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AND AFFILIATED PARTNERSHIPS

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February 3, 2023

By E-mail

Re: *Gentex Corp. et al. v. Meta Platforms, Inc. et al.*, No. 22-cv-3892 (N.D. Cal.)

Dear Andrew:

This letter is written in response to your January 24, 2023 correspondence and regarding the parties' discussion on the December 16, 2022 meet and confer. Gentex's scorched earth approach to its discovery demands is actually impeding progress on discovery in this matter. We have repeatedly asked for some reasonable focus on Gentex's requests, but you repeatedly refused to provide it. Gentex's demands are not appropriate. As previously discussed, we will search for and produce responsive documents within reason, as set forth below.

I. SUBSTANTIAL COMPLETION DEADLINE

Meta agrees that the parties should agree to a substantial completion of production deadline. As such, assuming we can promptly resolve the open issues regarding ESI, Meta proposes substantial completion of party document production by March 16, which is two months before the current close of fact discovery.

II. GENTEX'S DOCUMENT REQUESTS

A. RFP No. 10

No. 10: "All documents relating to any due diligence, valuation analysis, IP analysis, or other analysis you conducted or received in conjunction with your purchase of Oculus VR, Inc."

This request for "all documents" remains overly broad and Gentex has refused to agree to any reasonable limitations. That said, after a reasonable search, we have not located any patent analyses in connection with the purchase of Oculus VR, Inc. Additionally, we have already produced the only valuation analysis that we located, as well as documents sufficient to show the acquisition price. At this point, Meta believes it has produced all documentation proportional to the needs of this case. If further responsive and non-privileged materials are uncovered during ESI searching under the protocol being discussed, we intend to produce them.

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B. RFP No. 29

No. 29: “All market studies, marketing presentations, and any other documents relating to demand for each Oculus Product.”

This request for “All documents” in the listed categories remains overly broad and our objections stand. We understand that Plaintiffs are defining Oculus Products, for the purposes of this Request, as Oculus Rift, Oculus Rift S, Oculus Quest, Oculus Quest 2, Meta Quest 2, and Meta Quest Pro. Plaintiffs’ definition also includes all versions, models, and configurations of the listed products, including Enterprise versions, refurbished versions, and all various internal and external names used for these products, and excludes non-commercial, interim, or experimental hardware. Meta will respond to this Request with respect to Oculus Rift, Oculus Rift S, Oculus Quest, Oculus Quest 2, Meta Quest 2, and Meta Quest Pro, despite Gentex’s continually evolving definition of “Oculus Products.”

Meta’s investigation to date has not uncovered any specific repositories for the categories of materials listed in this request. We have, however, located a set of market studies and intend to produce them. If further responsive and non-privileged materials are uncovered during ESI searching under the protocol being discussed, we intend to produce them.

C. RFP No. 30

No. 30: “All documents concerning the market for virtual reality products.”

Meta continues to stand by its position that this Request is impermissibly broad. Plaintiffs’ proposed “limitation” does not meaningfully narrow this request and still includes large categories of documents that have no relevance to this to this case. We have, however, located a set of market studies and intend to produce them. If further responsive and non-privileged materials are uncovered during ESI searching under the protocol being discussed, we intend to produce them.

D. RFP No. 33

No. 33: “Documents sufficient to show sales of Oculus products used in conjunction with the Accused Products (including but not limited to applications and accessories), including such product’s unit sales, revenues, gross profit, net profit, average unit sales price, list price, cost of goods sold (COGS), operating costs attributed to such product (i.e., other costs that are attributable to the product but not included in COGS, such as SG&A), and profitability.”

Meta has consistently and repeatedly asked Gentex to (1) specify precisely which unaccused products you seek information on, and (2) provide a clear and reasonable basis for how

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such unaccused products relate to the specific infringement allegations in this case under Plaintiffs' damages theory. To date, Gentex has refused to provide this information or even categories of products for which you seek "certain financial information." Without this information, Gentex's request remains vague, unbounded, and disproportional to the needs of this case. Again, if Gentex will provide a list of the specific products for which you seek information, we are willing to consider this request.

E. RFP No. 43

No. 43: "All documents relating Meta's pricing and sales practices relating to the Accused Products, including whether it chooses to price the products as loss leaders, such documents including but not limited to documents relating to any investigation by the Federal Trade Commission of Meta's Virtual Reality division, Meta's Reality Labs division, or Meta's pricing and/or sales practices relating to the Accused Products."

On December 16, 2022, Meta requested information on the FTC investigation that you seek information on during the meet and confer. Over a month later, on January 24, 2023, you provided a link to a news article about an FTC investigation. We are looking into the investigation referenced in this article. But Meta at this point does not agree to produce "All documents...relating to any investigation by the Federal Trade Commission" merely to satisfy Gentex's curiosity, particularly if other documents are sufficient to show "Meta's pricing and sales practices relating to the Accused Products." If you have authority for your assertion that documents relating to an FTC investigation are required to be produced in a separate patent infringement case, please provide it for us to consider.

We explained in our December 16 meet and confer that we would be searching for marketing department repositories, quarterly business reports, and the like. It is unclear what further information Gentex is seeking from Meta regarding the search process as you have already outlined the process in your January 24 letter.

F. RFP No. 44

No. 44: "All documents relating or referring to any discussion of the Oculus Products at any meeting of your Board of Directors, including but not limited to meeting minutes or presentations."

You agreed during our meet and confer that this request is limited to formal Board meeting minutes and Board presentations. We are reviewing such Board of Directors documents for responsiveness and relevance as we stated we would during the December 16 meet and confer. Meta is confused what additional information you need in response to this request.

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Meta reiterates your agreement any production under this Request does not constitute a waiver of any *Apex* custodian objections.

G. RFP Nos. 45-46

No. 45: “Five samples of each Accused Product.”

No. 46: “Three samples of each prior version of the Oculus Products before you began selling the Accused Products.”

Meta understands that Gentex no longer has any unresolved issues with Meta’s response to RFP No. 45.

With respect to RFP No. 46 and your request to “take the samples into its temporary possession in order to use them off premises (for example, with our experts, with witnesses at deposition, or at trial),” where reasonably possible Meta is willing to provide the samples at a deposition and/or at trial upon your request and with sufficient time to plan for this request (*i.e.*, at least 10 business days’ notice). Regarding your request to take the samples off premises for experts; we do not see the need for this request and risk transporting the items to multiple locations throughout this litigation. Rather, where reasonably possible, we would make the headsets available at Kirkland’s San Francisco Office and your experts may review the samples under the same procedures that a source code expert would review Meta’s source code. That said, if after such inspection you believe there is a particular need for an off-premises inspection, we will consider it in context of the particular device and whether Gentex will bear the full risk and liability for any loss or damage while the device is off-premises.

Sincerely,

/s/ Laura Ashley Harris

Laura Ashley Harris