

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

IN RE NEO WIRELESS, LLC
PATENT LITIG.

Case No. 2:22-md-03034-TGB

Hon. Terrence G. Berg



**DEFENDANTS' MOTION TO COMPEL
PRODUCTION OF NEO'S LICENSING
NEGOTIATIONS WITH AVANCI**

CONCISE STATEMENT OF ISSUES PRESENTED

1. Should plaintiff Neo Wireless LLC (“Neo”) be compelled to produce its patent licensing negotiations with third-party Avanci, LLC (“Avanci”) where:

- Avanci is the world’s largest automotive OEM patent licensing entity for 4G/LTE cellular patents, and Neo is asserting its patents against the Defendant automotive OEM’s 4G/LTE cellular technology;
- Each Defendant is a licensee of Avanci;
- Neo admitted in an interrogatory response that it was negotiating with Avanci to secure a patent license that would cover each of the asserted patents, each of the Defendants, and the alleged infringement asserted in this case;
- Avanci permitted at least one Defendant (Ford) to produce in discovery its patent license negotiations with Avanci; and
- Neo seeks damages in the form of a “reasonable royalty” under 35 U.S.C. §284 and the Federal Circuit has held that a patentee’s negotiations to license its asserted patents are squarely relevant to the reasonable royalty determination.

Defendants’ answer: Yes.

CONCURRENCE PURSUANT TO L.R. 7.1(a)

Pursuant to L.R. 7.1(a), the parties met-and-conferred on numerous occasions regarding the relief sought in this Motion. The Court held a Status Conference on September 13, 2023 to discuss the parties’ discovery dispute, and authorized the Defendants to file this Motion.

TABLE OF CONTENTS

CONCISE STATEMENT OF ISSUES PRESENTED i

CONCURRENCE PURSUANT TO L.R. 7.1(a)..... i

TABLE OF AUTHORITIES iii

I. INTRODUCTION 1

II. BACKGROUND 1

 A. Summary of Neo’s Patent Infringement Claims 1

 B. The Avanci 4G/LTE Patent Pool..... 2

 C. Defendants’ Requests for Neo’s Licensing Negotiations..... 3

 D. The Present Discovery Dispute Regarding Avanci..... 4

III. ARGUMENT 5

 A. The “claim charts/analyses” exchanged between Neo and Avanci 5

 B. Neo’s communications with Avanci about a “group resolution of this litigation” are relevant and are not privileged.....10

IV. CONCLUSION10

TABLE OF AUTHORITIES

Cases

<i>Ericsson, Inc. v. D-Link Systems, Inc.</i> , 773 F. 3d 1201 (Fed. Cir. 2014).....	7
<i>Georgia-Pacific Corp. v. U.S. Plywood Corp.</i> , 318 F. Supp. 1116 (S.D.N.Y.1970).....	2, 7
<i>High Point Sarl v. Sprint Nextel Corp.</i> , No. 09-2269-CM-DJW, 2012 WL 1533213 (D. Kan. Apr. 30, 2012).....	8
<i>Iafrate v. Warner Norcross & Judd, LLP</i> , 335 F.R.D. 378 (E.D. Mich. 2020).....	9
<i>In re Smirman</i> , 267 F.R.D. 221 (E.D. Mich. 2010) (Zatkoff, J.)	9
<i>Phoenix Sols. Inc. v. Wells Fargo Bank, N.A.</i> , 254 F.R.D. 568 (N.D. Cal. 2008)	7, 10
<i>Rembrandt Pat. Innovations, LLC v. Apple Inc</i> , No. C 14-05093, 2016 WL 427363 (N.D. Cal. Feb. 4, 2016)	9
<i>Thought, Inc. v. Oracle Corp.</i> , No. 12-CV-05601, 2014 WL 3940294 (N.D. Cal. Aug. 11, 2014)	9

Rules

F.R.E. 408.....	10
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I. INTRODUCTION

The Avanci patent license is highly relevant to this case and reflects a “reasonable royalty.” (*See* ECF No. 175, PageID.11061.) Defendants seek relevant evidence Neo is withholding regarding (i) Avanci’s determination as to whether Neo’s asserted patents cover the 4G/LTE cellular “standards” Neo relies on to allege infringement in this case, and (ii) Avanci’s determination of Neo’s share of the Avanci license fee that is attributable to the asserted patents. Neo *admits* its negotiation with Avanci was directed to the asserted patents and the Defendants, all of whom are Avanci licensees. Neo’s “privilege” objection to disclosing this highly relevant factual information is factually unsupported, contrary to the law, and should be overruled. For the reasons detailed below, the Court should compel Neo to produce the materials exchanged with Avanci in licensing negotiations.

II. BACKGROUND

A. Summary of Neo’s Patent Infringement Claims

Neo asserts that Defendants infringe six U.S. patents through the inclusion of “4G/LTE” cellular modem devices in Defendants’ vehicles. The asserted patents make no reference to vehicles or automotive technology. Rather, they are directed exclusively to low-level features operating, if at all, inside of a cellular “modem” chipset supplied to the Defendants for incorporation in their vehicles. The term “4G/LTE” refers to published “standards” that manufacturers of cellular modem

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