

FILED

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

NOV 22 2013
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
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TWO-WAY MEDIA, LLC,
Plaintiff,

v.

AT&T SERVICES, INC., et al.
Defendants.

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Cause No. SA-09-CA-00476-OLG

ORDER

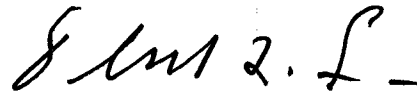
Before the Court are Defendants' Motion for Leave to File Motion for a New Trial – Non-Infringement Under Seal (docket no. 595), Plaintiff's Unopposed Motion for Leave to File its Opposition to Defendants' Motion for a New Trial – Non-Infringement Under Seal (docket no. 604), and Defendants' Motion for Leave to File a Reply In Support of their Motion for a New Trial – Non-Infringement Under Seal (docket no. 609). The Court hereby GRANTS each of the above-mentioned Motions for Leave to File. The Clerk of the Court is instructed to file each motion filed concurrently with the motions for leave to file as separate pleadings, and said pleadings shall be sealed.

Defendants move the court grant a new trial based on the issue of infringement of claims 1, 19, 20, 30 and 50 of the '187 patent and claims 25 and 39 of the '005 patent, and based on alleged prejudicial errors that occurred at trial. Rule 59 "allows a trial court to grant a new trial based on its assessment of the fairness of the trial and the reliability of the jury's verdict." *Seidman v. American Airlines, Inc.* 923 F.2d 1134, 1140 (5th Cir. 1991). The Court should not grant new trials on evidentiary grounds unless, at a minimum, the verdict is against the great, not merely the greater weight of the evidence. *Carr v. Wal-Mart Stores, Inc.*, 312 F.3d 667, 670 (5th Cir. 2002); *Conway v. Chem. Leaman Tank Lines, Inc.*, 610 F.2d 360, 363 (5th Cir. 1980). The Court may grant a new trial if "the verdict is against the weight of the evidence, the amount awarded was excessive, or the

trial was unfair or marred by prejudicial error.” *Smith v. Transworld Drilling Co.*, 773 F.2d 610, 613 (5th Cir. 1985).

The Court has carefully considered Defendants’ Motion for a New Trial – Non-Infringement Under Seal, Plaintiff’s Opposition, Defendants’ Reply thereto, the applicable law, and the other papers and pleadings on file in this case. After considering the evidence admitted into the record at trial, the Court finds that sufficient evidence was presented by Plaintiff for the jury to reach its verdict regarding the issue of infringement by Defendants, and that the jury’s verdict was not against the great weight of the evidence. *See Carr*, 312 F.3d at 670. Furthermore, the Court finds there were no prejudicial errors in this case that made the trial unfair. *See Smith*, 773 F.2d at 613. Therefore, the Court finds Defendants’ Motion for a New Trial – Non-Infringement Under Seal is hereby DENIED.

SIGNED this 22 day of November, 2013.



United States District Judge Orlando L. Garcia