

Lawsuit # 0214224-53.2020.8.19.0001

Electronic Procedure

Class/Subject: Common Procedure - Interlocutory injunction - Patent

Plaintiff: DIVX, LLC
Defendant: NETFLIX ENTRETENIMENTO BRASIL LTDA
Amicus Curiae: MOTION PICTURE ASSOCIATION AMERICA LATINA
Expert: PAULO ROBERTO NASCIMENTO MEIRA VASCONCELLOS
Expert: LA ROCCA PERÍCIAS LTDA
Expert: FLAVIO LA ROCCA

On this date, I submit the dockets to Hon. Judge Elisabete Franco Longobardi

On 09/21/2023

Decision

1). Pages 9006/15: The Plaintiff requests the ratification of the expert report, since there is no other evidence to be produced in the dockets, requesting the granting of measures in order to enforce the preliminary injunction already granted, in accordance with the provisions of articles 139, IV, 297 and 298 of the Code of Civil Procedure, all in accordance with the decision in interlocutory appeal # 0060197-47.2022.8.19.0000.

I DECIDE.

Having verified that there is a brief pending to be attached to the dockets, the system was consulted, and it was found that it is an interlocutory appeal (# 0077679-71.2023.8.19.0000) filed by the defendant, and the appeal was already dismissed, which is why there is no obstacle to proceeding with the case.

Considering that after presenting the Expert Report (pages ID. 7241/741), the expert presented his final statement on the opinions presented by the parties' technical assistants, as well as duly providing the necessary clarifications on the points of disagreement, in accordance with article 477, paragraph 2 of the Code of Civil Procedure (pages 8953/69), the robustness of the report presented by the expert, which in its 170 pages met the requirements of article 473 of the Code of Civil Procedure, should also be taken into account. It should be noted that, on page 7243, the expert clearly and precisely mentioned the stages that made up the technical analysis carried out:

"1.1 The 1st STAGE of the work consisted of an in-depth study of all the documentation in the case file, when the points and details that need attention from the expert were identified and will be verified in this test. At this stage, all the questions included in the case dockets were also checked, highlighting the main points to be analyzed by the expert. Based on this analysis, the expert team has already started the technical basis of the report, in order to advance the formatting, as well as transcribing the questions and preparing the conceptual answers.

1.2 The 2nd STAGE of the work consisted of sending e-mails to the parties' technical assistants, allowing them to submit additional documents, and scheduling a meeting so that everyone could make their considerations and presentations regarding the technical object of this test.

This expert team believes that, in order for the Technical Evidence to be well prepared, it is essential that the parties be given the opportunity to express their opinions during the work, because everything that can be seen and analyzed at that time will be translated into information in the Expert Report that will help the Judge to understand the causes and motives, as well as to form a value judgment. Magistrate in understanding the causes and reasons, as well as in forming its value judgments.

In this way, this Expert Team gave the parties space to make their points, and they were listened to attentively."

As can be seen on page 7244, it has been shown that the Expert followed the standards accepted by experts in the field, in particular the BR IP Statute. He even mentioned the technical references used, the steps that were followed, and gave conclusive answers to all the questions submitted by both parties (pages 7269/7330 and 7332/7405), as well as giving the parties and their Assistants the opportunity to express their opinions in order to ensure a fair trial during the preparation of the report, in other words, he fully demonstrated the expert's care in the diligence.

Thus, the Expert, in a very elucidating way, provided all the necessary clarifications in order to clarify any divergent points brought up by the defendant in its statement (pages 8392/8433), as can be seen on pages 8953/6.

Therefore, I RATIFY the Expert Report and its subsequent clarifications so that it may produce the due legal effects.

I declare the pre-trial phase closed, given that there are the necessary elements for the formation of the judge's understanding.

Challenges barred, the case shall be moved to trial. Be the parties summoned.

2). The payment order of the remaining amount of expert fees shall be issued, as requested on page 8953.

3). Having overcome the discussion about the expert report, I will now analyze the request for the enforcement of the preliminary injunction already granted, in light of the decision that was handed down in interlocutory appeal # 0060197-47.2022.8.19.0000.

In the Judgment of the aforementioned appeal, it was determined that: "once it is proven that the defendant/Netflix uses the patent PI0506163-6, and that it is held by the appellee, it is undeniable that it will have to answer for the alteration of the truth of the facts, in addition to the retroactivity of the fine since there was no compliance with the judicial decision...".

Now, since the expert since the expert examination was duly elucidated and the expert report has already been ratified (as decided above), in addition to the fact that, on page 7406, the Expert stated that the defendant uses the plaintiff's invention when implementing the HEVC standard technology, and given the insufficiency of assets in Brazil, I order the defendant to deposit the accrued amount of BRL 16.550,000.00, in accordance with the ruling (Interlocutory Appeal # 0060197-47.2022.8.19.0000) and the spreadsheet presented on pages 9016/17, within 15 days, in accordance with the ruling.

However, I highlight that the amount must remain at the disposal of this court until the final judgment is handed down.

Finally, I reiterate that disrespectful behavior will result in the application of the provisions of article 77, IV, paragraphs 1 and 2 of the Code of Civil Procedure, and the dictates of Law # 12965/14 must be observed, without prejudice to further measures.

4) Be the parties summoned.

5) Be the Defendant's pending brief attached to the dockets.

Elisabete Franco Longobardi - Trial Judge

Case dockets received from Hon. Judge Elisabete Franco Longobardi

In ____/____/____

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