

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
1:04-CV-5705

Lexion Medical, LLC)
) ORDER
 v.)
)
 Northgate Technologies, Inc.;)
 Smith & Nephew, Inc.; and)
 Linvatec Corporation)

This matter is before the Court on defendants' motion for relief from the Court's Judgment, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. The facts of this matter are more fully set forth in the Court's Order of May 29, 2007.

On April 30, 2007, the United States Supreme Court issued its opinion in KSR Int'l Co. v. Teleflex Inc., which prescribes the approach to be taken in considering whether a patent is obvious. KSR Int'l Co. v. Teleflex Inc., ___ U.S. ___, 127 S.Ct. 1727 (2007). In defendants' view, the KSR opinion worked dramatic changes in the law of obviousness, and conflicts with the Court's instructions of law to the jury, thereby "nullifying the jury verdict." (Defendants' Memorandum at 1.) Defendants urge the Court to invalidate Claims 11 and 12 of U.S. Patent No. 5,411,474 (the '474 patent), or alternatively, move for a new trial on obviousness.

The Court declines to do so. "When the error in a jury instruction could not have changed the result, the erroneous instruction is harmless." CytoLogix Corp. v. Ventana Med. Sys.,

424 F.3d 1168, 1174 (Fed. Cir. 2005). Even viewed in light of KSR, the jury's verdict on the validity of Claims 11 and 12 of the '474 patent is fully supported by the evidence. There is no basis to revisit the Judgment in this matter.

Defendants' motion is denied.

IT IS SO ORDERED.

Dated: June 8, 2007

s/ JAMES M. ROSENBAUM
JAMES M. ROSENBAUM
United States Chief District Judge