

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Cyntec Company, Ltd. v. Chilisin Electronics Corp., et al.

Cyntec · No. 18-cv-00939-TLT · Decided November 21, 2025

SUMMARY

The United States District Court for the Northern District of California grants Cyntec’s Daubert motion to exclude Dr. John C. Bravman from testifying on the ultimate question of obviousness and limits his use of secondary prior-art references. The court also finds that Dr. Kohl’s and Mr. Van Uden’s supplemental expert reports violated Rule 26 and were neither substantially justified nor harmless under Rule 37. The order therefore grants in part and denies in part Chilisin’s motion to strike the supplemental reports.

CASE DETAILS

COURT	United States District Court for the Northern District of California
JURISDICTION	United States District Court for the Northern District of California
DECIDED	November 21, 2025
DOCKET	18-cv-00939-TLT
DISPOSITION	other
PROCEDURAL POSTURE	After remand from the Federal Circuit in a patent-infringement action, the district court decided Cyntec's motion to exclude a defense expert's testimony under Daubert and Chilisin's motion to strike Cyntec's supplemental expert reports under Federal Rules of Civil Procedure 26 and 37.
STANDARD OF REVIEW	The court applied its gatekeeping function under Federal Rule of Evidence 702 and Daubert to determine the reliability and relevance of expert testimony. It reviewed Rule 26 supplementation and Rule 37(c) (1) exclusion issues under the substantial-justification-or-harmlessness standard, considering prejudice or surprise, ability to cure, trial disruption, bad faith or willfulness, and importance of the evidence.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- obviousness
- expert testimony
- daubert standard
- discovery dispute
- sanctions

PRACTICE AREAS

patent law

patent litigation

evidence

civil procedure

QUESTIONS PRESENTED

1. Whether Cyntec's motion to exclude Dr. John C. Bravman's opinions was timely and procedurally proper.
2. Whether Dr. Bravman could testify on the ultimate issue of obviousness when his report did not address all relevant objective indicia of nonobviousness.
3. Whether Dr. Bravman could rely on primary invalidity references beyond Shafer and Nakamura, and whether he could refer to other references for background and motivation-to-combine purposes.
4. Whether Dr. Kohl's and Van Uden's supplemental expert reports violated Federal Rule of Civil Procedure 26 and, if so, whether the violations were substantially justified or harmless under Rule 37(c)(1).
5. Whether the supplemental reports should also be stricken under Federal Rule of Civil Procedure 16.

HOLDINGS

1. Cyntec's motion to exclude Dr. Bravman's opinions was timely and procedurally proper because it was filed before the court-ordered deadline for pretrial objections, including Daubert motions.
2. Dr. Bravman may not testify on the ultimate question of obviousness because his report failed to address relevant objective indicia of nonobviousness, including commercial success, long-felt need, failure of others, unexpected results, and copying.
3. Dr. Bravman's primary invalidity references are limited to Shafer and Nakamura, but he may refer to other prior-art references to explain what was known in the art and why a skilled artisan would have been motivated to combine Shafer with Nakamura.
4. Dr. Kohl's supplemental report and Van Uden's third supplemental reports violated Rule 26, and the violations were neither substantially justified nor harmless; the reports were therefore excluded under Rule 37(c)(1).
5. The court denied Chilisn's motion to strike the supplemental reports under Rule 16 because it had already excluded the reports under Rule 37 and therefore did not need to decide the Rule 16 issue.

KEY QUOTATIONS

"The Court finds that Cyntec's Daubert motion to exclude Dr. Bravman's opinions is timely and procedurally proper." (at 4)

"Accordingly, the Court grants Cyntec's Daubert motion to exclude Dr. Bravman from testifying on the ultimate issue of obviousness." (at 6)

"However, Dr. Bravman may refer to other art references "to illustrate what was already known in the art, and why a skilled artisan would have been motivated to combine Shafer with Nakamura." (at 7)

“Accordingly, the Court grants Chilisin’s motion to strike Dr. Kohl’s and Mr. Van Uden’s supplemental reports pursuant to Rule 37.” (at 15-16)

FACTUAL BACKGROUND

Cyntec, a Taiwanese manufacturer of power chokes, alleged that Chilisin infringed its patents. After the Federal Circuit remanded the case for a jury to resolve factual disputes underlying obviousness, the parties agreed that no further expert discovery was necessary. More than a year later, Cyntec served a supplemental report from Dr. Kohl and third supplemental reports from damages expert Van Uden, including new financial data, shortly before the scheduled pretrial conference and trial.

PROCEDURAL HISTORY

Cyntec alleged that Chilisin infringed Cyntec's patents. After a jury found willful infringement and awarded damages, the district court granted Cyntec judgment as a matter of law on nonobviousness. The Federal Circuit reversed the JMOL on nonobviousness and reversed the denial of Chilisin's motion to exclude Cyntec's damages expert, remanding the case. On remand, the parties represented that no further expert discovery was necessary, but Cyntec later served supplemental reports; the court granted in part and denied in part the parties' motions concerning those reports and expert testimony.

DISPOSITION

other

CASES CITED

- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 590 (1993)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 43 F.3d 1311, 1318 (9th Cir. 1995)
- Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137, 147, 150, 153 (1999)
- Cooper v. Brown, 510 F.3d 870, 942 (9th Cir. 2007)
- Primiano v. Cook, 598 F.3d 558, 564-65 (9th Cir. 2010)
- Murray v. Southern Route Maritime SA, 870 F.3d 915, 922-23 (9th Cir. 2017)
- Asia Vital Components Co., Ltd. v. Asetek Danmark A/S, 377 F. Supp. 3d 990, 1008 (N.D. Cal. 2019)
- Intercontinental Great Brands LLC v. Kellogg North America Co., 869 F.3d 1336, 1343 (Fed. Cir. 2017)
- Illumina, Inc. v. BGI Genomics Co., Ltd., Nos. 19-cv-3770; 20-cv-1465, 2022 WL 899421, at *3 (N.D. Cal. Mar. 27, 2022)
- KSR International Co. v. Teleflex Inc., 550 U.S. 398, 407 (2007)
- Inline Plastics Corp. v. Caceria, 97 F.4th 889, 900 (Fed. Cir. 2024)
- InTouch Technologies, Inc. v. VGO Communications, Inc., 751 F.3d 1327, 1352 n.8 (Fed. Cir. 2014)
- Alaska Rent-A-Car, Inc. v. Avis Budget Group, Inc., 738 F.3d 960, 969 (9th Cir. 2013)
- City of Pomona v. SQM North America Corp.
- Yeti by Molly, Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1106 (9th Cir. 2001)

- Plexxikon v. Novartis, No. 17-cv-4405, 2021 WL 2577536, at *3, *6 (N.D. Cal. June 23, 2021)
- Proofpoint, Inc. v. Vade Secure, Inc., 2021 WL 2197954, at *7 (N.D. Cal.)
- Hawks Hill Ranch, LLC v. Yarak, No. 22-cv-1567, 2024 WL 1421265, at *1, *3 (N.D. Cal. Apr. 2, 2024)
- Rovid v. Graco Children's Products Inc., No. 17-cv-1506, 2018 WL 5906075, at *10-*11 (N.D. Cal. Nov. 9, 2018)
- Luke v. Family Care and Urgent Medical Clinics, 323 F. App'x 496, 500 (9th Cir. 2009)
- Jarrow Formulas, Inc. v. Now Health Group, Inc., No. 10-cv-8301, 2012 WL 3186576, at *15 (C.D. Cal. Aug. 2, 2012)
- Goodman v. Staples the Office Superstore, LLC, 644 F.3d 817, 827 (9th Cir. 2011)
- Werdebaugh v. Blue Diamond Growers, No. 12-cv-2724, 2014 WL 7148923, at *6-*7 (N.D. Cal. Dec. 15, 2014)
- In re Xyrem (Sodium Oxybate) Antitrust Litigation, No. 20-md-2966, 2024 WL 4789136, at *2 (N.D. Cal. Nov. 14, 2024)
- Gamevice, Inc. v. Nintendo Co., No. 18-cv-01942-, 2019 WL 5565942, at *3 (N.D. Cal. Oct. 29, 2019)
- Munro v. University of Southern California
- Sun Microsystems, Inc. v. Network Appliance, Inc., No. 07-cv-5488, at *3 (N.D. Cal. Mar. 22, 2010)
- Wong v. Regents of University of California, 410 F.3d 1052, 1062 (9th Cir. 2005)
- United States v. North East Medical Services, No. 10-cv-1904, 2014 WL 7208627, at *7 (N.D. Cal. Dec. 17, 2014)
- Convolv, Inc. v. Compaq Computer Corp., 812 F.3d 1313, 1325 (Fed. Cir. 2016)
- Hunt v. County of Orange, 672 F.3d 606, 616 (9th Cir. 2012)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
 CYNTEC COMPANY, LTD., Case No. 18-cv-00939-TLT 8 Plaintiff, ORDER GRANTING
 CYNTEC'S 9 v. MOTION TO EXCLUDE; GRANTING IN PART AND DENYING IN PART 10
 CHILISIN ELECTRONICS CORP., et al., CHILISIN'S MOTION TO STRIKE
 SUPPLEMENTAL EXPERT REPORTS 11 Defendants. Re: Dkt. Nos. 408, 417 12 13 Following
 remand from the Federal Circuit, both Cyntec Company, Ltd ("Cyntec") and 14 Defendants
 Chilisin Electronics Corp. and Chilisin America Ltd.'s (collectively, "Chilisin") 15 agreed that no
 further expert discovery is needed.

ECF 353. Despite these representations, which 16 were promised over one and a half years ago,
 the parties find themselves grappling with expert 17 discovery. 18 Pending before the Court are
 Cyntec's motion to exclude the opinions of John C. Bravman, 19 ECF 408, and Chilisin's motion
 to strike supplemental expert reports, ECF 417. Given that the 20 parties have submitted their
 motions on the papers, the Court, in its discretion, determines that the 21 motions are suitable for
 decision without oral argument.

See Civil L.R. 7-1(b). 22 Having considered the parties' briefs, the relevant legal authority, and for the reasons 23 below, the Court GRANTS Cyntec's motion to exclude the opinions of John C. Bravman and 24 GRANTS IN PART AND DENIES IN PART Chilisin's motion to strike supplemental expert 25 reports. 26 I. BACKGROUND 27 The Court has set out the factual and procedural background of this case in its prior Order 1 Denying Chilisin's Motion for Summary Judgment and Granting Cyntec's Motion for Summary 2 Judgment.

ECF 433. The Court assumes the parties' familiarity with this case's factual and 3 procedural background and only cites such background to the extent it is necessary for this Order. 4 Cyntec, a Taiwanese corporation that manufactures power chokes, alleged that Chilisin 5 infringed on Cyntec's patents. ECF 1. During the parties' first trial, and before Chilisin cross- 6 examined Cyntec's technical expert, "Cyntec moved for JMOL of nonobviousness, arguing that 7 Shafer and Nakamura were missing claim elements... and that Chilisin 'cannot meet [the] clear 8 and convincing evidence standard as to why [Shafer and Nakamura] would be combined[.]" ECF 9 336 at 5.

Judge Hamilton granted Cyntec's JMOL motion. Id. On September 1, 2021, a jury 10 found that Chilisin willfully infringed on Cyntec's patents and awarded Cyntec \$1,552,493 in lost 11 profits and a 5% reasonable royalty rate equaling \$320,463 in damages. ECF 269 at 5. 12 On October 16, 2023, the Federal Circuit "reverse[d] the district court's judgment as a 13 matter of law for nonobviousness and the district court's denial of Chilisin's motion to exclude 14 Mr. Van Uden's damages expert testimony." ECF 336 at 18.

The Federal Circuit held that, 15 although obviousness is a legal question, there were underlying factual disputes that should have 16 been given to the jury: 17 Chilisin presented the jury with evidence that would have allowed it to reasonably find the asserted claims obvious in view of Shafer and 18 Nakamura.

For example, the jury heard expert testimony that 19 Nakamura discloses embodiments of electronic devices having two magnetic powders in which the mean particle diameter of the first 20 magnetic powder is larger than the mean particle diameter of the second magnetic powder, and the hardness of the first magnetic 21 powder is harder than that of the second magnetic powder...

The jury also heard expert testimony that a skilled artisan would have been 22 motivated to improve the performance of Shafer—a prior art 23 reference that discloses an inductor with a wound coil buried in a mixture of a first powdered iron and "a second powdered iron... 24 Taken together and drawing all reasonable inferences in Chilisin's favor, this evidence is enough for a reasonable jury to have found that 25 the asserted claims would have been obvious.

26 Id. at 7–8 (internal quotation marks omitted). The Federal Circuit was "not convinced that 27 1 jury could have found the asserted claims obvious in view of Shafer as modified by Nakamura." 2

Id. at 9. 3 After remand, on November 28, 2023, the was reassigned to the undersigned Judge. ECF 4 341.

On February 8, 2024, during a case management conference, the parties agreed that no 5 further expert discovery is necessary. ECF 353. Based on the parties' representations regarding 6 expert discovery, on February 9, 2024, the Court issued a Case Management and Scheduling 7 Order that set a fact discovery cut-off date of June 28, 2024; no expert discovery deadline; pretrial 8 conference for February 2, 2026; and trial for March 2, 2026.

ECF 354. 9 More than a year after the Court issued the Case Management and Scheduling Order, 10 Cyntec served Chilisin with Dr. Kohl's supplemental expert report on July 28, 2025. ECF 417-1 ¶ 11 3. On August 13, 2025, Cyntec served Chilisin with Mr. Van Uden's third supplemental expert 12 report and produced new financial data. Id. ¶ 5.

On August 22, 2025, Cyntec served Chilisin with 13 Mr. Van Uden's served a revised third supplemental expert. Id. 14 On August 25, 2025, Cyntec and Chilisin filed cross motions for summary judgment. See 15 ECF 406; ECF 407. 16 On September 2, 2025, Cyntec filed a motion to exclude the opinions of Dr. John C. 17 Bravman. ECF 408.

On September 16, 2026, Chilisin filed an opposition. ECF 413. On 18 September 23, 2025, Cyntec filed a reply. ECF 416. 19 On September 24, 2025, Chilisin filed a motion to strike supplemental expert reports. ECF 20 417.

On October 8, 2025, Cyntec filed an opposition. ECF 419. On October 15, 2025, Chilisin 21 filed a reply. 22 On October 28, 2025, the Court heard oral argument on the parties' cross motions for 23 summary judgment. ECF 428.

The parties provided the Court with demonstrative slides. See 24 ECF 427; ECF 430. During oral argument, the parties agreed that the Court may take the parties' 25 pending motion to exclude, ECF 408, and motion to strike, ECF 417, under submission. Id. 26 Accordingly, the Court took ECF 408 and ECF 417 under submission. Id. 27 On November 10, 2025, the Court denied Chilisin's motion for summary judgment and II.

CYNTEC'S DAUBERT MOTION TO EXCLUDE DR. BRAVMAN'S OPINIONS 1 Cyntec seeks to exclude the opinion of Chilisin's expert, John C. Bravman. ECF 408. 2 Cyntec argues that it (A) brings a timely Daubert motion, and Dr. Bravman' opinions are (B) 3 unreliable and (C) outside the scope of remand. See id.; ECF 416. 4 Federal Rule of Evidence 702 allows a qualified expert to testify "in the form of an opinion 5 or otherwise" where: 6 (a) the expert's scientific, technical, or other specialized knowledge 7 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) 8 the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the 9 facts of the case.

10 In determining whether the requirements of Rule 702 are met, courts follow the approach set forth 11 in *Daubert v. Merrell Dow Pharms., Inc.*: 12 [T]he trial judge must determine... whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact 13 to understand or determine a fact in issue. This entails a preliminary assessment of whether the reasoning or methodology underlying the 14 testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.

15 509 U.S. 579, 590 (1993). 16 The “scientific knowledge” requirement concerns the reliability of an expert’s opinion and 17 can met by “[e]stablishing that an expert’s proffered testimony grows out of pre-litigation research 18 or that the expert’s research has been subjected to peer review.” *Daubert v. Merrell Dow 19 Pharmaceuticals, Inc.*, 43 F.3d 1311, 1318 (9th Cir.

1995); see *Kumho Tire Co., Ltd v. 20 Carmichael*, 26 U.S. 137, 147 (1999) (“[T]he Rule applies its reliability standard to all ‘scientific,’ 21 ‘technical,’ or ‘other specialized’ matters within its scope.”). The second requirement, that an 22 expert will “assist the trier of fact to understand or determine a fact in issue,” “means that the 23 evidence will assist the trier of fact to understand or determine a fact in issue.” *Cooper v. Brown*, 24 510 F.3d 870, 942 (9th Cir.

2007); see *Primiano v. Cook*, 598 F.3d 558, 564 (9th Cir. 2010) (“The 25 requirement that the opinion testimony assist the trier of fact goes primarily to relevance.”) 26 (internal quotation omitted). 27 A. Cyntec’s *Daubert* Motion to Exclude is Timely 1 As a preliminary matter, Chilisin argues that Cyntec’s *Daubert* motion to exclude Dr. 2 Bravman’s opinions is untimely and procedurally improper because Cyntec did not file its motion 3 before the parties’ first trial, and Cyntec does not provide good cause to modify the original 4 *Daubert* deadline.

ECF 413 at 2–3. Cyntec argues the Court set a new *Daubert* deadline 5 following remand and the Court may consider *Daubert* motions before a retrial. ECF416 at 3. 6 The Court finds that Cyntec’s *Daubert* motion to exclude Dr. Bravman’s opinions is timely 7 and procedurally proper.

The Court declines Chilisin’s invitation to set aside the Court’s 8 gatekeeping duties under *Daubert* and Rule 702. See *Apple Inc. v. Samsung Elecs. Co.*, No. 11- 9 cv-01846, 2018 WL 1586276, at *2 (N.D. Cal. Apr. 2, 2018) (“When considering expert 10 testimony offered pursuant to Rule 702, the trial court acts as a gatekeeper by making a 11 preliminary determination that the expert’s testimony is reliable.”) (internal quotations omitted).

12 In recognition of its gatekeeping responsibilities, the Court set a deadline of January 16, 2026, for 13 the parties’ deadline to file pretrial objections, including *Daubert* motions. ECF 354. Cyntec’s 14 motion to exclude Dr. Bravman’s opinions was filed on September 2, 2025, which is before the 15 Court’s January 16, 2026 deadline and therefore timely. ECF 408.

16 Accordingly, the Court finds that Cyntec’s *Daubert* motion to exclude Dr. Bravman’s 17 opinions is timely and procedurally proper. 18 B. Dr. Bravman May Not Reliably Opine on

Ultimate Question of Obviousness 19 Cyntec argues that Dr. Bravman's opinion on the ultimate question of obviousness is 20 unreliable because Dr. Bravman's report fails to address Graham's fourth factor of objective 21 indicia of non-obviousness, which includes commercial success, long-felt need, failure of others, 22 unexpected results, and copying.

ECF 408 at 2. Chilisin argues that Dr. Bravman's opinion does 23 not ignore the fourth Graham factor because his report recognizes that objective indicia are part of 24 the obviousness inquiry. ECF 413 at 3. According to Chilisin, Dr. Bravman confirmed that 25 objective factors should be considered in the obviousness analysis. Id. 26 "The question of reliability probes 'whether the reasoning or methodology underlying the 27 testimony is scientifically valid.'" *Murray v. Southern Route Maritime SA*, 870 F.3d 915, 923 (9th 1 Cir.

2017) (quoting *Daubert*, 509 U.S. at 593–94). "To give shape to the inquiry, the Court 2 identified four factors that may bear on the analysis: (1) whether the theory can be and has been 3 tested, (2) whether the theory has been peer reviewed and published, (3) what the theory's known 4 or potential error rate is, and (4) whether the theory enjoys general acceptance in the applicable 5 scientific community." Id. The applicability of each of these factors "depend[s] on the nature of 6 the issue, the expert's particular expertise, and the subject of his testimony." *Kumho Tire Co.*, 526 7 U.S. at 150. "A district court may permissibly choose not to examine factors that are not 8 'reasonable measures of reliability in a particular case.'" *Murray*, 870 F.3d at 922 (quoting 9 *Kumho*, 526 U.S. at 153).

10 Here, Dr. Bravman's opinion is on the issue of obviousness. ECF 409-1. "Under 35 11 U.S.C. § 103, a patent claim is invalid as obvious 'if the differences between the claimed 12 invention and the prior art are such that the claimed invention as a whole would have been obvious 13 before the effective filing date of the claimed invention to a person having ordinary skill in the art 14 to which the claimed invention pertains.'" *Asia Vital Components Co., Ltd. v. Asetek Danmark 15 A/S*, 377 F. Supp. 3d 990, 1008 (N.D.

Cal. 2019) (quoting *Intercontinental Great Brands LLC v. 16 Kellogg N. Am. Co.*, 869 F.3d 1336, 1343 (Fed. Cir. 2017)). The issue of obviousness involves the 17 following factual questions: "(1) the scope and content of the prior art; (2) the differences between 18 the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) any 19 relevant secondary considerations (i.e., objective indicia of non-obviousness) — often referred to 20 as the Graham factors" Id. (cleaned up).

The fourth question of objective indicia of non- 21 obviousness involves consideration of the following factors: "commercial success, long felt but 22 unsolved needs, [and] failure of others[.]" *Illumina, Inc. v. BGI Genomics Co., Ltd.*, Nos. 19-cv- 23 3770; 20-cv-1465, 2022 WL 899421, at *3 (N.D. Cal. Mar. 27, 2022) (internal quotations 24 omitted). "While the sequence of these

questions might be reordered in any particular case, the 25 factors continue to define the inquiry that controls.

If a court, or patent examiner, conducts this 26 analysis and concludes the claimed subject matter was obvious, the claim is invalid under § 103.” 27 *KSR Intern Co. v. Teleflex Inc.*, 550 U.S. 398, 407 (2007). 1 commercial long-felt need, failure of others, unexpected results, and copying. ECF 413; see 2 generally ECF 409-1.

Although Chilisin relies on Dr. Bravman’s deposition to argue that he 3 considered the objective indicia factors, the Federal Circuit has expressed doubt on Chilisin’s 4 approach. See *Inline Plastics Corp. v. Cacerta*, 97 F.4th 889, 900 (Fed. Cir. 2024) (“[T]he district 5 court concluded, based on Dr. MacLean’s deposition, that there was sufficient record evidence...

6 the district court should consider anew whether Dr. MacLean should be limited to testifying only 7 about the first three Graham factors...rather than the ultimate question of obviousness.”). The 8 Court agrees that Dr. Bravman cannot testify to the ultimate question of obviousness because his 9 report does not address commercial success, long-felt need, failure of others, unexpected results, 10 and copying.

Compare with *InTouch Tech.. v. VGOs Commc’n, Inc.*, 751 F.3d 1327, 1352 n.8 11 (Fed. Cir. 2014) (“[W]here, as here, an expert purports to testify, not just to certain factual 12 components underlying the obviousness inquiry, but to the ultimate question of obviousness, the 13 expert must consider all factors relevant to that ultimate question.”). 14 Accordingly, the Court grants Cyntec’s Daubert motion to exclude Dr. Bravman from 15 testifying on the ultimate issue of obviousness.

16 C. Dr. Bravman’s References to Secondary References Shall be Limited 17 Cyntec argues that Dr. Bravman’s opinion should be excluded to the extent he seeks to 18 opine on issues beyond the single obviousness theory remanded by the Federal Circuit – Shafer 19 combined with Nakamura. ECF 408 at 3. Chilisin argues that Dr. Bravman will rely on Shafer 20 combined with Nakamura as its primary invalidity references, but Dr. Bravman should be able to 21 discuss other prior art references that explain the technology, confirm what was well known in the 22 art at the time, and illustrate the understanding of a skilled artisan.

ECF 413 at 6. 23 “Expert opinion testimony is relevant if the knowledge underlying it has a valid connection 24 to the pertinent inquiry.” *Alaska Rent-A-Car, Inc. v. Avis Budget Grp., Inc.*, 738 F.3d 960, 969 25 (9th Cir. 2013) (quoting *Primiano*, 598 F.3d at 565). “Challenges that go to the weight of the 26 evidence are within the province of a fact finder, not a trial court judge.

A district court should not 27 make credibility determinations that are reserved for the jury.” *City of Pomona v. SQMN. Am.* 1 Here, the Federal Circuit explicitly held that the district court erred in granting JMOL on 2 obviousness because Chilisin presented the jury with evidence that would

have allowed the jury to reasonably find the asserted claims obvious in view of Shafer and Nakamura.

ECF 336 at 8. The 4 Federal Circuit concluded that, “given the evidence identified above, a reasonable jury could have found the asserted claims obvious in view of Shafer as modified by Nakamura.” *Id.* at 9. Because the parties agree that Dr. Bravman’s opinion will not refer to primary invalidity references beyond Shafer and Nakamura, the Court finds that Dr. Bravman may opine on primary invalidity references of Shafer and Nakamura.

However, Dr. Bravman may refer to other art references “to illustrate what was already known in the art, and why a skilled artisan would have been motivated to combine Shafer with Nakamura.” ECF 413 at 8. Accordingly, the Court grants Cyntec’s Daubert motion to the extent Cyntec moves to limit Dr. Bravman’s primary invalidity references to Shafer and Nakamura.

13 III. CHILISIN’S MOTION TO STRIKE SUPPLEMENTAL EXPERT REPORTS 14 Chilisin argues that Dr. Kohl’s and Mr. Van Uden’s supplemental reports violate Rule 26 and, therefore, must be stricken under Rule 37. ECF 417 at 3. Cyntec argues that Rule 37 does not apply. ECF 419 at 6–8. Pursuant to Rule 26(e)(2), “[f]or an expert whose report must be disclosed under Rule 26(a)(2)(B), the party’s duty to supplement extends both to information included in the report and to information given during the expert’s deposition.

Any additions or changes to this information must be disclosed by the time the party’s pretrial disclosures under Rule 26(a)(3) are due.” “Rule 37(c)(1) gives teeth to these requirements by forbidding the use at trial of any information required to be disclosed by Rule 26(a) that is not properly disclosed.” *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir.

2001). “The Court has ‘particularly wide latitude... to issue sanctions under Rule 37(c)(1).’” *Plexxikon v. Novartis*, No. 17-cv-4405, 2021 WL 25 2577536, at *3 (N.D. Cal. June 23, 2021) (internal quotations omitted). The Court considers (A) whether Cyntec failed to comply with Rule 26 and, if so, (B) whether the failure to comply was justified or harmless.

See *Proofpoint, Inc. v. Vade Secure, Inc.*, 1 party’s failure to comply with its Rule 26(e)(1) obligation must result in that party being precluded from the ‘use [of] that information... to supply evidence on a motion, at a hearing or at trial, unless the failure was substantially justified or is harmless.’”) (quoting Fed. R. Civ. P. 37(c)(1)). 4 A. Dr. Kohl’s and Mr. Van Uden’s Supplemental Expert Reports are Improper Under Rule 26 and Neither Justified Nor Harmless Under Rule 37 5 Chilisin argues that Cyntec failed to timely serve Dr. Kohl’s and Mr. Van Uden’s 6 supplemental expert reports.

ECF 423 at 3–5. Cyntec argues that both (i) Dr. Kohl’s and (ii) Mr. Van Uden’s reports were proper. ECF 419 at 1, 6–7. 8 “Disclosure of expert opinions must be made at the times and in the

sequence that the court 9 orders.” *Hawks Hill Ranch, LLC v. Yarak*, No. 22-cv-1567, 2024 WL 1421265, at *1 (N.D. Cal. 10 Apr. 2, 2024) (citing Fed. R. Civ. P. 26(a)(2)(D)).

Pursuant to Rule 26(e), “parties have a duty to 11 supplement or correct an expert report if they learn the report is incomplete or incorrect in some 12 material respect” and “must be made ‘in a timely manner’ no later than the deadline for pretrial 13 disclosures.” *Id.* “Supplementing or correcting these disclosures promptly is therefore required 14 under that Rule without the need for a request from the opposing party or an order from the court.” 15 Proofpoint, 2021 WL 2197954, at *7.

16 i. Dr. Kohl’s and Mr. Van Uden’s Supplemental Expert Reports are Improper 17 Under Rule 26
18 a. Dr. Kohl’s Attempt to Strengthen His Original Rebuttal Report is Improper under Rule 26 19
Cyntec argues that Dr. Kohl’s supplemental expert report does not contain new opinions 20 and only addresses relevant facts that arose after the first trial. ECF 419 at 3, 7.

Cyntec asserts 21 that Cyntec provided notice of introducing the reexamination facts back in December 2023. *Id.* at 22 5. Chilisin argues that, although Cyntec originally submitted Shafer to the PTO office, Cyntec did 23 not provide the Patent office with necessary information to assess Shafer. ECF 423 at 2. Chilisin 24 also argues that Dr. Kohl’s supplemental reports provide new opinions that the reexamination 25 confirms that the asserted patents are not obvious.

Id. at 3, 4–5. 26 Before the parties’ first trial, Dr. Kohl provided an expert report to rebut the opinion of 27 Chilisin’s expert, Dr. Bravman. ECF 417-2 ¶ 853. Although Dr. Kohl’s supplemental expert 1 report states that his “opinions have not changed from [his] Rebuttal Report[,]” the report attempts 2 to strengthen Dr. Kohl’s rebuttal report by providing a “further response to Dr. Bravman’s 3 Opening Report that accounts for new facts about the Asserted Patents and Asserted Claims that 4 did not exist when [Dr.

Kohl] served [his] Rebuttal Report.” *Id.* ¶ 855; see *id.* ¶ 859 (“[I]t is my 5 opinion that Dr. Bravman’s Opening Report fails to demonstrate that any Asserted Claim of the 6 Asserted Patents is invalid.” Rule 26(e), however, does not permit supplemental reports intended 7 to strengthen or deepen the expert’s original report. See *Rovid v. Graco Children’s Products Inc.*, 8 No. 17-cv-1506, 2018 WL 5906075, at * 11 (N.D.

Cal. Nov. 9, 2018) (“That is not the proper use 9 of Rule 26(e). That is because the supplemental report attempts to strengthen or deepen opinions 10 in light of the expert’s opponent’s challenges to the analysis and conclusions therein.”) (cleaned 11 up). Dr. Kohl’s attempt to strengthen his argument that Dr. Bravman’s Opening Report “[f]ails to 12 demonstrate that any Asserted Claim of the Asserted Patents is invalid,” *Id.* ¶ 859, is therefore 13 improper under Rule 26.

See *Luke v. Family Care and Urgent Medical Clinics*, 323 F.App’x. 496, 14 500 (9th Cir. 2009) (“Nor does Rule 26(e) create a loophole through which a party who submits 15 partial expert

witness disclosures, or who wishes to revise her disclosures in light of her 16 opponent's challenges to the analysis and conclusions therein, can add to them to her advantage 17 after the court's deadline for doing so has passed.").

Indeed, "a supplemental expert report that 18 states additional opinions or seeks to strengthen or deepen opinions expressed in the original 19 expert report is beyond the scope of supplementation and subject to exclusion under Rule 37(c)." 20 *Jarrow Formulas, Inc. v. Now Health Group, Inc.*, No. 10-cv-8301, 2012 WL 3186576, at *15 21 (C.D. Cal. Aug. 2, 2012).

22 Accordingly, the Court finds that Dr. Kohl's supplemental report violates Rule 26. 23 b. Mr. Van Uden's Supplemental Expert Report is Untimely Under Rule 26 24 Cyntec argues the parties reached an agreement that the parties will provide financial data 25 when available, and that the financial experts can update the calculations in their reports ahead of 26 trial.

ECF 419 at 1, 6. According to Cyntec, Mr. Van Uden did not change an opinion in his 27 supplemental expert report, and it is common practice to permit supplemental reports prior to trial. 1 certain sales data, and for Cyntec to provide updated damages calculations based on Chilisin data. 2 ECF 423 at 1. Chilisin also argues that any agreement between the parties in 2021 was superseded 3 by the parties' most recent agreement that there be no new expert discovery on remand.

Id. at 2, 4 4–5. 5 The Court finds that Mr. Van Uden's third supplemental reports were untimely under Rule 6 26. To the extent Cyntec cites the parties' 2021 agreement to justify Mr. Van Uden's 7 supplemental expert reports, the agreement is not dispositive because the parties disagree on the 8 scope of their agreement. Compare ECF 419 at 1 ("[T]he parties reached an agreement that 9 financial data would be updated when available, and the financial experts could subsequently 10 update the calculations in their reports accordingly.") with ECF 423 at 1 ("[T]he document Cyntec 11 refers to reflects an agreement that Chilisin (not Cyntec) would supplement certain sales data, and 12 Cyntec would provide updated damages calculations based on that data.") and ECF 423 at 4 13 ("Cyntec misstates that agreement.").

Moreover, even if there was a 2021 agreement, the parties 14 have, following remand, consistently agreed that the no further expert discovery is needed. See 15 ECF 353; ECF 392. Because of the parties' representations about expert discovery, the Court 16 explicitly recognized that "[b]oth parties agree no further expert discovery is necessary" during a 17 February 8, 2024 case management conference.

ECF 353. Neither party disputed the Court's 18 finding since that February 8, 2024 case management conference. 19 Notably, Mr. Van Uden's supplemental expert reports were served more than one year and 20 six months after the February 8, 2024 case management conference.

However, “under Rule 26, a party must ‘make expert disclosures at the times and in the sequence that the court orders.’” See 22 *Werdebaugh*, No. 12-cv-2724, 2014 WL 7148923, at *6 (N.D. Cal. Dec. 15, 2014) (quoting 23 *Goodman v. Staples the Office Superstore, LLC*, 644 F.3d 817, 827 (9th Cir. 2011)).

The Court 24 finds that the approximate one year and six months disclosure is untimely under Rule 26. See *id.*, 25 2014 WL 7148923, at *7 (finding supplemental report served more than a month after the close of 26 expert disclosure was untimely); *In re Xyrem (Sodium Antitrust Litig.)*, No. 20-md-2966, 2024 WL 27 4789136, at *2 (N.D. Cal. Nov. 14, 2024) (“Defendants’ complaint that the supplementation is 1 merit.”).

2 Accordingly, the Court finds that Mr. Van Uden’s third supplemental reports were 3 untimely under Rule 26. 4 ii. Dr. Kohl’s and Mr. Van Uden’s Supplemental Expert Reports are Neither Justified Nor Harmless Under Rule 37 5 Having found that Dr. Kohl’s and Mr. Van Uden’s supplemental reports violated rule 26, 6 the Court next considers whether the violation was substantially justified or harmless.

See 7 *Proofpoint*, 2021 WL 2197954, at *7 (“Rule 37 provides that a party’s failure to comply with its 8 Rule 26(e)(1) obligation must result in that party being precluded from the ‘use [of] that 9 information...to supply evidence on a motion, at a hearing or at trial, unless the failure was 10 substantially justified or is harmless.’”) (internal quotations omitted).

11 In deciding whether an untimely expert report is harmless or justified, the Court may 12 consider (a) prejudice or surprise to the party against whom the evidence is offered; (b) the ability 13 of that party to cure the prejudice; (c) the likelihood of disruption of the trial; (d) bad faith or 14 willfulness involved in not timely disclosing the evidence; and (e) importance of the evidence.

15 *Plexxikon Inc., v. Novartis Pharmaceuticals Corp.*, No. 17-cv-4405, 2021 WL 2577536, at *3 16 (N.D. Cal. June 23, 2021); see also *Wisk Aero LLC v. Archer Aviation Inc.*, No. 21-cv-2450, 2023 17 WL 3919469, at *33 (N.D. Cal. 2023). “As the late disclosing party, [Cyntec] bear[s] the burden 18 to establish justification and harmlessness.” *Hawks Hill Ranch, LLC v. Yarak*, No. 22- 19 2024 WL 1421265 (N.D.

Cal. Apr. 2, 2024); see also *Rovid*, 2018 WL 5906075, at *10 (“The 20 court finds that defendants have shown that Leshner’s rebuttal report violated Rule 26 by untimely 21 disclosing new expert testimony. The burden thus shifts to plaintiffs to show that the violation was 22 substantially justified or harmless.”) 23 a. The Supplemental Reports Result in Prejudice and Surprise.

24 Cyntec argues that there is no prejudice or surprise to Chilisin because Cyntec initiated or 25 made the disclosures nearly two years ago. ECF 419 at 12–13. Cyntec also argues that Mr. Van 26 Uden’s report is consistent with information that has been previously supplemented. *Id.* at 13. 27

Chilisin argues that Cyntec served its supplemental expert reports without warning, and that 1 Chilisin will need to take additional fact discovery on the new facts and evidence.

ECF 417 at 3– 2 4. Chilisin asserts that it will also need to depose Cyntec’s experts on their new opinions and 3 prepare responsive expert reports. Id. 4 The Court finds that the prejudice and surprise factor weighs in favor of striking Cyntec’s 5 expert reports. Following remand, Cyntec has consistently agreed that expert discovery is not 6 needed. See ECF 353; ECF 392.

Cyntec’s conduct thus gave rise to a “reliance interest” for 7 Chilisin. *Gamevice, Inc. v. Nintendo Co.*, No. 18-cv-01942-, 2019 WL 5565942, at *3 (N.D. Cal. 8 Oct. 29, 2019). Allowing supplemental expert reports at this stage of the litigation, where Cyntec 9 had more than a year since the Court’s Case Management Scheduling Order to supplement its 10 expert reports, would be “an unfair bait and switch.” See id. (“Gamevice affirmatively indicated 11 during fact discovery that it did not view these requests as being limited... then after the deadline 12 to move to compel expired, it changed its interpretation and, on that ground, refused to 13 supplement.”).

Cyntec has left Chilisin with little to no time to depose Mr. Van Uden and Dr. Kohl 14 or take additional discovery. See *Plexxikon*, 2021 WL 2577536 at *6 (“Plaintiff left Defendant no 15 time to depose Dr. Leonard about his new opinions or to provide a rebuttal report from 16 Defendant’s own damages expert.

Although trial was later continued several more times due to 17 COVID-19, this additional time did not liberate the parties to reopen discovery.”). 18 Accordingly, the Court finds that the prejudice or surprise factor weighs in favor of striking 19 Cyntec’s supplemental expert reports. 20 b. *The Ability to Cure is Limited.* 21 Cyntec argues that Cyntec offered compromises to mitigate any prejudice, including being 22 amenable to permitting a deposition of Mr. Van Uden.

ECF 419 at 14. Chilisin argues that the 23 Rule 26 violations cannot be cured by depositions because there is no time to reopen discovery to 24 determine how each of the products were identified or were manufactured. ECF 423 at 8. Chilisin 25 argues that any delay will increase costs substantially. Id. 26 The Court agrees that “[t]his close to trial, [Chilisin] little ability to cure the prejudice, and 27 the likelihood of disruption at trial is high.” *Munro v. University of Southern California*, No. 16- 1 February 2, 2026, which is less than three months from the date of this order.

ECF 354. Trial is 2 less than four months away. See *Proofpoint*, 2021 WL 21979954, at *7 (“Because Defendants 3 needed to formulate and disclose their theories and contentions in a timely manner, their failure to 4 do so until after the close of fact discovery impeded Plaintiffs’ ability to conduct fact discovery on 5 the undisclosed theories, allegations, and evidence.”); *Hawks Hill*, 2024 WL 1421265, at *3 6 (“Yaraks do not explain how Reidl’s late rebuttal report can be cured...

Expert discovery is 7 closed and Hawks Hill’s dispositive motion is fully briefed.”) 8 Accordingly, the Court finds that the ability to cure factor weighs in favor of striking 9 Cyntec’s supplemental expert reports. 10 c. There is a High Likelihood of Disruption to Upcoming Trial. 11 Cyntec argues that short depositions on the supplemental reports will not affect the pretrial 12 schedule.

ECF 419 at 14. Chilisin argues that there is no time to conduct additional discovery, 13 supplement reports, and depose experts while maintaining the March 2, 2026 trial date. ECF 417 14 at 4. Chilisin also argues that Chilisin agreed to forego new expert discovery because Cyntec did 15 not supplement its discovery responses, and, following remand, Chilisin only request discovery 16 that was relevant to Cyntec’s request for injunctive relief.

ECF 423 at 9. 17 As discussed above, trial is less than four months away. ECF 354. If Cyntec’s 18 supplemental report were allowed, Chilisin “will need to respond with another report, and then 19 another round of expert depositions will be required.” *Sun Microsystems, Inc. v. Network 20 Appliance, Inc.*, No. 07-cv-5488, at *3 (N.D. Cal. Mar. 22, 2010).

The likelihood of disruption to 21 trial is high and not harmless. See *Wong v. Regents of Univ. of California*, 410 F.3d 1052, 1062 22 (9th Cir. 2005) (“Disruption to the schedule of the court and other parties in that manner is not 23 harmless.”). 24 Accordingly, the Court finds that the disruption to trial factor weighs in favor of striking 25 Cyntec’s supplemental expert reports.

26 d. The Current Record Does Not Demonstrate that Cyntec Acted in Bad Faith. 27 Cyntec argues that it did not act in bad faith and that there was no violation of a rule or 1 in 2023, and evidence of the reexamination can be admitted through Dr. Kohl, a stipulation, or 2 judicial notice. *Id.* Chilisin argues that Cyntec has no good explanation for why it did not raise its 3 new reports sooner, and the decision to provide late disclosures is evidence of bad faith.

ECF 417 4 at 4. 5 Based on the record before the Court, the Court does not find that Cyntec acted in bad 6 faith. See *Plexxikon*, 2021 WL 2577536, at *6 (“Perhaps Plaintiff only belatedly realized its 7 oversight... But a party that plays fast and loose with its damages theories risks having its whole 8 theory struck, as well as additional sanctions.”) (cleaned up).

However, “a finding of bad faith is 9 not a necessary prerequisite to imposing sanctions for violations of Rule 37(c)(1).” *Proofpoint*, 10 2021 WL 2197954, at *7; see *Yeti by Molly*, 259 F.3d at 1106 (“[E]ven though Deckers never 11 violated an explicit court order to produce the Vuckovich report and even absent a showing in the 12 record of bad faith or willfulness, exclusion is an appropriate remedy for failing to fulfill the 13 required disclosure requirements of Rule 26(a).”) 14 Accordingly, the Court finds that the explanation and good faith factor is neutral in 15 whether to strike Cyntec’s supplemental expert reports.

16 e. The Importance of Evidence Factor Weighs Against Exclusion But is Not So Clear as to Override other Rule 37 Factors. 17 Cyntec argues that the Court should not strike the reports

because the reports are central to 18 Cyntec's defenses against Chilisin's invalidity challenge to Cyntec's Patents-in-Suit. ECF 419 at 19 9–11. Chilisin argues that the supplemental reports are not critical to the case.

ECF 423 at 5–6. 20 The Court finds that, even if this factor “weigh against exclusion... it is not so clear as to 21 override the other factors.” *United States v. North East Medical Services*, No. 10-cv-1904, 2014 22 WL 7208627, at *7 (N.D. Cal. Dec. 17, 2014).

Although Cyntec argues that Mr. Van Uden's 23 report demonstrates commercial success, commercial success is not dispositive of the obviousness 24 inquiry. See *Asia Vital Components Co.*, 377 F. Supp. 3d 990 at 1008 (listing factors for 25 obviousness inquiry). Regarding Dr. Kohl's supplemental report, although the PTO's 26 reexamination results may be relevant, the results themselves may not compel a different result.

27 See *Convolve, Inc. v. Compaq Computer Corp.*, 812 F.3d 1313, 1325 (Fed. Cir. 2016) (“The 1 prosecution history of the 2008 reexamination—a ‘highly influential’ piece of evidence in the 2 intervening rights inquiry...does not compel a different result”).

To the extent Cyntec argues that 3 the jury must consider evidence in the PTO's determinations, “[c]ourts have upheld the use of the 4 [Rule 37] sanction even when a litigant's entire cause of action or defense has been precluded.” 5 Yeti by Molly, 259 F.3d at 1106. 6 Accordingly, the Court finds that the importance of the evidence factor weighs against 7 exclusion but is not so clear as to override the other Rule 37 factors.

8 * * * 9 Having considered the available record before the Court, the Court finds that Dr. Kohl's 10 July 28, 2025, supplemental report and Mr. Van Uden's August 13, 2025 and August 22, 2025 11 third supplemental reports violate Rule 26.

After considering the Rule 37 factors, the Court also 12 finds that Cyntec's untimely disclosures are neither harmless nor justified. Accordingly, the Court 13 grants Chilisin's motion to strike Dr. Kohl's and Mr. Van Uden's supplemental reports pursuant to 14 Rule 37. 15 B. The Court Need Not Consider Whether to Strike Dr. Kohl's and Mr. Van Uden's Supplemental Expert Reports Pursuant to Rule 16 16 Chilisin that the Court may strike Dr. Kohl's and Mr. Van Uden's supplemental reports 17 under Rule 16.

ECF 417 at 3. Cyntec argues that Rule 16 does not apply because “Chilisin does 18 not identify what deadline Cyntec supposedly failed to meet.” ECF 419 at 6 n.4. 19 Because the Court strikes Dr. Kohl's and Mr. Van Uden's supplemental reports pursuant to 20 Rule 37, the Court need not consider whether to strike the supplemental reports under Rule 16. 21 See *Hunt v. County of Orange*, 672 F.3d 606, 616 (9th Cir.

2012) (“District courts have broad discretion to manage discovery and to control the course of litigation under Federal Rule of Civil Procedure 16.”) (internal quotations omitted). 24 Accordingly, the Court DENIES Chilisin’s motion to strike Dr. Kohl’s and Mr. Van Uden’s 25 supplemental reports under Rule 16. 26 IV. CONCLUSION 27 For the reasons stated above, the Court GRANTS Cyntec’s Daubert motion to exclude Dr. 1 Bravman from testifying on the ultimate issue of obviousness.

The Court also GRANTS Cyntec’s 2 || motion to the extent Cyntec moves to limit Dr. Bravman’s primary invalidity references to Shafer 3 and Nakamura. However, Dr. Bravman may refer to other art references to illustrate what was 4 || already known in the art, and why a skilled artisan would have been motivated to combine Shafer 5 with Nakamura. 6 The Court also GRANTS Chilisin’s motion to strike Dr. Kohl’s and Mr. Van Uden’s 7 supplemental expert reports pursuant to Rule 37.

Dr. Kohl’s and Mr. Van Uden’s supplemental 8 expert reports violate Rule 26, and Cyntec fails to show that the late disclosure was harmless or 9 || justified. The Court DENIES Chilisin’s motion to strike Dr. Kohl’s and Mr. Van Uden’s 10 supplemental expert reports pursuant to Rule 16. 11 IT IS SO ORDERED. 12 Dated: November 21, 2025 14 United States District Judge 16 18 19 20 21 22 23 24 25 26 27 28