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No Second Bite at the Apple: Dismissal under Duplicative-Litigation Doctrine

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The US Court of Appeals for the Federal Circuit affirmed a district court's dismissal of a second case between the same parties and asserting the same patent under the duplicative-litigation doctrine. *Arendi S.A.R.L. v. LG Elecs. Inc.*, Case No. 2021-1967 (Fed. Cir. Sept. 7, 2022) (**Prost**, Chen, Stoll, JJ.)

Arendi sued LG and others for infringement of several patents. Pursuant to Delaware's local rules requiring identification of accused products, Arendi identified hundreds of LG products as infringing four asserted claims of the patent relevant on appeal. For those accused products, Arendi provided one "exemplary" infringement claim chart for LG's Rebel 4 phone. LG objected to Arendi, stating that it should have provided charts for all accused products.

As the litigation proceeded, the parties agreed on eight products as representative but, despite LG's repeated objection, Arendi did not provide claim charts for any additional products during fact discovery. Instead, Arendi's opening expert report on infringement provided claim charts for seven non-Rebel 4 representative products for the first time. LG moved to strike those portions of the expert report. The district court granted that motion. Arendi did not supplement its claim charts in response to the court's order and instead filed another complaint in Delaware, thus creating a second concurrent case asserting the same patent against LG. After the district court granted LG's motion to dismiss the second suit, Arendi appealed.

The Federal Circuit explained the standard for assertion of the duplicative-litigation doctrine, which "prevents plaintiffs from 'maintain[ing] two separate actions involving the same subject matter at the same time in the same court … against the same defendant.'" Whether two cases involve the same subject matter depends on the extent of factual overlap of the asserted patents and accused products. There was no dispute that the same patent was asserted in both cases, but Arendi disputed that the cases involved the same accused products, citing the district court's order striking its expert report as evidence that the non-Rebel 4 products were not at issue in the first case.

Like the district court, the Federal Circuit disagreed. The Court distinguished between *accusing* products and satisfying discovery obligations regarding those products. Arendi listed the non-Rebel 4 products in its disclosure of accused products, served interrogatories about them, received discovery on them and included non-Rebel 4 products in its expert report. Thus, even

though Arendi “failed to fulfill its discovery obligations” as to those products, which made its expert report untimely, the non-Rebel 4 products were still accused, at issue and litigated in the first case. Thus, dismissal of the second case under the duplicative-litigation doctrine was not an error.

Practice Note: In a footnote, the Federal Circuit acknowledged the similarity of the duplicative-litigation doctrine to *res judicata* (claim preclusion). Although both doctrines involve an inquiry into whether claims in the second suit are repetitious, unlike *res judicata*, the duplicative-litigation doctrine does not require a final judgment in the first case.

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