

EXHIBIT A

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE
3 ARENDI S.A.R.L.,)
4)
5 Plaintiff,) C.A. No. 13-919-JLH
6 v.)
7 GOOGLE LLC,)
8 Defendant.)

10 Friday, April 24, 2023
11 9:00 a.m.
12 Jury Trial
13 Volume I

15 844 King Street
16 Wilmington, Delaware

17 BEFORE: THE HONORABLE JENNIFER L. HALL
18 United States Magistrate Judge

20 APPEARANCES:

21 SMITH, KATZENSTEIN & JENKINS LLP
22 BY: NEAL C. BELGAM, ESQ.

23 -and-
24
25

1 APPEARANCES CONTINUED:

3 SUSMAN GODFREY, LLP
4 BY: JOHN LAHAD, ESQ.
5 BY: KEMPER DIEHL, ESQ,
6 BY: MAX STRAUS, ESQ.
7 BY: SETH ARD, ESQ.
8 BY: KALPANA SRINIVASAN, ESQ.
9 Counsel for the Plaintiff

9 POTTER ANDERSON & CORROON
10 BY: DAVID ELLIS MOORE, ESQ.

11 -and-

12 PAUL HASTINGS
13 BY: ROBERT W. UNIKEL, ESQ.
14 BY: CHAD J. PETERMAN, ESQ.
15 BY: MATTHIAS A. KAMBER, ESQ.
16 BY: ANDREA ROBERTS, ESQ.
17 Counsel for the Defendant

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3 P R O C E E D I N G S

4 (Proceedings commenced in the courtroom beginning at
5 9:00 a.m.)

7 **THE COURT:** Please be seated.

8 Okay. The first day of trial, we're getting
9 off to a rocky start here. Let's have appearances for the
10 record.

11 **MS. SRINIVASAN:** Kalpana Srinivasan of Susman
12 Godfrey on behalf of Arendi.

13 **MR. ARD:** Seth Ard, Susman Godfrey, on behalf
14 of Arendi. Good morning, Your Honor.

15 **MR. LAHAD:** John Lahad, Susman Godfrey, on
16 behalf of Arendi. Good morning, Your Honor.

17 **MR. BELGAM:** Neal Belgam for Arendi, Your
18 Honor.

19 **MR. DIEHL:** Kemper Diehl from Susman Godfrey,
20 on behalf of Arendi, Your Honor.

21 **THE COURT:** Okay.

22 **MR. UNIKEL:** Robert Unikel on behalf of Google.

23 **MS. ROBERTS:** Andrea Roberts on behalf of
24 Google.

25 **MR. KAMBER:** Mathias Kamber of behalf of

1 Google.

2 **MR. PETERMAN:** Chad Peterman on behalf of

3 Google.

4 **THE COURT:** Okay.

5 **MR. BELGAM:** Your Honor, we have Max Straus,
6 also for Arendi.

7 **THE COURT:** All right. Very good. So for the
8 record, I've got a big stack of papers, much of which has
9 come in over the weekend, in the last 48 hours. So let's
10 start working through this.

11 It's 9:02. We'll get started. I had intended
12 to take the bench at 8:30, but we didn't have everyone
13 here. I won't dock the time today, but I'm frustrated by
14 the situation, that we didn't have everybody here so we
15 could get started.

16 So we have the jurors waiting in the jury room.
17 We're going to have them sit here while we go through some
18 of this stuff. So let's get started.

19 So first up on my list -- all right -- has to
20 do with IPR estoppel. So I have letters from the parties
21 that 456, 463, and 464 on this issue. So the record is
22 clear, here's my understanding of how we got to where we
23 are today. This case has been pending since 2013, well
24 before I took the bench.

25 Back in 2013, Apple, Google, and Motorola

1 downloads in 2018. But the reality is that probably less
2 than half of those downloads would have been to devices
3 that actually have the operating system that could have
4 infringed. But we can't address that because we never
5 knew this was going to be a model they were going to
6 pursue.

7 **THE COURT:** Okay. Counsel --

8 **MS. SRINIVASAN:** May I respond to that?

9 **THE COURT:** Yes.

10 **MS. SRINIVASAN:** Except for Google Chrome, all
11 of the other applications were from 2017 forward. So if
12 Google wanted to argue, we don't know what Android
13 operating system those applications apply to, that issue
14 it could have raised at any time. It is not impacted by
15 the narrowing of the applications that are from pre2017.

16 There's -- all the other applications that are
17 in there from post 2017, if Google wanted to take
18 discovery on it or wanted to raise in a motion, it didn't
19 raise this in *Daubert*, could have raised it and said,
20 well, we can't identify for these other applications what
21 operating system, whether it relates to Android 8 or not.
22 That issue is one that, as Google has framed, could have
23 been raised at any time. It is not specific to the fact
24 that the pre 2017 units are not -- no longer being
25 asserted.

1 So I think there's a little bit of confusion
2 created that is not clear here. All of the things from
3 post 2017 that are in the case today, that were in the
4 case before, that's the argument that counsel is talking
5 about. He wants to say, I don't know which one
6 corresponds to the 2018 -- or to the Android 8. But that
7 was true a week ago, two weeks ago, six months ago.

8 So that's not a new argument. That has nothing
9 to do with the fact that the pre2017 units are out. It
10 is -- all of those other applications that are unmodified
11 besides Google Chrome. They are exactly as they were
12 post2017.

13 If Google wanted to argue that they can't
14 figure out what operating system they connect to, that
15 should have been raised before.

16 **THE COURT:** All right. We are not going to
17 exclude any evidence at this point. That said, that
18 doesn't say anything about the merits. So if the evidence
19 gets presented and plaintiff failed to meet its burden of
20 proof that these numbers correspond to infringing
21 products, that's what it is. Google can move for JMOL or
22 we can deal with it in post-trial briefing, but the
23 evidence is going to go forward.

24 All right. An issue about closing the
25 courtroom.

1 **MS. SRINIVASAN:** Your Honor, we understand that
2 some information that might be raised in opening Google
3 has asked that the courtroom be sealed for, and there are
4 some third-party licenses that are referenced in opening,
5 and at least one of those third parties has made a request
6 for sealing. And so we obviously want to understand how
7 the Court would like to best handle that. Those are
8 definitely going to be presented in opening argument.

9 There are probably two discrete sections where
10 that happens, but they are not together in the opening, so
11 it would require sealing in the middle. And the Court can
12 also consider whether -- in our view, is that when Google
13 has asked us to seal in terms of number of downloads or
14 the number of installed applications, doesn't provide a
15 basis for sealing the courtroom.

16 We understand if we're talking about source
17 code we may need to seal the courtroom. But these are
18 unit numbers, and we don't see that as a basis for sealing
19 the courtroom at this --

20 **THE COURT:** Can we get -- are we talking about
21 information that's on an opening slide that's going to be
22 up on the screen?

23 **MS. SRINIVASAN:** Yes.

24 **THE COURT:** Is there a way we can deal with
25 this where we can give the jury a copy of the slides?

1 **MS. SRINIVASAN:** We could do that and not
2 publish it.

3 **THE COURT:** Counsel?

4 **MR. UNIKEL:** That would be fine, Your Honor, if
5 we just not publish the information to the whole
6 courtroom, but the jury gets the slides in hard copy, we
7 wouldn't object to that.

8 **THE COURT:** I just want to make sure -- I just
9 want to make sure -- I don't want to hear any arguments of
10 counsel later about certain slides being given undue
11 weight because we handed up copies of these slides but not
12 other slides.

13 So I guess we could explain to the jury that
14 we're going to give them a copy of all of the slides with
15 the idea being that the -- that's not a great solution as
16 I'm thinking about it. We could give them a copy of just
17 the slides that have the confidential information and
18 explain to them that we are giving it to them because it's
19 got confidential information we don't want published to
20 the Court.

21 Anybody have any ideas about what the best
22 approach is going to be?

23 **MS. SRINIVASAN:** I think that would work fine,
24 at least for my purposes because the two major things we'd
25 be talking about these third-party licenses, I could

1 certainly say there's an agreement by this party, which,
 2 you know, that can be shared publicly, and the number and
 3 the amount of that I can't say out loud, but you can look
 4 at it on your slide.

5 **THE COURT:** Okay. Counsel?

6 **MR. UNIKEL:** That would make sense as long
 7 as -- the only thing I would is that if those slides are
 8 given, they be given at the time that it would normally
 9 show up in the presentation.

10 **THE COURT:** So they're not sitting there
 11 looking at them?

12 **MR. UNIKEL:** Right. The whole time. And then
 13 obviously they shouldn't be evidence that they're taking
 14 back, and so we can collect those at the end as well.

15 **THE COURT:** Everybody agree?

16 **MS. SRINIVASAN:** That's fine.

17 **THE COURT:** How quickly do you think you can
 18 get all of that prepared so that we can hand it out?

19 **MS. SRINIVASAN:** Just need to print probably
 20 about four slides.

21 Okay. We have a printer here, so I think we
 22 can do that in 10, 15 minutes.

23 **THE COURT:** Okay. All right. Is there
 24 anything else? Have a seat. Anything else we need to
 25 deal with?

1 Is there anything else we need to address
 2 before we get started?

3 **MR. UNIKEL:** I don't believe so, Your Honor.

4 **MS. SRINIVASAN:** No, Your Honor.

5 **THE COURT:** Okay. All right. Let's take a
 6 ten-minute break, and we will be back at 10:15 and we will
 7 start with opening statements.

8 (Whereupon, a recess is taken.)

9 **MS. SRINIVASAN:** We've got our printouts made.
 10 I've shared those with the other side. They are fine with
 11 having them handed out to the jurors. There are only four
 12 or five of them. There's a stapled copy. And I can
 13 reference that without publishing it on the screen.

14 **THE COURT:** Okay.

15 **MR. UNIKEL:** Thank you, Your Honor.

16 **THE COURT:** Fantastic. All right. Is everyone
 17 ready to begin? May I have those as well? Thank you.

18 **MS. SRINIVASAN:** And, Your Honor, I just had
 19 one question. I know we are limited to the podium. Do
 20 you object to us being in front of the podium if we're
 21 facing the jury?

22 **THE COURT:** That's fine. I just like everyone
 23 to be within arm's reach of the podium during opening
 24 statements.

25 **MS. SRINIVASAN:** Sure.

1 So we are going to be able to do openings
 2 without closing the courtroom?

3 **MS. SRINIVASAN:** With that, for Arendi, yes.

4 **THE COURT:** Yes?

5 **MR. UNIKEL:** I believe yes, Your Honor.

6 **THE COURT:** Okay.

7 **MS. SRINIVASAN:** And I believe in the
 8 examination of our first witness, Mr. Hedloy, we'll have a
 9 similar issue where there will be some discussion. Now,
 10 in that case, because he's offering evidence and
 11 testifying about it, we probably will need to seal the
 12 courtroom so he can talk about the terms of those
 13 agreements.

14 **THE COURT:** Can we cabin it to one module of
 15 the direct examination?

16 **MS. SRINIVASAN:** I believe so, yes.

17 **MR. UNIKEL:** And we can cabin the cross
 18 similarly. I have it in one module.

19 **THE COURT:** So the idea is that we're going to
 20 kick everybody out, leave the jury where they're seated,
 21 do it, bring everybody back in. That's going to happen
 22 twice during the course of the examination?

23 **MS. SRINIVASAN:** Yes.

24 **MR. UNIKEL:** Yes.

25 **THE COURT:** Okay. All right.

1 **THE COURT:** Just out of curiosity, do you have
 2 a sense of how long your opening will be?

3 **MS. SRINIVASAN:** It will be under an hour,
 4 45 minutes to an hour.

5 **THE COURT:** Forty-five minutes to an hour.
 6 Counsel?

7 **MR. UNIKEL:** I would guess about 40 minutes,
 8 Your Honor.

9 **THE COURT:** Okay. So I think what we'll try to
 10 do is do the openings, and then we'll take lunch after
 11 that.

12 **MR. UNIKEL:** Great. Thank you, Your Honor.

13 **THE COURT:** All right. Let's bring the jury
 14 in.

15 **THE CLERK:** Yes, Your Honor.
 16 (The jury enters the courtroom at 10:21 a.m.)

17 **THE COURT:** Please be seated. Good morning,
 18 ladies and gentlemen of the jury. I want to apologize to
 19 you for the late start we had this morning. There were
 20 some matters that I needed to discuss with the attorneys
 21 before we began the trial, but we are now ready to go. We
 22 thank you very much for your patience. The trial is now
 23 going to begin. First we're going to hear opening
 24 statements from each side.

25 Counsel.

1 about something that could be related, have to do with the
 2 patent, whether or not is or similar or not, we have to
 3 send to the Patent Office.
 4 **Q.** As far as things that existed before the application,
 5 what kinds of references -- or you've heard the term
 6 "prior art" -- did Arendi find and submit to the Patent
 7 Office?
 8 **A.** We found there were several patents that were sort of
 9 in the vicinity. There were some manuals, documents,
 10 academic papers, everything. So everything we had, we
 11 sent everything.
 12 **Q.** And if you go to the next slide, Mr. Hedloy, can you
 13 describe for the jury what's shown on this slide.
 14 **A.** That is the beginning of the section which lists all
 15 the things that the patent examiner knew about, and,
 16 therefore, looked at. I think it's actually from the
 17 left-hand part of the first page.
 18 **Q.** So it starts on the first page of the patent, and
 19 then if we go to the next slide, Mr. Hedloy, could you
 20 describe what these subsequent eight pages of the patent
 21 are showing?
 22 **A.** Those are showing the names of all the references, of
 23 all the documents and patents and other things we had that
 24 we submitted to the Patent Office and that the Patent
 25 Office found themselves. I think that what the Patent

1 corporate representatives can stay for this.
 2 **MR. DIEHL:** On behalf of Arendi, that's okay.
 3 **MR. UNIKEL:** Thank you, Your Honor.
 4 **THE COURT:** Okay. Can I see counsel at
 5 sidebar.
 6 - - -
 7 (Whereupon, the following discussion is held at
 8 sidebar.)
 9 **THE COURT:** I can tell all of you that the
 10 gentleman sitting in the back of the courtroom is my law
 11 clerk.
 12 Is there anyone else that either side doesn't
 13 recognize that we need to address?
 14 **MR. UNIKEL:** I think everybody else is covered.
 15 **MS. SRINIVASAN:** The only issue is there was an
 16 Apple lawyer here. They exited the room. I don't know if
 17 they maintain an option for Google corporate people being
 18 here. She went outside. She came here for the express
 19 purpose of making sure sealing was done right for their
 20 confidential information. She left just before the issue
 21 being Google in-house corporate people. They are not
 22 expressly here for protective order.
 23 **MR. UNIKEL:** In-house counsel is okay.
 24 **MS. SRINIVASAN:** Yes.
 25 **MR. UNIKEL:** If it's going to hold things up

1 Office found is marked with a star, and the rest we
 2 submitted to them.
 3 **Q.** We heard about things like CyberDesk and Apple Data
 4 Detectors during the opening statements. Did Arendi
 5 happen to find any references related to those?
 6 **A.** Yes, we did. And we sent it to the Patent Office.
 7 **Q.** Mr. Hedloy, how did you feel when you got the patent?
 8 **A.** Great, of course. It was a patent, a U.S. patent.
 9 It was verification that it was new, and I felt great.
 10 **Q.** Is this case the first time that Arendi has sought to
 11 protect the '843 patent from infringement?
 12 **A.** No.
 13 **MR. DIEHL:** Your Honor, at this point I do need
 14 to seal the courtroom to begin talking about some of the
 15 confidential documents.
 16 **THE COURT:** Okay. Ladies and gentlemen of the
 17 jury, at this point we're going to have people who are not
 18 authorized to view certain confidential information that's
 19 been exchanged in this case to leave the courtroom. So
 20 please stay seated.
 21 Ms. Garfinkel, can we seal the courtroom.
 22 **MR. UNIKEL:** Can I ask a quick question?
 23 **THE COURT:** Yes.
 24 (A discussion was held off the record.)
 25 **MR. UNIKEL:** We are just making sure that the

1 because we are not sure, I'm happy to ask our corporate
 2 business rep to be excused and keep corporate in-house.
 3 **MS. SRINIVASAN:** That's fine. It is not our
 4 objection. I know the Apple lawyer came here for that
 5 purpose.
 6 **THE COURT:** If what we are concerned about is
 7 somebody coming in to court and raising objection in the
 8 middle of testimony. I rather we take the easy path
 9 forward if everybody agrees.
 10 **MR. UNIKEL:** Yes.
 11 **MS. SRINIVASAN:** Yes.
 12 (Whereupon, the discussion at sidebar concludes.)
 13 - - -
 14 **THE COURT:** The courtroom has been sealed.
 15 * * *
 16 (The following discussion is held under seal:
 17 **MR. DIEHL:** Thank you, Your Honor.
 18 **BY MR. DIEHL:**
 19 **Q.** Mr. Hedloy, what was the first time Arendi had to
 20 bring a lawsuit to protect the '843 patent?
 21 **A.** When we had to file suit against Microsoft.
 22 **Q.** What happened with that lawsuit?
 23 **A.** Well, they took a license.
 24 **Q.** What did Microsoft pay for its license to Arendi's
 25 patented technology?

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