

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. CV 10-07416-RGK (SSx)

Date April 2, 2012

Title **IMAGINAL SYSTEMATIC, LLC v. LEGGETT & PLATT, INC., et al**

Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

Sharon L. Williams

Not Reported

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings: (IN CHAMBERS) Order Re: Defendants' Motion for Judgment as a Matter of Law, on in the Alternative, for a New Trial (DE 459); Defendants' Motion for a New Trial or to Alter or Amend Judgment (DE 458)**

**I. FACTUAL BACKGROUND**

On October 4, 2010, Imaginal Systematic, LLC ("Plaintiff" or "Imaginal") filed an action for willful patent infringement against Leggett & Platt, Inc. ("Leggett") and Simmons Bedding Company ("Simmons") (collectively, "Defendants"). The controversy arose from Defendants' infringement of three of Plaintiff's patents, which describe an automatic stapling machine and a method for manufacturing box spring mattresses. Plaintiff claimed that Defendants developed and used a multi-stapler machine called the "TopOff Automatic Stapling Machine" that infringes various claims of Plaintiff's patents. On December 28, 2010, Defendants filed counterclaims for declaratory judgment of non-infringement and invalidity.

On summary judgment, the Court found that Plaintiff's patented claims were valid, and that Defendants directly infringed all patents at issue. Subsequently, the Court conducted a bench trial on the issues of willfulness and Defendants' equitable defenses. The Court rejected Defendants' equitable defenses but found that Defendants' infringement was not willful. Following the bench trial, Defendants filed a Motion for Judgment as a Matter of Law ("JMOL"). On January 19, 2012, the Court conducted a jury trial on the issue of damages. The jury returned a \$5,000,000 verdict for Plaintiff.

After the jury trial, Defendants renewed their JMOL motion pursuant to Federal Rule of Civil Procedure ("Rule") 50(b). Additionally, Defendants filed a motion for a new trial pursuant to Rule 59(a) or, in the alternative, to alter or amend the judgment pursuant to Rule 59(e). For the following reasons, the Court **DENIES** both of Defendants' motions.

## II. JUDICIAL STANDARD

### A. Motion for Judgment as a Matter of Law

A court may grant a motion for JMOL against a party on any issue when “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). A party whose JMOL motion made under Rule 50(a) is not granted by a court prior to submitting the action to the jury may renew its motion after the trial. Fed. R. Civ. P. 50(b). However, a party cannot raise arguments in its post-trial Rule 50(b) motion that it did not raise in its preverdict Rule 50(a) motion. *Freund v. Nycomed Amersham*, 347 F.3d 752, 761 (9th Cir. 2003).

Post-verdict JMOL is appropriate where there is no “substantial evidence” to support the verdict. *Pavao v. Pagay*, 307 F.3d 915, 918 (9th Cir. 2002). Substantial evidence is “such relevant evidence as reasonable minds might accept as adequate to support a conclusion.” *Three Boys Music Corp. v. Bolton*, 212 F.3d 477, 482 (9th Cir. 2000). A court must consider the evidence in the light most favorable to the nonmoving party, draw all reasonable inferences in its favor, and not weigh the evidence or assess the credibility of the witnesses. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 135 (2000); see also *Agrizap, Inc. v. Woodstream Corp.*, 520 F.3d 1337, 1342 (Fed. Cir. 2008).

### B. Motion for a New Trial

After a jury trial, a court may grant a new trial to a party “for any reason for which a new trial has [] been granted in an action at law in federal court.” Fed. R. Civ. P. 59(a)(1)(A). Because Rule 59 does not specify the grounds on which a court may grant a motion for a new trial, the court is “bound by those grounds that have been historically recognized.” *Zhang v. Am. Gem Seafoods, Inc.*, 339 F.3d 1020, 1035 (9th Cir. 2003). Those grounds include, but are not limited to, claims that the verdict is against the great weight of the evidence, that the damages are excessive, that the trial was not fair to the moving party, that the jury instructions were erroneous or inadequate, or that the court made incorrect and prejudicial admissibility rulings. *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251 (1940); see also *Chiron Corp. v. Genentech, Inc.*, 363 F.3d 1247, 1258 (Fed. Cir. 2004).

## III. DISCUSSION

After the jury trial, Defendants filed a renewed motion for JMOL or, in the alternative, new trial, and a separate motion for a new trial or to alter or amend the judgment. Defendants’ motion for JMOL addresses the sole issue tried by the jury — damages. Defendants’ motion for a new trial raises several issues, including the ones discussed in Defendants’ motion for JMOL. The Court will examine each motion in turn.

### A. Defendants’ Renewed Motion for Judgment as a Matter of Law or, in the Alternative, New Trial

In their renewed motion for JMOL, Defendants argue that Imaginal failed to sustain its burden of proving damages and request that the Court vacate its judgment and grant JMOL in Defendants’ favor or, in the alternative, grant a new trial to determine the amount of reasonable royalty damages. The Court will first examine Defendants’ motion for JMOL. The Court will then examine Defendants’ alternative motion for a new trial in conjunction with their independent motion for a new trial.

At trial, Plaintiff asked for a damages award based on a running royalty. According to Plaintiff's expert, a reasonable royalty in this case was \$15,933,037 as of the end of 2011.<sup>1</sup> Defendants, on the other hand, argued that a running royalty for an automatic stapling machine is not prevalent in the bedding industry and asked the jury to limit the damages award to \$296,621.<sup>2</sup> The jury returned a verdict of \$5,000,000 in Plaintiff's favor.

First, to show that the jury's verdict is not supported by substantial evidence, Defendants advance various arguments meant to discredit the methodology used by Plaintiff to calculate a reasonable royalty. Defendants argue that not only does Imaginal's method of calculating damages have no support in the bedding industry but it is also inaccurate and imprecise. Defendants contend that Imaginal incorrectly included increased Vertex staples and Semi-Flex grids profits in the royalty base. Defendants also contend that even if inclusion of the increased profits in the royalty base was proper, Imaginal erroneously applied the same increase in profitability rate to both Semi-Flex grids and Vertex staples sales without conducting two separate experimentations. Defendants' arguments are unconvincing.

During trial, both parties offered expert testimony and presented extensive evidence in support of their respective damages theories. On multiple occasions during trial, the jury heard from Plaintiff, Defendants, and their experts about the prevalence and propriety of using a running royalty in the bedding industry for automatic stapling machines. The jury also learned that Plaintiff's expert applied the same increase in profitability rate to both Semi-Flex grids and Vertex staples sales without conducting separate experimentations. The jury then had a chance to weigh this evidence, assess the credibility of the parties' expert witnesses, and decide on a reasonable royalty.

It is well-established that any reasonable royalty analysis "necessarily involves an element of approximation and uncertainty," and the jury is free to weigh the evidence, assess the credibility of witnesses, and make an ultimate determination regarding damages. *Unisplay, S.A. v. Am. Elec. Sign Co.*, 69 F.3d 512, 517 (Fed. Cir. 1995); see also *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1306 (Fed. Cir. 2011) (citing *i4i Ltd. P'ship v. Microsoft Corp.*, 598 F.3d 831, 856 (Fed. Cir. 2010)) ("it is decidedly the jury's role to evaluate the weight to be given to the testimony of dueling qualified experts"). Therefore, based on the standard articulated by the Federal Circuit, the jury was not required to adopt either of the parties' royalty calculations. While there may not be a meaningful way to explain how the jury arrived at the damages amount, the evidence that the parties presented was certainly relevant evidence, which reasonable minds might accept as adequate to support the jury's conclusion. See *Three Boys Music Corp.*, 212 F.3d at 482. The fact that Defendants disagree with how the jury weighed the evidence does not entitle them to a JMOL. See *Anderson*, 477 U.S. at 250-51. The Court cannot now reevaluate the evidence and substitute its own judgment for that of the jury. See *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 153 (2000).

Second, Defendants argue that inclusion of Simmon's cost savings in the royalty calculation was an improper attempt by Plaintiff to recover multiple royalties and that the evidence does not support an allocation of \$3,000,000 of the \$5,000,000 judgment to Simmons. There is no evidence, however, to support the contention that Imaginal sought to

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<sup>1</sup> Plaintiff calculated this number by multiplying a hypothetical "patent value" of \$33,193,827 by a royalty rate of 48%. The "patent value" represents the sum of expected manufacturing cost savings by Defendants from use of TopOff and Leggett's increased profits from sale of Vertex staples and Semi-Flex grids, which are sold and used with TopOff.

<sup>2</sup> This amount represents Leggett's profits on the sales of TopOff.

recover separate royalties from Simmons and Leggett. Instead, Imaginal simply sought a single damages award and asked the jury to properly apportion that amount between Defendants. Considering the evidence in the light most favorable to Imaginal and drawing all reasonable inferences in its favor, the Court finds that substantial evidence exists to support the jury's apportioning of \$3,000,000 to Simmons. See *Reeves*, 530 U.S. at 153.

Because the record contains a legally sufficient evidentiary basis to support the jury's reasonable royalty damages award, the Court **DENIES** Defendants' motion for JMOL.

## **B. Defendants' Motion for a New Trial or to Alter or Amend the Judgment**

In their second motion, Defendants argue that the Court should order a new trial, or in the alternative, alter or amend the judgment. The Court will address Defendants' arguments in turn.

### **1. The Verdict Is Not Against the Great Weight of Evidence, and the Damages Are Not Excessive**

To support their motion for a new trial, Defendants first argue that the jury's damages award is excessive and against the great weight of the evidence. The Court disagrees.

A court has wide discretion in granting a new trial. See *Monsanto Co. v. Ralph*, 382 F.3d 1374, 1383 (Fed. Cir. 2004). In ruling on a motion for a new trial, the court has the duty to weigh the evidence, and to set aside the verdict if, in its view, the verdict is against the clear weight of the evidence. *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 729 (9th Cir. 2007) (citing *Murphy v. City of Long Beach*, 919 F.2d 183, 187 (9th Cir. 1990)). However, the jury's verdict is still entitled to deference, and in the context of damages, the court must uphold the judgment "unless the amount is grossly excessive or monstrous, clearly not supported by the evidence, or based only on speculation or guesswork." *Monsanto Co.*, 382 F.3d at 1383 (internal quotations and citations omitted).

As previously mentioned, Plaintiff asked the jury for \$15,933,037, but Defendants asked the jury to limit the damages award to \$296,621. "The jury [was] not bound to accept a rate proffered by one party's expert but rather [was free to] choose an intermediate royalty rate." *Fuji Photo Film Co., Ltd. v. Jazz Photo Corp.*, 394 F.3d 1368, 1378 (Fed. Cir. 2005). The jury decided on \$5,000,000, an amount which was both within the amounts advocated by the parties and "within the range encompassed by the record as a whole." *Unisplay, S.A. v. Am. Elec. Sign Co., Inc.*, 69 F.3d 512, 519 (Fed. Cir. 1995). Moreover, as previously discussed, this verdict was supported by substantial evidence. The Court finds no reason to disturb the jury's verdict now.

### **2. The Trial Was Fair and the Jury Instructions Were Not Erroneous**

Next, Defendants argue that the jury instructions and the verdict form were erroneous and justify a new trial. Additionally, Defendants contend that the Court deprived them of their right to trial by imposing "unreasonably rigid" time limitations. The Court disagrees.

A court should review the jury instructions in their entirety and order a new trial only "when errors in the instructions as a whole clearly misled the jury." *Delta-X Corp. v. Baker Hughes Prod. Tools, Inc.*, 984 F.2d 410, 415 (Fed. Cir. 1993). "Moreover, to prevail on a challenge to jury instructions, a party must show both fatal flaws in the jury instructions and a request for alternative instructions which could have corrected the flaws." *Id.*

With respect to the jury instructions and the verdict form, Defendants assign error to three separate rulings. First, Defendants argue that the Court erred in refusing to instruct the jury on independent invention. According to Defendants, this instruction was necessary because “Plaintiff confused the jury [at trial] by *creating the inference* that [Defendants] copied its [] invention.” (emphasis added). However, an instruction on independent invention was not necessary because Plaintiff never argued or presented any evidence suggesting that Defendants copied its invention. Second, Defendants argue that the Court erred in declining to include a successive infringer jury instruction and instead providing an instruction on apportionment. Defendants contend that the successive infringer instruction was necessary “to clarify to the jury that there is only one reasonable royalty in this case, not one for Leggett and one for Simmons.” The Court’s instruction stated: “Once a reasonable royalty is calculated, a portion of the amount will be recovered from all defendants jointly. The amounts you award may not be recovered multiple times based on the presence of multiple defendants in this case.” The Court provided a succinct and correct summary of the law that addressed Defendants’ concerns and did not need to further instruct the jury on the law of successive infringer. Finally, Defendants argue that the verdict form was misleading and too broad. The Court finds no merit to this argument. The verdict form quoted substantially from 35 U.S.C. § 284 and did not limit the damage theory that the jury could use to calculate a reasonable royalty.

In addition to arguing that the jury instructions were improper, Defendants claim that the Court’s “rigid” four-hour time limit deprived them of a fair trial. As an initial matter, Defendants had four hours, exclusive of jury selection and opening and closing arguments, to produce evidence at trial. District courts have discretion to impose rules, such as time limits, to expedite completion of trials. *Gen. Signal Corp. v. MCI Telecomms. Corp.*, 66 F.3d 1500, 1508 (9th Cir. 1995). The jury trial phase of this case related to a single issue — damages. It is unclear why Defendants would have needed more than 4 hours to present their case or what other evidence they would have presented with more time. Nonetheless, the Court made it abundantly clear from the outset of trial that its time limits were not intractable. The Court would have entertained a request for more time, had the parties demonstrated effective and efficient use of the time already given and a need for additional time. In light of the foregoing, the Court finds that the four-hour time limit did not deprive Defendants of their right to a fair trial.

3. *The Court Need Not Reconsider Its Rulings on Invalidity and Laches*

Defendants argue that new evidence introduced during the willfulness phase of the bench trial shows that the patents are invalid, or at least creates a fact question that warrants a new trial on invalidity. Moreover, Defendants claim that the \$5,000,000 judgment somehow supports their equitable defense of laches. The Court refuses to entertain Defendants’ improper attempts to reargue invalidity and laches. This Court has already considered Defendants’ invalidity arguments twice, once on summary judgment and once as part of Defendants’ Motion for Reconsideration of the Court’s Summary Judgment Ruling. Furthermore, the Court fully considered and addressed Defendants arguments regarding laches in its recently issued Findings of Fact and Conclusions of Law. Defendants simply do not make any new arguments or present any new evidence now. Therefore, the Court will not reconsider its rulings on invalidity and laches.

In conclusion, the Court finds no historically recognized ground on which to grant Defendants a new trial. Therefore, the Court **DENIES** Defendants’ motion for a new trial.

4. The Court Need Not Alter or Amend the Judgment

In the alternative, Defendants argue that the Court should alter or amend the judgment pursuant to Rule 59(e).

Defendants argue that, although only three patented claims were at issue at trial, the judgment fails to identify the claims it covers. On summary judgment, the Court ruled on three separate claims (one in each patent) and found that Defendants infringed all three patents. Therefore, the Court's record is clear as to which claims were subject to the judgment.

Next, Defendants argue that the judgment fails to address their claims for declaratory relief. Defendants' claims for declaratory relief were also disposed of on summary judgment. As such, there is no need to alter or amend the judgment.

Finally, Defendants argue that the Court should expressly dispose of Plaintiff's willfulness claim by rendering a take nothing judgment against Plaintiff on willfulness. Since Defendants filed their motion for a new trial, the Court has issued its Findings of Fact and Conclusions of Law, which specifically addressed the willfulness issue. Amending the judgment and rendering a take nothing judgment against Plaintiff on willfulness is unnecessary.

In light of the foregoing, Defendants' motion to alter or amend the judgment is **DENIED**.

**IV. CONCLUSION**

For the foregoing reasons, the Court **DENIES** both Defendants' motion for JMOL, or in the alternative, for a new trial, and motion for a new trial or to alter or amend the judgment.

**IT IS SO ORDERED.**

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