

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

COLLISION COMMUNICATIONS, INC.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC.,

Defendants.

Case No. 2:23-cv-00587-JRG

JURY TRIAL DEMANDED

ORAL ARGUMENT REQUESTED

**SAMSUNG'S OPPOSITION TO COLLISION'S MOTION FOR LEAVE TO
SUPPLEMENT THE EXPERT REPORT OF JOHN M. KOWALSKI, PH.D.**

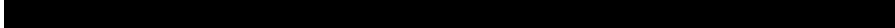


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I. INTRODUCTION

Collision's motion is an improper attempt to use the Court's supplemental claim construction order as a vehicle to smuggle new, previously undisclosed, case-changing infringement theories into the case on the eve of trial. Collision claims that the supplemental report was a product of this Court's revised claim construction and that the supplement does not put forward a new infringement theory. Both claims are false.

Collision's prior infringement theory was that "transmitted" SU-MIMO signals that emanate from antennas are the "multiple users" of the claims, and Dr. Kowalski opined that a "digital data stream" that is "received at the accused product" "contains multiple transmitted signals (*i.e.*, users)." Mot. Ex. G ¶ 8. The proposed supplemental report would radically change the infringement theory and opinion. Specifically, Dr. Kowalski now opines, for the first time and contrary to Collision's representations throughout this case, that the "users" are MIMO "layers," despite not mentioning layers a single time in his infringement analysis for this limitation in his opening report. In addition, despite testifying unequivocally in deposition that the asserted patents are not essential to the 4G or 5G standards, Dr. Kowalski now opines that practicing the 4G and 5G standards infringes the asserted claims (Mot. Ex. A ["Supp. Rpt."] ¶¶ 3-4)—a new theory that, if allowed, would convert this into an SEP case two weeks before trial. Nothing about these new theories is linked to the Court's supplemental construction, and in fact, they are flatly inconsistent with that construction and with Dr. Kowalski's own previous sworn testimony.

When the Court issued its supplemental claim construction order on August 26, the Court did *not* grant leave for Dr. Kowalski's new report. Dkt. 269 ("Supp. Order"). And at the PTC, the Court stated that its supplemental claim construction was *not* intended to "blow up" the trial schedule. PTC Hr'g Tr. at 39:7-19. Despite the Court's clear guidance, Collision again seeks leave to amend Dr. Kowalski's report, and in a way that would require a lengthy continuance for

additional fact and expert discovery and summary judgment briefing. There is no good cause for Collision’s late attempt to change its theory of infringement, and the Court should reject that attempt.

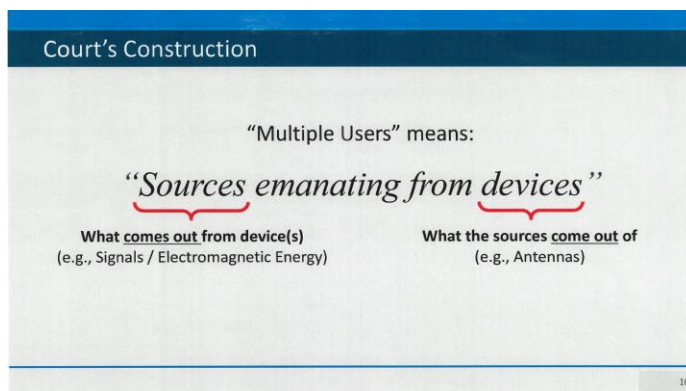
II. BACKGROUND

A. Collision Sought Clarification Of The Court’s Claim Construction Order

After full claim construction briefing and a hearing, the Court construed “multiple users” in the ’703 and ’651 patents as “sources emanating from devices,” plural. Dkt. 171 at 16. Collision then moved for clarification and leave to supplement its expert’s infringement report. Dkt. 202.

B. Counsel For Collision Explained What Dr. Kowalski’s Opinions Were

At the PTC, counsel for Collision explained what Dr. Kowalski maps to the claimed “multiple users”: *transmitted signals coming out from antennas*. PTC Hr’g Tr. at 41:17-18 (“It has always been that the users of the signals that go through the air.”), 26:6-12 (“I think antennas is certainly a device that sources come out of.”). Collision further argued that “users” are “[w]hat *comes out* from device(s) . . . e.g., [a]ntennas.” Collision PTC Slides at 16 (emphasis in original):



C. The Court’s Supplemental Claim Construction Order

Following the hearing on Collision’s motion, the Court issued its supplemental claim construction order, construing “multiple users” as “multiple sources of digital data streams for transmission.” Supp. Order at 14. The Court did not grant Collision’s request for leave to

supplement Dr. Kowalski's infringement report. PTC Hr'g Tr. at 319:13-14. In its order, the Court acknowledged the indefiniteness problem stemming from the "multiple users" limitation. *Id.* at 10 n.2. And the Court's construction avoids the indefiniteness problem by requiring that not just any source would meet the "users" construction; rather, the source must be *for transmission*. The Court then provided examples of what would and would not infringe under its supplemental construction. The first annotated figure in the Order has only *one* user (d1) utilizing two antennas, so it does not meet the "multiple users" limitation and thus does not infringe. *Id.* at 13. The Court provided another example with *two* users (d1 and d2), that does meet the "multiple users" limitation and thus meets the construction of "multiple users." *Id.* at 14.

Counsel for Collision agreed with the Court's construction. PTC Hr'g Tr. at 337:16-17.

D. Dr. Kowalski's New Supplemental Expert Report

On Saturday, September 6, Collision served Samsung with the supplemental report that is the subject of Collision's motion for leave. Dr. Kowalski claims that the Court's new construction is consistent with his opening infringement report, and that the Court's addition of "for transmission" was inherent in his prior analysis. Supp. Rpt. ¶ 2.

It is not. Dr. Kowalski's original opinion was that "users" are *transmitted signals* coming out from antennas. *See* Mot. Ex. G ¶ 8 ("This digital data stream contains multiple *transmitted* signals (i.e., users)") (emphasis added). But the Court's Order requires a user to be a source *for* transmission, not a signal that has already been transmitted. Indeed, using the Court's annotated Figure 1 as an example, transmitted signals come out of antennas 40 and are not users d1 or d2. Similarly, a mapping that "users" are transmitted signals is untenable because it inherently reads out "digital" from the Court's construction. A transmitted radiofrequency signal is *analog*. *See*

PTC Hr'g Tr. at 43:20-44:9. Transmitted analog signals over the air are not sources of *digital* data streams.¹

Perhaps recognizing that his original opinions do not match the Court's supplemental construction, Dr. Kowalski's supplemental report pivots to an entirely new theory. Supp. Rpt. ¶¶ 3-5. Dr. Kowalski now opines that the upstream [REDACTED]—

[REDACTED] *Id.* at ¶ 5; *see also id.* ¶ 5 ([REDACTED] [REDACTED]). Not only is this a new, never-before-disclosed theory at odds with the Court's construction, it is an updated repackaging of the “layer” theory in Collision's first attempt to supplement Dr. Kowalski's report that the Court denied. Dkt. 202-7; PTC Hr'ng Tr. at 319:13-14.

Dr. Kowalski's latest supplementation is also flatly inconsistent with the intrinsic record. As Dr. Kowalski recognizes, [REDACTED] [REDACTED] Mot. Ex. F (Op. App'x C) ¶ 29 (quoting Sesia, *The UMTS Long Term Evolution* § 11.2.2.2). The '703 and '651 patent specification explains that the “term $b_k[i]$ ” are *the mapped symbols* (*i.e.*, layers) for each user k . Dkt. 1-1 at 14:18-21; Figure 1. But the Court's supplemental claim construction order expressly *precludes* a mapping that a layer is a user; in the Court's non-infringing example, a single user (d_1) uses multiple layers (b_1 and b_2). Supp. Order at 13.

E. Dr. Kowalski's New Report Contradicts His Own Sworn Testimony

Dr. Kowalski's new theory that a “user” can be a layer “on the processing chain” is also contradicted by Dr. Kowalski's prior sworn testimony. Dr. Kowalski testified that layers and

¹ Collision attempts to dismiss this as “form over substance.” Mot. at 13 n.3. But in fact, this illustrates the unresolvable inconsistency between Dr. Kowalski's infringement opinion *before* the Court's August Order and his opinion *now*. All along, it has been his opinion that the sources are “transmitted,” past tense—*i.e.*, by antennas, over the air—and there can be no doubt that digital signals are not transmitted by antennas.

[REDACTED]

sources are *different things* in the very citations that he includes in paragraph 5 of his supplemental report. These are Dr. Kowalski's words:

[REDACTED]

[REDACTED]

Dkt. 133-2 (Kowalski 5/30 Tr.) at 182:4-15 (emphasis added).

According to Dr. Kowalski, the reason layers and sources are different things is that sources come from somewhere beyond the base station, opaque to Figure 1 of the '703 patent:

[REDACTED]

[REDACTED]

[REDACTED]

Dkt. 133-2 (Kowalski 5/30 Tr.) at 182:16-183:21 (emphasis added). The above testimony is crystal clear: the source, whatever it is, *precedes* the layers, which merely process the digital data. *Id.*

F. Dr. Kowalski's New Supplemental Report Invites A Standards-Essential Infringement Theory Not Previously Disclosed

During fact discovery, Collision stated repeatedly that it was not accusing the 4G and 5G standards of infringement, and that this was not an SEP case. *See* Dkt 165-11 at 20 ("To the best of Collision's knowledge, none of the Asserted Patents are subject to a FRAND commitment or

declaration. Moreover, Collision does not at this time intend to demonstrate Defendant's infringement solely by [*sic*] resort to any standard document[.]”).

Dr. Kowalski's supplemental report—served, again, two weeks before trial—walks back Collision's prior statements. Specifically, he opines that “

” Supp. Rpt. ¶ 3. Paragraphs 3 and 4 of his supplemental report cite select paragraphs (22–24, 26–29, 32, 42) of his opening report that describe the wireless standard. Those paragraphs in turn cite *only* to wireless standard documents or academic papers on the standard. Mot. Ex. F (Op. App'x C) ¶¶ 22–24, 26–29, 32, 42. By opining that the Accused Products infringe because they support the 4G and 5G standards, which in turn specify “transmission of SU-MIMO and CRS signals,” paragraph 3 of the supplemental report is an unambiguous opinion that practicing the LTE and/or 5G standards is enough to infringe.

III. ARGUMENT

An expert required to provide a written report must include “complete statement of all opinions the witness will express and the basis and reasons for them.” Fed. R. Civ. P. 26(a)(2)(B)(i). Parties must provide their expert disclosures “at the times and in the sequence that the court orders.” Fed. R. Civ. P. 26(a)(2)(D). “Fed. R. Civ. P. 16(b) provides that a schedule modification, such as permitting a supplemental expert report, may only be made for good cause.” *Smart Path Connections, LLC v. Nokia of Am. Corp.*, No. 2:22-CV-0296-JRG-RSP, 2024 WL 992147, at *1 (E.D. Tex. Mar. 6, 2024) (citing *Reliance Ins. Co. v. Louisiana Land & Expl. Co.*, 110 F.3d 253, 257 (5th Cir. 1997)). The Court evaluates good cause using a four-part test: “(1) the explanation for the failure to [submit a complete report on time]; (2) the importance of the testimony; (3) potential prejudice in allowing the testimony; and (4) the availability of a continuance to cure such prejudice.” *Reliance Ins. Co.*, 110 F.3d at 257.

All four factors weigh strongly against Collision. There is no good cause to supplement Dr. Kowalski's opinion. At the pretrial conference, the Court expressed concern the Court's supplemental construction would "blow up" the trial. The Court was clear that it did not "intend to send all the experts back to the starting blocks and rewrite expert reports and start over again." PTC Hr'g Tr. at 39:7-19; *see also id.* at 319:23-24 ("I can't imagine there's going to be a basis to completely rewrite reports."). Yet Dr. Kowalski's supplemental report does just that.

A. Collision Has No Explanation for the Supplemental Report Because Dr. Kowalski Could Have Expressed This Opinion Earlier

While Collision claims that the Court's "current multiple-users construction is largely . . . the construction that Dr. Kowalski, Collision's technical expert, applied in his expert report" (Mot. at 7), this is simply not the case and is belied by the additional analysis Dr. Kowalski includes in his report. *First*, Dr. Kowalski's original opinion was that "users" are *transmitted* signals in the air. *See supra* §§ II.B-II.D. Collision's motion, conspicuously, points to no opinion anywhere in Dr. Kowalski's opening report where he equates "users" and "layers;" instead, every discussion refers to transmitted signals, concluding there are multiple users based on the number of antennas transmitting those signals. *See id.* The Court's construction disposes of this mapping because "users" are not signals in the air, rather they are sources of digital data streams for transmission. *See supra* § II.C. *Second*, Collision's new theory—that "users" are MIMO layers in the processing chain²—was not only absent from Dr. Kowalski's opening report³, but is also irreconcilable with the Court's construction. *See supra* § II.D; *see also* Mot. at 11.

² "Processing chain" is both new to Dr. Kowalski's analysis and hopelessly vague. The word "chain" does not appear once in Dr. Kowalski's opening report and its inclusion in Dr. Kowalski's supplemental report appears to be yet another attempt to handwave away Dr. Kowalski's non-existent infringement analysis under a "layers" theory.

³ To confirm this theory was absent from Kowalski's report, one need only look at the evolution of Collision's arguments in this case. Collision first raised a related "layers" argument in its

The changes to Dr. Kowalski's report arise from Collision's inability to prove infringement unless Dr. Kowalski is allowed to pivot away from signals transmitted over the air. *See supra* § II.D. As explained above, Dr. Kowalski previously pointed to "transmitted" (i.e., analog) signals as the users, which are received and then "combined" into a digital data stream. *See* Mot. Ex. G ¶ 8 (opining "the digital data stream is the combined SU-MIMO signal received at the accused product"). But this existing infringement read does not identify a "source" of a "digital data stream[] for transmission" and, therefore, suffers from the same infirmities that caused Samsung to move for summary judgment of noninfringement of the "multiple users" term. *See* Dkt. 133. This is why Samsung objects to paragraph 6 of Dr. Kowalski's supplemental report (*see* Mot. at 14-15), which claims that Court's new construction "applies to [his] infringement analysis for the '703 and '651 patents"—it does not, and even if it did, it would be insufficient to prove infringement of those patents.

Moreover, layers were never a basis for Dr. Kowalski's infringement analysis, and any suggestion otherwise is belied by Dr. Kowalski's opening report.⁴ As Collision's motion demonstrates, they were barely even included in his report. Mot. at 11-12 (acknowledging that

opposition to Samsung's summary judgment motion. There, Collision raised a "layer" argument closely tied to the theory it now seeks to introduce through this supplemental report. *Compare* Dkt. 166 at 2-3 *with* Dkt. 280 at 11-12. Recognizing that there was no support for this "layers" theory in its expert's original report, Collision sought to supplement its expert report in connection with its motion for clarification. In that 24-page supplement, Dr. Kowalski **added** numerous opinions, not found in his original report, related to MIMO layers, with the word "layer" appearing 17 times. Dkt. 202-7. If these opinions were in his opening reports already, there would have been no need to supplement.

⁴ Collision suggests that Samsung did not ask any infringement-related questions of Dr. Kowalski because "infringement appendices to Dr. Kowalski's report were [not] introduced as exhibits to Dr. Kowalski's deposition." Mot. at 12. First, even if this were true, use of his appendices is not necessary for testing Dr. Kowalski's infringement opinions at deposition, as illustrated by the numerous portions of Dr. Kowalski's deposition included in Samsung's motion for summary judgment. Dkt. 133. Second, it is also abjectly false. Exhibit 1 to Dr. Kowalski's deposition was his *entire* opening report, including *all* appendices. Ex. 1 (Kowalski 5/29 Tr.) at 89:14-16.

infringement analysis does not use the word “layer” and providing parenthetical support in only a single paragraph from Appx. C, which discusses the 4G and 5G standards generally). Indeed, layers are mentioned in just a handful of block quotes included in his discussion of the 4G and 5G standards. *Id.* This portion of Collision’s motion also cites to paragraphs from his infringement analysis, Appx. I (’703 patent) and Appx. J (’651 patent). Notably, however, a review of the cited paragraphs reveals these paragraphs are not about layers at all. *See, e.g.*, Mot. Ex. G ¶ 8; Mot. Ex. H ¶ 13. Nowhere in these sections, as Collision suggests, did Dr. Kowalski “clearly indicate[] that ‘signal’ can be used as a synonym for layer” or that MIMO layers are users. *See* Mot. at 11. He did not and, to the contrary, they are completely different. *See supra* § II.E.

Collision also baselessly claims “Dr. Kowalski stated that ‘A spatial *layer* is the term used in LTE for one of the different streams generated by spatial multiplexing.’” Mot. at 11 (citing Ex. F at ¶ 29). Not so. In the cited paragraph, Dr. Kowalski’s affirmative opinion is limited to the following: “The LTE standards support multiple downlink antennas and various antenna transmission schemes, including MIMO. The MIMO scheme transmits multiple signals using the multiple antennas, maximizing the data throughput of the transmission.” Mot. Ex. F at ¶ 29. But this alleged “opinion” is *not* an affirmative opinion; instead, it is part of a block quote from a textbook. *Id.* It is not evidence of an opinion that layers were accused.

Further, Dr. Kowalski’s supplemental report now suggests he can determine infringement merely because the Accused Products practice the 4G or 5G standards, which support SU-MIMO and CRS signals. Supp. Rep. ¶¶ 3-4. The only evidence he cites in support of this opinion are technical standard documents, not Samsung technical documents. *See supra* § II.F. As a result, he identifies no basis for any opinion that the Samsung products are, in some relevant way, different from the standard. This new theory would, therefore, transform this case into an SEP case two

weeks before trial, is not justified in view of Collision’s prior representations that the asserted patents are not standard essential, and is directly contrary to Collision’s expert’s testimony at deposition. Ex. 1 (Kowalski 5/29 Tr.) at 22:1-15 (_____); Ex. 2 (Bergman Tr.) at 88:4-89:1 _____

_____ There is no justification for Collision raising this theory for the first time now, as it plainly could have been raised before this Court’s supplemental claim construction. Collision made a strategic decision not to make this argument before and it cannot use the claim construction as an excuse to do so now.

B. The Supplemental Report is Not Important Because It Misapplies Claim Construction and Contradicts Kowalski’s Sworn Testimony

It is well-established that “[e]xpert opinions that contradict or disregard a court’s claim constructions should be excluded.” *Longitude Licensing Ltd. v. BOE Tech. Grp. Co.*, No. 2:23-CV-00515-JRG-RSP, 2025 WL 2029871, at *2 (E.D. Tex. July 21, 2025) (internal quotation omitted); *MarcTec, LLC v. Johnson & Johnson*, 664 F.3d 907, 913 (Fed. Cir. 2012) (“[E]xpert testimony [that] ignored the court’s claim construction ‘is irrelevant to the question of infringement’ and is inadmissible under *Daubert*”). Such opinions are “particularly inappropriate” where the Court rejected the constructions at issue. *See Longitude Licensing*, 2025 WL 2029871, at *2. “Allowing experts to analyze claims under rejected constructions would render the entire claim construction process a waste of time.” *Id.*

Dr. Kowalski’s supplemental report is directly at odds with the Court’s supplemental construction. Dr. Kowalski’s new opinion maps MIMO layers to the claimed “users” (Supp. Rep. ¶ 5), which plainly contradicts the examples in the Court’s supplemental claim construction order of what users are and are not. Supp. Order at 12-14; *supra* §§ II.C-II.D. Collision invokes the 3GPP

technical specification to define MIMO layers in its motion,⁵ and in doing so cites a figure squarely demonstrating that layers *are not* users. *Compare:*

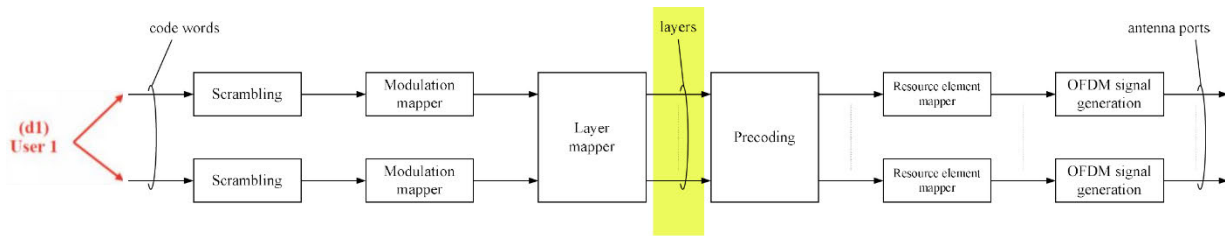


Figure 6.3-1: Overview of physical channel processing.

Mot. at 11 (citing 3GPP TS 36.211 v8.9.0, Figure 6.3-1) (annotated and highlighted) *with:*

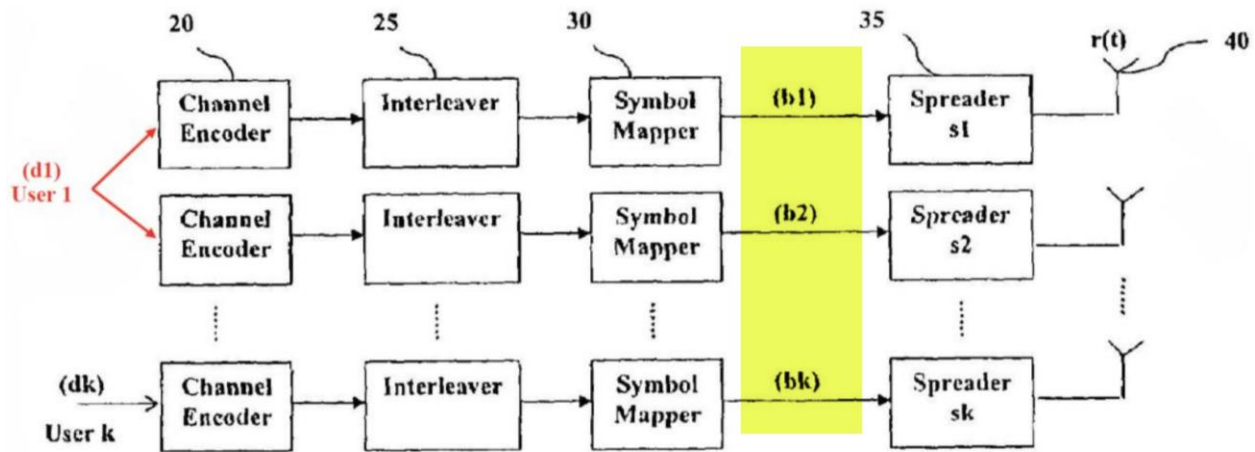


FIG. 1 of the patents modified to show a single “user” or source of a digital data stream d(1) ultimately provided to two different antennas

Supp. Order at 13 (yellow highlighting added).

This new opinion also contradicts Dr. Kowalski’s previous report and sworn deposition testimony. “Experts may continue to develop and refine their opinions” but “subsequent expert testimony may not introduce entirely new topics such that the opposing party would be surprised

⁵ In the same breath, Collision also alleges that “a MIMO layer is the *source* of a digital data stream in the processing chain of a transmitter.” Mot. at 13 (emphasis added). But the standards document cited by Collision as support—the same document from Appx. C to Kowalski’s opening report—demonstrates this is flatly wrong. That document states that a layer is a term “for one of the different streams generated by spatial multiplexing.” Mot. Ex. F at ¶ 29. In other words, Collision is wrong: the layer *is* a stream, it is not the *source* of a stream.

by opinions, grounds, or facts contained in subsequent expert testimony[.]” *G+ Commc’ns, LLC v. Samsung Elecs. Co.*, No. 2:22-CV-78-JRG, 2023 WL 3506434, at *2 (E.D. Tex. May 17, 2023).

Dr. Kowalski’s supplement does just that. Dr. Kowalski previously opined that layers and users are distinct concepts. Dkt. 133-2 (Kowalski 5/30 Tr.) at 182:4-183:21. Now his supplemental report equates layers and users. Supp. Rep. ¶ 5. Papering over deposition testimony that is harmful to Collision is an improper use of the supplemental report. *See Perfect Birds, L.L.C. v. Kaytee Prods., Inc.*, No. W-08-CA-042, 2009 WL 10669535, at *4 (W.D. Tex. Sept. 4, 2009) (“As the affidavits contradict rather than supplement Graham’s deposition testimony, the Court has excluded the affidavits from consideration.”); *Binh Hoa Le v. Exeter Fin. Corp.*, No. 3:15-CV-3839-L, 2019 WL 1436375, at *31 (N.D. Tex. Mar. 31, 2019) (“Defendants contend, and the court agrees for the reasons previously explained, that Plaintiff should not be allowed to offer new expert testimony or otherwise ‘fix’ his prior designations under the guise of supplementing his expert’s report or opinion.”), *aff’d*, 990 F.3d 410 (5th Cir. 2021).

Collision argues that the testimony is important because “Collision has the burden to show infringement under the Court’s current construction.” Mot at 9. That a party carries a burden at trial does not automatically bestow good cause to amend. Regardless, “[t]he importance of a witness’s testimony cannot singularly override the enforcement of local rules and scheduling orders.” *Young v. Brand Scaffold Servs., LLC*, No. 1:07-cv-917, 2009 WL 4674050, at *3 (E.D. Tex. Feb. 24, 2009) (citation omitted). There is no justification for the purported supplement here.

Finally, Samsung’s opposition to Collision’s eleventh-hour supplementation is not “gamesmanship,” as Collision suggests. Mot. at 9. Rather, it is *Collision’s* gamesmanship in attempting to use this Court’s supplemental claim construction as a means to rewrite all of its failing infringement theories, regardless of whether or how the construction affects those theories.

There is no “mischief” behind Samsung’s decision to oppose Collision’s attempt to inject expert testimony into the trial that is inexplicably untimely (*see supra* at 2, 7-10), that contravenes this Court’s claim construction (*see supra* § II.C-II.D), and that improperly seeks to paper over sworn deposition testimony that is harmful to Collision’s case (*see supra* § II.E).

C. Samsung is Prejudiced By The Supplemental Report

Collision’s need to supplement, even after the Court’s supplemental claim construction order, shows how brittle Collision’s infringement theory is.⁶ It is also highly prejudicial to Samsung. Collision proceeded through expert discovery using only its own proposed construction. It failed to provide any analysis of SU-MIMO for the ’703 and ’651 patents under Samsung’s construction. The supplementation Collision seeks is nothing more than an eleventh-hour mulligan of Collision’s entire infringement case. Collision’s argument that Samsung’s opposition to only paragraphs that mention MIMO somehow shows lack of prejudice (Mot at 14) makes no sense. The prejudice to Samsung stems from Dr. Kowalski’s flip-flopping of its mapping of “users” from transmitted signals to MIMO layers.

At this juncture, Samsung has taken all its discovery, including prior art searches and depositions, based on Collision’s previous infringement reads. A new read on one of Samsung’s chief non-infringement defenses is highly prejudicial for the obvious reason that “injecting a new infringement theory at a late stage is prejudicial to a defendant.” *Cellular Commc’ns Equip., LLC v. Apple Inc.*, No. 6:14-cv-251, 2016 WL 4211707, at *3 (E.D. Tex. Aug. 10, 2016).

Collision’s apparent new theory that the asserted patents are standard essential is just as prejudicial. Samsung did not seek discovery or develop SEP-related damages theories based on

⁶ Although not necessary, out of an abundance of caution, Samsung seeks leave to supplement Dr. Mahon’s reports for the limited purpose of explaining that his opinions are consistent with the Court’s construction. Exs. 3, 4.

Collision's assurance that the asserted patents are *not* standard essential. Now that Collision seeks to turn this case into an SEP case, the proper damages analysis changes dramatically. "Because SEP holders should only be compensated for the added benefit of their inventions, the jury must be told to differentiate the added benefit from any value the innovation gains because it has become standard essential." *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1233 (Fed. Cir. 2014). "Although the jury, as the fact finder, should determine the appropriate value for that added benefit and may do so with some level of imprecision, we conclude that they must be told to consider the difference between the added value of the technological invention and the added value of that invention's standardization." *Id.* Substantial fact and expert discovery and evidence is necessary to answer this question. *See HTC Corp. v. Telefonaktiebolaget LM Ericsson*, 407 F. Supp. 3d 631, 637–38 (E.D. Tex. 2019), *aff'd*, 12 F.4th 476 (5th Cir. 2021). No one has done that work. Collision's damages expert admitted that he did not account for the patents being standard-essential in calculating damages (because Collision's position at the time was that they were not). *Supra* at 10. Thus, less than two weeks from trial, neither side has an opinion or evidence of what a properly apportioned royalty rate would be if the asserted patents are standard-essential. Allowing Collision's proposed new theory would require the parties to re-do much of fact and expert discovery on the issue of damages.

Collision's attempt to turn this into an SEP case two weeks before trial also impacts the technical case because a theory that each element of the asserted claims is met by the practice of LTE or 5G alone changes the scope for both noninfringement and invalidity defenses.⁷ For

⁷ Collision's supplement would also be prejudicial for the same reasons expert reports unsupported by infringement contentions are regularly stricken. *See, e.g., Sol IP, LLC v. AT&T Mobility LLC*, No. 2:18-cv-00526-RWS-RSP, 2020 WL 10045985, at *1 (E.D. Tex. Apr. 23, 2020) (granting motion to strike unidentified accused products) (Payne, M.J.).

example, system prior art that merely practiced cellular standards before the priority date of the '703 and '651 patents was not available before, but would now be available under Collision's theory. *See Universal Connectivity Techs. Inc. v. Lenovo Grp. Ltd.*, No. 2:23-CV-00449-JRG, 2025 WL 1144734, at *3 (E.D. Tex. Apr. 15, 2025) ("As a case moves into fact discovery, a defendant is entitled to know whether the asserted patents are essential, and if so, on what basis.").

D. A Continuance Is Necessary If the Supplement Is Permitted

For the foregoing reasons, Dr. Kowalski's supplement does not "simply point[] to places in the Opening Report to explain that the Opening Report opinions are consistent with the Court's Order." Mot. at 15. To the contrary, and as explained above, it is an attempt to re-write the opening report and Collision's theory of infringement. Should the Court allow Collision to supplement, a continuance would be necessary to provide Samsung time to pursue the necessary fact and expert discovery, as well as an opportunity to renew its motion for summary judgment (Dkt. 133) which the Court denied as moot, without oral argument, due to the new construction. Samsung has a right—as a matter of due process and basic fairness—to develop and present evidence to defend against Collision's new infringement theories. The absence of a continuance here would deprive Samsung of its rights to defend against the claims and therefore would be legally improper. *See, e.g., Onosode v. Equifax Info. Servs.*, No. 4:20-CV-951, 2023 WL 2783263, at *14 (E.D. Tex. Mar. 29, 2023) (raising new allegations after summary judgment "is precisely the sort of surprise switcheroo that [Fifth Circuit's] precedents forbid") (internal quotations omitted).

IV. CONCLUSION

For these reasons, Defendants request that the Court deny Collision's motion to supplement the expert report of Dr. Kowalski.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served on all counsel of record via email on September 10, 2025.

Dated: September 10, 2025

/s/ John T. McKee
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