

1 HONORABLE RICHARD A. JONES  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 T-MOBILE USA, INC.,

11 Plaintiff,

12 v.

13 HUAWEI DEVICE USA, INC., *et al.*,

14 Defendants.

15 Case No. C14-1351-RAJ

16 ORDER

17 The parties disagree whether Defendant Huawei Device USA, Inc.'s gross revenue  
18 is relevant to the issues of damages. In particular, Huawei USA contends that it would be  
19 irrelevant and unfairly prejudicial for the jury to see a \$30 billion figure. Plaintiff T-  
20 Mobile USA, Inc. contends that this figure and other gross sales data are relevant to  
21 establishing damages.

22 As noted in the comments to the Washington Pattern Instructions, "the Court of  
23 Appeals has held that, once the plaintiff proves sales attributable to the use of a trade  
24 secret, the burden shifts to the defendant to establish 'any portion of the sales not  
25 attributable to the trade secret and any expenses to be deducted in determining net  
26 profits.'" WPI 351.01 cmt. (quoting *Petters v. Williamson & Assocs., Inc.*, 210 P.3d  
27 1048, 1054 (Wash. Ct. App. 2009)).

28 This comment is an accurate description of the Washington Court of Appeals'  
holding in *Petters*. In *Petters*, the court adopted comment f to Restatement (Third) of  
Unfair Competition § 45:

ORDER – 1

1       The traditional form of restitutionary relief in an action for the  
2       appropriation of a trade secret is an accounting of the defendant's profits on  
3       sales attributable to the use of the trade secret. . . . The plaintiff has the  
4       burden of establishing the defendant's sales; the defendant has the burden  
5       of establishing any portion of the sales not attributable to the trade secret  
6       and any expenses to be deducted in determining net profits.

7       *Id.* (quoting Restatement (Third) of Unfair Competition § 45 cmt. f., at 516-17 (1995)).

8       The court explained that this rule

9       places on the party in possession of the relevant information—the  
10       defendant—the burden of demonstrating which portion, if any, *of the*  
11       *revenue obtained through the transfer of a trade secret* was not, in fact,  
12       attributable to the transfer. That is, it requires the defendant to explain why  
13       any particular portion of the money that it received as a result of the  
14       misappropriating transaction should not be considered an 'actual loss'  
15       suffered by the plaintiff under RCW 19.108.030(1).

16       *Id.* (emphasis added).

17       Under this burden-shifting scheme, T-Mobile's initial burden is to establish sales  
18       attributable to Huawei USA's alleged trade secrets misappropriation. The scope of  
19       evidence relevant to this inquiry does not, as T-Mobile contends, permit an unconstrained  
20       assessment of Huawei USA's gross revenue. The \$30 billion figure at issue bears little to  
21       no relevance to this inquiry. Given its minimal probative value, allowing the jury to see  
22       this figure would also be unfairly prejudicial, confusing, and misleading in violation of  
23       Rule 403. *Stanard v. Bolin*, 565 P.2d 94, 97 (Wash. 1977) (discussing potential for  
24       "evidence of the defendant's wealth" to mislead a jury).

25       DATED this 4th day of May, 2017.

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28       The Honorable Richard A. Jones  
29       United States District Judge