

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DRONE TECHNOLOGIES, INC.,

Plaintiff,

14cv0111

**ELECTRONICALLY FILED**

v.

PARROT S.A., PARROT, INC.,

Defendants.

**ORDER OF COURT RE: DEFENDANTS' MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL DAMAGES EXPERT REPORT (DOC. NO. 282)**

Presently before this Court is a Motion filed by Defendants, in which they move this Court to permit them to file a Supplemental Damages Report. Doc. No. 282. By February 23, 2015, both Plaintiff and Defendants filed their respective expert reports, which both used January 31, 2012 as the date of the hypothetical negotiation, *i.e.* the starting point for the experts' damages calculations. Doc. Nos. 186-87, 197, and 199. January 31, 2012 is the issue date of the '748 patent. Doc. No. 1-2. Defendants contend that their expert, John C. Jarosz, used January 31, 2012 as the date of the hypothetical negotiation because Plaintiff's expert, Ned S. Barnes ("Barnes") used this date in his first-filed report.

Defendants move this Court to grant them leave to file a supplemental report by Jarosz that utilizes January 4, 2013 as the date of first infringement. Doc. No. 282, ¶ 13. Defendants set forth that January 4, 2013 is the "correct" date of first infringement because notice of the patents alleged to be infringed is required for indirect infringement and Defendants did not have notice of Plaintiff's patents-in-suit until January 4, 2013. Doc. No. 282, ¶¶ 7-10. Plaintiff wholly opposes Defendants' requested relief and withdraws its previous stipulation to Jarosz's expert qualifications due to his "extreme change of position." Doc. No. 290.

The Parties agree that the date of first infringement is a matter of law for the Court to determine, which until recently was agreed to be January 31, 2012. Doc. Nos. 272 and 282, ¶ 11. As previously noted by the Court in its Order on the Parties' Motions in Limine denying Defendants' Motion in Limine Regarding Damages Prior to January 4, 2013, Defendants have not presented sufficient support for this Court to disturb the initial consensus that January 31, 2012 is the date of first infringement. Doc. No. 287, ¶ 10. The Court also relies on the decision of the United States Court of Appeals for the Federal Circuit in *LaserDynamics, Inc. v. Quanta Computer, Inc.*, 694 F.3d 51 (2012) in finding that Defendants' requested relief should not be granted. Therefore, the following Order is entered:

AND NOW, this 10<sup>th</sup> day of April, 2015, IT IS HEREBY ORDERED THAT Defendants' Motion for Leave to File Supplemental Damages Expert Report (Doc. No. 282) is **DENIED**. IT IS FURTHER ORDERED THAT the date of first infringement is January 31, 2012.

s/ Arthur J. Schwab  
Arthur J. Schwab  
United States District Judge

cc: All Registered ECF Counsel and Parties