

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

MyChoice, LLC and Barboards, LLC v. Taiv, Inc.

No. 2:23-CV-00507-JRG-RSP (E.D. Tex. Dec. 1, 2025) · No. 2:23-CV-00507-JRG-RSP · Decided December 1,
2025

SUMMARY

The United States District Court for the Eastern District of Texas considers Taiv, Inc.’s motion to strike portions of plaintiffs’ technical expert Joseph C. McAlexander III’s reports. The court denies most of the motion, concluding that the challenged opinions concerning claim construction and infringement theories were sufficiently consistent with the court’s construction and plaintiffs’ infringement contentions. The court grants the motion only as to opinions identifying Taiv employees and advertisers as users and strikes the specified report paragraphs.

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 1, 2025
DOCKET	2:23-CV-00507-JRG-RSP
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved to strike portions of Plaintiffs’ technical expert Joseph C. McAlexander III’s rebuttal and infringement reports under Federal Rule of Evidence 702 and on the ground that certain opinions were inconsistent with the Court’s claim construction or were not disclosed in Plaintiffs’ infringement contentions.
STANDARD OF REVIEW	The district court has broad discretion in determining the admissibility of expert testimony under Federal Rule of Evidence 702 and serves as a gatekeeper to determine whether the testimony is sufficiently reliable and relevant to assist the trier of fact. The court does not weigh expert testimony so extensively as to replace the jury’s fact-finding role.
PRECEDENTIAL VALUE	Unknown; memorandum order from a federal district court

PARTIES

MyChoice, LLC, Barboards, LLC v. Taiv, Inc.

TOPICS

expert testimony

daubert standard

evidence

patent infringement

civil procedure

PRACTICE AREAS

patent law

civil procedure

evidence

commercial litigation

QUESTIONS PRESENTED

1. Whether the expert's opinions concerning real-time detection and analysis of prior-art systems were inconsistent with the court's construction of "real-time" detection.
2. Whether opinions concerning Taiv employees and advertisers as users, modes and advertising blacklists as user preferences, and the Taiv box as the output device and monitoring station exceeded Plaintiffs' infringement contentions.
3. Whether the challenged expert opinions were sufficiently reliable, relevant, and properly disclosed to remain admissible under Federal Rule of Evidence 702 and applicable procedural disclosure requirements.

HOLDINGS

1. Opinions that the prior-art system did not perform real-time detection because it intentionally delayed or time-shifted content were consistent with the court's construction of "real-time" detection as detection without the content being time-shifted and were not subject to exclusion.
2. Opinions that Candelore and Durden did not disclose real-time detection because they analyzed content before it was streamed were consistent with the court's construction and were not subject to exclusion.
3. The challenged opinions identifying Taiv employees and advertisers as the claimed users were subject to exclusion because they exceeded the scope of Plaintiffs' infringement contentions, and Plaintiffs did not oppose this portion of the motion.
4. Opinions that Taiv system modes and an advertising blacklist constituted user preferences indicating undesirability were not shown to introduce new infringement theories and were not subject to exclusion.
5. The expert's opinions that the Taiv box was both the claimed output device and monitoring station were not subject to exclusion because Plaintiffs' infringement contentions provided fair notice of that theory.

KEY QUOTATIONS

"An expert witness may provide opinion testimony if "(a) the expert's scientific, technical, or other specialized knowledge 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) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case."

“The trial court’s role as gatekeeper [under Daubert] is not intended to serve as a replacement for the adversary system.”

“Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.”

FACTUAL BACKGROUND

Plaintiffs’ technical expert opined on infringement and invalidity issues involving systems that detect undesirable content in media streams, user preferences, real-time detection, and replacement content. Taiv challenged portions of those opinions as inconsistent with the court’s construction of “real-time” detection and as introducing infringement theories not disclosed in Plaintiffs’ infringement contentions. The court found most challenged opinions consistent with the claim construction or adequately noticed, but found that opinions identifying Taiv employees and advertisers as users were outside the disclosed contentions.

PROCEDURAL HISTORY

In this patent-infringement action, Taiv moved to strike portions of Plaintiffs’ expert reports. The court denied the motion as to opinions concerning real-time detection, analysis of prior-art systems, mode and blacklist theories, and output-device theories. The court granted the motion only as to opinions identifying Taiv employees and advertisers as the claimed users and ordered specified paragraphs of the infringement report stricken.

DISPOSITION

other

CASES CITED

- Kumho Tire Co. v. Carmichael, 526 U.S. 137, 149, 152 (1999)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 592-93, 596 (1993)
- United States v. Valencia, 600 F.3d 389, 424 (5th Cir. 2010)
- Micro Chemical, Inc. v. Lextron, Inc., 317 F.3d 1387, 1391-92 (Fed. Cir. 2003)
- Pipitone v. Biomatrix, Inc., 288 F.3d 239, 249-50 (5th Cir. 2002)
- Mathis v. Exxon Corp., 302 F.3d 448, 461 (5th Cir. 2002)
- Estech Systems IP, LLC v. Carvana LLC, 2023 WL 3292881, at *2 (E.D. Tex. May 5, 2023)
- Sol IP, LLC v. AT&T Mobility LLC, 2020 WL 10045985, at *2 (E.D. Tex. Apr. 23, 2020)
- RMail Limited v. Amazon.com, Inc., No. 2:10-cv-00258-JRG, 2019 WL 10375642, at *2 (E.D. Tex. June 12, 2019)

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