IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

LIGHTING BALLAST CONTROL, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 7:09-CV-29-O**
	§	
PHILIPS ELECTRONICS NORTH AMERICA CORP., et al.,	§	
	§	
Defendants.	§	

ORDER

Before the Court is Defendant Universal Lighting Technologies, Inc.'s ("ULT") Motion to Strike, Limit, or Exclude Certain Expert Testimony (ECF No. 132) and Brief in Support (ECF No. 133), Plaintiff Lighting Ballast Control, LLC's ("LBC") Response and Brief in Support (ECF No. 142), and ULT's Reply (ECF No. 148). Also before the Court is ULT's Omnibus Motion in Limine (ECF No. 158), and LBC's Response (ECF No. 168). On May 26, 2011 the Court held a Pretrial Conference with the parties, and issued rulings regarding both ULT's Motion to Strike and ULT's Motion in Limine. *See* ECF No. 192. The Court, however, withheld its ruling on ULT's Motion to Strike LBC's damages expert Mark Gallagher, and on the first four sections of ULT's Motion in Limine. *Id.* Having reviewed the remaining portions of ULT's motions, the briefs, and the applicable law, the Court finds that ULT's Motion to Strike should be and is hereby **GRANTED** in part and **DENIED** in part, and the remainder of ULT's Motion in Limine is **GRANTED** in part and **DENIED** in part.

I. MOTION TO STRIKE

ULT moves to strike the testimony and expert report of LBC's damages expert Mark Gallagher ("Gallagher"). *See* Br. Supp. ULT's Mot. Strike 16, ECF No. 133. ULT contends that Gallagher's expert opinion should be struck on two grounds: 1) Gallagher's proposed royalty rates for the '529 patent rely on a self-serving selection of the rates most favorable to LBC; and 2) Gallagher improperly tests or "checks" the reasonableness of his selected royalty rates using the entire market value of the accused products. *Id.* at 18. LBC responds that Gallagher properly applied Federal Circuit precedent in presenting his expert opinion. *See* LBC's Resp. ULT's Mot. Strike 2, ECF No. 142. LBC argues that Gallagher properly compared the extant licenses of the '529 patent to the hypothetical negotiation at issue in this case and reasonably relied on the two patents he selected as most comparable. *Id.* at 6-12. Moreover, LBC argues that Gallagher did not rely on the entire market value theory to calculate his royalty rate, or to check his conclusions. *Id.* at 14.

A. Legal Standards

1. *Daubert*

"The landmark case of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, provides the analytical framework for determining the admissibility of expert testimony under Rule 702." *Micro Chem., Inc. v. Lextron, Inc.*, 317 F.3d 1387,1391 (Fed. Cir. 2003). Rule 702 of the Federal Rules of Evidence provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or date, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

See F.R.E. 702. "*Daubert* requires the district court to ensure that any scientific testimony 'is not only relevant but reliable.'" *i4i Ltd. P'ship v. Microsoft Corp.*, 598 F.3d 831, 852 (Fed. Cir. 2010) (quoting *Daubert v. Merrell Dow Pharm.*, 509 U.S. 579, 589 (1993)). "The trial court acts as a 'gatekeeper' to exclude expert testimony that is irrelevant or does not result from the application of reliable methodologies or theories to the facts of the case." *Micro Chem.*, 317 F.3d at 1391. "The Court later emphasized that the *Daubert* inquiry is 'a flexible one' and that the analysis will depend on the nature of the issue, the witness's expertise, and the subject of the testimony." *Id.* (quoting *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 150 (1999)). "The Court also explained that the principles of *Daubert* apply not only to scientific testimony, but to all expert testimony." *Id.* "When the methodology is sound, and the evidence relied upon sufficiently relates to the case at hand, disputes about the degree of relevance or accuracy (above this minimum threshold) may go to the testimony's weight, but not its admissibility." *i4i Ltd. P'ship*, 598 F.3d at 852 (citing *Knight v. Kirby Inland Marine Inc.*, 482 F.3d 347, 351 (5th Cir. 2007)).

2. Hypothetical Negotiation

"A patentee is entitled to 'damages adequate to compensate for infringement, but in no event less than a reasonable royalty.'" *Worldtech Sys. Inc. v. Integrated Networks Solutions, Inc.*, 609 F.3d 1308, 1319 (Fed. Cir. 2010) (quoting 35 U.S.C. § 284). "A reasonable royalty can be calculated from an established royalty, the infringer's profit projections for infringing sales, or a hypothetical negotiation between the patentee and infringer based on the factors in *Georgia-Pacific*." *Id.* (citing *Lucent Techs. v. Gateway, Inc.*, 580 F.3d 1301, 1324 (Fed. Cir. 2009)). In this case, Gallagher only analyzed LBC's damages using the hypothetical negotiation model outlined in *Georgia-Pacific*. *See* App. Supp. ULT's Mot. Strike A141-43, ECF No. 133-2. "The hypothetical negotiation 'attempts to ascertain the royalty upon which the parties would have agreed had they successfully negotiated an agreement just before infringement began,' and 'necessarily involves an element of approximation and uncertainty.'" *Worldtech*, 609 F.3d at 1320 (quoting *Lucent*, 580 F.3d at 1324-25).

B. Analysis

ULT moves to strike Gallagher's expert testimony on two grounds: 1) the past licenses upon which Gallagher relies in coming to his proposed royalty rates; and 2) Gallagher's use of the entire market value theory to check or confirm the reasonableness of his proposed royalty rates. *See* Br. Supp. ULT's Mot. Strike 18, ECF No. 133.

1. GE License

ULT contends that neither of the two license agreements Gallagher relied upon in his expert report are sufficiently comparable to the hypothetical license negotiation at the center of the damages dispute in this case. *Id.* Gallagher relied upon a license agreement between LBC and General Electric ("GE License"), and a license agreement between Mr. Bobel and the Robertson Transformer Company ("Robertson License"). *Id.* at 18-19.

ULT attacks Gallagher's reliance on the GE License on two grounds: 1) the GE License was entered into under threat of litigation; and 2) it conveyed substantially broader rights than would be conveyed in the hypothetical negotiations. LBC responds that Gallagher properly compared the extant licenses of the '529 patent and reasonably relied upon the GE and Robertson licenses. *See* LBC's Resp. ULT's Mot. Strike 6, ECF No. 142. LBC contends that Gallagher acknowledged the addition of the '106 patent in the GE License, but reasonably discounted it because it was his "understanding" that the focus of the negotiation with GE was the '529 patent. *Id.* at 7.

Additionally, LBC argues that while the GE License arose from litigation, courts have held that such licenses can still be taken into account and need not be ignored. *Id.*

"[T]he hypothetical reasonable royalty calculation occurs before litigation and . . . litigation itself can skew the results of the hypothetical negotiation." *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860, 872 (Fed. Cir. 2010) (citing *Hanson v. Alpine Valley Ski Area, Inc.*, 718 F.2d 1075, 1078-79 (Fed. Cir. 1983)). "[A] payment of any sum in settlement of a claim for alleged infringement cannot be taken as a standard to measure the value of the improvements patented, in determining the damages sustained by the owners of the patent in other cases of infringement." *Spreadsheet Automation Corp. v. Microsoft Corp.*, 587 F. Supp. 2d 794, 800 (E.D. Tex. 2007) (quoting *Rude v. Westcott*, 130 U.S. 152, 164 (1889)). "'Many considerations other than the value of the improvements patented may induce the payment in such cases.'" *Id.* (quoting *Rude*, 130 U.S. at 164). "'Settlement agreements are generally not relevant 'because in the usual course they do not provide an accurate reflection of what a willing licensor would do in an arm's length transaction.'" *Fenner Invs., Ltd. v. Hewlett-Packard Co.*, No. 6:08-CV-273, 2010 WL 1727916, at *1 (E.D. Tex. Apr. 28, 2010) (quoting *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F. Supp. 2d 147, 159 (D.R.I. 2009)). "District courts routinely exclude settlement licenses because the potential prejudice and jury confusion substantially outweigh whatever probative value they may have." *Id.* at *2 (collecting cases).

A patentee cannot "rely on license agreements that were 'radically different from the hypothetical agreement under consideration' to determine a reasonable royalty." *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1316 (Fed. Cir. 2011) (quoting *Lucent*, 580 F.3d at 1327). In *ResQNet*, the Federal Circuit emphasized a patentee's need to provide "evidence of a link between" the patent-in-suit and the licenses relied upon in reaching a proposed royalty rate. *ResQNet*, 594 F.3d at 871. The *ResQNet* court cited with approval *Trell v. Marlee Electronics Corp.*, where the Federal Circuit reversed a district court's award of damages when the license relied upon by the district court "'conveyed rights more broad in scope than those covered by the [patent-in-suit].'" *Id.* (quoting *Trell v. Marlee Elecs. Corp.*, 912 F.2d 1443, 1446 (Fed. Cir. 1990)). "The first *Georgia-Pacific* factor . . . must consider licenses that are commensurate with what the defendant has appropriated." *Id.* at 871-72.

The GE License served as a settlement agreement between LBC and GE in the instant case. The GE License settled all of LBC's claims against GE, served as a non-exclusive license to both the '529 and '106 patents, and required GE to make a royalty payment of 7.5%. The 7.5% royalty rate, by far the highest royalty rate of any of the licenses of the '529 patent, was thus entered into under the threat of litigation and "'likely represents considerations other than the value of the improvements patented.'" *Spreadsheet Automation Corp.*, 587 F. Supp. 2d at 800 (quoting *Rude*, 130 U.S. at 164). Moreover, the GE License conveys rights broader than those contemplated by the hypothetical negotiation, because it includes the '106 patent. While Gallagher contends that he properly considered, and discounted, the value of the '106 patent to the GE License, the record belies his assertion. Gallagher simply stated that it was his "understanding" that the '106 patent was immaterial to the consummation of the GE License, without any explanation whatsoever of where that understanding came from or what it was based upon. Such an "understanding" does not constitute a reliable or helpful expert analysis of the GE License.

The Court finds that the sections of Gallagher's testimony and expert report based on the GE License do not rely upon sufficient facts or data to be considered reliable, or helpful to the trier of fact under *Daubert* and Rule 702. Further, the Court finds that for the reasons stated herein the GE License is not probative of the royalty rate ULT would be forced to pay in a hypothetical negotiation and, to the extent it is probative of such royalty, such probative value is outweighed by its prejudicial effect under Rule 403 of the Federal Rules of Evidence. *Cf. Spreadsheet Automation Corp.*, 587 F. Supp. 2d at 801 ("The Court therefore finds such testimony . . . is inadmissible under Federal Rule of Evidence 403.").

2. Robertson License

ULT attacks the Robertson License on the grounds that it granted substantially broader rights than the hypothetical license at issue in the instant case. *See* Br. Supp. ULT's Mot. Strike 22, ECF No. 133. In his initial 1994 agreement with Robertson, Bobel licensed the '529 patent and the rights to three other patent applications to Robertson on an exclusive basis. *Id.* Additionally, Bobel agreed to provide consulting services. *Id.* In 1999, the parties amended the agreement to make the licenses non-exclusive and remove Bobel's obligation to provide consulting services. *Id.* As such, after 1999, the Robertson License granted a non-exclusive license for the '529 patent and three other patent applications. *Id.* ULT contends that the different structure, rights, and obligations granted under the Robertson license render it insufficiently related to the hypothetical negotiation at issue in this case. *Id.* 22-24. LBC responds that by the time of the 1999 amendment to Bobel's agreement with Robertson, the Robertson License provided for a non-exclusive license of the '529 patent, along with a non-exclusive license to three other patent applications. *See* App. Supp. ULT's Mot. Strike A144, ECF No. 133-2.

As discussed previously, a patentee must provide "evidence of a link between" the patent-in-suit and any licenses relied upon by the patentee to prove damages. *ResQNet*, 594 F.3d at 871.

"[T]here must be a basis in fact to associate the royalty rates used in prior licenses to the particular hypothetical negotiation at issue in the case." *Uniloc*, 632 F.3d at 1317. In the 1999 incarnation of the Robertson License, Bobel licensed the '529 patent to Robertson on a non-exclusive basis, along with the rights to other patent applications. Unlike the prior incarnations of the Robertson License, there was no lump sum paid to Bobel, there was no minimum royalty payment required, the license was no longer exclusive, and Bobel was not required to provide consulting services. While the Robertson License conveys a non-exclusive license to three other patent applications, thus conveying broader rights than would be the case in the hypothetical negotiation, the Court finds that because it represents a non-exclusive licensing of the '529 patent by Bobel around the time of the hypothetical negotiation, that there is a sufficient link between the Robertson License and the hypothetical negotiation.

3. Entire Market Value Theory

ULT also moves to exclude the final portion of Gallagher's opinion, arguing that Gallagher attempts to test the reasonableness of his proposed royalty rates by comparing them to the entire market value attributable to the accused products. *See* Br. Supp. ULT's Mot. Strike 24, ECF No. 133. LBC responds that Gallagher did not rely on the entire market value theory to test or check the reasonableness of his royalty rate, and that ULT's objection is based on the flawed premise that the '529 patent is a novel feature or component of a ballast, rather than a design for a ballast. *See* LBC's Resp. ULT's Mot. Strike 13-14, ECF No. 142.

"In one sense, [the] law on the entire market value rule is quite clear. For the entire market value rule to apply, the patentee must prove that 'the patent-related feature is the basis for customer demand.'" *Lucent*, 580 F.3d at 1336 (quoting *Rite-Hite Corp. v. Kelley Co., Inc.*, 56 G.3d 1538, 1550

(Fed. Cir. 1995) (en banc)). "This rule is derived from Supreme Court precedent requiring that 'the patentee . . . must in every case give evidence tending to separate or apportion the defendants' profits and the patentee's damages between the patented feature and the unpatented features, and such evidence must be reliable and tangible, and not conjectural or speculative,' or show that 'the entire value of the whole machine, as a marketable article, is properly and legally attributable to the patented feature.'" *Uniloc*, 632 F.3d at 1318 (quoting *Garretson v. Clark*, 111 U.S. 120, 121 (1884)).

ULT contends that Gallagher's expert report analyzes the reasonableness of his proposed royalty rates using the entire market value theory, even though he admits that the majority of the value of the accused products derives from nonpatented features. *See* Br. Supp. ULT's Mot. Strike 24, ECF No. 133. ULT argues that because neither Gallagher nor LBC present evidence that the '529 patent drives, or is the basis, for the value of the accused products, use of the entire market value theory is improper under governing Supreme Court and Federal Circuit precedent. *Id.* at 24-25. LBC argues that Gallagher does not actually use the entire market value theory, rather he uses the entire sales base as the royalty base for his hypothetical license, because the licenses he relies upon do the same. *See* LBC's Resp. ULT's Mot. Strike 14, ECF No. 142. Moreover, LBC contends that ULT ignores critical differences between the instant case and the *Uniloc* case, where the expert "checked" the reasonableness of a lump sum damages award by dividing and determining what percent of total sales it represented. *Id.* at 15. Lastly, LBC argues that ULT mischaracterizes the patented invention and its importance to the accused products. *Id.*

LBC's contention that Gallagher's report does not check or in any way analyze the reasonableness of his proposed royalty rates mischaracterizes the sum and substance of Gallagher's report. At the close of his report, Gallagher states:

> Based on the financial performance of ULT during the years 2003 to 2010, it appears that ULT would have been able to absorb a 7.5% royalty rate and still earn a reasonable incremental profit. As summarized in Schedule 2, I calculate that ULT earned a standard gross margin of 29.3% on sales of the accused products. Adjusting for variance, hedging and warranty expenses as reflected on ULT's incremental income statement, which I summarize in Schedule 3, I reduce the standard gross margin of the accused products by 3.3% to arrive at an adjusted gross margin of 26.0%. I then calculate the incremental margin as 19.6% by subtracting variable expenses of 6.4% (reflected as a percentage of net sales) from the adjusted gross margin. Given a pre-royalty incremental margin of 19.6%, applying a royalty of 7.5% to the profit would still leave ULT with an incremental margin of 12.1%.

See App. Supp. ULT's Mot. Strike A164-65, ECF No. 133-2. Gallagher clearly laid out ULT's profit margin on its sales of the accused products, and analyzed the reasonableness of his top-end proposed royalty rate against the pre-royalty margin. On that basis, Gallagher determined that even using his top-end royalty rate, ULT would still be left with an incremental margin of 12.1%. Gallagher is clearly checking or analyzing his royalty rate in light of ULT's total sales of the accused products, without any evidence that the '529 patent drives or forms the basis for sales of the accused products.

LBC next argues that Gallagher was simply applying his royalty rate to the entire sales base of the accused products in order to properly compare his proposed royalty to the licenses he relied on. *See* LBC's Resp. ULT's Mot. Strike 15, ECF No. 142. Gallagher, however, does not simply state that the royalty rate would be applied to the entire sales base of the accused products. Rather, Gallagher clearly links his proposed top-end royalty rate to ULT's profit margin on sales of the accused products. Analyzing his royalty rate in such a way as to put ULT's profit margins on the accused products in front of the jury is improper under *Uniloc*. As ULT argues, using total profit margin as opposed to revenue is a distinction without difference, because it still improperly attributes all of ULT's profits from the accused products to the patented technology without evidence that the '529 patent drives consumer demand.

Lastly, LBC argues that ULT misrepresents the sum and substance of the '529 patent and its importance to the accused products. *See* LBC's Resp. ULT's Mot. Strike 15-16, ECF No. 142. LBC's argument, however, is besides the point without evidence that the innovations of the '529 patent drives consumer demand for the accused products. *See Lucent*, 580 F.3d at 1336. Gallagher failed to present evidence that the patented technology drove sales of the accused products. Accordingly, use of the entire market value theory in Gallagher's expert report was improper under governing Federal Circuit case law. Moreover, presenting Gallagher's royalty rates in tandem with ULT's total profit margin on the accused products without evidence that the patent-in-suit is the basis for customer demand for the accused products is unduly prejudicial under Rule 403. *Cf. Uniloc*, 632 F.3d at 1320 ("This case provides a good example of the danger of admitting consideration of the entire market value of the accused where the patented component does not create the basis for customer demand. As the district court aptly noted, '[t]he $19 billion cat was never put back into the bag . . . in spite of a final instruction that they jury may not award damages based on [the Defendant's] entire revenue from all the accused products in the case.'") (quoting *Uniloc II*, 650 F. Supp. 2d 150, 185 (D.R.I. 2009)).

C. Conclusion

The Court finds that to the extent Gallagher relies on the GE License, his expert report must be struck from the record. "As to whether the entire report should be excluded, the Court finds that because [Gallagher] does not rely exclusively upon settlement agreements reached under threat of litigation, he may properly 'consider such royalty rates and the underlying agreements in the formation of an opinion.'" *Spreadsheet Automation Corp.*, 587 F. Supp. 2d at 801 (quoting *Acco Brands, Inc. v. ABA Locks Mfr. Ltd.*, No. 2:02-CV-112, 2004 WL 5492840 (E.D. Tex. May 17, 2004)).

The Court further finds that Gallagher's report improperly relies on the entire market value theory to bolster or check his proposed royalty rates in the context of ULT's total profit margin on the accused products, without sufficient evidence that the patent-in-suit drove demand for the accused products. Accordingly, that portion of Gallagher's report is also struck.

Therefore, ULT's Motion to Strike Gallagher's expert report is **GRANTED** to the extent he relies on the GE License and discusses ULT's total profit margin. As to the remainder of Gallagher's report, ULT's Motion to Strike Gallagher's report is **DENIED**.

II. MOTION IN LIMINE

The Court ruled on the majority of ULT's Motion in Limine during the Court's May 26, 2011 Pretrial Conference. The Court, however, withheld ruling on Roman Numerals I-IV of ULT's Motion in Limine. In these remaining four sections, ULT seeks to bar LBC from referring to: 1) a patent's presumption of validity; 2) licenses entered in settlement of this litigation; 3) evidence relating to LBC's settlement negotiations with GE or ULT; and 4) economic or financial information that is irrelevant to calculation of a reasonable royalty. *See* ULT's Mot. in Limine 1-9, ECF No. 158.

A. Presumption of Validity

ULT contends that LBC should not be permitted to refer to a patent's presumed validity, nor should a patent's presumption of validity be referred to in the jury instruction. *Id.* at 1. ULT contends that because a patent's presumption of validity lacks independent evidentiary value, repeating it to a jury is prejudicial. *Id.* Moreover, ULT warns the court that allowing LBC to refer to the presumption of validity is "particularly unwise" in light of the Supreme Court's pending decision in *Microsoft Corp. v. i4i Limited Partnership*, in which the Court is considering the burden of proof for invalidity. *Id.*

"In asserting an invalidity defense, an alleged infringer must contend with the first paragraph of §282, which provides that "[a] patent shall be presumed valid" and "[t]he burden of establishing invalidity . . . rest[s] on the party asserting such invalidity." *See Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. __, No. 10-290, at 3 (2011) (quoting 35 U.S.C. §282). "According to its settled meaning, a defendant raising an invalidity defense bore a 'heavy burden of persuasion,' requiring proof of the defense by clear and convincing evidence." *Id.* at 8 (quoting *Radio Corp. of Am. v. Radio Eng'g Labs.*, 291 U.S. 1, 8 (1934) (Cardozo, J.)). In *Microsoft*, the Supreme Court re-affirmed Federal Circuit precedent interpreting a patent's statutory presumption of validity as requiring that an infringer prove the defense of invalidity by clear and convincing evidence, even if the defense rests on evidence never presented to the Patent and Trade Office. *Id.* at 5-6.

The Court finds that ULT's contention that LBC's reference to a patent's statutory presumption of validity is prejudicial is not well taken. Moreover, ULT's argument that references to the presumption would be compounded by LBC's insistence on a "clear and convincing evidence" instruction to the jury is without merit given the Supreme Court's resounding endorsement of that standard in *Microsoft*. Accordingly, ULT's Motion in Limine excluding LBC from referencing the '529 patent's presumed validity is hereby **DENIED**.

B. <u>Licenses Entered in Settlement of Litigation</u>

ULT moves to exclude evidence and argument regarding licenses of the '529 patent entered in settlement of this litigation. *See* ULT's Mot. in Limine 2, ECF No. 158. For the reasons discussed more fully *supra* regarding Gallagher's reliance on the GE License, ULT's Motion in Limine excluding reference to licenses entered in settlement of this litigation is **GRANTED**.

C. Evidence Relating to LBC's Settlement Negotiations with GE or ULT

ULT seeks to exclude LBC from presenting evidence regarding the sum and substance of LBC's settlement negotiations with GE or ULT pursuant to Rule 408 of the Federal Rules of Evidence. *See* ULT's Mot. in Limine 5, ECF No. 158. LBC responds that while it "does not object to the general premise underlying ULT's request" it "*does*, however, object to the expansive request to exclude settlement negotiations with GE and ULT." *See* LBC's Resp. ULT's Mot. in Limine 4, ECF No. 168. LBC argues that Gallagher should be able to discuss the importance of the '106 patent to the GE License based on publicly available information. As discussed *supra*, the Court has granted ULT's Motion to Strike those portions of Gallagher's testimony in which he relies on the GE License. Accordingly, LBC's objection is moot and the Court **GRANTS** ULT's Motion in Limine regarding evidence of LBC's settlement negotiations with GE and ULT.

D. Economic and Financial Information

ULT seeks to exclude evidence presented in Gallagher's report regarding economic and financial information ULT alleges is irrelevant to calculation of a reasonable royalty. *See* ULT's Mot. in Limine 7, ECF No. 158. LBC does not object to ULT's motion with respect to Panasonic's annual revenues. *See* LBC's Resp. ULT's Mot. in Limine 4, ECF No. 168. Moreover, according to LBC, Gallagher has agreed to update his numbers to reflect net sales, rather than gross sales, in accord with ULT's request. *Id.*

LBC, however, contends that ULT's request improperly seeks to keep numbers relating to

ULT's profit margins in the lighting ballast industry from the jury. *Id.* LBC argues that such evidence is relevant and not prejudicial. *Id.* As discussed *supra*, it is improper for Gallagher to rely upon (and relay to the jury) ULT's profits from the accused products without evidence establishing that the '529 patent is the basis for the consumer demand. Such evidence has already been struck from Gallagher's report pursuant to the Court's ruling on ULT's Motion to Strike, and the Court need revisit the issue.

The Court finds that ULT's Motion in Limine regarding economic and financial information is **GRANTED** regarding Panasonic's annual revenues and ULT's anticipated sales after the 2013 expiration of the '529 patent.

III. CONCLUSION

Accordingly, ULT's Motion to Strike Gallagher's expert report is **GRANTED** to the extent that Gallagher relies on the GE License and discusses ULT's incremental profit margin. As to the remainder of Gallagher's report, ULT's Motion to Strike is **DENIED**.

ULT's Motion in Limine is **GRANTED** as indicated above with respect to Roman Numerals II, III, and IV and **DENIED** with respect to Roman Numeral I regarding the '529 patent's presumed validity.

SO ORDERED on this **10th** of **June, 2011**.

Reed O'Connor
UNITED STATES DISTRICT JUDGE