

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

PHILIP MORRIS PRODUCTS S.A.,

Plaintiff,

v.

R.J. REYNOLDS VAPOR COMPANY,

Defendant.

Case No. 1:20-cv-00393-LMB-TCB

ORAL ARGUMENT REQUESTED

**PHILIP MORRIS' OPPOSITION TO REYNOLDS'
RULE 50(b) RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW AND
RULE 59 MOTION FOR A NEW TRIAL**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. ARGUMENT	1
A. Reynolds Is Not Entitled To Judgment Or A New Trial On The '265 Patent.....	1
B. Reynolds Is Not Entitled To Judgment Or A New Trial On The '911 Patent.....	8
C. There Is No Other Basis For A New Trial.....	13
III. CONCLUSION.....	15

TABLE OF AUTHORITIES

CASES

BASF Corp. v. Johnson Matthey Inc.,
875 F.3d 1360 (Fed. Cir. 2017) 3

Cargill, Inc. v. WDS, Inc.,
No. 16-cv-848, 2018 WL 1525352 (W.D.N.C. Mar. 28, 2018) 1

Chemours Co. v. Daikin Indus., Ltd.,
4 F.4th 1370 (Fed. Cir. 2021) 10

Cordis Corp. v. Medtronic AVE, Inc.,
339 F.3d 1352 (Fed. Cir. 2003) 2

Dennis v. Gen. Elec. Corp.,
762 F.2d 365 (4th Cir. 1985) 13

Enovsys LLC v. Nextel Commc’ns, Inc.,
614 F.3d 1333 (Fed. Cir. 2010) 12

Finch v. Covil Corp.,
388 F. Supp. 3d 593 (M.D.N.C. 2019),
aff’d, 972 F.3d 507 (4th Cir. 2020) 14

Hologic, Inc. v. Minerva Surgical, Inc.,
No. 15-cv-1031, 2018 WL 3348998 (D. Del. July 9, 2018) 15

i4i Ltd. P’ship v. Microsoft Corp.,
598 F.3d 831 (Fed. Cir. 2010) 9

InTouch Techs., Inc. v. VGo Commc’ns, Inc.,
751 F.3d 1327 (Fed. Cir. 2014) 9

Kowalski v. Ocean Duke Corp.,
No. 04-cv-55, 2008 WL 903106 (D. Haw. Apr. 1, 2008) 1

Liquid Dynamics Corp. v. Vaughan Co.,
449 F.3d 1209 (Fed. Cir. 2006) 4

Minter v. Wells Fargo Bank,
762 F.3d 339 (4th Cir. 2014) 10, 14

Moore U.S.A., Inc. v. Standard Register Co.,
229 F.3d 1091 (Fed. Cir. 2000) 2

OPTi, Inc. v. VIA Techs., Inc.,
65 F. Supp. 3d 465 (E.D. Tex. 2014) 2

Parker Compound Bows, Inc. v. Hunter’s Mfg. Co.,
No. 5:14-cv-4, 2016 WL 617464 (W.D. Va. Feb. 12, 2016) 2

Polaris Indus., Inc. v. Arctic Cat, Inc.,
882 F.3d 1056 (Fed. Cir. 2018) 10

Rhoades v. Forsyth,
No. 1:18-CV-186, 2022 WL 303364 (N.D.W. Va. Feb. 1, 2022)..... 14, 15

Separation Design Group IP Holdings, LLC v. Inogen, Inc.,
No. CV15-08323-JAK, 2016 WL 7486596 (C.D. Cal. Oct. 21, 2016)..... 3

TecSec, Inc. v. Adobe Inc.,
978 F.3d 1278 (Fed. Cir. 2020) 13

United States v. Chong Lam,
677 F.3d 190 (4th Cir. 2012)..... 15

Warsaw Orthopedic, Inc. v. NuVasive, Inc.,
778 F.3d 1365 (Fed. Cir. 2015) 3

STATUTES

35 U.S.C. § 298..... 15

I. INTRODUCTION

After carefully considering the testimony of twelve witnesses, over a hundred exhibits, and this Court's instructions on the law, the jury returned a unanimous verdict finding both asserted patents infringed and not invalid. Reynolds now asks the Court to overturn nearly every decision that the jury made. But Reynolds' motion does little more than reargue and contradict claim construction and other issues that Judge O'Grady already decided. That is improper post-trial reconsideration. Reynolds provides no basis to reconsider any of Judge O'Grady's prior rulings and turns a blind eye to the substantial evidence supporting the verdict. The law does not permit such disregard for the jury's work. The Court should deny Reynolds' Motion.

II. ARGUMENT

A. Reynolds Is Not Entitled To Judgment Or A New Trial On The '265 Patent

1. The '265 Patent Is Not Indefinite

Reynolds argues that the limitation "dimensions substantially the same as a cross-section of a cigarette or a cigar" in claim 1 is indefinite. Reynolds made this legal argument during claim construction. Dkt. 226 at 19. Judge O'Grady rejected it. Dkt. 360 at 1. That is dispositive and Reynolds does not even attempt to meet the high standard required for reconsideration.

Separately, Reynolds waived its indefiniteness argument. A party "must have moved under Rule 50(a) for relief on similar grounds to move after trial under Rule 50(b)," and the failure to do so "results in waiver." *Cargill, Inc. v. WDS, Inc.*, No. 16-cv-848, 2018 WL 1525352, at *2 (W.D.N.C. Mar. 28, 2018); *Kowalski v. Ocean Duke Corp.*, No. 04-cv-55, 2008 WL 903106, at *1-2 (D. Haw. Apr. 1, 2008) (denying Rule 50(b) motion on indefiniteness that "fail[ed] to meet the renewal requirement of Rule 50(b)" where party did not "argue or even allude to indefiniteness" in its Rule 50(a) motion). Reynolds did not raise indefiniteness in its Rule 50(a) Motion. And Reynolds withdrew its invalidity defenses for the '265 Patent at trial. Reynolds is

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