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**Re: ImagineAR, Inc. et al. v. Niantic, Inc., Case No. 1:24-cv-01252-JDW (D. Del.):
Plaintiffs' Deficient Discovery Responses and Production**

Counsel:

We write to follow up on significant deficiencies in Plaintiffs' discovery responses and production thus far. Plaintiffs decided to file this lawsuit, not Niantic and should have already collected the information needed for discovery in this case. There is no excuse for delay in producing documents and responding to discovery.

NIANTIC-1055
Niantic, Inc. v. Imagegear, Inc.
IPR2025-01273, IPR2025-01274
IPR2025-01275, IPR2025-01276

To date, Plaintiffs have produced only 436 documents. 392 are public documents that relate to features of Defendant's products, not ImagineAR. Moreover, before August 19, 2025, Plaintiffs had only produced **71** documents total, with one being marked confidential. ImagineAR's post-August production remains woefully deficient.

Notably missing from Plaintiffs' production are documents responsive to the vast majority of Niantic's requests for production, as outlined below. Plaintiffs' Interrogatory Responses also remain deficient, despite the parties meeting on June 9th to confer as to Plaintiffs' deficient production and Interrogatories, with Plaintiffs doing little to remedy those deficiencies since. *See* A. Ohlert 6/9/2025 Email to J. Lukas.

Please let us know when you are available for a meet and confer this week to discuss these issues.

I. Plaintiffs' Deficient Interrogatory Responses

a. Agreements From Our June Discussions

When we last discussed Plaintiffs' deficiencies in June, Plaintiffs took the position that they did not need to supplement **Interrogatory No. 1** until Niantic served its invalidity contentions. A. Ohlert 6/9/2025 Email to J. Lukas. Niantic served its Invalidity Contentions on August 28, 2025. Given claim construction is fast approaching, Niantic is entitled to a response to this Interrogatory, which seeks your position as to whether the written description and enablement requirements of 35 U.S.C. § 112 have been met. Please promptly supplement Interrogatory No. 1.

We also spoke in June regarding **Interrogatory No. 6**. We agreed Plaintiffs would supplement their response to clarify your litigation funder lacked decision-making authority. *Id.* Plaintiffs supplemented their response on July 8, explaining that 1000782839 Ontario Corporation has a financial interest that is contingent upon the results of the litigation. ImagineAR 1st Suppl. Resp. to 1st Interrogatories (No. 6), p.7. But Interrogatory No. 6 also seeks information related to attempts to secure funding that did not result in an agreement to fund, which, as we explained in June, extends to any valuations of the Asserted Patents exchanged as part of attempting to secure funding. Please supplement Interrogatory No. 6 to provide this information or provide the basis for your refusal.

b. Plaintiffs' Other Interrogatories

Plaintiffs supplemented their response to **Interrogatory No. 2** on May 30, 2025 to state "Plaintiffs' investigation and analysis to date has not shown that Plaintiffs ImagineAR, Inc. and Imagine AR, Inc. made, used, offered to sell, sold, or imported any products or services that embody the claims of the Patents-in-Suit." But Interrogatory No. 2 is not limited to Plaintiffs. Moreover, Plaintiffs' initial disclosures specify that the Named Inventors should be contacted through counsel for Plaintiffs, including Ray Sharma, the founder of XMG Studios, which originally filed for the Asserted Patents. Plaintiffs have access to the information requested, including through their dealings to acquire the Asserted Patents. Plaintiffs' supplemental

response thus remains deficient. Plaintiffs must supplement their response immediately to clarify what information they have related to the first disclosure, manufacture, use, offer, sale, or incorporation into a product of the technology of the Asserted Patents.

Similarly, in your May 30, 2025 supplement to **Interrogatory No. 7**, you stated “Plaintiffs further state that their investigation and analysis to date has not shown that they have sold any commercial embodiments of the claims of the Patents-in-Suit and any products marked with the Patents-in-Suit.” To the extent you contend anyone else beyond Plaintiffs had a relevant commercial embodiments of the claims of the Patents-in-Suit, your response is deficient and should be supplemented.

Plaintiffs’ May 30, 2025 supplement to **Interrogatory No. 8** states that “Once the Court enters a Protective Order, Plaintiffs will produce and identify additional agreements with information responsive to this Interrogatory.” The Court entered a protective order in this case three months ago, on June 4, 2025 (D.I. 48). Plaintiffs must immediately supplement Interrogatory No. 8.

II. Plaintiffs’ Deficient Production

When we met and conferred in June, we specifically discussed the below RFPs. Please provide an update as to each.

- We discussed that RFP Nos. 3 and 4 seek information related to the value of the Asserted Patents, as well as ImagineAR’s Rule 11 basis for filing suit. Plaintiffs suggested they would reconsider RFP Nos. 3 and 4. A. Ohlert 6/9/2025 Email to J. Lukas. Plaintiffs have not produced responsive documents or supported any basis for refusing to produce such documents. Moreover, Plaintiffs did not object to RFP No. 17, which seeks “any valuation or value attributed to any of the Asserted Patents.” Plaintiffs must immediately produce any documents related to the value of the Asserted Patents in your possession, including those exchanged with potential funders and/or third parties. Plaintiffs should have known these documents would be relevant and called for in discovery during their discussion with such parties prior to filing suit and should have been prepared to produce them.
- We discussed that we would revisit RFP Nos. 21 and 48 based on your Supplemental responses to Interrogatory No. 6. We previously discussed that these RFPs seek information related to valuations of the patents in any attempt to secure funding of Plaintiffs lawsuit. Again, Plaintiffs did not object to RFP No. 17, which seeks “any valuation or value attributed to any of the Asserted Patents,” which would include any valuations provided to third parties to demonstrate the purported value of the Asserted Patents. Courts routinely permit discovery into documents related to valuations of the patents, particularly when exchanged with third-parties who have not yet agreed to fund a Plaintiff’s case. *See, e.g., Acceleration Bay LLC v. Activision Blizzard, Inc.*, No. CV 16-453-RGA, 2018 WL 798731, at *1 (D. Del. Feb. 9, 2018) (granting discovery into communications with litigation funder because “communications were exchanged before Hamilton Capital had agreed to fund Plaintiff’s litigation” were prepared “with a ‘primary’ purpose of obtaining a loan, as opposed to aiding in possible future litigation”

and the “documents were provided before any agreement was reached between Plaintiff and Hamilton Capital, and before any litigation was filed.”); *Cirba Inc. v. VMWare, Inc.*, No. CV 19-742-LPS, 2021 WL 7209447, at *2 (D. Del. Dec. 14, 2021) (citing *TQ Delta LLC v. Comcast Cable Commns. LLC*, C.A. No. 15-611-RGA, D.I. 154) (granting discovery into documents provided for funders that “describe or explain the value of one or more of the patents-in-suit” and agreeing with Judge Andrews’ statements that “if plaintiffs are busy saying to investors, these patents are worth X, Y, or Z . . . plaintiff’s evaluation of the patents is certainly something that an expert would want to consider”). Plaintiffs must produce responsive documents immediately.

- We also discussed that based on your agreement to produce documents related to RFP No. 32, that would resolve the dispute as to RFP No. 36. Plaintiffs have still not produced responsive documents to either RFP and must do so immediately.

To date, Plaintiffs have made five document productions, yet Plaintiffs have not produced documents relevant to the vast majority of Defendant’s RFPs. The below summarizes Plaintiffs’ productions thus far:

- **IAR001** | served May 9, 2025 | 32 documents
 - This production consists of public documents related to the Asserted Patents (patents, file history, assignment records, etc.).
 - There is a single confidential document assigning the Asserted Patents from ImagineAR to its US counterpart.
- **IAR002** | served May 15, 2025 | 39 documents
 - These include Plaintiffs’ Complaint and First Amended Complaint, as well as public documents/videos related to the Accused Products
- **IAR003** | served Aug. 19, 2025 | 43 documents
 - These include an organization chart from ImagineAR (showing 5 people) and interim financial statements from Nov. 30, 2019 to January 29, 2025.
- **IAR004** | served Aug .19, 2025 | 300 documents
 - These are all public documents/videos relating to Defendants’ products.
- **IAR005** | served Aug .19, 2025 | 22 documents
 - These are all public videos related to the Accused Products.

Plaintiffs previously agreed to produce responsive documents to RFP Nos. 1, 2, 5-20, 22-28, 30-35, 38-47, 49, and 50. ImagineAR 5/14/25 Letter to Niantic. At best, Plaintiffs’ documents thus

far are relevant only to Niantic RFPs 1, 2, 5, and to a lesser extent to RFP Nos. 26, 31, and 42-43 in that they relate, at a high-level, to infringement and/or Niantic. Yet Plaintiffs' production remains incomplete for even those few RFPs. For instance, RFP No. 1 seeks documentation sufficient to determine to "any parent, subsidiary, or other affiliated corporations," and RFP No. 5 seeks annual and quarterly financial reports going back to 2017.

Notably, Plaintiffs have still not produced any documents related to at least¹:

- Plaintiffs' decision to sue Niantic and meetings/negotiations/agreements related to Niantic's alleged infringement (RFP Nos. 3, 13, 27);
- Any financial interest in or distribution of the proceeds/royalties/revenues from this lawsuit, should Plaintiffs secure a damages award (RFP Nos. 4, 11, 48);
- Demand for/value of the Asserted Patents, including any evaluations of value of the Asserted Patents or their technology, or agreements related to IP/research developed by Plaintiffs or the named inventors, including valuations provided to potential funders (RFP No. 9, 16, 17, 21);
- Patent settlement/licenses/negotiations relevant to Plaintiffs' damages theories, including Plaintiffs' practices and policies for licensing patents (RFP Nos. 8, 12, 14);
- Agreements, licenses, documents, or communications exchanged between Plaintiffs and XMG Studios and/or the named inventors relating to the Asserted Patents (RFP Nos. 6, 7, 10, 15);
- Communications/documents with non-parties related to the Asserted Patents or this case (RFP Nos. 32, 36);
- Plaintiffs' business plans and financial forecasts or reports (RFP No. 47);
- Sales/public disclosure/use of any products embodying the Asserted Patents, or conception/reduction to practice/prosecution of the Asserted Patents (RFP No. 37, 38, 40, 41, 46)

Please immediately identify, for each category of RFPs listed above, whether Plaintiffs intends to produce documents; to the extent Plaintiffs do not intend to produce responsive documents, please confirm before our meet and confer whether responsive documents exist and, if so, identify caselaw supporting your position that Defendants are not entitled to the requested information.

¹ This is not an exhaustive list of the Niantic RFPs for which Plaintiffs have not produced documents.

Regards,

/s/ Andrew T. Ohlert

Andrew T. Ohlert