U.S. District Court
District of Delaware (Wilmington)
CIVIL DOCKET FOR CASE #: 1:13−cv−00919−LPS

Arendi S.A.R.L. v. Google LLC
Assigned to: Judge Leonard P. Stark
Related Cases: 1:09−cv−00119−LPS
1:11−cv−00260−LPS
1:12−cv−01595−LPS
1:12−cv−01596−LPS
1:12−cv−01597−LPS
1:12−cv−01598−LPS
1:12−cv−01599−LPS
1:12−cv−01600−LPS
1:12−cv−01601−LPS
1:12−cv−01602−LPS
1:20−cv−01483−LPS
1:13−cv−00920−LPS
Cause: 35:271 Patent Infringement

Date Filed: 05/22/2013
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Date Filed	#	Docket Text
01/25/2021	257	ORAL ORDER: Having reviewed the parties' submissions relating to various motions to strike, IT IS HEREBY ORDERED that Google and Motorola's motion to strike those portions of Dr. Smedley's reports that disclose, discuss, analyze, or opine on theories of infringement under the doctrine of equivalents ("DOE") (C.A. No. 12−1601 D.I. 230; C.A. No. 13−919 D.I. 237), and LG's similar motion directed to DOE theories and references in Dr. Levy's reports (C.A. No. 12−1595 D.I. 235) are GRANTED. Arendi's passing reference to DOE in its complaints followed by its lack of affirmative disclaimer of DOE theories (see, e.g., C.A. No. 12−1595 D.I. 238 at 5) ("Arendi has never asserted that its claims were limited to literal infringement") does not come close to satisfying Arendi's obligation to articulate, in a timely manner, contentions and then expert opinion and linking evidence specifically directed to the claim elements it contends are met (at least contingently) by a theory of equivalents, under the function/way/result and/or insubstantial differences tests (see, e.g., id. D.I. 240 at 2 n.2) ("As the party with the burden of proof, Arendi had to do far more than not limit its claims to literal infringement; it had to affirmatively disclose any DOE theories."). Not even attempting to meet this burden (and, in any event, failing to meet this burden even when it belatedly tried) until a reply expert report is surprising, harmful, and unfairly prejudicial to Google, Motorola, and LG and not substantially justified. Defendants had no opportunity to pursue fact or even expert discovery to counter the new DOE theories, which they might have done by pursuing, for example, different theories of non−infringement, such as ensnarement. While no trial date has been set, and it is possible that further discovery and delay could remedy much of the prejudice, there is no reason to consider such steps, given Arendi's failures with respect to DOE. Arendi's explanation − that Defendants' experts somehow relied on new and improper claim constructions in their non−infringement reports, to which Drs. Smedley and Levy were entitled to reply − is unpersuasive and unavailing. No expert will be permitted to present an opinion that contradicts the Court's claim constructions; Arendi has not shown this has occurred nor that, if it has, the appropriate relief would be to permit Arendi to expand this case to include DOE theories Arendi was obligated to disclose long ago. The Pennypack factors, as a whole, favor striking. No portion of the teleconference today will be devoted to arguing the motions resolved by this Order. ORDERED by Judge Leonard P. Stark on 1/25/21. Associated Cases: 1:12−cv−01595−LPS, 1:12−cv−01601−LPS, 1:13−cv−00919−LPS (ntl) (Entered: 01/25/2021)