

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:18-cv-00715-RGK-JC Date July 12, 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 Rule 59(a) Motion for New Trial [100]; Defendant's Rule 59(e) Motion to Alter Judgment [101]**

**I. INTRODUCTION**

On April 10, 2018, plaintiffs Vaporous Technologies, Inc. and Lubby Holdings LLC (collectively, "Plaintiffs") filed a First Amended 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. 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 has now filed a Rule 59(a) Motion for a New Trial ("Motion for New Trial") and a Rule 59(e) Motion to Alter Judgment ("Motion to Alter Judgment") (DEs 100, 101). For the following reasons, the Court **DENIES** Defendant Chung's Motion for New Trial and Motion to Alter Judgment.

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<sup>1</sup> Plaintiffs' initial complaint was filed January 26, 2018. The Court dismissed defendant Ming Chen on May 8, 2019. (*See* ECF No. 67.)

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**II. JUDICIAL STANDARDS**

**A. Motion for New Trial**

Under Federal Rule of Civil Procedure (“Rule”) 59, a court may grant a new trial to a party after a jury trial “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). Rule 59 does not specify the grounds on which a court may grant a new trial. Thus, 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 clear weight of the evidence or based on false evidence, that the damages are excessive, or that the trial was not fair to the moving party. *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251 (1940); *see also Tortu v. Las Vegas Metro. Police Dep’t*, 556 F.3d 1075, 1087 (9th Cir. 2009).

**B. Motion to Alter Judgment**

Under Rule 59(e), a court may alter or amend judgment in the following circumstances: (1) the court is presented with newly discovered evidence; (2) the court committed clear error or made a decision that was manifestly unjust; or (3) there is an intervening change in controlling law. *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001).

**III. DISCUSSION**

**A. Motion for New Trial**

Defendant asks the Court to vacate the judgment and set a new trial for two main reasons: (1) the verdict is against the weight of the evidence; and (2) “prejudicial misconducts” by opposing counsel at trial. (Def.’s Mot. 2, ECF No. 100-1.)

Specifically, Defendant Chung argues that there is no evidence that he sold any of the accused products. Moreover, he argues that there is no evidence to support a royalty based on sales of the whole product rather than on the value of the “anti-leak” mechanism independently. Finally, Defendant Chung avers that Plaintiffs’ counsel made false statements to the Court, failed to disclose damages calculations, and misled the jury about infringement.

As the Court discussed in its June 17, 2019 Order re: Defendant’s Motion for JMOL, there was sufficient evidence to support the jury’s verdict at the close of trial—including the jury’s computation of damages and the jury’s finding that Defendant Chung sold the allegedly infringing products. (*See* ECF No. 105.) Similarly, the Court has heard and rejected Defendant Chung’s numerous arguments that

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Plaintiff's counsel acted improperly or failed to make required disclosures. (*See, e.g.*, ECF Nos. 98, 63, 81.) After review of Defendant Chung's arguments and the evidence presented at trial, the Court finds insufficient grounds for a new trial under Rule 59(a).

**B. Motion to Alter Judgment**

Defendant Chung also moves to alter judgment under Rule 59(e) on the basis that the Court committed a clear error. Specifically, Defendant Chung contends that there was no evidence to show that Plaintiffs complied with the marking requirement of 35 U.S.C. § 287 ("§ 287"). As a result, the verdict was not supported by the evidence because the jury failed to limit Plaintiffs' damages calculation to begin on the day that Plaintiffs filed the action. Furthermore, Defendant Chung notes that Plaintiffs' counsel admitted that "he does not know this section 287 point of law." (Def.'s Mot. at 4.)

Luckily, the Court does. Under the § 287, "a patentee who makes or sells a patented article must mark his articles or notify infringers of his patent in order to recover damages." *Arctic Cat Inv. v. Bombardier Recreational*, 876 F.3d 1350, 1365 (Fed. Cir. 2017). An alleged infringer defendant may assert a "marking defense"—that the patentee plaintiff failed to comply with § 287, and thus the infringement claims fail. *See id.* But the defendant challenging the patentee's compliance with the marking statute bears the initial burden of production to "articulate the products it believes are unmarked 'patented articles' subject to § 287." *Id.* at 1368.

Here, Defendant failed to meet his initial burden. For example, Defendant does not identify unmarked products in his Answer, or in his Memorandum of Contentions of Fact and Law. (*See* ECF Nos. 23, 38.) As a result, the § 287 defense failed, and there is no basis to alter judgment under Rule 59(e).

**IV. CONCLUSION**

For the foregoing reasons, the Court **DENIES** Defendant Chung's Motion for New Trial and Motion to Alter Judgment.

**IT IS SO ORDERED.**

Initials of Preparer

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