

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

OMEGA PATENTS, LLC,

Plaintiff,

v.

Case No: 6:13-cv-1950-Orl-40DCI

CALAMP CORP.,

Defendant.

_____ /

ORDER

This cause is before the Court on the following:

1. Defendant CalAmp Corporation's Renewed Motion for Judgment as a matter of law and Motion for New Trial, (Doc. 216);
2. Plaintiff Omega Patents, LLC's Response in Opposition, (Doc. 226);
3. CalAmp's Supplemental Motion for Judgment as a Matter of Law, for New Trial, and to Vacate the Judgment, (Doc. 228); and
4. Omega's Response in Opposition to Defendant's Supplemental Motions, (Doc. 228).

Upon due consideration of the foregoing, Defendant CalAmp's Renewed Motions for Judgment as a Matter of Law and for New Trial are denied.¹

I. BACKGROUND

Omega Patents, LLC ("Omega") brought the instant action against CalAmp Corp.

¹ The supplemental briefing is not necessary to preserve the challenges directed by CalAmp against the Final Judgment, notwithstanding the entry of an Amended Final Judgment. Additionally, the Court has resolved the Motion to Vacate the Judgment for Lack of Venue. (Doc. 230).

(“CalAmp”) and contends that CalAmp infringed the claims of U.S. Patent No. 6,346,876 (“the ‘876 Patent”),² U.S. Patent No. 6,756,885 (“the ‘885 Patent”),³ U.S. Patent No. 7,671,727 (“the ‘727 Patent”),⁴ and U.S. Patent No. 8,032,278 (“the ‘278 Patent”)⁵ (collectively, the “patents-in-suit”).⁶ (Doc. 1). The trial of this matter commenced on February 16, 2016, and concluded on February 24, 2016, (Doc. 178–184), with the jury returning a verdict in favor of Omega in which they found that all of Omega’s asserted claims were valid and had been infringed upon by CalAmp’s accused devices: the LMU 3000, LMU 3030, LMU 3050, the V-Pod and the V-Pod 2. (Docs. 144, pp. 1–6). The jury rejected Defendant’s invalidity contentions and made three findings for Plaintiff on secondary considerations indicating nonobviousness. (*Id.* at pp. 7–9). Finally, the jury found Plaintiff had proven by clear and convincing evidence that CalAmp acted despite an objectively high likelihood that its actions infringed a valid patent and that this high likelihood of infringement was either known or so obvious that it should have been known to CalAmp. (*Id.* at pp. 9–10). The jury awarded damages in the amount of \$2,975,200. (*Id.* at p. 10).

II. STANDARDS FOR REVIEW

A. Judgment as a Matter of Law

² The jury found infringement of claims 1, 3, 4, 5, 12, 14, and 16. (Doc. 144, p. 2).

³ The jury found infringement of claims 1, 2, 3, 12, and 14. (*Id.* at p. 3).

⁴ The jury found infringement of claims 1, 10, and 11. (*Id.* at p. 4).

⁵ The jury found infringement of claims 1–6, 8, 11–16, 18–19, and 21. (*Id.* at pp. 5–6).

⁶ The patents-in-suit relate to control systems for vehicles with a “data communication bus.” The term “data communication bus” has been previously construed by the Court to mean “wired connection for communication of digital messages among vehicle devices, with each message including one or more device addresses.” (Doc. 50, p. 25).

Judgment as a matter of law should only be granted if no objectively reasonable jury, based on the evidence and inferences adduced at trial and through the exercise of impartial judgment, could reach the verdict reached. *Brown v. Ala. Dep't of Transp.*, 597 F.3d 1160, 1173 (11th Cir. 2010); *Combs v. Plantation Patterns*, 106 F.3d 1519, 1526 (11th Cir. 1997). Stated differently, the party moving for judgment as a matter of law must show that the trial evidence “is so overwhelmingly [in its favor] that a reasonable jury could not arrive at a contrary verdict.” *Middlebrooks v. Hillcrest Foods, Inc.*, 256 F.3d 1241, 1246 (11th Cir. 2001). However, where there is substantial evidence in the trial record which would allow reasonable minds to reach different conclusions, judgment as a matter of law is inappropriate. *Mee Indus. v. Dow Chem. Co.*, 608 F.3d 1202, 1211 (11th Cir. 2010). In considering a motion for judgment as a matter of law, the district court must review the record and draw all reasonable inferences derived therefrom in the light most favorable to the non-moving party. *Brown*, 597 F.3d at 1173. Importantly, the district court must not make credibility determinations or weigh evidence, as these are functions reserved for the jury. *Id.*

Rule 50 is clear in its procedure. Before a case is submitted to the jury for consideration, a party may move for judgment as a matter of law on any issue which is not supported by legally sufficient evidence. Fed. R. Civ. P. 50(a). If the court denies relief at that time, the party may renew the motion after the jury has returned its verdict. Fed. R. Civ. P. 50(b). It is well-established that “any renewal of a motion for judgment as a matter of law under Rule 50(b) must be based upon the same grounds as the original request for judgment as a matter of law made under Rule 50(a)” and that “a party cannot assert grounds in the renewed motion that it did not raise in the earlier motion.” *SEC v.*

Big Apple Consulting USA, Inc., 783 F.3d 786, 813 (11th Cir. 2015). Although “[s]trict identity of issues . . . is not required” of the two motions, the grounds identified in a Rule 50(b) motion must be “closely related” to the grounds raised in the prior Rule 50(a) motion such that opposing counsel and the court are notified of the evidentiary shortcomings asserted. *Howard v. Walgreen Co.*, 605 F.3d 1239, 1243 (11th Cir. 2010). This procedural safeguard “protects the non-moving party’s right to cure deficiencies in the evidence before the case is submitted to the jury” and ensures that “[t]he moving party cannot ambush the court and opposing counsel after the verdict when the only remedy is a completely new trial.” *Middlebrooks*, 256 F.3d at 1245.

B. New Trial

A district court may grant a new trial for a variety of reasons, including when the verdict is against the great weight of the evidence, the damages awarded by the jury are excessive, the court erred in admitting or excluding evidence or in instructing the jury on the law, or other circumstances resulted in a patently unfair trial. Fed. R. Civ. P. 59; *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251 (1940). Whatever its reason, “a district court may, in its discretion, grant a new trial ‘if in [the court’s] opinion, the verdict . . . will result in a miscarriage of justice, even though there may be substantial evidence’” which would preclude the entry of judgment as a matter of law. *McGinnis v. Am. Home Mortg. Servicing, Inc.*, 817 F.3d 1241, 1254 (11th Cir. 2016) (quoting *Hewitt v. B.F. Goodrich Co.*, 732 F.2d 1554, 1556 (11th Cir. 1984)). Unlike a motion for judgment as a matter of law made pursuant to Rule 50, the court “is free to weigh the evidence” in assessing whether to grant a new trial under Rule 59. *Id.* (quoting *Rabun v. Kimberly-Clark Corp.*, 678 F.2d 1053, 1060 (11th Cir. 1982)).

III. CALAMP'S JMOL ARGUMENTS AT TRIAL

At the conclusion of Omega's case-in-chief, CalAmp moved for judgment as a matter of law. (Doc. 182). CalAmp argued the evidence was insufficient to establish infringement, contending that Mr. McAlexander failed to address what control functions were being performed with respect to the '876 patent. (*Id.* at 3:23 to 4:2). CalAmp also argued that Omega's expert did not establish "they were actually generating the working and non-working command signals." (*Id.* at 4:10–12). As to the '876 and '885 patent, CalAmp claimed Plaintiff satisfied the "transmitter requirement" based on the CalAmp server, which they contend is a deviation from Mr. McAlexander's expert report where he "relied on the chip set on the device having both the transmitter and the receiver." (*Id.* at 4:14–23). Moreover, CalAmp argued the Court defined device codes "as being signals from a vehicle device," and Omega presented testimony that "[i]t was coming from the LMU and going onto the vehicle bus." (*Id.* at 5:8–14).

As to the '278 patent, CalAmp averred that Omega's expert "didn't show any control function the LMU was actually performing onto the bus." (*Id.* at 5:17–19). CalAmp elaborated that "the claim required a corresponding vehicle device code from among a plurality thereof for different vehicle, and he [McAlexander] was using different constructions. (*Id.* at 5:20–23). With regard to the '727 patent, Defendant submitted that Omega's expert testified to a "new theory of infringement that using GPS speed could now satisfy the claim limitation . . . [and] [w]e saw he was relying on speed from the vehicle bus" in his report. (*Id.* at 6:4–13).

On the issue of indirect infringement, CalAmp claimed Omega failed "to provide sufficient evidence of indirect infringement, [because] [t]here was no testimony about an

intent to infringe that's required for indirect infringement. And there was no testimony that—of an actual customer that he determined actually infringed.” (*Id.* at 6:15–19). CalAmp next offered that Omega failed to provide sufficient evidence to support willful infringement. (*Id.* at 6:23–24). Finally, CalAmp argued the damages evidence was insufficient. (*Id.* at 9:17–18).

Following the close of the defense case, CalAmp renewed its motion for judgment as a matter of law “[f]or the same reasons, so nothing [is new] there.” (Doc. 183, 221:10–13). CalAmp also argued that Omega failed to provide evidence sufficient to overcome the defense of obviousness for all four patents. (*Id.* at 221:15–19). The defense concluded by restating their claim that Omega failed to prove willfulness. (*Id.* at 222:3–9). These are the only grounds preserved for consideration by this Court at this juncture.

IV. CALAMP’S JMOL ARGUMENTS

A. The Verdict Form

CalAmp advocates that “[a]n overreaching issue on noninfringement is the fact that the verdict for asked only about, and the jury therefore could find only, direct infringement under 35 U.S.C. § 271(a).” (Doc. 216, p. 3). Since the claims of the ‘876 and ‘885 patents require “a transmitter and a receiver for receiving signals from said transmitter,” CalAmp contends infringement is only possible if the jury found the infringing product was “the LMU in combination with other components such as a server.” (*Id.* at pp. 3–4). Accordingly, CalAmp submits the verdict form can only sustain direct infringement. (*Id.* at p. 3).

Absent from CalAmp’s argument, however, is that the Court used the verdict form submitted by the Defendant. (Doc. 90-11). CalAmp’s verdict form poses the following

question: “Do you find Omega has proven by a preponderance of the evidence that any of the accused CalAmp devices infringed any of the following claims of the Plaintiff’s asserted Patents?” (*Id.* at p. 3). The verdict form proffered by Omega, however, asked: “Do you find by a preponderance of the evidence that Defendant infringed any of the following claims of Plaintiff’s Patents?” (Doc. 90-10, p. 2).

CalAmp was well aware that indirect infringement was before the jury along with direct infringement, because CalAmp argued for judgment as a matter of law (“JMOL”) on indirect infringement. (Doc. 182, 6:15–19). Yet, CalAmp offered, and the Court accepted, the verdict form which CalAmp now characterizes as fatally flawed. As Omega correctly observes in their response, to the extent the verdict form is lacking CalAmp invited the error by crafting that very verdict form.⁷ See *Slip-N-Slide Records, Inc. v. TVT Records, LLC*, 2007 U.S. Dist. LEXIS 80788 (S.D. Fla. Oct. 31, 2007) (party’s attack on verdict form is barred by invited error doctrine where that party failed to object to the verdict form). CalAmp cannot create the verdict form with full knowledge that indirect infringement had been presented to the jury and later complain that their form is deficient. Additionally, CalAmp failed to raise any objection to the verdict form during either of their arguments for judgment as a matter of law at trial and have waived this issue.⁸

B. The ‘876 and ‘885 Patents

CalAmp suggests that the ‘876 and ‘885 patents are not infringed, because the “accused products are not ‘at the vehicle’ when CalAmp makes, uses or sells them. (Doc.

⁷ Questions 6A and 6B of the verdict form ask the jury to address CalAmp’s actions, as opposed to the device.

⁸ The Court discussed indirect infringement (inducement) with the parties during the charge conference. (Doc. 183, 23:10–16). The inducement instruction was given. (Doc. 143, p. 15).

216, p. 5). Since the '876 patent requires the multi-vehicle compatible controller (“MVCC”) to be “at the vehicle,” direct infringement fails. (*Id.*). CalAmp did not make this argument at either JMOL motion hearing during the course of the trial and has waived this issue. Additionally, the Plaintiff’s theory was not limited to direct infringement, as discussed previously in this Order.

Next, CalAmp contends the '885 patent requires the MVCC to cooperate with the transmitter and receiver and avers that the devices are not cooperating with a RF transmitter and receiver until they are turned on. (*Id.*). This is an example of yet another argument that was not advanced during either JMOL hearing at trial. Regardless, Omega is correct that the testimony at trial established the “accused devices had a transmitter and receiver that are used to transmit and receive,” and CalAmp’s PULS server transmits scripts and updates directly from CalAmp to the accused devices via a cellular network. (Doc. 226, p. 3).⁹ This is adequate to support infringement.

CalAmp asserts that Mr. McAlexander “tried to inject a new theory at trial by pointing to ‘a transmitter receiver that’s associated with a server that receives and communicates with it’ in combination with the accused devices.” (Doc. 216, p. 4). While Omega disagrees with this characterization of Mr. McAlexander’s testimony, the point raised by CalAmp is not relevant. That is, the party moving for judgment as a matter of law must show that the trial evidence “is so overwhelmingly [in its favor] that a reasonable jury could not arrive at a contrary verdict.” *Middlebrooks v. Hillcrest Foods, Inc., supra*. CalAmp’s argument is not that the evidence presented by Omega on this issue was

⁹ Omega cites the testimony and exhibits supporting this statement, and the Court will not repeat the record citations here.

deficient, but rather that Mr. McAlexander allegedly injected a new theory at trial. Assuming CalAmp is correct that Plaintiff's expert modified the opinion set forth in his report, CalAmp's objection is to the introduction of a "new theory." An evidentiary objection does not equate with a lack of sufficient evidence to support the jury's verdict which is all the JMOL analysis concerns.

C. The Device Codes Limitation

The next argument advanced by Defendant is that all asserted claims of the '278 and '885 patents and claim 12 of the '876 patent have requirements for "device codes" which is a signal "from" a vehicle bus. (Doc. 216, p. 5). CalAmp acknowledges that Omega's expert testified that "the query sent by the LMU as part of the bus discovery process." (*Id.* at p. 6). In fact, Mr. McAlexander testified that the LMU device is a controller that is multi-vehicle compatible. (Doc. 180, 78:19–21). Defendant's witness, Mr. Chen, acknowledge that the LMU devices are able to read the device codes from the bus and match them with look-up tables. Accordingly, the jury was presented with sufficient evidence to sustain their finding of infringement.

D. Determining a Match Between Read and Stored Codes

CalAmp claims the asserted claims of the '885 patent, and claim 12 of the '876 patent, require "storing a set of device codes for a given vehicle device for a plurality of different vehicles," "reading a device code from the data communications bus," and "determining a match between a read device code and the stored device codes." (Doc. 216, pp. 6–7). The Defendant failed to raise this issue during either of their JMOL arguments. Mr. McAlexander was asked by Plaintiff's counsel if he found that the MVCC "is for reading a device code from the data communications bus and for determining a

match between a read device code and the stored device codes to thereby provide reading compatibility with a plurality of different vehicles?” (Doc. 180, 77:11–16). Mr. McAlexander replied:

Yes, I did. One of the unique aspects of this type of a system is the fact that you send out a sequence of codes, and only the code which is understood by some downstream vehicle device on the vehicle bus is going to respond. And so, it’s called a working command. When you get that working signal provides a response, that’s a match.

(*Id.* at 77:17–23). The fact that CalAmp’s expert disputes that a match is performed does not warrant judgment as a matter of law in favor of CalAmp.

E. Reading and Using Vehicle Speed from the Bus

In its JMOL argument, CalAmp contended that Omega’s expert testified to a “new theory of infringement that using GPS speed could now satisfy the claim limitation.” (Doc. 182, 6:4–13). As previously discussed, an objection to the propriety of offering an allegedly new opinion does not meet the standard for judgment as a matter of law. CalAmp elaborates upon their earlier argument by explaining that “the default speed above threshold functions uses only GPS speed, [hence] the accused products do not necessarily infringe.” (Doc. 216, p. 9). CalAmp therefore concludes it “could be liable only under an indirect infringement theory, but the jury was not asked to and did not find that CalAmp induced or contributed to another’s direct infringement,” harkening back to their earlier objection to the verdict form that they had offered for use at trial. (*Id.* at p. 10). CalAmp argues they are entitled to a new trial because it is impossible to know if the verdict was based on Mr. McAlexander’s incorrect claim construction theory. (*Id.*)

First, CalAmp cannot complain that their own verdict form has complicated matters in terms of direct and indirect infringement. Second, juries are routinely confronted with

competing legal theories, and a new trial is not warranted simply because the losing party cannot discern why the jury found as they did. In the instant case, the verdict form prepared by CalAmp allowed the jury to indicate which claims of each patent had been infringed. The jury concluded the '727 patent (speed from the vehicle data communication bus) had been infringed. (Doc. 144, p. 4). Lastly, CalAmp's engineer, Mr. Jeffrey Eiberger, testified that 5% of CalAmp's customers used bus speed for speed exceedances. (Doc. 147, 78:14–20). This is sufficient to support the finding of direct and indirect infringement.

F. Command Signals and Controller

CalAmp asserts that its products “merely request and receive data” and “do not infringe because they do not send signals to operate a vehicle device.” (Doc. 216, p. 11).

However, in the Claim Construction Order, this Court observed:

Since the system is designed to operate with a variety of vehicle platforms, not every signal generated on the data communications bus will cause a function to be performed Accordingly, CalAmp's proposed construction incorrectly includes within the definition of the “command signal” the requirement that a signal generated on the data communication bus must always cause a desired function to be performed.

(Doc. 50, p. 15). Besides, Mr. McAlexander testified that the LMU meets this definition. (Doc. 180, 66:16 to 69:15). Defense expert, Mr. Eric Andrews, ignores the Court's construction by inserting into the claim the requirement that the command function have a physical embodiment. (Doc. 183, 117:22–25; 118:1–12). Mr. Andrews admitted that a command signal need not result in a physical manifestation, when he acknowledged that an ECU responding with a device code signal is responding to a command signal. (*Id.* at 118:17–24). CalAmp's argument for JMOL disregards this testimony.

G. Patents-in-Suit is Invalid as Obvious

Judgment as a matter of law should only be granted if no objectively reasonable jury, based on the evidence and inferences adduced at trial and through the exercise of impartial judgment, could reach the verdict reached. *Brown v. Ala. Dep't of Transp.*, *supra*. CalAmp argued at trial and in their JMOL that “a person of ordinary skill would have looked to the J1978 standard to solve the problem of multi-vehicle compatibility (and thus combine the references).” (Doc. 216, pp. 12–13). The J1978 standard relates to a scan tool and, notwithstanding Mr. Andrews failure to articulate why one would have combined an SAE standard pertaining to scan tools with the referenced prior art, CalAmp contends “it is self-evident why one of ordinary skill would do so.” (*Id.* at p. 14).

CalAmp is required to prove by clear and convincing evidence that one of ordinary skill in the art would be motivated to combine the references provided by the Defendant. *Innogenetics, N.V. v. Abbott Labs.*, 512 F.3d 1363, 1373 (Fed. Cir. 2008). The jury rejected Mr. Andrew’s argument that one would have—without relying on the benefit of hindsight—combined the prior art with the SAE specification. (Doc. 144, p. 7). Based upon the quality of Mr. Andrew’s testimony, an objectively reasonable jury could have reached this verdict.

H. Secondary Considerations

“The jury found three secondary considerations of nonobviousness—commercial success, copying, and licensing by others. Dkt. 144 at 9” (Doc. 216, p. 15). While this precise argument was not presented at either JMOL hearing, it is sufficiently tied to the issue of obviousness to warrant further examination. CalAmp contends Omega failed to

sufficiently demonstrate a nexus between the claimed invention and the secondary considerations. (*Id.*).

Plaintiff, in its response to this assertion, summarizes ample evidence presented at trial which rebuts CalAmp's claim that the secondary considerations are unsupported. (Doc. 226, pp. 10–11). Plaintiff observes that Defendant's corporate representative and employees testified that the infringing products (and DEI's product) were "commercially successful due to the merits of Omega's invention." (*Id.* at p. 10). Witnesses testified that features on the infringing CalAmp products were requested by customers. (*Id.*). Additionally, Mr. Flick sold devices with the patented features, generating sales revenue of \$33 million annually. (*Id.*). Moreover, the jury heard testimony that Mr. Flick, via his company, issued dozens of licenses to the patents-in-suit and entered into settlement agreements with infringers. (*Id.*). Finally, Omega presented evidence that CalAmp knew of Omega's patents and discussed the difficulty of designing around the patents. (*Id.* at p. 11). This testimony was sufficient for an objectively reasonable jury to find the secondary considerations.

I. Willfulness

Defendant argues that no reasonable jury could have found willfulness. (Doc. 216, p. 22). In partial support for this premise, CalAmp states it relied upon counsel's legal opinion that the '885, '876 and '727 patents were invalid and their products would not infringe. (*Id.* at p. 18). However, the advice of counsel was not allowed into evidence, and CalAmp now contends this warrants JMOL on willfulness and a new trial. (*Id.*). As previously observed in this Order, CalAmp confuses JMOL, which questions the sufficiency of the evidence presented by the non-moving party, with a motion for new trial

due to an evidentiary error. In the interest of completeness, the Court will address its evidentiary ruling before turning to the weight of the evidence presented by Omega.¹⁰

Counsel for CalAmp asked Mr. Chen, senior director of business development in CalAmp's corporate development group,¹¹ if he had received written and oral opinions by legal counsel regarding the validity of the patents-in-suit. (Doc. 182, 116:6-23). When asked to state the content of the oral opinion provided by counsel regarding whether the LMU-3000 infringed the '885 patent, counsel for Omega objected to the hearsay testimony elicited by the question. (*Id.* at 116:21–25; 117:1). Because the legal opinion was being offered for the truth of the matter, the Court sustained the objection. (*Id.* at 117:5).

Following the lunch recess, the Court discussed the opinion letter of Mr. David Bailey, exhibits 71 and 73, in which he opines that the '876 and '883 patents are invalid due to obviousness. (*Id.* at 119:15–24). After discussing the content of the opinion letters, the Court concluded the opinions are offered for their truth and do not fall within an exception to hearsay. (*Id.* at 120:16 to 124:24). Having found the opinion letter to be hearsay, the Court advised CalAmp that the attorney who authored the opinions, if properly disclosed on CalAmp's witness list, could testify that he gave an opinion that the two patents were invalid. (*Id.* at 124:19–24). While CalAmp did not disclose Mr. Bailey as a witness, and even though Omega objected to the witness testifying, the Court allowed Mr. Bailey to testify that the CalAmp devices did not infringe the '876 and '883 patents. (*Id.* at 125:3–16).

¹⁰ For the reasons expressed herein, CalAmp's motion for new trial on willfulness (Doc. 216, p. 29) is denied.

¹¹ See Doc. 182, 38:24–25; 39:1.

When the jury returned, Mr. Chen identified the opinion letters and testified that he relied upon them along with his independent research of the prior art. (*Id.* at 127:18–25; 128:1–9). Mr. Bailey testified immediately following Mr. Chen, and he acknowledged giving opinions to CalAmp relating to the four patents in this lawsuit in which he opines the ‘727 and ‘278 are invalid. (*Id.* at 150:22–25 through 157:7). At the conclusion of his testimony, CalAmp offered the two opinion letters, Omega objected, and the objection was sustained. (*Id.* at 159:9–13). The next witness was Mr. Andrews, CalAmp’s expert on invalidity and noninfringement. Accordingly, CalAmp was permitted to present extensive testimony by Mr. Chen regarding his investigation of the prior art and his reliance upon Mr. Bailey’s legal opinions (notwithstanding the failure to list Mr. Bailey as a witness). Mr. Bailey thereafter testified that he advised Mr. Chen the ‘727 and ‘278 were invalid, and Mr. Andrews testified that none of the CalAmp devices infringe. CalAmp’s defense as to willfulness was presented and was rejected by the jury.

This Court has already summarized the evidence supporting a finding of willfulness, (Doc. 206), in its award of enhanced damages. The facts, exhibits and record citations cited in the Court’s previous order at pages 7–12 are incorporated by reference herein for brevity’s sake. Omega details the facts presented at trial which support a finding of willfulness, including the 2009 meeting between Mr. Flick and CalAmp’s representatives where Mr. Flick told CalAmp they were infringing his patents. (Doc. 226, p. 11). As a result, Mr. Chen requested a license agreement which he later declined to execute. (*Id.*). The jury also heard that two end users of CalAmp’s infringing devices settled with Omega and entered into licensing agreements. (*Id.* at 12). The jury also learned on cross-examination that Mr. Chen lacked any contemporaneous

documentation to support his claim to having conducted an exhaustive analysis of Omega's patents and prior art. (*Id.*). Moreover, while Mr. Chen testified that the LMU speed data is never derived from the vehicle bus, CalAmp's engineer testified that some customers' units read speed from the bus. (*Id.* at 13). Perhaps most telling is the email sent by Mr. Chen to a CalAmp vice president shortly before the lawsuit was initiated wherein Mr. Chen stated Claim 13 of the '278 patent "may relate to how we program a unit at the factory so it may be harder to avoid." (*Id.*).

These facts, and the reasonable inferences to be drawn from the facts, were sufficient for a reasonable jury to find willfulness.

J. ENHANCED DAMAGES and ATTORNEYS' FEES

CalAmp argues the Court should not exercise its discretion to enhance the damages and award attorneys' fees in this case. The Court addressed these issues previously, and none of the arguments advanced by CalAmp warrant a different outcome. (see Doc. 206). Omega's opposition to CalAmp's motion is detailed, and the Court agrees with the arguments advanced by Plaintiff. For the reasons stated in this Order, and based upon the Court's analysis at docket number 206, CalAmp's motion to alter its judgment to disallow enhanced damages and attorneys' fees is denied.

V. NEW TRIAL ON DAMAGES

CalAmp seeks a new trial on the issue of damages to the extent the Court overturns the verdict with respect to infringement or validity. Having denied the Defendant's motion for judgment as a matter of law on these issues, the motion for new trial on the issue of damages is denied.

CalAmp also seeks a new trial on damages on the basis that the Court erred when it excluded Dr. DeForest McDuff. (Doc. 216, p. 27). CalAmp also argues the Court should have permitted Dr. McDuff to testify to his opinion that the license agreements relied on by Omega were not comparable to the license that would result from the hypothetical negotiation in this case. (*Id.*). Additionally, CalAmp contends the non-comparable license agreements relied upon by Mr. Tregillis (Omega's expert) were admitted in error. (*Id.*).

The Court excluded Dr. McDuff based upon the unreliability of his methodology. (Doc. 117, pp. 18–27). CalAmp did not seek reconsideration of the Court's Order to allow Dr. McDuff to testify that the license agreements relied upon by Omega were not comparable to those that would result from a hypothetical negotiation in this case, presumably because the Court found Dr. McDuff to have formulated unreliable opinions using improper methodologies. To the extent CalAmp may have asserted an objection to the Court's Order excluding Dr. McDuff as a damages witness, that objection has been waived. To the extent CalAmp submits Mr. Tregillis failed to cite comparable license agreements, this was an issue for the jury to resolve. As Omega correctly notes, Mr. Tregillis was subjected to extensive cross-examination on whether the licenses he selected were in fact comparable, and the jury was instructed on what constitutes a comparable license—without objection. The Defendant's motion for new trial on damages is denied.

Next, CalAmp asserts a new trial is warranted due to erroneous claim construction rulings. Defendant basis its motion upon the conclusion that the Court erred in not accepting some of its proffered claim constructions. Defendant did not seek additional

construction of any disputed claim during the trial. Hence, the motion is denied. *Weinar v. Rollform, Inc.*, 744 F.2d 797, 809 (Fed. Cir. 1984).

In a catch-all summary of alleged errors, CalAmp seeks a new trial due to the alleged plethora of evidentiary missteps by the Court during trial, including the closing argument of Omega's counsel to which there was no objection. CalAmp fails to demonstrate how any of the perceived errors individually or collectively warrant a new trial, and the motion is denied.

VI. CONCLUSION

The verdict rendered by the jury was not against the greater weight of the evidence. To the contrary, an objectively reasonable jury could, and did, conclude that CalAmp had infringed Omega's patent-in-suit and had done so willfully. Defendant's Motions for Judgment as a Matter of Law and for New Trial, (Doc. 216) are **DENIED**; and Defendant's Supplemental Renewed Motion for Judgment as a Matter of Law, for a New Trial, and to Vacate the Judgment (Doc. 228) is **DENIED**.

DONE AND ORDERED in Orlando, Florida on November 14, 2017.



PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties