

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

CAROLYN W. HAFEMAN, an Individual

Plaintiff,

v.

LG ELECTRONICS INC.,

Defendant.

CIVIL ACTION NO.:
6:21-cv-00696-ADA-DTG

DEMAND FOR JURY TRIAL

PUBLIC VERSION

**DEFENDANT LG ELECTRONICS INC.'S OPPOSITION TO PLAINTIFF
CAROLYN W. HAFEMAN'S MOTION FOR A NEW TRIAL AND
PARTIAL JUDGMENT AS A MATTER OF LAW**

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I. INTRODUCTION

The jury unanimously found no infringement and all of the Asserted Claims invalid based on substantial evidence. The jury relied on LG's ample evidence that (i) Plaintiff's claims were invalid as anticipated by the BlackBerry system and obvious in light of the Windows 2000 system combined with European Patent Application Publication 0 687 968 A2 ("Cohen"); and (ii) the Accused Products simply did not infringe the Asserted Claims.

Plaintiff's kitchen-sink Motion now seeks to have the jury's carefully considered verdict thrown out based on a litany of untimely and meritless arguments. Her Motion is replete with evidentiary objections and legal theories that she failed to raise at trial or in her pre-verdict motion for judgment as a matter of law (JMOL). Even aside from these many procedural defects, however, Plaintiff's arguments fail. **First**, Plaintiff is not entitled to a new trial based on one sentence of testimony from LG's damages expert, which merely repeated information that many witnesses—including Plaintiff herself—had already discussed. **Second**, LG honored its *Sotera* stipulation regarding the pending *inter partes review* (IPR) proceedings challenging the Asserted Claims. **Third**, this Court correctly excluded evidence of [REDACTED], and regardless, Plaintiff suffered no prejudice because the jury well understood that Plaintiff believed [REDACTED]. **Fourth**, there was more than sufficient evidence to support the jury's verdict. Plaintiff's Motion should be denied.

II. LEGAL STANDARD

New Trial. "A trial court should not grant a new trial on evidentiary grounds unless the verdict is against the great weight of the evidence." *Pryor v. Trane Co.*, 138 F.3d 1024, 1026 (5th Cir. 1998). "[M]ere conflicting evidence or evidence that would support a different conclusion cannot serve as the basis for a new trial." *VLSI Tech. LLC v. Intel Corp.*, No. 6:21-CV-57-ADA,

Dkt. No. 638 at 2 (W.D. Tex. Aug. 9, 2021). “Indeed, unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is grounds for granting a new trial” *Id.* (quoting Fed. R. Civ. P. 61).

Judgment as a Matter of Law. Under Fed. R. Civ. P. 50(a)(1), a court may grant JMOL only if “the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue.” “A post-judgment motion for judgment as a matter of law should only be granted when the facts and inferences point so strongly in favor of the movant that a rational jury could not reach a contrary verdict.” *Thomas v. Hughes*, 27 F.4th 995, 1008 (5th Cir. 2022). In deciding a renewed motion for JMOL, “a court must . . . draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence.” *SMI Owen Steel Co. v. Marsh USA, Inc.*, 520 F.3d 432, 437 (5th Cir. 2008).¹

III. ARGUMENT

A. Ms. Kindler’s Statement Was Harmless And Does Not Warrant A New Trial

LG’s damages expert Lauren Kindler’s testimony that “none of Plaintiff’s activities resulted in any takers of a license or offers to purchase the patents that were accepted” could not have caused Plaintiff prejudice because the statement’s contents had been disclosed in testimony by earlier witnesses, including Plaintiff herself, as detailed below.

“No prejudice can result from . . . that which is already known.” *United States ex rel. Stahl v. Henderson*, 472 F.2d 556, 557 (5th Cir. 1972); *see also Morin v. Thaler*, 374 F. App’x 545, 555 (5th Cir. 2010) (“no prejudice when” evidence wrongly “admitted is merely cumulative of evidence that was properly admitted”); *ATD Combusters, LLC v. Ameritube, LLC*, No. 6:18-cv-00077-ADA-JCM, 2019 WL 7759503, at *5 (W.D. Tex. Oct. 10, 2019) (an “error is harmless

¹ Unless otherwise noted, any emphasis added and internal quotation marks and citations omitted.

when there is cumulative evidence on the same issues”).

Before Ms. Kindler testified, at least four witnesses had already told the jury about Plaintiff’s extensive and unsuccessful efforts to sell or license her patent portfolio, including that Plaintiff had received and rejected at least one offer. **First**, Plaintiff testified that she hired three separate brokers, Tr. 187:2-17, 252:6-9, and introduced emails from her broker offering her patents for sale. PX 23 (“Patent Portfolio for Sale”); Tr. 230:11-12 (“Not only have we received an offer on this portfolio which the seller is currently reviewing” (read from PX 23 without objection)); *see also* PX 21; PX 24; PX 25; PX 32; PX 125. She testified similar emails were sent to “over 500” “individuals in industry,” Tr. 226:8-14, and informed the jury that her multi-year efforts were unsuccessful, Tr. 188:12-22.² **Second**, in deposition testimony designated by Plaintiff, Plaintiff’s broker confirmed Plaintiff had received at least one offer that she rejected. Tr. 250:14-251:4; Ex. 1 at 1, 3. **Third**, Plaintiff’s damages expert confirmed that Plaintiff had been unable to sell her patents despite years of trying. Tr. 585:24-586:17. **Fourth**, prior to the objected to statement, Ms. Kindler testified *without objection from Plaintiff’s counsel* that Plaintiff spent “roughly a ten year period” trying to monetize her patents “and all of those attempts ultimately resulted in no licenses and no sales of her patents.” Tr. 982:2-8.³

Ignoring this record, Plaintiff asserts prejudice on the theory that Ms. Kindler’s statement sent a “clear” message that “the market thought [Plaintiff’s] patents were worthless.” Dkt. 261 at 7. But Ms. Kindler’s statement was limited to the undisputed factual circumstances surrounding

² Indeed, when Ms. Kindler made the statement prompting Plaintiff to object, Ms. Kindler was discussing one of Plaintiff’s exhibits (PX 48), which was a communication listing all the companies Plaintiff believed were targets for patent licenses. Tr. 982:14-983:1; *see also* Tr. 131:11-13; 132:18-133:2; 136:23-137:2; 248:9-20.

³ As this shows, Plaintiff’s counsel incorrectly stated that no prior testimony had “go[ne] into whether there were any offers to purchase or license Ms. Hafeman’s patents.” Tr. 985:25-986:3.

Plaintiff's efforts to monetize her patents. And, in any event, Plaintiff herself sent the same message long before Ms. Kindler took the stand by testifying that Plaintiff had spent more than "four-and-a-half *years*" unsuccessfully trying to market her patents. Tr. 188:12-22; 226:8-14.

Hollybrook Cottonseed Processing, L.L.C. v. American Guarantee & Liability Insurance Co., 772 F.3d 1031 (5th Cir. 2014), is irrelevant to this case. There, a witness testified to a settlement offer's amount, the verdict was "exactly \$1 million more than the settlement offer," and there was otherwise "no discernible basis for the jury's award apparent from the evidence." *Id.* at 1034. Here, by contrast, no testimony about the value of any offer came in, and the jury never reached damages because it found for LG on the unrelated issues of infringement and invalidity.⁴

Plaintiff's argument is all the more misguided because [REDACTED].⁵ Plaintiff's motion-*in-limine* requested exclusion of details regarding certain unconsummated offers because those offers "would not be 'probative of *the value* of the Asserted Patents.'" Dkt. 158 at 3. Thus, the order precluded testimony about *the value* of certain offers to avoid the jury using those offers for any damages calculation, but did not preclude the *mere* fact that Plaintiff received one or more offers. *See id.* at 2-3. As shown above, Plaintiff's own evidence proves that she did not seek to preclude such information.

Finally, Plaintiff received the exact remedy she requested at trial— [REDACTED]

[REDACTED] She did not request a mistrial at the time, thus waiving any such request. *Bank of the South v. Fort Lauderdale Tech. Coll., Inc.*, 425 F.2d 1374, 1374 (5th Cir. 1970).

⁴ Ms. Kindler herself stressed that, if the jury found for LG on liability, her "testimony would not really be relevant." Tr. 979:7-20.

⁵ The Court did not make a finding on the record that [REDACTED].

B. LG’s System Art Invalidity Grounds Did Not Violate The *Sotera* Stipulation

LG’s *Sotera* stipulation agrees not to raise any “ground” that was or could reasonably have been advanced in the pending IPR proceedings, and LG has honored that agreement. Dkt. 261-4; *see Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019 (P.T.A.B. Dec. 1, 2020). Plaintiff urges two separate theories of IPR estoppel as bases for a new trial. **First**, Plaintiff argues for the first time that LG was estopped from introducing any evidence of the Windows 2000 and BlackBerry systems because they are allegedly cumulative of printed references that could have been raised in the IPRs. **Second**, Plaintiff renews her pre-trial argument that LG was estopped from including the Cohen patent application in combination with the Windows 2000 system art.

Plaintiff’s first estoppel argument—that the Windows 2000 and BlackBerry system art duplicates printed publications that could have been introduced in the IPRs—is **brand new** in her post-trial motion and therefore “too late.” *Auster Oil & Gas, Inc. v. Stream*, 835 F.2d 597, 601 (5th Cir. 1988); *accord Jiaxing Super Lighting Elec. Appliance Co. v. CH Lighting Tech. Co.*, No. 6:20-CV-00018-ADA, 2023 WL 2415281, at *13 (W.D. Tex. Mar. 8, 2023). Plaintiff never once objected to these references at trial. *See* Tr. 3:24-5:4 (raising a completely different estoppel argument at trial). A new trial motion cannot “advance new theories.” *Wooten v. Relco Sys., Inc.*, No. 3:12-cv-3905-P, 2015 WL 12765415, at *1 (N.D. Tex. May 13, 2015).⁶

Enforcing Plaintiff’s waiver is particularly important given it was her evidentiary burden to prove that estoppel applies and LG would be unduly prejudiced if she is permitted to raise it for the first time in post-trial motions. *Ironburg Inventions Ltd. v. Valve Corp.*, 64 F.4th 1274, 1299

⁶ *ESW Holdings, Inc. v. Roku, Inc.*, No. 6-19-CV-00044-ADA, 2021 WL 3742201 (W.D. Tex. Aug. 24, 2021), states that no objection is necessary for a Rule 59 motion made based on the great weight of the evidence, but does not excuse the requirement to object when raising an entirely new theory of evidentiary error. *See Jiaxing*, 2023 WL 2415281, at *13.

(Fed. Cir. 2023). It is no coincidence that every case Plaintiff cites for her new estoppel argument arose in the context of summary judgment or another *pre*-trial motion. *See* Dkt. 261 at 8-9. By waiting to raise the argument until now, Plaintiff made it impossible for this Court to issue a timely ruling and for LG to structure its case accordingly.

Even putting aside Plaintiff's waiver, Plaintiff is wrong on the merits. Regarding the Windows 2000 and BlackBerry systems, Plaintiff admits that system art is generally allowed by a *Sotera* stipulation, but argues this case fits a narrow exception where system art is entirely cumulative of a publication reasonably available in the IPR. *See, e.g., Wasica Fin. GmbH v. Schrader Int'l, Inc.*, 432 F. Supp. 3d 448, 453-455 (D. Del. 2020). Every relevant limitation must be disclosed in the relevant publications for estoppel to apply. *Avanos Med. Sales, LLC v. Medtronic Sofamor Danek USA, Inc.*, No. 2:19-cv-02754-JPM, 2021 WL 8693677, at *2 (W.D. Tenn. Oct. 8, 2021). Plaintiff has not met her burden of proving that is the case. *Ironburg*, 64 F.4th at 1299. On the contrary, for both Windows 2000 and BlackBerry, LG relied on physical devices and other non-printed evidence such as witness testimony to establish critical limitations.⁷

As to Windows 2000, LG did not offer any printed document into evidence. Instead, LG presented Eric Flo's fact testimony, Dr. Chatterjee's video demonstration of that actual Windows 2000 system in operation (DX 477-L), and the actual Windows 2000 software (DX 454, DX 456, DX 457, DX 459). *See infra* pp. 16-17. Plaintiff does not argue these sources could have been used in the IPRs. *See* Dkt. 261 at 8-9. And the screenshots from the Windows 2000 Server Resource Kit publication in Dr. Chatterjee's demonstrative at most illustrated that the Windows 2000

⁷ Plaintiff's estoppel arguments also fail because, as LG explained at summary judgment, a "ground" refers to the "specific prior art references (or combinations thereof)" that are or could be asserted in the IPR, so system art can never be estopped as it cannot be asserted in an IPR. *Willis Elec. Co., Ltd. v. Polygroup Macau Ltd. (BVI)*, No. 15-cv-3443, 2023 WL 112733, at *19 (D. Minn. Jan. 5, 2023).

functionality at issue could be used for security. *See* Tr. 763:4-23. Plaintiff does not argue this document discloses all relevant limitations and thus fails to prove estoppel applies. *See* Dkt. 261 at 9; *see also* Tr. 1003-1008 (Plaintiff’s counsel arguing other Windows 2000 documents do not disclose various limitations).

For BlackBerry, LG relied on the physical, and functional, handheld device to establish certain claim limitations not otherwise established from the associated manuals. *See* Tr. 699:15-20 (entering device into evidence).⁸ Most significantly, but without limitation, Dr. Chatterjee demonstrated using the device that the lock screen containing user information appeared “without user assistance.” *See* Tr. 843:9-19. Plaintiff disputed that element, using the *same* device to show the screen partly obscured in certain circumstances. *See* Tr. 809:22-811:3. The jury had to resolve that factual dispute as to the device’s operation. *See* Tr. 1117:13-16 (Plaintiff’s counsel acknowledging Dr. Chatterjee “relies on the BlackBerry device” to “satisfy the no user assistance [limitation]”). Dr. Chatterjee also used the BlackBerry device to show certain claimed structural elements, Tr. 718:9-17, and the display of return information, Tr. 718:20-719:10. Because the BlackBerry manuals did not “adequately describe” all “the relevant claim limitations,” LG was not estopped from relying on the BlackBerry system even under Plaintiff’s erroneous theory of estoppel. *Avanos*, 2021 WL 8693677, at *2. And, even assuming the BlackBerry publications disclosed all relevant limitations, at most they could have supported an *obviousness* ground for invalidity in the IPRs because the multiple publications would not constitute a “single” reference required to show *anticipation*, the ground presented at trial. *See In re Koninklijke Philips Pat. Litig.*, No. 18-cv-01885, 2020 WL 7392868, at *27 (N.D. Cal. Apr. 13, 2020).

⁸ As Dr. Chatterjee explained, LG was not able to fully demonstrate the BlackBerry system because BlackBerry has decommissioned the necessary server. Tr. 819:2-7.

Moreover, regarding BlackBerry, Plaintiff has not even attempted to carry her burden to show that the BlackBerry documentation was known or could have been located by “an ordinarily skilled searcher acting with merely reasonable diligence,” rather than through “extraordinary measures” *before* the filing of the IPRs. *Ironburg*, 64 F.4th at 1298-99. The Federal Circuit has rejected the suggestion that merely having found the references is dispositive. *See id.* at 1299. For instance, Plaintiff failed to show or even argue that the BlackBerry Enterprise Server manual, DX 44, one of the BlackBerry documents LG introduced, could be located without “extraordinary measures” given it is from 2002 and accompanied back-end administration software not marketed to the public at large. *See* DX 44 at 1-2. Additionally, even if the Court found the BlackBerry manuals were reasonably available and disclosed all relevant limitations, Plaintiff cannot show prejudice because the jury can be presumed to have relied on the independent system art regarding Windows 2000. *i4i Ltd. P’ship v. Microsoft Corp.*, 598 F.3d 831, 849 (Fed. Cir. 2010).

This Court has already correctly rejected Plaintiff’s second estoppel argument. Tr. 9:4-10:9. Plaintiff contends that a printed reference available in an IPR—here, Cohen (DX 83)—can never be raised in a subsequent trial, even combined with system art that could not be raised in an IPR. Even cases Plaintiff has relied upon have rejected that extreme estoppel theory. *See, e.g., Boston Sci. Corp. v. Cook Grp. Inc.*, No. 1:17-cv-03448-JRS-MJD, 2023 WL 1452172, at *31 (S.D. Ind. Jan. 31, 2023); *see also* Dkt. 203, at 2-3 (relying on *Boston Scientific* at Plaintiff’s urging).⁹ Estoppel “does not apply” to a “systems combination” including a printed publication.

⁹ Plaintiff’s contrary authorities are not persuasive and are against the great weight of authority, including authority on which Plaintiff previously relied. *See, e.g.,* Dkt. 136 at 9. *Singular Computing LLC v. Google LLC* offers no reasoning and cites no authority for its offhand conclusion, in a single sentence, that combinations of system art and printed publications are impermissible. No. 19-12551-FDS, 2023 WL 2839282, at *7 (D. Mass. Apr. 6, 2023). And *Biscotti Inc. v. Microsoft Corp.* did not consider whether system art could be offered in combination with

Gen. Access Sols., Ltd. v. Sprint Spectrum LLC, No. 2:20-CV-00007-RWS, 2021 WL 5154085, at *4 (E.D. Tex. July 21, 2021). Here, Cohen was offered *only* in combination with Windows 2000 system art that could not have been raised in the IPRs, and thus was not subject to estoppel. Plaintiff also cannot establish that LG’s reliance on Cohen resulted in prejudice sufficient to warrant a new trial. Cohen merely showed that customers might want devices to display personal information. *See* Tr. 744:1-8. The jury could have reached that conclusion from Plaintiff’s own testimony. *See, e.g.,* Tr. 67:9-70:3.

C. The Exclusion of [REDACTED] Does Not Warrant A New Trial

Plaintiff characterizes evidence of [REDACTED] as showing “extreme bias of three testifying witnesses,” and argues prejudicial error in excluding evidence of “employment by someone with such a *direct* interest in the outcome of the case.” Dkt 261 at 11. However, unlike in Plaintiff’s cited case, the Google and Microsoft *fact* witnesses did *not* offer testimony on claim interpretation or provide any infringement or invalidity analysis. *Compare* Tr. 605:23-606:1, 845:16-21, 882:23-883:22, 909:15-23, *with Thurber Corp. v. Fairchild Motor Corp.*, 269 F.2d 841, 843-45 (5th Cir. 1959) (witnesses were experts and offered testimony including “the interpretation and meaning of the patent claims, and . . . general conclusions that there was no equivalence between [the plaintiff’s and the defendant’s] devices.”). In fact, none had *ever* viewed the Asserted Patents, and Plaintiff has not shown that the witnesses knew about [REDACTED]. Tr. 606:19-21, 640:10-642:13, 643:8-12, 863:22-864:1. Further,

printed publications. *See* Report & Rec., *Biscotti Inc. v. Microsoft Corp.*, No. 2:13-cv-1015, Dkt. 191 at 8-15 (E.D. Tex. May 11, 2017).

singular argument articulated in her pre-verdict Rule 50(a) motion, which objected exclusively to Dr. Black’s supposed failure to walk through each claim element-by-element for all claims except claim 1 of the ’287 patent. Tr. 1057:25-1058:12. Thus, Plaintiff has waived all of her arguments for JMOL here, which bear no resemblance to the motion she made during trial, and she previously gave up any argument as to claim 1 of the ’287 patent. *See* Dkt. 261 at 13, 15; *see also Jiaxing*, 2023 WL 2415281, at *13 (party “forfeited all other damages grounds for JMOL[]” when pre-verdict motion raised only one argument).

2. Even if not waived, there are sufficient evidentiary bases for the jury’s non-infringement findings.

The Asserted Claims generally require the capacity to remotely “initiat[e]” or “chang[e]” return information that appears on a device “without user assistance.” *See, e.g.,* ’297 patent 17:22-24. Plaintiff is not entitled to JMOL regarding any of these limitations.

- a. LG’s non-infringement argument based on the term “initiating” was proper and supported by expert testimony.

For the first time *ever*, Plaintiff alleges Dr. Black’s testimony on “initiating” was “improper claim construction.” Dkt. 261 at 16-18. As an initial matter, Plaintiff waived any objection to Dr. Black’s testimony by failing to object at trial, which alone requires denial of JMOL. *See SSL Servs., LLC v. Citrix Sys.*, 940 F. Supp. 2d 480, 492 (E.D. Tex. 2013); *see also Nissho-Iwai Co., Ltd. v. Occidental Crude Sales, Inc.*, 848 F.2d 613, 619 (5th Cir. 1988).

Even absent waiver, Plaintiff’s argument fails because Dr. Black offered his opinion that LG had not infringed the “initiating” limitations given their plain and ordinary meaning to a POSITA. Tr. 923:18-925:15. It is well-established that “[f]or terms that are given their plain and ordinary meaning, the jury is free to apply an expert’s description of the claims if it is consistent with the jury’s understanding.” *Hitachi Consumer Elecs. Co. v. Top Victory Elecs. Taiwan Co.*,

No. 2:10-CV-260-JRG, 2013 WL 5273326, at *10 (E.D. Tex. Sep. 18, 2013). The law permits experts like Dr. Black to educate the jury about the contents of the Asserted Patents, including the embodiments of the alleged invention. *See, e.g., SSL*, 940 F. Supp. 2d at 492 (denying JMOL where expert discussed a “preferred embodiment” in the specification to “educate the jury” but explained non-infringement by “analyzing the claims and not the preferred embodiments”); *Saffran v. Boston Sci. Corp.*, No. 2-05-CV-547-TJW, 2008 U.S. WL 2716318, at *11-12 (E.D. Tex. July 9, 2008). Indeed, an expert is *expected* to explain how the accused products do or do not meet the plain and ordinary meaning of claim terms. *See, e.g., Metaswitch Networks Ltd. v. Genband US LLC*, No. 2:14-CV-00744-JRG, 2017 WL 3704760, at *4 (E.D. Tex. Aug. 28, 2017). Not surprisingly, Plaintiff’s infringement expert, Dr. Schaefer, performed a similar analysis of the claims’ plain and ordinary meaning during his testimony. *See, e.g., Tr.* 313:9-23.

Plaintiff’s allegation that Dr. Black improperly imported limitations from the specification is mistaken. There is nothing improper about an expert referring to the specification when discussing claim language, so long as the expert grounds his opinion in the claim language and does not attempt to “limit [a] term to” a meaning *only* “found in the specification.” *Riverwood Int’l Corp. v. R.A. Jones & Co., Inc.*, 324 F.3d 1346, 1358 (Fed. Cir. 2003). Dr. Black’s discussion of the Asserted Patents was “simply an explanation, not a part of his opinion as to why there was no infringement.” *Verizon Servs. Corp. v. Cox Fibernet Va., Inc.*, 602 F.3d 1325, 1341 (Fed. Cir. 2010). Specifically, Dr. Black explained the Asserted Patents’ content to the jury. *Tr.* 925:16-927:21. At the end of this exchange, however, Dr. Black turned to the Asserted Claims to explain how the “remote initiating or changing element appears *in the claims*” by opining on what the claims required, which was consistent with—but by no means dictated by—the patents’ specification. *Tr.* 927:22-928:10. Dr. Black then described how the Accused Products worked,

offering his opinion that the products “work in a different way”—that is, in a different way from *the claims* just discussed. Tr. 928:11-929:2. Dr. Black confirmed this during cross-examination, where Plaintiff chose to challenge his opinions rather than object to them. Dr. Black testified that he “might look to the specification” to determine how to “apply the plain and ordinary meaning” because claims must be “read in light of the specification,” but he otherwise agreed with Plaintiff’s counsel that “the best source of determining what is required in a claim and what isn’t is the claim language itself.” Tr. 949:2-15; *see also* Tr. 949:16-957:18 (Dr. Black opining based on claim language on cross-examination).¹² The jury weighed Dr. Black’s and Dr. Schaefer’s credibility to reach its verdict, and Plaintiff’s arguments for JMOL do not justify departing from that verdict.¹³

- b. LG successfully rebutted Plaintiff’s argument that the Accused Products remotely changed return information.

There was ample evidence for the jury to find that Plaintiff did not meet her burden to show the Accused Products met the “changing” limitation. It is undisputed that the change must occur “through an interactive program stored in the memory of the computer” remotely accessed only by the owner or authorized party. *See, e.g.*, Tr. 333:20-334:13. Plaintiff ignores Dr. Black’s testimony explaining that the Android Find My Device module, identified by Plaintiff’s infringement expert as the interactive program, is not remotely accessed by the owner or authorized

¹² Dr. Black’s focus on the claim language distinguishes his testimony from the opinions excluded in Plaintiff’s cited cases. *See Network-1 Techs., Inc. v. Alcatel-Lucent USA, Inc.*, No. 6:11-cv-492-RWS-KNM, 2017 WL 4020589, at *4 (E.D. Tex. Sept. 12, 2017) (excluding on *Daubert* expert non-infringement opinion focusing on preferred embodiment); *EMC Corp. v. Pure Storage, Inc.*, No. 13-1985-RGA, 2016 WL 775742, at *4 (D. Del. Feb. 25, 2016) (experts “not precluded from making any reference . . . to patent specifications”).

¹³ Plaintiff misrepresents the argument LG made in its Opening Statement. Dkt. 261 at 14 n.7. LG’s counsel used the slide to preview its argument that the Accused Products do not infringe because the information that is to be displayed upon initiating or changing is not stored in the memory of the products prior to the signal to initiate or change that information. Tr. 52:20-54:1. LG presented evidence of this at trial through Dr. Black, Mr. Andersen, and Mr. Dinu. *See* Tr. 877:8-12, 887:15-889:19, 925:3-929:3.

party as all claims require. Tr. 930:18-931:17. Mr. Andersen’s testimony similarly established that Windows products use a cloud-based program that does not reside on the device. Tr. 886:7-890:20.

Plaintiff argued that the accused Windows devices could remotely change return information using back to back messages, but Mr. Andersen and Dr. Black testified unequivocally the display would be changed to show the second (i.e., changed) message *only* if the user took some action, such as powering down and re-starting the computer or plugging in and re-starting the computer after power loss. Tr. 888:23-889:18; 912:4-19, 913:11-16, 929:3-930:16, 960:4-12. While Plaintiff now provides attorney argument that *turning on* the computer is not user assistance, the record contains *no* evidence as to whether *turning off* or *plugging in* the computer are user assistance. Thus, the jury could reasonably determine that Plaintiff had not met her burden. *See* Tr. 961:14-962:3 (Plaintiff’s counsel stating this was for jury to decide). Accordingly, legally sufficient evidence supports a jury finding that the remotely changing limitations were not met.

- c. A reasonable jury could have found that LG’s allegedly infringing activities did not occur within the United States.

There was a legally sufficient evidentiary basis for a reasonable jury to find no allegedly infringing activities by LG (a Korean company) occurred *within* the United States. *See MEMC Elec. Materials, Inc. v. Mitsubishi Materials Silicon Corp.*, 420 F.3d 1369, 1375 (Fed. Cir. 2005); 35 U.S.C. §271(a). Mr. Lee testified that LG did not make, sell, or offer to sell within, or import into, the United States any of the Accused Products. Tr. 489:2-19. Plaintiff’s evidence and cases do not compel an alternate conclusion. *See* PX 30 (specifying [REDACTED]); [REDACTED]; PX 31 (same); *Nuance Commc’ns, Inc. v. Abby Software House*, 626 F.3d 1222, 1231-33 (Fed. Cir. 2010) (addressing personal jurisdiction and related discovery, not liability), *Litecubes, LLC v. N. Light Prods., Inc.*, 523 F.3d 1353, 1370-71 (Fed. Cir. 2008) (holding evidence of a foreign defendant selling to customers in the United States “*could* be construed by a reasonable

jury to constitute a sale . . . in the United States,” but not precluding an opposite finding.). Plaintiff also fails to establish that LG had the requisite control over its U.S. subsidiary to rely on traditional agency principles. *See In re Google LLC*, 949 F.3d 1338, 1345 (Fed. Cir. 2020). LG cannot be held liable for a U.S. entity’s acts simply because LG is the parent company. *United States v. Bestfoods*, 524 U.S. 51, 61 (1998); *see also Smith v. Garlock Equip. Co.*, 658 F. App’x 1017, 1027 (Fed. Cir. 2016) (evidence showing separately incorporated companies sold infringing devices could not support verdict that defendant had infringed).¹⁴

E. Plaintiff Is Not Entitled To JMOL On Invalidity

1. Plaintiff cannot seek JMOL on invalidity because she moved for JMOL only as to anticipation, not obviousness.

Because Plaintiff failed to make a pre-verdict motion on obviousness, she is not entitled to seek JMOL on that basis. *Duro-Last*, 321 F.3d at 1108; *accord Jiaxing*, 2023 WL 2415281, at *3; *see also Medisim Ltd. v. BestMed, LLC*, 758 F.3d 1352, 1357 (Fed. Cir. 2014) (it is insufficient to merely oppose another party’s Rule 50 motion). Plaintiff’s failure to move for JMOL on obviousness dooms her request for JMOL on *invalidity* generally. A verdict encompassing multiple legal theories must be upheld “if there was sufficient evidence to support *any* of the . . . alternative factual theories[.]” *i4i*, 598 F.3d at 849. Even if the evidence is insufficient for one theory, the Court must “assume the jury considered all the evidence and relied upon [the] factual theory for which the burden of proof was satisfied.” *Id.*¹⁵

Here, with Plaintiff’s agreement, the jury was asked a single question on “invalidity”

¹⁴ Plaintiff is also wrong regarding indirect infringement. The only evidence of LG’s purported knowledge (receipt of Tangible IP emails) was rebutted. Tr. 418:9-421:4, 499:11-15, 501:2-7; *see also* Tr. 498:14-499:10, 500:14-501:1 (discussing email disclaimer). Thus, substantial evidence supports a jury finding that LG did not have the requisite knowledge for indirect infringement.

¹⁵ Plaintiff must win on both obviousness and anticipation to reverse the jury’s invalidity verdict.

encompassing both anticipation and obviousness. Dkt. 248 at 6. The jury was separately instructed on obviousness. Plaintiff did *not* raise any *legal* challenge to that instruction—on the contrary, *LG* agreed to use Plaintiff’s version. *See* Dkt. 188-5 at 38-41; Dkt. 239 at 25-26; Tr. 1059:13-21. Even now, Plaintiff purports to challenge only the sufficiency of the evidence to support an obviousness finding. Dkt. 261 at 16-18. Her failure to make such a motion before the verdict is fatal.

2. Substantial evidence supports the jury’s invalidity verdict.
 - a. LG presented sufficient evidence to support the jury’s finding that Windows 2000 in combination with Cohen rendered the Asserted Claims obvious.

Substantial evidence supports that the Windows 2000 combination invalidates the Asserted Claims. Relying on Windows 2000’s group policy functions, Dr. Chatterjee testified that the Windows 2000 combination could remotely initiate or change return information without any user assistance. Tr. 752:6-20; *see also id.* 746:3-9. Mr. Flo confirmed that “one of the security measures that [Microsoft] did for [Windows 2000] Group Policy was that users could not prevent [group] policy from being applied to their clients.” Tr. 631:18-632:6. Plaintiff’s main argument—that Dr. Chatterjee’s video showed assistance by the user via logging into the computer—is irrelevant because *both* Dr. Chatterjee and Mr. Flo testified that a user does not *need* to be logged onto the computer to cause the group policy to update and result in the display of the return information when the computer boots up. Tr. 632:16-24, 813:4-10, 815:13-18, 829:17-18, 842:22-843:4.¹⁶

Plaintiff attacks the credibility of Dr. Chatterjee’s live video (DX 477-L) but did not offer any competing demonstration. Far from being misleading, Dr. Chatterjee carefully explained the

¹⁶ Plaintiff’s reliance on Dr. Schaefer’s testimony related to the Wi-Fi connection is also irrelevant because Windows 2000 also worked on a wired connection. Tr. 618:10-23. Nonetheless, Mr. Flo confirmed that Windows 2000 could still perform the claimed initiating or changing without user assistance even with a Wi-Fi connection. Tr. 666:21-667:6; *see also id.* 1025:22-1026:14 (Dr. Schaefer agreeing with Mr. Flo’s testimony).

video, including that he sped up portions (such as when the computer was rebooting) because of the equipment's age. Tr. 751:22-752:2, 799:11-17. Further, Plaintiff's counsel elicited that Dr. Chatterjee had created multiple videos not presented to the jury and that his assistant had connected the laptop to the Ethernet and logged into Windows. Tr. 825:5-827:2, 828:20-829:7; *see also* Tr. 1120:9-14. Thus, the jury had sufficient information to assess the video's credibility.

Likewise, both parties presented competing evidence on whether the Windows 2000 combination "maintained" the return information as certain claims required. Dr. Chatterjee testified that the Windows 2000 combination met this limitation because the information displays prior to the lock screen, Tr. 757:3-9, and Mr. Flo testified that while the information "goes away after two minutes," the system "will return the user back to the welcome screen where" pressing "control-alt-delete" will cause the information to reappear, Tr. 659:23-660:3-5.¹⁷ The jury weighed all this and found that Windows 2000 disclosed this limitation.

- b. LG presented sufficient evidence to support the jury's verdict that the BlackBerry system anticipated the Asserted Claims.

Plaintiff's allegations also do not support a finding of JMOL that the Asserted Claims are not anticipated by the BlackBerry system. Although Plaintiff argues that there was no fully operable BlackBerry system, "[t]hat the offered product is in fact the claimed invention may be established by *any* relevant evidence," including documentation and "testimony of witnesses." *Sonoscan, Inc. v. Sonotek, Inc.*, 936 F.2d 1261, 1263 (Fed. Cir. 1991); *see also Fujifilm Corp. v. Motorola Mobility LLC*, 182 F. Supp. 3d 1014, 1028-29 (N.D. Cal. 2016) (finding expert testimony regarding functionality of device based on review of manuals without admission of device

¹⁷ The "maintained" limitation does not prohibit user assistance, so pressing ctrl+alt+delete can satisfy that limitation. *See, e.g.*, '122 patent 16:52-62, 17:23-30, 18:19-27. Further, Mr. Flo testified that the administrator could disable the ctrl+alt+delete screen, causing the computer to display the return information instead. Tr. 632:7-11; *see also* Tr. 756:11-18.

sufficient for jury to infer the relevant characteristic). Thus, it was proper for the jury to rely upon Dr. Chatterjee’s testimony, the authenticated BlackBerry user guides (DX 44, DX 137, and DX 182)¹⁸, and the client-side device and photos (DX 469, DX 469A) to support its conclusion that the BlackBerry system anticipated the Asserted Claims.¹⁹

Finnigan Corp. v. ITC, 180 F.3d 1354 (Fed. Cir. 1999), cited by Plaintiff, is inapposite. In *Finnigan*, the Court was determining whether the respondent had proven that an alleged prior art device was publicly used before the priority date based solely on the inventor’s uncorroborated testimony. *Id.* at 1366-70. The Court disagreed that an article authored by the inventor corroborated the testimony, finding it “ambiguous.” *Id.* Here, Dr. Chatterjee’s testimony was corroborated by the physical handheld device and authenticated user guides admitted into evidence.

Plaintiff’s argument that LG failed to show that the BlackBerry system displayed return information that was “visible to anyone viewing the display screen” is misleading. Plaintiff again cherry picks *her* best evidence without acknowledging LG’s competing evidence. Plaintiff includes an image from page 5 of DX 469-A. Dkt. 261 at 18. However, as Dr. Chatterjee testified, the previous page shows the return information fully visible when the device is locked *without* the user pressing any buttons. Tr. 823:22-824:8, and this was demonstrated during Dr. Chatterjee’s examination, Tr. 843:12-19. The record further supports that page 6 shows that if a user presses the power button, the device prompts the user for a password and the return information is again fully visible, Tr. 824:12-22. *See also* Tr. 720:8-12. That the return information was locally input

¹⁸ Plaintiff’s attacks on the BlackBerry user guides are both untimely and unfounded. Plaintiff did not object to their admission, likely because LG produced custodial declarations authenticating these documents. Tr. 705:6-706:5, 707:7-21, 714:18-715:5; Ex. 2 ¶ 7, LG_00096193-501 (Ex. 3), LG_00096994-7211 (Ex. 4), Ex. 5 at LG_00097561-63 (Ex. 6)

¹⁹ Plaintiff also ignores that the physical BlackBerry handheld device was admitted into evidence and used by both parties during trial. Tr. 697:25-698:8, 699:15-20, 702:2-6, 717:13-23, 718:11-719:7, 809:22-811:3, 843:19, 1117:13; DX 469.

into the BlackBerry device also is not dispositive. Dr. Chatterjee extensively testified that the BlackBerry system remotely initiated or changed the return information. *See, e.g.*, Tr. 721:16-729:24, 736:19-738:12, 739:18-740:6.

Similarly, Plaintiff ignores the full scope of the evidence supporting that the BlackBerry system met limitations requiring return information to display “without assistance.” Dr. Chatterjee provided *two distinct ways* the BlackBerry system met those limitations: 1) the “Set Owner Info” functionality; and 2) the “Set Password and Lock” functionality. Plaintiff does not and did not address *the first way*: that the BlackBerry system provided IT administrators (*e.g.*, owners) with the ability to remotely set owner information (*e.g.*, a phone number) that would display when the device was locked (as shown in DX 469-A at 4) without requiring setting a new password by using the “Set Owner Info”²⁰ functionality. Tr. 722:5-724:17; *see also* DX 44 at 114-15. Plaintiff did not provide *any* evidence to the jury and does not dispute that this functionality met the “without assistance” limitations. *See* Tr. 1012:7-1014:4 (Dr. Schaefer’s testimony regarding BlackBerry).

LG *also* provided sufficient evidence for the jury to find *the second way* BlackBerry met the “without assistance” limitations, namely, the “Set Password and Lock” functionality. As Plaintiff acknowledges, the experts disagreed on whether the device would lock and display the return information without the user having to accept a new password prompt. Dkt. 261 at 19. Thus, the jury reviewed the evidence and found Dr. Chatterjee’s explanation was more credible.

Without explaining how the issue is relevant to her motion for JMOL, Plaintiff argues that Dr. Chatterjee’s discussion of BlackBerry’s security timeout feature was improper. But Plaintiff

²⁰ As evidenced by the image and the cited testimony, Plaintiff’s reference to the “Set Owner Info” screen is to the bottom section of the “Set Password and Lock” screen, which is independent functionality and actually *the second way* to meet the “without assistance” limitations. Tr. 721:12-722:14.

did not object to the testimony when it came in. Tr. 726:11-727:6. Later in the trial, Plaintiff stated she was not asking the Court to strike the testimony, and the Court stated that it would allow Dr. Schaefer to address this issue. Tr. 786:1-787:19; *see also* 787:8-10 (LG disputing that theory was not timely disclosed); Ex. 7 at 102 (screenshot showing security timeout feature), 154. Plaintiff ultimately presented no testimony from Dr. Schaefer on this point, meaning there are no facts in the record that could support JMOL.²¹

F. A New Trial On Infringement And Invalidity Is Not Warranted Because The Jury’s Verdict Was Not Against The Great Weight Of The Evidence

Plaintiff also requests a new trial based on the great weight of the evidence, without developing an independent argument on that front. Dkt. No. 261 at 20. But the evidence recited above strongly supports the jury’s verdict, and Plaintiff at most shows differing conclusions were possible, which does not warrant a new trial *See Dawson v. Wal-Mart Stores, Inc.*, 978 F.2d 205, 208 (5th Cir. 1992) (“Where the jury could have reached a number of different conclusions, all of which would have sufficient support based on the evidence, the jury’s findings will be upheld.”); *see also ESW Holdings*, 2021 WL 3742201, at *10 (“This Court places great esteem in the right to trial by jury as established by the Seventh Amendment and the outcomes thereby produced”).

IV. CONCLUSION

For these reasons, Plaintiff’s motion should be denied and the Court should enter judgment according to the jury’s verdict.

²¹ Plaintiff’s new argument that the security timeout feature cannot meet the “interactive program” limitation is irrelevant to her JMOL motion because she did not present it to the jury. *See Freshub, Inc. v. Amazon.com Inc.*, 576 F. Supp. 3d 458, 462 (W.D. Tex. 2021) (noting that JMOL is determined through a review of the record). Regardless, the security timeout feature does meet the “interactive program” limitation. As Dr. Chatterjee explained, the security timeout feature, which is part of a program stored on the BlackBerry device, utilizes the return information entered remotely via the Enterprise Server. Tr. 726:11-727:6.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copy of the above and foregoing document has been served on all counsel of record via electronic mail on August 31, 2023.

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