

United States District Court  
For the Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GOOD TECHNOLOGY CORPORATION and )  
GOOD TECHNOLOGY SOFTWARE, INC., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
MOBILEIRON, INC., )  
 )  
Defendant. )

Case No. 5:12-cv-05826-PSG  
**ORDER GRANTING-IN-PART  
MOTIONS TO STRIKE PORTIONS  
OF EXPERT REPORTS**  
**(Re: Docket Nos. 178, 185)**

Plaintiffs Good Technology Corporation and Good Technology Software, Inc. (“Good”) and Defendant MobileIron, Inc. each move to strike portions of the other’s expert reports. Upon extended review of the parties’ papers and consideration of today’s lengthy oral arguments, both motions are GRANTED-IN-PART.<sup>1</sup>

There are two key issues to consider: was the portion of the expert report previously disclosed, and if not, was the non-disclosure substantially justified and harmless? Courts in this district consider five factors to determine whether a non-disclosure was substantially justified or harmless: “(1) the surprise to the party against whom the evidence would be offered; (2) the ability of that party to cure the surprise; (3) the extent to which allowing the evidence would disrupt the

<sup>1</sup> Any issues omitted from this order were deemed withdrawn according to the parties’ representations on the papers and at oral argument.

1 trial; (4) the importance of the evidence; and (5) the non-disclosing party's explanation for it[s]  
2 failure to disclose the evidence."<sup>2</sup>

3 The court rules as follows:

<u>Issue</u>	<u>Ruling</u>
<b>Good's Motion to Strike</b>	
Opinions on lack of written description in Gray Invalidity Report at ¶¶ 132-40	DENIED
Opinions on Hasebe and use of an IMAP4 server in Gray Invalidity Report at Exh. C and Exh. E	GRANTED
Opinions on Clark related to "logging out theory" in Gray Invalidity Report at Exh. B	GRANTED
Opinions on lack of written description of the term "maintaining particular settings associated with the service" in Sacerdoti Invalidity Report at 80-81	DENIED
Opinions on allegedly undisclosed "prior art references" in Sacerdoti Invalidity Report at Appendix C, Appendix D and Appendix E	GRANTED
Opinions on non-infringing alternatives in Gray Non-Infringement Report at ¶¶ 327-37 and Sacerdoti Non-Infringement Report at ¶¶ 59-61, 116-19; reliance on same in Eichmann Report at ¶¶ 37-38	DENIED
<b>MobileIron's Motion to Strike</b>	
Late production of prior art source code	GRANTED
Undisclosed conception date for the '322 patent	GRANTED
New invalidity theory for "filtering" of '016 patent	GRANTED
New infringement theory for "list" of '219 patent	DENIED
New infringement theories for the '322 patent	DENIED

21 **SO ORDERED.**

22 Dated: April 23, 2015

23  
24  
25   
26 PAUL S. GREWAL  
United States Magistrate Judge

27 <sup>2</sup> *Guzik Tech. Enters. v. Western Digital Corp.*, Case No. 11-cv-03786, 2013 U.S. Dist. LEXIS  
28 164727, at \*15 (N.D. Cal. Nov. 18, 2013) (citing *San Francisco Baykeeper v. W. Bay Sanitary Dist.*, 791 F. Supp. 2d 719, 733 (N.D. Cal. 2011)).