

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ARENDI S.A.R.L.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 13-919-JLH
)	
GOOGLE LLC,)	
)	
Defendant.)	
)	

LETTER TO THE HONORABLE JENNIFER L. HALL FROM NEAL BELGAM
REGARDING PRIOR ART ESTOPPEL

Of Counsel:

SUSMAN GODFREY LLP
Seth Ard (*pro hac vice*)
Max Straus (*pro hac vice*)
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
sard@susmangodfrey.com
mstraus@susmangodfrey.com

SMITH, KATZENSTEIN & JENKINS LLP
Neal C. Belgam (No. 2721)
Daniel A. Taylor (No. 6934)
1000 West Street, Suite 1501
Wilmington, DE 19801
(302) 652-8400
nbelgam@skjlaw.com
dtaylor@skjlaw.com

Attorneys for Plaintiff Arendi S.A.R.L.

John Lahad (*pro hac vice*)
1000 Louisiana Street, Suite 5100
Houston, TX 77002-5096
jlahad@susmangodfrey.com

Kalpana Srinivasan (*pro hac vice*)
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
ksrinivasan@susmangodfrey.com

Kemper Diehl (*pro hac vice*)
401 Union Street, Suite 3000
Seattle, WA 98101-3000
kdiehl@susmangodfrey.com

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Dear Judge Hall:

Last week, Arendi raised the issue that the CyberDesk prior art ground Google intends to assert at trial is subject to IPR estoppel under 35 U.S.C. §315(e)(2) and requested that the Court address the issue before trial. D.I. 456. Google responded to Arendi's letter stating that "[i]f the Court were to revisit the issue of estoppel, Google agrees with Arendi that the Court, not the jury should decide it." D.I. 457.

Google argues that Judge Stark resolved this estoppel issue in its favor, but that is incorrect. To the contrary, Judge Stark held there is a disputed question as to whether the CyberDesk evidence is "cumulative," and that this issue was not amenable to resolution on a motion for summary judgment. D.I. 391 at 14. Similarly, Judge Stark did not resolve whether any testimony about CyberDesk that allegedly goes beyond the written record is uncorroborated. Because Judge Stark did not resolve this estoppel issue at the dispositive motion stage—presumably in part because it involved Google identifying which art it would present at trial—it is an issue for the Court to resolve as a threshold matter before the presentation of prior art to the jury.

Given that both parties now agree that the Court, not the jury, must resolve any remaining factual issues pertaining to estoppel, Arendi proposes the Court hold a conference on Wednesday or Thursday this week to resolve the disputes before jury selection and openings. While Arendi does not believe an evidentiary hearing is required, the evidentiary record submitted on summary judgment, including the CyberDesk exhibits and related testimony, may be relevant to the discussion. D.I. 282 at 9-13.

Google's view is that no conference or hearing is warranted or appropriate and it thus opposed Arendi's request.

Respectfully,

/s/ Neal C. Belgam

Neal C. Belgam (No. 2721)

cc: Clerk of Court (via CM/ECF)
All Counsel of Record (via CM/ECF)