IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ARENDI S.A.R.L., Plaintiff, v. GOOGLE LLC, Defendant.	)))) C.A. No. 13-919-JLH)) **Original Version Filed: June 2, 2023**)) **Public Version Filed: June 9, 2023**))

**ARENDI S.A.R.L.'S OPENING BRIEF IN SUPPORT OF ITS
RENEWED MOTIONS FOR JUDGMENT AS A MATTER OF LAW
AND MOTION FOR A NEW TRIAL**

Plaintiff Arendi S.A.R.L. respectfully renews its motions for judgment as a matter of law and moves for a new trial. Defendant Google LLC has not advanced substantial evidence to prove the invalidity of Claims 1 and 23 (the "Asserted Claims") of U.S. Patent No. 7,917,843 by clear and convincing evidence. Defendant's expert, Dr. Fox, provided conclusory testimony regarding anticipation by CyberDesk that ignored claim limitations. With respect to obviousness, Google failed to advance a motivation to combine; failed to present relevant evidence of the operation of Microsoft Word '97; failed to explain how the proposed combination would render the claims obvious; and failed meaningfully to address secondary considerations of non-obviousness. Finally, Google presented an invalidity defense that was estopped under 35 U.S.C. § 315(e)(2).

I.   **BACKGROUND**

The Court held a jury trial from April 24 to May 2, 2023, on infringement and validity of the Asserted Claims. Google alleged that the Asserted Claims were anticipated by an alleged CyberDesk system and rendered obvious by i) CyberDesk in view of an alleged Apple Data Detectors system ("ADD"); ii) CyberDesk in view of Word '97 ("Word"); and iii) ADD in view of Word. Trial Tr.[1] (4/24) at 19:17-21; *see also* Ex. 1 (4/22 email from Google's counsel) at 1.

On April 27, Google played deposition testimony concerning CyberDesk and ADD. Anind Dey testified concerning CyberDesk, and Google used his testimony to admit references describing CyberDesk: DTX-006-011, DTX-013-020, DTX-028, and DTX-034. Trial Tr. (4/27) at 826:11-18. Google never presented an actual CyberDesk system because none exists. *E.g.*, *id*. at 14-18. James Miller then testified concerning ADD. *Id*. at 996:16-1055:8. Google likewise used Mr. Miller to admit references allegedly describing ADD into evidence: DTX-179-180, DTX-182, DTX-186-191, DTX-777, DTX880-183. Although Google claimed to have laptops with ADD

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[1] Citations to "Trial Tr." reference the draft trial transcripts.

installed, Google declined to offer them into evidence or to demonstrate their functionality in court. Trial Tr. (4/27) at 993:23-994:15. No other fact witnesses testified concerning CyberDesk or ADD. No fact witnesses testified concerning Word, and no exhibits were admitted concerning Word. Google's invalidity expert witness, Edward Fox, testified on May 1, 2023.

Arendi then moved for judgment as a matter of law of no anticipation under section 102 and non-obviousness under section 103. Trial Tr. (5/1) at 1423:19-1424:14. Arendi also raised IPR estoppel as a basis for granting JMOL. *Id.* at 1425:18-1426:23. On May 10, 2023, the Court entered Judgment Following Verdict "in favor of Defendant and against Plaintiff on Defendant's invalidity defenses." D.I. 545 at 1. The Court denied Arendi's Rule 50(a) motions as moot. *Id.*

II.   ARGUMENT

The Court should grant judgment as a matter of law of no invalidity because insufficient evidence supports a finding of anticipation or obviousness. In the alternative, the Court should grant a new trial because such findings are against the clear weight of the evidence. Google presented a conclusory invalidity case and relied on estopped grounds. JMOL is granted under Rule 50(b) "if, viewing the evidence in the light most favorable to the nonmovant and giving it the advantage of every fair and reasonable inference, there is insufficient evidence from which a jury reasonably could find for the nonmovant." *TQ Delta, LLC v. 2Wire, Inc.*, 486 F. Supp. 3d 803, 806 (D. Del. 2020) (citation omitted). A court may exercise its discretion to grant a new trial under Rule 59(a) "if the jury's verdict is against the clear weight of the evidence, and a new trial [is necessary] to prevent a miscarriage of justice." *Id*. (internal quotation omitted).

A.   Anticipation

Google failed to prove that CyberDesk disclosed each limitation of the Asserted Claims. "Invalidity must be established by clear and convincing evidence." *ActiveVideo Networks, Inc. v.*

Verizon Commc'ns, Inc., 694 F.3d 1312, 1329 (Fed. Cir. 2012). "To anticipate a claim, a prior art reference must describe 'each and every claim limitation . . . .'" *Id.* "Typically, testimony concerning anticipation must be testimony from one skilled in the art and must identify each claim element, state the witnesses' interpretation of the claim element, and explain in detail how each claim element is disclosed in the prior art reference. The testimony is insufficient if it is merely conclusory." *Schumer v. Lab'y Computer Sys., Inc.*, 308 F.3d 1304, 1315-16 (Fed. Cir. 2002).

Google did not meet these exacting requirements. Dr. Fox's testimony on anticipation spans only six transcript pages, Trial Tr. (5/1) at 1171:3-1177:1, including a page and a half of prefatory remarks, *id.* at 1171:3-1172:12. He does not state his interpretation of each claim limitation; he does not explain how CyberDesk discloses each limitation; and he routinely ignores claim constructions. This conclusory testimony cannot support a finding of anticipation.

Dr. Fox's testimony about the "displaying the document . . ." limitation spans six lines. *Id.* at 1173:9-14. He does not explain, for example, how CyberDesk discloses a "document." *See* D.I. 144 at 3 (construing "document" as "a word processing, spreadsheet, or similar file into which text can be entered"). Dr. Fox notes browsers' ability to "display things," including "programs where you can make edits," Trial Tr. (5/1) at 1173:9-14; however, he does not explain why these "things" constitute "word processing, spreadsheet or similar files," and he does not show that these "things" are editable when displayed and analyzed using CyberDesk. *See* D.I. 400 at 11 (requiring document to "remain editable at least when it is displayed and analyzed."). Indeed, the sole "thing" to which Dr. Fox points is the image of an email browser in DTX-0010.0002 and DTX-0011.0001. Trial Tr. (5/1) at 1173:9-14. No evidence shows that this *browser* facilitated editing.[2] Rather, DTX-

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[2] When introducing CyberDesk, Dr. Fox points to Dr. Dey's affirmative answer (at Trial Tr. (4/27) 892:4-8) to the question, "[W]hen it could pull text from an e-mail, was it possible that a user could be working in an e-mail when the text was selected for the CyberDesk to work?," as evidence that

0011.0001 depicts a *received* email, and Dr. Fox describes this CyberDesk service as "a mail reader." *Id*. at 1154:11-13; *see also id.* at 1183:13-16 (Dr. Sacerdoti testifying, "It's a mail reader, not a full mail client. It means it's reading your mail. That means what it's reading is not an editable document under the Court's construction; therefore, it's not a document.").

Dr. Fox's 15 lines of testimony on the limitation, "while the document is being displayed…," also fall short. *Id*. 1173:15-1174:4. That element requires, *inter alia*, analyzing "to determine if the first information belongs to one or more of several predefined categories … that can be searched for"—and the categories must be identifying or contact information. D.I. 144 at 3. Dr. Fox's assertion that CyberDesk could "recognize a lot of different kinds of information" cannot establish that CyberDesk meets these requirements. Trial Tr. (5/1) at 1171:3-1177:1. Indeed, the rest of Dr. Fox's analysis discusses only one type of information, a name, which falls short of the limitation's "one or more *of several*" requirement. *E.g.*, *id*. at 1174:23-25.[3]

Google lacks evidence regarding the "retrieving…" limitation. Dr. Fox's two lines of testimony read, "It found that name, that highlighted name. So it retrieved it. So that's also covered. That's Element D." *Id.* at 1174:5-6. "So it retrieved it" is a conclusion—not an explanation.[4]

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the "mail reader" "doesn't have to be a mail reader; you can go with editing tools." Trial Tr. (5/1) at 1155:2-18. Dr. Fox wrongly equates "working in an e-mail" with editing. Dr. Fox also points to Dr. Dey's testimony about inserting "text that was found" into a "working document" as proof that CyberDesk disclosed the required "document." *Id.* at 1155:21-1156:12. But that text was inserted into a separate editor—not the email used in the analyzing step. Trial Tr. (4/27) at 892:25-893:7.

[3] Dr. Fox's introduction to CyberDesk, which is untethered to specific limitations, cannot fill these gaps. Although he notes that CyberDesk permits "look[ing] up words in dictionaries," Trial Tr. (5/1) at 1157:16-1158:6, "words" are neither "identifying" nor "contact" information. Dr. Fox also states, "So we heard from Dr. Smedley about looking up an address and finding information and going to a map. So I just wanted to remind us that this is what we saw in the CyberDesk system as well." *Id.* at 1157:12-15. Dr. Fox does not tie this feature to a limitation or explain how CyberDesk implemented that feature. If he was referencing DTX-0028.0001, that exhibit reads, "retriev[ing] a map for a given address," and does not disclose *analyzing* to identify an address.

[4] Even if Dr. Fox is equating "finding" and "retrieving" names, his testimony is inadequate. First, he does not state that understanding. Second, that view would collapse two limitations: "retrieving"

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