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

IN RE NEO WIRELESS, LLC
PATENT LITIG.

Case No. 2:22-md-03034-TGB
HON. TERRENCE G. BERG
JURY TRIAL DEMANDED

**PLAINTIFF NEO WIRELESS, LLC’S REPLY IN SUPPORT OF
NEO’S MOTION TO EXCLUDE CERTAIN PORTIONS OF THE
TESTIMONY OF DEFENDANTS’ EXPERTS AND CERTAIN EXHIBITS**

FILED UNDER SEAL

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I. The Court Should Exclude Use of Unelected Art.

A. Defendants Confirm Koo and 802.16e Are Used to Modify 802.16a.

Defendants do not dispute that 802.16a discloses a *fixed* wireless system with *stationary* subscriber units, as described by their experts. ECF No. 269 at 4. Defendants do not dispute that Koo and 802.16e are not prior art. *Id.* at 6–7. Defendants’ response confirms that Defendants and their experts employ Koo and 802.16e to modify the *fixed* system of 802.16a into a *mobile* system for their invalidity theories. *Id.* at 3–5. This is not simply “background” information, but rather an explicit combination to modify the *fixed*-system teachings of 802.16a. *See* ECF No. 251, PageID.15081–82. As such, these modifications are improper obviousness combinations because they use unelected and non-prior-art references.¹

Furthermore, Defendants’ case citations regarding unelected, non-prior-art references are inapposite given that these references are not used for background. ECF No. 269 at 5–7. Defendants do not cite authority that allows an unelected, non-prior-art reference to modify a reference against its own teachings.

B. Koo and 802.16e Are Not Used to Provide the State of the Art.

Even if Defendants’ unelected references could be used for background or state of the art, an earnest reading of Koo shows that the state of the art for 802.16a

¹ Defendants even call 802.16a a “primary reference” relative to Koo and 802.16e. ECF No. 269 at 4. Defendants also provide no substantive explanation for why Dr. Bims’s report structure includes Koo and 802.16e in the invalidity section, and not a background section. *Id.* at 7; *see also* ECF No. 251, PageID.15081–82.

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