

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

AMERANTH, INC.

§

V.

§

§

CASE NO. 2:07-CV-271

MENUSOFT SYSTEMS CORP., ET AL

§

§

ORDER

Pending before the court are Plaintiff's Rule 50(b) motions for judgment as a matter of law ("JMOL") of no anticipation, nonobviousness, and no invalidity based on expert testimony that was inconsistent with the court's claim construction (Dkt. Nos. 280, 281, and 282).¹

A motion for JMOL is a procedural issue not unique to patent law; thus, such motions are reviewed under the law of the regional circuit. *Summit Tech., Inc. v. Nidek Co.*, 363 F.3d 1219, 1223 (Fed. Cir. 2004). In the Fifth Circuit, JMOL may only be granted if "there is no legally sufficient evidentiary basis for a reasonable jury to find as the jury did." *Hiltgen v. Sumrall*, 47 F.3d 695, 700 (5th Cir. 1995) (internal citation omitted); *see also* FED. R. CIV. P. 50(a)(1) (stating that JMOL may be granted only if "the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on [an] issue."). In ruling on a motion for JMOL, the court reviews all the evidence in the record and must draw all reasonable inferences in favor of the nonmoving party. *See Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150-51 (2000). The court, however, may not make credibility determinations or weigh the evidence, as those are solely functions of the jury. *Id.* Under FED. R. CIV. P. 50(b), in ruling on a renewed motion for JMOL, the court may allow judgment on the verdict, if the jury returned a verdict, order a new trial,

¹Plaintiff moved for JMOL pursuant to FED. R. CIV. P. 50(a) on these issues at the close of Defendants' case in chief (Dkt. No. 273 at 151-58). The court carried Plaintiff's motions.

or direct the entry of judgment as a matter of law.

With regard to Plaintiff's motion for JMOL of no anticipation, a patent claim is invalid by reason of anticipation if "the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent." 35 U.S.C. § 102(a). Anticipation under § 102(a) requires the presence in the prior art of each and every limitation of the claimed invention. *Amgen Inc. v. F-Hoffman-La Roche Ltd.*, 580 F.3d 1340, 1366 (Fed. Cir. 2009); *Advanced Display Sys., Inc. v. Kent State Univ.*, 212 F.3d 1272, 1282 (Fed. Cir. 2000). Having carefully considered the record, and the parties' arguments, the court concludes that the jury had a legally sufficient evidentiary basis for finding the asserted claims of the patents-in-suit invalid due to anticipation. Accordingly, the court DENIES Plaintiff's motion for JMOL of no anticipation (Dkt. No. 280).

Plaintiff's motion for JMOL of nonobviousness is likewise DENIED (Dkt. No. 281). A patent is invalid for obviousness "if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." 35 U.S.C. § 103(a). Obviousness is a question of law based on underlying findings of fact. *In re Kubin*, 561 F.3d 1351, 1355 (Fed. Cir. 2009). "An analysis of obviousness must be based on several factual inquiries: (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the art at the time the invention was made; and (4) objective evidence of nonobviousness, if any." *Id.*; see also *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). The teachings of a prior art reference are underlying factual questions in the obviousness inquiry. *Id.* Applying this legal standard to the record in this case, the

court concludes that the jury had a legally sufficient evidentiary basis for finding the asserted claims of the patents-in-suit invalid due to obviousness.

Finally, the court also DENIES Plaintiff's motion for JMOL of no invalidity (Dkt. No. 282). Plaintiff argues that Defendants' expert, Dr. Acampora, testified inconsistently with the court's claim construction, and thus, Dr. Acampora's testimony cannot provide substantial evidence of invalidity to support the jury's verdict. The court, however, rejects this argument. The court has reviewed Dr. Acampora's testimony and is not persuaded that it was contrary to the court's claim construction. In any event, the court has reviewed the evidence in light of the court's jury instructions regarding infringement and invalidity and is persuaded that the evidence supports the jury's verdict.

In conclusion, the evidence presented in this case was legally sufficient to support the jury's finding that the asserted claims of the patents-in-suit are invalid due to anticipation and obviousness. Accordingly, the court DENIES Plaintiff's JMOL motions.

SIGNED this 26th day of May, 2011.


CHARLES EVERINGHAM IV
UNITED STATES MAGISTRATE JUDGE