UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

APPLE INC.,

Plaintiff,

vs.

WI-LAN, INC.,

Defendant.

AND ALL RELATED COUNTERCLAIMS.

CASE NO. 14cv2235 DMS (BLM)

ORDER (1) DENYING APPLE INC.'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW, (2) GRANTING APPLE INC.'S MOTION FOR A NEW TRIAL AND/OR REMITTITUR AND (3) DENYING WI-LAN'S MOTION FOR SUPPLEMENTAL DAMAGES, ONGOING ROYALTY, AND PREJUDGMENT AND POST JUDGMENT INTEREST

This case comes before the Court on Apple Inc.'s renewed motion for judgment as a matter of law and/or motion for a new trial and Wi-LAN's motion for supplemental damages, ongoing royalty, and prejudgment and post judgment interest. On November 30, 2018, the Court heard argument on the damages portion of Apple's motion. Ashley Moore appeared and argued for Wi-LAN, and Sean Cunningham appeared and argued for Apple. After reviewing the parties' briefs, the record, the relevant legal authority, and after hearing argument from counsel, the Court issues the following rulings:

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I.

RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW

Apple moves for judgment as a matter of law on the issue of infringement. "A Rule 50(b) motion for judgment as a matter of law is not a freestanding motion. Rather, it is a renewed Rule 50(a) motion." *E.E.O.C. v. Go Daddy Software, Inc.*, 581 F.3d 951, 961 (9th Cir. 2009). Federal Rule of Civil Procedure 50(a)(1) provides:

> If 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, the court may:
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> (A) resolve the issue against the party; and
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> (B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

Fed. R. Civ. P. 50(a)(1). In the Ninth Circuit, "'[j]udgment as a matter of law is appropriate when the evidence presented at trial permits only one reasonable conclusion.'" *Torres v. City of Los Angeles*, 548 F.3d 1197, 1205 (9th Cir. 2008) (quoting *Santos v. Gates*, 287 F.3d 846, 851 (9th Cir. 2002)). "In other words, '[a] motion for a judgment as a matter of law is properly granted only if no reasonable juror could find in the non-moving party's favor.'" *Id.* (quoting *El-Hakem v. BJY Inc.*, 415 F.3d 1068, 1072 (9th Cir. 2005)). When considering a motion for judgment as a matter of law, the court must view the evidence "'in the light most favorable to the nonmoving party, and all reasonable inferences must be drawn in favor of that party.'" *Id.* at 1205-06 (quoting *LaLonde v. County of Riverside*, 204 F.3d 947, 959 (9th Cir. 2000)).

Here, Apple raises a number of arguments in support of its motion for judgment as a matter of law on the issue of infringement. Several of these legal arguments were raised and rejected prior to trial, *e.g.*, the claim construction arguments. Apple has failed to show that the Court's previous rulings were in error, and thus those arguments do not warrant judgment as a matter of law in Apple's favor. On the evidentiary arguments, Apple has failed to show that no reasonable juror could have found for Wi-LAN, and thus those arguments also do not warrant judgment as a matter of law in

Apple's favor. Thus, the Court denies Apple's motion for judgment as a matter of law on the issue of infringement.[1]

II.

MOTION FOR NEW TRIAL OR REMITTITUR

Apple's motion for a new trial on damages is based on Federal Rule of Civil Procedure 59, which provides: "The court may, on motion, grant a new trial on all or some of the issues-and to any party-as follows: (A) after a jury trial, 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)(1)(A). "A trial court should grant a motion for a new trial if (1) the jury instructions were erroneous or inadequate, (2) the court made incorrect and prejudicial admissibility rulings, or (3) the verdict is contrary to the great weight of the evidence." *Chiron Corp. v. Genentech, Inc.*, 363 F.3d 1247, 1258 (Fed. Cir. 2004) (citations omitted).

As an alternative to a new trial on damages, Apple requests that the Court enter a conditional order of remittitur to a $10 million damages award. "'The Court has discretion to grant a remittitur, reducing the damages to the maximum authorized under the evidence, and then offer Plaintiffs the choice of accepting a remittitur (a reduction) of the award in lieu of a new trial on the issue of the damages only.'" *Coach, Inc. v. Celco Customs Services Co.*, No. CV 11-10787 MMM (FMOx), 2014 WL 12573411, at *23 n.128 (C.D. Cal. June 5, 2014) (quoting *Dixon v. City of Coeur d'Alene*, No. 2:10-cv-00078-LMB, 2012 WL 2923149, at *8 (D. Idaho July 18, 2012)).

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[1] Apple also moves for judgment as a matter of law of no damages on the ground Wi-LAN "failed to meet its burden of proving damages." (Mem. of P. & A. in Supp. of Apple's Mot. at 11.) At oral argument, Apple presented the Court with another option, namely entering judgment as a matter of law in the amount of $24 million in damages. That was the first mention of this option, and thus the Court declines to consider it here. Even if the Court considered it, however, Apple has failed to show there is sufficient evidence in the record for the Court to enter judgment as a matter of law in that amount. Furthermore, Apple's arguments on damages are directed more toward Wi-LAN's methodology, not a lack of evidence to support a damages award. Therefore, the Court addresses the issue of damages below under Apple's alternative motion for a new trial or remittitur.

In this case, the primary point of contention on the damages issue is apportionment.[2] Both sides agree that apportionment was required, but they disagree on the method for doing so. Apple apportioned by using the smallest salable patent practicing unit ("SSPPU"), which Apple argued was the baseband processor, while Wi-LAN used a "direct valuation" approach. Apple contends Wi-LAN's approach was riddled with legal and factual errors, and thus Apple is entitled to a new trial on damages or a remittitur to $10 million.

The general rule of apportionment is that "[a] patentee is only entitled to a reasonable royalty attributable to the infringing features." *Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.*, 904 F.3d 965, 977 (Fed. Cir. 2018). As stated above, there is no dispute that apportionment was required in this case. Thus, Wi-LAN was required, as part of its reasonable royalty analysis, to "apportion[ ] between the infringing and non-infringing features of the product." *Id.* (citations omitted).

Here, the accused product was the iPhone, and thus Wi-LAN had the burden to apportion the infringing features of the iPhone from the noninfringing features. Generally, this kind of apportionment is accomplished by ensuring the royalty base is not "larger than the smallest salable unit embodying the patented invention." *Id.*[3] If the SSPPU "itself contains several non-infringing features[,]" the patentee must apportion further by "estimat[ing] what portion of that smallest salable unit is attributed

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[2] To be sure, Apple raises other arguments, namely, that evidence of [redacted] skewed the damages horizon, and that Wi-LAN improperly included millions of non-infringing iPhones in the royalty base. However, in light of the discussion below, the Court declines to address these other arguments.

[3] The Court notes the parties dispute what constitutes the SSPPU in this case. Apple argues it is the baseband processor while Wi-LAN asserts it is the iPhone. The Court need not resolve this issue here, however.

to the patented technology." *Id.* (citing *VirnetX, Inc. v. Cisco Systems, Inc.*, 767 F.3d 1308, 1327 (Fed. Cir. 2014).[4]

Wi-LAN argues, however, that apportionment may be accomplished by other means, and that courts should allow "flexibility in arriving at apportionment." (Wi-LAN's Opp'n to Mot. at 15) (citations omitted). There is authority to support both of these arguments, *see Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1315 (Fed. Cir. 2014), *overruled on other grounds by Williamson v. Citrix Online, LLC*, 792 F.3d 1339 (Fed. Cir. 2015), (stating party may "estimate the value of the benefit provided by the infringed features by comparing the accused product to non-infringing alternatives."); *Commonwealth Scientific and Indus. Research Org. v. Cisco Systems, Inc. ("CSIRO")*, 809 F.3d 1295 (Fed. Cir. 2015) (stating "adaptability" may be necessary in the apportionment analysis), but neither of these cases resolves the issues raised here. *CSIRO*, for instance, was a unique case wherein the parties engaged in actual license negotiations to the patent in suit. 809 F.3d at 1303. In determining a reasonable royalty, the district court used those negotiations "as a lower bound on a reasonable royalty," and the Federal Circuit affirmed that approach. *Id.* at 1304. This case does not present facts similar to those found in *CSIRO*, or facts that would necessarily call for flexibility or "adaptability" in apportionment. Nevertheless, the Court cannot say, as a matter of law, that Wi-LAN's failure to use the SSPPU in its reasonable royalty analysis requires either a new trial or remittitur on damages. Rather, whether Apple is entitled to that relief depends on whether the damages theory Wi-LAN did present to the jury was the product of a reliable methodology, and if so, whether that methodology was reliably applied to the facts of this case.

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[4] In exceptional cases, the entire market value of the product may be used, but "'only where the patented feature creates the basis for customer demand or substantially creates the value of the component parts.'" *Versata Software, Inc. v. SAP America, Inc.*, 717 F.3d 1255, 1268 (Fed. Cir. 2013) (quoting *SynQor, Inc. v. Artesyn Tech., Inc.*, 709 F.3d 1365, 1383 (Fed. Cir. 2013)). There is no dispute that requirement is not met in this case, and that the entire market value rule, therefore, does not apply.

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