

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 PROPOSED JURY INSTRUCTION REGARDING LICENSE DEFENSE

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Per the Court’s Oral Order on May 1, 2023 (D.I. 522), Arendi S.A.R.L. hereby submits a proposed jury instruction regarding Google’s stated license defense, without waiver of Arendi’s argument that Google’s license defense was unpled and is improper.

* * *

5.7 LICENSE DEFENSE

[Arendi Proposal:

Google contends that Arendi’s agreement with Samsung reduces Arendi’s claim for damages. Google contends that it is a “supplier” of the Accused Google Apps to Samsung under Section 3.1 of the agreement and/or that the Accused Google Apps are “Licensed Products” under Section 1.6 of the agreement.

Arendi contends that the agreement between Arendi and Samsung does not reduce the damages Arendi is entitled to receive from Google in this case. Arendi contends the Accused Google Apps in this case are not “Licensed Products” under Section 1.6 because Google makes the Accused Google Apps available on the Google Play Store for users to download after purchasing a device, and the Google apps are not “made, used, sold, offered for sale by or for” Samsung. Arendi also asserts that Google is not a “supplier” of the accused Google apps under Section 3.1 because it does not supply the user-downloaded Google apps to Samsung, but rather to users of Samsung devices.

Google apps that were preinstalled on Samsung devices when they were sold are not at issue in this case. The Accused Google Apps in this case are only those that users downloaded

onto devices they had already purchased, and they do not include preinstalled apps that came with devices.

You must decide what Arendi and Samsung intended to agree upon.¹ In making your determination, you should consider the entire contract, in light of the relation between Samsung and Arendi and the circumstances under which their contract was made.² You should also consider the other evidence presented at trial, including any statements made under oath by the original parties to the contract regarding their intent. Such statements are significant evidence of the contracting parties' intent.³

In evaluating the words in the contract, you should not consider particular words in isolation, but rather should consider the contract as a whole in light of the overall intention of the parties,⁴ including any words in the “Whereas” clauses of the agreement regarding the intent of the parties.⁵ Google is not a party to the agreement. The agreement between Samsung and Arendi

¹ *Kass v. Kass*, 91 N.Y.2d 554, 566–67 (1998).

² *Kass v. Kass*, 91 N.Y.2d 554, 566–67 (1998) (courts “should examine the entire contract and consider the relation of the parties and the circumstances under which it was executed”).

³ N.Y. Pattern Jury Instr.--Civil 4:1, available on Westlaw (commentary) (“Where an agreement is ambiguous and extrinsic evidence is introduced to aid in construction, both sworn affidavits by both original parties to the contract and those parties' conduct after the contract was formed are significant evidence of the parties' intent.”) (collecting cases).

⁴ *Kass v. Kass*, 91 N.Y.2d 554, 566–67 (1998) (“Particular words should be considered, not as if isolated from the context, but in the light of the obligation as a whole and the intention of the parties as manifested thereby.”).

⁵ N.Y. Pattern Jury Instr.--Civil 4:1 (commentary), available on Westlaw (“If from the recitals therein it appears that the release is to be limited to only particular claims, demands, or obligations, then the release will be operative as to those matters only.” (collecting cases); *Bugel v. WPS Niagara Properties, Inc.*, 19 A.D.3d 1081, 1083, 797 N.Y.S.2d 232, 234 (2005) (“It is unreasonable to conclude that the parties, as a condition of the release, intended that plaintiff release all [his] existing unrelated claims against conceivably hundreds of named and unnamed corporations, ... employees, ... etc.” Rather, viewing the letter agreement as a whole and in light of its stated purpose, we conclude that the parties intended that plaintiff release only his employment-related claims against his employer and related entities and individuals.”).

should not be interpreted to benefit a third party that did not enter into the contract, like Google here, in the absence of clear contractual language evincing such an intent.⁶

Google bears the burden of proving, by a preponderance of the evidence, that Arendi's license agreement with Samsung reduces the damages to which Arendi is entitled to receive from Google for its infringement of the '843 Patent.]

⁶ N.Y. Pattern Jury Instr.--Civil 4:1 (commentary) ("Courts are generally reluctant to construe an intent to benefit a third party in the absence of clear contractual language evincing such an intent.") (collecting cases).