IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

WI-LAN INC.,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 6:10-cv-521-LED
v.	§	Civil Action No. 6:13-CV-00252-LED
	§	CONSOLIDATED CASES
ALCATEL-LUCENT USA INC.; *et al.*	§	
	§	JURY TRIAL DEMANDED
Defendants.	§	
	§	

DEFENDANTS' MOTION FOR JUDGMENT AS A MATTER OF LAW THAT WI-LAN IS NOT ENTITLED TO ANY DAMAGES

I. Introduction

The Court ruled that the opinions expressed in Mr. Jarosz's initial expert report on damages were inadmissible because Mr. Jarosz failed "to account for differences between Wi-LAN's worldwide portfolio licenses and a license to the patents-in-suit for U.S. sales of Defendants' accused products." Order at 7 (emphasis added; ECF No. 421). The Court later struck the opinions expressed on apportionment in Mr. Jarosz's supplemental expert report. At trial, Mr. Jarosz testified that he did "not adjust[] for the importance of the U.S. assets of Wi-LAN versus its non-U.S. assets." (Tr. at 107:2–3.) When asked why did not make the required allocation, Mr. Jarosz responded: "I don't know exactly how to do that." (*Id*. at 108:14.)

II. Argument

A court must grant a judgment as a matter of law must where "'a reasonable jury would not have a legally sufficient evidentiary basis to find for the [non-moving] party on that issue.'" *Mirror Worlds, LLC v. Apple, Inc.*, 784 F. Supp. 2d 703, 710 (E.D. Tex. 2011) (quoting Fed. R. Civ. P. 50(a)), *aff'd*, 692 F.3d 1351 (Fed. Cir. 2012). "A court should render judgment as a matter of law when a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for the party on that issue." *Reeves v. Sanderson Plumbing Prods., Inc*., 530 U.S. 133, 149 (2000); *see also*, Fed. R. Civ. P. 50(a) and (b). Wi-LAN bears the burden of proof as to the amount of damages. *Lucent Tech., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1324, 1335 (Fed. Cir. 2009); *see also Transclean v. Bridgewood Servs., Inc.*, 290 F.3d 1364, 1370 (Fed. Cir. 2002). Damages cannot stand if they are supported only by "speculation or guesswork." *Lucent,* 580 F.3d at 1335; *see also Integra Lifesciences I, Ltd. v. Merck KgaA*, 331 F.3d 860, 872 (Fed. Cir. 2003), *vacated other grounds* 545 U.S. 193 (2005). Nor can damages be based on expert testimony that is economically unsound or that does not pass the *Daubert* test for reliability. *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1315–

18 (Fed. Cir. 2011); *LaserDynamics, inc. v. Quanta Computer, Inc.*, 694 F.3d 51, 67 (Fed. Cir. 2012); *Riles v. Shell Exploration & Prod. Co.*, 298 F.3d 1302, 1311–13 (Fed. Cir. 2002). As set forth below, Wi-LAN's damages evidence failed to support—as a matter of law—the reasonable royalty it requests that the jury award, because it is not based on sufficiently reliable "economic and factual predicates." *LaserDynamics*, 694 F.3d at 67 (quoting *Riles*, 298 F.3d at 1311).

The only evidence presented to the jury regarding the value of the patents-in-suit relative the value of its worldwide patent portfolio is Mr. Jarosz's testimony that he does not how to arrive at such a value. Mr. Jarosz attempted to overcome this failure of proof with testimony that he provided inputs that would allow the jury to arrive the value on its own. (Tr. at 148:22–25.) But Mr. Jarosz—an expert on complex patent valuation issues—clearly has the same inputs. If he does not know how to value the patents, there is no way the jury could do so.

In addition, Wi-LAN's evidence of the total, unapportioned value of Wi-LAN's patents is fatally flawed because it improperly relies on Mr. Jarosz's analysis of prior licenses without evidence that those licenses are comparable to a license to the patents-in-suit.

CONCLUSION

Accordingly, Wi-LAN failed to put on a necessary element of its damages claim and Defendants are entitled to judgment that Wi-LAN is entitled to no relief.

Dated: July 10, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on all counsel of record on July 10, 2013, by electronic mail.

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