01:12:40

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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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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                    Monday, December 17, 2018
                    1:55 p.m.
                    Courtroom 4A

                    844 King Street
                    Wilmington, Delaware

BEFORE: THE HONORABLE WILLIAM C. BRYSON
         United States District Court Judge

APPEARANCES:

        RICHARDS LAYTON & FINGER, P.A.
        BY: FREDERICK L. COTTRELL, III, ESQ.

         -and-

        SUNSTEIN KANN MURPHY & TIMBERS, LLP
        BY: SHARONA H. STERNBERG, ESQ.

                    Counsel for the Plaintiff
                    Ingenico, Inc.

1   APPEARANCES CONTINUED:

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4   SMITH KATZENSTEIN & JENKINS, LLP
              BY: NEAL C. BELGAM, ESQ.
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              -and-
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              DECHERT LLP
7   BY: NOAH M. LEIBOWITZ, ESQ.
              BY: GREGORY T. CHUEBON, ESQ.
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                        Counsel for the Defendant
9   IOENGINE, LLC

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              MORRIS NICHOLS ARSHT & TUNNELL, LLP
12   BY: JACK B. BLUMENFELD, ESQ.

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14   ORRICK HERRINGTON & SUTFLIFFE, LLP
              BY: JARED BOBROW, ESQ.
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                        Counsel for Defendant
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                  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

04:26:47 1 discuss with you getting at least a first cut down before

04:26:51 2 claim construction so that we don't have to deal with terms

04:26:55 3 of 96 claims and then probably after claim construction

04:26:59 4 narrowing it again.

04:27:00 5   THE COURT: Yes. I absolutely think, well, 96

04:27:04 6 is way too many, way too many. So I would direct you to go

04:27:12 7 back and significantly adjust the number of claims that you

04:27:17 8 plan to raise. And there are -- one thing if you're

04:27:26 9 absolutely adamant about proceeding with a significant

04:27:30 10 number of claims, I will employ all my resources to try to

04:27:36 11 persuade you that that should not be your approach. But in

04:27:41 12 the end if we have to, I'll break the case up, and I'll try

04:27:46 13 the case involving a smaller number of claims and we'll see

04:27:50 14 where we are. That is not an option that I particularly

04:27:55 15 welcome because that's burdensome on everybody, but I just

04:27:59 16 am not going to see 96 claims, unless there is something

04:28:05 17 about the case that's really extraordinary which I haven't

04:28:10 18 seen so far.

04:28:11 19   MR. CHUEBON: Yes, Your Honor.

04:28:12 20   THE COURT: The earlier the better for the

04:28:14 21 reasons that Mr. Blumenfeld has given.

04:28:16 22   MR. CHUEBON: Thank you, Your Honor. If I may,

04:28:17 23 there is one reason that there are so many claims. We

04:28:21 24 didn't want to raise it to Your Honor, but we did have

04:28:24 25 issues with PayPal with their core technology document