

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:18-cv-00715-RGK-JC Date June 17, 2019

Title *Lubby Holdings LLC, et al. v. Henry Chung, 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 Plaintiff:

Attorneys Present for Defendant:

Not Present

Not Present

**Proceedings:** (IN CHAMBERS) Order Re: Defendant's Motion for Judgment as a Matter of Law [81]; Defendant's Request to Set Trial Date for the Equitable Issue of Patent Misuse [82]

**I. INTRODUCTION**

On January 26, 2018, plaintiffs Vaporous Technologies, Inc. and Lubby Holdings LLC (collectively, "Plaintiffs") filed a complaint against defendants Henry Chung ("Defendant Chung"), Ming Chen, and Deepvapes, Inc. (collectively, "Defendants").<sup>1</sup> In the Complaint, Plaintiffs assert that Defendants infringed certain claims of the United States Patent No. 9,750,284 (the "'284 patent").

The case went to trial on May 7, 2019. Defendant Chung moved for judgment as a matter of law ("JMOL") during trial, and the Court reserved consideration of the motion. After a three-day trial, the jury found that the asserted claims of the '284 patent were not invalid. The jury also found that Defendants infringed the patent and awarded Plaintiffs \$863,936.10 in damages. (See ECF No. 75.)

Defendant Chung then filed the instant Motion for JMOL ("JMOL Motion") and Request to Set Trial Date for the Equitable Issue of Patent Misuse ("Trial Request") (DEs 81, 82).

For the following reasons, the Court **DENIES** Defendant Chung's JMOL Motion and Trial Request.

<sup>1</sup> The Court dismissed defendant Ming Chen on May 8, 2019. (See ECF No. 67.) While the Complaint and the jury's verdict are asserted against Defendants collectively, the instant motions are filed by Defendant Chung individually. That said, Defendant Chung appears to make arguments on behalf of all Defendants.

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**II. JUDICIAL STANDARDS**

**A. Judgment as a Matter of Law**

After one party has been fully heard during a jury trial, the court may grant JMOL against that party 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). The movant may also file a renewed motion for judgment as a matter of law after the entry of judgment. Fed. R. Civ. P. 50(b). The test is whether “the evidence, construed in the light most favorable to the nonmoving party, permits only one reasonable conclusion, and that conclusion is contrary to that of the jury.” *White v. Ford Motor Co.*, 312 F.3d 998, 1010 (9th Cir. 2002). The court must not weigh the evidence or assess the witnesses’ credibility. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 135 (2000).

**B. Order for Separate Trial**

“For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims.” Fed. R. Civ. P. 42(b).

**III. DISCUSSION**

**C. Motion for JMOL**

Defendant Chung argues that the evidence does not support the jury’s verdict. Specifically, he contends that there was insufficient evidence on three issues: (1) Plaintiffs’ satisfaction of the marking requirement under 35 U.S.C. § 287; (2) the jury’s reasonable royalty calculation and the use of pre-issuance sales data; and (3) Defendants’ connection to the infringing products. After a review of the evidence presented at trial, the Court finds that there was sufficient evidence to support the jury’s verdict at the close of trial. Accordingly, Defendant Chung’s JMOL Motion is denied.

**D. Request to Set Trial Date**

Defendant Chung also files a request to set a trial date on the equitable defense of patent misuse. But the Court did not order a separate trial, nor did the Court grant a motion to bifurcate the issues in this case. As a result, the Trial Request is denied.

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IV. **CONCLUSION**

For the foregoing reasons, the Court **DENIES** Defendant Chung's JMOL Motion and Trial Request.

**IT IS SO ORDERED.**

Initials of Preparer

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