

**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 IPR**

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Dated: April 24, 2023

Dear Judge Hall:

At the conference on Friday, this Court directed the parties to meet and confer on how much evidence concerning the IPR should come in, and what can and cannot be said about the IPR proceeding. Tr. at 6:19-22; 8:8-22. The Court stated that it “sounds like everybody wants to mention them.” *Id.* at The Court also noted this is maybe something that “could have been addressed with a motion in limine at the pretrial conference.” *Id.* at 7:8-11.

The parties have been trying to reach a stipulation this weekend regarding the facts of the IPR, and we remain hopeful we can. The stipulation would allow the jury to be told about the relevant facts, and the parties would agree not to enter any IPR documents.

To the extent Google now argues, for the first time, that the jury should be shielded from all facts, evidence and testimony relating to the IPR, that is meritless. It is also diametrically opposed to the position Google has consistently taken in this litigation:

- Google wrote this Court on Wednesday night that “both Arendi and Google want the jury to hear about the IPR to some extent.” Dkt. 473 (April 20, 2023 Letter from Google)
- Google’s counsel stated on Friday morning regarding the IPR: “Our proposal is for the Court to issue a limiting instruction and some sort of guidance to the jury.”
- On Wednesday, Google submitted to this Court a proposed limiting instruction on the IPR stating:

“The ’843 Patent was the subject of a proceeding at the Patent Office called *inter partes* review, also referred to as “IPR,” filed by Google. An IPR permits a petitioner to request cancellation of patent claims as invalid on the basis of prior art consisting of patents or printed publications.... [T]he Federal Circuit ... h[eld] that .. the Pandit reference alone does not invalidate the ‘843 patent.” Dkt. 473-1.

- Google’s exhibit list, to this day, continues to have the IPR Final Written Decision on it.

Allowing evidence of the IPR is the only permissible course for the reasons set forth in Arendi’s April 21 letter, and below. Dkt. 476.

First, Google never filed a motion in limine to limit or exclude evidence relating to the IPR. To the contrary, it has consistently indicated until Sunday morning that it planned to use the IPR at trial. Any attempt by Google to exclude the IPR evidence on the eve of trial has been waived by its litigation conduct and would severely prejudice Arendi’s trial presentation.

Second, the fact that Google filed and failed to succeed on an IPR and developed infringing products after Arendi’s patent survived IPR, is relevant evidence of whether it had a reasonable belief of the validity of the patent for purposes of willful infringement. Google’s own case recognizes this. *Contour IP Holding v. GoPro, Inc., LLC*, No. 3:17-CV-04738-WHO, 2021 WL 75666, at *8 (N.D. Cal. Jan. 8, 2021).

Third, the IPRs are relevant for the purposes set forth in Arendi's prior letter to the Court dated April 21, 2023. Dkt. 476.

Arendi's proposal is simple. Absent agreement or instruction from the Court on what the relevant facts are, the parties should be permitted to elicit testimony and introduce documents regarding the facts of the IPR. In lieu of using those documents, the jury should be instructed on the relevant facts. Plaintiff's proposal, sent to Google, is set forth in the Proposed Stipulation in Exhibit A and provides factual information. By contrast, Google's proposed instructions and stipulation improperly confuses and mixes the *facts* with *legal* instructions. The only thing the jury should be instructed about now is what the facts are, not the law. The parties may argue about what those facts mean but the stipulation itself should not do that.

Google's letter from Wednesday asserted that Arendi intends to argue that the Federal Circuit "confirmed the '843 Patent's validity." Not so. What Arendi proposed is that the jury should be allowed to hear the facts: the Federal Circuit determined that Google failed to prove the patent was invalid during the IPR proceedings (language directly from that opinion). Similarly, Google should not be permitted to discuss the *reversed* IPR decision, which is null and void. In those respects, Arendi agrees with the Court that there are "things that shouldn't be said about the relevance of the IPR proceedings in court here." Tr. at 8:13-15.

In short, the IPR proceedings are relevant to the litigation here. Arendi believes that this evidence – previously unobjected to by Google – should be 1) used in documentary and evidentiary form or 2) presented by a stipulation of facts.

Respectfully,

/s/ Neal C. Belgam

Neal C. Belgam (No. 2721)

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