

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IOENGINE, LLC,)	
)	
Plaintiff,)	
)	C.A. No. 14-01571-GMS
v.)	
)	JURY TRIAL DEMANDED
INTERACTIVE MEDIA CORP.)	
D/B/A KANGURU SOLUTIONS,)	
)	
Defendant.)	
_____)	

**PLAINTIFF IOENGINE, LLC'S OPPOSITION TO INTERACTIVE MEDIA CORP.'S
RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, IN THE
ALTERNATIVE, FOR A NEW TRIAL**

Of Counsel
Jeffrey Ostrow
jostrow@stblaw.com
SIMPSON THACHER & BARTLETT LLP
2475 Hanover Street
Palo Alto, California 94304
Telephone: (650) 251-5000

SMITH, KATZENSTEIN & JENKINS LLP
Neal C. Belgam (No. 2721)
Eve H. Ormerod (No. 5369)
1000 West Street, Suite 1501
Wilmington, DE 19801
(302) 652-8400
nbelgam@skjlaw.com
eormerod@skjlaw.com

Noah M. Leibowitz
Gregory T. Chuebon
nleibowitz@stblaw.com
gchuebon@stblaw.com
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, New York 10017
Tel: (212) 455-2000

Attorneys for Plaintiff IOENGINE, LLC

Dated: March 15, 2017

TABLE OF CONTENTS

I. SUMMARY OF ARGUMENT 1

II. NATURE AND STAGE OF THE PROCEEDINGS 1

III. STATEMENT OF FACTS 2

IV. LEGAL STANDARD..... 2

V. ARGUMENT 3

 A. IMC’s Motion is Based on Arguments It Has Waived..... 3

 B. The Jury’s Verdict That the Asserted Claims Are Not Invalid Over Genske
 Should Not Be Disturbed 5

 1. Substantial Evidence Supports the Jury’s Finding that IMC Failed to
 Meet Its High Burden to Prove Invalidity Over Genske..... 6

 C. The Jury’s Verdict of No Invalidity on Enablement Should Not Be Disturbed 8

 1. Substantial Evidence Supports the Jury’s Verdict of Enablement..... 9

 2. Dr. Butler’s Rebuttal was More than Sufficient to Show Enablement..... 10

 D. IMC Fails to Address That a Reasonable Jury Could Have Found Dr.
 Madisetti’s Invalidity Testimony Inconsistent and Unreliable 11

 E. The Jury’s Verdict of Infringement Should Not Be Disturbed..... 12

 1. Substantial Evidence Supports that the Infringing IMC Products
 Contain Third Program Code Executed by the Portable Device
 Processor 13

 2. Substantial Evidence Supports that the Infringing IMC Products
 Contain Third Program Code that Causes a Communication to be
 Transmitted 15

 3. IMC’s “Synchronizing” Argument is Waived and is Improper..... 18

VI. CONCLUSION..... 20

TABLE OF AUTHORITIES

CASES

Abbott Labs. v. Syntron Bioresearch, Inc.,
334 F.3d 1343 (Fed. Cir. 2003)..... 5

Abbott Labs. v. Syntron Bioresearch, Inc.,
No. 98-CV-2359 H (POR), 2002 WL 32068939 (S.D. Cal. Jan. 11, 2002) 6

Apple Inc. v. Samsung Elecs. Co.,
816 F.3d 788 (Fed. Cir. 2016)..... 18

Apple Inc. v. Samsung Elecs. Co.,
839 F.3d 1034 (Fed. Cir. 2016)..... 10

Bicon, Inc. v. Straumann Co.,
441 F.3d 945 (Fed. Cir. 2006)..... 19

Edwards Lifesciences AG v. CoreValve, Inc.,
No. C.A. 08-91-GMS, 2011 WL 446203 (D. Del. Feb. 7, 2011) 19

EMC Corp. v. Zerto, Inc.,
C.A. No. 12-956 (GMS), 2016 WL 1291757 (D. Del. Mar. 31, 2016) 2

Finjan, Inc. v. Secure Computing Corp.,
626 F.3d 1197 (Fed. Cir. 2010)..... 3

Grazier ex rel. White v. City of Philadelphia,
328 F.3d 120 (3d Cir. 2003)..... 2

Hewlett-Packard Co. v. Mustek Sys., Inc.,
340 F.3d 1314 (Fed. Cir. 2003)..... 18

i4i Ltd. P’ship v. Microsoft Corp.,
598 F.3d 831 (Fed. Cir. 2010)..... 12, 20

In re Prosser,
534 Fed. App’x. 126 (3d Cir. 2013)..... 3, 4

Invista N. Am. S.A.R.L. v. M & G USA Corp.,
35 F.Supp.3d 583 (D. Del. 2014)..... 2, 4

Lightning Lube, Inc. v. Witco Corp.,
4 F.3d 1153 (3d Cir. 1993)..... 2, 4

Masimo Corp. v. Philips Elec. N. Am. Corp.,
C.A. No. 09-80-LPS, 2015 WL 2379485 (D. Del. 2015) 3, 5, 9

Mentor H/S, Inc. v. Med. Device All., Inc.,
244 F.3d 1365 (Fed. Cir. 2001)..... 3

Michalic v. Cleveland Tankers, Inc.,
364 U.S. 325 (1960)..... 14

Microsoft Corp. v. i4i Ltd. P’Ship,
564 U.S. 91 (2011)..... 5

Moleculon Research Corp. v. CBS, Inc.,
793 F.2d 1261 (Fed. Cir. 1986)..... 14

Reeves v. Sanderson Plumbing Prod., Inc.,
530 U.S. 133 (2000)..... 3

S.O.I.TEC Silicon On Insulator Techs., S.A. v. MEMC Elec. Materials, Inc.,
No. CIV. 08-292-SLR, 2011 WL 2748725 (D. Del. July 13, 2011) 8

Streck, Inc. v. Research & Diagnostic Sys., Inc.,
665 F.3d 1269 (Fed. Cir. 2012)..... 8

Teleconference Sys. v. Proctor & Gamble Pharm., Inc.,
676 F. Supp. 2d 321 (D. Del. 2009)..... 6

Tinnus Enters., LLC v. Telebrands Corp.,
846 F.3d 1190 (Fed. Cir. 2017)..... 14

U.S. v. Dunkel,
927 F.2d 955 (7th Cir. 1991) 6

Varlesi v. Wayne State Univ.,
No. 10-14793, 2014 WL 2864690 (E.D. Mich. June 24, 2014) 6

Williamson v. Consol. Rail Corp.,
926 F.2d 1344 (3d Cir. 1991)..... 2

RULES

Fed. R. Civ. P. 50..... passim

Fed. R. Civ. P. 59(a)4

OTHER AUTHORITIES

9B Charles Wright & Arthur Miller,
Fed. Prac. & Proc. Civ. § 2537 (3d ed. 2013)..... 3

Webster’s Third New International Dictionary, (2002).....19

I. SUMMARY OF ARGUMENT

IMC's motion is entirely divorced from the factual record developed at trial. It is an attempt to rewrite history after the jury, with the benefit of an extensive factual record and expert testimony, judged the credibility of the witnesses at the five-day trial and properly found against IMC on issues of infringement, validity, and inventorship. This is not a case where judgment as a matter of law or a new trial is appropriate. IMC's motion should be denied.

1. Nearly all of IMC's arguments for JMOL amount to entirely new arguments never before raised in a Rule 50(a) motion. IMC's Rule 50(b) arguments based on anticipation, enablement, the meaning of the claim term "when," and the alleged lack of direct evidence of third program code have all been waived.

2. IMC's invalidity arguments additionally fail because IMC's motion mistakes the relevant standard, attempting to flip the burden of proof on validity. Moreover, Genske does not disclose all three claimed program codes, which must be run *from* the portable device memory (regardless of which processor they are run *by*), and there is ample evidence of enablement.

3. Substantial evidence supports the jury's finding that IMC's infringing products contain third program code which, when executed by the portable device processor, causes a network communication to be transmitted. IMC's arguments to the contrary ignore the evidence and misunderstand IOENGINE's infringement analysis as presented to and accepted by the jury.

4. Finally, IMC fails to account for the significant credibility issues facing each of its proffered expert witnesses—whose testimony was subject to rejection by a reasonable jury.

II. NATURE AND STAGE OF THE PROCEEDINGS

After a five-day jury trial on IOENGINE, LLC's ("IOENGINE") claims of patent infringement against Interactive Media Corp. d/b/a Kanguru Solutions ("IMC"), the jury returned its verdict on January 13, 2017, finding the asserted claims of U.S. Patent No. 8,539,047 (the

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.