EXHIBIT OO

Glucoft, Josh

From: Borrasso, Andrew <aborrasso@wc.com>
Sent: Monday, February 14, 2022 3:19 PM
To: Watkins, Bailey Morgan; Glucoft, Josh; Heffernan, Jeannie; Turner, Ellisen Shelton; Deoras, Akshay S.; 'Paige Amstutz'
Cc: 'Meredith Addy'; Harber, Adam; Argall, Arthur; Ghosh, Shayon; 'Mark Mann'; 'Blake Thompson'; #Facebook-Gentex; Collins, Melissa; Baumgarten, Elise
Subject: RE: Gentex Corp. et al. v. Meta Platforms, Inc. et al. (No. 6:21-cv-00755-ADA)

Bailey,

Mr. Foxlin has possession of the physical notebook, and we've asked that he preserve his materials during the pendency of the litigation.

More generally, Defendants' attempt to distinguish *Kimberly-Clark* on the ground that the defendant there sought production as opposed to inspection is beside the point. The question, both here and in *Kimberly-Clark*, is whether a party has the right to view the non-responsive portions of a lab notebook, and *Kimberly-Clark* answers that question in the negative. Neither of the cases you cite are to the contrary.

The suggestion that inspection of non-responsive pages is warranted because the produced pages at issue might be fabricated is both entirely speculative and something that, if relevant at all, should be handled during fact discovery. Despite multiple attempts by Defendants to blur the line, the OGP requires only that Plaintiffs produce "all documents evidencing conception and reduction to practice for each claimed invention." It does not permit further discovery as to those documents, or the issue of conception and reduction to practice more generally. If Defendants feel otherwise, they should raise that issue with the Court now. But there is no basis to threaten preclusion based on an informal discovery request by Defendants that is plainly improper and untimely under the OGP.

Best,
Andrew

Andrew Borrasso
Associate* | Williams & Connolly LLP
725 Twelfth Street, N.W., Washington, DC 20005
* Admitted only in Illinois. Practice in the District of Columbia supervised by D.C. Bar members pursuant to D.C. Court of Appeals Rule 49(c)(8).

From: Watkins, Bailey Morgan <bailey.watkins@kirkland.com>
Sent: Thursday, February 10, 2022 1:49 PM
To: Borrasso, Andrew <aborrasso@wc.com>; Glucoft, Josh <josh.glucoft@kirkland.com>; Heffernan, Jeannie <jheffernan@kirkland.com>; Turner, Ellisen Shelton <ellisen.turner@kirkland.com>; Deoras, Akshay S. <adeoras@kirkland.com>; 'Paige Amstutz' <pamstutz@scottdoug.com>
Cc: 'Meredith Addy' <meredith@addyhart.com>; Harber, Adam <AHarber@wc.com>; Argall, Arthur <aargall@wc.com>; Ghosh, Shayon <sghosh@wc.com>; 'Mark Mann' <mark@themannfirm.com>; 'Blake Thompson' <blake@themannfirm.com>; #Facebook-Gentex <Facebook-Gentex@kirkland.com>
Subject: RE: Gentex Corp. et al. v. Meta Platforms, Inc. et al. (No. 6:21-cv-00755-ADA)

Counsel,

First, your February 7 response fails to answer questions posed in my last e-mail:

1. Do the Plaintiffs currently have possession of the inventor notebook and, if not, who does have possession?
2. Will the entire original notebook be preserved, unaltered, until this litigation has concluded?

Second, Plaintiffs' reliance on *Kimberly-Clark v. First Quality Baby Products* is misplaced. In that case, Defendants sought production of certain notebook pages. As we indicated in our February 3 e-mail, Defendants are not requesting Plaintiffs to produce the entire notebook, we are only requesting to inspect the notebook. Further, it is unclear from the six pages apparently excerpted from a generic "1 Subject Notebook" that the pages produced at GNTX-0001598-1604 are even part of a "laboratory notebook" as contemplated by *Kimberly-Clark v. First Quality Baby Products* and other case law on

evidence of previous conception and/or reduction to practice. For example, there do not appear to be any signatures on the pages produced -- either by Foxlin or a contemporaneous witness.

Finally, if Plaintiffs fail to provide the notebook for inspection by **Monday, February 14**, and attempt to use any portions of the notebook as evidence later in this litigation, Defendants will seek to preclude such evidence based on Plaintiffs failure to provide the full notebook for inspection. Defendants are entitled to inspect the notebook, including to confirm that the handwritten dates are authentic and were not applied after the fact. *See*, *e.g.*, *Aptix Corp. v. Quickturn Design Sys., Inc.*, No. 98-00762, 2000 WL 852813, at *5, *33 (N.D. Cal. June 14, 2000) (finding the asserted patent unenforceable where inspection of the inventor's notebook indicated that he added new material to his lab notebook and misdated false entries, which were presented to the court as evidence of prior conception); *Falana v. Kent State Univ.*, No. 5:08-CV-720, 2014 WL 3788695, at *8 (N.D. Ohio July 31, 2014) (finding that an inventor falsified entries in a co-inventor's notebook by signing and backdating the notebooks).

Bailey Watkins

KIRKLAND & ELLIS LLP

401 Congress Avenue, Austin, TX 78701
T +1 512 678 9152
M +1 210 262 0408
F +1 512 678 9101
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bailey.watkins@kirkland.com

From: Borrasso, Andrew <aborrasso@wc.com>
Sent: Monday, February 7, 2022 6:34 PM
To: Watkins, Bailey Morgan <bailey.watkins@kirkland.com>; Glucoft, Josh <josh.glucoft@kirkland.com>; Heffernan, Jeannie <jheffernan@kirkland.com>; Turner, Ellisen Shelton <ellisen.turner@kirkland.com>; Deoras, Akshay S. <adeoras@kirkland.com>; 'Paige Amstutz' <pamstutz@scottdoug.com>
Cc: 'Meredith Addy' <meredith@addyhart.com>; Harber, Adam <AHarber@wc.com>; Argall, Arthur <aargall@wc.com>; Ghosh, Shayon <sghosh@wc.com>; 'Mark Mann' <mark@themannfirm.com>; 'Blake Thompson' <blake@themannfirm.com>; #Facebook-Gentex <Facebook-Gentex@kirkland.com>
Subject: RE: Gentex Corp. et al. v. Meta Platforms, Inc. et al. (No. 6:21-cv-00755-ADA)

Counsel,

Gentex and Indigo have complied with their obligations under the Order Governing Proceedings. The documents you are seeking (by email and not a formal discovery request) go beyond what the OGP provides. As we previously explained, a lab notebook is not a document. *E.g.*, *Kimberly-Clark Worldwide, Inc. v. First Quality Baby Prod., LLC*, No. 09-C-0916, 2011 WL 1343166, at *2 (E.D. Wis. Apr. 8, 2011). Rather, each page within the lab notebook is its own document. Gentex has reviewed and produced all pages within the lab notebook at issue that evidence conception and reduction to practice of any claimed invention, which is what the OGP requires. Accordingly, Meta has no right to inspect the unproduced, non-responsive pages.

To the extent any pages in the lab notebook at issue are relevant for any reason other than that they evidence conception and reduction to practice of the claimed inventions, they will be produced in the ordinary course of fact discovery in response to a proper discovery request. The threat to preclude reliance on any such pages is baseless. In the meantime, Gentex and Indigo are complying with their preservation obligations.

We remain available to discuss, should you have any further questions.

Best,
Andrew

Andrew Borrasso
Associate* | Williams & Connolly LLP
725 Twelfth Street, N.W., Washington, DC 20005
* Admitted only in Illinois. Practice in the District of Columbia supervised by D.C. Bar members pursuant to D.C. Court of Appeals Rule 49(c)(8).

From: Watkins, Bailey Morgan <bailey.watkins@kirkland.com>
Sent: Thursday, February 3, 2022 3:25 PM
To: Borrasso, Andrew <aborrasso@wc.com>; Glucoft, Josh <josh.glucoft@kirkland.com>; Heffernan, Jeannie

<jheffernan@kirkland.com>; Turner, Ellisen Shelton <ellisen.turner@kirkland.com>; Deoras, Akshay S. <adeoras@kirkland.com>; 'Paige Amstutz' <pamstutz@scottdoug.com>
Cc: 'Meredith Addy' <meredith@addyhart.com>; Harber, Adam <AHarber@wc.com>; Argall, Arthur <aargall@wc.com>; Ghosh, Shayon <sghosh@wc.com>; 'Mark Mann' <mark@themannfirm.com>; 'Blake Thompson' <blake@themannfirm.com>; #Facebook-Gentex <Facebook-Gentex@kirkland.com>
Subject: RE: Gentex Corp. et al. v. Meta Platforms, Inc. et al. (No. 6:21-cv-00755-ADA)

Counsel,

Plaintiffs refusal to permit Defendants to inspect the inventor notebook—over one month after Defendants' initial request and well into the claim construction process—is improper. The Court's Standing Order Governing Proceedings for Patent Cases required Plaintiffs to produce "all documents evidencing conception and reduction to practice for each claimed invention" along with its Preliminary Infringement Contentions served on October 12, 2021. This requirement does not permit Plaintiffs to selectively produce portions of a document that it unilaterally selects and use those portions as a sword to support a priority date, while shielding the rest. Defendants are entitled to inspect the entire inventor notebook, in context, to investigate its provenance, impact on the alleged priority claim, and whether the purported priority dates are authentic and accurate.

If Plaintiffs are unwilling to permit Defendants to inspect the inventor notebook, Defendants will seek to preclude any attempt by Plaintiffs to rely upon it in this litigation. At this point, Defendants only request to inspect the full notebook and do not require Plaintiffs to produce copies of the full notebook for use in evidence, so Plaintiffs should have no objection. The parties can revisit this issue if Defendants request you to produce copies of any other portions of the notebook. **Please let us know by Monday, February 7, whether you will reconsider your refusal to permit Defendants to inspect the full inventor notebook.**

In addition, please confirm whether Plaintiffs currently have possession of the inventor notebook and, if not, who does have possession. Please also confirm that the entire original inventor notebook will be preserved, unaltered, until this litigation has concluded. And please confirm that Plaintiffs' outside counsel reviewed the entire inventor notebook before making the representation stated in your email that "[t]here are no pages other than the ones we have produced that are relevant to the conception and reduction to practice of the asserted patents," or if instead that representation relies on Eric Foxlin's beliefs regarding relevance. Please also confirm whether Plaintiffs represent that there are no other pages in the notebook that are relevant to this litigation beyond the pages that Plaintiffs copied and produced.

Bailey Watkins

KIRKLAND & ELLIS LLP

401 Congress Avenue, Austin, TX 78701
T +1 512 678 9152
M +1 210 262 0408
F +1 512 678 9101
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bailey.watkins@kirkland.com

From: Borrasso, Andrew <aborrasso@wc.com>
Sent: Tuesday, February 1, 2022 2:45 PM
To: Watkins, Bailey Morgan <bailey.watkins@kirkland.com>; Glucoft, Josh <josh.glucoft@kirkland.com>; Heffernan, Jeannie <jheffernan@kirkland.com>; Turner, Ellisen Shelton <ellisen.turner@kirkland.com>; Deoras, Akshay S. <adeoras@kirkland.com>; 'Paige Amstutz' <pamstutz@scottdoug.com>
Cc: 'Meredith Addy' <meredith@addyhart.com>; Harber, Adam <AHarber@wc.com>; Argall, Arthur <aargall@wc.com>; Ghosh, Shayon <sghosh@wc.com>; 'Mark Mann' <mark@themannfirm.com>; 'Blake Thompson' <blake@themannfirm.com>; #Facebook-Gentex <Facebook-Gentex@kirkland.com>
Subject: Gentex Corp. et al. v. Meta Platforms, Inc. et al. (No. 6:21-cv-00755-ADA)

Counsel,

We write concerning your December 30, 2021 request to inspect Mr. Foxlin's complete lab notebook from which we produced certain pages on December 22, 2021. There are no pages other than the ones we have produced that are relevant to the conception and reduction to practice of the asserted patents. Because the remainder of the notebook is not relevant, inspection of the entire notebook is improper. *E.g.*, *Kimberly-Clark Worldwide, Inc. v. First Quality Baby*

Prod., LLC, No. 09-C-0916, 2011 WL 1343166, at *2 (E.D. Wis. Apr. 8, 2011). If you are having any difficulty reading the pages we produced, we would be happy to have them rescanned.

Best,

Andrew

Andrew Borrasso
Associate* | Williams & Connolly LLP
725 Twelfth Street, N.W., Washington, DC 20005
* Admitted only in Illinois. Practice in the District of Columbia supervised by D.C. Bar members pursuant to D.C. Court of Appeals Rule 49(c)(8).

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