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**IN THE UNITED STATES DISTRICT COURT**

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**FOR THE DISTRICT OF ARIZONA**

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Lighting Defense Group LLC,

No. CV-22-01476-PHX-SMB

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Plaintiff,

Consolidated with: CV-22-01671-PHX-SMB

11

v.

**ORDER**

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Shanghai Sansi Electronic Engineering  
Company Limited, et al.,

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Defendants.

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SANSI LED Lighting Inc., and SANSI  
Smart Lighting Inc.,

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Plaintiffs/Counter-  
Defendants,

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v.

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Lighting Defense Group LLC,

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Defendant/Counter-  
Plaintiff.

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Pending before the Court is Plaintiff Lighting Defense Group LLC’s (“LDG”) Motion for Limited Reconsideration (Doc. 158). Following the Court’s Order for expedited briefing, Defendants SANSI LED Lighting, Inc., SANSI Smart Lighting, Inc., and Shanghai SANSI Electronic Engineering Co., Ltd. (collectively, “SANSI”) filed their Response (Doc. 171). Having considered the parties’ briefings and the applicable law, the Court will deny LDG’s Motion.

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1       **I.       BACKGROUND**

2               This case stems from LDG’s allegations that SANSI infringed on its various patents  
3 related to light emitting diode (also known as an LED) technology. The Court previously  
4 issued an Order granting in part and denying in part summary judgment on both parties’  
5 respective motions. (Doc. 146.) Relevant here, both parties moved for summary judgment  
6 on the issue of marking under 35 U.S.C. § 287(a) and availability of pre-notice damages.  
7 (See Doc. 107 at 11–16; Doc. 109 at 13–18.)

8               In LDG’s Motion for Partial Summary Judgment it argued § 287 is inapplicable  
9 until at least May 25, 2020 when it licensed its patents to a third-party, and that damages  
10 are available beginning on June 26, 2020 after it issued actual notice to SANSI of the  
11 alleged infringement. (Doc. 107 at 11–16.) LDG did not argue the availability of damages  
12 for the period between May 25 and June 26, 2020. Instead, relegated to a footnote, LDG  
13 stated it “reserves its right and intends to present its case to the Jury regarding marking”  
14 for that period. (*Id.* at 13 n.1.)

15               Conversely, in SANSI’s Motion for Summary Judgment, it argued that the notice  
16 given to LDG about its failure to mark triggered § 287, thereby precluding all damages  
17 pre-dating the actual notice LDG provided SANSI on June 26, 2020. (Doc. 109 at 13–18.)  
18 To support its argument, SANSI pointed to evidence showing: (1) LDG licensed the  
19 patents-at-issue to two third parties that authorized the sale of its LED technology before  
20 LDG had issued actual notice to SANSI; (2) those licenses did not include any obligation  
21 for the third parties to mark the products sold or offered for sale; (3) the licensees, among  
22 others, were listing and selling products practicing the patented technology online; and (4)  
23 identifying the products and providing links to the online marketplaces, including those  
24 within the United States, where the products could have been purchased. (*Id.* at 15; *see*  
25 *also* Doc. 110-2 at 76–94.) In response, LDG argued that SANSI failed to meet its burden  
26 of production to trigger § 287’s marking requirement. (Doc. 127 at 17–20.) According to  
27 LDG, SANSI did not produce any evidence that products were actually sold under the  
28 licenses before LDG issued it actual notice because (1) SANSI accessed the links

1 after-the-fact, (2) those links may not have been accessible during the period in dispute, (3)  
2 and the links for the products listed in the United States show the products as “currently  
3 unavailable.” (*Id.*) In turn, SANSI maintained that it provided adequate notice of failure  
4 to mark based on its proffered evidence. (Doc. 138 at 10–12.)

5 After oral argument, this Court construed LDG’s arguments as conceding and the  
6 unavailability of damages between May 25 and June 26, 2020 upon a finding of a failure  
7 to mark. (Doc. 146 at 43.) The Court then concluded that “[u]nder a plain reading, § 287(a)  
8 precludes recovery after the requirement to mark is triggered until actual notice is given,  
9 after which that date then controls the starting date for recovery.” (*Id.* at 45–47.) The  
10 Court found that SANSI met its burden of production that LDG failed to mark its products,  
11 and consequently LDG was not entitled to damages pre-dating June 26, 2020. (*Id.* at 43,  
12 45–47.)

13 LDG now moves for reconsideration of the Court’s finding of a concession to reach  
14 the merits of whether pre-suit damages are available for the period between May 25 and  
15 June 26, 2020. (Doc. 158.)

## 16 **II. LEGAL STANDARD**

17 “Motions to reconsider are appropriate only in rare circumstances.” *333 W. Thomas*  
18 *Med. Bldg. Enters. v. Soetantyo*, 976 F. Supp. 1298, 1302 (D. Ariz. 1995). These  
19 circumstances include when the court “(1) is presented with newly discovered evidence,  
20 (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an  
21 intervening change in controlling law.” *Sch. Dist. No. 1J, Multnomah Cnty. v. ACandS,*  
22 *Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); *see also* LRCiv 7.2(g)(1). “A motion for  
23 reconsideration should not be used to ask a court to rethink what the court had already  
24 thought through—rightly or wrongly.” *United States v. Rezzonico*, 32 F. Supp. 2d 1112,  
25 1116 (D. Ariz. 1998) (cleaned up); Lastly, courts should deny motions for reconsideration  
26 if they only reiterate previous arguments. *See Maraziti v. Thorpe*, 52 F.3d 252, 255 (9th  
27 Cir. 1995); *see also Ogden v. CDI Corp.*, No. CV 20-01490-PHX-CDB, 2021 WL  
28 2634503, at \*3 (D. Ariz. Jan. 6, 2021) (denying a motion for reconsideration when plaintiff

1 did “nothing more than disagree with this Court as to the relevant law”).

2 **III. DISCUSSION**

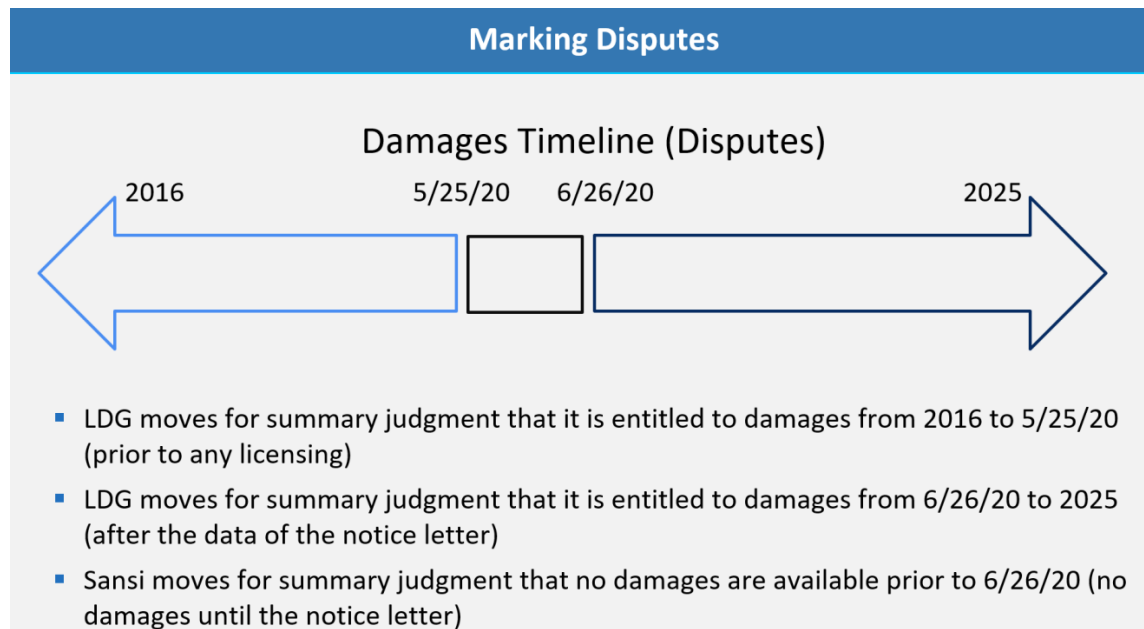
3 For purposes of the pending Motion, the essence of the overlapping summary  
4 judgment dispute is narrow and straightforward. According to LDG, the Court  
5 misconstrued its arguments as a concession of the availability of damages between May 25  
6 and June 26, 2020, and it did not waive the issue. (Doc. 158 at 3–6.) LDG contends that  
7 it “did not affirmatively address in its motions the timeframe between May 25, 2020 and  
8 June 26, 2020 because LDG believed—and continues to believe—a genuine dispute of  
9 material fact exists as to whether any offers for sale giving rise to a duty to mark occurred  
10 during this timeframe.” (*Id.* at 4.) LDG requests that the Court reconsider its finding that  
11 LDG conceded and waived the availability of damages during that period, which would  
12 require the Court to consider the merits of the dispute. (*Id.* at 6.)

13 Although, in its own words, LDG did not affirmatively address the timeframe before  
14 May 25 and June 26, 2020, LDG appears to request that the Court read into the lack of an  
15 affirmative dispute that there is in fact, a clear misunderstanding and a dispute of material  
16 fact on the issue. At oral argument, LDG’s counsel stated:

17 So marking. There are competing motions, as the Court recognized. We put  
18 this on a timeline. So before May 25th, 2020, there were no patented articles  
19 sold by the owner or any licensee under the asserted patents. May 25th, 2020,  
20 the GE RUN license is signed. Now, that doesn’t give rise itself to a need to  
21 mark. Marking has to happen when patented articles are sold, offered for sale,  
22 made, or imported. Notice was given to Sansi about the infringement on June  
23 26th, 2020. So our motion is before May 25th, 2020, there was no need to  
24 mark, and we’re entitled to damages for that period. And after June 26th,  
25 2020, Sansi was -- was given actual notice, and so we’re entitled to damages  
26 for that period. And then Sansi’s motion is prior to 6-26-20, no damages at  
27 all because of the licenses, and what they believe were products on sale, but  
28 we can’t find any evidence of products on sale within that month time frame.

(Doc. 149 at 68:15–69:5 (Transcript of Oral Argument held on November 15, 2024).) LDG  
understands this statement and its responsive arguments as raising a dispute that damages  
are available for that period. (Doc. 158 at 5.) LDG further provides that the following  
slide presented at oral argument, viewed independently or in conjunction with counsel’s

1 statements, evidences the Court’s misunderstanding.



13 (*Id.* at 4, 5.)

14 The Court previously understood LDG’s arguments as a concession based on its  
15 silence and lack of clarity. To the extent the Court gleans a misunderstanding from what  
16 appears opaque, the Court now finds clarity in LDG’s dispute—the marking statute was  
17 not triggered because LDG could not find any evidence products were sold during the  
18 relevant period and SANSE otherwise failed to meet its burden.

19 As previously outlined, “[t]he patentee bears the burden of pleading and proving he  
20 complied with § 287(a)’s marking requirement.” *Arctic Cat Inc. v. Bombardier*  
21 *Recreational Prods. Inc.*, 876 F.3d 1350, 1367 (Fed. Cir. 2017). Section 287 is a limitation  
22 on damages, and not an affirmative defense. *Id.* at 1366. “The burden of proving  
23 compliance with marking is and at all times remains on the patentee.” *Id.* at 1367.  
24 Compliance is a question of fact. *Id.* at 1366 (noting the compliance requirement extends  
25 to licensees). As the Federal Circuit has stated:

26 [A]n alleged infringer who challenges the patentee’s compliance with § 287  
27 bears an initial burden of production to articulate the products it believes are  
28 unmarked “patented articles” subject to § 287. To be clear, this is a low bar.  
The alleged infringer need only put the patentee on notice that he or his  
authorized licensees sold specific unmarked products which the alleged  
infringer believes practice the patent. *The alleged infringer’s burden is a*

1           *burden of production, not one of persuasion or proof.*

2       *Id.* at 1368 (emphasis added). “Once the alleged infringer meets its burden of production,  
3 however, the patentee bears the burden to prove the products identified do not practice the  
4 patented invention,” or where licensees compliance is at issue, “whether the patentee made  
5 reasonable efforts to ensure compliance with the marking requirements.” *Id.* at 1366  
6 (quoting *Maxwell*, 86 F.3d at 1111).

7           Even with the miscommunication, as SANSI correctly argues, SANSI met its  
8 burden of production and that has not changed from the Court’s previous Order. (*See* Doc.  
9 171.) SANSI provided the licenses that were effective during the relevant period, those  
10 licensees had listed products SANSI believed were practicing the patented technology  
11 online for sale, and LDG never required its licensees to mark licensed products. LDG  
12 exclaiming that there is no direct evidence that the products were actually sold during that  
13 period ignores the apparent inferential value of the evidence and further does not negate  
14 that SANSI’s burden was not one of persuasion or proof. *Arctic Cat*, 876 F.3d at 1368.  
15 Rather than make a showing that (1) these licensees did mark the products—at any  
16 time—(2) that the products did not practice the claimed invention (3) or that LDG made  
17 reasonable efforts to ensure compliance, LDG argues against the persuasiveness of  
18 SANSI’s evidence and rehashes the same arguments it failed to affirmatively develop prior.  
19 Consequently, LDG inappropriately increases SANSI’s burden to avoid its ultimate burden  
20 of proving compliance at all times. *Id.* at 1367.<sup>1</sup> Further, LDG’s proffered arguments  
21 against SANSI’s evidence defy common sense and do not give rise to a genuine dispute.

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23 <sup>1</sup> LDG also previously argued its failure to mark was excused because it was *de minimus*.  
24 (Doc. 127 at 21.) The case LDG cites states such a rule covers “unmarked products were  
25 a *de minimis* portion of the released goods in comparison to the vast majority of  
26 goods—which were, indeed, marked.” *See Flatworld Interactives LLC v. Samsung Elecs.*  
27 *Co.*, 77 F. Supp. 3d 378, 388 (D. Del. 2014). However, LDG does not compare marked  
28 and unmarked products, and instead argued based on the limited timeframe between its  
failure to mark and actual notice justifies the excuse. LDG pointed to no authority for the  
position that timeframe alone could justify failure to mark as *de minimus*. Nor has LDG  
provided any guidance as to whether this excuse would operate to refute SANSI’s burden  
or excuses LDG’s failure to prove compliance after the burden shifted back to LDG.  
Considering that the burden to prove damages and compliance with § 287 always remains  
on the patentee, it seems to be the latter. *See Arctic Cat*, 876 F.3d at 1367. Therefore,  
LDG’s argument is unavailing.

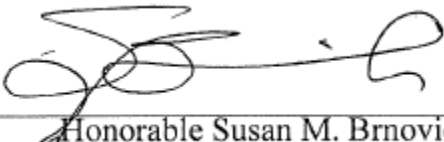
1 LDG therefore failed to show compliance with § 287, triggering the actual notice  
2 requirements, of which damages are precluded for any damages arising before that notice.  
3 Thus, even construing LDG's dispute as a miscommunication, the Court finds no error its  
4 prior holding. *See* LRCiv 7.2(g).

5 **IV. CONCLUSION**

6 Accordingly,

7 **IT IS HEREBY ORDERED denying** Plaintiff's Motion for Limited  
8 Reconsideration (Doc. 158).

9 Dated this 20th day of December, 2024.

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11 \_\_\_\_\_  
12 Honorable Susan M. Brnovich  
13 United States District Judge  
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