IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ALARM.COM, INC. and ICN ACQUISITION, LLC,

Plaintiffs;

v.

SECURENET TECHNOLOGIES LLC,

Defendant.

Civil Action No. 15-807-RGA

MEMORANDUM OPINION

Mary B. Matterer and Kenneth L. Dorsney, MORRIS JAMES LLP, Wilmington, DE; Ian R. Liston, WILSON SONSINI GOODRICH & ROSATI, P.C., Wilmington, DE; James C. Yoon, Ryan R. Smith (argued), Christopher D. Mays, and Mary A. Procaccio-Flowers, WILSON SONSINI GOODRICH & ROSATI, Palo Alto, CA, attorneys for Plaintiffs.

Jack B. Blumenfeld and Stephen J. Kraftschik, MORRIS, NICHOLS, ARSHT & TUNNELL LLP, Wilmington, DE; Erik B. Milch and Frank Pietrantonio, COOLEY LLP, Reston, VA; Rose Whelan (argued), and Naina Soni, COOLEY LLP, Washington, DC, attorneys for Defendant.

January 8, 2019

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

ANDREWS, U.S. DISTRICT JUDGE:

Currently pending before the Court is Defendant's Motion to Exclude Opinions of Brett Reed. (D.I. 173). The parties have fully briefed the issues. (D.I. 174, 187, 197). The Court heard oral argument on December 3, 2018. (D.I. 208). After considering the parties' briefing and argument, the Court GRANTS-IN-PART and DENIES-IN-PART Defendant's Motion.

I. Background

Plaintiffs' predecessor-in-interest iControl Networks, Inc. filed this suit against Defendant SecureNet Technologies LLC on September 11, 2015. (D.I. 1). The suit asserted United States Patent Nos. 7,855,635 ("the '635 patent"), 8,473,619 ("the '619 patent"), 8,478,844 ("the '844 patent"), and 8,073,931 ("the '931 patent"). (D.I. 1 ¶¶ 3-7). The patents-in-suit are generally related to integrating an alarm system with an external security network and other interfaces. ('635 patent, abstract; '619 patent, abstract; '844 patent, abstract; '931 patent, abstract).

On June 23, 2016, Plaintiffs Alarm.com and ICN Acquisition (collectively "Plaintiffs") entered into an Asset Purchase Agreement with iControl Networks to purchase the patents-in-suit. (D.I. 177 at 209). Plaintiff ICN is a wholly-owned subsidiary of Plaintiff Alarm.com. (D.I. 186 ¶ 2). On March 8, 2017, Plaintiff ICN completed its acquisition of the patents-in-suit. (D.I. 177 at 209, 255). On March 29, 2017, the Court substituted Alarm.com and ICN for iControl as Plaintiffs in this action. (D.I. 28). Defendant filed a Motion to Exclude Opinions of Brett Reed on October 30, 2018. (D.I. 173).

II. Legal Standard

Federal Rule of Evidence 702 sets out the requirements for expert witness testimony and states:

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise 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 Third Circuit has explained:

> Rule 702 embodies a trilogy of restrictions on expert testimony: qualification, reliability and fit. Qualification refers to the requirement that the witness possess specialized expertise. We have interpreted this requirement liberally, holding that a broad range of knowledge, skills, and training qualify an expert. Secondly, the testimony must be reliable; it must be based on the "methods and procedures of science" rather than on "subjective belief or unsupported speculation"; the expert must have "good grounds" for his or her belief. In sum, *Daubert* holds that an inquiry into the reliability of scientific evidence under Rule 702 requires a determination as to its scientific validity. Finally, Rule 702 requires that the expert testimony must fit the issues in the case. In other words, the expert's testimony must be relevant for the purposes of the case and must assist the trier of fact. The Supreme Court explained in *Daubert* that Rule 702's "helpfulness" standard requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility.
>
> By means of a so-called "*Daubert* hearing," the district court acts as a gatekeeper, preventing opinion testimony that does not meet the requirements of qualification, reliability and fit from reaching the jury. *See Daubert* ("Faced with a proffer of expert scientific testimony, then, the trial judge must determine at the outset, pursuant to Rule 104(a) of the Federal Rules of Evidence whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue.").

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

Schneider ex rel. Estate of Schneider v. Fried, 320 F.3d 396, 404–05 (3d Cir. 2003) (cleaned up).[1]

III. Discussion

A. Mr. Reed's Lost Profits Opinion

Defendant requests that the Court exclude 1) the entirety of Mr. Reed's lost profits opinion due to defects in his analysis of the manufacturing and marketing prong of *Panduit*, or 2) Mr. Reed's opinion as to Plaintiff Alarm.com's entitlement to its lost profits prior to Plaintiff ICN's acquisition of the patents-in-suit. (D.I. 174 at 7). Plaintiffs respond that Mr. Reed's lost profits opinion should not be excluded because 1) Defendant's challenge to Mr. Reed's *Panduit* analysis goes to the weight of the evidence and 2) his opinion merely addresses alternative lost profits scenarios without purporting to determine the date from which Plaintiff Alarm.com is legally entitled to claim lost profits. (D.I. 187 at 12-13).

i. Marketing and Manufacturing Prong of *Panduit*

Defendant asserts that Mr. Reed improperly assessed the marketing and manufacturing prong of *Panduit* by failing to consider the constraints on third-party dealers in converting customers from SecureNet to Alarm.com. (D.I. 174 at 7-8). Further, Defendant asserts that Mr. Reed's report is internally inconsistent in assessing these barriers. (*Id.*). Plaintiffs assert that Defendant's challenge goes to the weight of Mr. Reed's opinion. (D.I. 187 at 13-14).

I agree with Plaintiffs. Defendant's challenge to Mr. Reed's assessment of the marketing and manufacturing prong goes to the weight and credibility of his opinion, not its admissibility. Therefore, the Court will not exclude Mr. Reed's lost profits opinion in its entirety. Defendant

---

[1] The Court of Appeals wrote under an earlier version of Rule 702, but the recent amendments to it were not intended to make any substantive change.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

may challenge Mr. Reed's conclusions at trial through cross-examination and the presentation of contrary evidence.

ii. Lost Profits Before March 8, 2017

As explained in the summary judgment opinion, Plaintiff Alarm.com, as a matter of law, may not recover lost profits before the date Plaintiff ICN acquired the patents-in-suit. (D.I. 214 at 9-11). To the extent Mr. Reed offers opinions that are inconsistent with the starting date of March 8, 2017 for lost profits recovery, those opinions are excluded.

B. Mr. Reed's Opinions on Secondary Considerations

i. Commercial Success

Defendant asks the Court to exclude Mr. Reed's commercial success opinion "because he does not appropriately address the nexus between the alleged commercial success and the patented invention." (D.I. 174 at 8). Specifically, Defendant argues that Mr. Reed's identified nexus was known in the prior art and therefore cannot provide the nexus required by law. (*Id.*). Plaintiffs argue that Mr. Reed has identified and addressed the required nexus, and therefore Defendant's challenge goes to the weight of the opinion, not admissibility. (D.I. 187 at 16).

"[A] nexus must exist between the commercial success and the claimed invention" for commercial success to be relevant. *Tokai Corp. v. Easton Enterprises, Inc.*, 632 F.3d 1358, 1369 (Fed. Cir. 2011); *see also Ormco Corp. v. Align Tech., Inc.*, 463 F.3d 1299, 1311-12 (Fed. Cir. 2006) ("Evidence of commercial success . . . is only significant if there is a nexus between the claimed invention and the commercial success."). "[T]he patentee in the first instance bears the burden of coming forward with evidence sufficient to constitute a prima facie case of the requisite nexus." *Demaco Corp. v. G. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1392 (Fed. Cir. 1988). "[T]here is a presumption of nexus for objective considerations when the patentee

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

WHAT WILL YOU BUILD? | sales@docketalarm.com | 1-866-77-FASTCASE

fastcase®
Smarter legal research.