

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

**CHRIMAR SYSTEMS, INC., CHRIMAR  
HOLDING COMPANY, LLC,**

**Plaintiffs,**

**v.**

**ADTRAN, INC. et al.,**

**Defendants.**

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**CIVIL ACTION NO. 6:15-CV-00618-JRG**

**ORDER**

Before the Court is Defendants ADTRAN, Inc., Accton Technology Corporation, Aerohive Networks, Inc., Costar Technologies, Inc., Costar Video Systems, LLC, D-Link Systems, Inc., Dell Inc., Edgecore USA Corporation, EnGenius Technologies, Inc., and TRENDnet International Inc. (collectively, “Defendants”) *Daubert* Motion to Exclude Certain Testimony by Plaintiffs’ Technical Expert, Dr. Vijay Madisetti. (Doc. No. 573.) Plaintiffs Chrimar Systems, Inc. and Chrimar Holding Company, LLC (“Chrimar”) have filed a response. (Doc. No. 607.) Upon consideration of the parties’ arguments, Defendants’ Motion (Doc. No. 573) is **DENIED**.

**BACKGROUND**

In this action, Chrimar asserts that Defendants infringe certain claims of U.S. Patent Nos. 8,115,012 (“the ’012 Patent”), 8,902,760 (“the ’760 Patent”), 8,942,107 (“the ’107 Patent”), and 9,019,838 (“the ’838 Patent”) (“patents-in-suit”). On August 15, 2016, Plaintiffs served the opening report of their technical expert, Dr. Vijay Madisetti. (Doc. No. 574-3.) In that report, Dr.

Madisetti sets forth his opinions regarding infringement, and also his opinions regarding non-infringing-alternatives to the patents-in-suit, including opinions regarding the commercial viability of alternatives. *Id.* at 93–117. On September 7, 2016, Plaintiffs served the rebuttal report of Dr. Madisetti. (Doc. No. 574-1.) In that report, Dr. Madisetti provided his opinions regarding the validity of the patents-in-suit, including his opinions regarding the commercial success of the claimed inventions. *Id.* at ¶¶ 144–52. Defendants move to strike these opinions on the basis that they are outside of Dr. Madisetti’s technical expertise. (Doc. No. 573.)

### **LEGAL STANDARD**

Rule 702 provides that an expert witness may offer opinion testimony if (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case. Fed.R.Evid. 702.

“The inquiry envisioned by Rule 702 is . . . a flexible one,” but, in *Daubert*, the Supreme Court held that the Rules also “assign to the trial judge the task of ensuring that an expert’s testimony both rests on a reliable foundation and is relevant to the task at hand.” *Daubert v. Merrell Dow Pharms. Inc.*, 509 U.S. 579, 594, 597 (1993); *see also Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1321 (Fed. Cir. 2014) (“Experts routinely rely upon other experts hired by the party they represent for expertise outside of their field.”); *TQP Dev. LLC v. 1-800-Flowers.com, Inc.*, Case No. 2:11-cv-248-JRG, 2015 WL 6694116, at \*4 (E.D. Tex. Nov. 3, 2015) (“Dr. Becker was entitled to rely upon Dr. Jager’s technical analysis when constructing his damages model and presenting it to the jury.”).

“The relevance prong [of *Daubert*] requires the proponent [of the expert testimony] to demonstrate that the expert’s ‘reasoning or methodology can be properly applied to the facts in issue.’” *Johnson v. Arkema, Inc.*, 685 F.3d 452, 459 (5th Cir. 2012) (quoting *Curtis v. M & S Petroleum, Inc.*, 174 F.3d 661, 668 (5th Cir. 1999)). “The reliability prong [of *Daubert*] mandates that expert opinion ‘be grounded in the methods and procedures of science and . . . be more than unsupported speculation or subjective belief.’” *Johnson*, 685 F.3d at 459 (quoting *Curtis*, 174 F.3d at 668).

In assessing the “reliability” of an expert’s opinion, the trial court may consider a list of factors including: “whether a theory or technique . . . can be (and has been) tested,” “whether the theory or technique has been subjected to peer review and publication,” “the known or potential rate of error,” “the existence and maintenance of standards,” and “general acceptance” of a theory in the “relevant scientific community.” *Daubert*, 509 U.S. at 593–94; *see also Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 150 (1999) (“*Daubert* makes clear that the factors it mentions do *not* constitute a ‘definitive checklist or test.’”); *U.S. v. Valencia*, 600 F.3d 389, 424 (5th Cir. 2010). “The proponent need not prove to the judge that the expert’s testimony is correct, but she must prove by a preponderance of the evidence that the testimony is reliable.” *Johnson*, 685 F.3d at 459 (quoting *Moore v. Ashland Chem., Inc.*, 151 F.3d 269, 276 (5th Cir. 1998) (en banc)). At base, “the question of whether the expert is credible or the opinion is correct is generally a question for the fact finder, not the court.” *Summit 6, LLC v. Samsung Elecs. Co., Ltd.*, 802 F.3d 1283, 1296 (Fed. Cir. 2015).

## ANALYSIS

Defendants seek to exclude the expert opinions of Dr. Madisetti regarding commercial success as a secondary consideration for obviousness and commercial viability of non-infringing

alternatives. (Doc. No. 573, at 1.) Specifically, Defendants argue that Dr. Madisetti is a technical expert with an advanced degree in Electrical Engineering who offers commercial opinions that he is unqualified to offer. *Id.* Chrimar contends that Dr. Madisetti's opinions are reliable and Defendants' arguments should be addressed through cross-examination. (Doc. No. 607, at 1.)

With respect to commercial success, Defendants argue that Dr. Madisetti relies primarily on the growth of sales of PoE compliant products, that he admits he did no analysis to contextualize the sale of PoE products, and that he has no training or expertise as an economist, accountant, or market expert. *Id.* at 7. Defendants further argue that Dr. Madisetti fails to establish a nexus between the claimed inventions and the commercial success of the PoE compliant products. *Id.* Defendants argue that Dr. Madisetti makes conclusory remarks about the significant effort to find an ideal detection and classification system, and relies on license agreements to assume commercial success, but makes no economic analysis to link those efforts to commercial success. *Id.* at 10–11. Chrimar argues that while Dr. Madisetti notes the sales of PoE products that are 802.3af and 802.3at standard compliant, Dr. Madisetti established a nexus between Chrimar's inventions and the growth of sales by pointing out that the detection and classification protocols of Chrimar's inventions make the PoE standards valuable and popular. (Doc. No. 607, at 2.)

Here, while Dr. Madisetti discusses the worldwide sales of PoE Ports, as well as Chrimar's licensing, he does so by relying on Chrimar's damages expert, Mr. Mills, and specifically includes opinions and demonstratives from Mr. Mills's report. (Doc. No. 574-1, at ¶¶ 144, 147.) It is not uncommon, and indeed permissible, for experts to rely on other experts in rendering their opinions, as Dr. Madisetti does here in relying on Mr. Mills's opinions regarding sales. *See Apple*, 757 F.3d at 1321 (“Experts routinely rely upon other experts hired by the party

they represent for expertise outside of their field.”) Further, Dr. Madisetti includes opinions regarding a nexus between the success of the PoE products and the patents-in-suit. (Doc. No. 574-1, at ¶ 159.) Ultimately, these opinions regarding commercial success go to the weight of Dr. Madisetti’s opinions and not the admissibility.

With respect to commercial viability, Defendants argue that Dr. Madisetti’s opinions are conclusory and unsupported. (Doc. No. 573, at 12.) Defendants argue that Dr. Madisetti’s testimony regarding what can be considered commercially viable in determining non-infringing alternatives is unsupported without some economic analysis. *Id.* Defendants point specifically to Dr. Madisetti’s deposition testimony where he testified that adding a few cents per port would cause hesitation, and that factors such as the volume share of the market, the design times, the complexity, speeds, and board-level redesign, the chip design, and time-to-market issues would affect viability in the market. *Id.* at 13. Chrimar argues that Dr. Madisetti should be allowed to provide testimony in rebuttal on non-infringing alternatives where Defendants bear the burden of proof, and that Dr. Madisetti is fully capable of analyzing these alleged alternatives on a technical level and comparing them to the patents-in-suit. (Doc. No. 607, at 10–13.)

In his opening report, Dr. Madisetti goes through alleged alternatives and IEEE proposals in comparing both the detection and classification protocols of the patents-in-suit, including analysis of schematics and product design for competitors in the field. (Doc. No. 574-3, at ¶¶ 268–315.) For example, with respect to the Broadcom Level One proposals, Dr. Madisetti reviewed schematics and concluded that the proposals require the additional components to include a low-pass filter. *Id.* at ¶¶ 277–78. It is for this reason that Dr. Madisetti ultimately concludes that the “proposed technology would not be commercially viable, cost-effective, or as simple in design as the 802.3af/at standards.” *Id.* at ¶ 278. The Court finds such opinions

admissible based on Dr. Madisetti's technical expertise and therefore finds it permissible for him to testify regarding whether these alternatives would have been commercially viable. Again, Defendants' arguments go to the weight of Dr. Madisetti's opinions, not the admissibility.

Accordingly, the Court finds no reasons to exclude Dr. Madisetti's opinions on commercial success or viability. Defendants can address the challenged opinions during the cross-examination of Dr. Madisetti.

### CONCLUSION

For the reasons explained herein, Defendants' Motion (Doc. No. 573) is **DENIED**.

So ORDERED and SIGNED this 7th day of November, 2016.

  
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JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE