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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

REALTEK SEMICONDUCTOR,  
CORPORATION,

Plaintiff,

v.

LSI CORPORATION AND AGERE  
SYSTEMS LLC,

Defendants.

Case No. C-12-3451-RMW

**ORDERS ON RECENTLY MADE  
MOTIONS**

**[Re: Dkt. Nos. 268, 280, 292]**

These orders address recently raised or renewed issues.

**1. LSI's Motion to Preclude Further Evidence and Argument Relating to the P.A.**

**Consulting Group's "802.11 Patent Landscape: PA's Patent Landscape Analysis"**

LSI Corporation and Agere Systems LLC (collectively, "LSI") move to preclude further evidence and argument relating to the P.A. Consulting Group's "802.11 Patent Landscape: PA's patent landscape analysis" (the "P.A. Report"). Realtek Semiconductor Corp. ("Realtek") offered the P.A. Report for the first time during the examination of Dr. Gregory Leonard, after Dr. Leonard referenced the report as confirming his opinion as to the number of standard essential patents that exist. The report apparently came out after Dr. Leonard completed his report. Realtek had never previously disclosed the report to LSI, nor did Realtek supplement Dr. Leonard or Dr. Matthew

1 Shoemake’s expert reports to include the P.A. Report. Moreover, Realtek never disclosed the P.A.  
2 Report as a potential exhibit at trial.

3 Expert reports must include a complete statement of the expert’s opinions, the basis and  
4 reasons for them, and any data or other information considered when forming them. Fed. R. Civ. P.  
5 26(a)(2)(B). If a party fails to comply with the disclosure rules, “the party is not allowed to use that  
6 information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure  
7 was substantially justified or is harmless.” Fed. R. Civ. P. 37(c)(1). Here, the failure to disclose the  
8 P.A. Report was not substantially justified or harmless. LSI was understandably surprised when Dr.  
9 Leonard alluded to the P.A. Report, and then again when Realtek sought to admit the report into  
10 evidence. Realtek had ample opportunity to supplement its experts’ reports and to disclose the P.A.  
11 Report for use as an exhibit at trial, yet it did not do so. LSI has not had the opportunity to examine  
12 the report’s reliability or to consider whether experts in the field would rely on the report. Realtek  
13 is thus precluded from introducing any further evidence or argument relating to the P.A. Report. *See*  
14 *Guzik Technical Enterprises, Inc. v. W. Digital Corp.*, 5:11-CV-03786-PSG, 2013 WL 6070414, at  
15 \*4 (N.D. Cal. Nov. 18, 2013) (“In determining whether to preclude introduction of evidence  
16 pursuant to FRCP 37, courts consider (1) the surprise to the party against whom the evidence would  
17 be offered; (2) the ability of that party to cure the surprise; (3) the extent to which allowing the  
18 evidence would disrupt the trial; (4) the importance of the evidence, and (5) the nondisclosing  
19 party's explanation for it[s] failure to disclose the evidence.”). LSI’s motion is GRANTED.

20 **2. LSI's Motion for Judgment as a Matter of Law on Damages**

21 LSI’s motion for judgment as a matter of law that Realtek has failed to meet its burden of  
22 persuasion on damages (*see* Dkt. 280) was previously orally addressed (Trial Tr. 1049:13-1050:3).  
23 The court denied LSI’s motion on the record. For the reasons stated on the record, LSI’s motion for  
24 judgment as a matter of law is DENIED. *See* Dkt. No. 280.

25 **3. Realtek’s Motion to Proffer the ITC’s Preliminary Finding of Noninfringement**

26 The court has previously made clear in response to Realtek’s repeated attempts to offer the  
27 ITC’s preliminary finding of noninfringement that Realtek is not permitted to use the ITC’s initial  
28 determination or LSI’s recent motion to terminate the ITC investigation as to the ’867 Patent. *See*,

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*e.g.*, Dkt. No. 222 at 1-2. Realtek’s motion to proffer this evidence is DENIED. *See* Dkt. No. 268. Even if the preliminary finding were deemed relevant, its probative value is substantially outweighed by F.R.E. 403 concerns of unfair prejudice, confusing the issues and misleading the jury.

Dated: February 24, 2014

  
RONALD M. WHYTE  
United States District Judge