IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ST. CLAIR INTELLECTUAL PROPERTY CONSULTANTS, INC., Plaintiff, v. SAMSUNG ELECTRONICS CO., LTD., et al., Defendants.	:	Civil Action No. 04-1436-JJF-LPS
ST. CLAIR INTELLECTUAL PROPERTY CONSULTANTS, INC., Plaintiff, v. SIEMENS AG, et al., Defendants.	:	Civil Action No. 06-403-JJF-LPS
ST. CLAIR INTELLECTUAL PROPERTY CONSULTANTS, INC., Plaintiff, v. LG ELECTRONICS, INC., et al., Defendants.	:	Civil Action No. 06-404-JJF-LPS

ST. CLAIR INTELLECTUAL PROPERTY CONSULTANTS, INC., Plaintiff, v. RESEARCH IN MOTION LTD., et al., Defendants.	:	Civil Action No. 98-371-JJF-LPS
ST. CLAIR INTELLECTUAL PROPERTY CONSULTANTS, INC., Plaintiff, v. FUJIFILM HOLDINGS CORPORATIONS, et al., Defendants.	:	Civil Action No. 08-373-JJF-LPS

MEMORANDUM ORDER

The defendants in the above referenced actions (collectively, "Defendants") filed a Motion for Reconsideration (Docket Index ("D.I.") 669)[1] of this Court's December 28, 2009 Order Staying Briefing (D.I. 657) ("Order") on Defendants' Motion to Stay (D.I. 647) and Motion to Certify (D.I. 645). Plaintiff, St. Clair Intellectual Property Consultants, Inc. ("St. Clair"), filed a Memorandum in Opposition to Defendants' Motion for Reconsideration (D.I. 688). The Court has considered the Motion for Reconsideration and the response thereto. For

[1]Unless otherwise noted, all references to Docket Index (D.I.) numbers are to entries in the docket for C.A. No. 04-1436-JJF-LPS.

the reasons set forth below, the Motion for Reconsideration is **DENIED**.[2]

Pursuant to Local Rule 7.1.5, a motion for reconsideration should be granted only "sparingly." D. Del. LR 7.1.5. The decision to grant such a motion lies squarely within the discretion of the district court. *See Dentsply Int'l, Inc. v. Kerr Mfg. Co.,* 42 F. Supp. 2d 385, 419 (D. Del. 1999); *Brambles USA, Inc. v. Blocker,* 735 F. Supp. 1239, 1241 (D. Del. 1990). These types of motions are granted only if the court has patently misunderstood a party, made a decision outside the adversarial issues presented by the parties, or made an error not of reasoning but of apprehension. *See Shering Corp. v. Amgen, Inc.,* 25 F. Supp. 2d 293, 295 (D. Del. 1998); *Brambles,* 735 F. Supp. at 1241. "A motion for reconsideration is not properly grounded on a request that a court rethink a decision already made." *Smith v. Meyers,* No. 09-814-JJF, 2009 WL 51195928, at *1 (D. Del. Dec. 30, 2009); *see also Glendon Energy Co. v. Borough of Glendon,* 836 F. Supp. 1109, 1122 (E.D. Pa. 1993). It is not an opportunity to "accomplish repetition of arguments that were or should have been presented to the court previously." *Karr v. Castle,* 768 F. Supp. 1087, 1093 (D. Del. 1991).

A motion for reconsideration may be granted only if the movant can show at least one of the following: (i) there has been an intervening change in controlling law; (ii) the availability of new evidence not available when the court made its decision; or (iii) there is a need to correct a clear error of law or fact to prevent manifest injustice. *See Max's Seafood Café by LouAnn, Inc. v. Quinteros,* 176 F.3d 669, 677 (3d. Cir. 1999). However, in no instance should reconsideration be granted if it would not result in amendment of an order. *See Schering Corp.,* 25 F. Supp. 2d at

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[2]Defendants' request for oral argument on their Motion for Reconsideration (D.I. 670) is hereby **DENIED**.

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Defendants present three grounds for reconsideration, but none of them satisfy the stringent conditions set forth above. First, Defendants argue that the recently-established February 26, 2010 deadline for opening briefs in the *Fujifilm I* appeal constitutes new factual evidence justifying reconsideration of this Court's Order. In actuality, this is nothing new. During the December 28, 2009 hearing, Defendants expected the appeal to be "docketed in early January with opening briefs [due] in March[.]" Hearing Tr. (D.I. 690) at 6. The Federal Circuit's decision to set a date that is three days earlier than was anticipated does not constitute new evidence sufficient to warrant amendment of the Order or, therefore, reconsideration.

Next, Defendants argue that the Court has misapprehended their Motion to Stay as dependent on Judge Farnan's impending ruling on Defendants' Objections to the Report and Recommendation on claim construction (D.I. 531) ("Report"), rather than being dependent on the pending *Fujifilm I* appeal. There was no such misapprehension. The Court recognizes that, in Defendants' view, Judge Farnan's claim construction ruling in *Fujifilm I*, which is now on appeal, construes particular claim language in a manner contrary to that endorsed by the United States Patent and Trademark Office ("PTO") on re-examination. Defendants posit that in the *Fujifilm I* appeal the Federal Circuit may reject Judge Farnan's previous claim construction and agree with the PTO. Perhaps this will happen – or perhaps the Federal Circuit will conclude that Judge Farnan's construction is correct. The same issue is before Judge Farnan right now in the form of fully-briefed Objections to the claim construction Report, which recommends that Judge Farnan adhere to his previous *Fujifilm I* construction of the term with which Defendants are most concerned. Perhaps Judge Farnan will accept the Report's recommendation, or perhaps he will

agree with Defendants. How Judge Farnan rules on the Objections will have implications for whether the impending Motions are pressed (e.g., will Defendants still seek certification of an interlocutory appeal if their Objections are sustained?) and the factors that must be considered – and briefed – in ruling on them.

Finally, Defendants argue that the Court's Order committed legal error by ignoring a statutorily-defined process providing for certification of an interlocutory appeal at the same time a district court issues an order. While 28 U.S.C. § 1292(b) does provide for certification of an interlocutory appeal in a district court's order, it does not in all instances require a district court to rule on a motion to certify at the same time it issues its order. A court may grant a motion to certify and issue an amended order *after* an initial ruling on the merits. *See* James Wm. Moore et al., *Moore's Federal Practice* § 203.32[1] (3d ed. 2009); *In Re Hamilton,* 122 F.3d 13, 14 (7th Cir. 1997). Greater efficiency will be achieved by delaying briefing of the Motion to Certify until after Judge Farnan rules on the pending Objections rather than by requiring briefing now on a certification request that Defendants acknowledge will be withdrawn if Judge Farnan sustains certain of their Objections. *See* D.I. 669 at 7.[3]

[3]The Court reiterates the statement made during the teleconference that it will entertain a request from one or more parties for expedited briefing of the pending motions once Judge Farnan rules on the Objections to the Report. **THE PARTIES ARE HEREBY DIRECTED** to advise the Court of their proposal(s) for completing briefing on the Motion to Stay and Motion to Certify by joint letter no later than five days after issuance of a ruling on the Objections.

ACCORDINGLY, IT IS HEREBY ORDERED that Defendants' Motion for Reconsideration (D.I. 669) is **DENIED**.

Dated: February 4, 2010

Leonard P. Stark
UNITED STATES MAGISTRATE JUDGE