

EXHIBIT 2

From: John Lahad <jlahad@SusmanGodfrey.com>
Sent: Sunday, April 23, 2023 10:55 PM
To: Unikel, Robert; Kalpana Srinivasan; Failla, Melissa J.; Max Straus; Seth Ard; Rachel Solis; Kemper Diehl; Richard Wojtczak; dtaylor@skjlaw.com; nbelgam@skjlaw.com; smb@skjlaw.com
Cc: Hamlin, Shannon J.; vinny.ling@mto.com; Palapura, Bindu A.; Moore, David E.; ginger.anders@mto.com; Google-Arendi; Susan M. Betts; Neal C. Belgam
Subject: [EXT] RE: Invalidity Grounds, IPR Proceedings Issue and Wilfullness
Attachments: 2023-04-23 Proposed Stip .docx

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Rob:

The proposal you sent does not work. It is inaccurate in some places, overly argumentative in others, and raises legal points. We think the goal of the stipulation is to be a replacement for the documents (eg petition, institution decision, etc) and should provide a sufficiently fulsome recitation of the facts. Your proposal does not do that. Attached is a proposed stipulation that states just facts. If you think something in this is not a fact, let us know.

As to the limiting instruction, we don't think one is necessary at this time. Any instructions can be incorporated into the final jury instructions.

Thank you.

John P. Lahad

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From: Unikel, Robert <robertunikel@paulhastings.com>
Sent: Sunday, April 23, 2023 8:59 PM
To: Kalpana Srinivasan <ksrinivasan@SusmanGodfrey.com>; John Lahad <jlahad@SusmanGodfrey.com>; Failla, Melissa J. <melissafailla@paulhastings.com>; Max Straus <MStraus@susmangodfrey.com>; Seth Ard <sard@susmangodfrey.com>; Rachel Solis <RSolis@susmangodfrey.com>; Kemper Diehl <KDiehl@susmangodfrey.com>; Richard Wojtczak <rwojtczak@susmangodfrey.com>; dtaylor@skjlaw.com; nbelgam@skjlaw.com; smb@skjlaw.com
Cc: shamlin@Potteranderson.com; vinny.ling@mto.com; bpalapura@potteranderson.com; dmoore@potteranderson.com; ginger.anders@mto.com; Google-Arendi <Google-Arendi@paulhastings.com>; Susan M. Betts <SMB@skjlaw.com>; Neal C. Belgam <NCB@skjlaw.com>
Subject: RE: Invalidity Grounds, IPR Proceedings Issue and Wilfullness

EXTERNAL Email

Arendi Team,

Sorry to press, but it is getting pretty late. When can we expect your response on my email and compromise proposal below? Thanks.

Rob

From: Unikel, Robert

Sent: Sunday, April 23, 2023 7:36 PM

To: 'Kalpana Srinivasan' <ksrinivasan@SusmanGodfrey.com>; John Lahad <jlahad@SusmanGodfrey.com>; Failla, Melissa J. <melissafailla@paulhastings.com>; Max Straus <MStraus@susmangodfrey.com>; Seth Ard <sard@susmangodfrey.com>; Rachel Solis <RSolis@susmangodfrey.com>; Kemper Diehl <KDiehl@susmangodfrey.com>; Richard Wojtczak <rwojtczak@susmangodfrey.com>; dtaylor@skjlaw.com; nbelgam@skjlaw.com; smb@skjlaw.com

Cc: shamlin@Potteranderson.com; vinny.ling@mto.com; bpalapura@potteranderson.com; dmoore@potteranderson.com; ginger.anders@mto.com; Google-Arendi <Google-Arendi@paulhastings.com>; Susan M. Betts <SMB@skjlaw.com>; Neal C. Belgam <NCB@skjlaw.com>

Subject: RE: Invalidity Grounds, IPR Proceedings Issue and Wilfullness

Kalpana,

We continue to believe that the only correct course is for the parties to agree, or the Court to order, that the parties will not present any evidence, testimony or argument concerning the IPR proceedings to the jury. In light of the absence of any invalidity ground based on Pandit, there is no relevance to those proceedings in this case, and no justification for introducing such confusing and unduly prejudicial materials to the jury. If Arendi does not so agree, then we currently plan to ask for an appropriate order from the Court.

Should the Court disagree and allow some mention of the IPR proceedings to the jury, then we agree with you that the only way to at least partially minimize the prejudice and error is to present the IPR proceedings through a neutral and balanced stipulation and limiting instruction. Attached is Google's counterproposal to Arendi's proposed stipulation and limiting jury instruction regarding evidence relating to IPRs. It includes some of Arendi's proposed language combined with Google's in what we hope is a fair compromise that would minimize jury confusion and potential prejudice at trial. If we can agree on the language of the stipulation and proposed limiting instruction, and can agree that (1) the Court would read and/or provide a hard copy of the stipulation to the jury when one of the parties first asks for it at a relevant time during trial; and (2) the parties would not introduce any other evidence regarding the IPR to the jury or make any arguments that contradict the stipulation to the jury, then Google likely will agree not to proceed with its planned motion.

Please let us know by 9:30 pm tonight if Arendi accepts this compromise.

I'll note that Arendi's proposal in the limiting instruction that the jury could consider the IPR evidence to determine whether "Google has persuaded you by clear and convincing evidence that the Asserted Claims of the '843 Patent are invalid" without sufficient guardrails about the differences and limitations with IPR is particularly problematic. We all know that is an incomplete and misleading instruction and highly prejudicial, and it demonstrates once again that Arendi is trying to present IPR evidence to the jury for improper purposes.

Rob

From: Kalpana Srinivasan <ksrinivasan@SusmanGodfrey.com>

Sent: Sunday, April 23, 2023 3:20 PM

To: Unikel, Robert <robertunikel@paulhastings.com>; John Lahad <jlahad@SusmanGodfrey.com>; Failla, Melissa J. <melissafailla@paulhastings.com>; Max Straus <MStraus@susmangodfrey.com>; Seth Ard <sard@susmangodfrey.com>; Rachel Solis <RSolis@susmangodfrey.com>; Kemper Diehl <KDiehl@susmangodfrey.com>; Richard Wojtczak <rwojtczak@susmangodfrey.com>; dtaylor@skjlaw.com; nbelgam@skjlaw.com; smb@skjlaw.com

Cc: shamlin@Potteranderson.com; vinny.ling@mto.com; bpalapura@potteranderson.com;

dmoore@potteranderson.com; ginger.anders@mto.com; Google-Arendi <Google-Arendi@paulhastings.com>; Susan M. Betts <SMB@skjlaw.com>; Neal C. Belgam <NCB@skjlaw.com>

Subject: [EXT] RE: Invalidity Grounds, IPR Proceedings Issue and Wilfullness

--- External Email ---

Rob – Your proposal is based on the incorrect premise that the IPR evidence is permissible only if Google wants to use it. Google has already conceded that IPR evidence is relevant in its filing to the Court Thursday night as it intended to use that evidence to argue about its beliefs regarding invalidity as a defense to willfulness. Google included exhibits from the IPR proceeding on its exhibit list. But now Google suddenly says the jury will be confused even though Google intended to rely on the IPR proceedings as of a few days ago. Pandit doesn't change the equation – and only highlights that Google wanted to use the IPR proceedings to shore up its invalidity position in this case. Google's one-sided position is wrong.

As we already said, IPRs are relevant not solely to defend against willfulness but to rebut any defense of willfulness and the IPRs are also relevant to other issues which we have identified in our letter to the Court.

As you requested on our call last night, we attach a proposed Stipulation and Limiting Instruction that is edited from what you sent us earlier this week. In light of the foregoing, please let us know if Google agrees.

Kalpana

From: Unikel, Robert <robertunikel@paulhastings.com>

Sent: Sunday, April 23, 2023 6:26 AM

To: John Lahad <jlahad@SusmanGodfrey.com>; Failla, Melissa J. <melissafailla@paulhastings.com>; Kalpana Srinivasan <ksrinivasan@SusmanGodfrey.com>; Max Straus <MStraus@susmangodfrey.com>; Seth Ard <sard@susmangodfrey.com>; Rachel Solis <RSolis@susmangodfrey.com>; Kemper Diehl <KDiehl@susmangodfrey.com>; Richard Wojtczak <rwojtczak@susmangodfrey.com>; dtaylor@skjlaw.com; nbelgam@skjlaw.com; smb@skjlaw.com

Cc: shamlin@Potteranderson.com; vinny.ling@mto.com; bpalapura@potteranderson.com;

dmoore@potteranderson.com; ginger.anders@mto.com; Google-Arendi <Google-Arendi@paulhastings.com>; Susan M.

Betts <SMB@skjlaw.com>; Neal C. Belgam <NCB@skjlaw.com>

Subject: RE: Invalidity Grounds, IPR Proceedings Issue and Wilfullness

EXTERNAL Email

Arendi Team,

I know you are planning to send us today your proposal for how to deal with the IPR proceedings issues at trial. As I mentioned yesterday (by email and on our call), we believe that with the removal of Pandit from the invalidity grounds there is not even an arguable basis for presenting the IPR proceedings to the jury.

In case it was not clear from our call, Google will not be presenting the Pandit reference, or any obviousness combinations including the Pandit reference, at trial. Further, as indicated on our call, because presentation of the IPR proceedings to the jury will only confuse the jurors and taint the proceedings, Google has no intention of affirmatively introducing the IPR proceedings to the jury.

In light of the foregoing, it seems that the correct and simplest path forward would be to jointly agree that the parties will not present any evidence, testimony or argument concerning the IPR proceedings to the jury. Such agreement will also allow us to eliminate one additional dispute for the Judge to resolve, which I am certain she will appreciate.

Please let us know if Arendi agrees.

Rob

From: John Lahad <jlahad@SusmanGodfrey.com>

Sent: Saturday, April 22, 2023 12:08 PM

To: Unikel, Robert <robertunikel@paulhastings.com>; Failla, Melissa J. <melissafailla@paulhastings.com>; Kalpana Srinivasan <ksrinivasan@SusmanGodfrey.com>; Max Straus <MStraus@susmangodfrey.com>; Seth Ard <sard@susmangodfrey.com>; Rachel Solis <RSolis@susmangodfrey.com>; Kemper Diehl <KDiehl@susmangodfrey.com>; Richard Wojtczak <rwojtczak@susmangodfrey.com>; dtaylor@skjlaw.com; nbelgam@skjlaw.com; smb@skjlaw.com

Cc: shamlin@Potteranderson.com; vinny.ling@mto.com; bpalapura@potteranderson.com; dmoore@potteranderson.com; ginger.anders@mto.com; Google-Arendi <Google-Arendi@paulhastings.com>; Susan M. Betts <SMB@skjlaw.com>; Neal C. Belgam <NCB@skjlaw.com>

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Rob

Thanks for this. We decline your proposal re Pandit/IPR, and we disagree with your implication that IPRs may be used only to defend against a claim of willfulness. It is clear from even Google's proposed jury instruction that is not the case. Beyond that, we refer to the letter we filed with respect to other reasons the IPRs remain relevant. Google never sought to move in limine on use of the IPRs before this point – and intended to explicitly rely on them. We oppose.

Regarding willfulness, nothing has changed since yesterday. Moving the date of first infringement forward does not change the inquiry of willfulness under the law and the proposed instructions as to what Google knew when it released STS and whether its conduct was willful. Your argument

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