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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

VIASAT, INC.,

Plaintiff,

vs.

SPACE SYSTEMS/LORAL, INC.,
LORAL SPACE &
COMMUNICATIONS,
INC.,

Defendants.

CASE NO. 3:12-cv-00260-H-WVG

**PLAINTIFF VIASAT, INC.'S
OPPOSITION TO DEFENDANTS'
MOTION FOR JUDGMENT AS A
MATTER OF LAW (RENEWED), OR
A NEW TRIAL (7 OF 12),
REGARDING THE PRIORITY DATE
AND INVALIDITY OF THE '875
PATENT**

[REDACTED]

Date: August 11, 2014

Time: 9:00 a.m.

Place: Courtroom 15A

Hon. Marilyn L. Huff

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I. INTRODUCTION

For the second time in this case, Defendants seek to deprive Claim 12 of the '875 Patent of its provisional patent-application filing date on the grounds that the earliest-filed application does not provide written-description support for the claimed invention *as a matter of law*. Prior to trial, Defendants moved for summary judgment on the issue of the '875 Patent's priority date, raising the same arguments presented in their current Motion. (Dkt. 306-1.) The Court denied summary judgment, pointing out that the written-description inquiry was factual in nature, and that the outcome turned on the credibility of expert witnesses from both sides. (Dkt. 433.) Since then, the only thing that has changed is that the jury, as finder of disputed matters of fact, has sided with ViaSat in finding that the '875 Patent is not invalid, thus rendering Defendants' burden even more formidable than the one they faced on their prior, failed motion.

First, the crux of Defendants’ priority-date argument is that Dr. Bartone engaged in an “obviousness” analysis because he allegedly “combined embodiments” from the provisional application. There is no basis in law or fact for this argument. The Federal Circuit has never suggested that written-description for a claimed invention must be wholly self-contained in one discrete embodiment of a specification. Rather, the Court has instructed that in determining whether the inventors had “possession” of the claimed invention, a person of skill in the art should naturally read the specification **as a whole**. *E.g., In re Skvorecz*, 580 F.3d 1262, 1269-70 (Fed. Cir. 2009). In any event, Dr. Bartone did not “combine embodiments,” but rather explained that the teachings of the provisional application, read together in context, comprise “a very thorough description of the invention.” The jury was entitled to, and did, agree.

1 Second, Defendants are not entitled to JMOL simply because ViaSat did not enter into
 2 evidence an intervening patent application that was filed between its provisional patent
 3 application and the issuance of the '875 Patent. ViaSat offered expert testimony from
 4 Dr. Chris Bartone that explicitly relied upon the entire “chain” of applications, as
 5 specifically permitted by the Federal Rules of Evidence. *See* Fed. R. Evid. 705. This
 6 was sufficient to shift the burden of producing evidence rebutting Dr. Bartone’s
 7 testimony to Defendants. If Defendants believed there was some defect in the
 8 intervening application, they were obligated to highlight that fact to the jury through
 9 cross-examination or by entering the application into evidence themselves.

10 Finally, Defendants’ argument that they are entitled to a new trial because the
 11 Court gave a “prejudicially incomplete” instruction is a manufactured issue. Instruction
 12 No. 37 closely tracks the AIPLA model, and Defendants twice stipulated to an
 13 instruction that was materially identical. Further, the Federal Circuit has expressly
 14 rejected the argument that a priority-date instruction must, as a matter of law, include the
 15 same “obviousness-is-not-enough” caveat that Defendants seek to require here. For all
 16 these reasons and those set forth below, Defendants’ Motion should be denied.

17 **II. FACTUAL & PROCEDURAL BACKGROUND**

18 The '875 Patent, titled “Placement of Gateways Near Service Beams,” relates to
 19 an invention for “utilizing subscriber terminal and gateway terminal positioning and
 20 frequency re-use.” (V-1291 at col. 2, ll. 3-6.)¹ In general, a satellite communications
 21 system includes a network, interfaced with a “gateway” that is configured to
 22 communicate with one or more “subscriber terminals,” via the satellite. (V-1291 at col.

23 _____
 24 ¹ Citations to “Tr.” refers to the trial transcript. Citations to “V-__” and “S-__”
 refer to admitted trial exhibits.

1 3, ll. 60-64.) In the “forward,” or “downstream,” direction, the satellite provides a
2 connection between a feeder-beam uplink originating from a gateway, and one or more
3 service-beam downlinks that provide service to subscriber terminals. (See V-1291 at
4 col. 6, ll. 38-67 & Fig. 12A.) In the “return,” or “upstream,” direction, the satellite
5 connects one or more service beam uplinks with the feeder beam downlink. (V-1291 at
6 col. 7, ll. 1-13 & Fig. 12B.)

7 At trial, expert witness Dr. Chris Bartone testified that prior-art satellite systems
8 were designed to provide “ubiquitous” coverage to a desired region (for systems in the
9 United States, “full-CONUS coverage”). (Tr. 1451:13-20.) Although such systems
10 provided the broadest possible coverage, they necessarily required that gateways be
11 placed within the coverage area of the service beams. (Tr. 1451:19-21.) To avoid
12 interference between co-located feeder and service beams, prior-art satellite designers
13 were required to “take whatever frequency spectrum that [was] available, and . . . divide
14 it up,” between the two different types of beams. (Tr. 1451:21-22.) This division of the
15 available spectrum “inherently limit[ed] the overall capacity of the system.” (Tr.
16 1451:23-24; *see also* V-1291 at col. 1, l. 42-44 (“[T]he design of [star network services
17 using Ka band satellites] ***inherently limits the number of customers that may be***
18 ***adequately served.***”) (emphasis added).)

19 The invention of the ’875 Patent involves a satellite that foregoes service-beam
20 coverage to selected regions, and thus allows gateways to be strategically placed in areas
21 that are “spatially isolate[d]” from the service beams. (Tr. 1456:24-1457:4, 1458:22-
22 1459:5.) This spatial diversity “allows the gateways and the [service] beams to reuse all
23 [of the available] frequency,” which “drastically increase[s] the overall system capacity.”
24 (Tr. 1457:3-6; *see also* V-1291 at Claim 12.) Dr. Bartone also testified that, according

1 to the '875 Patent, "there may be certain areas with[in] the gateway regions where you
2 still want to provide some service." (Tr. 1460:25-1461:2.) In such cases, the color re-
3 use is "back[ed] off a little bit" to avoid interference. (Tr. 1461:14-15; *see also* V-1291
4 at Claim 1.) Upon learning of this invention in late 2006, Defendants viewed it to be "a
5 very radical design concept." (V-472.)

6 At trial, the inventors of the '875 Patent provided further insight into the concepts
7 and benefits underlying the '875 Patent and demonstrated that the core ideas of spatial
8 separation and feeder-service beam frequency re-use were developed in the summer of
9 2006. (Tr. 1347:5-1352:7 (Miller); 145:23-147:2, 162:2-164:17 (Dankberg); *see also*
10 V-517.) Shortly thereafter, the six provisional patent applications to which the '875
11 Patent claims priority were filed with the PTO, the earliest of which was application
12 number 60/827,038 (the "'038 Provisional Application") (V-1115) filed on September
13 26, 2006. The non-provisional application that ultimately led to the '875 Patent was
14 filed on March 25, 2009 as application number 12/411,315 (the "'315 CIP Application).

15 III. STANDARD OF REVIEW

16 A party challenging the validity of a duly issued patent bears the burden of
17 persuasion, by clear and convincing evidence, that purported prior art predates the
18 earliest date to which the patent claims priority. *See Tech. Licensing Corp. v. Videotek,*
19 *Inc.*, 545 F.3d 1316, 1326-29 (Fed. Cir. 2008) ("[I]t is a long-standing rule of patent law
20 that, because an issued patent is by statute presumed valid, a challenger has the burden of
21 persuasion to show by clear and convincing evidence that the contrary is true. ***That***
22 ***ultimate burden never shifts . . .***") (emphasis added). Whether the issued patent is
23 entitled to the priority date of some earlier-filed application is a question of ***fact***,
24

1 determined from the perspective of a person skilled in the art. *See Martek Biosciences*
 2 *Corp. v. Nutrinova, Inc.*, 579 F.3d 1363, 1369 (Fed. Cir. 2009).

3 Once a jury determines that an earlier-filed application—such as a provisional
 4 patent application—is sufficient to establish priority, that determination is reviewed only
 5 for substantial evidence. *SynQor, Inc. v. Artesyn Techs., Inc.*, 709 F.3d 1365, 1377-78
 6 (Fed. Cir. 2013); *Union Oil Co. of Cal. v. Atl. Richfield Co.*, 208 F.3d 989, 997 (Fed. Cir.
 7 2000) (“This court will not substitute its judgment for that of the fact finder.”).
 8 “Substantial evidence is evidence adequate to support the jury’s conclusion, even if it is
 9 also possible to draw a contrary conclusion from the same evidence.” *Johnson v.*
 10 *Paradise Valley Unified Sch. Dist.*, 251 F.3d 1222, 1227 (9th Cir. 2001). The Court is
 11 required to view the evidence in the light most favorable to ViaSat and disregard all
 12 evidence favorable to Defendants that the jury was not required to believe. *See Wallace*
 13 *v. City of San Diego*, 479 F.3d 616, 624 (9th Cir. 2007).

14 **IV. ARGUMENT**

15 **A. Substantial Evidence Shows That The ’875 Patent Is Entitled To The** 16 **September 26, 2006 Priority Date Of Its Provisional Patent Application.**

17 Defendants are not entitled to JMOL because a reasonable jury could conclude
 18 that the ’038 Provisional Application adequately supports Claim 12 of the ’875 Patent.
 19 “Claims deserve the provisional application’s earlier filing date so long as that
 20 application contains adequate written description under 35 U.S.C § 112.” *Star*
 21 *Scientific, Inc. v. R.J. Reynolds Tobacco Co.*, 655 F.3d 1364, 1371 (Fed. Cir. 2011); *see*
 22 *also* 35 U.S.C. §§ 111(b), 119(e)(1). The test is whether the earlier-filed application
 23 “describe[s] an invention understandable to [a] skilled artisan and show[s] that the
 24 inventor actually invented the invention claimed.” *Ariad Pharm., Inc. v. Eli Lilly & Co.*,

1 598 F.3d 1336, 1351 (Fed. Cir. 2010) (*en banc*). The inquiry will “necessarily vary
 2 depending on context,” and should account for “the existing knowledge in the particular
 3 field, the extent and content of the prior art, the maturity of the science or technology,
 4 [and] the predictability of the aspect at issue.” *Id.*²

5 No particular form of disclosure is required to satisfy the written-description
 6 requirement. *Id.* It is also “unnecessary to spell out every detail of the invention in the
 7 specification.” *LizardTech, Inc. v. Earth Resource Mapping, Inc.*, 424 F.3d 1336, 1345
 8 (Fed. Cir. 2005); *In re Alton*, 76 F.3d 1168, 1175 (Fed Cir. 1996) (holding that written
 9 description can be satisfied even when “every nuance of the claims is not explicitly
 10 described in the specification”). Instead, the written-description requirement is met—
 11 and priority to an earlier-filed application is established—so long as the earlier-filed
 12 application “reasonably convey[s] to those skilled in the art that the inventor had
 13 possession of the claimed subject matter as of the filing date” *Crown Packing*
 14 *Tech. v. Ball Metal Beverage Container Corp.*, 635 F.3d 1373, 1380 (Fed. Cir. 2011).

15 If the prior-art status of a reference turns on the priority date of a Patent, and the
 16 jury declines to find the Patent invalid, “the court must presume that the jury resolved the
 17 underlying factual disputes in favor of the verdict winner,” including factual findings
 18 regarding how person of skill in the art would understand the disclosures of an earlier-
 19 filed specification. *Cummins-Allison Corp. v. SBM Co., Ltd.*, 484 Fed. App’x 499, 507-
 20 08 (Fed. Cir. 2012) (**reversing** district court grant of JMOL contrary to jury verdict).

21
 22 ² The contextual nature of the written-description analysis is particularly relevant in
 23 this case, where Defendants’ expert Dr. Schindall opined that “ordinary” skill in this field
 24 would require at least a Master’s degree in electrical engineering or an equivalent
 discipline plus industry experience in satellite architecture and communication payload
 design. (Tr. 2164:22-2165:19.)

1 **1. A Reasonable Jury Could Conclude That The '038 Provisional**
 2 **Provides Sufficient Written-Description Support For Claim 12.**

3 According to Defendants, an adequate written-description disclosure for Claim 12
 4 would show: (1) A first feeder beam allocated different colors from a proximate service
 5 beam; (2) the first feeder beam further allocated at least one same color as non-proximate
 6 service beams; and (3) a second feeder that is non-proximate to all service beams and
 7 which is allocated all of the colors of the beam pattern. (See Mot. at 8.) A reasonable
 8 jury could, and did, find that a person of skill in the art would understand all three
 9 features to be **expressly** disclosed by the '038 Provisional Application as a whole.

10 (a) Figure 2B Discloses That A First Feeder Beam Is Proximate To A
 11 Differently Colored Service Beam.

12 Figure 2B of the '038 Provisional Application depicts an “example[] of a
 13 multibeam system 200 configured according to various embodiments of the invention . . .
 14 .” (V-1115 ¶ 24.) The larger coverage circles, labeled 225, represent feeder beam
 15 coverage areas, and the smaller coverage circles, labeled 205, represent service beam
 16 coverage areas. (*Id.*) Both the feeder and service beam coverage areas are created by
 17 “isolating antenna directivity to certain regions of [the] country,” which permits the
 18 “reuse[] of frequency bands.” (*Id.*) The specification teaches that in Figure 2B, “the
 19 gateway terminals 210 may be located in a region covered by a service spotbeam (e.g.,
 20 the first, second and fourth gateways 210-1, 210-2, 210-4).” (*Id.* ¶ 25; *see also* Tr.
 21 1464:6-10.) Defendants do not seriously dispute that Figure 2B and its accompanying
 22 description disclose a first feeder beam proximate to a service beam.

23 The description accompanying Figure 2B also teaches that feeder beams must use
 24 different colors from the service beams to which they are proximate. Paragraph 24
 contrasts Figure 2A, which shows “complete geographic exclusivity between the feeder

1 and service spot beams,” and Figure 2B, which shows “instances of service beam
2 overlap.” (V-1115 ¶ 24.) “[W]ith overlap,” the specification teaches, “there are certain
3 interference issues which may inhibit frequency band re-use in the overlapping regions.”
4 (*Id.*; *see also id.* ¶ 20 (“Two frequencies and two polarizations allow four separate
5 downstream uplinks . . .”).)

6 Dr. Bartone explained to the jury that these and other disclosures indicate to a
7 person of skill in the art that “when you have these partially overlapping or proximate
8 beams, you may have certain interference issues, and [the specification] teaches you to
9 use what’s called a four-color system so that you can get around those issues of
10 interference . . .” (Tr. 1464:11-17, 2682:8-12; *see also* V-1115 ¶ 24 (“A four color
11 pattern allows avoiding interference even where there is some overlap . . .”).) Even
12 Defendants’ own expert, Dr. Schindall, testified that a person of skill in the art would
13 understand that the same type of interference that occurs when two service beams are
14 proximate also occurs when a feeder beam and a service beam are proximate, and that
15 different colors are required to avoid such interference. (Tr. 2218:25-2219:10.); *see*
16 *Ariad*, 598 F.3d at 1351 (noting that in evaluating the adequacy of disclosure the Court
17 must account for “existing knowledge in the particular field”). As such, a reasonable
18 jury could find that the ’038 Provisional conveys to a person of skill in the art the concept
19 of proximity between a feeder beam and a differently colored service beam.

20 (b) Figure 2B Discloses That The First Feeder Beam Is Non-Proximate
21 To Other, Same-Color Service Beams.

22 Substantial evidence also shows that the ’038 Provisional Application discloses
23 the first, proximate feeder of Figure 2B reusing at least one same color as other, non-
24 proximate service beams. Paragraph 25 draws a contrast between the three feeder

1 beams that are proximate to a service beam (*i.e.*, feeder beams 225-1, 225-2, and 225-4)
2 and the one feeder that is not proximate to any service beams (*i.e.* feeder beam 225-3).
3 (V-1115 ¶ 25 (“However, a gateway may also be located outside of a region covered by
4 a service spotbeam.”).) As taught by the specification, “[b]y locating gateway [210-3]
5 outside of the spotbeam regions . . . , spatial diversity is achieved to allow for **greater** re-
6 use of the allocated frequencies.” (*Id.* (emphasis added).)

7 Dr. Bartone testified that a person of skill in the art would understand the “greater
8 re-use” language to mean that “when you have partially overlapping [feeder beam and
9 service beams], that you have a certain degree of frequency reuse, and then when you
10 isolate those gateways, you have greater frequency reuse.” (Tr. 2682:13-18.) Put
11 differently, because the spatially isolated feeder beam (*i.e.*, 225-3 in Figure 2B) achieves
12 “greater re-use of the allocated frequencies” than is achieved in the case where the feeder
13 beam is proximate to one or more service beams, there must be some, lesser degree of
14 frequency re-use in the proximate cases. Dr. Bartone’s expert testimony is exactly the
15 type of evidence, regarding how a person of skill in the art would interpret the
16 specification, that the Federal Circuit has found highly relevant to the written-description
17 analysis. *In re Alton*, 76 F.3d at 1175-76; *Wang Labs, Inc. v. Toshiba Corp.*, 993 F.2d
18 858, 866 (Fed. Cir. 1991). Indeed, where an expert “relie[s] on specific statements [in
19 an earlier-filed application] and explain[s] how, in his opinion, a person of ordinary skill
20 in the art would understand those statements,” that evidence alone is sufficient for a
21 reasonable jury to find that a patent claim is entitled to the priority date of the earlier-filed
22 application. *Martek*, 579 F.3d at 1371.

23 Although Dr. Bartone’s testimony is enough to satisfy the substantial-evidence
24 standard on this fact-intensive question, ViaSat also demonstrated that Defendants’ own

1 expert, Dr. Schindall **agreed** with Dr. Bartone's analysis when he was confronted with
 2 the "greater" re-use language for the first time at his deposition:

3 Q. "Greater reuse" means that there is actually reuse of the frequencies
 4 allocated going on even when you have gateway beams that are
 overlapping with service beams, correct?

5 A. **Correct.**

6 (Tr. 2324:10-2325:6 (emphasis added); *see also* Tr. 2322:10-2323:10, 2323:12-2324:8.)

7 For all of these reasons, the jury could reasonably find that the '038 Provisional
 8 Application sufficiently disclosed to a person of skill in the art the concept of the first
 9 feeder beam re-using colors with other, non-proximate service beams.

10 (c) Figure 2B Discloses That A Second Feeder Beam Is Non-Proximate
 To All Service Beams And Uses All Colors.

11 Finally, the record contains sufficient evidence for the jury to conclude that the
 12 '038 Provisional Application, as understood by a person of skill in the art, disclosed a
 13 second, isolated feeder beam that uses all the colors of the beam pattern. As described
 14 above, Figure 2B and its accompanying description teach a "four color pattern" for
 15 "avoiding interference" wherein "spatial diversity" between feeder beams and service
 16 spot beams allows for "greater re-use of the allocated frequencies." (V-1115 ¶¶ 24, 25.)
 17 A feeder beam that is isolated from all service beams and which is allocated "all of the
 18 colors of the beam pattern," is simply one example of the "greater re-use" specifically
 19 described in paragraph 25. The written-description requirement can be satisfied by a
 20 description of the invention in such broad terms, even though all conceivable and
 21 possible future embodiments are not specifically spelled out. *Cordis Corp. v. Medtronic*
 22 *AVE, Inc.*, 339 F.3d 1352, 1365 (Fed. Cir. 2003). As such, the "greater re-use" language
 23 of paragraph 25 adequately conveys to a person of skill in the art that ViaSat possessed
 24 the additional limitation of Claim 12.

1 In addition, the '038 Provisional Application discloses an isolated feeder beam
 2 that is allocated “all of the colors of the beam pattern.” Figure 12A discloses “a forward
 3 link distribution system,” comprising four “downstream uplinks,” each using one of four
 4 combinations of frequency band and polarization. (V-1115 ¶ 20.) Figure 12B discloses
 5 the “return link distribution system,” comprising four “upstream uplinks” that use the
 6 same four combinations of frequency band and polarization. (*Id.* ¶ 23.) Because
 7 Figure 12A allocates the same four colors to the feeder beam as Figure 12B allocates to
 8 the four service beams, Figure 12A depicts a feeder beam that is “allocated all of the
 9 colors of the beam pattern.”

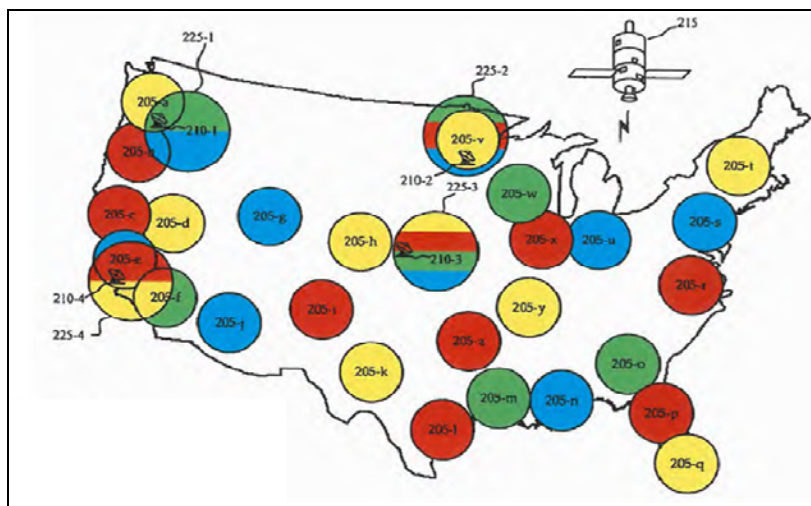
10 Dr. Bartone relied on Figures 12A and 12B, testifying that these disclosures
 11 instruct a person of skill in the art “how you can attain maximum reuse when you have a
 12 spatially isolated gateway.” (Tr. 1463:7-11.) Dr. Bartone also testified that the
 13 techniques described by Figures 12A and 12B were applicable to the spatially isolated
 14 feeder beam of Figure 2B, opining that “[gateway 210-3] would have available to use all
 15 of the frequency which is taught in these Figures 12(a) and 12(b), along with the
 16 associated text.” (Tr. 1463:19-1464:5.)³ Where, as here, an expert cites specific
 17 portions of an earlier-filed specification, and opines on how they would be interpreted by

18 ³ Defendants’ argue that express written references to “frequency re-use” and
 19 “maximum re-use” do not accompany Figures 12A and 12B in the '038 Provisional
 20 Application. (Mot. at 15-17.) But, Figures 12A and 12B themselves unquestionably
 21 show that the feeder beam uplink uses exactly the same four frequency band and
 22 polarization combinations (*i.e.* “1UL,” “1UR,” “2UL,” and “2UR”) for the four service
 23 beam uplinks. (*Compare* V-1115 Fig. 12A, with Fig. 12B; *see also* V-1115 ¶ 20.) Dr.
 24 Schindall admitted as much at trial. (Tr. 2319:4-25.) Because “drawings alone may
 provide a ‘written description’ of an invention as required by § 112,” *Vas-Cath Inc. v.*
Mahurkar, 935 F.2d 1555, 1565 (Fed. Cir. 1991), Defendants cannot seriously dispute
 that Figure 12 itself provides written-description support for an isolated feeder beam that
 is allocated “all of the colors of the beam pattern.”

a person of skill in the art, “***in light of the entire application,***” the Federal Circuit has affirmed denial of a motion for JMOL. *Martek*, 579 F.3d at 1370 (emphasis added). For all of these reasons, JMOL must be denied.

2. The Experts From Both Sides Agree That Embodiments Of Claim 12 Are Consistent With The '038 Provisional Application.

To more clearly illustrate how a person of skill in the art would interpret the disclosures of the '038 Provisional Application, ViaSat introduced evidence regarding a colored embodiment of Figure 2B, as shown below:



(V-1630.) In the diagram above, there are “instances of service beam overlap,” between “the feeder and service spot beams,” as taught by Paragraph 24 of the ’038 Provisional Application. (V-1115 ¶ 24 & Fig. 2B.) Additionally, “[a] four color pattern” is used to “avoid[] interference even where there is some overlap” (V-1115 ¶ 24.) For example, the colors allocated to gateway 210-2 for feeder beam 225-2 (green, red, and blue) are different from the color allocated to proximate service beam 205-v (yellow). At the same time, there is also a gateway located “outside of the spotbeam regions (e.g., the third gateway 210-3)” (V-1115 ¶ 25.) As compared to gateway 210-2, which is allocated 3 of the 4 colors, gateway 210-3 achieves “spatial diversity,” which allows

1 for the use of all 4 colors (*i.e.* “greater re-use of the allocated frequencies”) as specifically
 2 taught by Figure 12A. (V-1115 ¶¶ 25, 20 & Fig. 12A.) Importantly, **both** Dr. Bartone
 3 and Dr. Schindall testified at trial that this colored embodiment not only practices Claim
 4 12 of the ’875 Patent, but that it is **consistent** with the teachings of the ’038 Provisional
 5 Application. (2683:11-2684:14 (Bartone), Tr. 2325:7-2326:10 (Schindall).)⁴ This
 6 corroborating testimony from both experts is sufficient for a reasonable jury to find that
 7 the ’038 Provisional Application reasonably conveys to a skilled artisan that ViaSat
 8 possessed Claim 12 as of September 26, 2006.

9 Defendants cite *In re Rusching*, 379 F.2d 990, 995 (C.C.P.A. 1967), for the
 10 proposition that an embodiment’s consistency with the specification of an earlier-filed
 11 application is insufficient to establish written-description support. Respectfully, that is
 12 not what *Rusching* held. In *Rusching*, the Court found only that a specific, claimed
 13 chemical compound was not supported by a specification encompassing a potential class
 14 of at least 48 (and possibly over 1,000) different compounds. *Id.* at 994.⁵ *Rusching*
 15 actually noted that “naming [of the claimed compound] [was] not essential,” and that
 16 claims drawn to a single chemical compound required only “reasonably specific
 17 supporting disclosure.” *Id.* The Court acknowledged that even a broad disclosure, with

18 ⁴ Relying on material outside the record, Defendants argue that Dr. Bartone
 19 inconsistently applied his interpretation of Claim 1 for purposes of his validity and
 20 written-description analysis. (Mot. 19.) But, the colored embodiment depicted in V-
 21 1630—which both experts testified is consistent with the ’038 Provisional Application—is
 22 fully consistent with Dr. Bartone’s interpretation of Claim 1.

23 ⁵ It is telling that many of Defendants’ cases (*e.g.*, *Novozymes*, *Ruschig*, *Centocor*)
 24 involve the highly unpredictable chemical arts, where broad disclosures can encompass
 thousands of embodiments and which the Federal Circuit has characterized as “highly
 unpredictable.” *E.g.*, *Eisai Co. Ltd. v. Dr. Reddy’s Labs., Ltd.*, 533 F.3d 1353, 1359
 (Fed. Cir. 2008) (“To the extent an art is unpredictable, as the chemical arts often are . . .
 potential solutions are less likely to be genuinely predictable.”).

1 sufficient “blaze marks” pointing through the “forest of the specification” to the claimed
 2 invention, can provide written-description support. *Id.* at 995.

3 *Tronzo v. Biomet, Inc.*, 156 F.3d 1154 (Fed. Cir. 1998), is also distinguishable. In
 4 *Tronzo*, the Federal Circuit rejected the patentee’s argument that a broad claim, seeking
 5 to cover a cup of generic shape, was supported by a narrow disclosure that “ma[d]e clear
 6 that the [earlier-filed application] discloses *only* conical shaped cups and nothing
 7 broader.” *Id.* at 1159 (emphasis in original). Defendants’ argument here—that the
 8 ’038 Provisional Application is more general than Claim 12—is actually the exact
 9 opposite of the issue presented in *Tronzo*.

10 3. Dr. Bartone Did Not Engage In An Obviousness Analysis.

11 Defendants wrongly suggest that Dr. Bartone’s analysis was somehow flawed,
 12 because he interpreted the “greater re-use” teachings of Figure 2B of the ’038 Provisional
 13 Application in the context of the “full re-use” teachings of Figures 12A and 12B. (Mot.
 14 at 13-14.) According to Defendants, Dr. Bartone conducted an “obviousness” analysis
 15 because he “combin[ed] distinct embodiments” from the ’038 Provisional Application.
 16 (*Id.*) But, the mere fact that an expert cites the teachings of more than one embodiment
 17 of a single specification does not mean that the expert impermissibly engaged in an
 18 obviousness analysis. In fact, according to the guidance of the Federal Circuit, “the
 19 specification as a whole **must** be considered” in conducting the written-description
 20 analysis. *In re Skvorecz*, 580 F.3d at 1269-70 (quotation and citation omitted)
 21 (emphasis added); *Kolmes v. World Fibers Corp.*, 107 F.3d 1534, 1539 (Fed. Cir. 1997);
 22 *see also* Federal Circuit Bar Association Model Jury Instructions § 4.2a (“The written
 23 description requirement may be satisfied by **any combination** of the words, structures,
 24 figures, diagrams, formulas, etc., contained in the patent application.”) (emphasis added).

1 For example, in *Union Oil*, the Federal Circuit considered a patent that “claim[ed]
 2 its inventive products in terms of ranges of chemical properties, which work in
 3 combination with ranges of other chemical properties to produce a gasoline that reduces
 4 emissions.” 208 F.3d at 997. Although the specification did not provide the “exact
 5 chemical component of each combination” necessary to achieve the claimed result, the
 6 Federal Circuit held that the patent challenger was not entitled to JMOL of invalidity.
 7 *Id.* According to the Federal Circuit, based on the overall teachings of the specification,
 8 “[t]he patent unmistakably inform[ed] skilled refiners to increase or decrease the various
 9 components to arrive at preferred combinations.” *Id.* at 999.

10 *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565 (Fed. Cir. 1997), and
 11 *TurboCare Div. v. Gen. Elec. Co.*, 264 F.3d 1111 (Fed. Cir. 2001)—both cases involving
 12 summary judgment and *not* a motion for JMOL contrary to a jury verdict—do not hold
 13 to the contrary. In both of these cases, the Court merely held that obvious, but
 14 **undisclosed** subject-matter cannot provide written-description support. Thus, in
 15 *Lockwood*, where a claim required “a computer system connected to multiple vendors,”
 16 an expert declaration that the computer system disclosed in the specification **could** be
 17 connected to multiple vendors was not sufficient. 107 F.3d at 1572. Similarly, in
 18 *TurboCare*, the Federal Circuit upheld a finding that a claim, requiring a specific
 19 placement for a spring, was invalid for lack of written description despite expert
 20 testimony that the placement in question was the “only viable location for mounting a
 21 spring.” 264 F.3d at 1119.⁶ Neither *Lockwood* nor *TurboCare* suggest that support for

22
 23 ⁶ *Trans Video Electronics, Ltd. v. Sony Electronics, Inc.*, 822 F. Supp. 2d 1020,
 24 1027-28 (N.D. Cal. 2011) is also distinguishable, holding merely that the claims at issue
 lacked support where the patentee argued that a skilled artisan could “synthesize
 elements from different embodiments to come up with the claimed invention.”

1 an invention must be entirely self-contained in a single, discrete embodiment of the an
2 earlier-filed application. At most, these cases merely stand for the proposition that
3 written-description may not be premised on expert testimony alone, devoid of any
4 support in the specification.

5 Additionally, Defendants' heavy reliance on *Novozymes A/S v. DuPont Nutrition*
6 *Biosciences APS*, 723 F.3d 1336 (Fed. Cir. 2013), is equally unavailing. In *Novozymes*,
7 the Federal Circuit held that claims to certain, specific enzyme variants were invalid for
8 lack of written description because the specification described only the possibility of
9 creating variants based on 40 possible enzyme mutations, that could occur at any one of
10 33 different "promising" locations, on 7 parent enzymes. *Id.* at 1330-41. Citing the
11 "potentially wide range of [possible outcomes]" that could be produced, the Court held
12 that the specification provided "only generalized guidance listing several variables that
13 might, in some combination, lead to a useful result." *Id.* at 1340, 1346. *Novozymes*
14 bears little resemblance to the situation here. Dr. Bartone did not rely on a broad
15 disclosure to provide only generalized guidance as to how to arrange multiple variables
16 to arrive at potentially thousands of disparate embodiments. Instead, Dr. Bartone simply
17 made the unremarkable observation that one example of a spatially diverse feeder beam
18 employing "greater re-use" would involve the feeder beam employing "full re-use," as
19 **expressly** taught in Figures 12A and 12B. (See Tr. 1463:19-1464:5.) Even Dr.
20 Schindall testified that in the case of an isolated feeder beam, a person of skill in the art
21 would "want to use as many colors as possible," (Tr. 2219:15-25), which demonstrates
22 that even he views this field as distinguishable from the highly unpredictable chemical
23 art at issue in *Novozymes*. See *Ariad*, 598 F.3d at 1351 (noting that the written-
24 description inquiry varies based on the relevant art). A reasonable jury could conclude

1 that the '038 Provisional Application reasonably conveys to a person of skill in the art
2 that the inventors possessed Claim 12.

3 **B. Defendants Are Not Entitled To JMOL On The Basis That The 2007 PCT**
4 **Application Was Not A Trial Exhibit.**

5 Defendants argue they are entitled to JMOL because ViaSat did not enter into
6 evidence intervening patent application PCT/US2007/079567 (the "2007 PCT
7 Application). This argument fails, for multiple reasons.

8 **1. Defendants' Argument Is Waived.**

9 As an initial matter, Defendants failed to identify the 2007 PCT Application as a
10 basis for JMOL in their pre-verdict Rule 50(a) Motion. The entire argument is therefore
11 waived. *See Wordtech Sys., Inc. v. Integrated Networks Solutions, Inc.*, 609 F.3d 1308,
12 1316-17 (Fed. Cir. 2010). Had Defendants timely moved on this issue, ViaSat could
13 have simply introduced the relevant exhibit. Indeed, a primary purpose of a Rule 50(a)
14 motion is "to call the claimed deficiency in the evidence to the attention of the court and
15 to opposing counsel at a time when the opposing party is still in a position to correct the
16 deficit." *Lifshitz v. Walter Drake & Sons, Inc.*, 806 F.2d 1426, 1428 (9th Cir. 1986).

17 **2. Expert Testimony Shows That Every Application Leading To The**
18 **'875 Contained The Priority-Establishing Disclosures.**

19 Contrary to the representations in Defendants' Motion (Mot. at 6), ViaSat offered
20 expert testimony from Dr. Bartone that *all* of the Applications leading to the '875 Patent
21 contained the key, priority-supporting disclosures. Dr. Bartone testified that he
22 examined "the whole history of the patent from when it was first submitted to the U.S.
23 Patent Office," beginning with the '038 Provisional Application. (Tr. 1462:20-25.) His
24 opinions were based on the entire "prosecution history" (Tr. 1465:1-5), including all
relevant documents filed with the PTO from September 26, 2006 until "the Patent was

1 awarded on January 31st, 2012” (Tr. 1583:5-11). In fact, in rebuttal to Dr. Schindall’s
2 opinion that “the chain was broken from the provisional out to the ’875 Patent,” Dr.
3 Bartone testified that “[the chain] was never broken . . . there’s a series of other
4 provisionals and applications and so on, but that eventually led to the ’875 patent, so the
5 chain was never broken.” (Tr. 2684:24-2685:4.)

6 In light of this testimony, there is no doubt that ViaSat met its “burden of
7 production,” by providing expert testimony that every application in the chain leading the
8 ’875 Patent contained the priority-establishing disclosures. Because the written-
9 description inquiry focuses on how the underlying applications are understood by a
10 person of skill in the art, such expert testimony was the most probative evidence for the
11 finder of fact to consider. *See In re Alton*, 76 F.3d at 1175-76. Indeed, in this case, the
12 jury could not be expected to have the technical qualifications necessary to
13 independently interpret the highly technical 2007 PCT Application. Thus, once Dr.
14 Bartone rendered his opinions, the burden of producing evidence that the 2007 PCT
15 Application was deficient shifted back to Defendants. *See Videotek*, 545 F.3d at 1328
16 (“Assuming then that [the patentee’s] evidence and argument in support of the earlier
17 filing date is now before the court, the burden of going forward again shifts to the
18 proponent of the invalidity defense . . .”). The “risk of decisional uncertainty” on the
19 issue *always* remained with Defendants. *Id.* at 1327.

20 Dr. Bartone’s testimony is not “insubstantial” simply because ViaSat did not
21 introduce into evidence every single document on which he relied. *See Fed. R. Evid.*
22 705 (“[A]n expert may state an opinion—and give the reasons for it—without first
23 testifying to the underlying facts or data.”). As the Federal Circuit explained in *Symbol*
24 *Technologies, Inc. v. Opticon*, 935 F.2d 1569, 1576 (Fed. Cir. 1991), Rule 705 serves an

1 important function of “abbreviat[ing] trials by permitting opinion testimony without
2 factual foundation,” which is particularly important in patent trials which often involve
3 “lengthy testimony on complex technical issues.” *Id.* at 1576. Thus, if Defendants
4 wished to challenge the factual basis for Dr. Bartone’s opinions, they were obligated to
5 do so at trial—not in a post-trial motion. *Id.* at 1575 (“The responsibility for challenging
6 the factual underpinnings of [expert] testimony fell squarely on [the defendant] during
7 cross-examination.”); *see also Hynix Semiconductor Inc. v. Rambus Inc.*, No. 00-20905,
8 2009 WL 230039, at *17-19 (N.D. Cal. Jan. 27, 2009) (even conclusory expert testimony
9 that claims had written description support can suffice).

10 **3. Defendants Failed To Raise Any Defect In The 2007 PCT Application**
11 **At Trial And Are Therefore Estopped From Doing So Now.**

12 Additionally, the Federal Circuit does not reward the type of post-trial “gotcha”
13 argument advanced by Defendants here. The 2007 PCT Application is a public
14 document, whose existence is not disputed, and Defendants were free to enter it into
15 evidence themselves if they wished to highlight some particular defect in its priority-
16 establishing disclosures. *See Ajinomoto Co., Inc. v. Archer-Daniels-Midland Co.*, 228
17 F.3d 1338, 1343 (Fed. Cir. 2000). In *Ajinomoto*, a defendant attempted to challenge the
18 standing of the patentee, arguing that the record lacked evidence of patent ownership
19 because the patentee did not enter a recorded assignment into evidence at trial. *Id.* The
20 Federal Circuit disagreed, holding that the defendant was “estopped to object that the
21 recorded assignment was not entered into evidence,” because the disputed document was
22 “a public record of the [USPTO], . . . [and] its existence [was] not disputed.” *Id.* The
23 2007 PCT Application is no different from the recorded assignment in *Ajinomoto*;
24 Defendants are estopped from arguing that it somehow breaks the chain of priority.

1 **C. The Addition Of Material To The '315 CIP Application Cannot Establish A**
 2 **Lack Of Written-Description Support In The Earlier Applications.**

3 In Section II.A.3.c of their Motion, Defendants argue that “new matter” was added
 4 to the '315 CIP Application. But, a continuation-in-part application's entitlement to a
 5 priority date turns entirely on whether a claim is adequately supported in the earlier-filed
 6 disclosure, **not** on whether it bears a resemblance to later-added material. Indeed, the
 7 mere filing of a continuation-in-part application is not a concession that the invention
 8 was not originally disclosed. See *Waldemar Link v. Osteonics Corp.*, 32 F.3d 556, 559
 9 (Fed. Cir. 1994) (filing of continuation-in-part application did not estopp patentee from
 10 claiming earlier priority date). Where a jury finds that a claim is entitled to the priority
 11 date of an earlier application, an infringer is not entitled to JMOL simply because a claim
 12 limitation resembles material added to the continuation-in-part application. See
 13 *Therma-Tru Corp. v. Peachtree Doors, Inc.*, 44 F.3d 988, 992-93 (Fed. Cir. 1995).

14 Defendants' assertion that ViaSat “directly quoted from the [newly added] . . . ‘set
 15 of colors’ language” in order to “overcome a rejection” and “thereby “invoke[ed] the
 16 definition it assigned to the claims,” is not well taken. (Mot at 20.) First, the “set of
 17 colors” language cited by Defendants was present in the claims **as originally filed**,
 18 meaning that ViaSat could not have possibly “directly quoted” from newly added
 19 material for the purpose of overcoming a rejection. Second, the notion of assigning a
 20 “set of colors” to an individual beam is fully supported by the '038 Provisional
 21 Application at Paragraph 20 and Figure 12A. (See V-1115.)

22 Defendants also ascribe undue significance to ViaSat's citation of Figure 16
 23 during prosecution. The fact that an applicant cites to a newly added figure is not
 24 dispositive and often is not even particularly relevant to the question of whether a person

1 of skill in the art would recognize that *other* disclosures establish possession of the
 2 claimed invention as of the original filing date.⁷ Indeed, an applicant may properly add
 3 material to a continuation-in-part application without defeating priority to an earlier-filed
 4 disclosure to help respond to rejections that may arise during prosecution. See
 5 *Waldemar*, 32 F.3d at 559 (“[The applicant] had good reason to believe filing a CIP
 6 would enable it to further respond to the section 102 and 103 rejections.”).

7 The other cases cited by Defendants are distinguishable. In *Anascope, Ltd. v.*
 8 *Nintendo of America, Inc.*, 601 F.3d 1333, 1335 (Fed. Cir. 2010), the Federal Circuit
 9 found it significant that the patentee’s original disclosure specifically noted significant
 10 “disadvantages” to an embodiment claimed in a later-filed application. *Id.* at 1337.
 11 Here, there is no such similar allegation that the ’038 Provisional Application was
 12 inconsistent with, or taught away, from Claim 12. In *Centocor Ortho Biotech, Inc. v.*
 13 *Abbot Labs*, 636 F.3d 1341 (Fed. Cir. 2011)—a case in which the patentee failed to even
 14 offer expert testimony regarding the written description of the earlier-filed application—
 15 the Federal Circuit noted that the few passages identified by the inventor did not “relate
 16 to the specific critical limitations in the asserted claims,” but instead only happened to
 17 mention a “wish or plan” for obtaining the invention as eventually claimed. *Id.* at 1351-
 18 52. Here, Defendants do not seriously dispute that the ’038 Provisional Application
 19 discloses each and every limitation of Claim 12; instead, their argument boils down to
 20

21 ⁷ Unlike the patentee in *Videotek*, 545 F.3d at 1333, ViaSat did not draw the patent
 22 examiner’s attention to any specific portion of Figure 16 that can be shown to be missing
 23 from the ’038 Provisional Application. In fact, in ultimately allowing the application,
 24 the examiner said absolutely nothing about ViaSat’s reference to Figure 16 on page 9 of
 its Reply to Interview Summary. Instead, the examiner noted that he relied on the “the
 applicant’s remarks stated on **pages 10-11**” of ViaSat’s Reply to Interview Summary.
 (S-734 at VST00001288 (emphasis added).)

1 the unsupportable assertion that Dr. Bartone was required to analyze the specification as
 2 a series of individual, unrelated embodiments rather than as a whole.

3 **D. Substantial Evidence Shows That Defendants Failed To Prove That The**
 4 **ViaSat-1 PRR Anticipates Claim 12.**

5 Even if Defendants could somehow establish that the '038 Provisional
 6 Application fails to provide adequate written-description support (which they cannot),
 7 they are still not entitled to JMOL. The *only* invalidity theory advanced by Defendants
 8 that even arguably turns on the priority date of the '875 Patent is that the February 2008
 9 ViaSat-1 Program Readiness Review ("ViaSat PRR") invalidates the claim under the
 10 Section 102(b) "on-sale bar." (Mot. at 3-5) Defendants, however, failed to establish by
 11 clear and convincing evidence that the concept disclosed in the ViaSat PRR (1) was
 12 "ready for patenting"; or (2) anticipated each and every element of Claim 12.

13 First, Defendants failed to offer even a shred of evidence that the particular set of
 14 materials found within the four corners of the ViaSat PRR was "ready for patenting"
 15 prior to the March 25, 2008 critical date (*i.e.*, one-year prior to the '315 CIP Application).
 16 An invention is not "ready for patenting" until it can be described in a patent application
 17 that complies with 35 U.S.C. Section 112. *See Space Systems/Loral, Inc. v. Lockheed*
 18 *Martin Corp.*, 271 F.3d 1076, 1080 (Fed. Cir. 2001). Thus, a defendant cannot
 19 establish, as a matter of law, that an invention is "ready for patenting" simply by pointing
 20 to drawings that are similar to an eventually issued patent. *Honeywell Int'l Inc. v.*
 21 *Hamilton Sundstrand Corp.*, 370 F.3d 1131, 1145 (Fed. Cir. 2004). In this case, ViaSat
 22 proved that the invention of Claim 12 was ready for patenting and was constructively
 23 reduced to practice in September 2006, when the inventors filed the '038 Provisional
 24 Application fully disclosing the invention. To the extent Defendants urge a hyper-

1 technical analysis of the Section 112 requirements, however, it should not go unnoticed
 2 that Dr. Schindall offered **zero** testimony that the drawings and descriptions in the ViaSat
 3 PRR would “enable one skilled in the art to practice the invention.” *See Pfaff v. Wells*
 4 *Elecs., Inc.*, 525 U.S. 55, 67-68 (1998) (for invention to be “ready for patenting” for
 5 purposes of the on-sale bar, the defendant must prove, prior to the critical date, either
 6 “reduction to practice” or “that the inventor had prepared drawings or other descriptions
 7 of the invention that were sufficiently specific to enable a person of skilled in the art to
 8 practice the invention”). Lacking any such record evidence, much less undisputed clear
 9 and convincing evidence, Defendants are not entitled to JMOL even if they could
 10 somehow defeat entitlement to the earlier priority date.

11 Second, based on Defendants’ arguments underlying their Motion, Defendants
 12 failed to establish as a matter of law that the ViaSat-1 PRR anticipates each and every
 13 element of Claim 12 by clear and convincing evidence.⁸ In attempting to show a feeder
 14 beam that is both proximate to a differently colored service beam and non-proximate to
 15 same-colored service beams, Dr. Schindall simply [REDACTED]

16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED] (Tr. 2230:6-21; S-1193 at
 19 SSL0085524.) [REDACTED]

20
 21 ⁸ Defendants were required to show, as a matter of law, that ViaSat-1, **as described**
 22 **in the ViaSat PRR**, anticipates Claim 12. *See Tec Air, Inc. v. Denso Mfg. of Michigan*
 23 *Inc.*, 192 F.3d 1353, 1358 (Fed. Cir. 1999) (offer for sale did not specify that it would use
 24 the patented technique, but eventually shipped product did use the patented technique;
 jury could find on sale bar did not apply). Thus, Dr. Bartone’s testimony that
 documents prepared **after** the Section 102(b) critical date prove that ViaSat-1 practices
 Claim 12 (Tr. 1475:17-24) provides no support for Defendants’ invalidity argument.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] See *Scaltech Inc. v.*

9 *Retec/Tetra, L.L.C.*, 178 F.3d 1378, 1383 (Fed. Cir. 1999) (“[T]he first determination in
10 the § 102(b) analysis must be whether the subject of the barring activity met each of the
11 limitations of the claim” either expressly or inherently; “[t]he mere fact that a certain
12 thing may result from a given set of circumstances is not sufficient to establish
13 inherency.”). Simply put, given the similarity in detail disclosed by the ViaSat PRR and
14 the ’038 Provisional Application, a reasonable jury could conclude that the adequacy of
15 each vis-à-vis Claim 12 must rise or fall together. Either way, Defendants lose.

16 **E. Defendants Are Not Entitled To A New Trial.**

17 Defendants are not entitled to a new trial on the grounds that Jury Instruction No.
18 37, which closely tracks the AIPLA model instruction, was “prejudicially incomplete in
19 its discussion of the written description requirement.” (Mot. at 23.)⁹ According to
20 Defendants, this Court abused its discretion, because Instruction No. 37 posed a “risk of
21 permitting a jury to find the written description . . . was satisfied if undisclosed subject
22 matter merely would have been obvious.” (Bonn Ex. J at 2.) As an initial matter,

23 _____
24 ⁹ Defendants twice *stipulated* to a priority-date instruction that was materially
identical to Instruction #37. (See Dkt. 865 at 69-70; Dkt. 892 at 70-71.)

1 Defendants' "clarification" was unnecessary because, for the reasons described above,
2 Dr. Bartone did not conduct an obviousness analysis. Nevertheless, the Federal Circuit
3 has held that a new trial is not warranted simply because a priority-date jury instruction
4 omits the very same "clarification" sought by Defendants here. In *Trading Techs. Int'l,*
5 *Inc. v. eSpeed, Inc.*, 595 F.3d 1340 (Fed. Cir. 2010), the Appellant argued that the trial
6 court's instruction was prejudicial because it permitted opposing counsel to argue that the
7 written-description requirement was satisfied by "'an obvious variant' of what was
8 disclosed." (App. Br., 2009 WL 327983). The Federal Circuit disagreed, noting that
9 the disputed instruction "comport[ed] with this court's law on written description," and
10 "gave the jury adequate information to make a decision based on the possession standard
11 of this court." *eSpeed*, 595 F.3d at 1360. The same reasoning applies here.

12 Defendants are also not entitled to a new trial on the grounds that the verdict is
13 "against the weight of the evidence." (Mot. at 24.) It is error for a district court to
14 substitute its judgment for that of the jury in determining whether a verdict is against the
15 clear weight of the evidence. *Tortu v. Las Vegas Metro. Police Dept.*, 556 F.3d 1075,
16 1084 (9th Cir. 2009). Accordingly, the Motion for a new trial should be denied.

17 V. CONCLUSION

18 Defendants' Motion for Judgment as a Matter of Law And Alternatively A New
19 Trial should be denied in its entirety.

1 DATED: July 11, 2014

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

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3
4 By /s/ Sean S. Pak

Sean S. Pak

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6 Attorneys for Plaintiff ViaSat, Inc.
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CERTIFICATE OF SERVICE

I hereby certify that, on July 11, 2014, I caused the foregoing **PLAINTIFF VIASAT, INC.'S OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT AS A MATTER OF LAW (RENEWED), OR A NEW TRIAL (7 OF 12), REGARDING THE PRIORITY DATE AND INVALIDITY OF THE '875 PATENT** to be served on Defendants' counsel via the Court's ECF system and via e-mail.

DATED: July 11, 2014

By /s/ Sean S. Pak
Sean S. Pak