

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CAVE CONSULTING GROUP, LLC,
Plaintiff,
v.
OPTUMINSIGHT, INC.,
Defendant.

Case No. 11-cv-00469-EJD

**ORDER DENYING CCGROUP'S
MOTION FOR LEAVE TO FILE
MOTION FOR RECONSIDERATION**

Re: Dkt. No. 457

On September 21, 2016, Plaintiff Cave Consulting Group, LLC (“CCGroup”) filed a motion for leave to seek reconsideration of the Court’s September 7, 2016 order on the parties’ post-judgment motions (“Order”). Dkt. No. 457. For the reasons discussed below, CCGroup’s motion for leave is DENIED.

I. BACKGROUND

CCGroup brought this patent infringement action against Defendant OptumInsight, Inc. (“OptumInsight”) on January 31, 2011. Dkt. No. 1. On April 3, 2015, the jury returned a verdict in CCGroup’s favor, and the Court entered judgment three days later. Dkt. Nos. 366, 370. The parties filed various motions for post-judgment relief, including a motion by CCGroup to set an ongoing royalty rate. Dkt. No. 385. On September 7, 2016, the Court issued its Order on the parties’ post-judgment motions, in which it determined that “it would be appropriate to delay the consideration of evidence and calculating the ongoing royalty rate until after the completion of the appeals in this case.” Dkt. No. 456 at 45. On September 20, 2016, CCGroup filed the instant motion, requesting leave to seek reconsideration of the Court’s decision to delay its determination

1 of an ongoing royalty rate. Dkt. No. 457.

2 Shortly thereafter, on October 5, 2016, OptumInsight filed a notice of appeal to the Court
3 of Appeals for the Federal Circuit. Dkt. No. 459. CCGroup moved to dismiss for lack of
4 jurisdiction. Motion to Dismiss Appeals, *Cave Consulting Group, LLC v. OptumInsight, Inc.*, No.
5 17-1060 (Fed. Cir. Nov. 22, 2016) (No. 26). In its brief before the Federal Circuit, CCGroup
6 argued that the Court’s judgment was not “final except for an accounting” pursuant to 28 U.S.C.
7 § 1295(a)(1) because the Court had not set an ongoing royalty rate. *Id.*

8 On March 31, 2017, the Federal Circuit denied CCGroup’s motion to dismiss. Dkt. No.
9 479 (Order on Motion, *Cave Consulting Group, LLC v. OptumInsight, Inc.*, No. 17-1060 (Fed. Cir.
10 Mar. 31, 2017) (No. 29)). In its decision, the Federal Circuit concluded that the determination of
11 an ongoing royalty rate constitutes an “accounting,” and thus, the case was “final except for an
12 accounting” under § 1295(a)(1). *Id.*

13 **II. DISCUSSION**

14 In the absence of a change in facts or law, a party seeking leave to file a motion for
15 reconsideration of a court order in this district must specifically show “a manifest failure by the
16 Court to consider material facts or dispositive legal arguments which were presented to the Court
17 before such interlocutory order.” Civil L.R. 7-9(b).

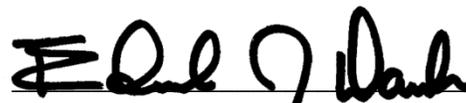
18 In the instant motion, CCGroup argues that the Court should reconsider its Order and set
19 an ongoing royalty rate “because otherwise, the Court’s judgment will not be final and
20 appealable.” Dkt. No. 457 at 1. This exact premise has now been considered and rejected by the
21 Federal Circuit. Dkt. No. 479 at 1-2, 7. Thus, there are no “material facts or dispositive legal
22 arguments” upon which reconsideration would be warranted. Civil L.R. 7-9(b).

23 **III. ORDER**

24 CCGroup’s motion for leave (Dkt. No. 457) is DENIED.

25 **IT IS SO ORDERED.**

26 Dated: April 7, 2017

27 

28 EDWARD J. DAVILA
United States District Judge