



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

TOUCHSTREAM TECHNOLOGIES, INC.,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

§
§
§
§
§
§
§
§
§
§

Civil Case No. 6:21-cv-569-ADA

JURY TRIAL DEMANDED

**GOOGLE LLC'S OPPOSITION TO TOUCHSTREAM TECHNOLOGIES, INC.'S
OPPOSED RULE 59(e) MOTION TO AMEND THE JUDGMENT TO INCLUDE
SUPPLEMENTAL DAMAGES, ONGOING ROYALTIES, AND INTEREST**





TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
TABLE OF ABBREVIATIONS	vi
TABLE OF EXHIBITS	vii
INTRODUCTION	1
BACKGROUND	3
LEGAL STANDARD.....	4
ARGUMENT.....	5
I. TOUCHSTREAM IS NOT ENTITLED TO ANY FURTHER ROYALTY BECAUSE THE JURY AWARDED A FULLY-PAID-UP LUMP SUM	5
A. The Record Demonstrates The Jury Awarded A Fully-Paid-Up Lump Sum	6
B. Touchstream’s Unsupported Implied Royalty Rate Should Be Rejected.....	9
II. TOUCHSTREAM’S REQUESTS FOR SUPPLEMENTAL AND ONGOING ROYALTIES SHOULD BE DENIED FOR ADDITIONAL REASONS	10
A. Touchstream Did Not Make A Timely Request For Supplemental Damages.....	10
B. Touchstream Is Not Entitled To A 50% Enhancement.....	11
III. PREJUDGMENT INTEREST SHOULD BE DENIED.....	15
IV. AT MOST, ANY PREJUDGMENT INTEREST SHOULD BE LIMITED TO THE POST-COMPLAINT PERIOD AND TO THE ONE-YEAR T-BILL RATE	18
CONCLUSION.....	20

[REDACTED]

TABLE OF AUTHORITIES

	Page
CASES	
<i>ACCO Brands, Inc. v. Am. Power Conversion Corp.</i> , No. 2:02-cv-113-TJW, 2004 WL 5698341 (E.D. Tex. Apr. 27, 2004)	19
<i>Apple, Inc. v. Samsung Elecs. Co.</i> , 926 F. Supp. 2d 1100 (N.D. Cal. 2013)	19, 20
<i>Cioffi v. Google, Inc.</i> , No. 2:13-cv-103, 2017 WL 4011143 (E.D. Tex. Sept. 12, 2017), <i>rev'd on other grounds</i> , No. 18-1049, 2023 WL 2981491 (Fed. Cir. Apr. 18, 2023), <i>petition for cert. filed on other grounds</i> (Oct. 16, 2023)	5, 12, 14
<i>Conceptus, Inc. v. Hologic, Inc.</i> , No. 09-02280-WHA, 2012 WL 44064 (N.D. Cal. Jan. 9, 2012)	16
<i>Creative Internet Advertising Corp. v. Yahoo! Inc.</i> , 674 F. Supp. 2d 847 (E.D. Tex. 2009)	5, 6
<i>Crystal Semiconductor Corp. v. TriTech Microelecs. Int'l, Inc.</i> , 246 F.3d 1336 (Fed. Cir. 2001)	5, 16, 17, 18
<i>EcoFactor, Inc. v. Google LLC</i> , No. 6:20-cv-00075-ADA, 2022 WL 2380332 (W.D. Tex. May 26, 2022)	19
<i>Erfindergemeinschaft UroPep GbR v. Eli Lilly & Co.</i> , No. 2:15-cv-1202-WCB, 2017 WL 3034655 (E.D. Tex. July 18, 2017), <i>aff'd</i> , 739 F. App'x 643 (Fed. Cir. 2018)	13, 14
<i>Galen Med. Assocs. v. United States</i> , 369 F.3d 1324 (Fed. Cir. 2004)	11
<i>Gaus v. Conair Corp.</i> , No. 94-civ-5693-FM, 2003 WL 223859 (S.D.N.Y. Feb. 3, 2003), <i>rev'd on other grounds</i> , 363 F.3d 1284 (Fed. Cir. 2004)	18
<i>Gen. Motors Corp. v. Devex Corp.</i> , 461 U.S. 648 (1983)	5, 16

..

TABLE OF AUTHORITIES
(continued)

	Page
<i>Genband US LLC v. Metaswitch Networks Corp.</i> , No. 2:14-cv-00033-JRG, 2018 WL 11357619 (E.D. Tex. Mar. 22, 2018).....	14
<i>Godo Kaisha IP Bridge 1 v. TCL Comm'cn Tech. Holdings Ltd.</i> , No. 15-634-JFB, 2019 WL 1877189 (D. Del. Apr. 26, 2019).....	10
<i>Halo Elecs., Inc. v. Pulse Elecs., Inc.</i> , 579 U.S. 93 (2016).....	13
<i>Imaginal Systematic, LLC v. Leggett & Platt, Inc.</i> , No. 10-cv-07416, 2013 WL 12129858 (C.D. Cal. July 3, 2013).....	20
<i>Kaneka Corp. v. SKC Kolon PI, Inc.</i> , 198 F. Supp. 3d 1089 (C.D. Cal. 2016)	16
<i>Laitram Corp. v. NEC Corp.</i> , 115 F.3d 947 (Fed. Cir. 1997).....	20
<i>LaserDynamics, Inc. v. Quanta Computer, Inc.</i> , 694 F.3d 51 (Fed. Cir. 2012).....	11
<i>Lighting Ballast Control, LLC v. Phillips Elecs. N. Am. Corp.</i> , 814 F. Supp. 2d 665 (N.D. Tex. 2011), <i>rev'd on other grounds</i> , 498 F. App'x 986 (Fed. Cir. 2013).....	6, 7
<i>Lucent Techs., Inc. v. Gateway, Inc.</i> , 580 F.3d 1301 (Fed. Cir. 2009).....	5
<i>Mars, Inc. v. Coin Acceptors, Inc.</i> , 513 F. Supp. 2d 128 (D.N.J. 2007)	20
<i>Mass Engineered Design, Inc. v. Planar Sys., Inc.</i> , No. 3:16-cv-1510-SI, 2018 WL 6059375 (D. Or. Nov. 19, 2018)	14
<i>Milwaukee Elec. Tool Corp. v. Snap-On Inc.</i> , 288 F. Supp. 3d 872 (E.D. Wis. 2017).....	18
<i>Oiness v. Walgreen Co.</i> , 88 F.3d 1025 (Fed. Cir. 1996).....	18

TABLE OF AUTHORITIES
(continued)

	Page
<i>Pers. Audio, LLC v. Apple, Inc.</i> , No. 9:09-cv-111, 2011 WL 3269330 (E.D. Tex. July 29, 2011).....	8
<i>Prism Techs. LLC v. Sprint Spectrum L.P.</i> , 849 F.3d 1360 (Fed. Cir. 2017).....	6, 10
<i>Roland Corp. v. inMusic Brands, Inc.</i> , No. 17-22405-civ, 2023 WL 2441356 (S.D. Fla. Jan. 20, 2023).....	16
<i>Saint-Gobain Autover USA, Inc. v. Xinyi Glass N. Am., Inc.</i> , 707 F. Supp. 2d 737 (N.D. Ohio 2010).....	16
<i>Smith & Nephew Inc. v. Arthrex, Inc.</i> , 603 F. App'x 981 (Fed. Cir. 2015)	5, 6
<i>SRI Int'l, Inc. v. Cisco Sys., Inc.</i> , 14 F.4th 1323 (Fed. Cir. 2021)	15
<i>Summit 6, LLC v. Samsung Elecs. Co.</i> , 802 F.3d 1283 (Fed. Cir. 2015).....	8
<i>Telcordia Techs., Inc. v. Cisco Sys., Inc.</i> , 612 F.3d 1365 (Fed. Cir. 2010).....	4
<i>Touchstream Techs., Inc. v. Vizbee, Inc.</i> , No. 1:17-cv-06247-PGG (S.D.N.Y. filed Aug. 17, 2017)	3
<i>Transocean Offshore Deepwater Drilling, Inc. v. GlobalSantaFe Corp.</i> , No. H-03-2910, 2006 WL 3227315 (S.D. Tex. Nov. 6, 2006).....	19, 20
<i>Vectura Ltd. v. GlaxoSmithKline LLC</i> , No. 16-638-RGA, 2019 WL 4346502 (D. Del. Sept. 12, 2019).....	14
<i>VLSI Tech. LLC v. Intel Corp.</i> , No. 6:21-cv-57-ADA, 2022 WL 1477728 (W.D. Tex. May 10, 2022).....	19
<i>WhitServe, LLC v. Computer Packages, Inc.</i> , 694 F.3d 10 (Fed. Cir. 2012).....	6, 10

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.