Appeal Nos. 22-1762, 23-2029

United States Court of Appeals for the Federal Circuit

ARENDI S.A.R.L.,
Plaintiff-Appellant,

v.

OATH HOLDINGS INC., OATH INC.,
Defendants-Appellees,

2022-1762

Appeal from the United States District Court for the District of Delaware in No. 1:13-cv-00920-GBW Judge Gregory B. Williams

ARENDI S.A.R.L.,
Plaintiff-Appellant,

APPLE INC.,
Third-Party Defendant,

v.

GOOGLE LLC,
Defendant-Appellee,

2023-2029

Appeal from the United States District Court for the District of Delaware in No. 1:13-cv-00919-JLH Judge Jennifer L. Hall

CORRECTED BRIEF OF *AMICUS CURIAE* LG ELECTRONICS INC. AND LG ELECTRONICS U.S.A., INC. IN SUPPORT OF APPELLEE GOOGLE LLC AND AFFIRMANCE

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CERTIFICATE OF INTEREST

Counsel for LG Electronics Inc. and LG Electronics U.S.A., Inc. certifies the following:

1. **Represented Entities.** Provide the full name of all entities represented by the undersigned counsel in this case:

LG Electronics Inc. and LG Electronics U.S.A., Inc.

2. **Real Party in Interest.** Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.

Not applicable.

3. **Parent Corporations and Stockholders.** Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more of stock in the entities:

LG Electronics Inc. is the parent corporation.

4. **Legal Representatives.** List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities:

FISH & RICHARDSON P.C.: Jeremy D. Anderson; Christian A. Chu; Kurt L. Glitzenstein; Thomas Lee Halkowski; Casey Kraning; Matthew C. Berntsen*; Ajit S. Dang*; Jacob Pecht*; Eda Stark*; Andy Thomson*

* No longer with the firm

5. **Related Cases.** Provide the case titles and numbers of any case known to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b):

Arendi S.A.R.L. v. LG Electronics Inc., et al., No. 1:12-cv-01595-GBW (D. Del.).

Arendi S.A.R.L. v. Blackberry Limited, et al., 1:12-cv-01597-GBW (D. Del.)
Arendi S.A.R.L. v. Motorola Mobility LLC, 1:12-cv-01601-JLH (D. Del.)
Arendi S.A.R.L. v. Sony Mobile Communications (USA) Inc., 1:12-cv-01602-GBW (D. Del.)
Arendi S.A.R.L. v. HTC Corp., et al., No. 1:12-cv-01600-GBW (D. Del.)
Arendi S.A.R.L. v. HTC Corp., et al., No. 2:18-cv-1725-BJR (W.D. Wash.)

6. **Organizational Victims and Bankruptcy Cases.** Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6):

Not applicable.

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I. STATEMENT OF INTEREST OF *AMICUS CURIAE*

LG Electronics Inc. and LG Electronics U.S.A., Inc. (together, "LG") are Defendants in a pending patent infringement action in the District of Delaware, Civil Action No. 12-1595 ("the Arendi-LG lawsuit"), in which Arendi has accused LG of infringing claims 1, 8, 23, and 30 of U.S. Patent No. 7,917,843 ("the '843 patent"). Claims 1 and 8 are method claims and claims 23 and 30 are analogous "computer readable medium" claims covering the same subject matter. Claims 1 and 8 are not patentably distinct from claims 23 and 30 and have the same scope (or perhaps slightly broader scope) than claims 23 and 30.

The Arendi-LG lawsuit is stayed pending final resolution in the instant case.

LG has a strong interest in the instant appeal because in the underlying action a jury rendered verdicts finding claims 23 and 30 of the '843 patent (the only two claims tried to the jury) invalid under both anticipation and obviousness. Appx6172-6173. LG contends that the jury's verdicts of invalidity in the instant case resolve Arendi's infringement allegations against LG. Issue preclusion should prevent Arendi from continued assertion of claims 23 and 30 of the '843 patent, and issue preclusion should further prevent Arendi from asserting claims 1 and 8 of the '843 patent as well because those claims are not patentably distinct from the claims invalidated by the jury verdict.

LG understands that Arendi may contend in this appeal that the invalidity verdicts are "moot" and that Arendi may ask that the verdicts be vacated. LG provides this *amicus curiae* brief to inform this Court that the jury verdicts of invalidity are not moot given Arendi's pending actions against LG and others. LG requests that this Court uphold the jury verdicts of invalidity and affirm the judgment in favor of Google at least on the basis of the jury's invalidity verdicts.

LG, through its undersigned counsel, represents that it authored this brief, and that no counsel for a party to this proceeding authored any part of it, and no party or counsel for a party made any monetary contribution toward the preparation or submission of this brief.

II. BACKGROUND

In 2012 and 2013, Arendi filed various patent infringement lawsuits alleging infringement of the '843 patent and other patents. Arendi sued, *inter alia*, LG; Apple Inc.; Blackberry Limited and Blackberry Corporation ("Blackberry"); Samsung Electronics Co., LTD, Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC ("Samsung"); Nokia Corporation and Nokia, Inc. ("Nokia"); HTC Corp. and HTC America, Inc. ("HTC"), Motorola Mobility LLC ("Motorola Mobility"); Sony Mobile Communications (USA) Inc., Sony Corporation, and Sony Corporation of America ("Sony"); Google LLC ("Google"); and Oath, Inc. and Oath Holdings, Inc. ("Oath").

Over the years, Apple, Samsung, and Nokia's successor-in-interest (Microsoft) settled with Arendi. The cases against LG, Blackberry, Motorola Mobility, Sony, Oath, and Google proceeded through dispositive motions. Oath was granted summary judgment of non-infringement. The remaining cases proceeded toward trial. The first case scheduled for trial was the Google case, which is the subject of this appeal. All other Arendi cases were stayed pending final resolution of the Arendi/Google trial and appeal.

Arendi and Google tried the validity of the '843 patent (and other issues) to a jury, and the jury returned its Verdict Form on May 2, 2023. Appx6172-6173. The jury found that the asserted claims of the '843 patent (at the time of trial, Arendi had narrowed the asserted claims to claims 23 and 30) were not infringed and were invalid. *Id.* Regarding invalidity, the jury found that the '843 patent claims were both "invalid as anticipated by prior art" and "invalid as obvious in view of prior art." *Id.*

On May 10, 2023, Judge Hall entered "Judgment Following Verdict" in favor of Google, noting that it was "subject to modification following the Court's consideration of the parties' post-trial motions." Appx10221-10222. Arendi filed a post-trial motion on patent invalidity. However, Arendi subsequently asked that Judge Hall **not** rule on that post-trial motion. Appx10255-10257 at Appx10257 ("The proper course [is to] decline to substantively address or deny as moot Arendi's

post-trial motion for judgment as a matter of law."). Although Arendi informed the district court that it was not "withdrawing" its motion, that is effectively what Arendi did when Arendi asked Judge Hall to decline to address the merits of its motion. *Id.*

On February 2, 2024, Judge Hall denied Arendi's post-trial motion challenging the invalidity verdicts without reaching the merits, and entered "Final Judgment," which stated that "Judgment is entered in favor of Defendant and against Plaintiff on Plaintiff's claim of patent infringement of U.S. Patent No. 7,917,843." Appx1; *see also* Appx98-100. The jury verdicts of invalidity thus stand—they were not overturned.

In denying Arendi's JMOL motion and leaving the invalidity verdicts intact, Judge Hall expressly "decline[d]" Arendi's request for "the Court to 'clarify' in the judgment document 'that the judgment is based on the jury's non-infringement verdict at trial.'" Appx98-99. Judge Hall further clarified that "this order is not intended to limit what issues the parties can (or must) raise on appeal against or in support of the judgment." Appx100; *see also* Appx99 ("[N]othing in this order is intended to preclude either side from making whatever arguments on appeal that they are permitted to make under the law—or that they are required to make in order to preserve their arguments.").

In its Opening Brief before this Court, Arendi did not challenge the invalidity verdicts (and, in fact, the jury's invalidity verdicts are not even mentioned in its

Opening Brief). Moreover, Arendi's challenges to the construction of the claim term "document" seek only to **broaden** the claim scope of the '843 patent, and thus cannot disturb the jury verdicts of invalidity. The District Court held that a "document" must be editable and must be a "word processing, spreadsheet, or similar file." Arendi argues on appeal that a "document" need not be editable and can be other types of files, such as a "fax" or "letter." Arendi Opening Br. at 33. The jury's anticipation and obviousness verdicts are not impacted by these arguments. As a matter of law, the claims would remain anticipated and obvious even if broadened as Arendi suggests.

III. SUMMARY OF ARGUMENT

The asserted claims of the '843 patent are dead—a jury found those claims to be invalid over the prior art presented by Google. Arendi did not challenge the invalidity verdicts on appeal. LG should receive the benefit of those jury verdicts so that Arendi may no longer hassle LG based on invalid patent claims.

Under controlling Third Circuit law, issue preclusion applies to alternative grounds supporting a judgment, and therefore the invalidity verdicts should preclude Arendi from continued assertion of the invalid claims of the '843 patent. To avoid any confusion on this point, LG requests that this Court clearly and explicitly affirm the judgment on the '843 patent based on the jury verdicts of invalidity.

Such an affirmance serves the public interest by eliminating invalid patent claims.

Such an affirmance also is the most practical resolution of the '843 patent issues in this appeal. Arendi chose not to raise the issues regarding patent invalidity in its Opening Brief. Further, although Arendi is challenging the district court's construction of the term "document," Arendi only seeks to broaden the scope of the claims. Thus, the claim construction challenge does not impact the jury's invalidity verdicts in any way. The invalidity verdicts are thus unchallenged on appeal.

Moreover, if Arendi intended to challenge the invalidity verdicts based upon the claim construction, it was obligated to (i) say so and (ii) explain why the invalidity verdicts should not stand. Arendi did not do so. Arendi has thus waived any challenge to the jury's invalidity verdicts, and they should be summarily affirmed.

IV. ARGUMENT

A. The Judgment in Favor of Google Should Be Affirmed Based on the Jury Verdicts of Invalidity

1. The Judgment on Appeal Is Supported by Multiple Jury Verdicts—a Verdict of Non-Infringement, a Verdict of Invalidity for Anticipation, and a Verdict of Invalidity for Obviousness

At trial, Arendi accused Google of infringing claims 23 and 30 of the '843 patent. Google argued that it did not infringe and that the asserted claims were invalid as an affirmative defense. Arendi and Google each requested that the jury

address infringement and validity separately and render separate verdicts on each of these issues (Documents 448 and 449 in the appealed Arendi-Google action).

On May 2, 2023, the jury entered verdicts finding claims 23 and 30 invalid as anticipated by prior art and as obvious over the prior art. Each of those invalidity verdicts—standing alone—is a sufficient basis to affirm the judgment in favor of Google on the '843 patent. At the very least, this Court should affirm the judgment of the District Court on the ground that the asserted claims of the '843 patent were found by a jury to be invalid and Arendi does not challenge those verdicts on appeal.

2. The Jury Verdicts of Invalidity Are Not Moot

After the jury rendered its verdicts, Arendi filed a JMOL motion on the issue of invalidity. However, Arendi later argued that the invalidity verdicts and JMOL motion were "moot" and asked the district court to decline to rule on the merits. *See* Appx10255-10257. Arendi was wrong regarding mootness. The invalidity verdicts were not moot for at least two independent reasons. First, Arendi and Google continue to have a live dispute concerning the '843 patent, and the invalidity verdicts provide a basis for this Court to affirm the judgment in favor of Google on the '843 patent. Second, Arendi ***and LG*** (as well as other defendants) continue to have a live dispute concerning the '843 patent. Arendi has a pending lawsuit against LG in which Arendi alleges that LG infringes the '843 patent. The Arendi-LG case is stayed pending resolution of the instant appeal.

The jury verdicts of invalidity of the '843 patent resolve Arendi's infringement allegations against LG, and thus the jury verdicts are far from moot. "The premise of 'mootness' arises from the case or controversy requirement of Article III of the Constitution." *Gerdau Ameristeel Corp. v. United States*, 519 F.3d 1336, 1340 (Fed. Cir. 2008) (citing *Allen v. Wright*, 468 U.S. 737, 750 (1984) (which discusses Article III justiciability doctrines and constitutional and prudential limits on the exercise of federal judicial power). The issue of the invalidity of the '843 patent cannot be moot given the live case and controversy between LG and Arendi—Arendi has not abandoned its claims against LG. Unless and until Arendi does so, LG will rely on the jury verdicts (and this Court's affirmance of the verdicts) as a basis for issue preclusion.

3. Issue Preclusion Applies to the Jury Verdicts

Issue preclusion ensures that "once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." *Montana v. United States*, 440 U.S. 147, 153 (1979). Issue preclusion is not unique to patent law, and therefore this Court follows the law of the regional circuit—here, the Third Circuit. *See Bayer AG v. Biovail Corp.*, 279 F.3d 1340, 1345 (Fed. Cir. 2002). "The prerequisites for the application of issue preclusion are satisfied when: (1) the issue sought to be precluded is the same as that involved in

the prior action; (2) that issue [was] actually litigated; (3) it [was] determined by a final and valid judgment; and (4) the determination was essential to the prior judgment." *Burlington N. R.R. Co. v. Hyundai Merch. Marine Co.*, 63 F.3d 1227, 1231-32 (3d Cir. 1995) (internal quotations and brackets omitted).

The first three factors are unquestionably met here. The issue of patent invalidity is present in both Arendi's case against Google and against LG. The issue of patent invalidity was actually litigated, having been raised as an affirmative defense and presented to the jury for decision. The issue was actually decided by a jury, which found the asserted claims to be invalid as anticipated and invalid for obviousness. Judge Hall entered final judgment on the jury verdicts.

The fourth factor is whether the determination of patent invalidity "was essential to the prior judgment." Judge Hall's Final Judgment of no liability is supported by each of three verdicts—the non-infringement verdict and both of the invalidity verdicts. Each verdict provides an independent basis to affirm the judgment. As such, they are alternative grounds supporting the judgment. In the Third Circuit, issue preclusion attaches to independently sufficient alternative grounds. *See Jean Alexander Cosmetics, Inc. v. L'Oréal USA Inc*., 458 F.3d 244, 251-55 (3d Cir. 2006); *accord United Access Techs., LLC. v. CenturyTel Broadband Servs. LLC*, 778 F.3d 1327, 1332-33 (Fed. Cir. 2015) (recognizing that issue preclusion may apply where there "was an explicit ruling that two independent

grounds" supported a decision and distinguishing general jury verdicts where the basis for decision is unknown). Here, the basis for decision is clear—the jury returned a special verdict that expressly found the asserted claims to be not infringed and invalid due to anticipation and obviousness.

In *Jean Alexander Cosmetics*, the Third Circuit noted that the First Restatement of Judgments provided for issue preclusion for alternative grounds, whereas the Second Restatement of Judgments adopted the contrary position. *Jean Alexander Cosmetics*, 458 F.3d at 251. The Court of Appeals further recognized a circuit split, with the majority of circuits adopting the "traditional view" allowing issue preclusion to attach to alternative grounds supporting a judgment. After carefully weighing the competing concerns, the Third Circuit adopted the traditional view as well: "[W]e will follow the traditional view that independently sufficient alternative findings should be given preclusive effect." *Id.* at 255.

4. Arendi Waived Any Argument Seeking to Overturn the Jury Verdicts of Invalidity

Arendi has appealed the Final Judgment entered on the jury verdicts by Judge Hall. Arendi framed the scope of the appeal by what it chose to argue in its opening brief before this Court. Under this Court's law, it "is well established that arguments not raised in the opening brief are waived." *SmithKline Beecham Corp. v. Apotex*

Corp., 439 F.3d 1312, 1319 (Fed. Cir. 2006) (citing *Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc*., 424 F.3d 1293, 1320-21 n.3 (Fed. Cir. 2005)).

Arendi did not raise the jury verdicts of invalidity. On the contrary, Arendi raised only three issues in its Opening Brief: (1) Whether patents other than the '843 patent were invalid under 35 U.S.C. § 101, (2) whether the district court erred in its claim constructions, and (3) whether the district court erred in granting full and partial summary judgment of non-infringement. *See* Arendi Opening Br. at 2-3 ("Statement of the Issues"). Arendi did not challenge the jury verdicts of invalidity in any way. In fact, Arendi did not even mention the jury verdicts of invalidity in its appeal brief or even acknowledge their existence. *See generally id.*

In this respect, the approach taken by Arendi is similar to that taken by the patent owner in *Becton Dickinson & Co. v. C.R. Bard, Inc*., 922 F.2d 792 (Fed. Cir. 1990). There, the parties disputed whether the question of invalidity had been decided on summary judgment. But rather than argue the merits of the validity question, the patent owner asserted that "no issue with respect to the validity" was before the Federal Circuit. *Id*. at 799. The Federal Circuit determined that the district court decided invalidity and noted that "the decision on what issues to raise appears to have been a knowing tactical decision by [the patent owner]." *Id.* at 800. Accordingly, any challenge to the district court's invalidity ruling was waived. *Id.* at 801. Likewise, here, Arendi cannot undo the invalidity verdicts by failing to raise

them on appeal. On the contrary, Arendi's failure to argue for validity on appeal locks in the finality of the invalidity verdicts.

It is black letter law that "an invalid patent cannot be infringed" and that either a finding of non-infringement or an invalidity determination supports a judgment of non-infringement. *Commil USA, LLC v. Cisco Sys., Inc*., 575 U.S. 632, 643-44 (2015) ("[A]n accused infringer may prevail either by successfully attacking the validity of the patent or by successfully defending the charge of infringement.") (internal quotations omitted). Arendi asked the district court to decline to address Arendi's motion for JMOL on the issues of validity, and Arendi does not ask this Court to reverse the invalidity verdicts supporting the judgment. Arendi has now waived the issue. *Becton Dickinson*, 922 F.2d at 801.

5. Arendi's Claim Construction Arguments Do Not Impact the Jury Verdicts of Invalidity

Arendi presents two claim construction arguments regarding the '843 patent on appeal. *See* Arendi Opening Br. at 26-43. However, each of these arguments seeks to **broaden** the scope of the claim term "document" to avoid the non-infringement verdict. Indeed, the section of Arendi's brief addressing these claim construction issues is titled "The District Court's Claim Constructions ***Improperly Narrowed*** the Scope of the Disclosed Inventions." *Id.* at 26 (emphasis added). Thus, Arendi's claim construction arguments do not impact the jury's verdicts of invalidity.

The jury implicitly found that prior art disclosed an editable document as required by the district court's claim construction. Even if this Court construed the term "document" to cover both editable and non-editable documents, the prior art would nonetheless disclose the claimed document and thus the jury verdict would be unaffected. *See Verizon Servs. Corp. v. Cox Fibernet Virginia, Inc*., 602 F.3d 1325, 1342 (Fed. Cir. 2010) (affirming jury verdict regardless of potential errors in claim construction because any such error "would not have changed the result") (citing *Teleflex Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1328 (Fed. Cir. 2002)).

6. This Court Should Summarily Affirm the Judgment on the '843 Patent on the Basis of Invalidity

Arendi has appealed the district court's judgment in favor of Google regarding Arendi's claims of infringement of the '843 patent. However, Arendi cannot prevail in its appeal because the judgment is based in part on jury verdicts of invalidity, and Arendi—for misguided tactical reasons—chose not to appeal the invalidity issues. Arendi has thus waived its right to challenge the invalidity verdicts and thus this Court may—and should—summarily affirm the judgment concerning the '843 patent on the basis of invalidity.

Arendi should not be heard to argue that a remand is more appropriate to give Judge Hall an opportunity to consider Arendi's JMOL motion. Arendi effectively withdrew its JMOL motion when it asked Judge Hall not to rule on it. Moreover,

Arendi waived the invalidity issues by not arguing for reversal, remand, or any other remedy with regard to the invalidity verdicts in its appeal brief. Arendi may not preserve certain issues for a later appeal. Rather, Arendi was obligated to raise all issues it wished to challenge in its opening brief. "An issue that falls within the scope of the judgment appealed from but is not raised by the appellant in its opening brief on appeal" may properly be deemed waived. *Engel Indus., Inc. v. Lockformer Co.*, 166 F.3d 1379, 1382-83 (Fed. Cir. 1999) ("To hold otherwise would allow appellants to present appeals in a piecemeal and repeated fashion, and would lead to the untenable result that a party who has chosen not to argue a point on a first appeal should stand better as regards the law of the case than one who had argued and lost.") (internal quotation marks omitted).

B. The Public Interest Supports Affirmance of Invalidity Verdicts

A jury heard extensive evidence from Arendi and others and rendered its verdicts that claims 23 and 30 of the '843 patent are invalid. Neither LG nor any other entity should be faced with continued litigation over the '843 patent. The asserted claims are now invalid, and LG should not have to try the case to a second jury and invalidate the asserted claims of the patent a second time.

"A patent by its very nature is affected with a public interest," and the public has "a paramount interest in seeing that patent monopolies spring from backgrounds free from fraud or other inequitable conduct and that such monopolies are kept

within their legitimate scope." *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 816 (1945).

More than fifty years ago, the Supreme Court in *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 332 (1971), recognized the importance of precluding patentees from continued assertion of invalid patents after the patentee had a full and fair opportunity to litigate the issue. The Court stated:

> Presumably [the patentee] was prepared to litigate and to litigate to the finish against the defendant there involved. Patent litigation characteristically proceeds with some deliberation and, with the avenues for discovery available under the present rules of procedure, there is no reason to suppose that plaintiff patentees would face either surprise or unusual difficulties in getting all relevant and probative evidence before the court in the first litigation.

Id. The Court further explained that "the holder of a patent should not be . . . allowed to exact royalties for the use of an idea that is not in fact patentable or that is beyond the scope of the patent monopoly granted." *Id.* at 350-51; *accord Cardinal Chem. Co. v. Morton Int'l, Inc*., 508 U.S. 83, 100 (1993) (finding "a strong public interest in the finality of judgments in patent litigation" and reiterating that as between non-infringement and validity, "validity has the greater public importance"). The Supreme Court further noted the "wasteful consequences of relitigating the validity of a patent after it has once been held invalid in a fair trial." *Cardinal Chem.*, 508 U.S. at 100-01.

The significance to the public (and to LG specifically) of the invalidity verdicts is not reduced merely because Google raised invalidity as an affirmative defense rather than as a counterclaim. The dispositive facts are that the issue of validity was fully litigated, the jury rendered its verdicts, and Arendi continues to assert the patent against others.

V. CONCLUSION

For the foregoing reasons, LG asks this Court to affirm the jury verdicts of invalidity of claims 23 and 30 of the '843 patent.

Dated: August 28, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 28, 2024, I electronically filed the foregoing CORRECTED BRIEF OF *AMICUS CURIAE* LG ELECTRONICS INC. AND LG ELECTRONICS U.S.A., INC. IN SUPPORT OF APPELLEE GOOGLE LLC AND AFFIRMANCE using the Court's CM/ECF filing system. All counsel of record were served via CM/ECF on August 28, 2024.

/s/ Steven R. Katz
Steven R. Katz

CERTIFICATE OF COMPLIANCE

The CORRECTED BRIEF OF *AMICUS CURIAE* LG ELECTRONICS INC. AND LG ELECTRONICS U.S.A., INC. IN SUPPORT OF APPELLEE GOOGLE LLC AND AFFIRMANCE is submitted in accordance with the type-volume limitation of Fed. Cir. R. 32(b)(1). The Brief contains no more than 3,717 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Fed. Cir. R. 32(b)(2). This Brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, 14 Point.

Dated: August 28, 2024

/s/ Steven R. Katz
Steven R. Katz