

Williams & Connolly LLP, Washington, DC;  
Anthony Amerigo Pericolo, Desmarais LLP,  
Washington, DC; Deborah Mariottini, Desmarais  
LLP, New York, New York, NY.

**Majority Opinion** >

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

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KEWAZINGA CORPORATION, Plaintiff, -  
against- GOOGLE LLC, Defendant.

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20 Civ. 1106 (LGS)

October 31, 2024, Decided

For Kewazinga Corp., Plaintiff: Jason Sobel,  
LEAD ATTORNEY, Ian Gregg DiBernardo,  
Brown Rudnick LLP (NYC), Seven Times  
Square, New York, NY; Anthony Joseph  
Boccamazzo, Brown Rudnick LLP (Hartford),  
Hartford, CT; Harold Stewart Laidlaw, Mintz  
Levin Glovsky Ferris & Popeo P.C., New York,  
NY; Haroon Mian, Brown Rudnick LLP, New  
York, NY; Merri C. Moken, Brown Rudnick LLP,  
Seven Times Square, New York, NY; Rebecca  
Lecaroz, Brown Rudnick LLP (Boston), Boston,  
MA; Timothy Kelso Gilman, Schulte Roth &  
Zabel LLP, New York, NY.

For Google LLC, Defendant: Allan Einar Carlsen,  
Caitrienne Feddeler, John Michael Desmarais,  
Karim Zeddami Oussayef, Kevin Goon, Lee J.  
Matalon, Leslie M.F. Spencer, Steven Marc  
Balcof, Tuhin Ganguly, Desmarais LLP, New  
York, NY; Amy Mason Saharia, Andrew Trask,

LORNA G. SCHOFIELD, UNITED STATES  
DISTRICT JUDGE.

LORNA G. SCHOFIELD

**ORDER**

LORNA G. SCHOFIELD, District Judge:

WHEREAS, on October 15, 2024, Plaintiff  
Kewazinga Corporation filed a letter objecting to  
certain exhibits related to the K-System that  
Defendant intends to introduce at trial. Plaintiff  
objected to the use of the K-System to rebut  
infringement and support Defendant's arguments  
regarding invalidity.

WHEREAS, on October 24, 28 and 30, 2024, the  
parties filed further submissions regarding  
Plaintiff's objections.

WHEREAS, under Federal Circuit law, "when a  
commercial product meets all the claim  
limitations, then a comparison [of the accused  
product] to that [commercial] product may  
support a finding of infringement." *Adams  
Respiratory Therapeutics, Inc. v. Perrigo Co.*,  
**616 F.3d 1283**, **1289** (Fed. Cir. 2010); *accord*  
*TEK Glob., S.R.L. v. Sealant Sys. Int'l, Inc.*, **920**  
**F.3d 777**, **788** (Fed. Cir. 2019). In other  
situations, the Federal Circuit has reversed a  
district court's decision permitting a comparison  
to a commercial product because the product at

issue did not fully embody the claims, and the correct infringement analysis is a comparison of the claims to the accused product. *Zenith Labs. v. Bristol-Myers Squibb Co.*, **19 F.3d 1418**, **1423** (Fed. Cir. 1994) ("As we have repeatedly said, it is error for a court to compare in its infringement analysis the accused product or process with the patentee's commercial embodiment or other version of the product or process; the only proper comparison is with the claims of the patent."). In cases where the Federal Circuit has affirmed a district court's allowing a comparison between the accused product and a commercial product, the Federal Circuit also focused on whether the party moving to preclude the comparison invited it and whether a proper jury instruction was given to minimize confusion. *TEK Glob., S.R.L.*, **920 F.3d at 788** (holding comparison made in closing statements was not improper because testimony showed the commercial product to be a full embodiment of the claims, the non-movant made its own comparison between the products and the jury was [\*2] instructed properly regarding the comparison and relevant standards).

WHEREAS, Plaintiff presents its corporate representative's deposition testimony that Plaintiff had "the one prototype [the K-System] and it did not use tweening." All claims at issue except one, Claim 18 of the '234 patent, include tweening as a claim limitation. However, Defendant presents evidence from which a jury

could find the K-System fully embodied the claims at issue, including tweening. Defendant supports its argument with deposition testimony of Plaintiff's corporate representative who states that the system was "covered by Kewazinga's patents" Defendant also relies on its own expert's reply report, which incorporates discovery material describing the K-System as using tweening. This evidence creates an issue of factual as to whether the K-System embodied the claims at issue. It is hereby

**ORDERED** that Defendant may present evidence related to the K-System. It is further

**ORDERED** that the parties may propose a limiting instruction the night before any evidence related to the K-System is to be presented.

Dated: October 31, 2024

New York, New York

/s/ Lorna G. Schofield

**Lorna G. Schofield**

**United States District Judge**

## General Information

<b>Case Name</b>	Kewazinga Corp. v. Google LLC
<b>Court</b>	U.S. District Court for the Southern District of New York
<b>Date Filed</b>	Thu Oct 31 00:00:00 EDT 2024
<b>Judge(s)</b>	Lorna Gail Schofield
<b>Parties</b>	KEWAZINGA CORPORATION, Plaintiff, -against- GOOGLE LLC, Defendant.
<b>Topic(s)</b>	Civil Procedure; Patent Law