

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

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

**GOOGLE'S MOTION FOR JUDGMENT AS A MATTER OF LAW ON THE ISSUE OF  
NO DIRECT INFRINGEMENT**

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## I. INTRODUCTION

Google moves for a judgment as a matter of law of no direct infringement of claims 23 and 30 (“Asserted Claims”) of U.S. Patent No. 7,917,843 (“843 Patent”) under Federal Rule of Civil Procedure 50(a). No reasonable juror could conclude that any Accused Product<sup>1</sup> infringes any of the Asserted Claims, because the accused applications (the “first computer programs”) do not have instructions establishing processes for (A) configuring the claimed “input device” or (B) receiving the claimed “user command” from the input device; instead, those instructions reside in the Android operating system. Furthermore, Google does not, as a matter of law, infringe the computer-readable-medium claims for Accused Apps on non-accused devices.

## II. LEGAL STANDARD

A party infringes a patent if it “without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent.” 35 U.S.C. § 271. To prove infringement, Arendi must show the presence in the accused products of each and every element of the properly construed patent claims. *See Inpro II Licensing, S.A.R.L. v. T-Mobile USA, Inc.*, 450 F.3d 1350, 1358 (Fed. Cir. 2006). Because the Asserted Claims are computer-readable-medium claims, Arendi must prove that each Accused Product is “‘capable of operating’ in the described mode.” *Finjan v. Secure Computing Corp.*, 626 F.3d 1197, 1203–04 (Fed. Cir. 2010) (citation omitted).

To “use” a system for purposes of infringement, “a party must put the invention into service, *i.e.*, control the system as a whole and obtain benefit from it.” *Centillion Data Sys., LLC v. Qwest Commc’ns Int’l, Inc.*, 631 F.3d 1279, 1284 (Fed. Cir. 2011). To “put the system into

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<sup>1</sup> The “Accused Products” are the instrumentalities accused of infringement, including (1) the “Accused Apps,” which are Google Calendar, Chrome, Contacts, Docs, Gmail, Hangouts, Inbox, Keep, Messages, Sheets, Slides, and Tasks; and (2) the “Accused Devices,” which are Pixel 2, Pixel 2 XL, Pixel 3, Pixel 3 XL, and Pixel C.

service,” the accused infringer “must be using all portions of the claimed invention.” *Id.* Where a claim requires both software and hardware components, a party must “put into service” the hardware and software in order to infringe. *Id.* at 1286 (“Supplying the software for the customer to use is not the same as using the system.”). Similarly, to “make” an infringing system under § 271, a party must combine all of the claim elements. *Id.* at 1288. To “sell” or “offer for sale” an infringing system, the accused infringer must sell (or offer for sale) the “complete invention.” *Synchronoss Techs., Inc. v. Dropbox, Inc.*, 987 F.3d 1358, 1368 (Fed. Cir. 2021).

### III. ARGUMENT

Arendi failed to offer substantial evidence at trial of infringement on multiple elements of the Asserted Claims by any Accused Product.

#### A. “First computer program”

To infringe the Asserted Claims of the ’843 Patent, the “first computer program”—Google’s Accused Apps—must both “set up” an “input device” and receive a “user command” from the input device, and as a consequence “caus[e] a search for the search term in the information source.” *See* ’843 patent at 12:54–55, 12:65–67; D.I. 144 at 2 (construing “providing an input device configured by the first computer program”). The Court has construed “computer program” to mean “a self-contained set of instructions, as opposed to a routine or library, intended to be executed on a computer so as to perform some task.” (D.I. 144.) At trial, Mr. Atle Hedloy confirmed that it was important for the invention that the relevant functionality be carried out by the “first computer program” rather than some other program. *See, e.g.*, 4/24/23 Trial Tr. (Hedloy) at 176:11–12 (deposition testimony that the claims are “focused on the invention where the first computer program is configuring” the input device). He also confirmed that, during prosecution of the ’843 patent, Arendi pointed to prior art CyberDesk and Apple Data Detectors publications as disclosing functionality for setting up an input device and receiving a user command from that

input device, but separate from the program related to the document. *See, e.g.*, 4/24/23 Trial Tr. (Hedloy) at 214:21–24 (agreeing that “it was an important distinction . . . that CyberDesk was separate from the document editing program”), 227:6–10 (agreeing “that ADD is a part of the operating system and analyzes the selected textual information and configures any input device,” which Arendi used as a basis for distinguishing Apple Data Detectors in the prosecution history); *see also* PX0925 at 111, 115 (Arendi’s Accelerated Examination Support Document distinguishing publications from patent application related to the ’843 Patent). Along similar lines, both Mr. Hedloy and Dr. Smedley confirmed at trial that the Asserted Claims require the input device to be configured, and the user command to be received, by the first computer program, not the operating system or receiving the user command. *E.g.*, 4/24/23 Trial Tr. (Hedloy) at 179:13–17; 181:7–18 (agreeing that there is a “particular advantage to having the configuring of the input device be done by the first computer program as opposed to having the input device configured by the operating system,” that he “deliberately called out . . . that the input device must be configured by the first computer program,” that though “it’s possible to construct a system where the operating system receives a user command,” he “deliberately specified that the input device must be configured by the first computer program and must receive the command from the input device”); 4/24/23 Trial Tr. (Smedley) at 406:13–17 (stating that the element is met if “when the user command goes to the input device it goes to the first computer program . . . connection there”).

Arendi’s infringement theory, as explained by Dr. Smedley, is that “the self-contained set of instructions” is each Accused App. 4/25/23 Trial Tr. (Smedley) at 335:23–25 (“So the self-contained set of instructions is each of these apps and the instructions that it includes.”). But no reasonable jury could find that Google’s Accused Apps—each the “first computer program,” or “self-contained set of instructions”—sets up an input device or receives a user command from the

input device, and in consequence causes a search, because the evidence consistently shows that the relevant STS instructions are in the Android operating system (or “Android Framework”) code rather than in any Accused App code. Indeed, there can be no reasonable dispute that the code instructions for Smart Text Selection that set up the accused “input device” and receive the accused “user command” are contained within the Android Framework code—not within the code for the Accused Apps. Arendi accepts this and presented the same during its case-in-chief. It presented no evidence that the “self-contained set of instructions” for each Accused App—*i.e.*, the code contained within the app—itself carries out these claim limitations. Instead, the instructions within the Accused Apps merely “display[] the document,” which satisfies only one limitation of the Asserted Claims. *E.g.*, PX0001 (’843 Patent) at 12:45–46, PX0713 (sample video). The critical STS functionality for other elements, by contrast, is contained in the Android framework, as Dr. Smedley and others admitted. *E.g.*, 4/25/23 Trial Tr. (Smedley) at 293:23–294:4; 4/26/23 Trial Tr. (Smedley) at 543:6–7, 546:8–12, 554:13–15; *id.* (Toki) at 718:21–25, 679:25–680:5 (stating that the “Intents handling instructions” are “in the Framework”).

This lack of evidence of STS functionality within the bounds of the Accused Apps means that the Accused Apps do not infringe two elements of the Asserted Claims.

### **1. The Accused Apps do not “set up” the alleged device.**

**First**, there is no evidence that the Accused Apps “set up” the alleged input device—the STS menu bar. *E.g.*, 4/25/23 Trial Tr. (Smedley) at 381:8–10, 382:3–6, 385:3–6, 387:7–9 (identifying the “input device” as “where you tap the button or menu item,” “that e-mail button,” “that button that said, ‘map,’” “that menu button that says track,” and “the menu button ‘Call,’” though “it’s [*i.e.*, the whole menu bar is] all part of the input device”). Arendi and its infringement expert, Dr. Smedley, pointed to no factual evidence that any of the Accused Apps contain the instructions to set up (or “configure”) the input device (the Smart Text Selection menu bar), or



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