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

CHRIMAR SYSTEMS, INC., CHRIMAR HOLDING COMPANY, LLC,	§	
	§	**CIVIL ACTION NO. 6:15-CV-00163-JDL**
Plaintiffs,	§	
v.	§	
ALCATEL-LUCENT ENTERPRISE USA INC.,	§	
Defendant.	§	

REDACTED MEMORANDUM OPINION AND ORDER

Before the Court is: (1) Defendant Alcatel-Lucent Enterprises USA, Inc. ("ALE") Motion for Judgment as a Matter of Law and Motion for A New Trial (Doc. No. 378); and (2) Plaintiffs' Chrimar Systems, Inc. d/b/a CMS Technologies and Chrimar Holding Company LLC ("Chrimar" or "Plaintiffs") Motion for Judgment as a Matter of Law on ALE's IEEE-related Equitable Defenses and Counterclaims (Doc. No. 379). The Motions have been fully briefed. For the reasons stated below, Defendant's Motion for Judgment as a Matter of Law and Motion for a New Trial (Doc. No. 378) is **DENIED**. Plaintiffs' Motion for Judgment as a Matter of Law (Doc. No. 379) is **DENIED**.

BACKGROUND

On March 9, 2015, Plaintiffs Chrimar Systems, Inc. d/b/a CMS Technologies and Chrimar Holding Company LLC ("Chrimar") filed the instant action against ALE. (Doc. No. 3.) In this action, Chrimar alleges infringement of U.S. Patent Nos. 8,115,012 ("the '012 Patent"), 8,902,760 ("the '760 Patent"), 8,942,107 ("the '107 Patent"), and 9,019,838 ("the '838 Patent")

("patents-in-suit"))[1]. Chrimar maintains that each of the patents-in-suit are standard essential patents ("SEP"). Specifically, Chrimar maintains that the patents-in-suit are SEPs for Power over the Ethernet ("PoE") standards IEEE 802.3af-2003 and IEEE 803.3at-2009. This case proceeded through claim construction, dispositive motions and pretrial, and the trial between Chrimar and ALE commenced on October 3, 2016. The following claims, defenses, and counterclaims were presented to the jury: damages, invalidity based on derivation and improper inventorship, fraud, and breach of contract. (Doc. No. 350.)

At the conclusion of Plaintiffs' case-in-chief, ALE moved pursuant to Rule 50(a) for judgment as a matter of law on Plaintiffs' allegations of willfulness and damages. Trial Transcript "Tr." at 612:17–616:3. The Court denied ALE's motion as to Plaintiffs' damages model (Tr. at 616:8–9), and granted ALE's motion as to willfulness (Tr. at 624:4–7). At the close of Defendant's case-in-chief, Plaintiffs moved pursuant to Rule 50(a) on the following issues: (1) infringement; (2) invalidity; (3) derivation; (4) antitrust; (5) implied license; (6) fraud; (7) breach of contract; and (8) damages reduction by noninfringing alternatives. (Tr. at 964:14–984:14.) The Court denied all of these motions, but granted as to written description and enablement, the antitrust claim, and implied license. (Tr. at 965:17–20; 966:12–18; 969:14; 969:25–970:1; 984:14; 986:4–9.) Additionally, at the close of evidence, the Court also provided ALE an opportunity to present additional evidence pertaining to ALE's equitable defenses.

On October 7, 2016, the trial concluded and the jury returned a verdict as follows: (1) Claims 31, 35, 43, and 60 of the '012 Patent were not invalid; Claims 1, 5, 72, and 103 of the '107 Patent were not invalid; Claims 1, 59, 69, 72, and 145 of the '760 Patent were not invalid, and Claims 1, 7, and 26 of the '838 Patent were not invalid; (2) the sum of money that would

[1] Prior to trial, ALE stipulated to infringement of all of the asserted claims of the patents-in-suit. (Doc. Nos. 298, 337.)

fairly and reasonably compensate Chrimar for ALE's infringement was $324,558.34; (3) ALE did not prove by a preponderance of the evidence that Chrimar committed fraud against ALE; and (4) ALE did not prove by a preponderance of the evidence that Chrimar breached a contract with the IEEE. (Doc. No. 349.) Both Chrimar and ALE have now moved to renew their motions for judgment as a matter of law pursuant to Rule 50(b). Specifically, ALE moves to renew its motion on damages (Doc. No. 378); and Chrimar moves on all IEEE-related claims and defenses, including (1) estoppel; (2) unclean hands; (3) waiver; (4) implied license; (5) patent misuse; (6) unenforceability; (7) breach of contract; (8) fraud; (9) antitrust. (Doc. No. 379.)

LEGAL STANDARDS

I. Judgment as a Matter of Law

A renewed motion for judgment as a matter of law ("JMOL") is a challenge to the legal sufficiency of the evidence supporting the jury's verdict. *Power-One, Inc. v. Artesyn Tech., Inc.*, 556 F. Supp. 2d 591, 593 (E.D. Tex. 2008) (citing *Flowers v. S. Reg'l Physician Servs.*, 247 F.3d 229, 235 (5th Cir. 2001)). Rule 50 provides that judgment as a matter of law is appropriate if the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue. Fed.R.Civ.P. 50(a)(1). 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; or direct the entry of judgment as a matter of law. Fed.R.Civ.P. 50(b).[2] A post-trial motion for JMOL should be granted only when the facts and inferences so conclusively favor one party "that reasonable jurors could not arrive at a contrary verdict." *TGIP, Inc. v. AT&T Corp.*, 527 F. Supp. 2d 561, 569 (E.D. Tex. 2007) (citing *Tol–O–Matic, Inc. v. Proma Produkt–Und Mktg. Gesellschaft m.b.H.*, 945 F.2d 1546, 1549 (Fed. Cir. 1991)). "If reasonable persons in the

[2] In order to advance a renewed motion for judgment as a matter of law under Rule 50(b), the movant must raise the same arguments during trial, in a Rule 50(a) motion for judgment as a matter of law. Fed.R.Civ.P. 50 (a)-(b).

exercise of impartial judgment could differ in their interpretations of the evidence, then the motion should be denied." *Id.* Thus, a jury's verdict may be overturned if, viewing the evidence and inferences therefrom in the light most favorable to the party opposing the motion, there is no legally sufficient evidentiary basis for a reasonable jury to find as the jury did.[3] *Guile v. United States*, 422 F.3d 221, 225 (5th Cir. 2005) (citing *Delano-Pyle v. Victoria County*, 302 F.3d 567, 572 (5th Cir. 2002)). The court may not make credibility determinations, nor weigh the evidence. *Power-One*, 556 F. Supp. 2d at 594 (citing *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000)).

II. New Trial

Under Federal Rule of Civil Procedure 59, a new trial may be granted to any party to a jury trial on any or all issues "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 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). The Court is required to view the evidence "in a light most favorable to the jury's verdict, and [] the verdict must be affirmed unless the evidence points so strongly and overwhelmingly in favor of one party that the court believes that reasonable persons could not arrive at a contrary conclusion." *Dawson v. Wal-Mart Stores, Inc.*, 978 F.2d 205, 208 (5th Cir. 1992).

ALE'S MOTION FOR JUDGMENT AS A MATTER OF LAW AND MOTION FOR NEW TRIAL ON DAMAGES

[3] Because a motion for judgment as a matter of law is a procedural matter not unique to patent law, the law of the regional circuit governs under Rule 50(b). *See SynQor, Inc. v. Artesyn Techs.*, 709 F.3d 1365, 1373 (Fed. Cir. 2013) ("This court reviews the grant or denial of a motion for JMOL under the law of the regional circuit . . . .").

ALE moves for JMOL, a vacatur of the damages verdict, or in the alternative, a new trial, on grounds that Chrimar failed to prove damages. Specifically, ALE claims that: (1) Chrimar's damages expert, Mr. Mills, improperly based his opinions on the Entire Market Value Rule ("EMVR"); (2) Mr. Mills failed to properly apportion; (3) the Court erred in its instruction on smallest saleable unit; (4) the Court erred in allowing Chrimar to present evidence of and rely on settlement agreements; and (5) the Court erred in allowing Chrimar to present evidence on *Georgia-Pacific* Factors 8, 9, and 10. (Doc. No. 378).

a. Applicable Law

The damages statute, 35 U.S.C. § 284, sets the floor for "damages adequate to compensate for [patent] infringement" at "a reasonable royalty for the use made of the invention by the infringer." The burden of proving damages falls on the patentee. *Dow Chem. Co. v. Mee Indus., Inc.*, 341 F.3d 1370, 1381 (Fed. Cir. 2003). Calculation of a reasonable royalty requires determination of two separate and distinct amounts: (1) the royalty base, or the revenue pool implicated by the infringement; and (2) the royalty rate, or the percentage of that pool "adequate to compensate" the plaintiff for the infringement. *See Cornell Univ. v. Hewlett-Packard Co.*, 609 F. Supp. 2d 279, 286 (N.D.N.Y. 2009). A reasonable royalty is based on a hypothetical negotiation that takes place between the patentee and the infringer on the date infringement began. *Unisplay, S.A. v. American Electronic Sign Co.*, Inc., 69 F.3d 512, 517 (Fed. Cir. 1995). "Although this analysis necessarily involves an element of approximation and uncertainty, a trier of fact must have some factual basis for a determination of a reasonable royalty." *Id.* The trial court has discretion to discern the reliability of methods used to arrive at a reasonable royalty. *See SmithKline Diagnostics, Inc. v. Helena Labs. Corp.*, 926 F.2d 1161, 1164 (Fed. Cir. 1991) ("[D]ecisions underlying a damage theory are discretionary with the court, such as, the choice of

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