

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.	)	
	)	

**ARENDI’S OPPOSITION TO GOOGLE’S MOTION FOR JUDGMENT AS A MATTER  
OF LAW OF NO DAMAGES OR, IN THE ALTERNATIVE, NOMINAL DAMAGES**

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The Court should deny Google’s motion for judgment as a matter of law of no damages, or in the alternative nominal damages, because Arendi’s damages are well-supported by the record evidence and Google’s scattershot arguments to the contrary all fail.

**I. ARGUMENT**

**A. THERE IS STRONG EVIDENTIARY SUPPORT FOR ARENDI’S DAMAGES CLAIM.**

**i. The record evidence contradicts Google’s claims that the unit data includes non-infringing units.**

Google claims *without any record evidence* that Mr. Weinstein “relied on data representing all downloads of the Google apps and all sales of Google devices between late 2017 and patent expiration (November 10, 2018)” rather than only downloads and devices running Google’s contemporaneous Android operating system. Mot. 3. D.I. 496. This claim is not only unsupported by the record evidence, but directly contradicted by it.

*First*, there is no question that all sales of the accused devices were running versions of Android 8.0 and later when sold. The Accused Devices are the Pixel 2, Pixel 2 XL, Pixel 3, and Pixel 3 XL. The first of these devices was released for sale in the U.S. on October 19, 2017, *after* Google had launched Android 8.0 in August 2017. As such, there is no factual basis on which to contradict Mr. Weinstein’s stated understanding that a “hundred percent” of the Accused Devices “had Android 8 or Android 9 on them” when sold based on “the materials that were produced by Google in this case.” Trial Tr. 614:23-615:10. There is no record evidence otherwise; nor could there be.

*Second*, with respect to the Accused Apps, there is likewise no record evidence that undermines Mr. Weinstein’s conclusion that the download data Google produced accurately reflects the number of infringing units. Notwithstanding Google’s newfound claims—raised for the first time during trial—that the download data includes downloads to devices running older

versions of Android, there is no record evidence that supports this attorney argument. And, to the contrary, *Google's own corporate representative confirmed that Google did not have any counter facts to offer about the download data.* During his trial testimony, Google's corporate representative was asked about the download data directly:

Q. So your testimony is that based on what you know, Mr. Weinstein is off by -- he pretty much missed it completely?

A. *If it is all the downloads for all -- every version. Again, he didn't know either. So I think until we know what that data represented.*

Q. So you don't have that data?

A. *I do not.* I'm not part of the discovery team.

Q. You weren't asked to provide that data?

A. *I was not.* That comes from the Play Store.

Q. You came to this trial and your legal team came to this trial ready to challenge Mr. Weinstein and you didn't look at the data yourself so you could have, like, a counter for us?

A. *I did not.*

Q. That information is knowable, correct?

A. *I don't know.*

Trial Tr. 815:10-816:1. The sum and substance of Google's corporate testimony is that Google does not know whether the data it produced in this case is anything other than what Mr. Weinstein concluded it was.

**ii. The download data Mr. Weinstein used is the best unit data available from Google for the Accused Apps.**

“An award of damages by a jury is upheld on appellate review unless it is clearly not supported by evidence, grossly excessive, or based only on speculation and guesswork.” *Interactive Pictures Corp. v. Infinite Pictures, Inc.*, 274 F.3d 1371, 1376 (Fed. Cir. 2001) (quoting *Oiness v. Walgreen Co.*, 88 F.3d 1025, 1031 (Fed. Cir. 1996)); see also *Ultratec, Inc. v. Sorenson*

*Commc'ns, Inc.*, 733 F. App'x 535, 540 (Fed. Cir. 2018) (“A jury’s decision with respect to an award of damages ‘must be upheld unless the amount is grossly excessive or monstrous, clearly not supported by the evidence, or based only on speculation or guesswork.’”).

There is nothing remotely approaching the kind of speculation or guesswork here that would undermine the jury’s determination of damages. Mr. Weinstein’s unit base is derived from the best evidence available from and provided by Google. It is directly tied to the unit downloads for *only* the accused apps and *only* during the period in which the corresponding Android operating system enabled infringement (*i.e.*, August 2017 and later); *see also* Ex. PX0067 ¶ 10 (Stipulation Concerning Representative Products). There is *no* record evidence that the download data overstates the number of infringing units by including downloads onto devices that were running earlier versions of Android.

**iii. Arendi’s and Google’s damages experts both independently concluded that the download data represents the appropriate number of Accused App units.**

Google’s claim that Mr. Weinstein improperly failed to apportion the download data is also refuted by Mr. Weinstein’s testimony that he and Google’s expert evaluated the same data sets and arrived at the same conclusions regarding the numbers of Accused Apps. *See* Trial Tr. 603:22-604:6 (Mr. Weinstein testifying that he “compared the numbers [he] was using in connection with apps with the numbers Google’s expert, Mr. Kidder, was using, and we were using the same numbers.”).

**B. MR. WEINSTEIN’S ANALYSIS ACCOUNTS FOR DIFFERENCES BETWEEN THE COMPARABLE LICENSES AND THE HYPOTHETICAL NEGOTIATION.**

Google’s motion also claims that Mr. Weinstein “failed to properly apportion his royalty rate” for a laundry list of purported reasons. Mot. 6-8. These all fail. Mr. Weinstein expressly acknowledged in his testimony that the other Arendi licenses included more patents than just the

'843 Patent, and Mr. Weinstein testified that his analysis was supported by his understanding from Mr. Hedløy that the '843 Patent “drove the negotiations” that led to the licenses. *Id.* at 578:2-5. Contrary to Google’s claim that Mr. Weinstein failed to account for *Georgia-Pacific* factor 7, Mr. Weinstein never so testified, and in fact expressly testified that Google did not have viable non-infringing alternatives to heighten the relevance of this factor. *See id.* at 632:2-633:4. Google’s other arguments are also wrong. For example, contrary to Google’s claim otherwise, Mr. Weinstein specifically accounted for the Microsoft, MMI, and Apple licenses’ disclaimers of infringement and validity. *See, e.g.,* Trial Tr. 578:17-18 (“Microsoft denied infringement of the patents”).

**C. THE COURT ALREADY UPHELD MR. WEINSTEIN’S MULTIPLIER.**

Google’s motion seeks to rehash an argument it lost long ago. The Court has already upheld the propriety of Mr. Weinstein’s multiplier. *See* D.I. 389 at 12. Google’s attempt to undercut the Court’s earlier analysis fails, as Mr. Weinstein’s trial testimony fully accounted for facts specific to each of the settlement agreements he considered in his royalty rate opinion.

**D. ARENDI IS ENTITLED TO DAMAGES FOR GOOGLE’S INFRINGEMENT.**

Finally, Google wrongly claims Arendi has somehow waived its right to damages under 35 U.S.C. § 284. This claim is largely unexplained, and inexplicable. The statute is clear that “[u]pon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but *in no event less than a reasonable royalty* for the use made of the invention by the infringer, together with interest and costs as fixed by the court.” 35 U.S.C. § 284. Arendi’s damages claim is well-supported by evidence in the trial record, and that evidence is more than sufficient to enable the jury to determine the reasonable royalty amount. Arendi has by no means somehow waived its statutory entitlement to damages under Section 284.

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