IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

ARENDI'S OPPOSITION TO GOOGLE'S MOTION FOR JUDGMENT AS A MATTER OF LAW OF NO WILLFUL INFRINGEMENT

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Dated: May 1, 2023

The Court should deny Google's motion for judgment as a matter of law of willful infringement because there is substantial evidence of willfulness in the trial record.

I. ARGUMENT

A. THERE IS STRONG EVIDENTIARY SUPPORT FOR ARENDI'S WILLFUL INFRINGEMENT CLAIM.

The willfulness of Google's infringement of the '843 Patent is abundantly supported by the trial evidence. The trial evidence makes clear that Google knew about the '843 Patent no later than the filing of Arendi's complaint in 2013 and nonetheless introduced the infringing Smart Text Selection functionality in 2017, while this case was stayed. Strikingly, despite its knowledge of the patent, the trial evidence shows that ***Google made no effort to design around it*** and made ***no effort to inform the engineers working on Smart Text Selection about it***. Trial Tr. 762:10-12 (Toki) ("Q. No one told you about the patent while you were working on Smart Text Selection, right? A. No."); 796:12-797:1 (Choc) ("When STS was developed -- again, I think this is where Toki is certainly more the expert than I -- that was 2017, and I didn't know about this patent until 2019 when I was deposed."); 797:2-17 (Choc) ("At the time that Google initiated its allegedly infringing conduct in 2017, Google had knowledge of the '843 patent, correct? A. That's right. Google legal would have known.").

Google's own corporate representative could not identify a single thing Google did to avoid infringing the patent, despite its express knowledge of it. Trial Tr. 797:21-799:19 (Choc) ("So what does Google do to avoid infringing intellectual property? A. I don't actually know."); id. ("You don't know -- if there are policies, you don't know whether or not Google undertook them in this case with respect to the '843 patent? A. While -- I mean, I know that Google was aware of this. But, again, I don't know what the policies are, so I think I -- I don't want to speculate."). He

also could not identify any facts to show Google had a reason to think the patent was invalid at the time it launched STS.

This evidence is more than sufficient to establish willfulness. The Federal Circuit held as much three weeks ago. In *Ironburg Inventions Ltd. v. Valve Corp.*, the Federal Circuit concluded that strikingly similar evidence to what exists here fully supported the jury's finding of willfulness. 64 F.4th 1274, 1296 (Fed. Cir. 2023). The Federal Circuit stated: "The jury heard Mr. Quackenbush's admission that ***he never provided the '525 patent to Valve's designers***, a point which the designers confirmed in their testimony, and learned that ***Valve did not attempt to design around the patent***. All of this provided the jury with substantial evidence to support a finding that Valve 'recklessly' disregarded Ironburg's patent rights and, therefore, willfully infringed." *Id.* Given the similarity of the evidence the jury has heard in this case, there is no basis for Google's claim that a reasonable juror could not find Google's infringement willful.

II. CONCLUSION

For the foregoing reasons, the Court should deny Google's motion for judgment of no willful infringement.

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