

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

ERICSSON INC.,	§	
TELEFONAKTIEBOLAGET LM	§	
ERICSSON,	§	
	§	Case No. 2:15-cv-00011-RSP
<i>Plaintiffs,</i>	§	
	§	
v.	§	
	§	
TCL COMMUNICATION TECHNOLOGY	§	
HOLDINGS, LTD., TCT MOBILE	§	
LIMITED, TCT MOBILE (US) INC.,	§	
	§	
<i>Defendants.</i>	§	

ORDER

On November 4, 2017, the Court entered an order striking the expert report of Dr. Jared Ligatti. *See* Dkt. No. 359 at 21-23. The Court concluded that Dr. Ligatti’s opinions relying on a distinction between a “services-based approach” and an “interception-based” approach were untimely. While the Court reopened discovery after the stay of the case was lifted, the additional discovery was intended only to allow the parties to update existing reports with current information, including newly accused products with the same software functionality as that present on the originally accused products. The additional discovery period was not to allow either party to inject new theories into the case. *See id.* at 22-23.

The Court explained that Ericsson’s supplemental expert report from Dr. Jones did not justify Dr. Ligatti’s new noninfringement opinions. *See id.* One sentence in Dr. Jones’s supplemental report states that “Android employs a service-based architecture.” *See* Suppl. Jones Rep. at 80 (Aug. 22, 2017). Although this precise sentence was not present in Dr. Jones’s original report, the same point about the Android operating system providing software “services” was

repeatedly made in Dr. Jones's original report. *See, e.g.* Jones Rep. ¶¶ 46-47, 49, 70, 91, 104, 126 (Nov. 12, 2015). Dr. Ligatti's new opinion that certain functionality such as checking accesses and permissions is performed by the request interceptor in the accused software, according to an "interception based approach," *see, e.g.*, Dkt. No. 325-5 ¶ 107, is not justified by Dr. Jones's supplemental report. Dr. Jones's theory has not changed.

Ericsson informed the Court at the pretrial conference that its original motion to strike Dr. Ligatti's report requested that the Court also strike similar opinions from Dr. Malek's and Mr. Martinez's report. *See* Dkt. No. 325 at 14. The Court neglected to address this request in the order entered on November 4th. For the same reasons the Court struck Dr. Ligatti's report, the Court entered a supplemental order partially granting Ericsson's additional request concerning Dr. Malek's and Mr. Martinez's reports. Dkt. No. 363. Specifically, the Court struck paragraphs 25, 136-140, 143-145, 162-165 of Dr. Malek's report, Dkt. No. 325-8, and paragraphs 127-128 of Mr. Martinez's report, Dkt. No. 325-9. *Id.* at 2.

TCL moves for reconsideration, contending that the paragraphs struck in the Court's supplemental order include opinions that directly respond to Ericsson's updated infringement report. *See* Dkt. No. 364. Having again reviewed the paragraphs stricken by the supplemental order, however, it is clear that each stricken paragraph refers to Dr. Ligatti's distinction between a services-based and interception-based approach. It was this opinion that the Court viewed as untimely. *See* Dkt. No. 359 at 21-23. Accordingly, TCL's motion for reconsideration is denied.