

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

**Phenix Longhorn LLC v. AU Optronics Corporation, Hisense
Electronica Mexico, S.A. de C.V., Hisense USA Corporation, Hisense
Visual Technology Co., Ltd., and Does 1–10**

Phenix Longhorn · No. 2:23-CV-00477-RWS-RSP · Decided December 22, 2025

SUMMARY

The court grants in part Plaintiff’s motion to strike portions of the hybrid witness disclosures of Center Chen and Bear Syong and grants related portions of Plaintiff’s Motion in Limine No. 1. The court limits the witnesses’ testimony concerning claim construction and infringement of U.S. Patent Nos. 7,233,305 and 7,557,788, while allowing certain testimony based on their ground-level experience with AUO’s products and testing data subject to specified limitations. The court also excludes testimony and materials concerning the scope and coverage of AUO’s patents as part of its independent-development story.

CASE DETAILS

COURT	United States District Court for the Eastern District of Texas, Marshall Division
WRITING FOR THE COURT	Roy S. Payne
JURISDICTION	United States District Court for the Eastern District of Texas, Marshall Division
DECIDED	December 22, 2025
DOCKET	2:23-CV-00477-RWS-RSP
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved to strike portions of defendants' hybrid witness disclosures under Federal Rule of Civil Procedure 26(a)(2)(C) and moved in limine to exclude related testimony and exhibits concerning asserted patents, testing, claim construction, infringement, and defendants' independent-development story.
STANDARD OF REVIEW	The court applied Federal Rule of Civil Procedure 26(a)(2)(B) and (C) to determine the permissible scope of hybrid and non-retained expert testimony, Federal Rule of Civil Procedure 37(c)(1) to disclosure

violations, and Federal Rules of Evidence 702 and 403 to the alternative challenges to testing evidence.

PRECEDENTIAL VALUE

Unknown; memorandum order from a federal district court

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QUESTIONS PRESENTED

1. Whether portions of Center Chen's hybrid-witness disclosure concerning the scope, claim construction, and infringement of the asserted patents violated Rule 26(a)(2)(C) because Chen lacked pre-litigation ground-level familiarity with those patents.
2. Whether Bear Syong's testing was impermissible expert opinion under Rule 26(a)(2)(C), and whether Chen and Syong could offer opinions based on testing conducted after their ground-level involvement in the development of the Pgamma ICs.
3. Whether AUO's patent exhibit and related testimony concerning its independent-development story should be excluded because the witnesses lacked ground-level knowledge of the referenced patents and the evidence risked jury confusion.
4. Whether Ms. Tang could testify regarding claim construction or infringement of the asserted patents despite lacking adequate pre-litigation ground-level knowledge.

HOLDINGS

1. A non-retained or hybrid witness may testify from ground-level personal knowledge concerning the functionality and design requirements that AUO supplied to its suppliers through RFQ documents, but Chen may not testify about claim scope, claim construction, or whether the accused products infringe the asserted patents because he first learned about those patents during the litigation.
2. The testing itself constituted factual evidence and was not excluded as impermissible Rule 26(a)(2)(C) expert testimony, but opinions by Chen and Syong based on testing conducted after their involvement in the design, development, and specification of the Pgamma ICs were stricken.
3. Defendants could present their independent-development story and reference the fact that they possessed numerous patents in the general technical field, but they could not refer to the scope or coverage of particular AUO patents because the witnesses were not competent to testify that the accused products practiced those patents and the evidence was not relevant to damages or willfulness and risked jury confusion.
4. Ms. Tang may testify about her ground-level experience with AUO's development of the accused products and the required functionality of the Pgamma ICs, but she may not testify about claim

construction, claim scope, or infringement of the asserted patents because she lacked adequate pre-litigation ground-level knowledge of them.

KEY QUOTATIONS

“A non-retained expert’s testimony under Rule 26(a)(2)(C) ‘arises not from his enlistment as an expert, but rather, from his ground-level involvement in the events giving rise to the litigation’”

“However, because he only learned about the Asserted Patents through the course of this litigation, and did not have any ground-level experience or knowledge of them beforehand, he cannot then testify, as Defendants wish him to, as to his opinion of the scope or coverage of the claims, as the Court construed them, or his opinion on whether the Accused Products containing the Pgamma ICs actually infringe the Asserted Patents.”

“The results of the testing itself are facts, not opinions falling under the purview of Rule 26(a)(2)(C).”

FACTUAL BACKGROUND

Center Chen had worked for AUO for approximately twenty-four years and had experience with the development, design requirements, supplier RFQs, and functionality of the Pgamma integrated circuits used in accused products. Chen testified that AUO did not possess suppliers' internal circuit diagrams and that he first encountered the asserted patents through the litigation. Bear Syong conducted testing of a Pgamma IC on an AUO TCON board, and Chen and Syong disclosed opinions relying on that testing. AUO also disclosed patents and an annotated analysis concerning its independent-development story, including patents that predated Chen's employment.

PROCEDURAL HISTORY

The action is a patent-infringement case pending in the Eastern District of Texas. Plaintiff filed a motion to strike portions of the disclosures of Center Chen and Bear Syong and separately filed Motion in Limine No. 1; the court carried the motion in limine issues relating to these matters and considered the fully briefed motions before trial.

DISPOSITION

other

CASES CITED

- DiSalvatore v. Foretravel, Inc., No. 9:14-CV-00150, 2016 WL 7742996, at *2 (E.D. Tex. May 20, 2016)
- Diamond Consortium, Inc. v. Manookian, No. 4:16-CV-00094, 2017 WL 2936218, at *2 (E.D. Tex. July 10, 2017)
- LaShip, L.L.C. v. Hayward Baker, Inc., 680 F. App'x 317, 324 (5th Cir. 2017)
- Tolan v. Cotton, No. CIV.A. H-09-1324, 2015 WL 5332171, at *1 (S.D. Tex. Sept. 14, 2015)
- United States ex rel. Taylor v. Healthcare Assocs. of Tex., LLC, No. 3:19-CV-02486, 2024 WL 4508961, at *10 (N.D. Tex. Oct. 15, 2024)
- Indianapolis Airport Auth. v. Travelers Prop. Cas. Co. of Am., 849 F.3d 355, 371 (7th Cir. 2017)

- Timpson ex rel. Timpson v. Anderson Cnty. Disabilities & Special Needs Bd., 31 F.4th 238, 253 (4th Cir. 2022)
- Jesus Church of Victoria Tex., Inc. v. Church Mut. Ins. Co., 627 F. Supp. 3d 715, 723 (S.D. Tex. 2022)
- LaShip, LLC v. Hayward Baker, Inc., 296 F.R.D. 475, 480 (E.D. La. Nov. 13, 2013)
- Ancor Holdings, L.P. v. Landon Capital Partners, L.L.C., 114 F.4th 382, 405 (5th Cir. 2024)

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