IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

GENTEX CORPORATION and INDIGO TECHNOLOGIES, LLC, *Plaintiffs,*	§ § § § § § § § § § § § § § § §	Case No. 6:21-CV-00755-ADA
THALES VISIONIX, INC., *Involuntary Plaintiff,*		
v.		
META PLATFORMS, INC., and FACEBOOK TECHNOLOGIES, LLC, *Defendants.*		

[PUBLIC] DISCOVERY DISPUTE ORDER

The Court hereby resolves the following discovery dispute submitted by email.

Summary of the Issue

Plaintiffs:

Meta moved to transfer venue to Northern California claiming that no relevant individuals reside in this District. That statement, and Meta's motion, was based on a declaration that hand-selected only certain employees whom Meta deemed relevant within narrowly-selected categories and timeframes. When Plaintiffs sought discovery about the full scope of potentially relevant current and former employees in Texas—where Meta employs over 2,000 individuals and does significant work relating to the accused products—Meta largely refused to provide information beyond what it cherrypicked for its declaration. Exs. A, B. Meta's effort to force Plaintiffs and the Court to rely on Meta's say-so about potential witnesses is inconsistent with the very concept of venue discovery. Plaintiffs respectfully request the Court compel Meta to answer the following requests.

Defendants:

Plaintiffs' case is about specific accused features in specific accused Oculus products. After extensive investigation, Defendants provided, in verified interrogatory responses and a sworn declaration, the name, location, team, and title for: the engineering teams that are responsible for those accused features; other engineers in Texas that work on the accused Oculus products (even if on unaccused features); the team responsible for Oculus marketing; the RL (Reality Labs, which includes Oculus) Finance team; and any Texas employees that support Oculus sales. Plaintiffs' assertion that Defendants "hand-selected only certain employees whom Meta deemed relevant" is inaccurate—Defendants used Plaintiffs' own allegations in the complaint and infringement contentions as the basis for their investigation. Plaintiffs seek a burdensome and likely impossible detour into current and historical information on "over 2,000" employees because they are (or were) allegedly in Texas, even if they have nothing to do with this case or Oculus products. Plaintiffs' requested relief should be denied.

Requested Relief

Plaintiffs:

Order "Within fourteen (14) days, Defendants must answer Interrogatory No. 1 either (i) in full for all source code made available for inspection, or (ii) by identifying the portions of the source code made available for inspection that are relevant to the accused functionalities, and answering Interrogatory No. 1 for those portions of the code only."

Order "Within fourteen (14) days, Defendants must

a) answer Interrogatory No. 3 in full;

b) produce documents responsive to Request for Production No. 1 for every current and former employee of Meta and/or Facebook Technologies who is now, or was at the time he or she

was employed working on the Oculus Products, located in or otherwise assigned to an office in Texas; and

c) produce all documents responsive to Request for Production No. 2 in full."

Order "Within fourteen (14) days, Defendants must produce all documents responsive to Request for Production No. 3 in full."

Defendants:

Regarding **Interrogatory 1**, Plaintiffs' motion to compel is DENIED as overbroad. However, if, during the venue discovery period, Plaintiffs supplement their infringement contentions to accuse specific source code files, Defendants are ORDERED to, within two weeks thereafter, identify where anyone who checked in such code is based, if known.

Regarding **Interrogatory 3** and **RFPs 1-2**, Plaintiffs' motion to compel is DENIED as overbroad. However, within two weeks of this Order, Defendants are ORDERED to (A) supplement their Interrogatory 3 response to identify any Texas employees within the RL Pillar who may work on any Oculus product, and (B), provide, where available, the names and titles of any employees based in Texas on the teams that may have worked on the accused products both as of when the complaint was filed (*i.e.*, July 2021) and as of when the first accused product was offered for sale (*i.e.*, May 2019).

Regarding **RFP 3**, Plaintiffs' motion to compel is DENIED as irrelevant.

<u>**Plaintiffs' Position**</u>

Meta moved to transfer venue to Northern California claiming that no relevant individuals reside in this District. That statement, and Meta's motion, was based on a declaration that hand-selected only certain employees whom Meta deemed relevant within narrowly-selected categories and timeframes. When Plaintiffs sought discovery about the full scope of potentially relevant

current and former employees in Texas—where Meta employs over 2,000 individuals and does significant work relating to the accused products—Meta largely refused to provide information beyond what it cherrypicked for its declaration. Exs. A, B. Meta's effort to force Plaintiffs and the Court to rely on Meta's say-so about potential witnesses is inconsistent with the very concept of venue discovery. Plaintiffs respectfully request the Court compel Meta to answer the following requests.

Interrogatory 1. This interrogatory asks Meta to identify all persons, and their locations, who edited the source code Meta produced to fulfill its obligation under the OGP to produce documents "sufficient to show the operation of the accused product(s)." Meta has refused, claiming that it produced far more source code than is relevant to the case—though it refuses to identify what portions of the code are actually relevant or produce documents to help Plaintiffs make that assessment before fact discovery commences. Instead, Meta has identified only the witnesses and teams in the declaration submitted in support of its transfer motion. And Meta suggests, under Rule 33(d), that Plaintiffs root around in Meta's source code to identify the names of witnesses who edited it. This is plainly insufficient. It was Meta, not Plaintiffs, who chose the source code to produce. Plaintiffs have spent months asking Meta in vain for guidance to help them understand the code and which sections are relevant. Given that, Meta must either (a) provide the witness identifications and locations for all individuals who edited the code, or (b) identify the portions of the code that are relevant and the witnesses for those. Moreover, it is no answer that Plaintiffs could spend weeks hunting through the code to identify potential witnesses. Rule 33(d) only allows Meta to shift the burden when it is "substantially the same for either party." This is Meta's code, on which it can run reports that Plaintiffs cannot. And even then, the code does not

identify where the witnesses are located, as Meta's personnel files would.   Meta should be compelled to answer this simple interrogatory.

Interrogatory 3 and RFPs 1 and 2.   These requests seek core venue discovery identifying potential witnesses in Texas, and there is no basis for Meta to limit its answer as it proposes to do. After initially refusing to provide *any* information regarding its current and former Texas employees whose work relates to the accused products beyond that in the declaration accompanying its Motion, Meta now agrees to list those employees who are "categorized in" Meta's Reality Labs "Pillar," subject to two further exceptions: (a) Meta would not commit to identify former employees, or even employees at the time the Complaint was filed, and (b) it will exclude employees whose "work is not directed specifically to the accused Oculus products." Ex. C. But Plaintiffs do not have visibility into the "pillars" by which employees are categorized, or how Meta determines what an employee's work is "directed specifically to." Indeed, Meta's categorization appears to exclude individuals whose work may be relevant, like finance and marketing functions. And, critically, although venue is assessed when the complaint was filed, the venue inquiry is not limited to current employees, much less those currently working on the accused functionality. Employees now working on other teams may still have relevant information about the development of the accused products, and former employees with relevant information may be *more* critical to the venue inquiry as they cannot be compelled to appear in California. Meta must identify Texas-based current and former employees—they are at the heart of the venue dispute. If Meta believes Plaintiffs' reliance on any witness is misguided, it can so argue on reply. But its subjective views are not a basis to withhold discovery, and Meta's exceptions only invite gamesmanship.

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