

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  DEPUTY CLERK

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

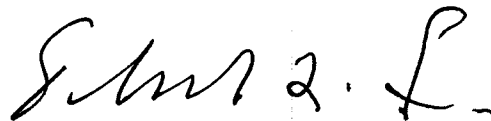
Before the Court are Defendants' Motion for Leave to File Renewed Motion for Judgment as a Matter of Law on Non-Infringement under Seal (docket no. 596), Plaintiff's Unopposed Motion for Leave to File its Opposition to Defendants' Motion for Judgment as a Matter of Law (JMOL) on Non-Infringement under Seal (docket no. 603), and Defendants' Motion for Leave to File a Reply In Support of their Renewed Motion for Judgment as a Matter of Law on Non-Infringement Under Seal (docket no. 610). 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.

A court reviewing a JMOL motion must give "great deference to a jury's verdict." *Dresser-Rand Co. v. Virtual Automation, Inc.*, 361 F.3d 831, 838 (5th Cir. 2004). JMOL is appropriate under Rule 50 only when "a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue." FED. R. CIV. 50(a)(1); *see, e.g. Old Town Canoe Co. v. Confluence Holdings Corp.*, 448 F.3d 1309, 1311 (Fed. Cir. 2006); *Guile v. United States*, 422 F.3d 221, 225 (5th Cir. 2005). The Court must review all of the evidence of record in deciding

for JMOL, “draw all reasonable inferences in favor of the non-moving party, and . . . not make credibility determinations or weigh the evidence.” *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 149–50 (2000). In the Fifth Circuit, entry of JMOL under Rule 50(b) is appropriate if evidence supporting the movant is “uncontradicted and unimpeached [or] if the facts and inferences point so strongly and overwhelmingly in favor of one party that the Court believes that [a] reasonable [jury] could not arrive at a contrary verdict.” *Med. Car. Am., Inc. v. Nat’l Union Fire Ins. Co.*, 341 F.3d 415, 420 (5th Cir. 2003).

The Court has carefully considered Defendants’ Renewed Motion for Judgment as Matter of Law on Non-Infringement, Plaintiff’s Opposition, Defendants’ Reply thereto, the applicable law, and the other papers and pleadings on file in this case. Furthermore, after considering the evidence admitted into the record at trial, and viewing it in the light most favorable to the non-moving party, the Court finds that sufficient evidence was presented by Plaintiff for the jury to reach its verdict regarding the issues presented by Defendants regarding non-infringement, and that a reasonably jury could find in favor of Plaintiff based on the evidence in the record. *See Reeves*, 530 U.S. at 149–50. Therefore, the Court finds Defendants’ Renewed Motion for Judgment as a Matter of Law on Non-Infringement is hereby DENIED.

SIGNED this 22 day of November, 2013.



United States District Judge Orlando L. Garcia