Defendants' Reply in Support of Their Motion to Compel Production of Neo's Licensing Negotiations with Avanci

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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' REPLY IN SUPPORT OF THEIR MOTION TO COMPEL PRODUCTION OF NEO'S LICENSING NEGOTIATIONS WITH AVANCI

I. INTRODUCTION AND ARGUMENT

Neo does not dispute that the Avanci patent license and its interactions with Avanci are highly relevant. After Defendants articulated the problems with Neo's initial position in their opening brief, Neo has conceded that it must produce documents shared with Avanci, including email correspondence and [redacted]. *See* Doc. No. 189 at 1 ("Neo has decided to produce [redacted] to avoid a dispute, mooting that issue."). While Defendants disagree with much of Neo's superfluous rhetoric on this mooted issue, they focus now on the only remaining issue: whether Neo should also have to produce other documents and correspondence that Neo shared with Avanci [redacted]. For at least two reasons, the Court should compel Neo to produce these documents as well.

First, the documents exchanged as part of Neo's effort to persuade Avanci to facilitate [redacted] are not materially different (from a discovery-disclosure standpoint) than the [redacted] Neo has conceded are unprotected and must be produced. The documents related to Neo's effort to [redacted], which Neo has agreed to produce, were provided in an arms-length transaction to persuade Avanci

to [redacted]. *See* Doc. No. 181 at 8-9. While Neo attempts to draw a distinction between these admittedly non-protected documents and the [redacted], it is a distinction without relevant difference. Like the documents exchanged when Neo was seeking to [redacted], the [redacted] were exchanged as part of an arms-length transaction where Neo was trying to persuade Avanci [redacted]. Doc. No. 189-3, ¶6. This discussion does not relate to a common legal interest in the outcome of this litigation, but instead is a business negotiation wherein Neo was trying to get Avanci to perform a commercial service: [redacted]. And importantly, like the licensing negotiations, Neo provides no evidence that these arms-length negotiations over [redacted] were ever consummated. *See id.* ¶¶6-9. There is no legitimate reason why this set of negotiations should be treated any differently than the [redacted] that Neo has conceded are not protected. *See Rembrandt Pat. Innovations, LLC v. Apple Inc.*, No. C 14-05093, 2016 WL 427363, at *8 (N.D. Cal. Feb. 4, 2016) (compelling NPE to produce communications with inventors of the patents it sought to acquire, including analysis of patents and identification of potential litigation targets); *Thought, Inc. v. Oracle Corp.*, 12-CV-05601, 2014 WL 3940294, at *2 (N.D. Cal. Aug. 11, 2014) (compelling production of patentee's failed negotiation with NPEs to jointly

monetize the patents-in-suit).

Neo's cited cases do not show that the [redacted] are entitled to special protection. In *Xerox*, for example, the entities that shared information had "entered into agreements" that provided compensation to the agent based on the outcome of litigation. *See Xerox Corp. v. Google Inc.*, 801 F. Supp. 2d 293, 303–04 (D. Del. 2011) ("[T]he documents over which Xerox is asserting privilege relate exclusively to a time frame in which IPValue was already retained by, and working for and with, Xerox"). Here, Neo has pointed to no such agreement. *See* Doc. No. 189-3, ¶¶9-10. Rather, the [redacted] reflect the arms-length negotiations between Neo and Avanci as Neo attempted to [redacted]. *See Xerox*, 801 F. Supp. 2d. at 304 (noting no common interest existed in case where parties were negotiating at arms-length when documents were created).

Second, even if the [redacted] are differently situated from the [redacted], Neo waived protection over such documents by disclosing them to Avanci. [redacted]). Indeed, Neo provides only the unilateral, self-serving testimony of its CEO that he had some vague [redacted]

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