

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

CORE WIRELESS LICENSING S.A.R.L.,

*Plaintiff,*

v.

LG ELECTRONICS, INC., LG  
ELECTRONICS MOBILECOMM U.S.A.,  
INC.,

*Defendants.*

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**CIVIL ACTION NO. 2:14-CV-00911-JRG  
LEAD CASE**

**CIVIL ACTION NO. 2:14-CV-00912-JRG  
Consolidated member case**

**MEMORANDUM OPINION AND ORDER**

Before the Court are Defendants LG Electronics, Inc. and LG Electronics MobileComm U.S.A., Inc.’s (collectively, “LG” or “Defendants”) Renewed Motion for Judgment as a Matter of Law, and for a New Trial, in the -912 Case (Damages) (No. 2:14-cv-911, Dkt. No. 612) (“the 612 Motion”) and Defendants’ Renewed Motion for Judgment as a Matter of Law, and for a new Trial, in the -912 Case (Willfulness and Enhanced Damages) (No. 2:14-cv-911, Dkt. No. 614) (“the 614 Motion”) (collectively, “the Motions”). Having considered the Motions, and for the reasons set forth below, the Court finds that the 612 Motion should be **GRANTED** as to a new trial on damages and the 614 Motion should be **DENIED**. In light of the Court’s grant of the 612 Motion, Plaintiff’s motions for attorneys’ fees and supplemental damages (Dkt. Nos. 618, 619, 621) are **DENIED-WITHOUT-PREJUDICE**.

**I. BACKGROUND**

On September 26, 2014, Core Wireless Licensing S.a.r.l. (“Plaintiff” or “Core”) filed suit against LG, alleging infringement of, among others, United States Patent Nos. 6,633,536 (“the

'536 Patent”) and 7,804,850 (“the ’850 Patent”) (collectively, the “Asserted Patents”). Trial took place from September 12–16, 2016.

On November 2, 2016, the Court entered final judgment holding: (1) that LG infringed Claim 19 of the ’536 Patent and Claim 21 of the ’850 Patent; (2) that Claim 19 of the ’536 Patent and Claim 21 of the ’850 Patent were not invalid; (3) that Core be awarded \$2,280,000 in damages; (4) that LG’s infringement was willful; and (5) that Core be awarded \$456,000 as enhanced damages pursuant to LG’s willful infringement. (No. 2:14-cv-912, Dkt. No. 47 at 3.)

## II. LEGAL STANDARD

### A. Renewed Motion for Judgment as a Matter of Law

“A motion for judgment as a matter of law [under Rule 50(b)] is a challenge to the legal sufficiency of the evidence supporting the jury’s verdict.” *Erfindergemeinschaft UroPep GbR v. Eli Lilly & Co.*, 276 F. Supp. 3d 629, 643 (E.D. Tex. 2017) (“*UroPep*”) (Bryson, J., sitting by designation). Entry of judgment as a matter of law is therefore only appropriate when “there is no legally sufficient evidentiary basis for a reasonable jury to find as the jury did.” *Guile v. United States*, 422 F.3d 221, 225 (5th Cir. 2005); *see also Baisden v. I’m Ready Prods., Inc.*, 693 F.3d 491, 498 (5th Cir. 2012) (“A district court *must* deny a motion for judgment as a matter of law unless the facts and inferences point so strongly and overwhelmingly in the movant’s favor that reasonable jurors could not reach a contrary conclusion.”) (emphasis added) (internal quotation marks omitted).<sup>1</sup>

“In evaluating a motion for judgment as a matter of law, a court must ‘draw all reasonable inferences in the light most favorable to the verdict.’” *Metaswitch Networks Ltd. v. Genband US*

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<sup>1</sup> *See also Finisar Corp. v. DirectTV Group, Inc.*, 523 F.3d 1323, 1332 (Fed. Cir. 2008) (“The grant or denial of a motion for judgment as a matter of law is a procedural issue not unique to patent law, reviewed under the law of the regional circuit in which the appeal from the district court would usually lie.”).

*LLC*, No. 2:14-CV-00744-JRG, 2017 WL 3704760, at \*2 (E.D. Tex. Aug. 28, 2017) (quoting *E.E.O.C. v. Boh Bros. Const. Co., L.L.C.*, 731 F.3d 444, 451 (5th Cir. 2013)). Courts must also avoid the temptation of revisiting credibility determinations or reweighing evidence. *Id.* Such determinations are, appropriately, left to the jury. *Montano v. Orange Cty., Texas*, 842 F.3d 865, 874 (5th Cir. 2016) (“[I]t is for the jury alone to judge the credibility of witnesses and weigh the evidence.”).

### **B. Motion for New Trial**

Rule 59 provides that a new trial may be granted on all or part of the issues on which there has been a trial by jury for “any reason for which a new trial has heretofore been granted in an action at law in federal court.” Fed. R. Civ. P. 59(a). Notwithstanding the broad sweep of Rule 59, “courts do not grant new trials unless it is reasonably clear that prejudicial error has crept into the record or that substantial justice has not been done, and the burden of showing harmful error rests on the party seeking the new trial.” *Metaswitch*, No. 2:14-cv-00744-JRG, 2017 WL 3704760, at \*2; *UroPep*, 276 F. Supp. 3d at 643. “A new trial may be granted, for example, if the district court finds the verdict is against the weight of the evidence, the damages awarded are excessive, the trial was unfair, or prejudicial error was committed in its course.” *Smith v. Transworld Drilling Co.*, 773 F.2d 610, 612–13 (5th Cir. 1985); *see also Laxton v. Gap Inc.*, 333 F.3d 572, 586 (5th Cir. 2003) (“A new trial is warranted if the evidence is against the great, and not merely the greater, weight of the evidence.”).<sup>2</sup>

### **C. Willful Infringement**

Under 35 U.S.C. § 284, “the court may increase the damages up to three times the amount found or assessed.” *Polara Eng’g, Inc. v. Campbell Co.*, 894 F.3d 1339, 1353 (Fed. Cir. 2018).

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<sup>2</sup> *See also Z4 Techs., Inc. v. Microsoft Corp.*, 507 F.3d 1340, 1347 (Fed. Cir. 2007) (holding that regional circuit law controls the decision to grant a new trial under Rule 50(b) and Rule 59).

The Supreme Court describes such damages “as providing that punitive or increased damages could be recovered in a case of willful or bad-faith infringement.” *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923, 1930 (2016). Such enhanced damages “are not to be meted out in a typical infringement case, but are instead designed as a ‘punitive’ or ‘vindictive’ sanction for egregious infringement behavior”; instead, they are reserved for “[t]he sort of conduct warranting enhanced damages has been variously described in our cases as willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or—indeed—characteristic of a pirate.” *Id.* at 1932.

Willful infringement is a question of fact reviewed for substantial evidence following a jury trial. *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1341–42 (Fed. Cir. 2016). A finding of willful infringement does not require the district court to award enhanced damages. *Halo*, 136 S. Ct. at 1933. The district court thus retains “the discretion to decide whether the case is sufficiently egregious to warrant enhancing damages and to decide the amount of enhancement that is warranted (up to the statutory limit of treble damages).” *WBIP*, 829 F.3d at 1342.

### **III. DISCUSSION**

#### **A. Damages**

LG argues that Dr. Magee “failed to apportion any damages to the value of the accused features of the patents.” (Dkt. No. 612 at 5.) While Dr. Magee testified that the benefit of the ’536 Patent was increased call quality and reduced call dropping, (9/14/16 Morning Session, Dkt. No. 41 at 37:1–10), Dr. Magee also confirmed that he failed to apportion damages to any specific benefit of patent. (*Id.* at 39:2-4.) Similarly, Dr. Magee testified that the ’850 Patent provided battery life benefits, but was only one of many patents to provide such benefits and that he did not “know the percentage of the ’850 contribution to battery life compared to those [other] potential causes of battery -- better battery life.” (*Id.* at 38:18–39:1; *see also id.* at 37:11–38:17.) LG asserts that such failure to apportion violates the requirement that damages theories “reflect the value

attributable to the infringing features of the product, and no more.” (Dkt. No. 612 at 5 (quoting *CSIRO*, 809 F.3d at 1301).)

Core responds that, as a threshold matter, LG’s arguments regarding admissibility were addressed prior to trial. (Dkt. No. 628 at 9 (citing Dkt. No. 551).) Core further argues that the Federal Circuit in *CSIRO* held that “comparable evidence of offered licensing rates renders the apportionment principal ‘inapplicable’ and that such evidence does not require apportionment ‘from a royalty base at all,’” as such evidence is already built into the proper apportionment. (*Id.* (quoting *CSIRO*, 809 F.3d at 1302, 1303).) Core asserts that Dr. Magee “took great care to identify evidence of a licensing rate for *comparable technology* structured on a *per patent per unit* basis,” as well as to testify as to how the CDMA2000 patent pool presented such evidence. (*Id.* (citing Tr. 558:22–561:7, 561:9–562:13).)

Under § 284, damages awarded for patent infringement “must reflect the value attributable to the infringing features of the product, and no more.” *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1226 (Fed. Cir. 2014). “Consequently, to be admissible, all expert damages opinions must separate the value of the allegedly infringing features from the value of all other features.” *CSIRO*, 809 F.3d at 1301. However, “there may be more than one reliable method for estimating a reasonable royalty,” *Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1315 (Fed. Cir. 2014), an adaptability that is necessary due to the fact-dependence of damages models. Accordingly, “the data utilized in the [damages model] methodology [must be] sufficiently tied to the facts of the case.” *Summit 6, LLC v. Samsung Elecs. Co.*, 802 F.3d 1283, 1296 (Fed. Cir. 2015). “In practice, this means that abstract recitations of royalty stacking theory, and qualitative testimony that an invention is valuable—without being anchored to a quantitative market valuation—are insufficiently reliable.” *CSIRO*, 809 F.3d at 1302.

Both parties argue that *CSIRO* is on point. In *CSIRO*, the defendants argued that the district court had committed an error of law by not beginning its damages analysis with the smallest saleable unit. The Federal Circuit held that the smallest saleable unit was not applicable because

the district court did not apportion from a royalty base at all. Instead, the district court . . . looked to the \$1.90 per unit rate requested by *CSIRO* in its public Rate Card license offer. Because the parties' discussions centered on a license rate for the '069 patent, this starting point for the district court's analysis already built in apportionment. Put differently, the parties negotiated over the value of the asserted patent, and no more.

*Id.* at 1302–03. Going further, the Federal Circuit held that the proper methodology is to start with rates from comparable licenses *and then* “account for differences in the technologies and economic circumstances of the contracting parties.” *Id.* at 1303 (quoting *Finjan, Inc. v. Secure Computing Corp.*, 626 F.3d 1197, 1228 (Fed. Cir. 2010)) (emphasis added). Since the Rate Card at issue was already limited to the patent at issue, the Federal Circuit held that no further apportionment was required.

It is well established that even in the Standard Essential Patent (“SEP”) context, “the royalty rate for SEPs must be apportioned to the value of the patented invention.” *Ericsson*, 773 F.3d at 1232; *see also Westinghouse Elec. & Mfg. Co. v. Wagner Elec. & Mfg. Co.*, 225 U.S. 604, 617 (1912) (“[Plaintiff] was only entitled to recover such part of the commingled profits as was attributable to the use of its invention.”). However, when “dealing with SEPs, there are two special apportionment issues that arise. First, the patented feature must be apportioned from all of the unpatented features reflected in the standard. Second, the patentee’s royalty must be premised on the value of the patented feature, not any value added by the standard’s adoption of the patented technology.” *Ericsson*, 773 F.3d at 1232.

Dr. Magee’s analysis failed to reach or meet these requirements. First, Dr. Magee relied on the CDMA2000 patent pool advertisement. (9/14/16 Morning Session, Dkt. No. 41 at 30:10–13

(“This is the only advertised standard essential patent royalty rate that gives us a dollars per unit for a small number of patents, and that’s why I used this particular one to value the royalty rate.”.) On its face, reliance on an advertisement is not error on its own. Here, however, no patents were identified as part of the patent pool. As such, it would be impossible for Dr. Magee to associate the advertisement with any particular advancement in cellular technology and then determine whether the patent pool was associated with patents that were of more, less, or average value. (*Id.* at 45:2–11 (“Q. You did not identify what patents are in the [CDMA2000] pool, did you? A. I did not identify that, but rather the contributors to the pool, several large companies that contributed patents to the pool. Q. You don’t know what patents they contributed, though? A. No, sir, I don’t. Q. And you haven’t made any comparison of the value of those patents to the value of the two patents that are asserted here? A. No, sir, I haven’t.”).) While Dr. Magee asserted that the CDMA2000 patent pool advertisement set the bar as an “industry standard rate” (*Id.* at 33:19–21), he also testified that he “did not identify what patents are in the [CDMA2000] pool,” or make “any comparison of the value of those patents to the value of the [’850 and ’536 Patents].” (*Id.* at 45:3, 9–11.)

Also, Dr. Magee admits that he did not identify the specific value provided by the patents themselves. For example, Dr. Magee testified:

Q. And is it fair to say, with respect to both the ’536 and the ’850 patent, that since you don’t know what other technologies are involved in providing the benefits, that you’ve assumed -- you have not considered the contribution of those technologies in providing those benefits?

A. That’s correct.

...

Q. Okay. And you haven’t -- in forming your opinions with respect to damages, you haven’t considered the relative value of the ’850 or the ’536 patent in relation to the benefits that you’ve identified for those patents and you assume are present in the LG devices?

A. Correct. I don't know the percentage of the '850 contribution to battery life compared to those others -- other -- other potential causes of battery -- better battery life.

Q. And the same is true with respect to the LG devices and whatever benefits you've identified for the '536 patent?

A. That would be correct.

(*Id.* at 37:25–38:5; 38:18–39:4; *see also id.* at 62:10–64:16 (admitting that he had not analyzed whether the accused products were more valuable for having the technology contained in the Asserted Patents) Dr. Magee's failure to identify the incremental value of the Asserted Patents prevents his analysis from adequately determining the damages associated with such patents. Even if Dr. Magee had adequately apportioned the patent pool, or if the jury determined that the alternative Nokia license—which appears to suffer the same deficiencies as the CDMA2000 patent pool—was the relevant measure of damages, there was no evidence to permit the jury to determine the incremental value of the Asserted Patents.

Finally, Dr. Magee performed no analysis as to whether his alleged 5 cents per phone per patent value was due to the alleged standard essentiality of the patents. (*Id.* at 40:3–6 (“Q. And in the course of your testimony, you did not present any opinion with respect to how much these patents would be -- would be worth if they were not standard essential patents? A. Correct.”).) Accordingly, the Jury was left with no way to determine how much of the alleged 5 cents royalty should be apportioned to the patents themselves, and how much is due to the adoption of the standard.

Each of these errors constitutes separate grounds requiring the Court to determine that Plaintiff failed to meet its burden to prove damages. Dr. Magee's failure to analyze the patents of the CDMA2000 patent pool rendered him unable to attribute any portion of the license to specific technologies. However, even assuming that the CDMA2000 formed an industry baseline, Dr.



Magee's failure to apportion the value of the patents to any contribution to the technology or to separate the value of the standard's adoption from the incremental value of the patents constitutes a fatal failure of proof. Accordingly, the Court **GRANTS** the 612 Motion requesting a new trial on damages, and **ORDERS** a new trial on damages.

### **B. Willful Infringement**

LG argues that “[n]one of the evidence introduced at trial supports a finding of willfulness under *Halo* or the jury instruction, which required finding that LG ‘acted egregiously, willfully, or wantonly, . . . in reckless or callous disregard of, or with indifference to, the rights of Core Wireless.’” (9/16/16 Morning Session, Dkt. No. 45 at 22:25–23:2.) First, LG asserts that “Core’s corporate representative John Lindgren admitted that since Core’s initial allegations in 2012, LG has consistently stated it did not infringe the ’850 patent and believed it invalid, and that Core never even alleged pre-suit that LG infringed claim 19 of the ’536 patent.” (9/13/16 Afternoon Session, Dkt. No. 40 at 96:21–23; 113:2–10; 114:15–19.) LG argues that “no reasonable juror could find that LG knew of a high or excessive danger of infringement of claim 19 of the ’536 patent, because Core admitted it never alleged that LG infringed that claim,” nor could a reasonable juror “find LG’s good-faith belief of non-infringement of the ’850 patent somehow ‘reckless or callous.’” (Dkt. No. 614 at 5.) LG next argues that it “engaged in licensing discussions in good faith, meeting with Core nine times over several years.” (Dkt. No. 614 at 6 (citing 9/13/16 Afternoon Session, Dkt. No. 40 at 112:16–25).) Finally, LG argues that its reasonableness in failing to take a license was evidenced by the fact that Core had not “had any significant licenses” with other implementers of the standards. (*Id.* at 6–7.)

Core responds that adequate evidence exists to show willfulness. Core argues that it need not show that LG had specific knowledge of the individual claim; instead, it asserts that knowledge of the patent itself is sufficient. (Dkt. No. 625 (citing *WBIP*, 829 F.3d at 1341).) Core further

contends that LG's assertion that it consistently maintained a good-faith belief that the '850 Patent was not infringed is irrelevant because such belief relied on LG's erroneous assertion that its devices did not support the UL DRX feature. (*Id.* at 9.)

The Court finds that there was adequate evidence presented that LG had knowledge of the Asserted Patents. Mr. Lindgren testified that Core Wireless and LG engaged in nine meetings over two years, seven of which were in South Korea. (Dkt. No. 40 at 95:2–15.) Mr. Lindgren further testified that Core provided LG with claim charts covering the '850 Patent at the first meeting, on May 23, 2012, and claim charts covering the '536 Patent at the third meeting, on March 6, 2013. (*Id.* at 95:16–96:4, 97:6–9.) In each case, LG responded that it believed the Asserted Patents were invalid and not infringed. (*Id.* at 96:23, 97:18–21.) Despite LG's response, Core continued negotiating, providing counter arguments to LG's assertions of non-infringement and invalidity. (*Id.* at 97:3–5.)

As to the good-faith belief in noninfringement, LG presented charts to Core which state that “Mosaid asserts that claims 1 and 21 cover discontinuous uplink transmission (UE\_DTX\_cycle 1 and UD\_DTX\_cycle 2 in 3GPP TS25.0308, section 11.1), or the uplink DRX (MAC\_DTX\_cycle in 3GPP TS25.308, section 11.1.1). LG[]'s handsets support neither discontinuous uplink transmission or uplink DRX.” (Trial Ex. PTX-1689, Dkt. No. 614-9 at 20.) Such description constitutes the full and total analysis provided by LG. Other than its own statements, LG provides no independent evidence that it had a good-faith belief that the '536 Patent was non-infringed or invalid. Accordingly, since the Court has previously found substantial evidence that the LG handsets did, in fact, support uplink DRX, there is sufficient evidence for a reasonable jury to find that LG did not have a good-faith belief in non-infringement. (*See* Dkt. No. 666 at 12 (noting that Core's expert provided testimony that UL DRX was an optional feature that

was supported by the handset hardware) (citing 9/13/16 Afternoon Session, Dkt. No. 40 at 36:18–37:8, 57:17–58:6 ).)

LG’s evidence is similarly lacking for its good-faith belief in invalidity. In the only cited presentation, LG provides that the ’850 Patent is invalid under § 112 for failure to provide a supporting written description and misleading the PTO. (Trial Ex. PTX-1689, Dkt. No. 614-9 at 22–23.) The full analysis provided for the written description argument is “[t]here is no supporting description in the ’850 specification for the highlighted steps of asserted claim 1.” (*Id.*) LG’s analysis further states:

Applicants told the USPTO in a response filed April 23, 2007 that rewritten claim 1 was supported by para. [0057] (i). However neither this paragraph nor any other paragraph in the specification describes a “checking step to determine whether or not the MAC entity is transmitting data packets during a current air interface time interval. The support applicants pointed to for amended claim 21 (original claim 68) was similarly lacking.

*Id.* LG offers nothing further to substantiate that it had a good-faith belief in invalidity, and it points to no evidence of such a belief with regards to the ’536 Patent. Accordingly, the Court finds that a reasonable jury could have properly determined that such “analysis” is too truncated to form a good-faith belief, especially since LG’s invalidity defenses presented at trial primarily relied on anticipation and obviousness grounds. (*See* LG’s Renewed Motion for Judgment as a Matter of Law (Invalidity), Dkt. No. 616 (spending two pages arguing that the ’850 Patent was invalid on written description grounds, compared to six pages for anticipation and obviousness).)

The Court finds *Commil* instructive in this case. In *Commil*, the Supreme Court held that “belief in invalidity will not negate the scienter required [for induced infringement].” *Commil USA, LLC v. Cisco Sys.*, 135 S. Ct. 1920, 1930 (2015). In so doing, the Court determined that infringement and validity are entirely separate issues. *See id.* at 1929 (“Validity and infringement are distinct issues, bearing different burdens, different presumptions, and different evidence.”).

“That is because invalidity is not a defense to infringement, it is a defense to liability. And because of that fact, a belief as to invalidity cannot negate the scienter required.” *Id.* Further, the Court stated that:

Creating a defense of belief in invalidity, furthermore, would have negative consequences. It can render litigation more burdensome for everyone involved. Every accused inducer would have an incentive to put forth a theory of invalidity and could likely come up with myriad arguments. And since it is often more difficult to determine whether a patent is valid than whether it has been infringed, accused inducers would likely find it easier to prevail on a defense regarding the belief of invalidity than noninfringement.

*Id.* at 1929–30.

As with induced infringement, the Court finds that a good-faith belief in invalidity does not negate the scienter required for willful infringement. As in *Commil*, had LG been able to prove invalidity, it would have had a complete defense to liability for infringement. However, having failed to do so, it cannot now use its failed defense as a shield to avoid the effects of its willful disregard for Core’s patent rights. As stated in *Commil*, to permit otherwise would encourage every accused infringer to put forth a theory of invalidity, no matter how weak, in order to preclude the possibility of enhanced damages.

In addition to the initial meetings wherein the Parties discussed the infringement and validity of the Asserted Patents, Mr. Lindgren further testified that in June 2014, LG promised that they would make “their first monetary offer to take a license in the next meeting. And so we flew to Seoul in June [2014] fully expecting to receive a monetary offer, their first one after two years of negotiations.” (*Id.* at 98:11–14.) Instead, LG provided “a one-page presentation that essentially said: We are not going to take a license until other cell phone companies take a license.” (*Id.* at 98:18–20.) Based on such conduct, there is sufficient evidence for a reasonable jury to find that LG acted willfully. *See Halo*, 136 S. Ct. at 1932.

LG's other arguments are similarly deficient. First, LG asks the Court to find that the FRAND commitment prevents a finding of willfulness or enhanced damages. The Court declines this invitation. Any such holding would only encourage flagrant activity permitting users to wantonly infringe standard essential patents while forcing patent holders to hail them into court, the very acts the willful infringement doctrine is meant to punish and prevent.

LG next argues that open compliance with standards is not the type of concealment conduct that usually justifies punitive damages. While some might characterize enhanced damages as a blunt instrument, they can also serve to bring parties to the negotiating table. Here, the fact that there was no concealment does not foreclose willfulness. However, in this case, such context was properly reflected in the Court's enhancement "toward the lower end of [the range]." (Final Judgment, Dkt. No. 47 at 2.)

LG next argues that its actions were justified because neither Qualcomm nor the other implementers of the standards had taken a license. This argument relies on the same logic reflected in a young child's typical protestation raised in the form of "But Mama, Johnny didn't do it either." The Court finds that other implementers wrongful acts do not excuse LG's behavior, and are not a reason to overturn a proper verdict in this regard.

LG also argues that the mere existence of willfulness in this case was so prejudicial as to warrant a new trial. (Dkt. No. 614 at 8–11.) LG asserts that Core never identified evidence that supported an allegation of egregiousness. Further, LG argues that "the Court's ruling on Core's motion *in limine* 1 deeply prejudiced LG by preventing LG from introducing evidence to rebut Core's charges of willfulness," because it barred LG from introducing evidence that the patents

are not standard essential in the form of the Apple litigation and the French litigation.<sup>3</sup> (*Id.*) Such argument goes to infringement, not willfulness. The Court previously addressed the issue of the *Apple I* verdict in its Order Denying LG’s Renewed Motion for Judgment as a Matter of Law. (*See* Dkt. No. 666 at 4–7.) In so doing, the Court found Magistrate Judge Payne’s reasoning persuasive: there were multiple grounds on which the *Apple I* jury could have found non-infringement; as such, there was little probative value in permitting the introduction of the *Apple I* verdict, while the introduction of such could have been highly prejudicial to Core’s arguments here. (*Id.* at 6–7.) The Court finds that the exclusion of such evidence did not so prejudice LG’s ability to defend itself as to justify either a new trial on liability or to overturn the jury’s willfulness determination.

Finally, LG argues that “the Court’s conclusions concerning the parties’ final meeting falls short of acknowledging the totality of the circumstances” because LG made a counteroffer at the meeting and LG’s positions in the document were “entirely well-founded.” (Dkt. No. 614 at 7–8.) However, no evidence of such a counteroffer was presented at trial, when LG had a full opportunity to do so. Further, the Court has already addressed LG’s other defenses. Accordingly, LG’s motion to set aside the jury’s verdict on willfulness and the Court’s resulting enhancement is **DENIED**. However, in light of the Court’s decision to grant a new trial as to damages, the Court will reconsider the level of any enhanced damages following the conclusion of such new trial on damages.

#### IV. CONCLUSION


For the foregoing reasons, the Court finds that the 612 Motion should be **GRANTED** and the 614 Motion should be **DENIED**. Accordingly, the Court **ORDERS** and **GRANTS** a new trial

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<sup>3</sup> LG failed to object to motion *in limine* 1 as to the French litigation. (Dkt. No. 526.) Accordingly, such objections were waived.

on damages only. The Court will reconsider the level of any enhanced damages following the conclusion of such new trial on damages. The Court further **DENIES-WITHOUT-PREJUDICE** Plaintiff's Motion for Attorney Fees and Expert Fees (Dkt. No. 618) and Motions for Supplemental Damages (Dkt. Nos. 619, 621) as untimely, in light of the new trial on damages. Those matters may be renewed after a new damages verdict has been accepted by the Court.

**So ORDERED and SIGNED this 27th day of September, 2018.**

  
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RODNEY GILSTRAP  
UNITED STATES DISTRICT JUDGE