

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

**ACTIVEVIDEO NETWORKS, INC.,**

**Plaintiff,**

**V.**

**CIVIL ACTION NO. 2:10cv248**

**VERIZON COMMUNICATIONS, INC.,  
VERIZON SERVICES CORP.,  
VERIZON VIRGINIA INC., and  
VERIZON SOUTH INC.**

**Defendants.**

***MEMORANDUM ORDER***

Before the Court is Defendants', Verizon Communications Inc., Verizon Services Corp., Verizon Virginia Inc., and Verizon South Inc. (collectively, "Verizon"), Motion for Partial Reconsideration Regarding Validity of the '748 Patent pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. Having carefully reviewed the Parties' pleadings, the Court finds this matter ripe for judicial determination. For the reasons stated herein, Defendants' Motion for Partial Reconsideration is **DENIED**.

**I. FACTUAL & PROCEDURAL HISTORY**

On May 27, 2010, Plaintiff, ActiveVideo Networks, Inc.'s ("ActiveVideo"), filed suit in the United States District Court for the Eastern District of Virginia against Verizon alleging patent infringement and seeking to enjoin Verizon from infringing five patents that ActiveVideo owns and to recover monetary damages for previous infringement. Compl. ¶¶ 13, 19, 25, 31, 37. On July 16, 2010, ActiveVideo filed a First Amended Complaint, alleging that the Verizon FIOS system, which provides interactive television services, infringes at least one claim of each of the

five patents owned by ActiveVideo, which are directed to methods and systems relating to interactive delivery of information services to subscriber televisions over a cable distribution network. First Am. Compl. ¶¶ 12, 18, 26, 33, 40, 47. On December 2, 2010, Verizon filed an Answer to ActiveVideo's First Amended Complaint and First Amended Counterclaims against ActiveVideo, seeking, *inter alia*, declaratory judgments of non-infringement and invalidity of the ActiveVideo's patents and alleging ActiveVideo's infringement of United States Patent Nos. 5,682,325 (the "325 patent"), 6,169,542 (the "542 patent"), 6,381,748 (the "748 patent") and 7,561,214 (the "214 patent"), which VCI owns. Defs.'s First Am. Countercls. ¶¶ 19, 23, 29, 33, 39, 43, 49, 53, 59, 63, 67, 78, 89, 100. ActiveVideo filed an Answer to Defendant's First Amended Counterclaims and ActiveVideo's First Amended Counterclaims on December 16, 2010 alleging invalidity and non-infringement of the patents that Verizon asserts against it. Pl.'s Answer to Def.'s First Am. Countercls. at 17.

On May 10, 2011, the Court issued a Memorandum Opinion and Order granting ActiveVideo's Motion for Partial Summary Judgment of Invalidity of the Asserted Claims of the '325 and '748 patents. Specifically, the Court held, *inter alia*, that Claims 13 and 20 of the '748 patent are anticipated by U.S. Patent No. 6,034,689 (the "689 Patent"). On May 13, 2011, Verizon filed the instant Motion for Partial Reconsideration Regarding Validity of the '748 Patent, arguing that the '689 Patent failed to disclose the step of "transforming the data processing network information from the network format having a first interactive element to a television format having a second interactive element." On May 27, 2011, ActiveVideo filed a Memorandum in Opposition to the Motion and Verizon filed a Reply to ActiveVideo's Memorandum in Opposition on June 3, 2011. Accordingly, this matter is now ripe for judicial determination.

## II. LEGAL STANDARD & DISCUSSION

Under Rule 54(b) of the Federal Rules of Civil Procedure, an interlocutory order is subject to revision “at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.” Fed. R. Civ. P. 54(b). Thus, “a district court retains the power to reconsider and modify its interlocutory judgments.” *Am. Canoe Ass’n v. Murphy Farms, Inc.*, 326 F.3d 505, 514-15 (4th Cir. 2003); *see also Fayetteville Investors v. Commercial Builders, Inc.*, 936 F.2d 1462, 1469 (4th Cir. 1991). However, the district court’s reconsideration of an interlocutory order is not subject to the heightened standards that apply to reconsideration of a final judgment. *See Am. Canoe*, 326 F.3d at 514. Instead, the district judge may exercise the discretion to afford relief from interlocutory orders “as justice requires.” *Fayetteville Investors*, 936 F.2d at 1473. A district court may grant a motion for reconsideration under Rule 54(b): (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available earlier; or (3) to correct a clear error of law or prevent manifest injustice. *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir.1993); *see also Gordon v. ArmorGroup, N.A., Inc.*, No. 1:10cv002, 2010 WL 4272979, at \*1 (E.D. Va. Oct. 19, 2010). In this case, Defendants argue for reconsideration based upon a clear error of law.

It is axiomatic that a Motion for Reconsideration is not a tool with which an unsuccessful litigant may force the Court’s attention to matters adequately and previously addressed. *See Hutchinson*, 994 F.2d at 1081; *see also Moore v. United States*, No. 2:05CV244, 2006 WL 763656, at \*1 (E.D. Va. Mar. 23, 2006) (“[S]uch motion should not be used to ‘rehash’ arguments previously presented or to submit evidence which should have been previously submitted.”). In their Motion, Verizon seeks to reargue issues that the Court has already

addressed. In their original Opposition to ActiveVideo's Motion for Partial Summary Judgement, Verizon relied primarily on a claims construction argument in defending the Motion, dedicating only three sentences to the argument that the '689 Patent fails to disclose the "transformation" step as claimed in Claim 13 of the '748 Patent. Accordingly, the Court was compelled to rule on ActiveVideo's motion with the arguments and facts made known to the Court through the Parties' briefs at the time the motion was pending. Verizon cannot now seek to expand upon an argument that they failed to develop in their original brief in the form of a Motion for Reconsideration. Because the Court reposes great confidence in the propriety of its May 10, 2011 Memorandum Opinion and Order granting partial summary judgment for ActiveVideo and invalidating Claims 13 and 20 of the '748 patent, the Court declines to reconsider it.

Given the discretion invested in this Court to reconsider its earlier decision, the Court finds that Verizon has not asserted any meritorious ground to amend the Court's judgement. Accordingly, Defendants' Motion for Partial Reconsideration is **DENIED**.


### III. CONCLUSION

For the foregoing reasons, Defendants' Motion for Partial Reconsideration is **DENIED**.

The Court **DIRECTS** the Clerk to send a copy of this Memorandum Order to counsel and parties of record.

**IT IS SO ORDERED.**

Norfolk, Virginia  
June 30, 2011

  
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Raymond A. Jackson  
United States District Judge