Subject: RE: NextGen: 5/30/23 Meet and Confer Summary/Follow up - RPI - Nokia
Date: Tuesday, July 25, 2023 at 10:08:03 AM Central Daylight Time
From: Wroblewski, Karlee
To: ptong@raklaw.com, Vinci, Brianna, Ben Wang, Opp.nextgen.infinera@raklaw.com, Opp.nextgen.fujitsu@raklaw.com, ATT-NextGenNRFService@nortonrosefulbright.com, Dacus, Deron, Opp.nextgen.nokia@raklaw.com
CC: nextgen@raklaw.com, Nokia22-309

Peter,

I have stated repeatedly that Nokia will not produce irrelevant information in the district court proceeding. Nokia has not changed its position. If NextGen intends to seek RPI discovery, it should do so in the PTAB proceeding.

Best,
Karlee

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Karlee.Wroblewski@alston.com

From: ptong@raklaw.com <ptong@raklaw.com>
Sent: Friday, July 14, 2023 1:07 PM
To: Wroblewski, Karlee <Karlee.Wroblewski@alston.com>; Vinci, Brianna <BVinci@duanemorris.com>; Ben Wang <bwang@raklaw.com>; Opp.nextgen.infinera@raklaw.com; Opp.nextgen.fujitsu@raklaw.com; ATT-NextGenNRFService@nortonrosefulbright.com; Dacus, Deron <ddacus@dacusfirm.com>; Opp.nextgen.nokia@raklaw.com
Cc: nextgen@raklaw.com; Nokia22-309 <Nokia22-309@alston.com>
Subject: Re: NextGen: 5/30/23 Meet and Confer Summary/Follow up - RPI - Nokia

EXTERNAL SENDER – Proceed with caution

Hi Karlee,

I'm surprised that Nokia has switched its position from essentially "it is not relevant" to essentially "nothing responsive exists." This may be an easier avenue for resolve any issues. But can you provide some clarification?

In your email below, are you saying that because Nokia has the understanding that "Nokia has not coordinated and/or worked on any IPRs with the other defendants," thus no such information possibly can exist under Nokia's understanding?

Or is Nokia willing to provide assurances that, regardless of Nokia's understanding , there is nothing to produce because:

1. Nokia has not made or received indemnity demands with the other codefendants
2. Nokia has not sent or received drafts of or comments on IPR documents with the other codefendants
3. Nokia has not sent or received any meeting invites or emails to/from the other codefendants for discussing the IPR's
4. Nokia has not sent or received payment from the other codefendants for searching for any prior art cited in the IPR's
5. Nokia has not sent or received payment from the other codefendants for any IPR related expenses such as attorney fees, filing fees, or expert fees
6. Nokia has not sent or received anything discussing with the other codefendants which prior art or expert to use in the IPR's
7. Nokia has not signed any joint defense agreement that relate to the IPR's with the other codefendants

If you are assuring us that there is nothing to produce because Nokia has not taken actions #1-7 above, then we can just sidestep the relevance objection.

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From: Wroblewski, Karlee <Karlee.Wroblewski@alston.com>
Date: Wednesday, July 12, 2023 at 12:58 PM
To: ptong@raklaw.com <ptong@raklaw.com>, Vinci, Brianna <BVinci@duanemorris.com>, Ben Wang <bwang@raklaw.com>, Opp.nextgen.infinera@raklaw.com <Opp.nextgen.infinera@raklaw.com>, Opp.nextgen.fujitsu@raklaw.com <Opp.nextgen.fujitsu@raklaw.com>, ATT-NextGenNRFService@nortonrosefulbright.com <ATT-NextGenNRFService@nortonrosefulbright.com>, Dacus, Deron <ddacus@dacusfirm.com>, Opp.nextgen.nokia@raklaw.com <Opp.nextgen.nokia@raklaw.com>
Cc: nextgen@raklaw.com <nextgen@raklaw.com>, Nokia22-309 <Nokia22-309@alston.com>
Subject: RE: NextGen: 5/30/23 Meet and Confer Summary/Follow up - RPI - Nokia

Peter,

We do not intend to produce any information that is not otherwise relevant to the district court litigation. Specifically, regarding NextGen's request for discovery relating to alleged "coordinating and working on IPRs with the other defendants," Nokia has not coordinated and/or worked on any IPRs with

the other defendants. Therefore, we do not have any such information to produce. We are currently in the process of collecting and reviewing potentially responsive sales and revenue information for products identified by Nokia in response to NextGen's Common Interrogatory No. 1, and expect to complete our review and produce any relevant, non-privileged documents soon and thereafter on a rolling basis.

Best,
Karlee

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From: ptong@raklaw.com <ptong@raklaw.com>
Sent: Thursday, July 6, 2023 11:05 AM
To: Wroblewski, Karlee <Karlee.Wroblewski@alston.com>; Vinci, Brianna <BVinci@duanemorris.com>; Ben Wang <bwang@raklaw.com>; Opp.nextgen.infinera@raklaw.com; Opp.nextgen.fujitsu@raklaw.com; ATT-NextGenNRFService@nortonrosefulbright.com; Dacus, Deron <ddacus@dacusfirm.com>; Opp.nextgen.nokia@raklaw.com
Cc: nextgen@raklaw.com; Nokia22-309 <Nokia22-309@alston.com>
Subject: Re: NextGen: 5/30/23 Meet and Confer Summary/Follow up - RPI - Nokia

EXTERNAL SENDER – Proceed with caution

Hi Karlee,

We appreciate the update. Can you clarify two things for me? First, which subsets of RPI information you do not intend to produce? Second, we are nearly two months since the discovery request. If Nokia is not waiting until the substantial completion deadline, can you provide an estimate as to when we can expect the production to be complete?

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From: Wroblewski, Karlee <Karlee.Wroblewski@alston.com>
Date: Thursday, July 6, 2023 at 8:51 AM
To: ptong@raklaw.com <ptong@raklaw.com>, Vinci, Brianna <BVinci@duanemorris.com>, Ben Wang <bwang@raklaw.com>, Opp.nextgen.infinera@raklaw.com <Opp.nextgen.infinera@raklaw.com>, Opp.nextgen.fujitsu@raklaw.com <Opp.nextgen.fujitsu@raklaw.com>, ATT-NextGenNRFService@nortonrosefulbright.com <ATT-NextGenNRFService@nortonrosefulbright.com>, Dacus, Deron <ddacus@dacusfirm.com>, Opp.nextgen.nokia@raklaw.com <Opp.nextgen.nokia@raklaw.com>
Cc: nextgen@raklaw.com <nextgen@raklaw.com>, Nokia22-309 <Nokia22-309@alston.com>
Subject: RE: NextGen: 5/30/23 Meet and Confer Summary/Follow up - RPI - Nokia

Peter,

We have been identifying and producing relevant, non-privileged documents as available on a rolling basis and will continue to do so. We do not intend to wait until the substantial completion deadline and have never indicated otherwise. We do not intend to produce materials that you deem are relevant to the pending IPRs in line with your demanded timeline simply because it aligns with the timing of the IPRs.

As I've reiterated numerous times, Nokia will produce the information relevant to the district court litigation. That information, however, is not relevant to and cannot be used in the PTAB proceeding under the Protective Order in this case. See Dkt. No. 77 at Para. 7 ("Documents, information or material produced pursuant to any discovery request in these Actions, including but not limited to Protected Material designated as DESIGNATED MATERIAL, shall be used by the Parties only in the litigation of the specific Action in which it was produced and shall not be used for any other purpose without permission from the producing Party."). Given the different discovery standards as to what is the relevant scope of discovery in the district court and PTAB, courts have routinely denied the use of district court materials in PTAB proceedings, as you are apparently seeking to do. *See, e.g.*, *Ericsson Inc. v. D-Link Corp.*, Case No. 6:10-cv-473, 2013 U.S. Dist. LEXIS 199512, at *25-26 (E.D. Tex. Dec. 20, 2013). If NextGen intends to seek RPI discovery (through document production or a log), it should do so through the PTAB.

Best,
Karlee

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From: ptong@raklaw.com <ptong@raklaw.com>

Sent: Wednesday, June 28, 2023 5:06 PM
To: Wroblewski, Karlee <Karlee.Wroblewski@alston.com>; Vinci, Brianna <BVinci@duanemorris.com>; Ben Wang <bwang@raklaw.com>; Opp.nextgen.infinera@raklaw.com; Opp.nextgen.fujitsu@raklaw.com; ATT-NextGenNRFService@nortonrosefulbright.com; Dacus, Deron <ddacus@dacusfirm.com>; Opp.nextgen.nokia@raklaw.com
Cc: nextgen@raklaw.com; Nokia22-309 <Nokia22-309@alston.com>
Subject: Re: NextGen: 5/30/23 Meet and Confer Summary/Follow up - RPI - Nokia

EXTERNAL SENDER – Proceed with caution

Hi Karlee,

I am writing to follow up on when Nokia expects to make the production promised below. Infinera promised a production by July 9. Can we expect the same from Nokia, now that Nokia has had time to collect responsive documents? Or does Nokia still not intend to make its production until the substantial completion deadline?

In the meantime, I want to confirm the remaining part of the dispute. Is it still Nokia's position that Infinera will not agree to produce (or log) the other requested information related to coordinating and working on IPR's with the other defendants as described in my May 15 email? If Nokia expects to make the production you described below by July 9, then NextGen will consider it before seeking further relief.

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From: Wroblewski, Karlee <Karlee.Wroblewski@alston.com>
Date: Friday, June 9, 2023 at 12:48 PM
To: ptong@raklaw.com <ptong@raklaw.com>, Vinci, Brianna <BVinci@duanemorris.com>, Ben Wang <bwang@raklaw.com>, Opp.nextgen.infinera@raklaw.com <Opp.nextgen.infinera@raklaw.com>, Opp.nextgen.fujitsu@raklaw.com <Opp.nextgen.fujitsu@raklaw.com>, ATT-NextGenNRFService@nortonrosefulbright.com <ATT-NextGenNRFService@nortonrosefulbright.com>, Dacus, Deron <ddacus@dacusfirm.com>, Opp.nextgen.nokia@raklaw.com <Opp.nextgen.nokia@raklaw.com>
Cc: nextgen@raklaw.com <nextgen@raklaw.com>, Nokia22-309 <Nokia22-309@alston.com>
Subject: RE: NextGen: 5/30/23 Meet and Confer Summary/Follow up

Peter,

As I already informed you, Nokia intends to comply with its discovery obligations in the district court case. We will produce relevant documents as soon as they are available and meet the substantial completion deadline in the DCO. As I explained on the meet and confer, some of the categories of documents you are requesting will be searched for and, if located, will be produced in the district court case. We do not agree that the documents produced in the district court case should be used in the PTAB proceeding. Any discovery sought related only to the IPRs should be sought through the PTAB proceeding.

Best,
Karlee

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Karlee.Wroblewski@alston.com

From: ptong@raklaw.com <ptong@raklaw.com>
Sent: Friday, June 9, 2023 12:27 PM
To: Wroblewski, Karlee <Karlee.Wroblewski@alston.com>; Vinci, Brianna <BVinci@duanemorris.com>; Ben Wang <bwang@raklaw.com>; Opp.nextgen.infinera@raklaw.com; Opp.nextgen.fujitsu@raklaw.com; ATT-NextGenNRFService@nortonrosefulbright.com; Dacus, Deron <ddacus@dacusfirm.com>; Opp.nextgen.nokia@raklaw.com
Cc: nextgen@raklaw.com; Nokia22-309 <Nokia22-309@alston.com>
Subject: Re: NextGen: 5/30/23 Meet and Confer Summary/Follow up

EXTERNAL SENDER – Proceed with caution

Hi Karlee,

We are troubled by Nokia's vague and ambiguous response that walks back on the proposal discussed during the meet and confer. We left with the impression that Nokia would agree to timely produce some amount of the requested discovery, such contracts for sale, purchase agreements, receipts, indemnity-related provisions, and other items.

Now, Nokia takes the position that "Nextgen is not entitled to district court discovery" that we requested. With this understanding, Nokia then promises to "produce … any information that is discoverable," which Nokia just defined as not including what we requested, and further writes that it will "not produce discovery in the district court action that is not relevant."

Nokia continues to emphasize the "deadlines" in the DCO. This emphasis on the deadlines suggests that if Nokia makes any production at all, Nokia will wait until the end of the discovery deadline and ignore the DCO instruction that "Counsel are expected to make good faith efforts to produce all

required documents as soon as they are available and not wait until the substantial completion deadline." Nokia's emphasis on the DCO deadline also implies that it will ignore the Discovery Order, which requires production of all documents "relevant to the pleaded claims or defenses" even "[w]ithout awaiting a discovery request."

Nokia's response effectively walks back on the proposed compromise to timely produce a subset of the requested RPI discovery. Indeed, much of our requested discovery overlaps with damages-related discovery and should already have been produced. As a result, it appears the parties have returned to an impasse. Plaintiff will move to compel.

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From: Wroblewski, Karlee <Karlee.Wroblewski@alston.com>
Date: Friday, June 2, 2023 at 5:11 PM
To: Vinci, Brianna <BVinci@duanemorris.com>, Ben Wang <bwang@raklaw.com>, Opp.nextgen.infinera@raklaw.com <Opp.nextgen.infinera@raklaw.com>, Opp.nextgen.fujitsu@raklaw.com <Opp.nextgen.fujitsu@raklaw.com>, ATT-NextGenNRFService@nortonrosefulbright.com <ATT-NextGenNRFService@nortonrosefulbright.com>, Dacus, Deron <ddacus@dacusfirm.com>, Opp.nextgen.nokia@raklaw.com <Opp.nextgen.nokia@raklaw.com>
Cc: nextgen@raklaw.com <nextgen@raklaw.com>, Nokia22-309 <Nokia22-309@alston.com>
Subject: RE: NextGen: 5/30/23 Meet and Confer Summary/Follow up

Counsel,

Further to Brianna's email, I write to provide additional clarifications as to the issues specific to Nokia.

NextGen's Request for RPI Discovery
Nokia stated on the call that NextGen is not entitled to district court discovery relating to real party in interest issues. That being said, Nokia will produce as part of discovery any information that is discoverable in district court litigation for use in the district court litigation in line with the deadlines provided in the Docket Control Order. Nokia will not produce discovery in the district court action that is not relevant to the district court action. Any discovery sought related to the IPRs should be sought through the PTAB proceeding.

Common Interrogatory No. 1
As stated on the call, Nokia has responded to the interrogatory based on NextGen's request for "DCO-style" products in the interrogatories.

Individual Interrogatories 2-3
Nokia indicated that it is open and willing to further discuss a concrete proposal regarding a stipulation. We anticipate responding early next week regarding an appropriate path forward.

Best,
Karlee

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From: Vinci, Brianna <BVinci@duanemorris.com>
Sent: Friday, June 2, 2023 5:05 PM
To: Ben Wang <bwang@raklaw.com>; Opp.nextgen.infinera@raklaw.com; Opp.nextgen.fujitsu@raklaw.com; ATT-NextGenNRFService@nortonrosefulbright.com; Dacus, Deron <ddacus@dacusfirm.com>; Opp.nextgen.nokia@raklaw.com
Cc: nextgen@raklaw.com
Subject: RE: NextGen: 5/30/23 Meet and Confer Summary/Follow up

EXTERNAL SENDER – Proceed with caution

Hi Ben,

Thanks for the summary. We'd like to provide the following clarifications.

NextGen's Objections to Defendants' Common Interrogatories
Defendants have explained their position at several points and reiterated that position on the parties' meet and confer. Namely, the purported discrete subparts NextGen identifies are not discrete or distinct subparts and instead all relate to common factual issues. Case law from this district supports the conclusion that such interrogatories are proper. Nevertheless, with the understanding that NextGen refuses to respond to the relevant interrogatories as written, Defendants are considering NextGen's proposed solutions to avoid burdening the court with motion practice. If neither of those solutions is workable for Defendants, NextGen agreed on the call that Defendants have satisfied their meet and confer obligations with respect to this issue.

Invalidity Contentions
It is clear to Defendants that the parties have not yet reached impasse with respect to NextGen's request for amended invalidity contentions. Defendants intend to amend their 112 allegations and, on the call, stated they could do so by the end of the month. In the spirit of compromise, Defendants confirm that we will be able to provide that amendment by June 23. With respect to reference combinations, Defendants clarified that we have articulated our obviousness combinations in Appendix A. Defendants requested that NextGen consider and provide a claim limiting order to guide the proposed narrowing of claims and obviousness combinations. We look forward to seeing a proposal from NextGen.

NextGen's Request for RPI Discovery
I write on behalf of Infinera with respect to this issue. Infinera stated on the call that NextGen is not entitled to district court discovery relating to real party in interest issues. While NextGen claims that such discovery may be relevant to estoppel, such estoppel would not arise until there is a final written decision in the IPR. Thus, there is no claim or defense that NextGen could bring concerning IPR-related estoppel. The possibility that estoppel may (or may not) arise based on the IPRs is simply not relevant and does not create a ripe issue on which discovery is proper in the district court action. Infinera will not produce discovery that is not relevant to the district court action. That being said, Infinera is considering producing documents along the lines the other defendants described.

Common Interrogatory No. 1
I write on behalf of Infinera with respect to this issue. As stated on the call, Infinera is in the process of amending its response to this Interrogatory and gathering additional responsive documents. Infinera suggested on the call, and again suggests, that NextGen review the to-be-served supplement. Infinera maintains its position that NextGen has not identified additional categories of products in its infringement contentions and may not amend its infringement contentions to add additional categories of products to the case via email.

Individual Interrogatories 2-3
I write on behalf of Infinera with respect to this issue. Your summary does not reflect the parties' discussion in its entirety. Infinera stated that it intends to supplement its responses to these interrogatories and to produce relevant, responsive information. However, Infinera requested on the call that the parties have a further meet and confer regarding what NextGen means by "Inducing Provider-Side Products." NextGen stated on the call that it would reach out for a further discussion. Infinera cannot produce additional information if it does not understand the scope of what NextGen is requesting, and reiterates its request for a further meet and confer.

Thanks and have a nice weekend,
Brianna

Brianna Vinci
Associate

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From: Ben Wang <bwang@raklaw.com>
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To: Opp.nextgen.infinera@raklaw.com; Opp.nextgen.fujitsu@raklaw.com; ATT-NextGenNRFService@nortonrosefulbright.com; ddacus@dacusfirm.com; Opp.nextgen.nokia@raklaw.com
Cc: nextgen@raklaw.com
Subject: NextGen: 5/30/23 Meet and Confer Summary/Follow up

Counsel,

Thanks for meeting and conferring on Tuesday. Below is a summary of what was discussed, and plaintiff's responses on several follow-up issues. If you h

1. Defendants' Common Interrogatories: Plaintiff asked that defendants consider (A) whether all the information requested is truly necessary, and if not, w

2. Defendants' Invalidity Contentions. (A) Defendants agreed to amend their 112 allegations and proposed doing so by the end of June. Plaintiffs are willir

3.Real-Party-In-Interest. Nokia, AT&T, and Fujitsu agreed to produce a portion of the RPI discovery sought, at least the sales and indemnity-related agree

4. Identification of Relevant Products. We understand that AT&T states that it has now identified all products and will be providing a supplemental producti

With regard to Fujitsu, we understand that Fujitsu has responded to the interrogatory based on its own definition of "DCO-style" and will not supplement fu

Infinera stated similarly that it responded to the interrogatory based on its definition of DCO-style and would not agree to a further response.

Nokia stated its position was similar to Fujitsu and that it had not withheld any documents based on form factor.

As you know, we provided a list of form factors that we believe are encompassed by the term "DCO-style" as set forth in our interrogatories and infringeme

5. Customer identification and sales information. We have requested this information from Infinera, Fujitsu, and Nokia. None of the parties have produced

Thanks,

Ben

For more information about Duane Morris, please visit http://www.DuaneMorris.com

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