

**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.

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**ORDER**

This cause is before the Court on Plaintiff Omega Patents, LLC's, Motion for Judgment of Infringement of VPOD units under Rule 59 (Doc. 332), and Defendant CalAmp Corp.'s Response in Opposition. (Doc. 349). Upon due consideration, Omega's motion is denied.

**I. BACKGROUND**

On September 30, 2019, the jury returned a verdict finding CalAmp's LMU-3000, 3030 and 3050 products directly infringed the '278 patent. (Doc. 310). However, the jury found CalAmp's VPOD and VPOD2 do not infringe the '278 patent. (*Id.*)<sup>1</sup> Omega contends the VPOD and VPOD2 (collectively "**VPODs**") units are functionally identical in all material respects to the infringing LMUs. (Doc. 332, p. 1). Omega brings the Rule 59(e) motion, because the jury's failure to find infringement by the VPODs represents a manifest error of law and fact. (*Id.*). That is, Omega characterizes the evidence presented

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<sup>1</sup> As to the '278 patent, the jury was asked to decide: "Has Omega proven by a preponderance of the evidence that CalAmp infringes any of the following claims of the '278 patent by making, using, selling, offering for sale or importing into the United States any of the following accused products?" (Doc. 310).

at trial as “overwhelming and unrebutted” so that if the accused LMU units infringed, the VPODs also infringed. (*Id.* at p. 5). Omega also asserts that the verdict finding the VPODs noninfringing while determining the accused LMU units infringing is inconsistent. (*Id.*). Omega did not move for judgment as a matter of law at the close of its case or the close of the defendant’s case. Nor did Omega argue prior to the dismissal of the jury that their verdict finding the accused LMUs infringed the ‘278 while the VPODs did not was inconsistent.

## **II. DISCUSSION**

### **A. Sufficiency of the Evidence and Inconsistent Verdict**

CalAmp correctly argues that Omega has waived the ability to seek judgment as a matter of law based upon the sufficiency of the evidence and waived the right to redress the alleged inconsistent verdicts. In *Canalejo v. ADG, LLC*, No. 8:14-cv-17, 2015 WL 12915720, \*1 (M.D. Fla. Nov. 20, 2015) (collecting cases), the plaintiff claimed that it was “‘clear error’ for the jury to find as it did given the indisputable evidence.” The court construed, as it must, the plaintiff’s sufficiency of the evidence argument—even when styled as at Rule 59(e) motion—as arising under Rule 50(b). (*Id.*). In denying the plaintiffs motion, the Court reasoned:

Plaintiff does not move for relief under Rule 50(b). And, even if the Court were to construe her motion as such, which it does not, her Rule 50(b) argument is foreclosed because she did not move for judgment as a matter of law based on the sufficiency of the evidence before the case was submitted to the jury as Rule 50 requires. *Crawford v. Andrew Sys., Inc.*, 39 F.3d 1151, 1154 (11th Cir. 1994) (holding that a district judge has no authority to grant a Rule 50(b) motion when no Rule 50(a) motion is made).

*Id.* The Third Circuit Court of Appeals reached the same conclusion in *Brown v. Gass*, 544 F. App’x 81, 85 (3d Cir. 2013); see also, *Sw. Software, Inc. v. Harlequin Inc.*, 226

F.3d 1280, 1290 (Fed. Cir. 2000) (“Failing to properly move for JMOL at the close of the evidence precludes a challenge to the sufficiency of the evidence.”).

Omega raises for the first time the sufficiency of the evidence, arguing there can be but one conclusion as to the verdict that reasonable jurors could have reached and that is the VPODs infringe. This argument should have been raised under Rule 50. Plaintiff is foreclosed from raising their Rule 50(b) motion under the guise of Rule 59(e). Similarly, Omega was required to assert its inconsistent verdict argument before the jury was discharged and they did not. *Pensacola Motor Sales Inc. v. E. Shore Toyota, LLC*, 684 F.3d 1211, 1225 (11th Cir. 2012). Accordingly, Plaintiff’s Motion for Judgment of Infringement under Rule 59(e) is denied.

## **B. The Merits**

While the Court need not address the merits of Omega’s untimely Rule 50(b) argument, the complex history of this case warrants additional comment for the benefit of the parties.

Omega contends that “[t]estimony in both [trials] established that (a) the VPODs must be used with a compatible non-accused LMU in order to function, and (b) the VPODs (in combination with a non-accused LMU) provide identical functionality and features as the Infringing LMUs.” (Doc. 332, p. 3). That is, Omega admits the VPODs standing alone do not contain all of the limitations required by the ‘278 patent. CalAmp correctly argues the fact that “VPODs function the same as the accused LMUs when a customer connects a VPOD and a non-accused LMU, ... is not sufficient to find that CalAmp is a direct infringer.” (Doc 349, p. 7). The jury could rationally decide that CalAmp neither directly nor indirectly infringed the ‘278 patent by selling the VPODs, just as the found CalAmp

did not induce its customers to infringe Omega's '885 and '876 patents. (Doc. 310). Based upon the totality of the evidence presented to the jury, it cannot be said there is "no rational, non-speculative way to reconcile two essential jury findings." *Reider v. Philip Morris USA, Inc.*, 793 F.3d 1254, 1259 (11th Cir. 2015).

### III. CONCLUSION

For these reasons, Omega's Motion (Doc. 332) is **DENIED**.

**DONE AND ORDERED** in Orlando, Florida on April 3, 2020.

  
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PAUL G. BYRON  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record  
Unrepresented Parties