**Subject:** RE: NextGen: 5/30/23 Meet and Confer Summary/Follow up - RPI - Infinera
**Date:** Thursday, October 26, 2023 at 2:58:48 PM Central Daylight Time
**From:** Squire, Monté T.
**To:** ptong@raklaw.com, Vinci, Brianna, Opp.nextgen.infinera@raklaw.com, Redacted
**CC:** nextgen@raklaw.com, InfineraNG, Redacted

Counsel,

As we stated in our preliminary reply, because there are no current estoppels at issue Redacted the Board will not address any real party-in-interest (RPI) issues pursuant to *SharkNinja*, and thus the letter you seek to submit is not relevant to any issue before the Board. As we also stated, we disagree Redacted real party-in-interest. We also disagree that Infinera has withheld or is withholding any information from the USPTO or that the letter is evidence of an alleged RPI relationship Redacted It isn't. Rather, the document is irrelevant to any RPI issue for all the reasons previously stated. Indeed, among other reasons, Infinera has not agreed to Redacted

Nonetheless, to the extent you want to include/file the letter with your sur-reply, because the letter includes confidential information, please confirm that: (1) the letter will be filed under seal as confidential under a protective order and not made public; (2) to the extent the sur-reply discusses or references the letter, the sur-reply will be filed under seal as confidential under a protective order and not made public, and a redacted sur-reply (with those confidential portions redacted) will be separately filed for the public; and (3) Patent Owners will prepare the proposed protective order and motion to seal papers to be filed therewith.

Redacted designated the document as having confidential information and produced the document in the Redacted the district court's protective order in that case. Thus, Infinera cannot agree to allow you to use the document in the PTAB unless NextGen has obtained consent, in writing, from Redacted ocument in the Infinera IPR proceedings, under any conditions or confidentiality terms acceptable to Redacted

Finally, under your duty of disclosure obligation to the PTAB, your sur-reply should not attempt to imply that Infinera has agreed to Redacted Redacted

**Monté T. Squire**
Partner

Duane Morris LLP
1201 North Market St., Suite 501
Wilmington, DE 19801
P: +1 302 657 4918
F: +1 302 397 2543
C: +1 302 229 3813

MTSquire@duanemorris.com
www.duanemorris.com

---

**From:** ptong@raklaw.com <ptong@raklaw.com>
**Sent:** Tuesday, October 24, 2023 6:41 PM
**To:** Vinci, Brianna <BVinci@duanemorris.com>; Opp.nextgen.infinera@raklaw.com; Redacted
**Cc:** nextgen@raklaw.com
**Subject:** Re: NextGen: 5/30/23 Meet and Confer Summary/Follow up - RPI - Infinera

Counsel for Infinera and Redacted

We received a production with bates number NEXTGEN_ Redacted

This document is evidence of a real party-in-interest relationship between Infinera and Redacted

When Infinera filed its IPR petitions, it became bound by its duty of disclosure to the USPTO to disclose the nature of this relationship to the USPTO. Accordingly, we ask your permission to either:

1. Disclose a copy of this document to the USPTO, or alternatively,
2. At minimum, tell the USPTO that Infinera has received an Redacted and that Infinera provides Redacted to Redacted

Our sur-reply to the USPTO is due this Friday. If we do not hear from you by Thursday, then we will assume you will not give this permission, and that Infinera will continue to withhold this information from the USPTO.

**Peter Tong**
**Russ, August & Kabat**
4925 Greenville Avenue, Suite 200 I Dallas, Texas 75206
Main +1 310 826 7474 I ptong@raklaw.com I www.raklaw.com

---

**From:** Vinci, Brianna <BVinci@duanemorris.com>
**Date:** Tuesday, August 1, 2023 at 4:08 PM
**To:** ptong@raklaw.com <ptong@raklaw.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>, ddacus@dacusfirm.com <ddacus@dacusfirm.com>, Opp.nextgen.nokia@raklaw.com <Opp.nextgen.nokia@raklaw.com>
**Cc:** nextgen@raklaw.com <nextgen@raklaw.com>
**Subject:** RE: NextGen: 5/30/23 Meet and Confer Summary/Follow up - RPI - Infinera

Peter,

In an effort to resolve your questions, we already told you that there has been no coordination on IPRs, even though that is a topic we are not required

to address in this case. Your requests continue to go beyond the scope of relevant discovery in this case and seek to encroach on applicable privileges and protections. Infinera will not entertain this inquiry.

Thank you,
Brianna

**Brianna Vinci**
**Associate**

**Duane Morris LLP**
**30 South 17th Street**
**Philadelphia, PA 19103-4196**
**P: +1 215 979 1198**
**F: +1 215 754 4983**

BVinci@duanemorris.com
www.duanemorris.com

---

**From:** ptong@raklaw.com <ptong@raklaw.com>
**Sent:** Monday, July 31, 2023 3:46 PM
**To:** Vinci, Brianna <BVinci@duanemorris.com>; Ben Wang <bwang@raklaw.com>; 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:** Re: NextGen: 5/30/23 Meet and Confer Summary/Follow up - RPI - Infinera

Hi Brianna,

I am writing to follow up on the status of the rolling production of sales and revenue information. Could you please provide an update on when we can expect anything beyond what Infinera has already produced?

Additionally, I want to write to seek some clarification regarding Infinera's RPI production. In view of you representation below, can you confirm that the following categories of documents do not exist?

1. Indemnity demands between Infinera and any of the other codefendants
2. Drafts of or comments on IPR documents between Infinera and any of the other codefendants
3. Meeting invites or emails between Infinera and any of the other codefendants for discussing the IPR's
4. Payment between Infinera and any of the other codefendants for searching for any prior art cited in the IPR's
5. Payment between Infinera and any of the other codefendants for any IPR related expenses such as attorney fees, filing fees, or expert fees
6. Discussions between Infinera and any of the other codefendants which prior art or expert to use in the IPR's
7. Joint defense agreement that relates to the IPR's between Infinera and any of the other codefendants

Please let me know for each category does not exist or whether it exists but is objected to.

**Peter Tong**
**Russ, August & Kabat**
4925 Greenville Avenue, Suite 200 I Dallas, Texas 75206
Main +1 310 826 7474 I ptong@raklaw.com I www.raklaw.com

---

**From:** Vinci, Brianna <BVinci@duanemorris.com>
**Date:** Tuesday, July 11, 2023 at 4:04 PM
**To:** ptong@raklaw.com <ptong@raklaw.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>, ddacus@dacusfirm.com <ddacus@dacusfirm.com>, Opp.nextgen.nokia@raklaw.com <Opp.nextgen.nokia@raklaw.com>
**Cc:** nextgen@raklaw.com <nextgen@raklaw.com>
**Subject:** RE: NextGen: 5/30/23 Meet and Confer Summary/Follow up - RPI - Infinera

Peter,

Regarding documents relating to indemnification, Infinera has collected and produced, for example, supplier agreements (including those with indemnification provisions). See INF-NEXTGEN_00120851, INF-NEXTGEN_00120977. Regarding documents relating to damages, Infinera is currently in the process of collecting and reviewing potentially responsive sales and revenue information for products identified by Infinera in response to NextGen's Common Interrogatory No. 1, and expects to complete its review and produce any relevant, non-privileged documents soon and thereafter on a rolling basis.

Regarding NextGen's request for discovery relating to alleged "coordinating and working on IPRs with the other defendants," Infinera has not coordinated and/or worked on any IPRs with any of the other defendants. Infinera, therefore, does not have any such information to produce. In any event, even if did, such information would be irrelevant to this district court litigation and could not be used in the PTAB proceeding under the Protective Order in this case.

Thank you,
Brianna

**Brianna Vinci**
**Associate**

**Duane Morris LLP**
**30 South 17th Street**
**Philadelphia, PA 19103-4196**
**P: +1 215 979 1198**
**F: +1 215 754 4983**

BVinci@duanemorris.com
www.duanemorris.com

---

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

**Sent:** Friday, July 7, 2023 11:26 AM
**To:** Vinci, Brianna <BVinci@duanemorris.com>; Ben Wang <bwang@raklaw.com>; 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:** Re: NextGen: 5/30/23 Meet and Confer Summary/Follow up - RPI - Infinera

Hi Brianna,

Could you provide a bit more clarification on what Infinera is and is not providing?
As to the "documents relating to indemnification and to damages," that Infinera is willing to produce, is Infinera's position that it will only provide this category of production for other entities, but not for Nokia, AT&T, or Fujitsu because "Infinera did not agree to produce indemnification and financial information relating to the other defendants"?

Finally, as to Infinera's refusal to provide all other requested discovery regarding "coordinating and working on IPRs with the other defendants," we interpret this to mean that Infinera will not provide: agreements to work together on the IPR's, meeting to discuss the IPR's, sharing of fees and resources for IPR, jointly searching for or selecting prior art, providing input on IPR drafts or strategy, coordinated IPR expert retention and work, and discussing the IPR in the context of indemnity for the accused products. Is this scope of understanding correct? We understand you've made a relevance objection and no privilege objection.

**Peter Tong**
**Russ, August & Kabat**
4925 Greenville Avenue, Suite 200 I Dallas, Texas 75206
Main +1 310 826 7474 I ptong@raklaw.com I www.raklaw.com

---

**From:** Vinci, Brianna <BVinci@duanemorris.com>
**Date:** Thursday, July 6, 2023 at 10:59 AM
**To:** ptong@raklaw.com <ptong@raklaw.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>, ddacus@dacusfirm.com <ddacus@dacusfirm.com>, Opp.nextgen.nokia@raklaw.com <Opp.nextgen.nokia@raklaw.com>
**Cc:** nextgen@raklaw.com <nextgen@raklaw.com>
**Subject:** RE: NextGen: 5/30/23 Meet and Confer Summary/Follow up - RPI - Infinera

Peter,

Your email contains misstatements that require clarification. Infinera did not agree to produce indemnification and financial information relating to the other defendants. Instead, Infinera stated that it would produce relevant "documents relating to indemnification and to damages." (*see* my email of June 9). Infinera has already produced some of this information (*see* INF-NEXTGEN_00120851, INF-NEXTGEN_00120977) and is continuing to collect and review potentially responsive information for production.

To the extent that NextGen now seeks information relating to alleged "coordinating and working on IPRs with the other defendants," such information is irrelevant to this district court litigation 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."). Accordingly, Infinera does not intend to produce such information, to the extent that any such information even exists.

Thank you,
Brianna

**Brianna Vinci**
**Associate**

**Duane Morris LLP**
**30 South 17th Street**
**Philadelphia, PA 19103-4196**
**P: +1 215 979 1198**
**F: +1 215 754 4983**

BVinci@duanemorris.com
www.duanemorris.com

---

**From:** ptong@raklaw.com <ptong@raklaw.com>
**Sent:** Wednesday, June 28, 2023 5:06 PM
**To:** Vinci, Brianna <BVinci@duanemorris.com>; Ben Wang <bwang@raklaw.com>; 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:** Re: NextGen: 5/30/23 Meet and Confer Summary/Follow up - RPI - Infinera

Hi Brianna,

We appreciate your clarification and look forward to the upcoming production by July 9 of indemnification and sales information related to the other defendants. I'm glad we were able to resolve some part of the discovery request.

In the meantime, I want to confirm the remaining part of the dispute. Is it still Infinera'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 this is still the case, NextGen will consider your July 9 production before seeking further relief.

**Peter Tong**
**Russ, August & Kabat**
4925 Greenville Avenue, Suite 200 I Dallas, Texas 75206
Main +1 310 826 7474 I ptong@raklaw.com I www.raklaw.com

---

**From:** Vinci, Brianna <BVinci@duanemorris.com>

**Date:** Friday, June 9, 2023 at 12:27 PM
**To:** ptong@raklaw.com <ptong@raklaw.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>, ddacus@dacusfirm.com <ddacus@dacusfirm.com>, Opp.nextgen.nokia@raklaw.com <Opp.nextgen.nokia@raklaw.com>
**Cc:** nextgen@raklaw.com <nextgen@raklaw.com>
**Subject:** RE: NextGen: 5/30/23 Meet and Confer Summary/Follow up - RPI

Hi Peter:

We'd like to clarify and resolve any confusion. We intend to produce documents relating to indemnification and to damages and are in the process of collecting them from our client. We expect to produce them within an month and will keep you updated. Your assertion that these documents "should have been produced already" is not consistent with the DCO, which requires substantial document production by 9/27/23.

Thank you,
Brianna

**Brianna Vinci**
**Associate**

**Duane Morris LLP**
**30 South 17th Street**
**Philadelphia, PA 19103-4196**
**P: +1 215 979 1198**
**F: +1 215 754 4983**

BVinci@duanemorris.com
www.duanemorris.com

---

**From:** ptong@raklaw.com <ptong@raklaw.com>
**Sent:** Friday, June 9, 2023 12:27 PM
**To:** Vinci, Brianna <BVinci@duanemorris.com>; Ben Wang <bwang@raklaw.com>; 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:** Re: NextGen: 5/30/23 Meet and Confer Summary/Follow up - RPI

Hi Brianna,

Because Infinera's position is that "Infinera will not produce discovery that is not relevant to the district court action," we remain at an impasse and will move to compel. Production should have been completed. A vague promise of indefinitely "considering" producing documents is unresponsive. Indeed, much of our requested discovery overlaps with damages-related discovery and should have already been produced.

**Peter Tong**
**Russ, August & Kabat**
4925 Greenville Avenue, Suite 200 I Dallas, Texas 75206
Main +1 310 826 7474 I ptong@raklaw.com I www.raklaw.com

---

**From:** Vinci, Brianna <BVinci@duanemorris.com>
**Date:** Friday, June 2, 2023 at 4:05 PM
**To:** 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>, ddacus@dacusfirm.com <ddacus@dacusfirm.com>, Opp.nextgen.nokia@raklaw.com <Opp.nextgen.nokia@raklaw.com>
**Cc:** nextgen@raklaw.com <nextgen@raklaw.com>
**Subject:** RE: NextGen: 5/30/23 Meet and Confer Summary/Follow up

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**

**Duane Morris LLP**
**30 South 17th Street**
**Philadelphia, PA 19103-4196**
**P: +1 215 979 1198**
**F: +1 215 754 4983**

BVinci@duanemorris.com
www.duanemorris.com

**From:** Ben Wang <bwang@raklaw.com>
**Sent:** Thursday, June 1, 2023 4:18 PM
**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 product

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 infringem

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

Confidentiality Notice: This electronic mail transmission is privileged and confidential and is intended only for the review of the party to whom it is addressed. If you have received this transmission in error, please immediately return it to the sender. Unintended transmission shall not constitute waiver of the attorney-client or any other privilege.