

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

JIAXING SUPER LIGHTING ELECTRIC
APPLIANCE CO., LTD. AND OBERT, INC.,

Plaintiffs,

V.

CH LIGHTING TECHNOLOGY CO., LTD.,
ELLIOTT ELECTRIC SUPPLY INC., AND
SHAOXING RUISING LIGHTING CO., LTD.,

Defendants.

CASE NO. 6:20-CV-00018-ADA

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT AS A
MATTER OF LAW UNDER FEDERAL RULE OF CIVIL PROCEDURE 50(b)**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. LEGAL BACKGROUND 2

III. ARGUMENT 4

 A. Defendants’ New Grounds, Omitted from Their Original
 Rule 50(a) Motion, Can Be Immediately Dispatched..... 4

 B. Defendants Cannot Rewrite the Factual Record to Eliminate the
 Overwhelming Evidence of Willfulness. 5

 C. Defendants Cannot Flip a Complete Failure of Proof on the ’125
 Patent into a JMOL in Their Favor. 7

 D. Defendants’ Failure of Proof Continued on the ’540 Patent,
 Leaving Them Only the Insufficient Combination of Zhao and
 Ivey II. 10

 E. The Jury Properly Found the ’140 Patent Infringed and Valid..... 13

IV. CONCLUSION..... 20

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Am. Home Assur. Co. v. United Space All., LLC</i> , 378 F.3d 482 (5th Cir. 2004)	3
<i>Arctic Cat Inc. v. Bombardier Recreational Prod. Inc.</i> , 876 F.3d 1350 (Fed. Cir. 2017).....	19
<i>Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.</i> , 776 F.2d 281 (Fed. Cir. 1985).....	8
<i>Blackboard, Inc. v. Desire2Learn, Inc.</i> , 574 F.3d 1371 (Fed. Cir. 2009).....	4
<i>Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.</i> , 880 F.3d 1356 (Fed. Cir. 2018).....	9, 15
<i>DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.</i> , 464 F.3d 1356 (Fed. Cir. 2006).....	12
<i>Erfindergemeinschaft UroPep GbR v. Eli Lilly & Co.</i> , 276 F. Supp. 3d 629 (E.D. Tex. 2017), <i>aff'd</i> , 739 F. App'x 643(Fed. Cir. 2018)	12
<i>Gambro Lundia AB v. Baxter Healthcare Corp.</i> , 110 F.3d 1573 (Fed. Cir. 1997).....	13
<i>i4i Ltd. P'ship v. Microsoft Corp.</i> , 598 F.3d 831 (Fed. Cir. 2010), <i>aff'd</i> , 564 U.S. 91 (2011)	3
<i>Juicy Whip, Inc. v. Orange Bang, Inc.</i> , 292 F.3d 728	9
<i>Kampen v. Am. Isuzu Motors, Inc.</i> , 157 F. 3d 306, 318 (5th Cir. 1998)	8
<i>Kinetic Concepts, Inc. v. Smith & Nephew, Inc.</i> , 688 F.3d 1342 (Fed. Cir. 2012).....	11, 13
<i>Laxton v. Gap Inc.</i> , 333 F.3d 572 (5th Cir. 2003)	3
<i>Maryland Cas. Co. v. Acceptance Indem. Ins. Co.</i> , 639 F.3d 701 (5th Cir. 2011)	3

<i>Mentor H/S, Inc. v. Medical Device Alliance, Inc.</i> , 244 F.3d 1365 (Fed. Cir. 2001).....	3
<i>Microsoft Corp. v. Enfish, LLC</i> , 662 F. App'x 981 (Fed. Cir. 2016)	13, 19
<i>Mintz v. Dietz & Watson, Inc.</i> , 679 F.3d 1372 (Fed. Cir. 2012).....	12
<i>MobileMedia Ideas LLC v. Apple Inc.</i> , 780 F.3d 1159 (Fed. Cir. 2015).....	11, 15, 17
<i>Network-1 Techs., Inc. v. Hewlett-Packard Co.</i> , No. 6:13-CV-00072-RWS, 2021 WL 1941693 (E.D. Tex. May 7, 2021).....	8
<i>Pers. Web Techs., LLC v. Apple, Inc.</i> , 848 F.3d 987 (Fed. Cir. 2017).....	12
<i>Taylor-Travis v. Jackson State Univ.</i> , 984 F.3d 1107 (5th Cir. 2021)	3
<i>TQ Delta, LLC v. CISCO Sys., Inc.</i> , 942 F.3d 1352 (Fed. Cir. 2019).....	19
<i>Versata Software, Inc. v. Internet Brands, Inc.</i> , 902 F. Supp. 2d 841 (E.D. Tex. 2012).....	3, 4
<i>VLSI Tech. LLC v. Intel Corp.</i> , No. 6:21-CV-057-ADA, 2022 WL 1477725 (W.D. Tex. May 10, 2022) (J. Albright).....	3, 4, 5
<i>Wellogix, Inc. v. Accenture, L.L.P.</i> , 716 F.3d 867 (5th Cir. 2013)	4
Statutes	
35 U.S.C. § 102.....	8
35 U.S.C. § 102(a)(1).....	8
Rules	
Fed. R. Civ. P. 30(b)(6).....	6
Fed. R. Civ. P. 50.....	4, 8
Fed. R. Civ. P. 50(a)	<i>passim</i>
Fed. R. Civ. P. 50(b)	1, 3, 4

I. INTRODUCTION

After losing overwhelmingly at trial and having damages enhanced due to their weak case and continued misbehavior, Defendants now try to rewrite history and reverse the Jury’s verdict. In so doing, Defendants ignore the evidentiary disputes and the fact that many of the evidentiary disparities resulted from their own strategic choices and sanctions for their gamesmanship. Ultimately, their efforts to reimagine the case fail on both procedural and substantive grounds.

To begin, Defendants are *not* free to seek JMOL on just any basis. Rather, because this is a *renewed* motion under Rule 50(b), Defendants are strictly limited to those arguments that they presented originally under Rule 50(a). A comparison of Defendants’ current papers to their original motion shows that the instant motion reveals a host of new arguments that were never raised before. The Court should dispatch these new arguments without further analysis.

Substantively, Defendants fail to show that no reasonable jury could have reached the verdict rendered here based on the evidence presented. Defendants’ revisionist history regarding the jury’s willful infringement finding is especially glaring. Defendants openly misstate and mischaracterize their concession of infringement—far from being inadmissible “streamlining,” they expressly admitted their products infringed *as a matter of fact* in both sets of jury instructions that were read to the Jury and the Joint Pretrial Order. Plaintiffs were completely justified in pointing to that admission and the Jury was entitled—indeed, required—to rely upon it. Defendants continue their attempt to hide behind inconsistent excuses for ignoring not one, not two, *but three* notices of infringement from Super Lighting, and they similarly ignore that the Jury was given an agreed-upon instruction regarding their complete inaction after learning of the asserted patents as a result of their gamesmanship over purported opinions of counsel. Given that, and Qingbo “Jack” Jiang’s falsehoods about Defendants’ efforts to find counsel, it is little surprise the Jury found in Plaintiffs’ favor. Far from being “distract[ing]” or “inflam[ing] attack[s]” on

Defendants' counsel, these were facts demonstrating wanton infringement and malfeasance.

The pattern continues with the '125 Patent. Although Defendants recognize that “‘conclusory, unsupported assertions,’ even by an expert, cannot defeat JMOL,” (Mot. at 3), that is all Defendants use when attacking this Court’s mid-trial JMOL against Defendants’ '125 Patent invalidity defense. This Court properly took that issue from the Jury after Defendants’ own failures and gameplaying¹ left them with no support for their invalidity theory beyond Dr. Lebby’s conclusory say-so. Yet, Defendants now contend Dr. Lebby’s unsupported assertions should not only overcome the Court’s JMOL for Plaintiffs, but should result in JMOL in the other direction.

Many of the same evidentiary shortcomings plagued Defendants’ defense against the '540 Patent. Even where Defendants actually pointed to a combination of Zhao and Ivey II, Plaintiffs’ expert Dr. Phinney explained why those references were insufficient. The Jury was fully entitled to believe Dr. Phinney over Dr. Lebby, whose credibility was repeatedly undermined by his own statements and his own client’s disagreement with him on infringement.

Finally, on the '140 Patent, Plaintiffs’ infringement expert Dr. D’Andrade showed exactly how the pulses in the LT2600 chip satisfied the limitations of the asserted claims. And, contrary to Defendants’ suggestion, nothing in Plaintiffs’ infringement proof was inconsistent with their validity presentation. Defendants’ argument distorts the evidence and fails to grapple with how Dr. D’Andrade and Dr. Phinney applied the claim language and analyzed the evidence.

Because reasonable jurors could and did find for Plaintiffs on the record presented, Defendants’ JMOL motion should be denied.

II. LEGAL BACKGROUND

Although Defendants cite only the language of Rule 50(a), their motion is actually a

¹ As just one example, Defendants served the equivalent of an entirely new expert report from Dr. Lebby the night before he was due to take the stand. (Dkt. 281 at 24.)

renewed motion for JMOL under Rule 50(b). (*Compare* Mot. at 3, with FED. R. CIV. P. 50(b).) This distinction is critical because although Rule 50(a) speaks broadly about a party's ability to seek JMOL, that latitude is sharply constrained when filing a renewed motion under Rule 50(b).

As a matter of law, a party forfeits the right to move under Rule 50(b) by failing to move first under Rule 50(a), and issues raised for the first time in a Rule 50(b) motion cannot be considered. *i4i Ltd. P'ship v. Microsoft Corp.*, 598 F.3d 831, 845 (Fed. Cir. 2010), *aff'd*, 564 U.S. 91 (2011); *see also VLSI Tech. LLC v. Intel Corp.*, No. 6:21-CV-057-ADA, 2022 WL 1477725, at *7 (W.D. Tex. May 10, 2022) (J. Albright); *Maryland Cas. Co. v. Acceptance Indem. Ins. Co.*, 639 F.3d 701, 707-08 (5th Cir. 2011); *Versata Software, Inc. v. Internet Brands, Inc.*, 902 F. Supp. 2d 841, 853 (E.D. Tex. 2012).

Courts grant JMOL for the party bearing the burden of proof only in extreme cases, where the only reasonable conclusion is in its favor and the jury could not disbelieve their evidence. *Mentor H/S, Inc. v. Medical Device Alliance, Inc.*, 244 F.3d 1365, 1375 (Fed. Cir. 2001). JMOL is inappropriate if evidence shows a reasonable and fair-minded jury in the exercise of impartial judgment might reach different conclusions. *Laxton v. Gap Inc.*, 333 F.3d 572, 579 (5th Cir. 2003).

A jury verdict must stand unless there is a lack of substantial evidence, in the light most favorable to the successful party, to support the verdict. *Am. Home Assur. Co. v. United Space All., LLC*, 378 F.3d 482, 487 (5th Cir. 2004). JMOL must be denied if a jury's verdict is supported by legally sufficient evidence that amounts to more than a mere scintilla. *Laxton*, 333 F.3d at 585. In considering the motion, the "court must draw all reasonable inferences in favor of the nonmoving party." *Taylor-Travis v. Jackson State Univ.*, 984 F.3d 1107, 1112 (5th Cir. 2021). In particular, the court must disregard evidence favorable to the moving party that the jury is not required to believe, *id.*, because "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge."

Wellogix, Inc. v. Accenture, L.L.P., 716 F.3d 867, 874 (5th Cir. 2013).

III. ARGUMENT

A. Defendants' New Grounds, Omitted from Their Original Rule 50(a) Motion, Can Be Immediately Dispatched.

The Court should not even consider many of the arguments in Defendants' motion.

First, Defendants forfeited a host of issues by failing to raise them under Rule 50(a). As to infringement and willful infringement, Defendants failed to cite any specific basis why it was entitled to JMOL in their Rule 50(a) motion. The transcript portions cited by Defendants in their brief did not form any basis to request a Rule 50(b) motion on issues such as infringement and willfulness. (Mot. at 3 (citing Dkt. 239, "Trial Tr. Day 3" at 67:22-71:10 (requesting JMOL on invalidity and damages)).) Nor did Defendants raise any of the specific arguments in their Rule 50(a) motion that they are now making. (Dkt. 238, "Trial Tr. Day 2" at 100:16-101:11.) Specifically, regarding non-infringement, Defendants now rely (Mot. at 15-17) almost entirely on Dr. Zane's testimony. But Defendants did not raise any argument in any pre-verdict JMOL based on the purportedly missing elements identified by Dr. Zane. Defendants, however, cannot make these arguments. *Versata*, 902 F. Supp. 2d at 853; *VLSI*, 2022 WL 1477725, at *7 (new argument waived by failure to raise in pre-trial JMOL even though sufficiency of proof of element was raised).²

Second, at least with respect to the product prior art, Defendants' motion for JMOL of invalidity is nonsensical because the Court granted **Plaintiffs'** JMOL on that issue before Plaintiffs' rebuttal case. Rule 50 makes clear that JMOL may be granted only "if a party has been fully heard on an issue during a jury trial." JMOL cannot be granted unless the jury was charged

² Plaintiffs acknowledge the liberal interpretation of Rule 50(a) in the Fifth Circuit. *See, e.g. Blackboard, Inc. v. Desire2Learn, Inc.*, 574 F.3d 1371, 1380 (Fed. Cir. 2009). However, Defendants did not place Plaintiffs or the Court on notice of **any** specific claim element that Plaintiffs supposedly failed to prove.

with an issue after hearing evidence from *both* parties. *VLSI*, 2022 WL 1477725, at *8. Because the Court had already granted JMOL, Plaintiffs' validity expert, Dr. Phinney, did not address the '125 Patent or the product prior art. (Trial Tr. Day 2 at 64:3-19, 82:14-25.) When Defendants attempted to raise the '125 Patent on cross, the Court confirmed that such examination was improper because the '125 Patent was "out of the case."³ (Trial Tr. Day 3 at 118:11-119:12.)

B. Defendants Cannot Rewrite the Factual Record to Eliminate the Overwhelming Evidence of Willfulness.

Defendants concede that their chances of JMOL on willfulness are slim given that the Court has already deemed this case "egregious." (*Compare* Mot. at 17-18, *with* Dkt. 281 at 19.) But the Court should not lose sight of the overwhelming facts that led to that ruling.

1. Nothing Can Undo Defendants' Express Admission of Infringement as an Agreed-Upon Matter of Fact.

Although Defendants now claim that "Plaintiffs insistence that CH 'admitted' infringement is incorrect at best and highly misleading," (Mot. at 18), an examination of the facts shows that the admission was clear, unambiguous, and repeated multiple times. Specifically, as described in more detail in Plaintiffs' opposition to Defendants' new trial motion, Defendants first indicated to the Court that they would concede infringement at the August 25, 2021 Discovery Hearing. (Dkt. 152 at 20:15-20.) That admission was then embodied into the Stipulated Facts portion of the Joint Pretrial Order, (Dkt. 173 at 9-10 (Stipulated Facts 16, 17, 18)), the Preliminary Jury Instructions, (Dkt. 213, Voir Dire Tr. at 13:9-16), and the Final Jury Instructions. (Trial Tr. Day 3 at 128:23-137:6.) At no point during any of these agreements or instructions did Defendants object, nor did Defendants object during any of the "15 times" Plaintiffs reiterated Defendants' infringement

³ Dr. Phinney was prepared to testify, *inter alia*, that Defendants' purported prior art products failed to teach a light strip "disposed on an inner circumferential surface" of a tube, the same element missing from the prior art combination presented to the Jury regarding the '540 Patent. Dr. Phinney also would have explained why Defendants could not prove the tubes were prior art.

admission. (*See generally* Voir Dire Tr.; Trial Tr. Day 3; Dkt. 237, “Trial Tr. Day 1” at 23:25-24:4, 29:13-15, 36:4-11, 36:5-37:7, 40:25-41:4, 175:22-24; Trial Tr. Day 2 at 45:2-3, 136:1-5, 136:21-25, 145:11-15, 146:6-11, 250:20-22; Dkt. 240, Trial Tr. Day 4 at 32:20-24, 41:10-18, 65:20-25.) As such, no JMOL is warranted.

2. The Jury Was Right to Reject Defendants’ Inconsistent Excuses about the Three Notice Emails Sent to Caiying Gan.

Defendants allude to their excuses for ignoring the not one, not two, *but three* separate notice letters informing them of their infringement of the asserted patents. (Mot. at 18.) But it was certainly reasonable for the jury to reject the myriad inconsistent stories Defendants presented at trial. CH’s president, Caiying Gan, variously testified that: (1) she does not check email (despite having an email address prominently displayed on her business card) (Trial Tr. Day 1 at 211:5-11, 214:6-11); (2) she did not receive the emails, (*id.* at 213:13-17, 215:5-25); (3) she received the emails but did not open them, (*id.* at 214:14-18, 214:19-215:4); (4) she did not read the emails because they were written in English, (*id.* at 213:13-17, 214:14-18); and (5) she does not know how to work her laptop, (*id.* at 216:10-16). Not surprisingly, the collective effect of these conflicting tales was to convince the Jury that neither Ms. Gan nor Defendants were credible.

3. Defendants’ Inaction in the Face of Super Lighting’s Patents Was Established by an Adverse Instruction.

Plaintiffs recite the history of Defendants’ gamesmanship regarding opinions of counsel in their opposition to Defendants’ new trial motion. In brief, Qingbo “Jack” Jiang attempted to ambush Plaintiffs with purported legal opinions in two Rule 30(b)(6) depositions. The disputes over those opinions led to several discovery hearings during which the Court found that Defendants waived privilege for certain subject matter, compelled production of those documents, and ultimately issued an adverse instruction. (Dkt. 137 at 25:2-26:16; Dkt. 195 at 6; Dkt. 213,

“Voir Dire Tr.” at 130:16-21; Trial Tr. Day 3 at 152:13-21.) Even if that jury instruction⁴ did not compel a willfulness finding, it certainly supported one and no JMOL is warranted on this issue.

4. Qingbo “Jack” Jiang Gave the Jury Many Reasons to Find That Defendants Infringed with Improper Motives.

The jury heard plenty of details about—and from—Defendants’ principal that supported their willfulness verdict. Not only did Mr. Jiang leave Super Lighting for its archrival CH Lighting to obtain personal benefits including a large, rent-free home, a free office, and a company of his own to run; he left without being honest about where he was going. (Trial Tr. Day 1 at 79:6-82:14, 220:1-221:21.) Moreover, Mr. Jiang took Super Lighting’s proprietary customer lists and hired away the technical assistant to Super Lighting’s CEO. (*Id.* at 82:15-83:9, 217:23-219:4.) The Jury also observed firsthand Mr. Jiang’s dishonesty regarding this case and his dealings with Plaintiffs. After Mr. Jiang repeatedly misrepresented the actions Defendants took upon learning of the asserted patents, Plaintiffs were forced to impeach him with PTX-326, the so-called DELAY and AVOID email.⁵ Based on all of this, the Jury was entitled to find that Defendants’ infringement was willful, and therefore Defendants’ JMOL motion should be denied.

C. Defendants Cannot Flip a Complete Failure of Proof on the ’125 Patent into a JMOL in Their Favor.

Defendants are seeking unprecedented relief regarding the ’125 Patent. Despite bearing the burden of proving invalidity by clear and convincing evidence, Defendants failed to present *any* evidence of public availability of the purported prior art products, resulting in JMOL for

⁴ The instruction read: “CH Lighting and Ruising first learned about the asserted ’140 Patent on February 16, 2019 and first learned of the asserted ’540 and ’125 Patents in July 2019. Upon learning of the asserted patents, CH Lighting and Ruising took no actions other than to retain litigation counsel for this case on or about November 12, 2020.”

⁵ Defendants now complain that PTX-326 was “privileged” and argue that Mr. Jiang’s cross-examination did not trigger a waiver, (Mot. at 19-20), but that flies in the face of this Court’s July 12, 2021 rulings holding that Mr. Jiang and Defendants’ counsel waived any privilege over the purported opinions of counsel and ordering documents like PX 326 to be produced. (Dkt. 137 at 3:15-26:7.)

Plaintiffs at the conclusion of Defendants’ case. Yet Defendants now ask the Court not only to reverse that prior decision but grant JMOL in *their* favor—even though Plaintiffs did not have the opportunity to present their case as required under Rule 50.

Even if JMOL for Defendants could be procedurally appropriate, it would be unwarranted here. As Defendants acknowledge, “‘conclusory, unsupported assertions,’ even by an expert, cannot defeat JMOL.” (Mot. at 3 (quoting *Kampen v. Am. Isuzu Motors, Inc.*, 157 F.3d 306, 318 (5th Cir. 1998) (en banc)); see also *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 294 (Fed. Cir. 1985) (“[l]ack of factual support for expert opinion going to factual determinations... many render the testimony of little probative value”)). But Defendants’ invalidity JMOL regarding product prior art relies *entirely* on such conclusory assertions.

The first step to any invalidity analysis is to determine whether the cited reference is “prior art” under 35 U.S.C. § 102. Here, that predicate factual question was whether the tubes on which Defendants relied were “in public use, on sale, or otherwise available to the public” before the critical date. 35 U.S.C. § 102(a)(1). Contrary to Defendants’ suggestion that the parties disagreed only on one technical element of the claim, (Mot. at 9), whether the purported products were “prior art” in the first place was hotly disputed factual question. Defendants now cite two pieces of “evidence” in support of their “on sale” allegation: the entirety of Dr. Lebby’s direct presentation on the ’125 Patent, and all twenty-six of his ’125 Patent demonstratives.⁶ The demonstratives are easily dispatched since they are, by definition, not evidence. (Trial Tr. Day 3 at 137:25-138:6; Dkt. 281 at 25); *Network-1 Techs., Inc. v. Hewlett-Packard Co.*, No. 6:13-CV-00072-RWS, 2021 WL 1941693, at *5 (E.D. Tex. May 7, 2021). Dr. Lebby’s testimony fares no better, since he admitted on cross-examination that he had no personal knowledge about the availability of the

⁶ Citing *everything* presented regarding the ’125 Patent for this one “on-sale” issue tacitly concedes that no specific testimony or graphic addresses the point.

tubes (Trial Tr. Day 2 at 317:21-318:2) and had not spoken to anyone about them (*id.* at 318:25-319:6). He failed to identify sales records or other documentary evidence to prove the point anywhere in his testimony. All Defendants had was Dr. Lebby's unsupported say-so. Further, public use needs to be corroborated; mere oral testimony is insufficient.⁷ *Juicy Whip, Inc. v. Orange Bang, Inc.*, 292 F.3d 728, 740-43 (uncorroborated oral testimony regarding use of prior art devices insufficient to show anticipation by clear and convincing evidence).

Defendants also failed to prove that any of the purported tube products satisfied every '125 Patent claim element, particularly the light strip "disposed on an inner circumferential surface" of the tube. Because Dr. Lebby relied exclusively on photographs to create his expert report, the tubes themselves were not allowed into evidence. (Trial Tr. Day 2 at 17:2-3; Trial Tr. Day 3 at 46:11-20.) The photographs had their own admissibility problems, given that Dr. Lebby did not take them, did not direct them to be taken, and did not know who had taken them. (Day 2 Tr. at 276:21-277:8.) Ultimately, the photographs were only presented as demonstratives, not actual evidence on which a verdict could be based. (Trial Tr. Day 3 at 137:25-138:6; Dkt. 281 at 25.)

And, even if the photos had been in evidence, they fail to establish the "disposed on" limitation. For the Maxlite tube, the photo excerpted at pages 7 and 9 of Defendants' brief merely shows a light strip atop a metal rail protruding from the tube. That photo, taken from an angle that does not show the physical relationship between the light strip, rail, and tube surface, does not show the light strip or rail "disposed" on the inner circumferential surface of the tube. If anything, the rail casts a shadow on the white tube, showing a gap between the two. Reasonable jurors could

⁷ Assuming *arguendo* that Dr. Lebby's testimony could have been sufficient to show public availability—and it was not—the Jury was not **required** to credit his conclusory testimony in view of his admissions on cross-examination. See, e.g., *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1364 (Fed. Cir. 2018) (denying JMOL despite lack of rebuttal expert testimony because reasonable jury could have concluded in view of expert's cross-examination that defendant failed to prove invalidity).

have found that the photo did not support Dr. Lebby's conclusory assertions. The demonstrative photographs of the purported Cree and Philips tubes were even weaker. (Mot. at 9.) Defendants' photos of these tubes did not even show the light strip *inside* either tube, much less "disposed on an inner circumferential surface."⁸

In view of the record, the Court correctly granted JMOL to Plaintiffs on the '125 Patent's validity. But, even if this issue had gone to the Jury, the Jury could reasonably have found that Defendants failed to prove invalidity by clear and convincing evidence.

D. Defendants' Failure of Proof Continued on the '540 Patent, Leaving Them Only the Insufficient Combination of Zhao and Ivey II.

1. MaxLite

Defendants asserted the same MaxLite tube against the '540 Patent as they did against the '125 Patent, and their case failed on pre-verdict JMOL for the same reasons. (Trial Tr. Day 3 at 52:23-53:9.) For the '540 Patent, Defendants have nothing but the same conclusory assertions that the MaxLite tube was prior art, (Mot. at 6 (citing Trial Tr. Day 2 at 291:10-14)), and that it satisfied the requirement of a light strip disposed on the tube's "inner circumferential surface." (Mot. at 6 (citing Trial Tr. Day 2 at 296:7-19).) Defendants' JMOL motion as to the MaxLite tube fails for the same reasons with respect to the '540 Patent that it does for the '125 Patent.⁹

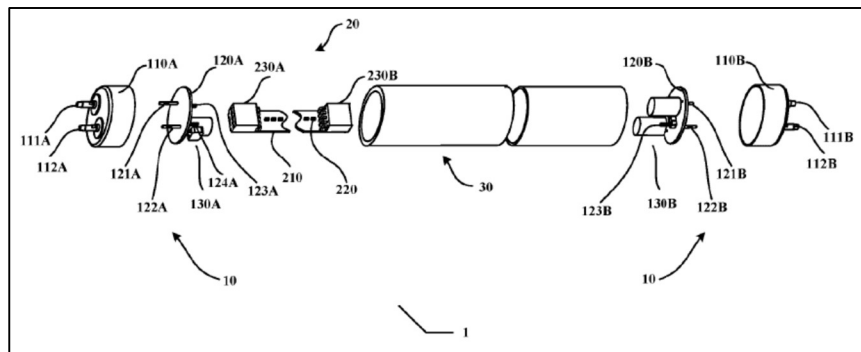
2. Zhao + Ivey II

Substantial evidence supported the Jury's finding that Defendants failed to prove invalidity

⁸ In a footnote, Defendants raise a new claim construction argument that "prior art anticipates if any part of the LED strip touches any part of the tube." (Mot. at 9.) This novel argument is untimely and forfeited. Nevertheless, Defendants fail to show anticipation under their new construction since the Maxlite tube photograph shows a gap with shadows between the corners of the light strip and the tube, while the Cree and Philips photographs show the light strip completely removed from the tube.

⁹ The cases cited in Defendants' new trial motion all concern *denials* of new trial motions. (Dkt. 292 at 3-4, n.2.) Defendants cite no authority that conclusory testimony by an expert without personal knowledge, and without any other evidence in the record including the purported prior art itself, suffices for a court to *grant* JMOL of invalidity.

of claims 13 and 14 of the '540 Patent by clear and convincing evidence. First, the Jury could reasonably have credited Dr. Phinney's testimony and found that Defendants failed to prove an LED strip disposed on the "inner circumferential surface" of a lamp tube. *MobileMedia Ideas LLC v. Apple Inc.*, 780 F.3d 1159, 1168 (Fed. Cir. 2015) (citing *Kinetic Concepts, Inc. v. Smith & Nephew, Inc.*, 688 F.3d 1342, 1362 (Fed. Cir. 2012) ("In light of the jury's determination that [Defendant] failed to prove obviousness, we must infer that the jury found [Plaintiff's] experts to be credible and persuasive on this point")). For this element, Defendants relied on a single figure (Fig. 4, below) from the Zhao reference (Dkt. 296-25, DTX-60), and the corresponding text:



(Day 2 Tr. at 303:3-9.) As Dr. Phinney explained, the figure does not show how the parts fit together, and therefore does not teach a person of ordinary skill in the art that the LED strip is "disposed on the inner circumferential surface" as claimed. (Day 3 Tr. at 11:4-10.) Likewise, the corresponding text in Zhao merely indicates that the light strip is "inside" the tube. (*Id.* at 11:13-24; DTX-60 at 4:16-17, 8:35-41.) Defendants do not even address this testimony, much less explain why a reasonable jury could not have credited it.

Conversely, Defendants failed to present a credible case of their own on this element. Despite acknowledging that this element was disputed, Defendants' expert offered a meager six lines of testimony on the issue. (Day 2 Tr. at 303:4-9.) Nothing in his testimony explained why a skilled artisan would infer that the light strip was disposed on an inner circumferential surface either from the figure or the cited portions of the specification teaching that the light strip was

merely “inside” the tube. The Jury certainly was not required to credit Dr. Lebby’s testimony over the more detailed explanation from Dr. Phinney.

Implicitly recognizing the inadequacy of Dr. Lebby’s trial testimony, Defendants raise two, completely new arguments in their motion: (1) that Zhao “shows nothing between the LED strip and the tube’s ‘inner circumferential surface,’” and (2) that “common sense would inform skilled artisans that disposing the strip directly on the tube was one option.” (Mot. at 5.) Raised for the first time post-trial, both arguments are procedurally improper. *Erfindergemeinschaft UroPep GbR v. Eli Lilly & Co.*, 276 F. Supp. 3d 629, 653 (E.D. Tex. 2017), *aff’d*, 739 F. App’x 643 (Fed. Cir. 2018). Nonetheless, these new arguments are also insufficient to compel JMOL in any event. The absence of an intervening structure in Fig. 4 between the light strip and the tube still does not mean that the claim element was satisfied. Likewise, proclaiming the mere possibility that disposing the light strip directly on the tube—despite it not being undisclosed in the art—as “one option” is insufficient to show obviousness. Defendants’ burden was to show that a skilled artisan **would** have modified the reference to dispose the strip directly on the tube, not merely that one **could** have done something differently than what was literally disclosed. *Pers. Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 993-94 (Fed. Cir. 2017). Defendants’ conclusory assertion that “common sense” would lead a skilled artisan to the claim element also fails without any evidence showing **why** an artisan would find the element common sensical. *Mintz v. Dietz & Watson, Inc.*, 679 F.3d 1372, 1377 (Fed. Cir. 2012) (error to find claims obvious based on “invocation of the words ‘common sense’ without any record support”). Defendants’ sole case reiterates this requirement and does not remotely suggest that JMOL may rest on a new, post-trial argument by counsel that “common sense” suggests a limitation as “one option.” *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006).

In addition, the Jury was entitled to find that there was no motivation to combine Zhao and

Ivey II. Dr. Phinney presented unimpeached, unrebutted testimony that a skilled artisan would not have combined Zhao and Ivey II because they had substantially different physical structures and were addressed to different types of tube lamps. (Day 3 Tr. at 111:25-114:6.) For his part, Dr. Lebby merely asserted that Zhao and Ivey II were “both trying to solve the same problem... they’re both teaching to solve the dazzling effect.” (Day 2 Tr. at 305:12-20.) The fact that both references address similar problems says nothing about why an artisan would have **replaced** Zhao’s solution with Ivey II’s. *Cf. Microsoft Corp. v. Enfish, LLC*, 662 F. App’x 981, 990 (Fed. Cir. 2016) (expert testimony that art “address[ed] the same technical issues and disclose[d] closely related subject matters” insufficient to show motivation to combine). Indeed, the fact that Zhao already taught a complete solution to the “dazzling effect” problem could have suggested the **lack** of a reason to replace it with a different solution. *Kinetic Concepts*, 688 F.3d at 1369 (“Because each device independently operates effectively, a person having ordinary skill in the art... would have no reason to combine the features of both devices into a single device”).

At a minimum, the evidence was mixed, and a reasonable jury could have found that Defendants did not meet the high standard of proof to invalidate the ’540 Patent.¹⁰

E. The Jury Properly Found the ’140 Patent Infringed and Valid.

Defendants’ motion demonstrates their fundamental misunderstanding of the ’140 Patent. Defendants argue that it “would make no sense for technology designed to prevent shock” to “turn[] the lamp on before detecting proper installation.” (Mot. 11.) But as the Jury heard, that is **exactly** what is claimed and why the invention was so unexpected.

¹⁰ Like their experts, (Trial Tr. Day 2 at 312:3-5), Defendants do not address secondary considerations regarding the ’540 Patent. (*See generally* Mot.) It is undisputed that Defendants sold literally millions of units of products that were admitted to infringe the patents-in-suit (Trial Tr. Day 2 at 75:8-12) and continued to do so after the verdict (Dkt. 287 at 5-6). As such, Defendants’ own sales are per se evidence of commercial success that weighs against any invalidity finding. *See Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1579 (Fed. Cir. 1997) (commercial success of products found to infringe demonstrated non-obviousness).

Aiming Xiong (the '140 Patent's main inventor) likened his invention to a person using their finger to quickly touch shower water to test if it is too hot. (Trial Tr. Day 1 at 109:22-110:8.) Even if the water is extremely hot, the person avoids being burned by touching the water only for a brief moment. (*Id.* at 110:6-8.) Similarly, the '140 Patent uses a pulse to turn an LED light on very quickly to test and determine if there is a proper installation. (*Id.* at 110:9-14.) Because the pulse is so short, even if the installation is faulty, electricity will only affect the person handling the bulb for a brief moment and they will not be harmed. (*Id.*) Plaintiffs' validity expert echoed Mr. Xiong's testimony when describing the '140 Patent. (Trial Tr. Day 3 at 95:1-12, 91:3-5 (explaining that the "'140 [P]atent goes right ahead and turns on the light first and then determines if there's a proper installation")).

This unconventional technique is reflected in the '140 Patent's claims, which describe how a "pulse generating circuit" generates a pulse that allows an "installation detection circuit" to check the installation status. Depending on whether the installation is proper or not, the "pulse generating circuit" controls a "switch circuit" to keep the LED tube lamp powered on (if installed correctly), or remove power (if installed incorrectly). (Dkt. 296-13, JTX-1 at 59:5-7, 59:13-15, 59:18-20; 59:21-36; 64:27-30, 64:43-44.)¹¹

1. Defendants' Defective Non-Infringement JMOL

Defendants raise only two arguments about the products containing the LT2600 chip, neither of which it raised in pre-trial JMOL and neither of which remotely warrants JMOL even if preserved.¹² First, Defendants suggest the LT2600's "patented grid impedance monitoring

¹¹ Although Defendants argue that their millions of sales of admittedly-infringing products do not represent "commercial success" of the '140 Patent, their support for that is drawn from the Court's permanent injunction analysis, not secondary considerations. (Mot at 15.)

¹² Even if Defendants are allowed to address '140 non-infringement, that argument affects only the products using the LT2600 chip. Defendants admitted infringement for all other products accused under the '140 Patent. (Trial Tr. Day 3 at 136:23-137:7)

algorithm” is different from the ’140 Patent because it “detect[s] proper installation [of a tube lamp] based on grid impedance, rather than voltage alone.” (Mot. at 16.) That is irrelevant because the claims say nothing about what electrical property needs to be measured to provide the “sampling signal” to determine proper installation. (JTX-1 at 59:22-26, 60:37-44, 64:31-35.) The ’140 Patent itself explains that the detection circuitry may detect when one end of a tube lamp is connected to a “high impedance, such as a person.” (*Id.* at 42:40-43.) Dr. D’Andrade accordingly explained his testing procedure, which used a resistor to simulate a person touching an end of the lamp tube to confirm that the infringing products detected the faulty installation, (Trial Tr. Day 1 at 172:13-23, 182:14-16), and confirmed that it satisfied the claim element according to the Court’s construction, (*id.* at 186:7-187:9). Indeed, Dr. Zane admitted that the LT2600’s “algorithm” measured impedance via voltage and current. (Trial Tr. at Day 2 at 236:16-237:10.)¹³ Defendants’ brief fails to explain how the measurement of impedance rather than voltage is relevant to any claim element. The Jury could have credited Dr. D’Andrade’s testimony and Dr. Zane’s admissions even if the evidence credibly conflicted.¹⁴ *MobileMedia Ideas*, 780 F.3d at 1168.

Defendants’ second argument, that the LT2600 lacks a pulse generator or pulses, ignores the extensive contrary evidence. Plaintiffs’ expert explained to the Jury how he reverse-engineered

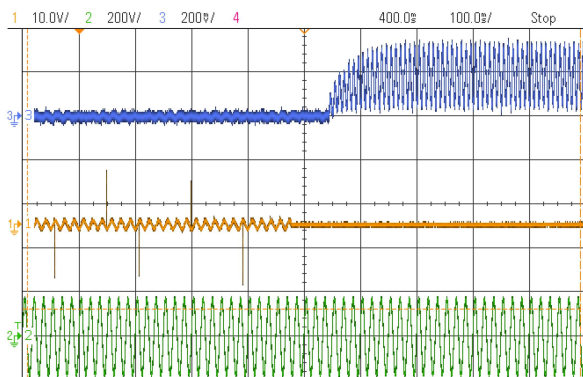
¹³ Defendants suggest (Mot. at 16) that detected impedance *rather* than the pulses controls the switch. No such argument was made at trial, and the argument confuses the pulse generation and installation detection features of the claims. The pulse generator turns the light switch on momentarily (Trial Tr. Day 1 at 184:12-185:9), and the detection and latching circuits keep it on if proper installation is detected (*id.* at 186:7-189:4). Nothing in the claims makes these features mutually exclusive; indeed, the Court’s construction of the “detection result latching circuit” coupled to the switch *requires* both inputs. (Dkt. 57 at 6; Trial Tr. Day 3 at 147:18-23.)

¹⁴ At most, this argument—and most of Defendants’ other arguments on the ’140 Patent—reduce to a battle of the experts, which makes Defendants’ request for JMOL untenable. The Jury was entitled to credit Plaintiffs’ experts over those of Defendants, particularly where, as here, Defendants’ experts’ credibility was repeatedly undermined by their lack of analysis and concessions on cross-examination. *Core Wireless*, 880 F.3d at 1364. Dr. Lebby’s lack of support has already been detailed above, but Defendants’ ’140 Patent expert, Dr. Zane, similarly chose not to do any of his own testing and limited his own role to that of a “peer-reviewer” of the extensive work done by Plaintiffs’ expert. (Trial Tr. Day 2 at 233:8-10, 252:5-254:18.)

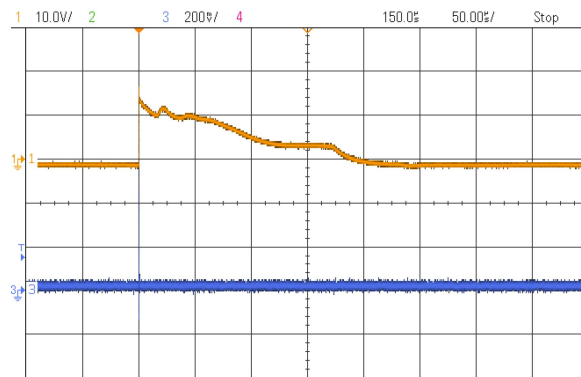
the LT2600 chip and found switch CP2. (Trial Tr. Day 1 at 173:20-174:6; *see also id.* at 181:12-17 (stating that CP2 is the switch).) He then confirmed experimentally that the LT2600 had a pulse generator that generated pulses to control switch CP2. (*Id.* at 180:17-181:3; 180:19-24 (describing pulses shown in Reid Decl., Ex. 1, PDX-200 at 228, reproducing Reid Decl., Ex. 2, PTX-128 at 128.11).) He also found that switch CP2 was controlled by the detection circuitry, and the detection circuitry caused switch CP2 to remain on if the installation was proper but turn it off if improper. (*Id.* at 185:1-5 (stating that CP1, which has the detection circuitry, likewise controls switch CP2), 186:21-187:6, 188:7-189:1.) He testified that the switch is turned on via the pulse, and also when the light is determined to be properly installed. (*Id.* at 188:15-22.) The Jury could have credited this testimony.

Defendants fail to rebut this. Defendants quote Dr. Zane distinguishing between the relative sizes and randomness of “spikes” (pulses) in the admitted infringing products vs the LT2600, but neither characteristic is required by the claims. Dr. Zane’s “spikes” are just ***zoomed out*** views of the pulses (orange, below). Plaintiffs’ expert showed the Jury these pulses/spikes through graphs at different levels of resolution:

Zoomed Out View (Ex. 2, PTX-128.11)



Zoomed In View (Ex. 2, PTX-128.14)



(Trial Tr. Day 1 at 192:2-10 (explaining PDX-247 showing PTX-128.11 (zoomed out view) and PTX128.14 (zoomed in view)).)

The Jury was entitled to reject Defendants’ arguments on ’140 Patent’s non-infringement even if Defendants had preserved them under Rule 50(a). Accordingly, no JMOL is warranted.

2. Invalidity

A reasonable jury could, and did, conclude that none of Defendants’ references contained the claimed “pulse generating circuit” that controls the switch that keeps the lights on, or turns them off. (JTX-1 at 59:5-7, 59:13-15, 59:18-20.)

(a) Ono Does Not Anticipate Claim 1.

The Jury was entitled to find that the structure Defendants identified as Ono’s “pulse generating circuit” did not control turning the “switch circuit” on and off as required by the claims. Rather, Ono operated in what Dr. Phinney explained was the “old way,” by checking the power line to see if the light switch could be turned on in the first place. (Trial Tr. Day 3 at 90:13-92:2.) That way was different from the claimed invention, which turns the light on *before* deciding whether it should stay on or be turned off. (*Id.*; *see also* JTX-1 at 59:5-7 (stating the pulse generator controls the LEDs to turn on and off); *see also id.* at 59:18-20 (stating the detection circuit controls the switch to keep the LEDs on).) Ono’s alleged pulse generator does not flip the light switch on, and then detect whether there is a proper installation to keep lights on. (Day 3 Tr. at 90:13-92:2.) Dr. Zane tried to equate Ono with the ’140 Patent by arguing that (1) the “pulse generating circuit generates a pulse and injects a signal ... into the power loop,” (Day 2 Tr. at 197:4-5), and (2) “the detection determining circuit” then makes a “decision [that] goes directly to turn the switch on or off.” (*Id.* at 197:9-21.) But the Jury was free to weigh the credibility of the two experts and adopt Dr. Phinney’s description of Ono over Dr. Zane’s and find that Ono did not anticipate. *MobileMedia Ideas*, 780 F.3d at 1168.

(b) Claims 1, 4, 5, 24, 28, and 31 Are Not Obvious Over Ivey I.

(i) Arguments Applicable to all Claims

Ivey I¹⁵ lacks two elements. First, it has the same defect as Ono—it lacks the required “pulse generating circuit” that controls the same switch that turns the lights on and off, and represents the “old way” of doing things. Dr. Phinney explained that Ivey I’s alleged “pulse generator” did not control the switch for the LEDs, but was instead an oscillator to switch a different element (test load). (Trial Tr. Day 3 at 94:17-25.) This switch for the test load (Dkt. 296-21, DTX-65, FIG. 3, Element 135) does *not* control the switch that turns the LEDs on and off. (Trial Tr. Day 3 at 94:17-95:12.) Instead, Ivey I’s light switch is elsewhere (DTX-65, FIG. 3, Element 175), and relied on different circuitry and control logic. (Trial Tr. Day 3 at 95:17-21.)

Second, and more simply, Ivey I is not even a “tube lamp.” Ivey I taught only “an ‘LED-based light’ with a ‘first connection point’ and a ‘second connection point.’” (Mot. at 12 (citing DTX-65 at ¶ 37); *see also* DX 65 at ¶ 5.) Defendants’ expert did not argue that Ivey I taught a tube, just that a skilled artisan would “think of” a tube as an “example.” (Trial Tr. Day 2 at 213:13-15.) And a reasonable jury could have agreed with Dr. Phinney, who explained that Ivey itself did not teach or suggest a tube. (Trial Tr. Day 3 at 92:23-93:1.) Because the Jury could reasonably have sided with Dr. Phinney on either missing element, JMOL is unwarranted.

(ii) Arguments Specific to Claims 4, 5, 24, 28, and 31

For claims 4, 5, 24, 28, and 31, Defendants and Dr. Zane further failed to demonstrate that Ivey I contains the required “detection result latching circuit.” (*Compare* Mot. at 13-14, *with* Dkt. 57; Trial Tr. Day 2 at 219:13-222:18.) Defendants provided no evidence how the alleged latching circuit outputs a “high logic value when either the stored detected result or the pulse signal output

¹⁵ Defendants never moved for JMOL on Ivey I against ’140 Patent claim 1, so their renewed JMOL as to that claim has been forfeited. (Trial Tr. Day 3 at 68:1-70:11.)

terminal ... has a high logic value” as required by the claims. In contrast, Plaintiffs’ expert Dr. Phinney testified that Ivey I’s alleged “detection result latching circuit” shuts everything down if it detects a problem, (Trial Tr. Day 3 at 97:9-15), rather than turning the switch on or off based on the combination of inputs from the pulse generator and the detected result. (*Id.* at 98:15-18.) Because the Jury could reasonably credit Dr. Phinney on this point, JMOL is unwarranted.

(c) Claims 1, 4, 5, 24, 28, and 31 Are Not Obvious Over Ivey I + Sadwick.

(i) Arguments Applicable to All Claims

Defendants attempt to fix Ivey I’s shortcomings by combining it with Sadwick, a reference cited by the Examiner during prosecution. In a single, conclusory paragraph, Defendants assert that Sadwick connects its pulse generating circuit directly to a load switch. (Mot. at 13.) But they failed to convince the Jury that a POSA would have had any motivation or reasoning to modify Ivey I’s circuit to do so. *Arctic Cat Inc. v. Bombardier Recreational Prod. Inc.*, 876 F.3d 1350, 1359 (Fed. Cir. 2017) (it is a “fact question [] [regarding] whether one of ordinary skill in the art had a motivation to combine the prior art to achieve the claimed combination”).

Plaintiffs’ expert, Dr. Phinney, explained how Defendants were following the ’140 Patent as a roadmap and recipe to arrive at elements from Sadwick (which addresses a different electrical environment than Ivey I), employing improper hindsight. (Trial Tr. Day 3 at 104:13-106:24.) Dr. Phinney further explained that Dr. Zane’s modifications to Ivey I’s structure were significant, and that the art itself presented no motivation to make those modifications. (*Id.* at 100:1-102:15, 104:13-106:20.) Dr. Zane’s reasons for these modifications were conclusory. *TQ Delta, LLC v. CISCO Sys., Inc.*, 942 F.3d 1352, 1361 (Fed. Cir. 2019) (rejecting conclusory expert testimony “us[ing] the challenged patent as a roadmap to reconstruct the claimed invention”). His only response was to assert that the two references were “‘oriented to’ the same problem,” (Trial Tr. Day 2 at 225:20-229:4), but that is legally insufficient for a motivation to combine. *Enfish*, 662 F.

App'x at 990. Nonetheless, Dr. Phinney also said they were in different technical areas. (Trial Tr. Day 3 at 106:8-20.) Regardless, a reasonable jury could have concluded that Defendants had not met their burden on motivation to combine in light of the testimony.

Because the Jury could have reasonably sided with Dr. Phinney on either of these issues, JMOL is unwarranted and Defendants' motion should be denied.

(ii) Arguments Specific to Claims 4, 5, 24, 28, and 31

In addition to the above, for claims 4, 5, 24, 28, and 31, Defendants attempt to fix Ivey I's deficiencies with Sadwick. But, once again, Defendants' conclusory assertions fail to demonstrate how a reasonable jury could have found that the combination's purported "detection result latching circuit" yields a "high logic value when either the stored detected result or the pulse signal output terminal ... has a high logic value" as required by the claims. (Mot. At 14 (two sentences of analysis); Trial Tr. Day 2 at 229:5-230:12; Dkt. 57.) Dr. Phinney testified that Sadwick's alleged latching circuit is a shut-down, turn-off circuit that does not logically combine the detection result and the pulse as required by the Court's construction. (Trial Tr. Day 3 at 108:2-21.) Accordingly, the Jury could reasonably have credited this testimony to find non-obviousness, even if Defendants' assertions were considered.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs ask that the Court deny Defendants' JMOL motion.

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Respectfully submitted,

/s/ Matthew C. Bernstein

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**ATTORNEYS FOR JIAXING SUPER
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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing instrument was served or delivered electronically via U.S. District Court [LIVE] Document Filing System, to all counsel of record on this 9th day of September 2022.

By: Matthew C. Bernstein

Matthew C. Bernstein