

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 BASED ON SAMSUNG AGREEMENT

Plaintiff Arendi respectfully requests that the Court deny Defendant Google's motion for judgment as a matter of law based on the Samsung agreement, filed at D.I. 498.

The Samsung Agreement does not foreclose damages for Google Apps downloaded onto Samsung devices. First, that Agreement unambiguously excludes those post-purchase user-installed apps from the scope of Samsung's license and release. Arendi incorporates by reference its briefing on this same issue in D.I. 426 at 3-5.<sup>1</sup> Second, should the Court find the Agreement to be ambiguous, evidence in the record would permit a reasonable jury to find in favor of Arendi based on *unrebutted testimony*. *E.g.*, Trial Tr. (Hedløy) at 238:3-239:12, 247:12-250:7 (testifying to lack of intent to license Samsung); Trial Tr. (Weinstein) at 662:8-663:1 (testifying that, based on his expertise, he would not "expect a licensee to silently release claims against a different company in separate litigation without mentioning that separate company in the agreement); *see also, e.g.*, Trial Tr. (Choc) at 816:14-818:2 (testifying, as Google's corporate representative, to

<sup>1</sup> Google's Apps, moreover, infringe the asserted *computer readable medium* claims even *before* they are downloaded onto a Samsung device. *See* Arendi's Opposition to Google's Motion for Judgment as a Matter of Law on the Issue of Direct Infringement, Section B.

lack of knowledge of Google's participation in, payment for, or communications with Samsung regarding the Samsung Agreement). Third, Google's defense is waived. Google's raises an express license defense but never pleaded one in its answer. *See generally* D.I. 99.

Google has also waived any defense based on the doctrines of "exhaustion" or "implied license." Google makes no reference to those doctrines in its motion, and Google never amended its answer to include the Samsung license as a basis for such defenses. *See* D.I. 99 at ¶ 69. Those doctrines, moreover, do not apply for the same reasons that Google's express license defense fails: the Samsung license extends only to the devices sold by Samsung. The accused Google Apps are installed by users *after* the point-of-sale. *E.g.*, Trial Tr. (Smedley) at 308:16-24. And Google has made no showing, for example, that the licensed devices lack substantial alternative uses to hosting post-sale downloads of the Google Apps.

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