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

GENTEX CORPORATION and INDIGO TECHNOLOGIES, LLC, Plaintiffs, THALES VISIONIX, INC., Involuntary Plaintiff, v. META PLATFORMS, INC. and META PLATFORMS TECHNOLOGIES, LLC, Defendants.	Case No. 6:21-cv-00755-ADA **JURY TRIAL DEMANDED**

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE SUR-REPLY [DKT. 68] TO MOTION TO TRANSFER [DKT. 39]

The declarations that Meta submitted with its reply brief rebut the previously undisclosed evidence and inaccurate argument that Plaintiffs submitted in their opposition. Meta served discovery requests specifically seeking Plaintiffs' evidence so that Meta could provide any responsive facts before Plaintiffs' opposition brief was due. Dkt. 66-19 at 8. Plaintiffs refused to provide that discovery. *Id.*; Dkt. 66-4 ¶ 16. Instead, Plaintiffs presented the requested information for the first time in their opposition brief, along with new, untrue inferences drawn therefrom. Thus, Meta submitted responsive declarations from Messrs. Wong, Wright, and Melim (all of whom were disclosed in Meta's opening brief, before venue discovery began, *see* Dkt. 39-1 ¶¶ 8, 10) to address and correct Plaintiffs' unfounded assertions.

Now, Plaintiffs seek leave to file a sur-reply, arguing that it is responsive to those three reply declarations. The Court should reject the sur-reply because it would only add further unsupported and inaccurate arguments, and reward Plaintiffs for refusing to provide responsive evidence in discovery.

Wong Declaration. Plaintiffs' opposition brief sought to ensnare irrelevant Texas employees by arguing that this case will turn on technology far beyond what Plaintiffs accused in their complaint and infringement contentions. Dkt. 61 at 7. But the source code and functionality that Plaintiffs actually sought discovery on belies those arguments. Mr. Wong's declaration provides a responsive example, identifying the locations of people that checked in the specific source code that Plaintiffs actually requested. Dkt. 66-3 ¶ 2; Dkt. 66-4 ¶ 7. Those people were readily identifiable on the computer that Plaintiffs had before venue briefing began. Dkt. 49 at 7. Meta repeatedly offered to provide, at Plaintiffs' request, the locations of anyone that checked in allegedly relevant code files. Dkt. 49 at 7. Plaintiffs' opposition brief stretched their theory of relevance, and Meta fairly rebutted it.

Wright Declaration. Meta first learned that Plaintiffs were relying on Mr. Wright's LinkedIn page when Meta received Plaintiffs' opposition brief. Dkt. 66-4 ¶ 16. Meta had identified Mr. Wright in its opening brief, discovery responses, and initial disclosures only as a source of information confirming that no Texas employees (including himself) designed or developed the accused functionality. Dkt. 39-1 ¶ 10; Dkt. 66-7 at 17; Dkt. 66-2 ¶¶ 2-3, 5. Despite Plaintiffs' notice of Mr. Wright's knowledge related to venue, they never sought discovery from him or explored the facts he actually provided. Instead, Plaintiffs relied on inaccurate inferences from LinkedIn.[1] Dkt. 61 at 4. Mr. Wright's declaration explained that he did not develop the tracking technology referenced on LinkedIn, that it was not even Meta's technology, and that it was never deployed in any Oculus product. Dkt. 66-2 ¶ 4. He also re-affirmed that he and others in Texas did not develop the accused functionality. Dkt. 66-2 ¶¶ 3, 5-6.

Melim Declaration. Plaintiffs' opposition brief newly disclosed that they were relying on LinkedIn pages for a few Texas employees. Dkt. 61 at 6. Mr. Melim's declaration confirms that none of them designed or developed the accused functionality, consistent with what Plaintiffs were already told in discovery. Dkt. 66-1 ¶¶ 3-4; Dkt. 39-1 ¶ 8; Dkt. 66-7 at 12-38.

Meta's reply declarations responded to the new documents, and demonstrably inaccurate inferences, that Plaintiffs first revealed in their opposition brief but did not disclose in discovery. A sur-reply is therefore not warranted, and Plaintiffs' motion for leave should be denied.

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[1] Plaintiffs argue that Mr. Wright does not address prior work. Dkt. 68-1 at 2. But that was actually addressed in paragraphs 3 and 5 of his declaration, and also provided long ago in venue discovery. Dkt. 66-2 ¶¶ 3, 5; Dkt. 39-1 ¶ 10; Dkt. 66-7 at 12, 17. Plaintiffs also, incorrectly, state that Matt Hooper "no longer works for Meta" based solely on Mr. Wright having referred to Mr. Hooper's "role" (not Mr. Hooper himself) in the past tense. Dkt. 68-1 at 2. Plaintiffs also made inaccurate arguments based on Mr. Hooper's title on LinkedIn, so Mr. Wright responded to describe Mr. Hooper's actual role. Dkt. 66-2 ¶ 6. Even if titles were significant, employees with at least equally significant titles reside in N.D. Cal., including relevant employees, such as the "Head of Product Marketing" and "Finance Director." *See, e.g.*, Dkt. 66-7 at 18-19, 24-44; Dkt. 39-1 ¶¶ 14-15.

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Respectfully submitted,

/s/ Ellisen Shelton Turner

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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that, on June 14, 2022, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system.

/s/ Ellisen Shelton Turner
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