

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

SCRAMOGE TECHNOLOGY LTD.,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

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Civil Action No. 6:21-cv-00616-ADA

DEMAND FOR JURY TRIAL

GOOGLE LLC'S PRELIMINARY INVALIDITY CONTENTIONS

I. INTRODUCTION

Defendant Google LLC (“Google”) hereby makes the following Preliminary disclosure of Invalidity Contentions (“Preliminary Invalidity Contentions”) to Plaintiff Scramoge Technology Ltd. (“Scramoge” or “Plaintiff”).

These contentions address only the asserted claims of U.S. Patent Nos. 9,843,215 (“the ’215 Patent”), 10,367,370 (“the ’370 Patent”), 10,804,740 (“the ’740 Patent”), and 9,997,962 (“the ’962 Patent”) (collectively, the “Asserted Patents”) asserted in Plaintiff’s Preliminary Disclosure of Asserted Claims and Infringement Contentions (“Infringement Contentions”) served on September 7, 2021.

Plaintiff has asserted the following claims (collectively, the “asserted claims”) against Google:

- **The ’215 Patent:** Claims 1, 4, 5, 8, 9, 10, 11, 12, 13, 17, 18, 19, 20, 21, and 22.
- **The ’370 Patent:** Claims 1, 2, 3, 4, 7, 8, 9, 12, 13, 14, 15, 16, 17, and 18.
- **The ’740 Patent:** Claims 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10.
- **The ’962 Patent:** Claims 1, 2, 3, 4, 7, 18, and 19.

With respect to each asserted claim and based on its investigation to date, Google hereby: (a) identifies each item of prior art that anticipates and/or renders obvious each asserted claim; (b) specifies whether each such item of prior art anticipates each asserted claim and/or renders it obvious, and, if it renders it obvious, explains why the prior art renders the asserted claim obvious and identifies any combinations of prior art showing obviousness; (c) submits a chart identifying where specifically in each item of prior art each limitation of each asserted claim is found; and (d) identifies the grounds of invalidity based on 35 U.S.C. § 112.¹

¹ According to the Preliminary Infringement Contentions, Plaintiff contends that the claims of the ’740 patent are entitled to a priority date before March 16, 2013 (*see* Preliminary Infringement Contentions at 4) and that the

In addition, pursuant to the Standing Order Governing Patent Proceedings, and based on its investigation to date, Google produces documents concurrently with these Preliminary Invalidation Contentions.

II. RESERVATIONS

Google reserves the right to amend these Preliminary Invalidation Contentions. The information and documents that Google produces are based on information available to date and are subject to further revision. Google expressly reserves the right to amend these disclosures and the accompanying document production should Plaintiff provide any additional information that it failed to provide in its Infringement Contentions.

Further, because discovery (including discovery from third parties) has not yet begun, Google reserves the right to revise, amend, and/or supplement the information provided herein, including identifying and relying on additional references, should Google's further search and analysis yield additional information or references, consistent with the Standing Order Governing Patent Cases and the Federal Rules of Civil Procedure. Google reserves the right to rely on additional prior art; further analysis of prior art; application of prior art to new or different claims; depositions and discovery from prior art sources and authors; analysis of prior art products; combinations of references; expert opinion and/or testimony; evidence supporting invalidity of any asserted claim; and any additional relevant information that may result from its further investigation and discovery. Additionally, Google reserves the right to rely on additional information, testimony, and/or analysis concerning operation of prior art systems. Moreover, Google reserves the right to revise its ultimate contentions concerning the invalidity

claims of the '215, '370, and '962 patents are entitled to a priority date after March 16, 2013 (*see id.*). As discussed further herein, Google does not agree that the claims are entitled to the priority dates set forth in the Infringement Contentions. But unless otherwise specified, the invalidity grounds discussed in these Preliminary Invalidation Contentions are applicable under both pre-AIA and post-AIA law.

of the asserted claims, which may change depending upon the Court's construction of the asserted claims, any findings as to the priority or invention date of the asserted claims, and/or positions that Plaintiff or its expert witness(es) may take concerning claim construction, infringement, and/or invalidity issues.

Prior art not included in this disclosure, whether known or unknown to Google, may become relevant. In particular, Google is currently unaware of the extent, if any, to which Plaintiff will contend that limitations of the asserted claims are not disclosed in the prior art identified by Google, or will contend that any of the identified references do not qualify as prior art. The identification of any patent or patent publication shall be deemed to include any counterpart patent or application filed, published, or issued anywhere in the world.

The information and documents that Google produces are based on Google's present understanding of Plaintiff's infringement theories as advanced by Plaintiff in its Infringement Contentions. Plaintiff's Infringement Contentions are deficient in numerous respects. For example, Plaintiff has failed to specifically identify where each element of each Asserted Claim is found within each accused instrumentality, and does not identify a specific mapping from components of the accused instrumentalities to the elements of the asserted claims. Plaintiff has also failed to present any contentions for infringement under the doctrine of equivalents. Plaintiff has not provided detailed infringement contentions that identify each specific claim limitation allegedly infringed under the doctrine of equivalents and its alleged equivalent element in the accused instrumentalities, or the basis for purported insubstantial differences between each such limitation and its alleged equivalent. If Plaintiff attempts or is permitted to cure such deficiencies, doing so may lead to further grounds for invalidity, and thus Google specifically reserves the right to modify, amend, or supplement its contentions. Plaintiff has

failed to cure the deficiencies and has not undertaken reasonable efforts to prepare preliminary contentions to put Google on notice of its theories of infringement.² Thus, it no longer has the opportunity to amend as of right under OGP 3.5, unless “the amendment is based on material identified after those preliminary contentions were served.” OGP 3.5 at 8 n.7. However, if it is granted leave to amend its contentions, or other additional information regarding Plaintiff’s infringement theories becomes available, Google anticipates that it will provide corresponding invalidity contentions which establish that, under Plaintiff’s interpretation of the claim scope as set forth in its Infringement Contentions, the asserted patents read on the prior art.

Further, Plaintiff has not produced prior art known to it, including regarding any known prior art products. As discovery in this action provides Google with additional information, Google may serve subpoenas on third parties believed to have knowledge, documentation, and/or corroborating evidence relating to invalidity and/or prior art. It is therefore likely that Google will discover additional prior art pertinent to the invalidity of the asserted claims and Google reserves the right to supplement these contentions after becoming aware of additional prior art or information. Google further reserves the right to introduce and use such supplemental materials at trial.

Google’s claim charts in Exhibits B, C, D, and F cite particular teachings and disclosures of the prior art as applied to features of the asserted claims. However, persons having ordinary skill in the art may view an item of prior art generally in the context of other publications, literature, products, and understanding. Accordingly, the cited portions are only exemplary, and Google reserves the right to rely on uncited portions of the prior art references and on other publications and expert testimony as aids in understanding and interpreting the

² For example, Scramoge has failed to present any infringement contentions relating to indirect infringement or relating to doctrine of equivalents, and Google reserves all rights.

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