

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
ON THE ISSUE OF DIRECT INFRINGEMENT**

Plaintiff Arendi respectfully requests that the Court deny Defendant Google’s motions for judgment as a matter of law on the issue of direct infringement, filed at D.I. 494.¹

A. Each input device is “set up” by the first computer program, and searching is caused “in consequence of receipt by the first computer program of the user command from the input device”

The Court 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. Dr. Smedley offered extensive testimony explaining how each computer program sets up the input device and receives the user command from the input device—as required by the claims. *E.g.*, Trial Tr. (Smedley) at 395:3-403:22, 406:6-17.

Google’s motion hinges on limiting the Court’s construction of “computer program” to app-specific source code that is stored in an isolated file, the “apk.” But as Google’s own expert

¹ Google also moved for judgment on Arendi’s indirect infringement claims. To focus Arendi’s case on direct infringement, Arendi has withdrawn its indirect infringement claim, rendering Google’s motion moot. D.I. 505 (Joint Proposed Verdict Form) and D.I. 506 (Joint Proposed Jury Instructions).

testified, that is not what the construction requires. Trial Tr. (Rinard) at 955:25-956:8, 957:12-957:19 (“It’s definitely not limited to source code, and it doesn’t say anything about storage either in the instruction [*sic*].” *Id.* at 957:17-19).

Multiple witnesses and exhibits admitted into evidence confirm that each Google App comprises both instructions in its app-specific code *and* the framework code that those instructions expressly direct be included in the computer program. *E.g.*, Trial Tr. (Smedley) 296:22-297:3 (“When programmers include things from” the Android framework “it’s part of the program.”); *id.* at 295:9-296:4 (explaining how app-specific code causes framework code to be included in a Google App); *id.* at 370:23-371:22 (same); *see also* Trial Tr. (Rinard) at 958:9-959:7 (testifying that when apps “use” framework code, they “communicate” with and “configure” that code because all apps use it “slightly differently”); *id.* at 963:23-964:4 (testifying Google Apps can implement functionality in the framework); *id.* at 968:9-14 (“Q. Well, you said Gmail has to identify which portions of the framework are going to get used? A. Sure. Look, the Java the Java—look, whatever happen there, that app has to specify which parts of the framework it wants to use and execute instructions that cause those parts of the framework to execute.”). When executed, the Google App code and framework code run together in a single process. Trial Tr. (Rinard) at 971:19-972:2; Trial Tr. (Elbouchikhi) 703:25-705:20 (testifying “[t]he process of an app is effectively how it runs on the system,” that the apk-specific and framework “processes are running together,” and that during this time “they are joined together”); Trial Tr. (Toki) 757:12-23 (testifying that TextView, defined in the Android framework, runs “as part of the app’s process,” which would “cause Smart Text Selection to work in the app”).

Google’s efforts to assimilate the “self-contained” set of instructions to app-specific code saved in a particular apk file leads to results inconsistent with the remainder of the Court’s

construction, which requires that the instructions be “intended to be executed on a computer so as to perform some task.” Were the Google Apps to exclude the framework code, they could not do anything at all. *E.g.*, Trial Tr. (Rinard) at 960:9-16, 961:4-24, 965:9-966:5. Indeed, Dr. Rinard’s own testimony *requires* that framework code utilized by the first computer program comprise part of the first computer program: He acknowledges that the first computer program is used for displaying the document—notwithstanding its use of framework code to do so. *Compare* Trial Tr. (Rinard) at 974:17-20 (“Q. Okay. You also don’t dispute that the accused apps and devices meet this [limitation]—displaying the document electronically using the first computer program, right? A. That’s correct.”) *with* Trial Tr. (Rinard) at 961:4-24 (“Q. Yeah. We wouldn’t be able to see the e-mail without functionality provided by the framework, right? A. That is correct.”) *and* (“Q. Right. But the action like displaying the text, sending the e-mail, all that action, that’s provided by the Java API framework, correct? A. Yeah. And – yeah, shared between all the apps and provided by the API framework”) *and* Trial Tr. (Rinard) at 975:16-977:16.

B. Google makes, uses, sells, offers for sale, or imports into the United States the required CRMs.

Dr. Smedley identified two encoded computer readable mediums (“CRMs”) that satisfy the asserted claims: the copy of the app-specific instructions encoded on Google’s Play Store servers and the copy downloaded to the memory of the user’s device. Trial Tr. (Smedley) at 454:4-11. Both are sufficient to establish infringement.

Google argues that copies of the CRMs on its servers cannot infringe because of a lack of evidence that Android framework code resides on the server. But that argument misstates the requirement of the claims. Claim 23 claims a “non-transitory computer readable medium which, *when loaded on a computer*, establish processes” laid out in the limitations. PX001 (’843 Patent), at 12:40-44. The app-specific code (what Google refers to as the “apk”) contains all of the

instructions necessary to establish each limitation *when loaded* onto a compatible computer—*i.e.*, an Android 8 or 9 device—including by directing the use of framework code. *E.g.*, Trial Tr. (Smedley) 455:25-456:7.

Google also errs in arguing that Google cannot be liable for the instructions downloaded onto the CRM on user’s devices. That *encoded* CRM is sold and/or made by Google. The encoding of the instructions on the user’s CRM is the direct, necessary and intended result of Google’s Play Store transmitting the instructions from Google’s servers to the device. No evidence in the record identifies any action required by the user to subsequently “configure” or otherwise alter the CRM to make it infringing. *See, e.g., Finjan, Inc. v. Secure Computing Corp.*, 626 F.3d 1197, 1204-05 (Fed. Cir. 2010); *see also VirnetX Inc. v. Apple Inc.*, 792 F. App’x 796, 808 (Fed. Cir. 2019); *Fantasy Sports Props., Inc. v. Sportsline.com, Inc.*, 287 F.3d 1108, 1118-19 (Fed. Cir. 2002); *M2M Sols. LLC v. Sierra Wireless Am., Inc.*, No. CV 14-1102-RGA, 2020 WL 7767639, at *12-13 (D. Del. Dec. 4, 2020); *M2M Sols. LLC v. Motorola Sols., Inc.*, No. CV 12-33-RGA, 2016 WL 70814, at *9 (D. Del. Jan. 6, 2016).

C. Evidence in the Record, including Google’s own stipulation, supports the availability of STS starting with the release of Android 8 on August 21, 2017

Google is bound by its own representative products stipulation, PX0067. That stipulation includes the includes the following provision:

The produced Pixel device loaded with Android version 8 (Oreo), having the Accused Applications that were available in connection with that Android version (whether or not those applications were preinstalled), may be treated as representative of all Google-branded devices loaded with versions of Android version 8 (Oreo). The Accused Applications loaded on that device may likewise be treated as representative of those Accused Applications when installed on devices with versions of Android version 8.

PX0067 at 5. Dr. Smedley testified that the STS worked in Google Apps on the representative Pixel device, which was running Android 8.0.0. *E.g.* Trial Tr. (Smedley) at 457:24-458:4. Dr.

Smedley's testimony is corroborated by exhibits introduced into evidence. *E.g.*, PX0673 (screen recording evidencing operation of STS on representative Pixel device); PX0458 (representative Pixel device). Dr. Smedley offered extensive testimony that detailed additional bases for his opinion that STS became available on August 21, 2017, with the release of Android 8. Trial Tr. (Smedley) at 456:8-462:5, 465:18-467:11.

For these reasons, Google's motion should be denied.

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