

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

SIMPLEAIR, INC.,

*Plaintiff,*

v.

GOOGLE INC.

*Defendant.*

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CASE NO. 2:11-CV-416-JRG

**ORDER**

Plaintiff SimpleAir, Inc. (“SimpleAir”) filed this patent infringement action against Google on September 15, 2011. At trial, SimpleAir alleged that the operation of Google’s Cloud Messenger (GCM) and Cloud to Device Messenger (C2DM) (collectively the “Accused Services”) infringe independent claim 1, and dependent claims 2, 3, 7, and 22 (the “asserted claims”) of U.S. Patent No. 7,035,914 (the “’914 Patent”). A jury trial commenced on January 13, 2014. On January 18, 2014, the jury reached and returned its unanimous verdict, finding that the Accused Services infringed each of the asserted claims, and that the asserted claims were not invalid. Dkt. No. 601.

However, the same jury was unable to reach a unanimous verdict with respect to the amount of damages. Accordingly, the Court entered judgment with respect to the separate issues of validity and infringement, and ordered a new trial on damages to be set for March 17, 2014. Dkt. No. 634; 635. A new jury was seated and a trial concerning damages only began on March 17, 2014. On March 19, 2014, that jury returned a unanimous verdict awarding \$85 million in damages to SimpleAir. Dkt. No. 718.

Following the respective trials on the issues of liability (infringement and validity) and damages, Google moved for judgment as a matter of law (JMOL), arguing: (1) that it did not infringe the '914 Patent; (2) that the '914 patent was invalid; and (3) that the jury's damages award was not supported by substantial evidence. *See* Google's motions for JMOL (Dkt. Nos. 636, 637 and 748). After careful review of the parties' arguments and the record, the Court determined that the jury verdicts with respect to both liability and damages were supported by substantial evidence, and denied Google's motions for JMOL. *See* Dkt. No. 764 (liability); Dkt. No. 765 (damages).

In the motions presently before the Court (Dkt. No. 649 and Dkt. No. 749), Google asks the Court to set aside the juries' verdicts with respect to both liability and damages and grant a new trial on all issues. Federal Rule of Civil Procedure 59(a) provides that a trial court may grant such relief, on motion from a party, "for any reason for which a new trial has heretofore been granted in an action at law in federal court." Generally, such motions are granted if the jury's verdict is against the great weight of the evidence, or if prejudicial error occurred during the course of the trial. *See Shows v. Jamison Bedding, Inc.*, 671 F.2d 927, 930 (5th Cir.1982); *Smith v. Transworld Drilling Co.*, 773 F.2d 610, 612–13 (5th Cir.1985). "The decision to grant or deny a motion for a new trial is generally within the sound discretion of the trial court." *Shows*, 671 F.2d at 930.

In support of its motions under Rule 59(a), Google argues that:

- the Seventh Amendment requires a new, combined trial on all issues (*i.e.*, infringement, validity, and damages) (Dkt. No. 649 at 11);
- the jury verdicts in this case—both with respect to liability and damages—are against the great weight of the evidence (Dkt. No. 649 at 7-11; Dkt. 749 at 6-11);
- the Court erred in excluding certain evidence and or allowing other evidence to be presented to the jury (Dkt. No. 649 at 13; Dkt. No. 749 at 12).

Having reviewed the parties' arguments and the entire record, the Court does not find Google's arguments to be persuasive.

Following the first trial in this case, Google moved for a new, combined trial—raising the same Seventh Amendment concerns that are reiterated in the current motion. Dkt. No. 628. The Court considered and denied Google's motion in an order that issued on February 10, 2014. *See* Dkt. No. 634. Accordingly, Google's first argument is properly considered a motion for reconsideration. However, Google has failed to show any of the conditions necessary to justify such a reconsideration: (1) an intervening change in the law; (2) the availability of new evidence; or (3) the need to correct a clear error of law or prevent manifest injustice. *See Benjamin Moore & Co. v. Borden*, 318 F.3d 626, 629 (5th Cir. 2002).

Google's remaining arguments either (a) reiterate arguments raised in Google's motions for JMOL<sup>1</sup>, or (b) challenge the Court's evidentiary rulings. As discussed at length in the Court's prior orders, the jury verdicts with respect to liability and damages are supported by substantial evidence. *See* Dkt. No. 764; Dkt. No. 765. Having reviewed the parties' briefing and the record, the Court is not convinced that the same verdicts are against that great weight of the evidence, such that a new trial is warranted. The Court is similarly not persuaded that its evidentiary rulings were in error, or caused any unfair prejudice to Google.

Accordingly, Google's Motions for a new trial under Rule 59(a) (Dkt. No. 649 and Dkt. No. 749) are **DENIED** in their entirety. The Court further **ORDERS** that all other pending motions in this case are **DENIED**, and the Clerk of the Court is directed to terminate the same.

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<sup>1</sup>*See, e.g.*, Dkt. No. 649 at 7 (“The jury’s verdict of infringement of the ’914 Patent by Google is against the great weight of the evidence, as discussed in Google’s Renewed Motion for Judgment as a Matter of Law Regarding Infringement . . . which is hereby incorporated by reference.”); Dkt. No. 749 at 6 (“The jury’s damages verdict of \$85 million is against the great weight of the evidence, as discussed in Google’s Renewed Motion for Judgment as a Matter of Law Regarding Damages . . . which is hereby incorporated by reference.”).

**So ORDERED and SIGNED this 10th day of December, 2014.**

  
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RODNEY GILSTRAP  
UNITED STATES DISTRICT JUDGE