

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

**EON CORP. IP HOLDINGS, LLC**  
*Plaintiff,*

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**CIVIL ACTION NO. 6:11-CV-317-JDL**

v.

**JURY TRIAL DEMANDED**

**LANDIS+GYR INC., ET AL.,**  
*Defendants*

**ORDER**

Before the Court is Defendant Silver Springs Networks, Inc.’s (“SSN”) Motion for Reconsideration of the Sealed Memorandum Opinion and Order (Doc. No. 658) Regarding Claims 1 and 2 of the ‘491 Patent (Doc. No. 662). SSN moves for reconsideration “with respect to whether claims 1 and 2 of the ‘491 patent require transmission of data messages in a downstream direction from a base station to subscriber units.” *Id.* at 1. SSN further argues that if the Court concludes that there are two reasonable, but conflicting claim constructions, the claim would be indefinite and invalid under *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120 (2014).

SSN mischaracterizes the Court’s ruling by arguing that the Court “address[ed] this claim construction issue as being an issue of fact that the jury was to decide, rather than an issue of claim construction to be decided by the Court.” (Doc. No. 662 at 1). The Court did not address this issue as one of claim construction.<sup>1</sup> Rather, it was tasked with determining whether the

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<sup>1</sup> SSN attempts to couch as a claim construction issue the denial of its motion for judgment as a matter of law by comparing this case to *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351 (Fed. Cir. 2008). However, in *O2 Micro* the claim construction “issues were fully litigated and decided at the *Markman* stage of the litigation.” *Id.* at 1359. Here, SSN did not request construction of the relevant terms in claims 1 and 2 of the ‘491 patent at the *Markman* stage, and failed to raise the issue at trial. Rather, SSN presented its claim construction argument for the first time in its post-trial motion for judgment as a matter of law (Doc. No. 636 at 20). Thus, even if the parties’ disagreement concerned the scope of the claim limitations, SSN waived any claim construction arguments it may have had. *Lazare Kaplan Int’l, Inc. v. Photoscribe Technologies, Inc.*, 628 F.3d 1359, 1376 (Fed. Cir. 2010) (“Unlike *O2 Micro* where the appellant presented its claim construction argument to the district court during a *Markman* hearing, [the plaintiff] first asserted the claim construction argument it presses on appeal in a post-trial motion.”); *Broadcom Corp. v. Qualcomm Inc.*, 543 F.3d 683, 694 (Fed. Cir. 2008) (“Unlike in *O2 Micro*, where the parties disputed the proper construction of a term at a pre-trial *Markman* hearing, [defendant] here has failed to offer its proposed construction of ‘networks’ at or prior to trial, and we reject such arguments raised for the first time after the jury verdict (internal citation omitted)).

jury's finding of infringement as to claims 1 and 2 of the '491 patent was supported by sufficient evidence. The Court evaluated the position of EON's infringement expert, Dr. Bims, and ultimately held that his testimony provided a legally sufficient evidentiary basis to support the jury's finding.<sup>2</sup>

Moreover, SSN's argument that the claims are indefinite under *Nautilus* is misguided. First, SSN did not raise its indefiniteness argument at trial, or in a Rule 50(a) motion for judgment as a matter of law, and as a result, the Court did not address it in ruling on SSN's renewed motion for judgment as a matter of law. Thus, the Court has nothing reconsider regarding SSN's indefiniteness arguments. Next, contrary to SSN's assertion, the Court did not hold that claims 1 and 2 of the '491 patent are susceptible to two reasonable interpretations as a matter of the legal parameters of claim scope. Rather, the Court merely noted that Dr. Bims presented his own interpretation of the claim language—which differed from SSN's subjective interpretation—and that the jury was entitled accept his testimony. As EON points out, a difference of opinion between two experts does not automatically render a claim indefinite under the standard set out in *Nautilus*.

Accordingly, SSN's Motion for Reconsideration of the Sealed Memorandum Opinion and Order (Doc. No. 658) Regarding Claims 1 and 2 of the '491 Patent (Doc. No. 662) is **DENIED**.

**So ORDERED and SIGNED this 3rd day of December, 2014.**

  
JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE

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<sup>2</sup> SSN argues that the Court's citation to Dr. Bims' testimony in relation to claim 5 of the '491 patent is misplaced and that this testimony is insufficient to support the jury's infringement finding as to claims 1 and 2. However, at the outset of his direct examination, Dr. Bims specifically testified that he structured his infringement analysis by organizing the text of all of the asserted claims into five distinct components, and that each component was applicable across all claims. *See* Tr. 6/3/14 A.M. 80:25-83:4. He further explained to the jury that "no matter which claim you're looking at, you're going to have up to five components that we're going to address, and that's all you really have to focus on." Tr. 6/3/14 A.M. 82:24-83:4. Thus, given the structure of his analysis, Dr. Bims' testimony regarding claim 5 of the '491 patent necessarily provided the jury with a sufficient evidentiary basis to support the infringement finding as to claims 1 and 2.