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

CORE WIRELESS LICENSING S.A.R.L., *Plaintiff*,	§	
v.	§	Case No. 2:14-cv-911-JRG
LG ELECTRONICS, INC. AND LG ELECTRONICS MOBILECOMM U.S.A., INC., *Defendants*.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is LG's First Motion for Judgment as a Matter of Law, and in the Alternative for a New Trial (Non-Infringement) (Dkt. No. 451), LG's Second Motion for Judgment as a Matter of Law, and in the Alternative for a New Trial (Invalidity) (Dkt. No. 452), and LG's Third Motion for Judgment as a Matter of Law, and in the Alternative for a New Trial (Damages) (Dkt. No. 453). For the reasons set forth below, the Court finds that LG's motions for judgment as a matter of law, and in the alternative for a new trial, on the issues of infringement and validity should be **DENIED** (Dkt. No. 451; Dkt. No. 452). The Court finds that LG's motion for a new trial on the issue of damages should be **GRANTED** (Dkt. No. 453).

I. BACKGROUND

The Court held a jury trial in this case, and the jury returned a verdict on March 24, 2016. The asserted claims of U.S. Patent No. 8,434,020 ("the '020 Patent") and U.S. Patent No. 8,713,476 ("the '476 Patent"), the two patents-in-suit, relate to interface techniques used to access various functions of a mobile device application, and the accused products at trial were LG phones that implement the Android operating system. The jury's verdict found that the

asserted claims were infringed by LG's accused devices and not invalid, and it awarded $3.5 million in damages to Plaintiff Core Wireless Licensing S.a.r.l. ("Core"). ("Verdict," Dkt. No. 428.) Defendants LG Electronics, Inc. and LG Electronics MobileComm U.S.A., Inc. (collectively, "LG") now argue that the jury did not have sufficient evidence for its findings.

II. LEGAL STANDARD

A. Applicable Law Regarding FRCP 50

Upon a party's renewed motion for judgment as a matter of law following a jury verdict, the Court should properly ask whether "the state of proof is such that reasonable and impartial minds could reach the conclusion the jury expressed in its verdict." FRCP 50(b); *see also Am. Home Assur. Co. v. United Space Alliance*, 378 F.3d 482, 487 (5th Cir. 2004). "The grant or denial of a motion for judgment as a matter of law is a procedural issue not unique to patent law, reviewed under the law of the regional circuit in which the appeal from the district court would usually lie." *Finisar Corp. v. DirectTV Group, Inc.*, 523 F.3d 1323, 1332 (Fed. Cir. 2008). "A JMOL may only be granted when, 'viewing the evidence in the light most favorable to the verdict, the evidence points so strongly and overwhelmingly in favor of one party that the court believes that reasonable jurors could not arrive at any contrary conclusion.'" *Versata Software, Inc. v. SAP Am., Inc.*, 717 F.3d 1255, 1261 (Fed. Cir. 2013) (quoting *Dresser-Rand Co. v. Virtual Automation, Inc.*, 361 F.3d 831, 838 (5th Cir. 2004)).

Under Fifth Circuit law, a court is to be "especially deferential" to a jury's verdict, and must not reverse the jury's findings unless they are not supported by substantial evidence. *Baisden v. I'm Ready Prods., Inc.*, 693 F.3d 491, 499 (5th Cir. 2012). "Substantial evidence is defined as evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions." *Threlkeld v. Total Petroleum,*

Inc., 211 F.3d 887, 891 (5th Cir. 2000). A motion for judgment as a matter of law must be denied "unless the facts and inferences point so strongly and overwhelmingly in the movant's favor that reasonable jurors could not reach a contrary conclusion." *Baisden*, 693 F.3d at 498 (citation omitted). However, "[t]here must be more than a mere scintilla of evidence in the record to prevent judgment as a matter of law in favor of the movant." *Arismendez v. Nightingale Home Health Care, Inc.*, 493 F.3d 602, 606 (5th Cir. 2007).

In evaluating a motion for judgment as a matter of law, a court must "draw all reasonable inferences in the light most favorable to the verdict and cannot substitute other inferences that [the court] might regard as more reasonable." *E.E.O.C. v. Boh Bros. Const. Co., L.L.C.*, 731 F.3d 444, 451 (5th Cir. 2013) (citation omitted). However, "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). "[T]he court should give credence to the evidence favoring the nonmovant as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'" *Id.* at 151 (citation omitted).

B. Applicable Law Regarding FRCP 59

Under FRCP 59(a), a new trial can be granted to any party after a jury trial on any or all issues "for any reason for which a new trial has heretofore been granted in an action at law in federal court." FRCP 59(a). In considering a motion for a new trial, the Federal Circuit applies the law of the regional circuit. *z4 Techs., Inc. v. Microsoft Corp.*, 507 F.3d 1340, 1347 (Fed. Cir. 2007). "A new trial may be granted, for example, if the district court finds the verdict is against the weight of the evidence, the damages awarded are excessive, the trial was unfair, or prejudicial error was committed in its course." *Smith v. Transworld Drilling Co.*, 773 F.2d 610,

612–13 (5th Cir. 1985). "The decision to grant or deny a motion for a new trial is within the discretion of the trial court and will not be disturbed absent an abuse of discretion or a misapprehension of the law." *Prytania Park Hotel, Ltd. v. General Star Indem. Co.*, 179 F.3d 169, 173 (5th Cir. 1999).

III. INFRINGEMENT

To prove infringement under 35 U.S.C. § 271, a plaintiff must show the presence of every element, or its equivalent, in the accused product or service. *Lemelson v. United States*, 752 F.2d 1538, 1551 (Fed. Cir. 1985). First, the claim must be construed to determine its scope and meaning; and second, the construed claim must be compared to the accused device or service. *Absolute Software, Inc. v. Stealth Signal, Inc.*, 659 F.3d 1121, 1129 (Fed. Cir. 2011) (citing *Carroll Touch, Inc. v. Electro Mech. Sys., Inc.*, 15 F.3d 1573, 1576 (Fed. Cir. 1993)). "A determination of infringement is a question of fact that is reviewed for substantial evidence when tried to a jury." *ACCO Brands, Inc. v. ABA Locks Mfr. Co.*, 501 F.3d 1307, 1311 (Fed. Cir. 2007).

A. LG's Motion for JMOL Based on New Claim Constructions

At trial, Core asserted dependent claims 11 and 13 from the '020 Patent and dependent claims 8 and 9 from the '476 Patent. Independent claim 1 of the '020 Patent, on which claims 11 and 13 depend, provides as follows:

> A computing device comprising a display screen, the computing device being configured to display on the screen a main menu listing at least a first application, and additionally being configured to display on the screen an application summary window that can be ***reached directly*** from the main menu, wherein the application summary window displays a limited list of at least one function offered within the first application, each function in the list being selectable to launch the first application and initiate the selected function, and wherein the application summary window is displayed while the application is in an ***un-launched state***.

'020 Patent at col. 5, ll. 33–43 (emphasis added). Independent claim 1 of the '476 Patent, on which claims 8 and 9 depend, provides as follows:

> A computing device comprising a display screen, the computing device being configured to display on the screen a menu listing one or more applications, and additionally being configured to display on the screen an application summary that can be ***reached directly*** from the menu, wherein the application summary displays a limited list of data offered within the one or more applications, each of the data in the list being selectable to launch the respective application and enable the selected data to be seen within the respective application, and wherein the application summary is displayed while the one or more applications are in an ***un-launched state***.

'476 Patent at col. 5, l. 59–col. 6, l. 3 (emphasis added).

On the first morning of trial, Core called Mr. Mathieu Martyn, the named inventor of the '020 and '476 Patents, as its first witness. During Core's direct examination and LG's cross-examination of Mr. Martyn, it became clear to the Court that a live claim construction dispute existed between the parties. *See* (3/21/2016 A.M. Trial Tr., Dkt. No. 433 at 103:13–105:14, 135:14–137:8.) After Mr. Martyn's testimony ended, the Court asked the parties whether an *O2 Micro* issue existed for the Court to resolve with regard to the claim terms "un-launched state" and "reached directly." *See O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co., Ltd.*, 521 F.3d 1351 at 1360 (Fed. Cir. 2008) ("When the parties raise an actual dispute regarding the proper scope of these claims, the court, not the jury, must resolve that dispute."). While Core indicated that it did not think additional claim construction before the Court was necessary, LG disagreed. (3/21/2016 P.M. Trial Tr., Dkt. No. 434 at 3:5–4:1, 100:12–101:4.) LG admitted that it had previously believed an *O2 Micro* issue might arise during trial but had not brought this concern to the Court's attention. (*Id.* at 100:22–101:4.)

LG then asked the Court to revisit its *O2 Micro* concerns after the testimony of Core's infringement expert, Dr. Kenneth Zeger, and the Court agreed. (*Id.* at 4:1–23.) After observing

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