

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

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ARENDI S.A.R.L.,)	
)	
Plaintiff,)	
)	C.A. No. 12-1595-LPS
v.)	
)	
LG ELECTRONICS, INC.,)	PUBLIC VERSION
LG ELECTRONICS USA, INC. and)	
LG ELECTRONICS MOBILECOMM U.S.A.,)	
INC.,)	
)	
Defendants.)	
<hr/>)	
ARENDI S.A.R.L.,)	
)	
Plaintiff,)	
)	C.A. No. 12-1596-LPS
v.)	
)	PUBLIC VERSION
APPLE INC.,)	
)	
Defendant.)	
<hr/>)	
ARENDI S.A.R.L.,)	
)	
Plaintiff,)	
)	C.A. No. 12-1597-LPS
v.)	
)	PUBLIC VERSION
BLACKBERRY LIMITED and)	
BLACKBERRY CORPORATION,)	
)	
Defendants.)	
<hr/>)	

ARENDI S.A.R.L.,

Plaintiff,

v.

MOTOROLA MOBILITY LLC
f/k/a MOTOROLA MOBILITY, INC.,

Defendant.

C.A. No. 12-1601-LPS

PUBLIC VERSION

ARENDI S.A.R.L.,

Plaintiff,

v.

SONY MOBILE COMMUNICATIONS (USA)
INC. f/k/a SONY ERICSSON MOBILE
COMMUNICATIONS (USA) INC.,
SONY CORPORATION and
SONY CORPORATION OF AMERICA,

Defendants.

C.A. No. 12-1602-LPS

PUBLIC VERSION

ARENDI S.A.R.L.,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

C.A. No. 13-919-LPS

PUBLIC VERSION

ARENDI S.A.R.L.,

Plaintiff,

v.

OATH HOLDINGS INC. and OATH INC.,

Defendants.

C.A. No. 13-920-LPS

PUBLIC VERSION

**LETTER TO THE HONORABLE LEONARD P. STARK FROM
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LG Electronics MobileComm U.S.A., Inc.,
Apple Inc., BlackBerry Limited, BlackBerry
Corporation, Sony Mobile Communications
(USA) Inc., Sony Corporation, Sony
Corporation of America, Oath Holdings Inc.
and Oath Inc.*

Dear Chief Judge Stark:

Defendants move the Court to strike those portions of Arendi expert Dr. Sacerdoti's responsive report regarding the validity of U.S. Patent No. 7,917,843 (Ex. A, "Sacerdoti Report")¹ that suggest, rely upon, or opine on, the previously unidentified conception date of July 6, 1997 for the asserted '843 Patent. Only on October 20, 2020, eight years after these cases began and nearly one year after the close of fact discovery, did Arendi first disclose—via the Sacerdoti Report—the new, July 6, 1997 conception date and produce a document purportedly corroborating this newly disclosed date in an effort to avoid 35 U.S.C. § 102(a) prior art. (Sacerdoti Rpt. ¶45.) During fact discovery, Arendi never identified *any* specific conception or invention date for the '843 Patent despite Defendants' discovery requests calling for that information. Arendi's disclosure of a new alleged invention date in its expert report is improper and suspect, as it is not supported by valid (or properly disclosed) evidence, and it occurred after Defendants spent countless hours investigating prior art and developing invalidity arguments. Gamesmanship such as Arendi's should not be allowed.

Arendi Never Identified the New July 6, 1997 Invention Date During Fact Discovery

During fact discovery, Arendi identified conception and reduction to practice dates of "the summer of 1997" and "the summer of 1998," respectively. And, Arendi did not produce documents corroborating these dates. In response to Defendants' September 2013 interrogatories, for example, which included a request for Arendi to "describe in detail the circumstances surrounding the invention of the claims, including the precise date of conception. . .", Arendi responded, [REDACTED]

[REDACTED] (Ex. B, 10/23/2013 Resp. to Def. Interrogatory No. 2.) Arendi's response did not identify July 6, 1997 as the alleged conception or invention date, and the documents cited by Arendi's response neither indicated a "summer of 1997" conception date nor established diligence between 1997 and 1998. Instead, in response to Defendants' Interrogatory No. 9, which asked Arendi to "state the priority date . . . [for each asserted claim of the Arendi Asserted Patents]," Arendi definitively stated, [REDACTED]

[REDACTED] (Ex. B, 10/23/2013 Resp. to Def. Interrogatory No. 9.) Arendi never supplemented its October 23, 2013 interrogatory responses before the close of fact discovery on December 13, 2019.

In October 2013, Defendants also served a document request seeking from Arendi "[a]ll documents that reflect, refer to or relate to the conception, reduction to practice, research, design, development, or testing of the subject matter shown, described, and claimed in any of the Patents-in-Suit . . ." (Ex. C, Defs.'s 10/3/2013 RFP No. 5.) Notwithstanding this clear request, Arendi provided no materials showing a July 6, 1997, or even a "summer of 1997," conception date. In fact, as detailed below, Arendi inexplicably failed to produce during fact discovery the lone document (Ex. D, ARENDI563479) that Dr. Sacerdoti now purports to rely on to pinpoint an alleged July 6, 1997 invention date.

In a final attempt to pin down any Arendi-alleged conception date during fact discovery, Defendants deposed Mr. Hedløy over five days in October and November 2019 in both his individual capacity (as the named inventor of the '843 Patent) and as Arendi's Rule 30(b)(6) corporate representative. During these depositions, Hedløy never provided a specific conception date of July 6, 1997. In fact, during his 30(b)(1) deposition, [REDACTED]

¹ An exemplary report from the Google case is attached as Ex. A, but the requested relief applies

The Honorable Leonard P. Stark
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[REDACTED] (Ex. E, 10/29/2019 Hedløy Dep. at 40:5-7.) This non-specific testimony was based on only Hedløy's high-level recollection that he [REDACTED] (*Id.*) [REDACTED]

[REDACTED] (*Id.* at 42:17-18.) [REDACTED]

[REDACTED] (*Id.* at 357:4-15.) Additionally, in his 30(b)(6) testimony, although Hedløy [REDACTED]

[REDACTED] (Ex. F, 11/5/2019 Hedløy Dep. at 222:10-21, 231:20-232:14.)

Dr. Sacerdoti's Reports Impermissibly Rely on Withheld Evidence to Support its Invention Date

Dr. Sacerdoti supports the new July 6, 1997 alleged invention date by relying on a small number of files "related to the development of Arendi A.S. products." (Sacerdoti Report ¶ 45.) These files include (i) an undated note allegedly drafted by Hedløy in preparation for a meeting with his future attorney (ARENDI563479); and (ii) two prototypes with "last modified" dates of July 6 and July 8, 1997 (AHL0067172.) ***But, Arendi indisputably failed to produce Hedløy's undated note (ARENDI563479) during fact discovery.*** In correspondence following service of the Sacerdoti Report, Arendi confirmed that it waited almost one year after fact discovery closed to produce the undated note allegedly corroborating the new invention date. (*See* Ex. G, 10/27/2020 Email.) Arendi offered no explanation or justification for its untimely production. Further, before Sacerdoti's reports, Arendi never specifically identified the two prototype files cited by Sacerdoti as having any particular relevance—not in Arendi's interrogatory response concerning any alleged conception date and not in Hedløy's 30(b)(1) or 30(b)(6) deposition testimony concerning the invention timeline. These two prototype files were two files *among hundreds* included in the folder labeled AHL0067172.

The Court Should Strike the Portions of the Sacerdoti Reports That Assert or Rely Upon a July 6, 1997 Invention Date

Arendi improperly withheld its identification of the alleged, July 6, 1997 invention date, and impermissibly failed to produce the evidence Dr. Sacerdoti now relies on to corroborate that new invention date, during fact discovery. Accordingly, the Court should now strike the portions of the Sacerdoti Report that attempt to assert and/or rely upon that July 6, 1997 invention date. *See* FRCP 37(c)(1) ("[i]f a party fails to provide information . . . as required by Rule 26(a) or (e), the party is not allowed to use that information . . . to supply evidence on a motion, at a hearing, or at trial, unless the failure was substantially justified or harmless.").

Given that the determination of an invention date necessarily is based upon factual findings, it was critical for Arendi to disclose its alleged invention date, and identify all allegedly supporting evidence, during fact discovery to afford Defendants the opportunity to investigate and test Arendi's date (and the allegedly corroborating evidence). *E.I. du Pont De Nemours & Co. v. Unifrax I LLC*, 921 F.3d 1060, 1068 (Fed. Cir. 2019) (explaining, "[p]riority, conception, and reduction to practice are questions of law, which are based on subsidiary factual findings"). Here, applying Third Circuit law, the Court should find that Arendi's extreme delay in disclosing both its new invention date and the evidence allegedly corroborating that date caused Defendants harm.

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