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

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

DEFENDANTS' OPPOSITION TO NEO WIRELESS, LLC'S MOTION FOR RECONSIDERATION OF THE COURT'S INDEFINITENESS DETERMINATION

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ISSUES PRESENTED

1. Whether Neo has established that the Court committed a legal error.

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I. INTRODUCTION

The Court properly found that the term "low peak-to-average power ratio" is indefinite based on a thorough review of the relevant case law, the intrinsic record, and the extrinsic evidence. Neo seeks reconsideration of the Court's well-reasoned opinion. But Neo has not met, and cannot meet, the exacting requirements for reconsideration of the Court's order, because it offers no arguments based on precedent, intrinsic evidence, or extrinsic evidence that were not already fully argued by the parties and considered by the Court. The Court should reject Neo's improper effort to relitigate this finding.

II. ARGUMENT

A. Neo's Rehashing of Previously Considered Arguments Should Be Rejected

The Court should deny Neo's motion because it is an improper attempt at re-arguing its rejected claim construction arguments. Indeed, Neo's motion relies entirely on the same intrinsic evidence, extrinsic evidence, and case law that the Court already considered and rejected. Neo merely repackages and repeats its arguments, while incorrectly alleging that the Court "misapprehended the controlling law regarding indefiniteness" (it did not) and that the Court failed to consider certain extrinsic evidence (even though it did). Neo's repackaging and repeating of the same previously rejected arguments are routinely rejected in this district. *See, e.g.*, *Evans v. City of Ann Arbor*, No. 21-10575, 2022 WL 2988168,

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*1 (E.D. Mich. July 28, 2022) (rejecting attempt to "re-argue [its] case, present new arguments, [and] otherwise relitigate issues that the court previously considered"); *Estate of Larlham v. Dazzo*, Case No. 12-cv-11377, 2012 U.S. Dist. Lexis 156790, *3 (E.D. Mich. Oct. 26, 2012) (denying motion for reconsideration which "presents the same issue already ruled on by the Court" in violation of Rule 7.1(h)(3).). The Court should deny Neo's motion for this reason alone.

B. The Court Applied The Correct Legal Standard And Did Not Commit Any Error

Even if the Court were to entertain the merit of Neo's motion, the Court should nonetheless deny the motion because there was no error. Arguing otherwise, Neo misrepresents the legal standard for indefiniteness and alleges that the Court erred by requiring objective boundaries for those of skill in the art to determine what constitutes a low peak-to-average power ratio. Dkt. 201 at 2-5. Neo was given every opportunity to show any criteria at all for what constitutes a "low" peak-to-average power ratio and failed to do so. The Court did not commit any error.

The Court considered all the evidence before it and applied the law correctly, as reflected by its thorough analysis of the disputed term. Because the disputed term is a term of degree, the Court correctly articulated the legal standard for indefiniteness and required the patent to provide some standard for measuring that degree:

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> [T]he claims must "inform those skilled in the art about the scope of the invention with reasonable certainty," in light of the specification and prosecution history. *Nautilus*, 572 U.S. at 910. This standard requires that a patent must "be precise enough to afford clear notice of what is claimed, thereby apprising the public of what is still open to them." *Id.* at 909 (cleaned up). In other words, "[t]he claims, when read in light of ***the specification and the prosecution history, must provide objective boundaries for those of skill in the art***." *Interval Licensing*, 766 F.3d at 1371.

Dkt. 198 at 31-32 (emphasis added). Contrary to Neo's arguments, the Court then properly applied this precedent by ruling that the specification both "fails to provide any guidance on what qualifies as a 'relatively low' or 'low' PAPR" and "injects more uncertainty by introducing the phrases 'relatively' low PAPR, and 'improve[d]' power efficiency, without specifying any standard against which these parameters are measured." *Id.* at 36 (brackets in original). The Court also analyzed the prosecution history and correctly found that, during the prosecution of two related applications, the PTO rejected the ***same*** argument that Neo presented during claim construction here and in its current motion for reconsideration. Dkt. 198 at 36-37. The Court, like the PTO, applied the controlling law and determined that there is no objective boundary for determining how low the ratio should be to meet the claim language. Under the correct legal standard, the Court correctly concluded that "neither the intrinsic [n]or extrinsic evidence provides objective boundaries for the term 'low peak-to-average power ratio.'" Dkt. 198 at 35.

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