IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DRONE TECHNOLOGIES, INC., Plaintiff, v. PARROT S.A. and PARROT, INC. Defendants.	§ § § § § § § § §	Civil Action No. 2:14-cv-00111 Judge Arthur J. Schwab JURY TRIAL DEMANDED ELECTRONICALLY FILED

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS PARROT S.A. AND PARROT, INC.'S MOTION FOR JUDGMENT AS A MATTER OF LAW

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 50(a), Defendants Parrot S.A. and Parrot, Inc. (collectively, "Defendants" or "Parrot") submit this Memorandum in support of Parrot's accompanying Motion for Judgment as a Matter of Law, which asks the Court to enter judgment as a matter of law in favor of Parrot for the grounds set forth herein. A Proposed Order accompanies this Memorandum.

II. LEGAL STANDARDS

Judgment as a matter of law "is appropriate only where a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue." *Agrizap, Inc. v. Woodstream Corp.,* 520 F.3d 1337, 1342 (Fed. Cir. 2008) (citing Fed. R. Civ. P. 50(a)). "A motion for judgment as a matter of law under Federal Rule 50(a) should be granted only if, viewing the evidence in the light most favorable to the nonmoving party, there is no question of material fact for the jury and any verdict other than the one directed would be erroneous under the governing law." *Beck v. City of Pittsburgh,* 89 F.3d 966, 971 (3d Cir. 1996) (quoting *Macleary v. Hines,* 817 F.2d 1081, 1083 (3d Cir. 1987)).

"In ruling on a Rule 50(a) motion, the Court must refrain from weighing the evidence, determining the credibility of witnesses, or substituting [its] own version of the facts for that of the jury." *Carnegie Mellon Univ. v. Marvell Tech. Group, Ltd.*, 986 F. Supp. 2d 574, 602 (W.D. Pa. 2013) (quoting *Eshelman v. Agere Sys.*, 554 F.3d 426, 433 (3d Cir. 2009) (internal quotation marks omitted)). Judgment as a matter of law "should be granted where the record is critically deficient of the minimum quantum of evidence necessary to support a verdict in favor of the non-moving party. To that end, a scintilla of evidence is not enough to survive a Rule 50 motion at trial. The question is not whether there is literally no evidence supporting the unsuccessful party,

but whether there is evidence upon which a reasonable jury could properly find a verdict in favor of the non-moving party. In other words, a directed verdict is mandated where the facts and the law will reasonably support only one conclusion." *Carnegie Mellon*, 986 F. Supp. 2d at 602-03 (internal quotation marks and citations omitted).

III. THERE IS INSUFFICIENT EVIDENCE THAT DRONE TECHNOLOGIES, INC. (DTI) OWNS THE PATENTS-IN-SUIT OR THAT DTI IS A LEGAL CORPORATE ENTITY

The only evidence of ownership of the patents-in-suit that Plaintiff presented at trial was evidence that the patents-in-suit identify Ms. Yu-Tuan ("Diane") Lee as the sole inventor (P1; P2), and that Lee assigned the patents-in-suit to DTI for $1.00 (P3). This evidence is insufficient to show that DTI is the rightful owner of the patents-in-suit. As discussed in detail in Doc. No. 173, which is incorporated herein by reference, Lee was not the sole inventor of the patents-in-suit and, therefore, DTI never legally acquired the rights in the patents-in-suit.

Even if the patents-in-suit (P1; P2) and the assignment (P3) are viewed in the light most favorable to Plaintiff, however, there remains another reason why a jury could not reasonably find for Plaintiff: there is no evidence in the record that DTI is a legal corporation under Taiwanese law. Plaintiff presented no evidence of incorporation, registration, tax records, accounting records, annual reports, or other corporate documents that show that DTI is an actual and legally existing company. Ding's uncorroborated testimony, which also does not establish that DTI is a legally valid entity, is insufficient as a matter of law. (*See, e.g.,* Trial Tr. Day 1, 154:2-21, Apr. 27, 2015.) Because there is insufficient evidence for a reasonable jury to conclude that DTI owns the patents-in-suit or that DTI is a legal corporate entity, judgment as a matter of law should be entered on this ground.

IV. PARROT PRODUCTS NOT INDENTIFIED IN THE COMPLAINT ARE NOT SUBJECT TO DAMAGES

Parrot products not identified in the Complaint include Parrot's Minidrones (of which there are two, the "Jumping Sumo" and "Rolling Spider," collectively referred to as "Minidrones") and Bebop drone. Plaintiff only identified two accused products in its Complaint: the AR.Drone and the AR.Drone 2.0. (Doc. No. 1, ¶ 14.) The Complaint did not identify Parrot's Minidrones or Bebop drone as accused products. Plaintiff's initial disclosures under LPR 3.1 did not accuse Parrot's Minidrones or Bebop drone as indirectly infringing any claim of any patent-in-suit either. The record shows that Plaintiff never provided any basis for an allegation against these devices under Fed. R. Civ. P. 11. Because the Complaint only demands judgment with respect to Parrot's AR.Drone and AR.Drone 2.0, and because the Complaint does not demand any judgment against any other Parrot product, Parrot's Minidrones and Bebop drones are not subject to the default judgment as a matter of law. *See* Fed. R. Civ. P. 54(c). Because Parrot's Minidrones and Bebop drones should never have been included in the damages trial, there is insufficient evidence upon which a reasonable jury could properly award damages with respect to these products. Therefore, judgment as a matter of law is appropriate.

V. PLAINTIFF'S REASONABLE ROYALTY ANALYSIS IS FLAWED

For reasons further specified below, Parrot respectfully submits that Plaintiff has failed to provide a legally sufficient evidentiary basis for the jury to find for Plaintiff on the issue of a reasonable royalty.

A. Plaintiff did not provide sufficient evidence to establish the royalty base.

Plaintiff's claim for damages is based solely on a reasonable royalty. Under long-settled law, the amount of a reasonable royalty depends on two fundamental factors: 1) the royalty base, which depends on the number of infringing acts; and, 2) the royalty rate to be assessed on that

base. *See VirnetX, Inc. v. Cisco Sys.*, 767 F.3d 1308, 1326 (Fed. Cir. 2014); *Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1339 (Fed. Cir. 2009). Plaintiff bears the burden of proof on both issues. *Lucent*, 580 F.3d at 1324.

All of the claims of the patents-in-suit require two sub-systems: 1) a remote controller; and, 2) a remotely controlled vehicle. (P1; P2.) In its Complaint, Plaintiff accuses Parrot of indirect infringement of the patents-in-suit by selling the AR.Drone and AR.Drone 2.0 products in the U.S., and by making available the FreeFlight software for remotely controlling them from a smartphone, tablet, or computer. (Doc. No. 1, ¶¶ 32, 33, 37, 38.) The Complaint alleges that "Users" of the AR.Drone directly infringe the patents-in-suit "when they download the Parrot FreeFlight app onto a smartphone or tablet and control a Parrot Drone using the smartphone or tablet, in accordance with the instructions provided by Defendants on the product packaging and user manuals for the Parrot Drones." (Doc. No. 1, ¶¶ 31, 36.)

In view of the Complaint, there is no dispute that to prove an act of direct infringement under the patents-in-suit, Plaintiff must prove: 1) that a remote controller has been paired with a Parrot drone; 2) that the remote controller has a magnetic sensor ('071 Patent) and/or an accelerometer ('748 Patent); 3) that the magnetic sensor or accelerometer can be accessed by the FreeFlight application to control a Parrot drone; 4) that the FreeFlight application has been activated to use one or both of a magnetic sensor or accelerometer. All must be proven, and proven on a system-by-system basis, to determine the number of directly infringing systems.

However, Plaintiff has not provided any evidence showing the number or extent of acts of direct infringement. Specifically, there is insufficient evidence: 1) identifying any "User" of the "Parrot Drones" or the number of Users of the Parrot Drones; 2) identifying the identity, manufacturer, and capability of any particular smartphone or tablet known to be used by a User

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.