IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

GOOGLE'S MOTION FOR JUDGMENT AS A MATTER OF LAW OF NO DAMAGES BASED ON SAMSUNG AGREEMENT

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I. INTRODUCTION

Defendant Google LLC ("Google"), pursuant to Federal Rule of Civil Procedure 50(a), moves for a judgment as a matter of law ("JMOL") of no damages resulting from Accused Apps on Samsung devices. Samsung's license to the '834 patent forecloses those damages, and the Court should instruct the jury to exclude any Accused Apps on Samsung devices from its calculation of damages, should it consider them.

II. LEGAL STANDARD

[redacted]It is well settled that a contract is to be construed in accordance with the parties' intent," *MHR Capital Partners LP v. Presstek, Inc.*, 912 N.E.2d 43, 47 (N.Y. 2009), and the "best evidence of what parties to a written agreement intend is what they say in their writing," *Tomhannock, LLC v. Roustabout Resources, LLC*, 128 N.E.3d 674, 675 (N.Y. 2019). A contract that is "complete, clear, and unambiguous on its face must be enforced according to the plain meaning of its terms . . . ." *MHR*, 912 N.E.2d at 645 (citation omitted). A contract is unambiguous if, on its face, it "is reasonably susceptible of only one meaning . . . ." *Selective Ins. Co. of Am. v. Cnty. of Rensselaer*, 47 N.E.3d 458, 461 (N.Y. 2016) (citation omitted). A court may not strain the interpretation of a contract to find an ambiguity that would not otherwise exist. *See Uribe v. Merchs. Bank of N.Y.*, 693 N.E.2d 740, 743 (N.Y. 1998).

Ambiguity as to the meaning of the terms and the intent of the parties may raise a jury question, but the threshold decision on whether a writing is ambiguous is the exclusive province of the court. *See Innophos, Inc. v. Rhodia, S.A.*, 882 N.E.2d 389, 392 (N.Y. 2008). Ambiguity is present "if [the] language was written so imperfectly that it is susceptible to more than one reasonable interpretation." *Brad H. v. City of N.Y.*, 951 N.E.2d 743, 746 (N.Y. 2011). "Extrinsic

evidence of the parties' intent may be considered only if the agreement is ambiguous," *Innophos*, 882 N.E.2d at 392 (citation omitted), and extrinsic evidence may not be used to create an ambiguity, *Brad H.*, 951 N.E.2d at 746. In cases of doubt or ambiguity, a contract must be construed most strongly against the party who prepared it and favorably to a party who had no voice in the selection of the language. *See Cheng v. Modansky Leasing Co.*, 539 N.E.2d 570, 573 (N.Y. 1989); *67 Wall St. Co. v. Franklin Nat'l Bank*, 333 N.E.2d 184, 187 (N.Y. 1975). Where no extrinsic evidence of the parties' intent is offered, the construction of an ambiguous contract is a question of law for the court. *Hartford Accident & Indem. Co. v. Wesolowski*, 305 N.E.2d 907, 909 (N.Y. 1973).

III. ARGUMENT

The Samsung Agreement is unambiguous. Arendi agrees, arguing that the Agreement unambiguously does not license or release Accused Apps on Samsung devices. Although Arendi attempts to reserve an argument that the Agreement is ambiguous, it identifies no alleged ambiguity in the Agreement's language. Rather, Arendi simply asserts that it would not have intended to license or release Google [redacted] Such extrinsic evidence ***may not be considered*** without a predicate determination that the Agreement is ambiguous. Arendi may not manufacture ambiguity with its after-the-fact explanation. *Brad H.*, 951 N.E.2d at 746.[1] Moreover, the Agreement includes [redacted]

[1] Arendi attempts to introduce further confusion by soliciting testimony from its damages expert Mr. Weinstein to interpret the license. *See* 4/26/23 Trial Tr. (Weinstein) at 662:8–13 (**Q.** "In your experience would you expect a licensee to release claims asserted against a different company in separate litigation without mentioning that separate company in the agreement? **A.** No. If that was the case, I would expect it to be specifically incorporated in the agreement itself."). The Samsung Agreement must be interpreted according to the parties' intent. Mr. Weinstein has no basis on which to opine on the parties' intent memorialized in the Samsung Agreement.

[redacted]

[redacted] The Court thus can and should resolve the Samsung Agreement's meaning as a matter of law.

[redacted] This includes all Samsung devices on which Accused Apps are installed, the Android operating system itself (which is pre-installed on each Samsung device), and the Accused Apps themselves. *See* 4/24/23 Trial Tr. (Hedloy) at 235:11–20 (agreeing "that Samsung devices use an operating system"; "Android is an operating system for many of the Samsung devices"; "an operating system is software"; and "the Google apps are software"). Arendi did not dispute this—its only argument is that the Samsung Agreement does not cover "after-market downloads" of the Accused Apps to Samsung devices. D.I. 426. Arendi is wrong for three reasons.

First, the Samsung Agreement contains a broad release that encompasses Arendi's claims against Google for the Samsung-device apps: [redacted] Both conditions are met in this case. Google is a supplier to Samsung, as Google supplies Android OS, which is installed on numerous

Samsung devices, and the Accused Apps. 4/24/23 Trial Tr. (Hedloy) at 239:21–24 ("**Q.** Is it your view that Google is a supplier to Samsung of the Android operating system and the Google apps, correct? **A.** I think that's right").[2] And Arendi's claims in this action against the Samsung-device apps [redacted] as Arendi claims infringement by apps downloaded to and used on Samsung devices, which are Licensed Products. Additionally, the Samsung-device apps interoperate with Android OS, another Licensed Product. Thus, Arendi's infringement claims against the Accused Apps that are downloaded onto a Licensed Product and rely on another Licensed Product to function are clearly [redacted] The Agreement releases Google, [redacted] from all Arendi claims involving the Samsung-device apps.

Second, the purportedly infringing use of the Accused Apps is licensed. As Mr. Hedloy agreed, [redacted]

Infringement of the computer-readable-medium claims requires an end user to use her Samsung device to install an Accused App on that device. In the context of purported infringement related to Samsung devices, those devices [redacted]

[2] [redacted] Regardless, the record is clear that Google is a [redacted] o Samsung by supplying the Android operating system to Samsung.

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