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

CONTENTGUARD HOLDINGS, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 2:14-CV-61-JRG
	§	
GOOGLE, INC.,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION AND ORDER

Before the Court are the following motions filed by Plaintiff ContentGuard Holdings, Inc. ("ContentGuard") and Defendants Google, Inc., HTC America, Inc., HTC Corporation, Huawei Device USA, Inc., Huawei Technologies Co., Ltd., Motorola Mobility LLC, Samsung Electronics Co., Ltd., and Samsung TeleCommunications America, LLC (collectively, "Defendants"): (1) ContentGuard's Motion for Judgment as a Matter of Law with Respect to the Google-Samsung Trial or, in the Alternative, for a New Trial (Dkt. No. 400[1]; Dkt. No. 1038 in Case No. 2:13-cv-1112); (2) Defendants' Motion for Judgment of Invalidity as a Matter of Law Pursuant to Federal Rule of Civil Procedure 50(b), and in the Alternative, Request for a New Trial Pursuant to Federal Rule of Civil Procedure 49 (Dkt. No. 397; Dkt. No. 1034 in Case No. 2:13-cv-1112); (3) Defendants' Conditional Motion for Bench Trial on Defendants' Inequitable Conduct Defenses (Dkt. No. 396; Dkt. No. 1032 in Case No. 2:13-cv-1112); and (4) Google's Motion for Judgment of Laches (Dkt. No. 394; Dkt. No. 1038 in Case No. 2:13-cv-1112). For the reasons set forth below, the Court finds that each of these motions should be **DENIED**.

[1] Unless otherwise indicated, references to the docket are for Case No. 2:14-cv-61.

I. BACKGROUND

The Court held a jury trial in this case and the jury returned a unanimous verdict on September 23, 2015, that Defendants had not infringed United States Patents Nos. 6,963,859 ("the '859 Patent"), 7,523,072 ("the '072 Patent"), 8,370,956 ("the '956 Patent"), and 8,393,007 ("the '007 Patent") (collectively, the "Trusted Repository Patents" or "Stefik Patents"); and 8,001,053 ("the '053 Patent") (the "Meta Rights Patent," "Nguyen/Chen Patent," or "Nguyen Patent") (all, collectively, "the patents-in-suit"). The jury also found that Defendants had not proved that ContentGuard's patents were invalid. ContentGuard and Defendants now uniformly assert that, in the approximately 36 hours of testimony and evidence presented at trial, the jury did not have sufficient evidence for its findings. The Court disagrees.

II. APPLICABLE LAW

Upon a party's renewed motion for judgment as a matter of law following a jury verdict, the Court asks whether "the state of proof is such that reasonable and impartial minds could reach the conclusion the jury expressed in its verdict." Fed. R. Civ. P. 50(b); *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 Productions, 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* 393 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).

III. ANALYSIS

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).

An issued patent is presumed valid. 35 U.S.C. § 282; *Fox Grp., Inc. v. Cree, Inc.*, 700 F.3d 1300, 1304 (Fed. Cir. 2012). Samsung has the burden to show by clear and convincing evidence that the asserted claims were anticipated by or obvious over the prior art. *Microsoft Corp. v. i4i Ltd. P'ship*, 131 S. Ct. 2238, 2242 (2011). To prevail on judgment as a matter of law, moreover, Samsung must show that no reasonable jury would have a legally sufficient evidentiary basis to find for the Plaintiff. FED. R. CIV. P. 50. "Generally, a party seeking to invalidate a patent as obvious must demonstrate by clear and convincing evidence that a skilled artisan would have had reason to combine the teaching of the prior art references to achieve the claimed invention, and that the skilled artisan would have had a reasonable expectation of success from doing so." *In re Cyclobenzaprine Hydrochoride*, 676 F.3d 1063 (Fed. Cir. 2012) (internal quotation marks omitted).

A. Infringement of the Patents-In-Suit

ContentGuard argues that the Court should enter judgment of infringement as a matter of law because Defendants "failed to present a meritorious non-infringement defense" and instead "misled the jury to a verdict of non-infringement by repeatedly urging arguments the Court had already rejected in its *Markman* and other pre-trial orders." (Inf. JMOL at 1.) More specifically,

ContentGuard argues that because "there is no dispute concerning the structure or operation of the accused device, . . . the issue of whether the claim language reads on the device is purely one of claim construction properly resolved by the Court." *See* (*id.* at 5.) Further, ContentGuard argues that because all of Defendants' noninfringement arguments "were contrary to the Court's *Markman* and *Daubert* Orders, and thus legally incorrect," the Court should enter judgment of infringement as a matter of law. *See* (*id.* at 6.)

For example, ContentGuard asserts that Defendants' argument that the content and the usage rights must travel together was inconsistent with both the Court's *Markman* and *Daubert* orders rejecting the idea of "permanent" attachment. (*Id.* at 6–10.) Similarly, ContentGuard claims that "non-infringement argument Defendants advanced based on the file-moving experiments performed by Dr. Clark[, Defendants' technical expert] should also be rejected" because, "as a matter of law, copying and moving encrypted content is not the same as 'access[ing]' the content." *See* (*id.* at 10–12.) ContentGuard also argues that Defendants' "file-moving defense" violated the Court's *Daubert* order, which prohibited argument that the three integrities must be maintained "at all times." (*Id.* at 11.) Finally, ContentGuard argues that because books and movies are data, rather than software, Defendants' argument that movie and book files are downloaded from the Google Play store without digital certificates and thus their products lack "behavioral integrity" is incorrect. *See* (*id.* at 11–13.)

In the alternative, ContentGuard argues that new trial should be ordered because "Defendants' conduct clearly violated the Court's *Markman* and *Daubert* orders," Defendants unfairly used the Court's *Daubert* order to create alleged inconsistencies in ContentGuard's positions, and "that the Court erred when it permitted Defendants to pursue a 'practicing the prior art' defense before the jury." *(Id.* at 13–18.)

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