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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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

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

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

1 APPEARANCES CONTINUED:  
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4 SMITH KATZENSTEIN & JENKINS, LLP  
5 BY: NEAL C. BELGAM, ESQ.

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7 DECHERT LLP  
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10 Counsel for the Defendant  
11 IOENGINE, LLC

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

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17 Counsel for Defendant  
18 PayPal Holdings, Inc.

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20 P R O C E E D I N G S  
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THE COURT: Thank you. Please be seated. Off  
the record for a moment.

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