[redacted]

EXHIBIT F

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

TOUCHSTREAM TECHNOLOGIES, INC., *Plaintiff*, v. CHARTER COMMUNICATIONS, INC. et al., *Defendants.*	Case No. 2:23-cv-00059-JRG

REBUTTAL EXPERT REPORT REGARDING DAMAGES

July 15, 2024

Respectfully Submitted,

W. Christopher Bakewell

5.8 Established Profitability of the Patented Product, its Commercial Success, and its Current Popularity[492]

266. I understand that certain principles must be followed when assessing a reasonable royalty in matters involving complex devices with interrelated technologies.[493] The overall goal is that a reasonable royalty analysis should consider the profitability that is specifically attributable to the footprint of the invention in the marketplace, or in other words the incremental value contributed by the patents-in-suit. From a financial/economic perspective, the idea is to get close to the financial footprint of the patent right, which reduces the possibility for error.[494]

267. G-P Factor 8 involves evaluating the economic benefits that can be specifically attributed to the patents-in-suit, and specifically to the extent that any such benefits can be distinguished from the products themselves. This was addressed in the cost and income approaches; G-P Factor 8 involves similar considerations (*see* **Section 4.4**). This G-P Factor is neutral relative to the baseline(s).

5.9 Utility and Advantages of the Patented Product Over Old Modes or Devices;[495] *and*

5.10 Nature of the Intellectual Property, Character of the Commercial Embodiment and the Benefits to Those Who Have Used the Invention[496]

268. G-P Factor 9 relates to the advantages of the patent property over any old modes or devices. G-P Factor 10 relates to the nature of the patented invention and its associated benefits. These two G-P Factors are often considered together due to their similar natures. I

---

[492] In its entirety, G-P Factor 8 reads: "The established profitability of the product made under the patent; its commercial success; and its current popularity."
[493] *See, for example*, *ResQNet.com, Inc. v. Lansa, Inc.,* 594 F.3d 860, 869 (Fed. Cir. 2010); *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1320 (Fed. Cir. 2011); *VirnetX, Inc. and Science Applications International Corporation v. Cisco Systems, Inc. and Apple Inc.,* 2014 WL 4548722, *14 (Fed. Cir. 2014).
[494] *Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.,* 894 F.3d 1258 (Fed. Cir. 2018), citing *VirnetX,* 737 F.3d at 1327.
[495] In its entirety, G-P Factor 9 reads: "The utility and advantages of the patent property over the old modes or devices, if any, that had been used for working out similar results."
[496] In its entirety, G-P Factor 10 reads: "The nature of the patented invention; the character of the commercial embodiment of it as owned and produced by the licensor; and the benefits to those who have used the invention."

discussed many of these considerations in **Section 2** and **Section 4**, particularly where I considered NIAs.

269. As a damages expert, I am required to assume that the patents-in-suit are valid and infringed. Nevertheless, considering prior art is a relevant consideration in assessing the incremental value of a patent right. In other words, studying prior art is relevant to a reasonable royalty, because it is important to consider the contribution of the patented invention over other technical contributions that occurred in the past.

270. I provided an overview of the patents-in-suit in **Section 2.1**. I discussed the "utility and advantages over old modes or devices" in **Section 4.4**, when I discussed NIAs. Furthermore, in terms of prior art, I understand that there are limited incremental benefits, if any, with the patents-in-suit over prior art.[497] I understand from Dr. Shamos that the invention is relatively narrow, and assuming the patents-in-suit are patentable (which he assumed for purposes of my interview), the contributions of patents-in-suit should be kept in context, and there are limitations to the incremental benefit provided by the patents-in-suit, particularly over prior art.[498] I also understand from Dr. Shamos that the technology is becoming obsolete, consistent with my observations from a commercial point of view.[499] This G-P Factor is neutral to downwards relative to the baseline(s).

271. I note that Dr. Mangum disregards any potential non-infringing alternatives, disregards that usage is limited and waning, disregards that Send to TV is not included in the latest generation of STBs, and as I have now described at length, disregards the limitations in this feature in terms of demand or value creation (see, for example, **Section 2.4**, **Section 2.5**, and **Section 4.4**. Dr. Mangum also provides no assessment of the patents-in-suit over prior art.

272. Dr. Mangum opines that "any advantages, or lack thereof must be measured in a relative sense against the advantages of the product built into the market measure," (*i.e.*, the

[497] Interview of Dr. Shamos.
[498] Interview of Dr. Shamos.
[499] Interview of Dr. Shamos.

Quadriga software agreement).[500] Dr. Mangum performs no such analysis.

273. According to Dr. Mangum, "is the advantage of the Touchstream technology more or less advantageous over older products in the hospitality space or the cable industry."[501] Dr. Mangum provides no basis for this claim.

274. According to Dr. Mangum, as he is "unaware of any studies or evidence comparing the two industries with respect to the Touchstream technology…it is clear that the parties to the hypothetical negotiation would understand the economic value of the patents-in-suit and how US consumers, and in turn the cable companies value that technology relative to the hospitality space."[502] It is unclear why Dr. Mangum believes a lack of documents comparing two industries is indicative that the parties would understand the relative value of the technology in the two industries. If anything, this is another reason that the Quadriga software agreement is not comparable to the hypothetical license(s). These industries are different, and the use cases are different, as I discussed above. It is only Dr. Mangum, apparently, who believes that the hospitality industry is like consumer cable TV.

275. Dr. Mangum says that "[w]hile on the one hand, in the hospitality space, the technology enables consumers to view additional media in the room (*e.g.*, BYOC), in the cable industry space, when a subscriber loses a remote, there is an immediate comprehensive replacement."[503] This comparison appears to be a mistake by Dr. Mangum, as it does not make sense. Dr. Mangum also states that the cable industry provides services to residential customers, but also to hotels."[504] Dr. Mangum does not consider that these are businesses that are different and separate, with different technologies and economics, treated as such by Charter.[505]

[500] Mangum Report, p. 57.
[501] Mangum Report, p. 57.
[502] Mangum Report, p. 57.
[503] Mangum Report, p. 57.
[504] Mangum Report, p. 57.
[505] Interview of Mr. Hardin.

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.