

INGENICO, INC.,)
)
Plaintiff,)
) C.A. No. 18-826 (WCB)
v.)
)
IOENGINE, LLC,)
)
Defendant.)
)

IOENGINE LLC,)
)
Plaintiff,)
) C.A. No. 18-452 (WCB)
v.)
)
PAYPAL HOLDINGS, INC.,)
)
Defendant.)

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1 APPEARANCES CONTINUED:

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20 P R O C E E D I N G S
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01:51:23 22
01:51:23 23 THE COURT: Thank you. Please be seated. Off
01:53:21 24 the record for a moment.

01:53:22 25 I am allotted here by Amtrak no longer than

04:23:41 1 MR. BLUMENFELD: I don't think this is any in
04:23:43 2 the local rules. I think this is a Ingenico issue, so I'll
04:23:45 3 let Ingenico speak to it.

04:23:45 4 MS. STERNBERG: I can speak to it. Our concern
04:23:48 5 right now at least in the Ingenico case, we don't know how
04:23:51 6 many claims, there are 189 potential claims that can be
04:23:54 7 asserted, and we haven't received infringement contentions.
04:23:57 8 We're just nervous about limiting the RFA to fifty if there
04:24:02 9 are more than fifty or there are a hundred claims that are
04:24:04 10 at issue because RFA's are useful for contention.

04:24:09 11 THE COURT: This is a good time to address the
04:24:11 12 number of claims. One area in which I will push back is
04:24:19 13 having too many claims. And 189 is way too many claims. So
04:24:26 14 there are various ways that I can limit the number of claims
04:24:30 15 if you don't, but I would urge you in the strongest terms to
04:24:37 16 go back and weed out those claims. Otherwise -- and I'm
04:24:42 17 sure your experience on this will tell you that if you have
04:24:47 18 anything remotely approaching 189 claims in one case, you're
04:24:52 19 going to spend most of the days, or most of the trial on the
04:24:56 20 long march. And you know what I mean with an asterisk. And
04:25:01 21 now on claim 167, first limitation, can I put a green check
04:25:11 22 next to it? Yes, you can. And the jury is going to hate
04:25:14 23 you. They're going to want to take you around the back and
04:25:18 24 shoot you.

04:25:19 25 So I would suggest it's in your interest as well

04:25:22 1 as the jury's interest and I am going to make sure that it
04:25:26 2 doesn't come to pass that we have 189 claims. I would
04:25:31 3 suggest something more in the neighborhood of ten. I don't
04:25:35 4 know what your experience has been in terms of what works
04:25:38 5 with a jury, but my experience, limited to be sure, but is
04:25:46 6 that anything more than that is just the jury loses track.

04:25:53 7 MR. CHUEBON: Yes, Your Honor, we have no
04:25:55 8 intention of putting 186 claims in front of the jury.

04:25:58 9 THE COURT: Thank you. I probably should have
04:26:00 10 asked first and not bore you with the speech. But that's --
04:26:06 11 I feel really strongly about this.

04:26:08 12 MR. BLUMENFELD: Your Honor, can I address that
04:26:09 13 for a moment?

04:26:10 14 THE COURT: Yes.

04:26:11 15 MR. BLUMENFELD: Unlike in Ingenico, we have
04:26:14 16 received preliminary first round infringement contentions
04:26:18 17 from IOENGINE, and they have, in fact, in the first round
04:26:22 18 asserted 96 claims. And it's less than 189, but 96 is way
04:26:28 19 too many to deal with. It's not only from our point of view
04:26:31 20 a jury issue.

04:26:33 21 THE COURT: I understand.

04:26:34 22 MR. BLUMENFELD: It's going to fall on your
04:26:36 23 plate when we start claim construction, it's going to fall
04:26:39 24 on yours when we do invalidity contentions, and yes, there
04:26:45 25 will be invalidity in this case. And we would like to

discuss with you getting at least a first cut down before claim construction so that we don't have to deal with terms of 96 claims and then probably after claim construction narrowing it again.

THE COURT: Yes. I absolutely think, well, 96 is way too many, way too many. So I would direct you to go back and significantly adjust the number of claims that you plan to raise. And there are -- one thing if you're absolutely adamant about proceeding with a significant number of claims, I will employ all my resources to try to persuade you that that should not be your approach. But in the end if we have to, I'll break the case up, and I'll try the case involving a smaller number of claims and we'll see where we are. That is not an option that I particularly welcome because that's burdensome on everybody, but I just am not going to see 96 claims, unless there is something about the case that's really extraordinary which I haven't seen so far.

MR. CHUEBON: Yes, Your Honor.

THE COURT: The earlier the better for the reasons that Mr. Blumenfeld has given.

MR. CHUEBON: Thank you, Your Honor. If I may, there is one reason that there are so many claims. We didn't want to raise it to Your Honor, but we did have issues with PayPal with their core technology document