

January 26, 2024

The Honorable Jennifer L. Hall
J. Caleb Boggs Federal Building
844 N. King Street
Unit 17, Room 6312
Wilmington, DE 19801-3555

Re: *Arendi S.A.R.L. v. Google LLC* (13-919-JLH)

Dear Judge Hall:

Arendi S.A.R.L. submits this letter to reply to two issues raised in Google's letter (D.I. 611) regarding the amendment of the existing judgment (D.I. 545).

First, Google's assertion that the Court lacks jurisdiction to modify its judgment is based on a misreading of law from the wrong circuit. Google cites only one case: *Sun-Tek Industries, Inc. v. Kennedy Sky Lites, Inc.*, 929 F.2d 676 (Fed. Cir. 1991) (discussing *Sun-Tek Indus.*, 848 F.2d 179, 181 (Fed. Cir. 1988)). Because the timeliness of a Rule 59 motion is not unique to patent law, *Sun-Tek* turned on the application of regional circuit law from the Eleventh Circuit. 848 F.3d at 181. And the Federal Circuit there interpreted the Eleventh Circuit's ruling in *Hidle v. Geneva County Board of Education*, 792 F.2d 1098 (11th Cir. 1986), to confine disposition of a Rule 59(e) motion to grounds raised in the original motion. 848 F.3d at 182-83.

In the Third Circuit, however, a district court disposing of a Rule 59(e) motion "is not limited to the grounds set forth in the motion itself." *Bullock v. Buck*, 611 F. App'x 744, 746 n.2 (3d Cir. 2015) (holding court was "within its authority" in amending judgment on grounds not raised in Rule 59(e) motion); *see also Fed. Ins. Co. v. Susquehanna Broad. Co.*, 738 F. Supp. 896, 897 n.1 (M.D. Pa. 1990) (holding court could amend judgment under Rule 59(e) on grounds advanced by nonmoving party). Other circuits follow the same approach. *E.g., Veolia Water N. Am. Operating Servs., LLC v. City of Atlanta*, 546 F. App'x 820, 827 (11th Cir. 2013) (noting "many of our sister circuits have held that, once a Rule 59(e) motion is filed, a district court has the power to make appropriate corrections even with respect to issues not raised in the motion" and collecting cases). In fact, even the Eleventh Circuit has departed from the strict reading of *Hidle* adopted in *Sun-Tek. Id.* (reversing denial of prejudgment interest on defendants' counterclaim when only plaintiff had filed Rule 59(e) motion regarding prejudgment interest). Because Arendi filed a timely Rule 59(e) motion, the Court has jurisdiction to amend the judgment on the additional ground the Court has identified: Google's failure to plead a counterclaim of invalidity.

Second, Google lodges misplaced accusations of gamesmanship. Google, not Arendi, made a strategic choice to omit a counterclaim of invalidity. Google stuck with that decision through eleven years of litigation. Yet now that Google knows how the jury found, Google regrets that decision and seeks the benefit of a counterclaim it never raised. The only gameplaying emanates from Google.

Arendi respectfully requests that the Court amend the judgment to limit it to noninfringement.

The Honorable Jennifer L. Hall
January 26, 2024
Page 2

Respectfully,

Neal C. Belgam

Neal C. Belgam (No. 2721)

cc: Clerk of Court (via CM/ECF)
All Counsel of Record (via CM/ECF)