in internet, so is this referring to 5G or is it referring to internet?

There is simply too much risk that these can be misused to sort of attempt to connect a precise value to the asserted patents when there have been specific surveys and specific results by sort of throwing around lots of numbers like this and introducing all this. There's opportunity to confuse the jury as to what the actual accused technology is here and what's relevant, which is the technology claimed by the asserted patents, not sort of how Samsung defines 5G within its marketing materials.

THE COURT: Well, I can understand your fear that there may be something in these marketing materials that goes beyond what Mr. Dell covered in his report and that that -- if these are pre-admitted, then that extraneous material could be plucked out and used because it would be an exhibit. However, to the extent this material dovetails with what Mr. Dell covered in his report and you didn't challenge that portion of Mr. Dell's report under *Daubert*, I don't know why I should now

let you have a second bite at the *Daubert* apple to effectively curtail his use of this supporting material when you didn't challenge those opinions that this relates to during *Daubert* practice.

So I'm happy to limit these to the use in a way that comports with what Mr. Dell's opinions, that you didn't challenge, say to avoid something unrelated to his opinions that you might find harmful being plucked out and used because it's, quote, an exhibit, but I don't see any reason you're entitled to reargue the *Daubert* challenge when it's an exhibit when you didn't challenge the underlying portion of his report that these relate to. Is that clear?

MR. FREEMAN: Understood, Your Honor. And that goes a significant way to addressing our concern.

THE COURT: Is there any problem from Plaintiff's standpoint with these being circumscribed to connect with what Mr. Dell said in his report and not used otherwise? I don't want something extraneous that goes beyond what Mr. Dell being an ambush for Samsung. But by the same token, if Samsung didn't care enough to challenge it at *Daubert*, they're not going to challenge it on the same basis here in the exhibit process.

MR. SHEASBY: Your Honor, two points of clarification. It's dealt with by Doctor Reed-Arthurs and by Mr. Dell.

THE COURT: Any expert.

MR. SHEASBY: And what we're happy to do is only the pages that discuss 5G and the surveys and performance results and studies on 5G are the ones we need to put in, and we're happy to redact anything else that's not discussing 5G.

THE COURT: Here's what I'm going to do. I'm going to pre-admit these exhibits in this category, but I'm going to limit their use to only where the underlying material and opinions in any existing expert's report that wasn't taken out through the *Daubert* process remain in effect.

MR. SHEASBY: No problem at all, Your Honor.

THE COURT: Okay?

MR. SHEASBY: Thank you, Your Honor.

THE COURT: That will be the ruling.

Now, let's go back to the other list where we apparently handled the first item. And I guess the next appropriate item up would be the second item on this would be Plaintiff's objections. Is that right?

MR. SHEASBY: Yes, Your Honor.

THE COURT: This list?

MR. SHEASBY: Yes, Your Honor.

THE COURT: Okay. So we are on No. 2 of this list now, Mr. Sheasby?

MR. SHEASBY: We are, Your Honor.

THE COURT: Let's go there, then.

MR. SHEASBY: Sure. This is DTX 41.

DTX 41 is a ZTE/Samsung license agreement, and I think all parties agree that it doesn't cover the patents-in-suit. This is being used as a comparable agreement. And there is portions of it that, in fact, do recite a rate and recite the covered scope of the license, which is fine. The problem is there's all this other stuff about there being a standstill and the parties not suing each other and wanting time to evaluate each other's 5G portfolio and actually legally agreeing not to sue each other until December of this year.

The concern that I have--and we sent a redacted version to Defendants--which is that we have no problem with the financial terms and the scope of the license coming in, but the part of it that talks about the standstill, the part of it that talks about the fact the parties are going to negotiate before they sue each other, the part about the fact that the standstill exists until 2023, that could invariably lead to some conclusion that because we hold ZTE patents, that we're bound by this agreement and bound by the standstill aspects of it.

And so I proposed a set of redactions that gave them everything they wanted in terms of using this as a comparable agreement, but didn't give them what they wanted about using it to tie us to ZTE and to say ZTE is the horrible person who signed a standstill agreement with us and then sold patents

and did all these horrible things. That use --

THE COURT: I gather that overture was rejected?

MR. SHEASBY: It was, not surprisingly, rejected, but I do think based on the Court's guidance it's a middle ground. There's two ways of dealing with this. One is that it cannot be pre-admitted and the Court can serve as the gatekeeper, as it has on the ZTE aspect of this sort of Damocles that they want to hold over us about tying us to ZTE; or we can pre-admit this part that we're comfortable with and they can try a second round by approaching the Court. But given the sensitivity of the ZTE relationship, we would respectfully request that the whole document that discussed -- so I can show you the standstill portion, Your Honor.

THE COURT: Please do.

MR. SHEASBY: If you can scroll. Next page. Keep scrolling. Keep scrolling.

THE COURT: Can we expand it? It's awfully small.

MR. SHEASBY: We can expand it -- as soon as I get to the standstill page we can expand it, Your Honor, with your permission.

Keep scrolling.

Here's another example they have. 1.35 is the Samsung standstill products, and the standstill products include products that would potentially be subject to infringement allegations in this case.

Let's keep going.

THE COURT: You know, as an aside, lawyers never say can we expand the document, can we enlarge the document; lawyers uniformly say can we blow it up. And I guess there's something about saying blowing it up, but I've not heard -- in 12 years on the bench had a lawyer ask to expand or enlarge a document; every time it's on the elmo and they want it to be bigger than it is, they ask me, Can we blow it up.

That's just an irrelevant, interesting aside, but you brought it to mind, Mr. Sheasby.

MR. SHEASBY: What's did I say, Your Honor?

THE COURT: I said, Can you enlarge it, and you said, We would when you get there, or you would when we got to the right place, so you really haven't used the word yet.

MR. SHEASBY: So Mr. Svenson, if you can continue --

THE COURT: And I'm not saying you need to change your practice; it's just an observation.

MR. SHEASBY: Yes, Your Honor.

Keep expanding. I want to get to the actual standstill clause. Sorry. Next page. Keep scrolling. Next page. Next page. Next page.

"Mutual limited standstill and tolling agreement." And let's pull up at the bottom 3.6. And let's go to the next page as well and get the rest of it. Scroll down more.

Yes. So it's this -- it says there's a standstill until

December 31st, 2023. Invariably, that has no relevance to any issue in this case other than this tying us to ZTE which, as I indicated to you, was never previously pled under breach of contract or in discovery.

And so I recognize that the Court ruled that this is a comparable agreement, or at least that a foundation has been laid that it's a comparable agreement, but the standstill and the discussion of we're going to talk about 5G later has no place in the analysis of comparability and could only, only be used for the purposes of suggesting impropriety by ZTE.

THE COURT: All right. Let's leave this on the screen.

Let me hear from Samsung. Are you intending to use this standstill portion as opposed to the underlying financial data in here?

MR. CORDELL: Mr. Sheasby's given me all kinds of ideas, Your Honor.

So the short answer is no; however, there are portions of this that are relevant. The fact that this agreement was directed toward one set of patents and not others is directly relevant.

So I guess, at least from my view, the Court set out a procedure this morning that would allow us to develop the ZTE record, if you want to call it that, and the relevance in this case, and I think that this will come out in that wash that,

you know, we certainly don't have any plan to highlight any particular portions of this other than using it for the damages purposes for which we had put it. It wasn't subject to *Daubert* --

THE COURT: The problem with that is--and it's not of your making or my making; it's just the way that it's transpired--I don't want to get the briefing that I ordered from you this morning and then have to go back and say, Okay, now we're going to take up exhibits that relate to this issue after all the briefing's been done.

MR. CORDELL: Understood, Your Honor. But I think we can follow the Court's guidance with respect to this and you can provisionally admit it or provisionally -- the problem with the redactions is if it did become an issue --

THE COURT: Here's what I'm going to do. I'm going to pre-admit it, but I'm going to order that this portion of it not be used without advance leave of the Court.

MR. CORDELL: I think that's great. Thank you.

THE COURT: Okay. Let's go onto the next exhibit dispute. This is DTX 589. Is that correct?

MR. SHEASBY: Yes, Your Honor. This is DTX 589. This relates to the Brazil litigation. And this is a rule of -- they have dropped their objections to argue some documents from the Brazil litigation. I still have an objection on them.

I think the reason why I did this is I think we both agree that this is going -- the Court is serving as a gatekeeper on this. And so even though they dropped their objections as to mine, I think for this DTX 589 and the two that I put on from the Brazil litigation, they should be only pre-admitted with an asterisk because we need to seek leave from the Court before discussing the Brazil litigation.

THE COURT: Well, I told everybody yesterday I didn't want to hear the word 'Brazil' or 'ZTE' without prior approval of the Court. I told everybody that these issues have the potential to visit substantial prejudice on the opposed party or the opposite party. There's no reason why the exhibits shouldn't follow the same path as argument and testimony in that regard.

So I'll pre-admit these, but they're going to all flow either -- they're all going to rise and fall together, and you're not to use them without the Court's prior permission, which if at some point I give you permission to go into this matter substantively, then that's going to be permission to use any supporting documents that have been pre-admitted. If I deny you the ability -- any party the ability to go into one of these topics substantively, then that's going to deny your ability to use any of these pre-admitted and related exhibits. Understood?

MR. SHEASBY: Yes, Your Honor.

THE COURT: Okay. Clear, Mr. Cordell?

MR. CORDELL: Yes, Your Honor. Thank you.

THE COURT: Okay. Then what's next?

MR. SHEASBY: Unelected prior art. And we can pull up DTX 574.

The Court has often drawn a distinction between admitting art that is used for the purposes of establishing invalidity and using art and how you use art that is, quote, background art.

So this is one of their, quote, background art references. This is a references that in the IPR they're using to invalidate our patent. And here, just so happens, they're using it as, quote, background art to give the jury some type of overview of what the technology is. If it's not being used for a § 102 and § 103 purpose, subject to the Court's *Daubert* instructions, the witnesses can speak about it within the confines of their report and as instructed by the Court yesterday. But there is no reason for non-§ 102, § 103 prior art to come in as evidence in the case.

THE COURT: All right. Wheat's Samsung's response?

MR. FREEMAN: Briefly, Your Honor.

It's only half the story. At paragraphs 213 to 216 of Doctor Min's rebuttal report, he uses this reference and these other references in the section as non-infringing alternatives to the various patents which play into the *Georgia-Pacific*

analysis. So we certainly understand the background prior art, but as a non-infringing alternative as it relates to those issues it's certainly relevant.

THE COURT: So this '925 Patent is a non-infringing alternative, based on what your expert says.

MR. FREEMAN: Correct. Paragraphs 213 to 216 of Doctor Min's July 19th rebuttal report.

THE COURT: And he calls this patent out by name in those paragraphs?

MR. FREEMAN: Yes.

THE COURT: What's your response?

MR. SHEASBY: Every single piece of prior art they've described as, quote, a non-infringing alternative to try to launder it, and it's the same thing. Non-infringing alternative is a very, very low bar, and so the idea -- and this is the other ones they don't use as non-infringing alternatives.

There's even more starker examples. They can talk about a non-infringing alternative without inserting a patent that's prior art to us into evidence in front of the jury because the invariable impact of this is to suggest it's invalidating. And so the distinction between this is background art -- everything that's background art is, of course, *ab initio* an alternative way of doing something because it's background art.

THE COURT: All right. Here's what we're going to do. This is not going to be pre-admitted. I don't want the jury to send me a note and ask for every patent that's an exhibit in the case and then I have to send this back to the jury when it's not an elected invalidating item of prior art. But it can be used as a demonstrative, and when the expert testifies about what's in his report and those paragraphs, Mr. Freeman, you can use it as a demonstrative with the witness, but it's not a pre-admitted exhibit. And that should protect against what I'm concerned about. All right?

MR. FREEMAN: Understood, Your Honor.

THE COURT: All right. What's next, counsel?

MR. SHEASBY: Your Honor, bucket 5, this is a series of claim charts that we presented to Samsung in negotiation. And I have no problem with the mere fact that the claim charts having been presented come in; it's a use issue that I'm concerned about, which is that some of the claim charts relate to invalidity contentions that we had dropped to narrow the case, and so--sorry--non-infringement contentions that we had dropped to narrow the case. And it's the use that I'm concerned about in which they try to use these charts to compare to prior art or to our current infringement allegations that would create serious complications for us.

So it's not the fact that we sent these charts in, they're going to be used for that purpose, it's fine; it's to

sort of use them as sort of some shoestring to create an invalidity argument that I'm concerned about.

THE COURT: I'm trying to remember a time when a similarly-situated party has actually moved to admit contentions, either infringement, non-infringement, validity, invalidity contentions as exhibits in the case. That seems very irregular to me.

MR. SHEASBY: Yeah. And so, to be clear, these are not our actual infringement contentions; these were charts we sent in negotiation to Samsung. I completely understand why it's proper for them to be admitted, and we don't object to their admission.

THE COURT: Have you proposed redactions to address what you're concerned about?

MR. SHEASBY: Our proposal is purely a use-based rule.

THE COURT: Okay.

MR. SHEASBY: That's what we propose. Because otherwise the redactions would make the documents meaningless. We just don't want them to be used to prove up an invalidity case.

THE COURT: Let me hear from Mr. Freeman on Samsung's position.

MR. FREEMAN: Your Honor, these are -- as Mr. Sheasby indicated at the end, these are claim charts that were

sent attached to correspondence in discussion negotiations. As Your Honor noted earlier, they're integral to the FRAND discussions --

THE COURT: Slow down, please, Mr. Freeman.

MR. FREEMAN: Apologies. They are integral to the FRAND discussions. Mr. Sheasby doesn't object to their admission. But there's no nefarious intent to come up with a surreptitious invalidity argument here; they are simply part of the FRAND negotiations. And as Your Honor indicated earlier, it wouldn't be proper to selectively admit these letters that were sent.

THE COURT: And you intend to use these with which witness?

MR. FREEMAN: This would be with Mr. Jeon and perhaps also Mr. Meyer.

THE COURT: Okay. Do you have any problem when you use these with those witnesses letting them confirm in response to a question that these relate only to the FRAND issue before the Court and don't relate to the issue of validity as to the asserted patents?

MR. FREEMAN: I believe that would be acceptable, Your Honor. Mr. Jeon certainly won't be talking about invalidity issues.

THE COURT: Then let's just -- I'm going to pre-admit them; I'm just going to instruct you to make them

clear when used with this witness that they are being used for that limited purpose and not invalidity or any other purpose.

MR. FREEMAN: Thank you.

THE COURT: And you doing it makes it very innocuous and shouldn't be a big deal.

MR. FREEMAN: Understood.

THE COURT: All right. Let's do it that way. These will be pre-admitted with that instruction.

What's left, Mr. Sheasby?

MR. SHEASBY: So the last thing that's left is DTX 17. It's ETSI documents. So this is a collection of all ETSI guidance that relates to DTX 17 -- that relates to a large number of different subjects. And we proposed redactions so it solely relates -- let me give you an example. There is stuff about disclosure and your obligations of when you need to disclose a patent.

THE COURT: How many pages in length is this document?

MR. SHEASBY: I think it's hundreds of pages.

THE COURT: Okay.

MR. SHEASBY: So what we did is -- there's two parts that have some relevance. It's the guidelines on intellectual property and it's the policy on intellectual property. And within those there's two parts. There's the FRAND negotiation part and there's the part about disclosing how you disclose

patents and when you need to disclose them and having an obligation to disclose.

We have no problem with the FRAND negotiation parts coming in. It's all this discussion about when you have to disclose, how you disclose, who you disclose that is completely irrelevant to any issue in this case. There's not a failure of disclosure issue before the jury. In fact, there's not even one before the Court on equity.

And so we proposed redactions to them we felt were in good faith and we just haven't been able to move them off of this. They want the entire guidelines and the entire directive on IP to come in.

THE COURT: All right. Let me hear from Samsung.

Are you going to use every one of these hundreds of pages, Mr. Freeman?

MR. FREEMAN: Certainly not, Your Honor. The issue here is simply -- there's no dispute that this document is relevant. And it's the ETSI IPR policy; it's central to the FRAND issues. There's no dispute that it's relevant.

And I know we've used the slicing bologna argument, but I'm afraid I'll do it again. There's simply not an obligation to slice the bologna so thin as to, you know, discuss the relevance of each and every page and paragraph within it. We don't intend to look at each and every page, but G+ exposed extensive redactions to the document. Candidly, Your Honor,

we think that adding all of these redactions would introduce more confusion.

The document -- you asked about the length. It's about an inch thick. It's several hundred pages. We're not going to be pointing the jury to all these various sections, but, you know, by redacting and hiding certain sections, that just introduces certain confusion. The jury can certainly focus on the aspects that we point them to.

I will highlight one particular redaction that was proposed. This is not the proposed redactions; this is just a blank copy. But the section 4 disclosure of IPRs was proposed to be redacted. Yes, there's not a dispute that these patents were, in fact, disclosed to ETSI. That doesn't mean that we should redact the fact that there is, in fact, a policy to do such a thing.

THE COURT: All right. I've heard enough. I'm going to pre-admit DTX 17. If somebody decides they want to pursue some esoteric provision that doesn't relate to the relevant issues before the Court, the other party can object to relevance at the time and I can keep it out then, but I think to go through and try to redact a portion here and a portion there at this point of a document that length, A, it's probably not practical, and B, peppering it with redactions probably somewhat calls its validity into question in the minds of the jury and makes it something different than the

simple unredacted document.

It is relevant in large part. If somebody purports to use it in a way that goes outside of the actual issues before the jury, then you can make a relevance objection at that time and I'll take it up, but I'm not going to order it redacted at this point. I'm going to trust both sides to use it properly, to use it fairly, and if somebody strays from that I can deal with it at the time. Okay?

MR. FREEMAN: Understood.

THE COURT: It's pre-admitted.

What else do we have by way of disputed objections?

MR. SHEASBY: Your Honor, I believe that is it.

THE COURT: Are you aware of anything further, Mr. Freeman?

MR. FREEMAN: Not at this time.

THE COURT: All right. Then we still have the issue -- the late-breaking issue of Mr. Cordell's obligations in the District of Delaware on December the 11th. I understand there's now a formal motion for continuance that's been filed, and as was made clear yesterday, I don't think the Plaintiff wants to insist on the ordinary briefing schedule, but has made their position known. I'm happy to hear argument on this.

It's your motion, Mr. Cordell. Let me hear from you first.

MR. CORDELL: Thank you, Your Honor. Ruffin Cordell for Samsung.

This is an unfortunate set of events. You know, I wish I could somehow change things, but I can't. The trial that I have in Delaware has been continued twice. It was continued once because of a foreign evidence issue that had to be developed, and then it was continued the second time because of the unfortunate death of our primary witness right before a July setting.

Judge Connolly made it as crystal clear as he could that the case was going to go forward, and his appointment of the -- an additional judge was really in service of making sure that it went forward. So it wasn't a case where his expectation was anything other than that the case would proceed.

I understand Mr. Sheasby's argument from yesterday. He really wants his client to have his day in court, and I understand that completely. Mr. Sheasby said something about due process, but, you know, Samsung also has due process rights, they have asked me to try the case, I'm their choice of counsel, and it seems that, you know, they have a due process right to choose who will actually represent them.

So again, I apologize profusely for this situation, I hate to be the fly in the ointment, but that's where I find myself. And so with that I --

THE COURT: Let me ask you this. Based on communications between the Court and the parties, I've made it clear that I have a trial term available -- likely available on the 8th of January. Do you have problems with trying this case on the 8th of January?

MR. CORDELL: So I do not and my trial team does not. We are having to work with our witnesses that have competing trial considerations. Mr. Sheasby and I visited this morning about perhaps exploring starting our trial perhaps a day or two late so that we would have a little bit of a window of time where the witnesses wouldn't have to be in two trials at the exact same time, and that -- the witnesses involved are our damages expert and our survey expert. They tend to go on at the end of the case. And so our hope was that we would be able to find a window that would fit and still take advantage of the Court's week that would allow us to try the case.

THE COURT: In other words, you think if they go on at the end of your case tried here they'll be through with whatever they're involved in other places?

MR. CORDELL: That's my hope. But I'm afraid we would have to slip it just a bit, so perhaps not start on the 8th, but start a day or two later such that there would be an assured window where they wouldn't have trial commitments elsewhere.

But Mr. -- in fairness, Mr. Sheasby has to check with his client. He made that helpful proposal, but he made it clear that he couldn't -- you know, he couldn't dictate this on his own.

THE COURT: Well, I don't know that I've formally granted a continuance in this case before. It is my recollection that this case has been in line to be tried and not reached heretofore. This is not the first time it's been set, but I understand the factual problems that you presented.

Mr. Sheasby, let me hear from you on this, and I'd like you to also, as part what you're going to tell me, address your client's ability to try this case in early January as opposed to mid-December.

MR. SHEASBY: Let me start by saying that I have nothing but a personal respect for Mr. Cordell and I impute no ill-will whatsoever to anything that has occurred.

Having said that, this case was originally scheduled for trial in early November. The Court did not -- took it off that setting in early November and put it onto a setting right after Thanksgiving. I had asked the Court to keep that setting when the Court was inclined to move that. I know exactly why the Court was inclined to move that. The Court did the honorable thing by not keeping the setting at Thanksgiving -- after Thanksgiving, but the end result of it is that every single time we have the opportunity to try this

case, something comes up that blocks it from being tried.

I think the appropriate step for Mr. Cordell to take when Chief Judge Connolly said on the 17th of November, You're going to Judge Hall, was to ask Judge Hall to continue her trial--who's a new judge, who could probably use the extra week so that this trial could proceed since it had already been set for this date, and it was set for this date after being continued from the 27th.

I understand that -- and I'm sure it wasn't Mr. Cordell; I'm sure it was his client who blocked him from doing that, and I understand you have to do what your client tells you to do, but the end result of this is that a judge who literally got this case on November 17th is going to destroy the schedule that we've been waiting for three times to try this case, and that strikes me as deeply inequitable.

Now, I did in good faith explore the opportunity. If there was a possibility of a realistic setting on January 8th, I would have jumped at it. I have two problems. I have the largest most important PTAB argument of my career on the 11th, and my client -- it's for a case that you're involved with, Your Honor. My client has made absolutely clear that there is no way that they will accept a continuance on that or allow me to even request one.

THE COURT: You are talking about January the 11th?

MR. SHEASBY: January the 11th. I checked. The

client has absolutely forbidden me to even request a continuance from the PTAB.

The other problem is, is that the challenges that we are facing on the 11th are going to be vast. So Mr. Meyer is in the United Kingdom, and those cases go on forever. And Mr. Simonson, I don't know where he is. Now, the idea of starting mid -- later, the problem with that is I have a trial in front of Your Honor on the second setting in January, and I asked my client would they feel comfortable allowing me to have two back-to-back trials in front of Your Honor, and the client who is scheduled in January said, Absolutely not; you'll be prejudicing us; that is completely inappropriate.

So I'm in a situation where I have clients who are forbidding me from accepting a January 11th -- January 8th setting or a January -- a January 8th setting. Both of them are very principled because it will profoundly impact my ability.

THE COURT: Refresh my recollection. What's the other case with the other client that's set January 22nd?

MR. SHEASBY: It's Netlist versus Micron. And it's a crucially important case for --

THE COURT: Every case is crucially important, especially to the client.

MR. SHEASBY: Yes. And I understand that, Your Honor, but I have to say their views on it.

THE COURT: I understand.

MR. SHEASBY: I have a fiduciary -- and so I just wish there was another way to do it.

And what bothers me is that -- so Maxwell, Mr. Cordell's client, is Tesla. It's one of the largest companies in the world. They're not asking Judge Hall for a continuance. The only person who gets pounded down in all of this is my client, who has already paid a lease, who has spent significant amounts of money for us to try it next week, the week after next, and they are getting the short stick on this, and I just struggle with how to balance that equity. It would be one thing if Mr. --

THE COURT: How much have they paid on that lease, Mr. Sheasby?

MR. SHEASBY: $12,000 for the lease, $10,000 for the caterer, and then we have a truck that I think's $30,000 that's driving out all the stuff. So it's about $100,000 when it's all in that's going to cause them to shift. And that's not peanuts for this client.

And so when I take in all of those issues, I just feel -- it would be one thing if Maxwell Technologies had participated in this morass in good faith by asking Judge Hall for a continuance in light of this. Maxwell is not asking for a continuance, they don't care about this Court, and they don't care about what we're going through. They want to do

what's right for them.

I don't understand why the chief judge of this Court has to accommodate a magistrate judge who got a case a week ago who's not being asked to accommodate her schedule and we're the parties have to be burdened by this. It just doesn't make sense. This is not Mr. Cordell; this is Mr. Cordell's client Maxwell. It strikes me as, at best, haughty, and, at worst, disrespectful to what's going on here. And it's not Mr. Cordell. I'll say that again and again. But that's my peace, Your Honor.

THE COURT: So I take it, Mr. Sheasby, that you're not available to try this case somewhere at or near the week of the 8th of January.

MR. SHEASBY: I am not, Your Honor.

THE COURT: What can you add, Mr. Cordell?

MR. CORDELL: Well, just looking at the calendar, Your Honor, what if we advanced the date? Now, I will certainly be resoundingly tarred and feathered if I suggested we started too early, but what if we started the 4th? Could we not shoehorn in the trial, get clear of the holidays, shoehorn in the trial.

THE COURT: Well, we've got the problem that Mr. Sheasby just represented that his client's opposed to him trying two cases in the same month in this court, as I understood it.

MR. SHEASBY: That's correct, Your Honor.

THE COURT: I'm not sure what the logic is there.

MR. CORDELL: Just that it would advance -- it would put everything before the conflicting dates I guess is the idea. And I can assure Your Honor that it's -- Judge Hall was given the case *ex cathedra* and --

THE COURT: I'm not going to get into the interactions between the Delaware judges and this Court, and I'm not going to respond to the references to a mere magistrate judge. She's already been confirmed as a United States district judge; she's just got to take the oath. That's not what this is about.

MR. CORDELL: Thank you.

THE COURT: I'm not going to respond to that.

Can you and/or your client make some monetary concession to Mr. Sheasby's client if I move this and they have to bear some of the cost he's talked about?

MR. CORDELL: I can certainly explore that. I can't commit them, but I think that would be something that they would certainly consider; should consider.

THE COURT: And Mr. Sheasby, if the Court were to move this from December 11th to, say, January 3rd or 4th so that you're done and out of here before your PTAB argument, you still are telling me that that's not what you want to do. Your client's telling you not to do that.

MR. SHEASBY: I'm forbidden to do it. I've been ordered to say I'm unavailable to try a case on that day.

THE COURT: And tell me precisely -- without revealing any attorney/client privilege, tell me what the real problem with that is.

MR. SHEASBY: Sure.

THE COURT: I mean, if you start a case starting January 3rd or 4th, you do your PTAB deal the 11th, and you're back here the 22nd to pick another jury, what's the harm here, other than it's a lot of work for a lawyer in a single month, but still that's common practice for you, as I understand it, so what's the problem?

MR. SHEASBY: So this PTAB hearing is very, very important to the client. The client has scheduled moots for me in advance of the PTAB hearing with ex-Federal Circuit judges and ex-PTAB judges hearing the moots. This is being prepared for the way an oral argument the Federal Circuit would be prepared for, and they want me to have that week to be prepared for it.

THE COURT: Okay. So this is about the PTAB argument; it's not about trying two cases in one month.

MR. SHEASBY: No, that's the reason why shifting back doesn't work.

THE COURT: Okay.

MR. SHEASBY: Yeah. And, frankly, it would be

excruciating for me to do all that. I go on one trip a year with my family, it's between Christmas and New Year. The idea that -- it's just -- that month would be the worst month of my life, unless I won everything, in which case it would be the best month.

MR. CORDELL: I certainly am sympathetic to Mr. Sheasby's schedule and his conflicts. February is wide open, Your Honor, if -- to the extent that that -- you know, would pose a solution.

THE COURT: Well, February may be wide open on your calendar; it's not on mine.

All right. Does anybody have anything else that they need to add to this discussion that I haven't heard? I take it that you both fully expressed your positions.

MR. CORDELL: The only other thing I'll throw in, Your Honor, you had asked me what the status of negotiations were for the Delaware matter, and I have confirmed that they are dead.

THE COURT: All right. Well, that raises the other side of the coin. Are there discussions in this case between you parties? I understood somebody told me Mr. Baxter made an offer last night. Are they dead in this case? Are we worrying about something that's going to go away and not be a problem?

MR. SHEASBY: I think this case is really going to

have to be tried, based on where we have -- but we did move last night. And the only thing I would request is that -- I would just request that before this continuance is granted, that Maxwell Technologies request a continuance formally as well. That seems to me that that's at least an equitable thing to have happen.

THE COURT: Well, I don't know that I can order or should order another party in another court to request a continuance before a different judge.

MR. SHEASBY: I know you can't do that, but you can certainly sit on this issue until Maxwell I think treats -- behaves in a way that I would view as equitable to what's going on here.

THE COURT: Well, this is the first of December. We're talking about the 11th of December. The clock is running.

MR. SHEASBY: I understand, Your Honor. I understand. This is a bad situation.

THE COURT: It is. And sometimes difficult situations present themselves despite best efforts of the participants, and that's really what I attribute this to.

MR. SHEASBY: It's definitely not Mr. Cordell's fault. There's no doubt about it in my mind; it's not.

THE COURT: You haven't yet said it wasn't my fault, but that's okay.

MR. SHEASBY: Well, Your Honor, the President gave you a commission that makes it as a matter of the Constitution not your fault.

THE COURT: Well... all right. I'm going to continue the trial from December the 11th. I'm going to reset it. I'm going to specially set it for January the 22nd. I'm going to stop one-half short -- one-half step short of actually ordering you to do this, Mr. Cordell, but you need -- your client needs to pay Mr. Sheasby's client $25,000 to partially offset the financial impact of this, and I expect that to happen.

And I can tell Mr. Sheasby that the other case that is now currently set on the 22nd is not going to be tried back to back to G+. There will be something else tried before you have to come back and try that next case. All right? I can't tell you exactly when or how far apart, but they won't be back-to-back.

MR. SHEASBY: Thank you, Your Honor.

THE COURT: And that is the best in a bad situation that I know we can do. That's going to be the Court's decision.

MR. CORDELL: Thank you.

THE COURT: All right. Are there other matters in advance of selecting the jury in the G+/Samsung case that haven't been addressed, other than the additional briefing

that I ordered? And I did that in chambers, so I'm going to repeat it on the record and perhaps clarify it.

I want a letter brief from both sides, separate letter briefing of not more than -- I think I said this morning eight pages; I'll make it 10, not more than 10 pages from each side on the law applicable to the arguments we heard yesterday concerning whether the conduct of ZTE and its license negotiations at, during, and before the acquisition of these patents by G+ is somehow on -- with regard to the FRAND obligation and the obligation of good faith and fair dealing, if that is somehow and on what basis imputable to G+, short of direct evidence of some conspiracy or direct intent to act jointly. Assuming that there's no evidence that G+ colluded or conspired with ZTE in that conduct, if they are, in fact, at arms length in that regard and they are separate entities, how and to what extent and under what requirements would ZTE's conduct in the FRAND construct be imputable to G+.

And I told you 10 days. I guess 10 days is not a problem. If we were still going to go to trial the 11th, I'd probably shorten that, but 10 days is still -- that is not a problem in light of the continuance I'm granting. So I want that within 10 days.

Now, in addition to that, what else has been overlooked or needs to be addressed before this case is packaged up with a bow on top ready to be tried?

MR. SHEASBY: So, Your Honor, there are three issues. There is a motion to supplement Mr. Dell's report based on the late deposition of Mr. Jeon. There's a motion to supplement the -- Mr. Meyer's report based on the late deposition of Mr. Jeon. It's my impression that both those motions can be decided on the papers and that there is no need for oral argument on them. So that's -- in my mind, those are the two outstanding motions.

MR. CORDELL: I think that's right, Your Honor.

THE COURT: And those are fully briefed at this point, or is there briefing still coming in?

MR. SHEASBY: No, it's fully briefed.

MR. CORDELL: I think so, but I can't swear to that.

THE COURT: All right.

MR. SHEASBY: You have opening and opposition briefs on both of them, Your Honor.

THE COURT: All right. I'm take those up and decide them on the papers.

What else?

MR. SHEASBY: Your Honor, just I would like to thank you for allowing me to speak about my client's concerns, and I appreciate the Court's indulgence. Obviously this is very difficult when clients instruct you to take positions. And I understand you were faced with a very difficult situation, and I'm grateful for your patience.

THE COURT: Mr. Sheasby, I practiced law 30 years before taking the bench. I've had clients instruct me to do things I didn't necessarily want to do either. I understand fully where you're coming from.

MR. SHEASBY: Thank you very much, Your Honor.

THE COURT: Anything further from your side, Mr. Cordell?

MR. CORDELL: No, Your Honor. Thank you.

THE COURT: All right. That will complete the pretrial hearing before the Court in the G+ Communications versus Samsung Electronics matter.

Court stands in recess.

(The proceedings were concluded at 10:50 a.m.)

I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER. I FURTHER CERTIFY THAT THE TRANSCRIPT FEES FORMAT COMPLY WITH THOSE PRESCRIBED BY THE COURT AND THE JUDICIAL CONFERENCE OF THE UNITED STATES.

S/Shawn McRoberts 12/05/2023

_____DATE_____
SHAWN McROBERTS, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER

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CONFIDENTIAL INFORMATION
HAS BEEN REMOVED FROM THIS PAGE

Order (ECF 548)

ISSUED UNDER SEAL
Pursuant to Protective Order

Appx416-420

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

G+ COMMUNICATIONS, LLC, *Plaintiff,* v. SAMSUNG ELECTRONICS CO., LTD. and SAMSUNG ELECTRONICS AMERICA, INC., *Defendants.*	§ § § § § § § § § § §	CIVIL ACTION NO. 2:22-CV-00078-JRG

VERDICT FORM

In answering the following questions and completing this Verdict Form, you are to follow all the instructions that I have given you in the Court's Final Jury Instructions. Your answers to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Final Jury Instructions. You should refer to and consider the Final Jury Instructions as you answer the questions in this Verdict Form.

As used herein, the following terms have the following meanings:

- "**Plaintiff**" or "**G+**" refers to Plaintiff G+ Communications, LLC.
- "**Defendants**" or "**Samsung**" refers to Defendants Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc.
- The "**'776 Patent**" refers to U.S. Patent No. 8,761,776.
- The "**'130 Patent**" refers to U.S. Patent No. 10,736,130.
- The "**'443 Patent**" refers to U.S. Patent No. 10,564,443.
- The "**Asserted Patents**" refers collectively to the '776 Patent, the '130 Patent, and the '443 Patent.
- The "**Asserted Claims**" refers collectively to Claims 1 and 2 of the '776 Patent, Claim 20 of the '130 Patent, and Claim 10 of the '443 Patent.

IT IS VERY IMPORTANT THAT YOU FOLLOW THE INSTRUCTIONS PROVIDED IN THIS VERDICT FORM

READ THEM CAREFULLY AND ENSURE THAT YOUR VERDICT COMPLIES WITH THEM

QUESTION NO. 1a:

Did G+ prove by a preponderance of the evidence that Samsung infringed Claim 1 and/or Claim 2 of the **'776 Patent**?

Yes: ✓ **OR** No: _____

QUESTION NO. 1b:

Did G+ prove by a preponderance of the evidence that Samsung infringed Claim 20 of the **'130 Patent**?

Yes: ✓ **OR** No: _____

QUESTION NO. 1c:

Did G+ prove by a preponderance of the evidence that Samsung infringed Claim 10 of the **'443 Patent**?

Yes: _____ **OR** No: ✓

QUESTION NO. 2:

Did Samsung prove by clear and convincing evidence that ANY of the following Asserted Claims involve only technologies and activities that, both alone and in combination, were **well-understood, routine, and conventional** from the perspective of a person of ordinary skill in the art as of the priority date of the Asserted Patents?

Answer "Yes" or "No" for **EACH** of the Asserted Claims listed below.

Claim 1 of the '776 Patent	Yes: _____	**OR**	No: ✓
Claim 2 of the '776 Patent	Yes: _____	**OR**	No: ✓
Claim 10 of the '443 Patent	Yes: ✓	**OR**	No: _____

QUESTION NO. 3:

Did Samsung prove by clear and convincing evidence that ANY of the following Asserted Claims are **invalid** as **anticipated, obvious, and/or lacking adequate written description**?

Answer "Yes" or "No" for **EACH** of the Asserted Claims listed below.

Claim 1 of the '776 Patent	Yes: _____	**OR**	No: ✓
Claim 2 of the '776 Patent	Yes: _____	**OR**	No: ✓
Claim 10 of the '443 Patent	Yes: _____	**OR**	No: ✓
Claim 20 of the '130 Patent	Yes: _____	**OR**	No: ✓

If you answered NO on Question Nos. 1a, 1b AND, 1c, then DO NOT answer Question Nos. 4a – 4d.

Answer Question Nos. 4a – 4d ONLY as to any Asserted Claim that you have found to be infringed (see Question Nos. 1a, 1b, and 1c), AND not ineligible (see Question No. 2), AND not invalid (see Question No. 3).

QUESTION NO. 4a:

What sum of money, if paid now in cash, do you find by a preponderance of the evidence would fairly and reasonably compensate G+ for Samsung's infringement of the **'776 Patent**?

Answer in United States Dollars and Cents, if any:

$ 45,000,000.00

QUESTION NO. 4b:

What sum of money, if paid now in cash, do you find by a preponderance of the evidence would fairly and reasonably compensate G+ for Samsung's infringement of the **'130 Patent**?

Answer in United States Dollars and Cents, if any:

$ 22,500,000.00

QUESTION NO. 4c:

What sum of money, if paid now in cash, do you find by a preponderance of the evidence would fairly and reasonably compensate G+ for Samsung's infringement of the **'443 Patent**?

Answer in United States Dollars and Cents, if any:

$ -0-

QUESTION NO. 4d:

Are the reasonable royalties that you found in Question Nos. 4a – 4c **Running Royalties** for past sales only or one-time **Lump Sums** for past and future sales?

Running royalties ✓ **OR** Lump sum royalties _____

Regardless of how you answered all prior questions, please proceed to answer Question Nos. 5 – 8.

QUESTION NO. 5:

Did Samsung prove by a preponderance of the evidence that **G+ breached** its **FRAND** obligation by failing to offer a license to the Asserted Patents to Samsung that was fair, reasonable, and non-discriminatory, and by failing to act in good faith regarding negotiations with Samsung as to a **FRAND** license covering the Asserted Patents?

Yes: _____ **OR** No: ✓

Answer Question No. 6 ONLY IF you answered YES to Question No. 5.

QUESTION NO. 6:

What sum of money, if any, has Samsung proven by a preponderance of the evidence would compensate it for G+'s breach of its FRAND obligation?

Answer in United States Dollars and Cents, if any:

$_____

QUESTION NO. 7:

Did G+ prove by a preponderance of the evidence that **Samsung breached** its **FRAND** obligation by failing to act in good faith regarding negotiations with G+ as to a **FRAND** license covering the Asserted Patents?

Yes: _____ **OR** No: ✓

Answer Question No. 8 ONLY IF you answered YES to Question No. 7.

QUESTION NO. 8:

What sum of money, if any, has G+ proven by a preponderance of the evidence would compensate it for Samsung's FRAND obligation?

Answer in United States Dollars and Cents, if any:

$_____

FINAL PAGE OF THE JURY VERDICT FORM

You have now reached the end of the Verdict Form and should review it to ensure that it accurately reflects your unanimous determinations. The Jury Foreperson should then sign and date the Verdict Form in the spaces below. Once this is done, notify the Court Security Officer that you have reached a verdict. The Jury Foreperson should keep the Verdict Form and bring it when the jury is brought back into the courtroom.

Signed this 26 day of January, 2024.

_____
Jury Foreperson

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

G+ COMMUNICATIONS, LLC, *Plaintiff*, v. SAMSUNG ELECTRONICS CO., LTD. and SAMSUNG ELECTRONICS AMERICA, INC., *Defendants*.	§ § § § § § § § § § §	CIVIL ACTION NO. 2:22-CV-00078-JRG

VERDICT FORM

In answering the following questions and completing this Verdict Form, you are to follow all the instructions that I have given you in the Court's Final Jury Instructions. Your answers to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Final Jury Instructions. You should refer to and consider the Final Jury Instructions as you answer the questions in this Verdict Form.

As used herein, the following terms have the following meanings:

- "**Plaintiff**" or "**G+**" refers to Plaintiff G+ Communications, LLC.
- "**Defendants**" or "**Samsung**" refers to Defendants Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc.
- The "**'776 Patent**" refers to U.S. Patent No. 8,761,776.
- The "**'130 Patent**" refers to U.S. Patent No. 10,736,130.

IT IS VERY IMPORTANT THAT YOU FOLLOW THE INSTRUCTIONS PROVIDED IN THIS VERDICT FORM

READ THEM CAREFULLY AND ENSURE THAT YOUR VERDICT COMPLIES WITH THEM

QUESTION NO. 1:

What sum of money, if paid now in cash, do you find by a preponderance of the evidence would fairly and reasonably compensate G+ for Samsung's infringement of the **'776 Patent**?

Answer in United States Dollars and Cents, if any:

$ 61,000,000.00

QUESTION NO. 2:

What sum of money, if paid now in cash, do you find by a preponderance of the evidence would fairly and reasonably compensate G+ for Samsung's infringement of the **'130 Patent**?

Answer in United States Dollars and Cents, if any:

$ 81,000,000.00

FINAL PAGE OF THE JURY VERDICT FORM

You have now reached the end of the Verdict Form and should review it to ensure that it accurately reflects your unanimous determinations. The Jury Foreperson should then sign and date the Verdict Form in the spaces below. Once this is done, notify the Court Security Officer that you have reached a verdict. The Jury Foreperson should keep the Verdict Form and bring it when the jury is brought back into the courtroom.

Signed this 16 day of April, 2024.

_____

Jury Foreperson

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

G+ COMMUNICATIONS, LLC, *Plaintiff*, v. SAMSUNG ELECTRONICS CO., LTD., and SAMSUNG ELECTRONICS AMERICA, INC., *Defendants*.	§ § § § § § § § § § §	CIVIL ACTION NO. 2:22-CV-00078-JRG

ORDER

The Court issues this Order *sua sponte*. On April 15, 2024, the Court empaneled a jury for a re-trial on damages related to U.S. Patent Nos. 8,761,776 (the "'776 Patent") and 10,736,130 (the "'130 Patent"). *See* (Dkt. No. 629).[1] The jury returned a verdict that G+ Communications, LLC ("Plaintiff") was entitled to $61,000,000 for Defendants' infringement of the '776 Patent and $81,000,000 for Defendants' infringement of the '130 Patent. (Dkt. No. 631 at 4). The Court subsequently stayed this action pending the outcome of mediation between the parties. (Dkt. No. 636). During the parties' mediation efforts, the Patent Trial and Appeal Board found the only claim of the '130 Patent asserted in this case—claim 20—to be unpatentable. *See Samsung Electronics Co., Ltd., et al. v. G+ Communications, LLC*, IPR2023-00171, Dkt. No. 34 at 41 (P.T.A.B. Apr. 29, 2024). The parties' continuing mediation efforts post-trial have now resulted in an impasse. Accordingly, the Court **ORDERS** that the stay of this case is **LIFTED**.

[1] At the original trial, the jury found that Defendants did not infringe asserted claim 10 of U.S. Patent No. 10,564,443 (the "'443 Patent"). (Dkt. No. 584 at 2).

Furthermore, in view of the results of the recent re-trial of damages (Dkt. No. 631) and the PTAB's finding that asserted claim 20 of the '130 Patent is unpatentable, the Court is of the opinion that judicial efficiency would be served by severing and staying Plaintiff's claim of infringement related to the '130 Patent. Accordingly, it is **ORDERED** that Plaintiff's claim of infringement by Defendants related to the '130 Patent is **SEVERED** into a separate case. The Clerk of Court is directed to designate a new case number for the severed case. It is further **ORDERED** that the severed case is **STAYED** in its entirety until further order of this Court. Upon a decision from the Federal Circuit as to the appeal of the PTAB's decision on the '130 Patent, the parties shall file a joint notice of the same in the severed and stayed case; such joint notice to be filed within seven (7) days from the issuance of the decision of the Federal Circuit. The Court will proceed to enter Final Judgment as to the claims of the '776 Patent and '443 Patent by separate order as part of this case.

So Ordered this
Jun 13, 2024

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

G+ COMMUNICATIONS, LLC, *Plaintiff*, v. SAMSUNG ELECTRONICS CO., LTD., and SAMSUNG ELECTRONICS AMERICA, INC., *Defendants.*	Civil Action No. 2:22-CV-78-JRG **JURY TRIAL DEMANDED**

AMENDED FINAL JUDGMENT

A jury trial commenced in the above-captioned case on January 19, 2024, and on January 24, 2024, the jury reached and returned its unanimous verdict finding that Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. ("Defendants") did not infringe claim 10 of U.S. Patent No. 10,564,443 (the "'443 Patent"), that Defendants did infringe claims 1 and/or 2 of U.S. Patent No. 8,761,776 (the "'776 Patent") and claim 20 of U.S. Patent No. 10,736,130 (the "'130 Patent"), that claim 10 of the '443 Patent involved only technologies and activities that, both alone and in combination, were well-understood, routine, and conventional, and that claims 1 and/or 2 of the '776 Patent do not involve only technologies and activities that, both alone and in combination, were well-understood, routine, and conventional. (Dkt. No. 584 at 4-5).[1] The jury also found that Defendants had failed to prove by clear and convincing evidence that any of the asserted claims of the asserted patents were invalid as anticipated, obvious, and/or lacking adequate written description. (*Id.* at 6). Finally, the jury found that neither Plaintiff G+

[1] The Court previously determined that claim 10 of the '443 Patent and claims 1 and 2 of the '776 Patent were directed to an abstract idea. (Dkt. No. 548 at 3).

Communications, LLC ("Plaintiff") nor Defendants had breached their respective FRAND obligations. (*Id.* at 9-10). The jury in this original trial awarded damages for Defendants' infringement of the '776 Patent and the '130 Patent, but this Court set aside those amounts due to likely juror confusion and ordered a re-trial on damages for the '776 Patent and the '130 Patent. (Dkt. No. 607).

On April 15, 2024, the Court empaneled a jury for the re-trial on damages related to Defendants' infringement of the '776 Patent and the '130 Patent. *See* (Dkt. No. 629). The jury returned a verdict that Plaintiff was entitled to $61,000,000 for Defendants' infringement of the '776 Patent and $81,000,000 for Defendants' infringement of the '130 Patent. (Dkt. No. 631 at 4). The Court subsequently severed and stayed G+'s claim of infringement related to the '130 Patent. (Dkt. No. 639).

Pursuant to Rule 58 of the Federal Rules of Civil Procedure, and in accordance with the jury's unanimous verdict and the entirety of the record with respect to the '443 Patent and the '776 Patent, the Court hereby **ORDERS** and **ENTERS JUDGMENT** as follows:

1. Defendants have not infringed claim 10 of U.S. Patent No. 10,564,443;
2. Defendants have infringed claims 1 and/or 2 of U.S. Patent No. 8,761,776;
3. Claim 10 of U.S. Patent No. 10,564,443 is invalid as claiming patent ineligible subject matter under 35 U.S.C. § 101;
4. Claims 1 and/or 2 of U.S. Patent No. 8,761,776 are not invalid as claiming patent ineligible subject matter under 35 U.S.C. § 101;
5. Claims 1 and/or 2 of U.S. Patent No. 8,761,776 and claim 10 of U.S. Patent No. 10,564,443 are not invalid as anticipated, obvious, and/or lacking adequate written description;

6. Plaintiff did not breach its FRAND obligation;

7. Defendants did not breach their FRAND obligation;

8. Plaintiff is hereby awarded compensatory damages for infringement from and against Defendants, and Plaintiff shall accordingly have and recover from Defendants, jointly and severally, the sum of $61,000,000.00 U.S. Dollars, all of which is a reasonable royalty in the form of a one-time lump sum payment;

9. Pursuant to 35 U.S.C. § 284 and Supreme Court guidance that "prejudgment interest shall ordinarily be awarded absent some justification for withholding such an award,"[2] the Court awards pre-judgment interest to Plaintiff to be recovered by Plaintiff from Defendants and applicable to all sums awarded herein, calculated at the five-year U.S. Treasury Bill rate, compounded monthly, adjusting the effective rate with each and every change in said five-year U.S. Treasury Bill rate from the date of the infringement began;

10. Pursuant to 28 U.S.C. § 1961, the Court awards post-judgment interest applicable to all sums awarded herein, at the statutory rate, from the date of entry of this Judgment until paid; and

11. Pursuant to Federal Rule of Civil Procedure 54(d), Local Rule CV-54, and 28 U.S.C. § 1920, Plaintiff is the prevailing party in this case and shall recover their costs from Defendants. Plaintiff is directed to file its proposed Bill of Costs.

Any request for relief pursuant to 35 U.S.C. § 285 must be filed as a subsequent motion herein within 28 days of this Judgment. All other requests for relief now pending and requested by either party but not specifically addressed herein are **DENIED**.

[2] *General Motors Corp. v. Devex Corp.*, 461 U.S. 648, 657 (1983).

So ORDERED and SIGNED this 3rd day of July, 2024.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

CONFIDENTIAL INFORMATION
HAS BEEN REMOVED FROM THIS PAGE

Memorandum Opinion and Order (ECF 690)

ISSUED UNDER SEAL
Pursuant to Protective Order

Appx443-461

US008761776B2

EXHIBIT A

(12) **United States Patent**
Huang et al.

(10) **Patent No.: US 8,761,776 B2**
(45) **Date of Patent: Jun. 24, 2014**

(54) **CELL RESELECTION METHOD AND TERMINAL**

(75) Inventors: **Yada Huang**, Shenzhen (CN); **Zhongda Du**, Shenzhen (CN)

(73) Assignee: **ZTE Corporation**, Shenzhen (CN)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 275 days.

(21) Appl. No.: **13/062,080**

(22) PCT Filed: **Apr. 14, 2009**

(86) PCT No.: **PCT/CN2009/071266**

§ 371 (c)(1),
(2), (4) Date: **Mar. 3, 2011**

(87) PCT Pub. No.: **WO2010/031258**

PCT Pub. Date: **Mar. 25, 2010**

(65) **Prior Publication Data**

US 2011/0165909 A1 Jul. 7, 2011

(30) **Foreign Application Priority Data**

Sep. 19, 2008 (CN) 2008 1 0211571

(51) **Int. Cl.**
H04W 36/00 (2009.01)

(52) **U.S. Cl.**
USPC **455/444**; 455/433; 455/434; 455/436; 455/437; 455/438; 455/439; 455/440; 455/441; 455/442; 455/443

(58) **Field of Classification Search**
CPC H04W 48/16; H04W 48/20; H04W 48/18; H04W 36/30; H04W 36/14; H04W 36/08; H04W 36/04
USPC 455/433, 434, 444
See application file for complete search history.

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(Continued)

Primary Examiner — Liton Miah
(74) *Attorney, Agent, or Firm* — Knobbe, Martens, Olsen & Bear, LLP

(57) **ABSTRACT**

The present invention provides a cell reselection method and terminal. The method includes: cells on multiple frequencies with the same priority are set as same-priority cells. The terminal comprises: a first reselection module, used to select cells on multiple frequencies with the same priority according to a priority-based reselection principle when a terminal performs cell reselection, wherein the cells on multiple frequencies with the same priority are same-priority cells; a second reselection module, used to select a cell as a reselected cell from the same-priority cells based on a best-cell reselection principle. The above technical solution enables the terminal to perform cell reselection quickly in a determined manner, and enables configuration of network parameters to achieve the intended purpose.

3 Claims, 2 Drawing Sheets

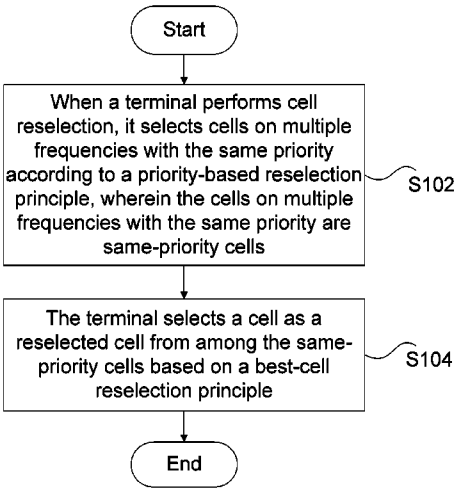

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FIG. 1

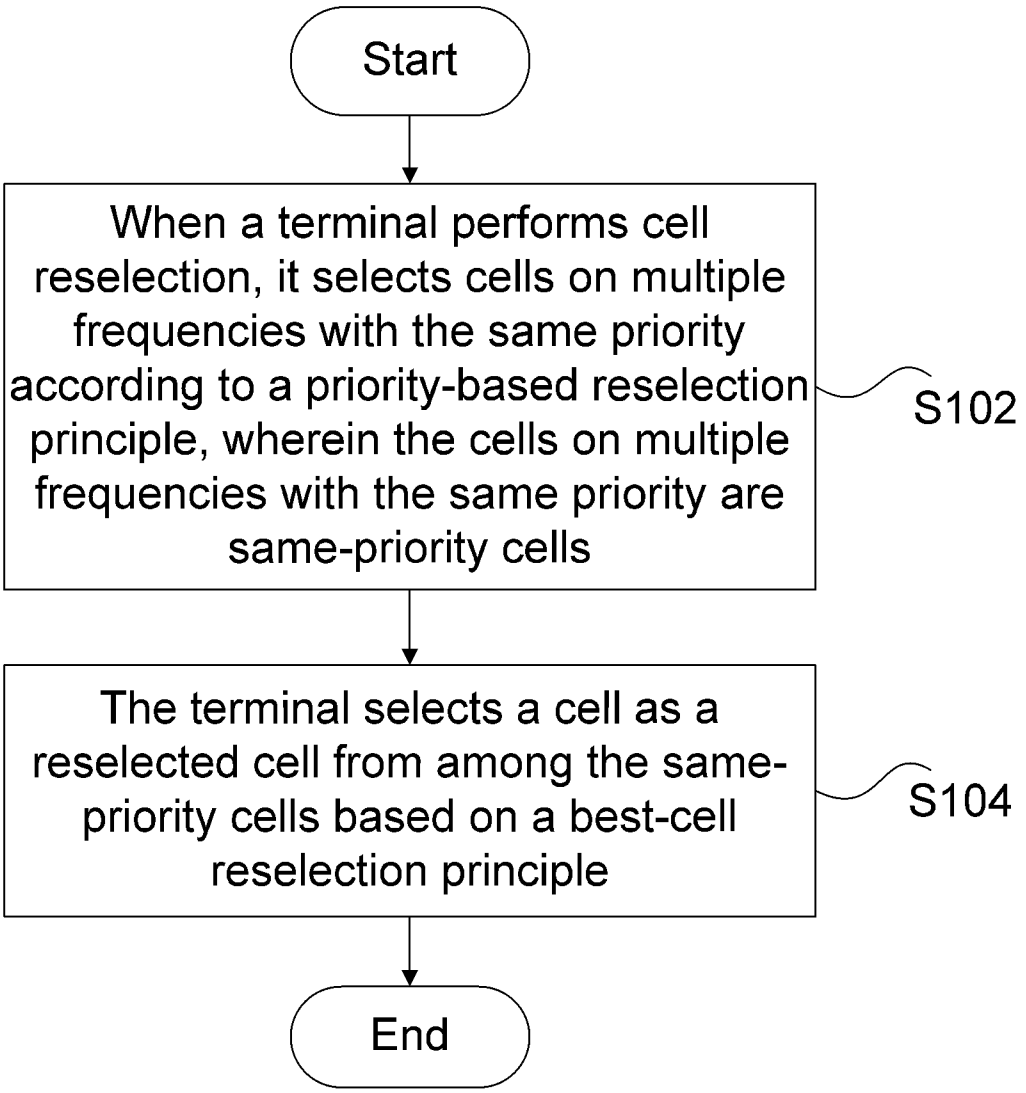
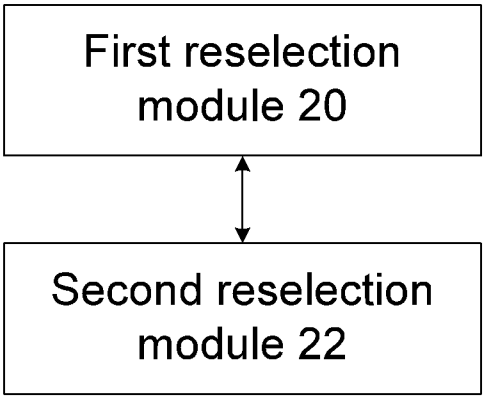

Start
When a terminal performs cell reselection, it selects cells on multiple frequencies with the same priority according to a priority-based reselection principle, wherein the cells on multiple frequencies with the same priority are same-priority cells
S102
The terminal selects a cell as a reselected cell from among the same-priority cells based on a best-cell reselection principle
S104
End

FIG. 2



CELL RESELECTION METHOD AND TERMINAL

TECHNICAL FIELD

The present invention relates to the field of communications, particularly to a cell reselection method and terminal.

BACKGROUND

At present, cell handover and reselection performed by a terminal is an important technique in a cellular mobile communication system. Specifically, when a user equipment (UE) leaves a cell and enters another one, a signal received from the original cell by the UE will become weaker, while a signal received from the cell that the UE is entering will get stronger. In order to maintain the quality of the signal received by the UE, the UE will transfer from the original base station to the new base station with a stronger signal.

With regard to a terminal in a connected state, this transfer between base stations is called handover. With regard to a terminal in an idle state, the change of a cell where the terminal camps is implemented via a cell reselection process, so it is necessary for the terminal to detect a target cell and perform cell reselection among the cells that meet requirements.

In a 3rd Generation (3G) mobile communication system, a terminal measures the quality of signals in different cells and compares the quality of the measured signals with the quality threshold of the signal in the serving cell. If the quality of a measured signal continuously meets the reselection standard within a specific time, the terminal will perform cell reselection and transfer to the cell with such signal quality.

Specifically, when the terminal performs cell reselection, it is required to measure the signal level or signal quality of its serving cell and neighbouring cells, then map the measured value of this serving cell into a cell reselection assessment value Rs, and map the measured value of a neighbouring cell into Rn. The Rs is compared with each Rn, and the cell ranked first is the cell with the best signal quality. When the best cell is not the cell where the terminal currently camps, the terminal will perform reselection and transfer to the best cell. Wherein the method of calculating Rs and Rn is determined by standard specifications. Parameters relating to calculation are distributed to the terminal via a broadcast channel of the serving cell.

An evolved universal terrestrial radio access network (E-UTRAN) system in a 3G mobile communication long term evolution (LTE) system continues to use the foregoing cell reselection method to perform intra-frequency cell reselection. Specifically, the terminal is required to calculate Rs=Qmeas,s+Qhysts, Rn=Qmeas,n−Qoffset, wherein s stands for a serving cell, n stands for a neighbouring cell, Qmeas,s stands for a measured level of a serving cell, Qmeas,n stands for a measured level of a neighbouring cell, Qhysts stands for the hysteresis of a serving cell, and Qoffset stands for a level offset of a neighbouring cell. After the calculation is completed, the terminal will rank all R values. The one ranked first is the best cell, the terminal will select the best cell when performing reselection. However, considering that the difficulty of reselection among neighbouring cells lies on not only the radio quality of these cells but also on the value of Qoffset, the foregoing reselection method through ranking R values is also called an offset-based cell reselection method.

As it is necessary to measure all intra-frequency and inter-frequency neighbouring cells when the offset-based cell reselection method is adopted, the terminal will consume more electric energy. As inter-frequency measurement requires the terminal to switch the resonant frequency of a receiver, whereas intra-frequency measurement does not need so, the LTE groups all neighbouring cells by frequency. The terminal firstly ranks the frequencies based on their absolute priority and finds out the frequency with top priority, and then selects a cell on this frequency by the offset-based cell reselection method. This reselection method is called a priority-based reselection method, and the selected cell should meet the following conditions: $S_{nonServingCell,x}$ of a cell on a measured frequency is greater than a threshold value $Thresh_{x,high}$ within $Treselection_{RAT}$, wherein x stands for the measured frequency, nonServingCell stands for the measured cell, $S_{nonServingCell,x}$ stands for the measured level of the measured cell, $Treselection_{RAT}$ stands for the measured time of cell reselection, and $Thresh_{x,high}$ stands for the threshold of reselection to a frequency with higher priority. A cell may be chosen as a reselected cell only when it meets the foregoing conditions. Moreover, the following should be noted when a cell is selected as a reselected cell:

1. if a cell on a frequency with higher priority meets the foregoing conditions and the terminal has camped in a serving cell for more than one second, then the terminal will perform reselection and transfer to this cell;

2. if no reselectable cell exist on the serving frequency or on the frequencies having the same priority with the serving frequency, and no cell on the frequencies with higher priority meets the foregoing conditions, moreover, the measured level $S_{ServingCell}$ of the serving cell is lower than a threshold $Thresh_{serving,low}$, when $S_{nonServingCell,x}$ of a cell on a measured frequency with lower priority is greater than a threshold $Thresh_{x,low}$ within $Treselection_{RAT}$, then the terminal will perform reselection and transfer to this cell, wherein x stands for the measured frequency with lower priority, $S_{nonServingCell,x}$ stands for the measured level of the measured cell, $Treselection_{RAT}$ stands for the measured time of cell reselection, $Thresh_{serving,low}$ stands for the low-level threshold of the serving cell, and $Thresh_{x,low}$ stands for the threshold of reselection to a frequency with lower priority;

3. the offset-based cell reselection method is adopted for reselection among intra-frequency cells and cells on the frequencies with the same priority;

4. when multiple cells on a frequency meet the foregoing conditions, the terminal will select the best cell as the reselected target cell.

It can be seen from the above description that in related techniques, the priority-based reselection method only defines that a terminal can select the best cell by the offset-based cell reselection method (R value-based sequencing method) on condition that this reselection is performed among cells on the same frequency. However, for this case that several cells on each of frequencies with the same priority meet the reselection conditions of the priority-based reselection method, no effective solution has been provided on how to perform cell reselection among these cells.

SUMMARY

The present invention is provided to solve the problem on how to perform cell reselection among cells when several cells on each of frequencies with the same priority meet the reselection conditions. Therefore, the main object of the present invention is to provide a cell reselection method and terminal to solve the foregoing problem existing in related techniques.

According to one aspect of the present invention, a cell reselection method is provided, by which a terminal performs reselection among cells on multiple frequencies with the same priority.

The cell reselection method provided according to the present invention includes: setting the cells on multiple frequencies with the same priority as same-priority cells.

Further, when a terminal performs cell reselection, it may select cells on multiple frequencies with the same priority according to a priority-based reselection principle; and the terminal may select a cell as a reselected cell from among the same-priority cells based on a best-cell reselection principle.

Wherein the same-priority cells may specifically include one of the following: cells on multiple frequencies with the same priority that is higher than the priority of a serving frequency; cells on multiple frequencies with the same priority that is lower than the priority of the serving frequency; a serving cell; and cells on the serving frequency and on one or more frequencies having the same priority with the serving frequency.

Wherein the priority of the same-priority cells may be equal to the absolute priority of corresponding frequencies.

Wherein the best-cell reselection principle may be an offset-based cell reselection principle.

According to another aspect of the present invention, a terminal is provided, which is used to perform reselection among cells on multiple frequencies with the same priority.

The terminal provided according to the present invention comprises: a first reselection module, used to select cells on multiple frequencies with the same priority according to a priority-based reselection principle when a terminal performs cell reselection, wherein the cells on multiple frequencies with the same priority are same-priority cells; a second reselection module, used to select a cell as a reselected cell from among the same-priority cells based on a best-cell reselection principle.

Wherein the same-priority cells may specifically include one of the following: cells on multiple frequencies with the same priority that is higher than the priority of a serving frequency; cells on multiple frequencies with the same priority that is lower than the priority of the serving frequency; a serving cell; and cells on the serving frequency and on one or more frequencies having the same priority with the serving frequency.

Wherein the priority of the same-priority cells may be equal to the absolute priority of corresponding frequencies.

Wherein the first reselection module may be specifically used to select cells on frequencies with higher priority based on the priority of frequencies.

Wherein the best-cell reselection principle may be an offset-based cell reselection principle.

Through selecting the best cell after the cells on multiple frequencies with the same priority are selected, the technical solution of the present invention enables the terminal to perform cell reselection quickly in a determined manner, and enables configuration of network parameters to achieve the intended purpose.

Other characteristics and advantages of the present invention will be illustrated in the subsequent description, and partially become obvious through the description or understood through implementation of the present invention. The object and other advantages of the present invention may be realized and acquired through the structures particularly indicated in the description, claims and drawings.

BRIEF DESCRIPTION OF THE DRAWINGS

The drawings described here are intended to provide further understanding on the present invention and constitute a part of this application. The schematic embodiments of the present invention and the descriptions thereof are intended to explain the present invention and not to limit the present invention. Among the drawings:

FIG. **1** is a flowchart of a cell reselection method according to an embodiment of the present invention; and

FIG. **2** is a block diagram of a terminal according to an embodiment of the present invention.

DETAILED DESCRIPTION

Function Summary

At present, in related techniques, the priority-based reselection method only defines a cell reselection method for the cells on the same frequency, while it does not define a cell reselection method in the situation that several cells on each of frequencies with the same priority meet the priority-based reselection conditions. Therefore, to solve this problem, the present invention provides a technical solution for cell reselection, wherein cells on multiple frequencies with the same priority are set as same-priority cells. Further, when a terminal performs cell reselection, firstly it will select the cells on one or more frequencies with the same priority according to a priority-based reselection principle and then it will select a cell as a reselected cell from among the same-priority cells based on a best-cell reselection principle.

The preferred embodiments of the present invention are described below in combination with the accompanying drawings. It should be understood that the preferred embodiments described here are only intended to illustrate and explain the present invention and not to limit the present invention. If there is no conflict, the embodiments of the present invention and the features in the embodiments may be combined.

Method Embodiment

According to an embodiment of the present invention, a cell reselection method is provided, by which a terminal performs reselection among cells on multiple frequencies with the same priority. FIG. **1** is a flowchart of a cell reselection method according to an embodiment of the present invention. As shown in FIG. **1**, the following processing is included.

Step S**102**, when a terminal performs cell reselection, it selects cells on multiple frequencies with the same priority according to a priority-based reselection principle, wherein the cells on multiple frequencies with the same priority are same-priority cells.

In Step S**102**, selecting same-priority cells according to the priority-based reselection principle refers to that: the terminal may first select the cells on the frequencies with higher priority according to the priority of frequencies.

Further, in practical application, the same-priority cells may be cells on multiple frequencies with the same priority that is higher than the priority of the serving frequency, or cells on multiple frequencies with the same priority that is lower than the priority of the serving frequency, or the serving cell, or cells on the serving frequency or on one or more frequencies having the same priority with the serving frequency. Further, the priority of the same-priority cells is equal to the absolute priority of the corresponding frequencies.

Step S**104**, the terminal selects a cell as a reselected cell from among the same-priority cells based on a best-cell reselection principle, wherein the best-cell reselection principle is an offset-based cell reselection principle (the offset-based cell reselection principle has been described in details in the background of the present invention, so it will not be described here again).

The foregoing technical solution of the present invention will be described in details in combination with examples.

EXAMPLE 1

Reselection to Frequencies with Higher Priority

Frequencies F_a**1** and F_a**2** are high-priority frequencies with the same priority. C_a**1**_**1** and C_a**1**_**2** are cells on a frequency F_a**1**, and C_a**2**_**1** is a cell on a frequency F_a**2**. Currently the terminal resides on a frequency F_b**1**, and the priority of F_b**1** is lower than the priority of F_a**1** and F_a**2**. C_b**1**_**1** is the cell where the terminal resides.

The terminal periodically measures different-frequency cells C_a**1**_**1**, C_a**1**_**2** and C_a**2**_**1**. If within a time period $Treselection_{E_UTRAN}$, different-frequency cells satisfy $S_{C_a1_1,F_a1}>Thresh_{F_a1,high}$, $S_{C_a1_2,F_a1}>Thresh_{F_a1,high}$ and $S_{C_a2_1,F_a2}>Thresh_{F_a2,high}$, in other words, three cells with higher priority simultaneously meet the reselection conditions (the reselection conditions: $S_{nonServingCell,x}$ of a cell on a measured frequency is greater than $Thresh_{x,high}$ within $Treselection_{RAT}$), then the terminal needs to reselect and transfer to one of the three cells by the priority-based reselection method, wherein C_a**1**_**1**, C_a**1**_**2** and C_a**2**_**1** are same-priority cells; according to the offset-based cell reselection principle, $R_{C_a1_1}$, $R_{C_a1_2}$ and $R_{C_a2_1}$ are ranked after being calculated, in this case, $R_{C_a1_2}$ is the largest, then C_a**1**_**2** is the best cell, and the terminal will finally reselect and transfer to the cell C_a**1**_**2**.

Through the foregoing processing, the terminal realizes cell reselection to frequencies with higher priority according to the method specified in the present invention.

EXAMPLE 2

Reselection to Frequencies with Lower Priority

Frequencies F_c**1** and F_c**2** are low-priority frequencies with the same priority. C_c**1**_**1** is a cell on the frequency F_c**1**, and C_c**2**_**1** is a cell on the frequency F_c**2**. Currently the terminal resides on a frequency F_b**1**. The priority of F_b**1** is higher than the priority of F_c**1** and F_c**2**. C_b**1**_**1** is a serving cell. F_b**2** is a frequency having the same priority with the serving frequency, and C_b**2**_**1** is a cell on this frequency. When $S_{C_b1_1}$ is lower than a threshold $Thresh_{C_b1_1,low}$, C_b**2**_**1** does not satisfy reselection conditions.

As there is no frequency with priority higher than the priority of F_b**1** here, the terminal needs to consider performing reselection among low-priority frequencies F_c**1** and F_c**2**. When $S_{C_c1_1,F_c1}>Thresh_{F_c1,low}$ and $S_{C_c2_1,F_c2}>Thresh_{F_c2,low}$ are satisfied within a time period $Treselection_{E_UTRAN}$, in other words, two low-priority cells simultaneously meet the reselection conditions, then the terminal needs to reselect and transfer to one of the two cells according to the priority-based reselection method. C_c**1**_**1** and C_c**2**_**1** are same-priority cells; according to the offset-based cell reselection principle, $R_{C_c1_1}$ and $R_{C_c2_1}$ are calculated and ranked, in this case, $R_{C_c1_1}$ is the largest, then C_c**1**_**1** is the best cell, and the terminal will finally reselect and transfer to the cell C_c**1**_**1**.

Through the foregoing processing, the terminal realizes cell reselection to frequencies with lower priority according to the method specified in the present invention.

Device Embodiment

According to an embodiment of the present invention, a terminal is provided, which is used to perform reselection among cells on multiple frequencies with the same priority. The device may be used to realize the cell reselection method provided by the foregoing method embodiment.

FIG. **2** is a block diagram of a terminal according to an embodiment of the present invention. As shown in FIG. **2**, the terminal comprises a first reselection module **20** and a second reselection module **22**. In practical application, the first reselection module **20** and the second reselection module **22** may also be integrated, but in this embodiment, they are disposed separately in order to more clearly explain the technical solution of the present invention. Below the two modules will be described in details.

The first reselection module **20** is used to select cells on multiple frequencies with the same priority according to a priority-based reselection principle when a terminal performs cell reselection, wherein the cells on multiple frequencies with the same priority are same-priority cells;

Wherein selecting same-priority cells according to a priority-based reselection principle refers to that: the first reselection module **20** may select cells on multiple frequencies with the same priority according to the priority-based reselection method.

Further, in practical application, the same-priority cells may be cells on multiple frequencies with the same priority that is higher than the priority of the serving frequency, or cells on multiple frequencies with the same priority that is lower than the priority of the serving frequency, or the serving cell, or cells on the serving frequency or on one or more frequencies having the same priority with the serving frequency. Further, the priority of the same-priority cells is equal to the absolute priority of the corresponding frequencies.

The second reselection module **22**, connected to the first reselection module **20**, is used to select a cell as a reselected cell based on a best-cell reselection principle from among the same-priority cells selected by the first reselection module **20**. Wherein the best-cell reselection principle is an offset-based cell reselection principle (the offset-based cell reselection principle has been described in details in the background of the present invention, so it will not be described here again).

To summarize, through selecting the best cell after the cells on one or multiple frequencies with the same priority are selected, the technical solution of the present invention solves the problem on how to perform cell reselection among cells meeting reselection conditions on multiple frequencies with the same priority, thereby enabling the terminal to perform cell reselection quickly in a determined manner, and making configuration of network parameters achieve the intended purpose.

The foregoing descriptions are preferred embodiments of the present invention and are not intended to limit the present invention. For those skilled in the art, the present invention may have various changes and modifications. All modifications, equivalent substitutions and improvements, etc, made without departing from the spirit and principle of the present invention, shall be within the protection scope of the present invention.

The invention claimed is:

1. A cell reselection method, by which a terminal, which is currently associated with a serving cell on a serving frequency with a first priority, performs reselection among cells on multiple frequencies, other than the serving frequency, with a second priority, the method including:

setting the cells on multiple frequencies with the second priority as same-priority cells;

selecting cells on multiple frequencies with the second priority according to a priority-based reselection principle when a terminal performs cell reselection; and

selecting a cell as a reselected cell by the terminal from among the same-priority cells based on a best-cell reselection principle,

wherein the same-priority cells include one of the following:

cells on multiple frequencies with the second priority that is higher than the first priority;

cells on multiple frequencies with the second priority that is lower than the first priority; and

a serving cell, and cells on the serving frequency and on one or more frequencies having the same priority with the serving frequency,

wherein the priority of the same-priority cells is equal to the absolute priority of corresponding frequencies, and

wherein the best-cell reselection principle is an offset-based cell reselection principle.

2. A terminal used to perform reselection among cells on multiple frequencies with the same priority, wherein the terminal is currently associated with a serving cell on a serving frequency with a first priority, the terminal including:

a first reselection module, used to select cells on multiple frequencies, other than the serving frequency, with a second priority according to a priority-based reselection principle when a terminal performs cell reselection;

wherein the cells on multiple frequencies with the second priority are same-priority cells; and

a second reselection module, used to select a cell as a reselected cell from among the same-priority cells based on a best-cell reselection principle,

wherein the same-priority cells specifically include one of the following:

cells on multiple frequencies with the second priority that is higher than the first priority;

cells on multiple frequencies with the second priority that is lower than the first priority; and

a serving cell, and cells on the serving frequency and on one or more frequencies having the same priority with the serving frequency,

wherein the priority of the same-priority cells is equal to the absolute priority of corresponding frequencies, and

wherein the best-cell reselection principle is an offset-based cell reselection principle.

3. The terminal according to claim **2**, wherein the first reselection module is specifically used to select cells on frequencies with higher priority based on the priority of frequencies.

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CERTIFICATE OF SERVICE AND FILING

I certify that on October 2, 2026, I electronically filed the foregoing **NONCONFIDENTIAL OPENING BRIEF** of Defendants-Appellants using the Court's CM/ECF filing system. Counsel for Plaintiff-Appellee were electronically served by and through the Court's CM/ECF filing system per Fed. R. App. P. 25 and Fed. Cir. R. 25(e).

/s/ Lauren A. Degnan
Lauren A. Degnan

CERTIFICATE OF COMPLIANCE

The **NONONFIDENTIAL OPENING BRIEF** of Defendants-Appellants is submitted in accordance with the type-volume limitation of Fed. Cir. R. 32(b). The brief contains 13,991 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Fed. Cir. R. 32(b)(2). This brief has been prepared in a proportionally spaced typeface using Microsoft® Word for Microsoft 365 in Times New Roman, 14 Point.

Dated: October 2, 2026

/s/ Lauren A. Degnan
Lauren A. Degnan

CERTIFICATE OF CONFIDENTIAL INFORMATION

Defendants-Appellants' **NONCONFIDENTIAL OPENING BRIEF** complies with Federal Circuit Rule 25.1(d)'s limitations on the amount of material that can be marked confidential in motions, responses, replies, or briefs. This brief contains 14 unique words (including numbers) marked confidential, which does not exceed the maximum of 15 words permitted by Fed. Cir. R. 25.1(d)(1)(A) & (C).

Dated: October 2, 2026

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