

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IMAGINEAR, INC., ET AL.,

Plaintiffs,

v.

NIANTIC, INC. D/B/A NIANTIC LABS,

Defendant.

Case No. 1:24-cv-01252-JDW

ORDER

AND NOW, this 11th day of September, 2025, upon consideration of Plaintiffs ImagineAR, Inc. and Imagine AR, Inc.'s (together "IAR") Motion To Compel (D.I. 62), and following a call with Counsel for the Parties, I note as follows.

1. Federal Rule of Civil Procedure 34(a) requires litigants to produce responsive documents in their "possession, custody, or control[.]" Fed. R. Civ. P. 34(a)(1). As the party seeking to compel Niantic, Inc. to produce documents pertaining to the Skatrix product, IAR "bears the burden of establishing the opposing party's [possession, custody, or] control over those documents." *Princeton Digital Image Corp. v. Konami Digital Ent. Inc.*, 316 F.R.D. 89, 90 (D. Del. 2016). IAR has not met its burden.

2. IAR has not demonstrated that Niantic has any Skatrix documents in its possession or custody. Instead, it contends that Niantic must produce the documents

because it “has control over its co-developer, Reality Crisis[,]” which possesses the Skatrix documents. (D.I. 62 at 5.)

3. “[D]ocuments are in the ‘control’ of a litigating party if that party has the ‘legal right to obtain the documents required on demand’ from the non-party corporation.” *Princeton Digital*, 316 F.R.D. at 90 (quotation omitted). For example, courts may find the requisite control where “the litigating corporation is the parent of the corporation possessing the records” or where a parent or sister company in possession of the records is an “alter ego” of the litigating corporation. *Gerling Int’l Ins. Co. v. Comm’r*, 839 F.2d 131, 140, 141 (3d Cir. 1988). In short, courts will not permit a party “to deny control for purposes of discovery” where the relationship is such that the litigant “can secure documents of the [third party] to meet its own business needs” *Id.* at 141.

4. There is no evidence (or argument) that Reality Crisis is Niantic’s subsidiary or its alter-ego. Nor is there any evidence that the relationship between the two companies permits Niantic to obtain documents from Reality Crisis in the ordinary course of its business. The Lightship Collaboration Agreement between Niantic and Reality Crisis does not establish Niantic’s legal right to obtain the Skatrix documents from Reality Crisis.

5. The Collaboration Agreement provides that Reality Crisis (*i.e.*, the “Developer”) “will collaborate on its planning and development road map for the Developer Application [(i.e. Skatrix)] with Niantic, and any relevant information about the Developer Application that Niantic reasonably requests, and upon the release, the

Developer Application will materially conform to Developer and Niantic's plans." (Collaboration Agreement at Section 1.a.v.) Though not a model of clarity, this provision does not authorize Niantic to obtain documents from Reality Crisis for purposes of this lawsuit.

6. The provision consists of two independent clauses, the second of which (which beings "and upon the release") has no application in this case. As for the first independent clause, it contains a single verb—"collaborate." (It also includes the word "requests," but that is the verb in a subordinate clause that follows the word "that.") This verb must apply to the entirety of the first clause; otherwise, the entire provision would make no sense. *See In re Stone & Webster, Inc.*, 558 F.3d 234, 246 (3d Cir. 2009) ("It is a general rule of contract construction to 'consider the entire instrument and attempt to reconcile all of its provisions in order to determine the meaning intended to be given to any portion of it.'" (quotation omitted)).

7. At most, then, the Collaboration Agreement requires Reality Crisis to "collaborate on ... any relevant information about the Developer Application that Niantic reasonably requests[.]" (Collaboration Agreement at Section 1.a.v.) This makes sense in light of the second independent clause, which makes clear that after the release of Skatrix, it "will materially conform to [Reality Crisis] and Niantic's plans." (*Id.*) Read in this overall context, it is clear that this provision pertains to collaboration and sharing information during the development of Skatrix, so that the final product reflects both co-developers'

vision. It does not (as IAR contends) authorize Niantic to demand technical information from Reality Crisis in the ordinary course of business or for purposes of this lawsuit. Indeed, this provision bears almost no resemblance to the broad disclosure obligations at issue in *LG.Philips LCD Co. v. Tatung Co.*, No. 04-cv-343, 2007 WL 9771352, at *1, n.1 (D. Del. July 3, 2007). Thus, IAR has failed to establish that Niantic has a legal right to obtain the Skatrix documents.

Therefore, and for the reasons set forth during the call with Counsel for the Parties, it is **ORDERED** that IAR's Motion To Compel (D.I. 62) is **GRANTED IN PART** and **DENIED IN PART** as follows.

1. The Motion is **GRANTED** with respect to IAR's request to compel Niantic, Inc. to produce: (a) technical documents (aside from documents pertaining to the Skatrix produce); (b) source code; (c) documents responsive to Categories¹ i, ii, iii, v, vi, and viii; and (d) supplemental responses to Interrogatory Nos. 2, 5, 7, 9, and 11. Niantic shall produce this discovery on or before September 30, 2025.

2. The Motion is also **GRANTED** with respect to IAR's request to compel Niantic to produce prior art search reports. However, rather than produce the actual search reports themselves, on or before September 26, 2025, Niantic shall produce a table to IAR that identifies: (a) any prior art references that Niantic or its agent(s) discovered

¹ I refer to "Categories" as defined in IAR's Motion.

relate to any of the Patents-in-Suit²; (b) the date on which Niantic or its agent(s) discovered the prior art; and (c) who at Niantic or which agent discovered the prior art.

3. The Motion is **DENIED** with respect to IAR's request to compel production of technical information pertaining to Skatrix; and

4. IAR shall file the Collaboration Agreement on the docket on or before September 17, 2025.³

BY THE COURT:

/s/ Joshua D. Wolson

JOSHUA D. WOLSON, J.

² Given my ruling on Niantic's motion to dismiss, "Patents-in-Suit" refers to U.S. Patent Nos. 10,946,284; 11,484,797; 11,666,827; and 12,070,691.

³ To the extent IAR contends that sealing is warranted, it shall file a contemporaneous motion to seal.