

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

ARENDI S.A.R.L.,

Plaintiff,

v.

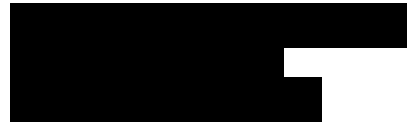
GOOGLE LLC,

Defendant.

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C.A. No. 13-919-JLH

**JURY TRIAL DEMANDED**



**LETTER TO THE HONORABLE JENNIFER L. HALL FROM  
DAVID E. MOORE, ESQUIRE**

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*Attorneys for Defendant Google LLC*

Dated: January 19, 2023  
10555100 / 12599.00040

Dear Judge Hall:

Google asks the Court to strike those portions of Arendi damages expert Roy Weinstein's supplemental expert reports (Exs. 1, 2) that calculate damages based on Google's Accused Apps on Samsung devices. [REDACTED]

[REDACTED] Following supplemental damages expert discovery that only recently closed on October 28, 2022, and following a subsequent attempt to resolve this case via mediation by December 21, 2022 (*see* D.I. 412), it became clear that Mr. Weinstein intends to erroneously pursue infringement damages for Accused Apps on Samsung devices. Google thus promptly presents this issue to the Court well before trial, as the interpretation of [REDACTED] "is a legal matter for the court." *805 Third Ave. Co. v. M.W. Realty Assoc.*, 448 N.E.2d 445, 451 (N.Y. 1983).

### **Background**

Arendi alleges that Google infringed Claims 1, 8, 23, and 30 (the "Asserted Claims") of U.S. Patent No. 7,917,843 (the "'843 patent") via software applications (the "Accused Apps")<sup>1</sup> available on Android mobile devices, including those sold, marketed, and used by Samsung and its customers. The Accused Apps allegedly infringe the Asserted Claims via two particular functionalities (the "Accused Functionalities") that are provided by or rely on Google's Android operating system ("Android OS"): "Smart Text Selection with Text Classifier," "Content Detectors," and "Quick Actions."

Arendi previously brought [REDACTED] its action asserting the '843 patent against Samsung. [REDACTED]

In his supplemental damages reports, [REDACTED] He thus calculates [REDACTED] in Accused App-based damages for Accused Apps on *all* Android devices, including Samsung devices. (Ex. 1, Weinstein Suppl. Report ¶ 15; Ex. 2, Weinstein Suppl. Reply Report ¶ 13.) Mr. Weinstein alternatively calculates [REDACTED] in Accused App-based damages *excluding* Accused Apps on Samsung devices (that is, excluding Samsung's 42.1% Android OS device market share). (Ex. 1, Weinstein Suppl. Report ¶ 15 n.22; *id.* at Suppl. Ex. 5C; Ex. 2, Weinstein Suppl. Reply Report ¶ 13 n.19.) The issue of whether Mr. Weinstein can include in his calculations Accused Apps installed or running on [REDACTED] thus affects alleged damages by over [REDACTED]. Mr. Weinstein offers no substantive rationale for including Accused Apps on Samsung devices in his supplemental damages

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<sup>1</sup> The Accused Apps include Calendar, Chrome, Contacts, Docs, Gmail, Hangouts, Inbox, Keep, Messages, News, Sheets, Slides, and Tasks.

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calculations—he included them simply because “[t]he Court has not determined that accused Google apps installed on devices sold by . . . Samsung . . . are licensed.” (Ex. 2, Weinstein Suppl. Reply Report ¶ 10.) He explained at deposition that he provided his alternative damages calculations “in the event that . . . the court decides that those apps are licensed.” (Ex. 4, Weinstein Suppl. Dep. Tr. at 337:24–338:9.) He confirmed he made no independent determination or conclusion about whether Accused Apps downloaded to Samsung devices are, in fact, licensed [REDACTED]. (*Id.* at 337:24–339:14.)

***The Court should strike the portions of Mr. Weinstein’s reports that include damages for Accused Apps on Samsung devices***

The [REDACTED] [REDACTED]. “Construction of an unambiguous contract is a matter of law, and the intention of the parties may be gathered from the four corners of the instrument and should be enforced according to its terms.” *Beal Sav. Bank v. Sommer*, 865 N.E.2d 1210, 1213–14 (N.Y. 2007). As Mr. Weinstein himself indicated, the Court must resolve this dispute.

[REDACTED]

[REDACTED] r. Weinstein himself has naturally referred to the Accused Apps, Android OS, and Accused Functionalities and software in this case as “services,” “applications,” “the Android *software* platform,” and “mobile phone applications and software.” (Ex. 5, Weinstein Opening Report ¶ 15 (emphasis added).) [REDACTED]

Unquestionably [REDACTED] This alone precludes a finding of infringement as to the Accused Apps on Samsung devices, [REDACTED]

[REDACTED] In particular, the Asserted Claims require “displaying [a] document” and an “input device” for a user command. (D.I. 97-1, ’843 patent at 10:41–42, 10:50–52, 10:61–62, 12:45–46, 12:54–56, 12:65–66.) A document can only be “displayed” via some sort of hardware, “such as a conventional display device or a touch screen monitor”; and an input device requires hardware to permit the user input, “such as a touch screen button, keyboard button, icon, menu choice, voice command device, etc.” (*Id.* at 3:46–48, 9:3–8.) As Arendi itself alleges, the hardware required for these claim elements are the Samsung/Android devices and their components – for example, their touchscreens. (Ex. 6, Arendi’s Infringement Contentions Ex. E at 200 (alleging infringement based on “input mechanisms” such as “touchscreens, keyboards, styluses, [and] wired or wireless accessories”).) Arendi’s infringement allegations against Google’s Accused Apps on Samsung devices thus rely on indisputably licensed Samsung device hardware. [REDACTED]

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[REDACTED] Google supplies the Accused Apps, the Android OS, and the Accused Functionalities to Samsung Android devices,

Mr. Weinstein's supplemental reports provide no basis for his opinions including damages for Accused Apps on Samsung devices – nor can they, [REDACTED] Mr. Weinstein instead offers alternative calculations and expressly awaits and invites the Court's decision on which calculations he may present at trial. The Court should strike Mr. Weinstein's baseless damages calculations for Accused Apps on Samsung devices, so that he may rely only on his alternative calculations that omit Accused Apps on Samsung devices. *See Stecyk v. Bell Helicopter Textron, Inc.*, 295 F.3d 408, 414 (3d Cir. 2002) (“It is an abuse of discretion to admit expert testimony which is based on assumptions lacking any factual foundation in the record.”); Fed. R. Civ. P. 26(a)(2)(B); Fed. R. Evid. 702(b) (an expert's opinion testimony must be “based on sufficient facts or data”).

***Google's motion is timely***

In its Answer to Arendi's Amended Complaint, Google asserted defenses of “Non-Infringement” and of “patent exhaustion and/or implied license” based on any “licensed rights . . . granted to third-parties.” (D.I. 99, Answer to Am. Compl. ¶¶ 60, 69.) [REDACTED]

[REDACTED] (*Id.* ¶ 69.) After supplemental expert discovery and mediation (which only concluded on December 21, 2022), Google expected that Mr. Weinstein and Arendi would withdraw any damages calculations for Accused Apps on Samsung devices in light of [REDACTED]

[REDACTED] They refuse to do so, so Google promptly presents this issue to the Court so it may strike Mr. Weinstein's erroneous calculations and settle the issue well before trial. This is an issue that must be decided by the Court; it would be error to submit this issue to the jury for resolution. *See 805 Third Ave. Co.*, 448 N.E.2d at 451 (“Interpretation of the [unambiguous] contract is a legal matter for the court[.]”); *Wadsworth v. Allcott & Smith*, 6 N.Y. 64, 64 (N.Y. 1851) (“No question as to the meaning of such [unambiguous] contract, can properly be submitted to a jury.”).

Respectfully,

/s/ David E. Moore

David E. Moore

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Enclosures

cc: Clerk of the Court (via hand delivery)  
Counsel of Record (via electronic mail)