

F.3d 673, 677 (2d Cir. 1994) (citations omitted).

MJ has not satisfied this standard. As to its first argument that the Court erred in its assessment of whether MJ "copied," Applera's products, each of MJ's current objections was considered by the Court in its prior decision, which concluded:

While "copying" may . . . be a misnomer, MJ's conduct with regard to the PE 9600 cyclers is relevant and appropriate to take into account as a measure of the nature of defendants' culpability for their inducement of infringement of the PCR process patents. Copying patented product features demonstrates the purposefulness with which defendants sought to attract PCR users as customers, by taking features they thought customers would want from Applera's '610 embodiment, the PE 9600 thermal cycler.

March 30, 2005 Ruling [Doc. # 1299] at 4. The Court also considered the impact of the jury's finding that the '610 patent was not willfully infringed. See id. at 6 n. 3.

Second, MJ argues that in finding that MJ lacked a good faith belief that it did not infringe Applera's patents, the Court failed to distinguish between two analytically distinct issues: whether MJ had a good faith belief that it was not inducing infringement and whether MJ had a good faith belief that Applera was engaged in patent misuse, so that MJ would not be liable for damages even if it were inducing infringement. This Court noted in its March 30 decision, however, that "although defendants have vigorously pursued their claims that Applera's patents are unenforceable because its licensing program constituted patent misuse, defendants have not pointed to any

legal opinions from which this Court could conclude that MJ came to its position in good faith." Id. at 12. This Court found that MJ's legal advocacy before the FTC did not support the formation of a good faith belief of patent misuse. Thus, the Court's decision to bifurcate the patent and antitrust/patent misuse phases could have had no impact on the jury's willfulness finding.

The Court also addressed MJ's contention that it acted in good faith because it did not contributorily infringe Applera's patent by the mere sale of thermal cyclers, and concluded that MJ was on notice that it was being accused of inducing infringement of Applera's patents, not merely contributory infringement. See id. at 9.

Third, MJ argues that the Court erred in relying on John Finney's testimony that approximately 400 MJ machines were licensed under the EAP, out of a total of about 65,000 MJ machines, because John Finney did not gain this knowledge until this litigation was underway. As there was also evidence that an MJ customer support manager acknowledged in a 1998 memorandum that most customers did not pay for an end user license, and that MJ discouraged people from getting licenses, see id. at 18, the Court finds no basis to modify its earlier conclusion that MJ's claimed reliance on end users obtaining a license lacked credibility.

Finally, MJ's arguments as to its motivation and concealment of infringement were thoroughly addressed in Court's March 30 ruling, and are insufficient grounds for reconsideration.

Accordingly, defendants' motion for reconsideration [Doc. # 1307] is DENIED.

IT IS SO ORDERED.

/s/

Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut, this 17th day of August, 2005.