

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE: NEO WIRELESS, LLC,
PATENT LITIGATION

Case No. 2:22-MD-03034-TGB
HON. TERRENCE G. BERG

**DEFENDANTS' SUPPLEMENTAL BRIEF ADDRESSING
CLAIM TERMS IMPACTED BY IPR PROCEEDINGS**

Pursuant to the Court's June 6, 2023 Order, Defendants¹ submit this supplemental brief addressing three disputed claim terms impacted by two decisions of the U.S. Patent Trial and Appeal Board ("Board") instituting *Inter Partes* Review ("IPR") after the claim construction briefing, which ended March 30, 2023 (ECF No. 133).

U.S. Patent 10,965,512
("at least one of the time slots")

In its May 2, 2023 Decision Granting Institution of IPR No. 2022-01539, the Board addressed Plaintiff's proposal that the term "at least one of the time slots" be construed to mean "at least one of the *same* time slots." ECF No. 145-2

¹ On June 6, 2023, Plaintiff and Defendant Mercedes-Benz USA, LLC filed a Joint Notice of Settlement and Request for Stay. ECF No. 147. Due to the settlement, Mercedes-Benz USA, LLC is not a party to this submission.

(Institution Decision) at PageID.10506-07 (emphasis added). The Board held that Neo’s argument “does not make clear why claims 15 and 23 should be narrowed in that manner, when the plain language of the claims is broader.” *Id.*, *see also* PageID.10508, 10544 (“[T]he plain language of the claims does not require transmitting the subcarriers in the same time slot.”). By injecting the word “same” into the claims, Neo effectively erases the “at least one” language. The claim language permits, for example, the first and second plurality of subcarriers to be received in “two” (which is “at least one”) time slots. The Plaintiff’s proposed “*same* time slots” construction, in contrast, does not permit this and is thus improper. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (*en banc*) (“[T]he claims themselves provide substantial guidance as to the meaning of particular claim terms.”). The Board’s remarks confirm that the claim limitation should not be interpreted to include the narrowing “same” adjective that Plaintiff proposes.

U.S. Patent 10,075,941

(“the antenna transmission scheme comprising a transmission diversity scheme or a multiple-input multiple-output (MIMO) scheme” and “the corresponding subchannel configuration characterized by distributed subcarriers or localized subcarriers in the frequency domain”)

In its May 5, 2023 Decision Granting Institution of IPR No. 2022-01537, the Board preliminarily construed the limitation “the antenna transmission scheme comprising a transmission diversity scheme or a multiple-input multiple-output

(MIMO) scheme” to require “at a minimum, that [the] antenna transmission scheme indicated by the mobile station-specific transmission parameters is capable of supporting, *as alternatives*, a transmission diversity scheme and a MIMO scheme.” ECF 145-1 (Institution Decision) at PageID.10456-58 (emphasis added). Additionally, the Board preliminarily construed the limitation “the corresponding subchannel configuration characterized by distributed subcarriers or localized subcarriers in the frequency domain” to require “at a minimum, that the mobile station-specific transmission parameters that are capable of indicating, *as alternatives*, both distributed subcarriers and localized subcarriers in the frequency domain as subchannel configurations.” *Id.* at PageID.10455, 10458 (emphasis added). Furthermore, the Board stated that “each of the recited antenna transmission schemes (i.e., a transmission diversity scheme and a MIMO scheme) must be capable of supporting, *as alternatives*, both distributed subcarriers and localized subcarriers in the frequency domain as subchannel configurations.” *Id.* at PageID.10458 (emphasis added).

Since Neo and the Defendants disagree whether the claimed transmission parameters must “alternatively indicate” an antenna transmission scheme and a subchannel configuration, respectively, the Board’s constructions are directly relevant to the disputed constructions before this Court. Furthermore, the Board’s preliminary constructions support this Court construing the claim limitations in

accordance with Defendants' proposals, which explicitly contain "alternatively indicate[s]" language, as opposed to Neo's proposals, which do not provide for the alternative indication.

Respectfully submitted,

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