SUMMIT 6, LLC v. SAMSUNG ELECTRONIC CO. LTD., Appeal Nos. 2013-1648, -1651 (Fed. Cir. September 21, 2015). Before Prost, Reyna and Hughes. Appealed from N.D. Tex. (Judge O'Connor).

Background:

Summit owns a patent relating to processing digital content such as digital photos. Summit sued Samsung for patent infringement based on its use of a process of sending photos via multimedia messaging service (MMS) by portable devices. During the damages phase of the jury trial, Summit presented expert witness on damages opined that Samsung would have agreed in a hypothetical negotiation to pay $0.28 per phone to use the infringing features on its phones over the life of the patent. The jury awarded Summit $15 million in damages. Samsung filed a *Daubert* motion to exclude Summit's damages expert's testimony, which the district court denied. Summit appealed.

Issue/Holding:

Did the district court err in admitting Summit's damages expert's testimony? No, affirmed.

Discussion:

Samsung argued that Summit's expert's methodology was "unpublished, created specifically for the current litigation and never employed by any expert." Samsung further argued that the expert's "premise…that a feature's use is proportional to its value" was incorrect and contradicted by other expert testimony. Samsung also questioned the reliability of Summit's use of survey evidence since Summit's expert is not a survey expert failing to take basic steps required of a secondary expert.

The court recognized that estimating a reasonable royalty is not an exact science, and that there may be more than one reliable method for estimating a reasonable royalty.   In the case at bar, Summit's expert calculated a reasonable royalty for a hypothetical negotiation based on (1) the relative amount of revenue from sales of Samsung's phones that could be attributable to the camera function, (2) the percentage of users who used the alleged infringing feature, and (3) an assumption of an even split between the parties of the profits attributable to the infringing feature.

Applying the Supreme Court's *Daubert* decision, the Federal Circuit found that, although Summit's expert's damages methodology was not peer-reviewed or published, it was based on reliable principles and was sufficiently tied to the facts of the case. To the extent that Summit's expert's testimony had factual errors or was not credible, those are factors to be considered by the jury because they speak to the weight of the evidence rather than its admissibility. Thus, the Federal Circuit affirmed the district court's denial of Samsung's *Daubert* motion.