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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GOPRO, INC.,
Plaintiff,
v.
360HEROS, INC.,
Defendant.

Case No. [16-cv-01944-SI](#)

ORDER RE: DISCOVERY

Re: Dkt. No. 79

The Court has received the parties' joint discovery letter. Dkt. No. 79. In their letter, the parties dispute the adequacy of certain of 360Heros' document productions. GoPro seeks an order compelling 360Heros: (i) to produce all relevant third-party communications, including those related to design, testing, manufacturing, and others; (ii) to produce all prior art and related documents in 360Heros' possession; and (iii) to provide written confirmation that 360Heros' production is complete with respect to Requests 7, 9, 27, 37, 38, 42, 70, 71, 72, 82, and 83. GoPro further seeks its fees and costs for filing this joint letter.

First, with respect to documents related to third parties, GoPro argues that 360Heros has omitted relevant materials. For example, GoPro states that, aside from invoices, 360Heros has not produced any materials exchanged with prototyping and manufacturing companies, and that 360Heros has not provided communications or documents related to the marketing of its camera rigs. 360Heros argues that it has produced communications with third-parties, but states that the other items GoPro seeks are not linked to specific requests. This smacks of gamesmanship. To the extent that 360Heros has responsive, relevant documents in its custody or control, it must produce them.

Second, GoPro seeks additional prior art and related documents in 360Heros' possession that it has not produced. 360Heros argues that it has produced the patent file history for the '019 patent and for related foreign applications, and that even if it has more in its possession, it should not have to produce it. 360Heros relies on the patent local rules in this District to suggest that

1 GoPro is confined to discovery related to prior art disclosed in its Patent Local Rule 3-3 invalidity
2 contentions, but nothing in those rules so provides. 360Heros also states that the requested
3 discovery is not relevant under Federal Rule of Civil Procedure 26(b)(1), but fails to explain why.
4 Any prior art in 360Heros' possession, and related documents, is undoubtedly relevant in this case.
5 Discovery need only be relevant, and "need not be admissible in evidence to be discoverable."
6 Fed. R. Civ. P. 26(b)(1). To the extent 360Heros has additional prior art or related documentation
7 in its possession or control, it is ORDERED to produce those materials to GoPro **within ten days**
8 **of the date of this order**, or otherwise certify in writing that it has no further responsive materials.

9 Finally, 360Heros represents in the joint letter that it does not have any additional
10 responsive documents to GoPro's Requests 7, 9, 30, 42, 70, and 72. But 360Heros says nothing
11 with respect to Requests 27, 37, 38, 71, 82, or 83, except that GoPro has not adequately explained
12 its position as to each separate request. The parties' opposing statements in the joint letter are
13 obfuscatory rather than helpful. Nevertheless, at this time, the Court ORDERS as follows:


14 To the extent it has not done so, 360Heros is ORDERED to produce, **within ten days of**
15 **the date of this order**: (i) all non-privileged, responsive documents in its possession with respect
16 to GoPro's Requests 7, 9, 27, 37, 38, 42, 70, 71, 72, 82, and 83; and (ii) any additional prior art
17 and related documents in its possession. 360Heros is further ORDERED to provide written
18 confirmation to GoPro that these productions are complete **within ten days of the date of this**
19 **order**. If GoPro remains unsatisfied, it may bring a motion to compel with specific details as to
20 why 360Heros' productions remain incomplete.

21 At this time, GoPro's request for fees and costs is DENIED. If a motion to compel
22 becomes necessary, the Court may consider shifting fees.

23 This order resolves Dkt. No. 79.

24 **IT IS SO ORDERED.**

25 Dated: July 27, 2017

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28 SUSAN ILLSTON
United States District Judge