

**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 OF NO INDIRECT INFRINGEMENT**

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Dated: April 27, 2023

I. INTRODUCTION

Defendant Google LLC (“Google”), pursuant to Federal Rule of Civil Procedure 50(a), moves for a judgment as a matter of law (“JMOL”) of no indirect infringement. Arendi has presented no evidence that any third party infringes ’843 claims 23 or 30 (“Asserted Claims”), nor has Arendi presented any evidence that Google had the necessary scienter to commit secondary infringement or that the other elements of induced and contributory infringement are present. No reasonable juror could find Google liable for indirect infringement. Therefore, the Court should grant judgment of non-infringement as a matter of law.

II. BACKGROUND

In the Joint Preliminary and Final Jury Instructions filed on March 31, 2023, Arendi included instructions for induced and contributory infringement. D.I. 451 at 10; D.I. 452 at 25–30. Later, Arendi notified Google that it would not pursue infringement of any method claims of the ’843 Patent. D.I. 474 at 1. That same day, the Court issued its proposed preliminary jury instructions. D.I. 470. The parties conferred on any edits they believed were needed, and Google indicated that it believed that a sentence regarding induced and contributory infringement should drop out with the removal of the method claims. D.I. 474 at 1. Arendi disagreed. *Id.*

Accordingly, Arendi appears to still be pursuing claims of induced and contributory infringement.

III. LEGAL STANDARD

“In order to succeed on a claim of inducement, the patentee must show, first that there has been direct infringement” *Minn. Mining & Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1304–06 (Fed. Cir. 2002). Second, the alleged infringer must commit affirmative acts encouraging the infringing activity. *See* 35 U.S.C. § 271(b); *Power Integrations, Inc. v. Fairchild Semiconductor Int’l, Inc.*, 843 F.3d 1315, 1331–32 (Fed. Cir. 2016). And that affirmative act must actually cause

the third-party's infringement. *See id.* Third, the patentee must prove that “the alleged infringer knowingly induced and possessed specific intent to encourage another's infringement.” *Minn. Mining & Mfg. Co.*, 303 F.3d at 1305–06. To affirmatively induce infringing acts, the alleged infringer must have actual knowledge of the asserted patent. *Commil USA, LLC v. Cisco Sys., Inc.*, 575 U.S. 632, 639 (2015). But mere knowledge of the patent is not sufficient. *Id.* The accused infringer must know that the induced act constitutes infringement of the asserted patent. *Id.* Alternatively, an accused infringer may be liable if she knows of the patent and is willfully blind to the infringing nature of the acts she induces—that is, she subjectively believes there is a high probability that the induced act infringes and takes deliberate action to avoid knowing that induced acts constitutes infringement. *Glob.-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 768–770 (2011).

Like inducement, contributory infringement requires proof that some third party has directly infringed an asserted claim. *See Fujitsu Ltd. v. Netgear Inc.*, 620 F.3d 1321, 1326 (Fed. Cir. 2010). To contributorily infringe, a party must also have knowledge of the asserted patent and sell, or offer to sell, a component of the claimed invention. *Id.*; *i4i Ltd. P'ship v. Microsoft Corp.*, 598 F.3d 831, 850–51 (Fed. Cir. 2010). That “component” “must be a material part of the invention, have no substantial noninfringing uses, and be known (by the party) ‘to be especially made or especially adapted for use in an infringement of such patent.’” *Id.* (citation omitted).

IV. ARGUMENT

Arendi offers no evidence that a third party directly infringes any asserted claim. Dr. Smedley testified only that **Google** directly infringed the claims. *See* 4/25/23 Trial Tr. (Smedley) at 300:10–18, 373:14–18 (“**Q.** What's your opinion about whether Google, the Google apps, and the Google smartphones practice the retrieving step? **A.** The Google apps and the Google smartphone practice all this step as well.”). Where a product has non-infringing uses, a patentee

must show “specific instances of direct infringement” by third parties in order to prove secondary infringement. *ACCO Brands, Inc. v. ABA Locks Mfrs. Co.*, 501 F.3d 1307, 1312–13 (Fed. Cir. 2007). Arendi has not done that, and for that reason alone, a verdict of no indirect infringement must be entered.

But even if Arendi established that third parties did infringe an asserted claim, it has failed to establish the other elements of induced and contributory infringement.

A. Google Has Not Induced Infringement

Arendi presented no evidence that Google affirmatively acted to induce infringement. The Federal Circuit has long held that that “inducement requires evidence of promotion, active steps, or encouragement”—that is, active encouragement of the infringing acts. *Takeda Pharms. U.S.A., Inc. v. W.-Ward Pharm. Corp.*, 785 F.3d 625, 631 n.3 (Fed. Cir. 2015). In particular, merely distributing a product with the knowledge that some users may use it to infringe is not inducement. *Warner-Lambert Co. v. Apotex Corp.*, 316 F.3d 1348, 1363–64 (Fed. Cir. 2003); *Rodime PLC v. Seagate Tech., Inc.*, 174 F.3d 1294, 1306 (Fed. Cir. 1999).

1. Here, Dr. Smedley testified merely that Google makes its apps available to consumers. Arendi offered no evidence that Google affirmatively encourages users to download their apps or to use the allegedly infringing functions. Without “statements or actions directed to promoting direct infringement,” there can be no liability. *Alpek Polyester, S.A. de C.V. v. Polymetrix AG*, No. 2021-1706, 2021 WL 5974163, at *6 (Fed. Cir. Dec. 16, 2021).

2. Additionally, Arendi presented no evidence that any inducing act by Google actually caused a third party to infringe. “To prevail under a theory of indirect infringement, [the patentee] must first prove that the defendants’ actions *led to* direct infringement” *Dynacore Holdings Corp. v. U.S. Philips Corp.*, 363 F.3d 1263, 1274 (Fed. Cir. 2004) (emphasis added); *Roche Diagnostics Corp. v. Meso Scale Diagnostics, LLC*, 30 F.4th 1109, 1121 (Fed. Cir. 2022) (vacating

jury verdict where patentee “didn’t provide evidence of causation between the allegedly inducing acts . . . and the direct infringement”). As these decisions (and the ones cited above) demonstrate, causation may not be inferred merely from a defendant’s making available a product, together with evidence of subsequent direct infringement. Rather, a plaintiff must present evidence that the defendant’s affirmative inducing acts—its inducing communications—reached users and caused them to engage in direct infringement.

Here, Arendi presented no evidence that direct infringement, if any, occurred *because of* any inducing persuasion by Google. There is no evidence that Google affirmatively encouraged any downloads of its apps or instructed users on the allegedly infringing functionalities, much less that any users saw such communications and downloaded the apps as a result. And to the extent that Arendi contends that users directly infringed by *using* the allegedly infringing functionality, Arendi has presented no evidence of that use, much less that any active step by Google caused such use.¹

3. Arendi has not shown that Google had the necessary *mens rea* for inducement, i.e., that it knew that any induced act constituted infringement of the ’843 patent. *See* 4/26/23 Trial Tr. (Elbouchikhi) at 686:18–687:1 (“**Q.** Why didn’t Google change how STS worked given that Arendi had sued Google in 2013 for allegedly infringing the ’843 patent? **A.** Yeah. So going back

¹ As noted in Google’s parallel Rule 50(a) motion that there is no direct infringement, there is also an issue as to when the alleged infringement could have even begun, owing to the fact that STS functionality was not turned on until December 2017. Even after maintenance release 1 of Android 8 (O-MR1), the evidence at trial is that it would have taken at least several months for that release to have been implemented by Android handset manufacturers and distributed in the United States by carriers. 4/26/23 Trial Tr. (Elbouchikhi) at 682:3–683:5, 683:22–684:3; 4/27/23 Trial Tr. (Choc) at 793:9–794:4 (explaining that that “lengthy process” takes “six months” on average). Furthermore, even after it was available, the undisputed testimony was that OMR-1 was not distributed by many handset manufacturers. 4/26/23 Trial Tr. (Elbouchikhi) at 684:4–19; 4/27/23 Trial Tr. (Choc) at 691:18–792:3. And, as detailed in another Google Rule 50(a) motion, there is no direct infringement with respect to Google apps on Samsung devices.

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