

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ARENDI S.A.R.L.,)
) C.A. No. 13-919-LPS
 Plaintiff,)
) **JURY TRIAL DEMANDED**
 v.)
) **PUBLIC VERSION**
 GOOGLE LLC,)
)
 Defendant.)

**LETTER TO THE HONORABLE LEONARD P. STARK
FROM BINDU A. PALAPURA**

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Dated: December 6, 2019
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December 6, 2019; Public Version Dated: December 13, 2019

VIA ELECTRONIC-FILING

The Honorable Leonard P. Stark
U.S. District Court for the District of Delaware
J. Caleb Boggs Federal Building
844 N. King Street
Wilmington, DE 19801-3556

PUBLIC VERSION

Re: *Arendi S.A.R.L. v. Google LLC*, C.A. No. 13-919-LPS

Dear Chief Judge Stark:

Defendant Google LLC (“Google”) submits this letter brief in response to Plaintiff Arendi S.à.r.l.’s (“Arendi”) motion to compel certain 30(b)(6) testimony (D.I. 190). Google has met its obligations in responding to Arendi’s overly broad 30(b)(6) topics and, with the one exception set forth below, believes that further testimony is unwarranted. Google designated at least six 30(b)(6) witnesses capable of providing detailed financial and/or use and metrics testimony. While Arendi complains about Mr. Sai Marri’s inability to answer questions concerning five non-financial spreadsheets relating to the use and downloads/installation of the accused products, it fails to mention that it also took the deposition of no less than five other Google 30(b)(6) witnesses who were designated on topics concerning use and/or downloads/installation. Shockingly, Arendi did not ask any of these witnesses about the spreadsheets. Arendi’s failure to do so is its own fault and cannot be cured by a motion to compel.

Arendi’s motion does raise a request for testimony regarding additional “unit sales” data that Google is producing. While Google believes that this data is self-explanatory, it is willing to provide a witness for deposition on the newly produced data on December 13, 2019 to resolve this dispute. Arendi’s motion should otherwise be denied.

A. History of the Parties’ Dispute

As reflected in the discovery dispute letter to the Court, the discovery issues that Arendi initially raised were broad: “Whether Google LLC’s corporate representatives designated to testify on topics 1-6, 13, 15-17, 19, and 21 of Arendi’s 30(b)(6) Notice were properly limited in their testimony.” (D.I. 182.) During the meet and confer process leading to Arendi’s motion, Arendi continued to demand testimony on the full scope of these 12 topics, which concern finance, use, and related topics. (D.I. 190, Ex. A.) These 12 topics are facially overbroad and would have been very difficult for Google to prepare a witness on.

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In its written objections served on September 17, 2019, Google was very clear that its testimony on these topics would be limited to witnesses to “testify generally about the Google financial documents relating to the Accused Products that are produced by Google in this case.” (D.I. 190, Ex. A at 8-13). Google subsequently confirmed the scope of its testimony in an email dated October 22, 2019, noting: “Neither Google nor Motorola will be producing a witness to testify ‘broadly concerning financial topics.’” (Ex. E, 10/22/2019 email from M. Marek Figueiredo.) Arendi did not object to the reasonable testimony limitations placed by Google or request additional documents prior to Mr. Marri’s deposition on October 30, 2019.¹

Perhaps realizing that the 12 topics were overly broad, Arendi’s present motion only requests testimony regarding “amount of sales and use of the accused products.” (D.I. 190 at 3). At his deposition, Mr. Marri testified in detail about numerous financial documents concerning the amount of sales of the accused products. Arendi only takes issue with Mr. Marri’s inability to testify regarding five, non-financial spreadsheets concerning use and downloads/installations and his response to questions about “unit sales.” It requests an additional witness on these two topics only.

B. Arendi Inexplicably Failed to Ask the Appropriate Witnesses About Usage and Download/Installation Data

Mr. Marri was never designated to testify regarding the non-financial spreadsheets concerning use and downloads/installations. Google presented another 30(b)(6) witness – Brahim Elbouchikhi – who was prepared to testify regarding GOOG00156349 [REDACTED] and on usage information as it relates to the Android operating system. Despite being expressly told by Google that Mr. Elbouchikhi was prepared to testify regarding GOOG00156349, Arendi failed to ask him a single question about it.²

Likewise, Google designated Abodunrinwa Toki to testify regarding Android usage data. Indeed, Google’s stated at the *very beginning* of the deposition that Mr. Toki was [REDACTED]

¹ Arendi admitted that Google produced financial information “in recognizable form” over a month before Mr. Marri’s deposition. (D.I. 190 at 1). Thus, Arendi had ample opportunity to ask for supplementation in advance of the deposition if it saw any issues with the information.

² Prior to and during Mr. Elbouchikhi’s deposition, Google made it expressly clear that he was prepared to testify regarding downloads/installations, including at least one of the documents that Arendi cites in its motion. Google’s counsel stated on the record, [REDACTED]

[REDACTED] Google also designated Mr. Elbouchikhi on Topic 24 concerning “how customers use and configure the Accused Applications” as it relates to the Android operating system. (Ex. C, 10/3/2019 email from [REDACTED])

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Despite this clear invitation, Arendi did not ask Mr. Toki about any of the spreadsheets it cites in its motion.

Arendi's pattern of neglect with respect to the cited spreadsheets is also evident in the depositions of at least three other 30(b)(6) witnesses (Brian Kravitz, Kishore Papineni, and Syed Albiz,) who were designated on topics in their respective product areas that included use of the accused products, including Topics 16, 25, and 31. (Ex. C.)³ Arendi did not ask any of those witnesses about the spreadsheets.⁴

In sum, Arendi had no less than five witnesses apart from Mr. Marri through which it could have pursued testimony regarding the spreadsheets. Its failure to do so is a result of its own strategy or inexcusable neglect. In either event, it is not Google's fault. At least five Google witnesses were ready, willing, and able to provide testimony if they had been asked. Google met its obligations to have witnesses ready, and should not be compelled to produce yet another witness because of Arendi's failure to ask the appropriate questions.

C. Google has Agreed to Produce Additional "Unit Sales" Data and Will Provide an Additional 30(b)(6) Witness for the Additional Data

Mr. Marri testified at length regarding sales of the accused products. He was able to testify fully regarding the financial documents that Google produced. During the course of his deposition, Arendi asked some questions about sales-related data beyond the scope of Google's production.

[REDACTED]

[REDACTED]

[REDACTED] It produced some of this additional data on November 25, 2019 and expects to complete production of the additional data by December 9, 2019.

The additional data is self-explanatory, but to the extent that Arendi wants a 30(b)(6) witness to explain the new data only, Google will make a witness available on December 13, 2019. Alternatively, Google would be willing to answer written questions on these documents. As best as Google understands Arendi's complaints on this issue, Google's offer should moot the issue.

For the reasons set forth above, Arendi's motion should be denied.

³ Mr. Albiz even testified [REDACTED]

⁴ The depositions of Messrs. Elbouchikhi, Toki, Kravitz, and Papineni all occurred after the [REDACTED]

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Sincerely yours,

/s/ Bindu A. Palapura

Bindu A. Palapura

BAP/msb/6508528 /40549

Enclosures

cc: Clerk of the Court (via hand delivery) (w/encs.)
Counsel of Record (via electronic mail) (w/encs.)