IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE NEO WIRELESS, LLC PATENT LITIG.	§	2:22-MD-03034-TGB
	§	HON. TERRENCE G. BERG

PLAINTIFF'S RESPONSE TO DEFENDANTS' SUPPLEMENTAL BRIEF ADDRESSING CLAIM TERMS IMPACTED BY IPR PROCEEDINGS

Given a chance to defend their original claim that the PTAB (*and Neo*) had made statements "impact[ing] the scope and meaning" of at least three claim terms, 6/6/23 P. Steadman Ltr. at 2, Defendants' Supplemental Brief (ECF No. 150) fails to deliver on that promise. Defendants simply do not demonstrate how the PTAB's preliminary comments on claim construction have any legal "impact" on the Court's construction of these terms. Rather, Defendants solely argue their belief that the PTAB's preliminary constructions comport with their positions. ECF No. 150, PageID.10729, 10730. In the course of failing to show how the IPR decisions impact the claim constructions in this Court, Defendants also manage to mischaracterize the PTAB's preliminary determinations for each term in question.

A. '512 Patent—"at least one of the time slots" term.

As both sides recognize, the PTAB made the preliminary determination not to construe this term based on "the record at this stage[.]" IPR2022-01539, Paper 7 at 13. Defendants, however, go on to then present their own argumentative statements, as if the Board said or endorsed them (even subsequently referencing "[t]he Board's remarks"). ECF No. 150, PageID.10729. But the PTAB did not make these statements or remarks. Instead, it merely declined to interpret this term on the record before it and invited Neo to submit its developed arguments and evidence in support of its proposal, which Neo has done in this case.

B. '941 Patent Terms

Defendants choose to treat the terms of this patent together, likely in a move to obfuscate that, for one of the terms, the PTAB simply adopted a prior (not new) PTAB position that Defendants could have *and did* present in their original briefing.[1] At bottom, Defendants claim that the PTAB's "preliminary constructions support this Court construing the claim limitations in accordance with Defendants' proposals[.]" *Id.*, PageID.10730–31. Note that Defendants *do not even claim* that the PTAB adopted their proposed constructions. The PTAB, of course, did not. But even the claim that the PTAB's preliminary constructions support Defendants' positions is wrong, *as the PTAB itself recognized:* "The positions taken by the plaintiff and defendants (including Petitioner) in the NEO Wireless litigation also supports this understanding." IPR2022-01537, Paper 8 at 28. The PTAB recognized that *both side's* proposals here include the requirement to support "both MIMO and non-MIMO transmission diversity systems[,]" and thus the PTAB's preliminary construction "is not inconsistent" with the positions presented here. *Id.* at 28–29. This requirement (that both options be supported) is what is encompassed by the PTAB's use of the words "alternatively indicate" for both terms. Repeated emphasis of these words by Defendants cannot alter this reality.

[1] Notably, Defendants no longer present the incorrect claim that, in the PTAB's prior decision, "the PTAB rejected" Neo's argument that the "corresponding subchannel configuration" term "does not require . . . a specific, separate parameter" for indication, as Defendants did in their briefing. *See* ECF No. 131, PageID.9123.

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Respectfully submitted,

/s/ Christopher S. Stewart
Jason D. Cassady
Texas State Bar No. 24045625
Email: jcassady@caldwellcc.com
Christopher S. Stewart
Texas State Bar No. 24079399
Email: cstewart@caldwellcc.com
CALDWELL CASSADY CURRY P.C.
2121 N. Pearl St., Suite 1200
Dallas, Texas 75201
Telephone: (214) 888-4848
Facsimile: (214) 888-4849

Jaye Quadrozzi (P71646)
YOUNG, GARCIA & QUADROZZI, PC
2775 Stansbury Blvd., Suite 125
Farmington Hills, MI 48334
Telephone: (248) 353-8620
Email: quadrozzi@youngpc.com

ATTORNEYS FOR PLAINTIFF NEO WIRELESS, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that on June 19, 2023, the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

/s/ Christopher S. Stewart
Christopher S. Stewart