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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

NUANCE COMMUNICATIONS, INC.,

Plaintiff,

No. C 08-02912 JSW

v.

ABBY SOFTWARE HOUSE, ET AL.,

Defendants.

**ORDER DENYING PLAINTIFF'S
MOTION FOR JUDGMENT AS A
MATTER OF LAW, OR IN THE
ALTERNATIVE, FOR A NEW
TRIAL**

Now before the Court is the motion by Plaintiff Nuance Communications, Inc. ("Nuance") for judgment as a matter of law, or in the alternative, for a new trial. This motion is fully briefed and ripe for decision, and the Court finds the motion suitable for disposition without oral argument. N.D. Civ. L.R. 7-1(b). Accordingly, the hearing set for December 13, 2013, is VACATED. Having reviewed the parties' pleadings, the relevant legal authority, and the record in this case, for the reasons set forth herein, the Court DENIES the motion for judgment as a matter of law, or in the alternative, motion for a new trial.

ANALYSIS**A. Motion for Judgment as a Matter of Law.**

The Federal Circuit looks to regional circuit law in order to determine whether judgment as a matter of law is appropriate. See *Kinetic Concepts, Inc. v. Blue Sky Med. Group, Inc.*, 554 F.3d 1010, 1017 (Fed. Cir. 1994). In this circuit, "[j]udgment as a matter of law is proper if the evidence, construed in the light most favorable to the non-moving party, allows only one

1 reasonable conclusion, and that conclusion is contrary to that reached by the jury.” *Acosta v.*
2 *City and County of San Francisco*, 83 F.3d 1143, 1145 (9th Cir. 1996).

3 The jury heard the same arguments now made again by Plaintiffs, heard the conflicting
4 experts’ testimony, reviewed the multitude of evidence presented, judged the credibility of all
5 witnesses presented, and rendered a verdict entirely in Defendants’ favor. Nuance bore the
6 burden of proof on their claims and the Court finds the uncontested instructions properly
7 advised the jury of the application of the Court’s constructions of terms to the technology as
8 explained by the parties’ substantial presentation of evidence and the interpretation of that
9 evidence by the parties’ experts. When the evidence presented at trial is construed in the light
10 most favorable to Defendants, a reasonable jury could have found in favor of the Defendants.
11 Although the Court does not find Plaintiff waived any basis for its motion, the Court DENIES
12 Nuance’s motion for judgment as a matter of law.

13 **B. Motion for a New Trial.**

14 A court may grant a new trial “if ‘the verdict is contrary to the clear weight of the
15 evidence, or is based upon evidence which is false, or to prevent, in the sound discretion of the
16 trial court, a miscarriage of justice.’” *United States v. 4.0 Acres of Land*, 175 F.3d 1133, 1139
17 (9th Cir. 1999) (quoting *Oltz v. Saint Peter’s Community Hosp.*, 861 F.2d 1440, 1452 (9th Cir.
18 1988)). When considering a motion for a new trial, “[t]he judge can weigh the evidence and
19 assess the credibility of witnesses, and need not view the evidence from the perspective most
20 favorable to the prevailing party.” *Landes Const. Co., Inc. v. Royal Bank of Canada*, 833 F.2d
21 1365, 1371 (9th Cir. 1987). A trial court may not, however, grant a new trial simply because it
22 disagrees with the jury’s verdict. *4.0 Acres of Land*, 175 F.3d at 1139.

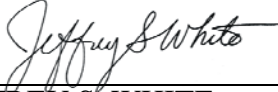
23 Upon review of the voluminous evidence presented at trial, the Court finds that the
24 verdict is consistent with the clear weight of the evidence. The Court also finds that the
25 additional language Nuance wanted to insert into the instructions regarding the axiom that “a
26 patent is not defined by its preferred embodiment” was an unnecessary addition to the standard
27 instructions. The Court properly instructed the jury that the patent’s claims define what is
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covered by the patent and properly confined its instructions to fall within the scope of the jury's duties. The Court DENIES Nuance's motion for a new trial.

IT IS SO ORDERED.

Dated: December 10, 2013



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

