

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EDWARDS LIFESCIENCES AG and)
EDWARDS LIFESCIENCES LLC,)
)
Plaintiffs,)
)
v.)
)
COREVALVE, INC. and,)
MEDTRONIC COREVALVE, LLC)
)
Defendants.)
_____)

C.A. No. 08-91-GMS

MEMORANDUM

I. INTRODUCTION

In this patent infringement action, plaintiffs Edwards Lifesciences AG and Edwards Lifesciences LLC (collectively, “Edwards” or “the plaintiffs”) allege that a medical device manufactured by defendants CoreValve, Inc. and Medtronic CoreValve, LLC (“CoreValve”) infringe the asserted claim of the patent-in-suit. (D.I. 1.) The court held an eight-day jury trial in this matter on March 23 through April 1, 2010. (D.I. 326-333.) At trial, CoreValve properly moved for judgment as a matter of law (“JMOL”) on a number of grounds pursuant to Rule 50(a) of the Federal Rules of Civil Procedure (see D.I. 303-304, 308, and 310), and the court denied CoreValve’s motions. (See Tr. 1264-70.)

On April 1, 2010, the jury returned a unanimous verdict in favor of Edwards on all claims. The jury found that CoreValve’s Generation 3 ReValving System (the “Gen 3” device) directly infringed claim 1 of United States Patent No. 5,411,552 (“the ‘552 Patent”), the only asserted claim in this case. (D.I. 313.) The jury further found that CoreValve’s infringement was willful, and rejected CoreValve’s claim of non-enablement with respect to the asserted

claim. (Id.) The jury awarded Edwards \$72,645,555 in lost profits and \$1,284,861 in reasonable royalties. (Id.) The court entered judgment on the verdict on May 4, 2010. (D.I. 324.) Presently before the court are the parties' post-trial motions.¹ Having considered the entire record in this case, the substantial evidence in the record, the parties' post-trial submissions, and the applicable law, the court will deny all the parties' post-trial motions with the exception of: Edwards' motion for pre-judgment and post-judgment interest (D.I. 344), which the court will grant; and Edwards' motion for permanent injunction and accounting (D.I. 356), which it will grant in part and deny in part. The court's reasoning follows.

II. BACKGROUND OF THE TECHNOLOGY

The patent-in-suit relates to medical device technology. Specifically, the '552 Patent relates to a "valve prosthesis, preferably a cardiac valve prosthesis, for implantation in the body . . ." ('552 Patent, col. 1, ll.13-15.) The object of the invention, and the key innovation upon which the parties focused at trial, is to provide a valve prosthesis that can be implanted in the body without the need for surgical intervention, but rather through use of a catheter. With respect to cardiac valves, the invention thus permits a valve to be implanted without the need for open heart surgery and the risks that come with such surgery. The claimed prosthesis comprises: "A collapsible elastical valve which is mounted on an elastic stent, the elastical valve having a plurality of commissural points" where the valve is attached to the stent. ('552 Patent, claim 1.) Relevant to the pending motions, the asserted claim requires that the stent include "cylindrical

¹ These motions are: CoreValve's Renewed Motion for Judgment as a Matter of Law (D.I. 318), CoreValve's Motion for a New Trial or Alternatively to Amend Judgment (D.I. 320), Edwards' Motion for Attorney Fees (D.I. 339), Edwards' Motion for Enhanced Damages Pursuant To 35 U.S.C. § 284 (D.I. 341), Edwards' Motion for Prejudgment and Postjudgment Interest (D.I. 344), CoreValve's Motion to Stay Judgment Pending Post-Trial Motions (D.I. 348), Edwards' Motion for Permanent Injunction, Accounting and Related Relief (D.I. 356), CoreValve's Local Rule 7.1.3(c)(2) Motion to Strike (D.I. 391), and CoreValve's Motion to Supplement Court Record (D.I. 417).

support means” and “a plurality of commissural supports projecting from one side of the cylindrical support means in a direction generally parallel to the longitudinal axis thereof.” (Id.)

III. DISCUSSION

A. Renewed JMOL Motions

To prevail on a renewed motion for judgment as a matter of law following a jury trial and verdict, the moving party ““must show that the jury’s findings, presumed or express, are not supported by substantial evidence or, if they were, that the legal conclusion(s) implied [by] the jury’s verdict cannot in law be supported by those findings.”” *Pannu v. Iolab Corp.*, 155 F.3d 1344, 1348 (Fed. Cir. 1998) (quoting *Perkin-Elmer Corp. v. Computervision Corp.*, 732 F.2d 888, 893 (Fed. Cir. 1984)). “Substantial evidence” is defined as “such relevant evidence from the record taken as a whole as might be accepted by a reasonable mind as adequate to support the finding under review.” *Perkin-Elmer Corp.*, 732 F.2d at 893.

The court should only grant the motion “if, viewing the evidence in the light most favorable to the nonmovant and giving it the advantage of every fair and reasonable inference, there is insufficient evidence from which a jury reasonably could find liability.” *Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1166 (3d Cir. 1993) (citing *Wittekamp v. Gulf Western Inc.*, 991 F.2d 1137, 1141 (3d Cir. 1993)). “In determining whether the evidence is sufficient to sustain liability, the court may not weigh the evidence, determine the credibility of witnesses, or substitute its version of the facts for the jury’s version.” *Lightning Lube*, 4 F.3d at 1166 (citing *Fineman v. Armstrong World Indus., Inc.*, 980 F.2d 171, 190 (3d Cir. 1992)). Rather, the court must resolve all conflicts of evidence in favor of the non-movant. *Williamson v. Consol. Rail Corp.*, 926 F.2d 1344, 1348 (3d Cir. 1991); *Perkin-Elmer Corp.*, 732 F.2d at 893.

“The question is not whether there is literally no evidence supporting the party against whom the motion is directed but whether there is evidence upon which the jury could properly find a verdict for that party.” *Lightning Lube*, 4 F.3d at 1166 (quoting *Patzig v. O’Neil*, 577 F.2d 841, 846 (3d Cir. 1978)). In conducting such an analysis, “the court may not determine the credibility of the witnesses nor ‘substitute its choice for that of the jury between conflicting elements of the evidence.’” *Syngenta Seeds, Inc. v. Monsanto Co.*, 409 F. Supp. 2d 536, 539 (D. Del. 2005) (quoting *Perkin-Elmer Corp.*, 732 F.2d at 893).

1. “Projecting”

CoreValve asserts that it is entitled to judgment as a matter of law (“JMOL”) because its accused device does not meet the limitation of the asserted claim “projecting from one side of the cylindrical support means in a direction generally parallel to the longitudinal axis thereof.” Here, a brief review of the discussions surrounding this phrase during the claim construction process illustrates that CoreValve’s renewed JMOL motion on this issue is actually an effort to reopen claim construction and grant CoreValve summary judgment based on a construction that the court never adopted. Initially the parties offered these proposed constructions for the phrase:

Edwards: The commissural supports <i>project</i> from <i>one side</i> of the cylindrical support means in a direction generally parallel to the longitudinal axis of the cylindrical support means, namely, the commissural supports may not necessarily be parallel to that longitudinal axis in a strict geometric sense	CoreValve: <i>Extending away from one end</i> of the cylindrical support means in a direction generally parallel to the longitudinal axis of the cylindrical support means
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(D.I. 45 at 12 (emphasis added).) The parties’ proposed constructions differed in at least two respects. First, Edwards’ construction included language (specifically, everything after “namely”) reminiscent of the language they proposed in their construction of the term

“cylindrical.” Second, whereas Edwards’ proposed construction left unaltered the “project[ing] from one side” claim language, CoreValve proposed a construction that replaced “projecting” with “extending away” and “one side” with “one end.”

With respect to the latter difference, CoreValve’s claim construction answering brief stated that its proposed construction “is important to specify that the supports do not extend from a *side* of the cylindrical support means, but rather from its end.” (D.I. 64 at 16 (emphasis in original).) Edwards took issue with CoreValve’s proposed “extending away from one end” construction in its answering brief. Edwards argued that “[e]xtending away” is inaccurate because a portion of the commissural supports in the preferred embodiment shown in Figure 2 overlap and thus do not extend away from one end of the cylindrical support means.” (D.I. 62 at 14.) At the *Markman* hearing, Edwards stated that the dispute regarding the “extending away from one side” limitation was over “a very minor detail” (id. at 30-31), and CoreValve agreed that their positions on the meaning of this phrase were “very close.” (D.I. 100 at 74.) Edwards did repeat its opposition to the “extending away” limitation as “an unnecessary limitation which isn’t there.” (Id. at 30.) CoreValve’s sole statement regarding its “extending away” proposal at the hearing was:

Now, [Edwards’ counsel] didn’t like the fact that we said extending away. We were trying to give another word for projecting. If the parties want to use projecting, that’s probably fine with us as well. We didn’t intend to change anything by “projecting.”

(Id. at 74.) No mention was made between the distinction between “one end” and “one side,” nor did CoreValve press the court further to adopt its “extending away construction,” despite the fact that Edwards had specifically repeated its opposition to CoreValve’s proposal.

Given the parties’ indication that they did not view the differences between their

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