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

ULTRAVISION TECHNOLOGIES, LLC, *Plaintiff*, v. SHENZEN ABSEN OPTOELECTRONIC CO., LTD., ABSEN, INC., *Defendants*.	§ § § § § § § § § § § § §	CIVIL ACTION NO. 2:18-CV-00100-JRG

ORDER

Before the Court is Plaintiff Ultravision Technologies, LLC's ("Ultravision") Motion for a New Trial Under Fed. R. Civ. P. 59(a)(1)(A) and to Alter the Judgment Pursuant to Fed. R. Civ. P. 59(e) (the "Motion"). (Dkt. No. 706). Having considered the Motion, the relevant authorities, and the entirety of the record before the Court, the Court finds that it should be **GRANTED-IN-PART** and **DENIED-IN-PART** as set forth herein.

I. BACKGROUND

Ultravision filed its original complaint against Defendants Shenzen Absen Optoelectronic Co., Ltd. and Absen, Inc. (collectively, "Absen") on March 27, 2018. *Ultravision Technologies, LLC v. Shenzhen Absen Optoelectronic Co., Ltd. et al*, Case No. 2:18-cv-00112-JRG-RSP, Dkt. No. 1. On April 12, 2019, that case and several other member cases were consolidated under the lead case against GoVision, LLC. (Dkt. No. 17). Ultravision amended its complaint to assert infringement of eight patents against Absen. (Dkt. No. 73). Five of the eight patents are relevant to the Motion—U.S. Patent Nos. 9,916,782 (the "'782 Patent"), 9,978,294 (the "'294 Patent"), 9,207,904 (the "'904 Patent"), 9,047,791 (the "'791 Patent"), and 9,666,105 (the "'105 Patent").

The Court conducted a claim construction hearing that addressed all eight of the initially asserted patents on July 29, 2020. (Dkt. No. 407 at 1). For the '782 and '294 Patents, the Court construed the phrase "sealed to be waterproof" to mean "sealed to have an ingress protection (IP) rating of IP 65 or higher."[1] (*Id.* at 23–24). For the '782, '294, and '904 Patents, the Court construed the terms "display panel[s]," "modular display panel[s]," "LED display panel[s]," and "panel[s]" to mean "interchangeable display panel for a multi-panel modular display configured for use without a cabinet." (*Id.* at 18).

After the Court's claim construction, the parties stipulated to non-infringement of the '791 and '105 Patents. (Dkt. No. 637). The parties further stipulated to the submission of a proposed final judgment that the accused products have not infringed and currently do not infringe the asserted claims of the '791 and '105 Patents. (*Id.* at ¶ 12).

At trial, Ultravision asserted infringement of only claim 9 of the '782 Patent, claim 22 of the '294 Patent, and claim 1 of the '904 Patent. (Dkt. No. 691 at 2). The jury returned a verdict finding no infringement and invalidity for each of the three asserted claims. (*Id.* at 4–5).

II. APPLICABLE LAW

After a jury trial on the merits, a party may file a motion for a new trial or a motion to alter the judgment. Fed. R. Civ. P. 59.

A. Motion for a New Trial

Rule 59 provides that a new trial may be granted on all or part of the issues on which there has been a trial by jury for "any reason for which a new trial has heretofore been granted in an action at law in federal court." Fed. R. Civ. P. 59(a). Notwithstanding the broad sweep of Rule 59,

[1] The Ingress Protection (IP) standard provides a two-digit number to evaluate a product's protection from dust and water ingress. (Dkt. No. 297-20 at ¶ 54). The first digit reflects the protection against dust ingress and the second digit reflects the protection against water ingress. (*Id.*).

"courts do not grant new trials unless it is reasonably clear that prejudicial error has crept into the record or that substantial justice has not been done, and the burden of showing harmful error rests on the party seeking the new trial." *Metaswitch Networks Ltd. v. Genband US LLC*, No. 2:14-CV-00744-JRG, 2017 WL 3704760, at *2 (E.D. Tex. Aug. 28, 2017); *Erfindergemeinschaft UroPep GbR v. Eli Lilly & Co.*, 276 F. Supp. 3d 629, 643 (E.D. Tex. 2017). "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); see also *Laxton v. Gap Inc.*, 333 F.3d 572, 586 (5th Cir. 2003) ("A new trial is warranted if the evidence is against the great, and not merely the greater, weight of the evidence."). Furthermore "[u]nless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial . . . . The court must disregard all errors and defects that do not affect any party's substantial rights." Fed. R. Civ. P. 61.

B. Motion to Alter the Judgment

Under Rule 59(e), a party can move the Court to amend an Order or Judgment within 28 days of entry. Fed. R. Civ. P. 59(e). "Rule 59(e) is properly invoked 'to correct manifest errors of law or fact or to present newly discovered evidence.'" *In re Transtexas Gas Corp.*, 303 F.3d 571, 581 (5th Cir. 2002) (internal citations omitted). A motion for reconsideration "is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before." *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004). "Since specific grounds for a motion to amend or alter are not listed in the rule, the district court enjoys considerable discretion in granting or denying the motion." *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (internal citations omitted). Accordingly, relief under Rule 59(e) is appropriate

only when (1) there is a manifest error of law or fact; (2) there is newly discovered or previously unavailable evidence; (3) there would otherwise be manifest injustice; or (4) there is an intervening change in controlling law. *Schiller v. Physicians Res. Grp. Inc.*, 342 F.3d 563, 567 (5th Cir. 2003).

III. DISCUSSION

Ultravision moves for a new trial pursuant to Federal Rule of Civil Procedure 59 on two grounds. First, Ultravision asserts that the Court erred in its construction of the term "sealed to be waterproof" and that the erroneous construction was prejudicial because it led to the jury's factual findings of non-infringement and invalidity. (Dkt. No. 706 at 4). Second, Ultravision argues that the Court's interpretation of "interchangeable" in the construction of the term "modular display panel" was erroneous; further, Ultravision argues that the Court's erroneous interpretation of "interchangeable" prejudiced Ultravision because it resulted in the exclusion of Ultravision's expert testimony regarding validity. (*Id.* at 9–10).

Additionally, Ultravision notes that the parties stipulated to non-infringement of the '791 and '105 Patents and agreed to "submit a proposed final judgment that the Accused Products have not infringed and currently do not infringe the Asserted Claims of the '791 and '105 Patents after the completion of the jury trial currently scheduled for June 3, 2021." (Dkt. No. 637). Ultravision moves under Rule 59(e) that the judgment reflect the terms of the parties' stipulation. (Dkt. No. 706 at 13).

A. Motion for New Trial on Infringement and Validity Based on the Construction of "Sealed to Be Waterproof"

Ultravision raises two issues with the Court's construction of "sealed to be waterproof." Ultravision argues that the Court's construction was erroneous, which resulted in (1) the erroneous finding of infringement, and (2) the erroneous finding of invalidity. As the Court finds that its prior construction was not erroneous, the Court rejects both prongs of Ultravision's argument.

i. **The Court's Construction of "Sealed to Be Waterproof" Was Not Erroneous**

According to Ultravision, it was erroneous to limit the construction of "sealed to be waterproof" to panels having an IP rating of IP 65 or higher because the dependent claims claim display panels with IP ratings of IP 65, IP 66, IP 67, and IP 68. (Dkt. 706 at 4 (citing '782 Patent, claim 6)). Ultravision asserts that the incorporation of IP ratings in a dependent claim gives rise to a presumption that IP ratings are not present in the independent claims. (*Id.* at 6 (citing *Phillips v. AWC Corp.*, 415 F.3d 1303, 1314–15 (Fed. Cir. 2005)). Ultravision additionally reasserts objections previously raised and overruled regarding the Court's construction of the "waterproof" terms. (*Id.* at 6–7; Dkt. No. 420 at 2–4; Dkt. No. 580).

The Court reaffirms its prior construction for the reasons noted in the Court's Claim Construction Order. (Dkt. No. 407 at 20–23). "'The claims themselves provide substantial guidance as to the meaning of particular claim terms' and 'the specification is the single best guide to the meaning of a disputed term.'" *Network-1 Techs., Inc. v. Hewlett-Packard Co.*, 981 F.3d 1015, 1022 (Fed. Cir. 2020) (citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc)). When the patent specifications at issue discuss the waterproof characteristic of the panels, the specifications do so by discussing the IP rating system. *See, e.g.*, '782 Patent at 7:42–46 ("In the present example, the housing 220 is sealed to prevent water from entering the housing. For example, the housing 220 may be sealed to have an ingress protection (IP) rating such as IP 67, which defines a level of protection against both solid particles and liquid."). The claims themselves further evaluate "sealed to be waterproof" in terms of an IP rating. Claim 1 of the '782 Patent requires that the claimed modular display panel is "sealed to be waterproof." *Id.* at 31:9. Claim 6 of the '782 Patent covers: "[t]he panel of claim 1, wherein the modular display panel comprises an ingress protection (IP) rating of IP 65, IP 66, IP 67, or IP 68." *Id.* at 31:22–24. Finally,

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