

Judge Richard G. Stearns: ELECTRONIC ORDER entered denying 485 Motion for Reconsideration ; finding as moot 490 Motion for Leave to File Reply (having considered its contents). In its motion for reconsideration, Neurografix contends that various published articles provide evidence of direct and induced infringement. "A motion for reconsideration is not the venue to undo procedural snafus or permit a party to advance arguments it should have developed prior to judgment, nor is it a mechanism to regurgitate 'old arguments previously considered and rejected.'" *Biltcliffe v. CitiMortgage, Inc.*, 772 F.3d 925, 930 (1st Cir. 2014) (citations omitted). "To obtain relief, the movant must demonstrate either that newly discovered evidence (not previously available) has come to light or that the rendering court committed a manifest error of law." *Palmer v. Champion Mortg.*, 465 F.3d 24, 30 (1st Cir. 2006). Neurografix does not identify a "manifest error of law," nor do the articles qualify as newly discovered evidence warranting reconsideration - "there is no showing that the information could not have been obtained through the use of due diligence before the summary judgment motions." *Minh Tu v. Mut. Life Ins. Co. of New York*, 136 F.3d 77, 82 (1st Cir. 1998). Indeed, Neurografix attached many of the articles as exhibits to its motion for leave to file proposed second amended complaint (which was denied), but did not include or rely on them as part of the summary judgment record. Nor has the court misapprehended the evidence, as Neurografix suggests. Of the two articles that were referenced in the summary judgment pleadings, Neurografix conceded that "Wu and colleagues did not use any BrainLAB products and in fact most of the underlying research was done before BrainLAB began to market the offending product." Pl.'s Opp'n to Def.'s Mot. for Summ. J. of No Lost Profits, Dkt # 464 at 7. The other article, Sivakanthan, was published in 2016, 3 years after the expiration of the asserted patent. Neither article provides material evidence of infringement. The court notes that Neurografix's counsel has apologized to Brainlab's counsel for the overheated rhetoric of its motion, see Opp'n, dkt # 489 at 4 n.1., and cautions counsel for Neurografix, as officers of the court, to take greater care in their pleadings. Allegations of misconduct are a serious matter, and cannot be made lightly. This case (No. 13-10758), along with the other member cases of this MDL, were referred to this court for "coordinated or consolidated pretrial proceedings." Dkt #1 at 3. These being completed, the court recommends the remand of Brainlab's remaining counterclaim for declaratory judgment of invalidity of the '360 patent, see Brainlab's Answer to Supplemental Complaint, No. 13-10758 Dkt # 42 at 7, to the Northern District of Illinois for trial. (Tang, Danni) Modified on 6/20/2018 (Tang, Danni). (Entered: 06/20/2018)

As of June 21, 2018, PACER did not contain a publicly available document associated with this docket entry. The text of the docket entry is shown above.

In re: NeuroGrafix ('360) Patent Litigation
1-13-md-02432 (MAD), 6/20/2018, docket entry 491