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ESTTA Tracking number: **ESTTA1202241**

Filing date: **04/11/2022**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	92070611
Party	Defendant Schneider Electric USA, Inc.
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Date	04/11/2022
Attachments	Schneider Opposition to Willdan Motion to Compel.pdf(103136 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

The Weidt Group, Inc. Willdan Energy Solutions, Petitioners,	)))	
v.	)	Cancellation No. 92070611
Schneider Electric USA, Inc., Respondent.	))	

RESPONDENT'S OPPOSITION TO PETITIONERS' MOTION TO COMPEL

Respondent, Schneider Electric USA, Inc. ("Schneider" or "Respondent") submits this Opposition to Petitioners, The Weidt Group, Inc. and Willdan Energy Solutions' ("Petitioners") Motion to Compel ("Motion"). In short, Petitioners are not satisfied with limiting discovery to the facts pertinent to the sole issue in this proceeding: likelihood of confusion between the parties' respective registered marks. Their Motion seeks to expand discovery far beyond that limited scope. Indeed, as shown below, Respondent's discovery responses, document production and its answers to Petitioners' request for admission are more than sufficient to allow the proceeding to move to the trial phase.

PRELIMINARY STATEMENT

This proceeding involves Petitioners' claim of likelihood of confusion between its registrations of:

- **NEO NET ENERGY OPTIMIZER**, Reg. No. 4,429,793 for "Providing on-line non-downloadable software for use in building and analyzing energy models" in Class 42; and
- **NEO**, Reg. No. 5,964,643 for "Providing on-line non-downloadable software for use in building and analyzing energy models, excluding software in the fields of medical or genetic testing and medical or genetic research" in Class 42;

and Respondent's registration of:

- **NEO NETWORK**, Reg. No. 5,638,377 for:

- Class 09: Mobile application software used to provide information regarding green energy and clean energy technology, namely, providing business information and referrals in the fields of clean energy projects, agreements, deals, events, conventions, advice, and best practices for companies, clean energy developers, building owners, utilities, and government entities; software platform for use in asset optimization, industrial automation, machine diagnostics, and optimization of industrial, manufacturing and infrastructure management processes; software applied to the protection, control, management, surveillance and supervision of electric installations and networks and communication networks;

- Class 35: Providing an interactive website featuring business information and referrals in the fields of clean energy projects, agreements, deals, events, conventions, advice, and best practices for companies, clean energy developers, building owners, utilities, and government entities; and

- Class 42: Providing an interactive website featuring technology that allows companies, clean energy developers, building owners, utilities, and government entities to facilitate business transactions by sharing and obtaining information, introductions and referrals in the fields of clean energy technology, projects, agreements, deals, events, conventions, advice, best practices, regulations, and laws, said interactive website not for use in building and analyzing energy models.

In short, Petitioners provide an online energy modeling tool for individual buildings. *See* https://netenergyoptimizer.com/. Conversely, Schneider's NEO NETWORK is a members-only renewable and clean energy marketplace designed to support its members with trusted experts, viable projects and technologies, and exclusive market intelligence to enable and accelerate their clean energy transaction decisions. https://neonetworkexchange.com/landing_page/main.

Despite the fact that Schneider has produced hundreds of pages of documents showing its adoption, development, consideration and use of NEO NETWORK, Petitioners demand that Schneider produce categories of documents that have little to no bearing upon the narrow issues at hand. Indeed, Petitioners' Motion reveals the extent to which it has already used discovery to harass Schneider with repeated, gratuitous requests that are disproportional to the claims and issues in this proceeding. For example, Petitioners assert that Schneider should produce "all"

documents related to "Station A", a third-party vendor that offers software to NEO NETWORK members to help them find opportunities to install solar or battery storage systems, which is entirely unrelated to Schneider's offerings under the NEO NETWORK mark, and is irrelevant as it is clearly labeled a "Station A" product.

As set forth below, due to the limited nature of TTAB proceedings, Petitioners' discovery requests and requests to admit at issue here have been answered sufficiently, and otherwise seek documents and information that would provide little or no additional benefit to determining likelihood of confusion. Accordingly, Petitioners' Motion should be denied in its entirety.

STATEMENT OF FACTS

I. This Proceeding

Despite having over three years and three sets of written discovery requests, Petitioners waited until after the close of discovery to file this Motion. This dispute began on February 17, 2019, when Petitioners filed this cancellation. (1 TTABVUE.) After extensive motion practice, discovery opened on January 20, 2020. (12 TTABVUE.) On April 16, 2020, Petitioners served upon Respondent their First Set of Written Discovery. On September 22, 2021, Petitioners served their Second Set of Written Discovery upon Respondent. Then on December 23, 2021, Petitioners served upon Respondent their Third Set of Interrogatories. Finally, on December 27, 2021, Petitioners served upon Respondent their Third Set of Requests for Admission.

Schneider has properly responded to each of Petitioner's discovery requests. By way of example, below is a sampling of the documents Schneider has produced in this proceeding:

- a 2016 press release on the launch of Schneider's NEO NETWORK platform;
- a 2018 article highlighting Schneider's expanded renewable and clean energy offerings;

- Schneider's 10-page 2020 Cleantech Marketing Plan;
- a screenshot of a NEO NETWORK global view of detailed information, organized by country, regarding renewable energy opportunities;
- Schneider's 16-page marketing brochure for its NEO NETWORK platform;
- A 2015 internal Schneider email identifying the top choices for naming the clean and renewable energy platform Schneider ultimately named "NEO NETWORK"; and
- two screenshots of the Station A application available to members of the NEO NETWORK.

These documents, among others produced by Respondent, along with Schneider's interrogatory responses, answers to Petitioners' requests to admit, as well as the publicly available information about Schneider's use of the NEO NETWORK, provide Petitioners with sufficient information regarding the key issues surrounding Schneider's use of the NEO NETWORK mark such that Petitioners would only be obtaining duplicative and superfluous information and documents were its Motion to be granted. They also highlight how different Schneider's NEO NETWORK offerings are from Petitioners' energy modelling software.

To the extent Petitioners believe they are entitled to additional information or question Schneider's efforts to search for responsive documents, they had the opportunity to depose Schneider's employees. For reasons unknown, Petitioners never sought any such depositions. Further, Petitioners failed to issue any subpoenas in this proceeding, including on Station A, about whom Petitioners ask Schneider in many of their requests at issue here. Petitioners' failure to take any depositions or issue even one subpoena belie the arguments that are implicit in their Motion, namely, that they need additional information to determine the facts underpinning this proceeding.

ARGUMENT

A. Petitioners' Motion to Compel Seeks Discovery Far Beyond the Scope of the Issues in This Cancellation Proceeding.

Petitioners' Motion asks Schneider to respond to overly broad and irrelevant interrogatories and produce redundant and irrelevant documents, many originating from a third party, which have no bearing on the issues in this proceeding. Schneider has specifically objected to Petitioners' additional discovery requests on a number of grounds, including that: 1) the demands are overly broad and unduly burdensome; 2) the demands seek information that is not reasonably relevant to this dispute; 3) the demanded information was readily available to Petitioners; and 4) the demanded information was in the possession of a third party, which Petitioners should have subpoenaed. Schneider's objections to Petitioners' written discovery are fully justified under the circumstances of this case.

1. Petitioners' Demand For Additional Documents and Information Is Overly Broad and Unduly Burdensome and Irrelevant

The general scope of discovery that may be obtained in inter partes proceedings before the Board is governed by Fed. R. Civ. P. 26(b)(1). Parties may not engage in "fishing expeditions" and must act reasonably in framing discovery requests. The parties are expected to take into account the principles of proportionality with regard to discovery. The scope of discovery in Board proceedings is generally narrower than in court proceedings. *Emilio Pucci International BV v. Sachdev*, 118 USPQ2d 1383, 1386 (TTAB 2016) (Board expects parties to take into account the principles of proportionality with regard to discovery); *Domond v. 37.37, Inc.*, 113 USPQ2d 1264, 1268 (TTAB 2015) (Board applied proportionality principle to interrogatories, document requests and requests for admission).

In this regard, requests for "any and all" documents can be "so overly broad that in asking for everything under the sun, they ask for nothing in specific." *Stephens v. City of Chicago*, 203 F.R.D. 353, 360 (N.D. Ill. 2001). When a party makes such overly broad and

unduly burdensome requests, denial of that party's motion to compel discovery is appropriate. *See id*. at 364 (denying motion to compel discovery of documents subject to overly broad, unduly burdensome requests); *Baxter Int'l, Inc. v. Cobe Labs, Inc*., 1992 WL 211075 at *3 (N.D. Ill. 1992) (same).

Further, Fed. R. Civ. P. 26(b)(1) provides that only relevant information is discoverable. Petitioners' discovery requests here are irrelevant on multiple fronts. First, when a "document request is overly broad in scope and time [it], therefore, seeks wholly irrelevant matter." *Stephens*, 203 F.R.D. at 359 (N.D. Ill. 2001). Second, "the object of inquiry must have some evidentiary value before an order to compel disclosure of otherwise inadmissible material will issue." *Piacenti v. General Motors Corp.*, 173 F.R.D. 221, 223 (N.D. Ill. 1997) *citing Baxter Int'l, Inc.*, 1992 WL 211075 at *2 (N.D. Ill. 1992). Courts have recognized that "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility should not be misapplied so as to allow fishing expeditions in discovery." *Id*. at 224. When a party makes irrelevant discovery requests, denial of that party's motion to compel discovery is appropriate. See id. at 226.

This entire dispute centers on whether there is a likelihood of confusion between Petitioners' NEO and NEO NET ENERGY OPTIMIZER marks and Schneider's NEO NETWORK mark. Schneider has already produced over 600 pages of documents relating to its adoption, development, consideration and use of the NEO NETWORK mark. As identified above, Schneider has produced documents and information sufficient for Petitioners to determine this question. Nonetheless, Petitioners are demanding information and documents unnecessary and unrelated to the issues in this proceeding. Some examples of Petitioners' overly broad and unduly burdensome discovery requests include:

Document Request No. 21. "All documents that demonstrate Respondent's promotion of Respondent's EcoStruxure solution through the NEO NETWORK platform."

Document Request No. 28. "All documents concerning energy efficiency solutions promoted by Respondent in connection with the NEO NETWORK platform."

Interrogatory No. 8. "Identify all members of the NEO NETWORK."

Interrogatory No. 9. "Identify all solution providers that participate in the NEO NETWORK."

Interrogatory No. 34. "Identify with specificity all material data, including individual geospatial characteristics, that is analyzed by the Station A technology promoted through the NEO Network platform."

Schneider's EcoStruxure IT software (Petitioners' Document Request No. 21) a cloud-based Data Center Infrastructure Management (DCIM) software platform that provides insight into the status of your data center, network closets and branch IT infrastructure, is unrelated to Petitioners' online energy modeling tool and the issues underpinning this opposition. https://ecostruxureit.com/what-is-ecostruxure-it/. Additionally, Schneider offers this software under the EcoStruxure trademark, and not the NEO NETWORK mark. Finally, the potential number of documents responsive to Petitioners' request is enormous.

Energy efficiency solutions (Petitioner's Document Request No. 28) related to Schneider's NEO NETWORK platform could include every single document related to the NEO NETWORK platform as it is a community of multi-national organizations and corporations focused on clean energy solutions, including the improvement of their energy efficiencies. Such a request is amorphous, overly board and ultimately irrelevant to the evaluation of likelihood of confusion between the parties' marks.

Similarly, the identity of "all members of NEO NETWORK" or "all solution providers that participate in the NEO NETWORK" (Petitioners' Document Request Nos. 8 and 9) is overly broad and has no bearing on this opposition. Neither the members nor the solution providers that participate in the NEO NETWORK platform have any relevance to Schneider's use of the NEO NETWORK mark or its presentation to the public or potential customers. Petitioners have made no showing why this information would be relevant to the determination of likelihood of confusion. In seeking this information, Petitioners merely make an attempt to harass Schneider and, potentially, the members and solution providers within the NEO NETWORK platform.

Finally, as discussed in depth below, Schneider does not possess documents related to Station A, one of the NEO NETWORK vendors, including all material data Station A analyzes to provide its services to NEO NETWORK members. Only Station A possesses those documents. (Petitioners' Document Request No. 34).

Producing all of this information and documents in response to Petitioners' overly broad requests would be unduly burdensome for Schneider, especially considering the irrelevancy of this information for this proceeding. As in *Stephens*, "[i]t is clear from such overly broad discovery requests that plaintiff seeks to make discovery so onerous and burdensome in terms of manpower, costs, and the general disruption to the defendants' business so as to coerce a settlement." *Stephens*, 203 F.R.D. at 358 (N.D. Ill. 2001); *See also Luehrmann v. Kwik Kopy Corp.*, 2 USPQ2d 1303, 1305 (TTAB 1987) (parties should seek only discovery which is proper and relevant to the specific issues involved in the case); *Dow Corning Corp. v. The Doric Corp.*, 183 USPQ 377, 378 (TTAB 1974) ("tremendous and prolonged discovery" which lacked specificity and was "too comprehensive in scope" not warranted). Therefore, Petitioners' unreasonable, overly broad requests should be denied.

The Board expects parties to take into account principles of proportionality in discovery. *Emilio Pucci Int'l BV v. Sachev*, 118 U.S.P.Q.2d 1383, 1386 (T.T.A.B. 2016). Accordingly, "[a] reasonably representative sample of some items is sufficient where there are so many items as to make the responding party's task burdensome." *Sunkist Growers, Inc. v. Benjamin Ansehl Co*. 229 U.S.P.Q. 147, 148 (T.T.A.B. 1985); *see also Ga.-Pac. Corp. v. Great Plains Bag Co*., 190 U.S.P.Q. 193, 196 (T.T.A.B. 1976) "Respondent's discovery needs should be adequately met by the identification by petitioner of only so many of these documents which tend to establish the answers to respondent's questions.") As identified above, Petitioners' discovery requests have asked for information irrelevant to this proceeding and/or are so voluminous that they request every document related to Schneider's NEO NETWORK platform.

2. Schneider's Purported Discovery Deficiencies

Petitioners claim several deficiencies with Schneider's discovery responses. In order to place Petitioners' current complaint in the proper context, a sampling of the disputed requests and Schneider's written responses and objections thereto are described in detail below.

Petitioners first complain about Schneider's response its Document Request No. 25:

Petitioners Request No. 25: "Screenshots of all software that demonstrate Respondent's use of the NEO NETWORK mark in connection with each aspect of the identification of goods description listed in International Class 9 for Respondent's Registration."

Schneider's Response: "Respondent objects to Request No. 25 to the extent it seeks information protected discovery by the attorney-client privilege and/or the work-product doctrine. Subject to and without waiving the foregoing general and specific objections, Respondent will produce representative, responsive, non-privileged documents to the extent they exist and are in Respondent's custody or control."

On December 22, 2022, Schneider complied with this request by producing screenshots of its use of the NEO NETWORK mark directly relevant to its registered goods and services, namely "green energy and clean energy technology, namely, providing business information and

referrals in the fields of clean energy projects, agreements, deals, events, conventions, advice, and best practices for companies, clean energy developers, building owners, utilities, and government entities; software platform for use in asset optimization, industrial automation, machine diagnostics, and optimization of industrial, manufacturing and infrastructure management processes; software applied to the protection, control, management, surveillance and supervision of electric installations and networks and communication networks." The produced screenshots provide Petitioners with sufficient information related to Schneider's offerings and use of its mark with those offerings.

Petitioners next identify its Document Request No. 29 and Schneider's response thereto as another example of Schneider's purported deficient responses, specifically:

Petitioners Request No. 29: "A representative sample of reports generated by the Station A technology available through the NEO NETWORK platform."

Schneider's Response: "Respondent objects to Request No. 29 to the extent it seeks information protected discovery by the attorney-client privilege and/or the work-product doctrine. Subject to and without waiving the foregoing general and specific objections, Respondent will produce representative, responsive, non-privileged documents to the extent they exist and are in Respondent's custody or control."

Here, Petitioners' request relates to services provided to NEO NETWORK members by a third-party vendor under its own mark: STATION A. As Schneider set forth, the information sought by Petitioners has no bearing on the issues in this proceeding because STATION A is a product offered by a third party to members of the NEO NETWORK platform. That is, the goods and services offered under the STATION A mark both are not offered by Schneider under the NEO NETWORK mark and information about those goods and services would be in Station A's possession not Schneider's. Schneider's relationship with Station A is akin to Facebook's relationship with its many third-party vendors that provide offerings to Facebook's members within that platform. Simply because a third-party vendor offers certain goods or services under

its own mark to members of a platform does not mean the owner of the platform offers those goods and services. Accordingly, the services offered under the STATION A mark are not offered by Schneider, so discovery about them from Schneider is not relevant to this proceeding. The same points apply to Schneider's responses to Petitioners' Interrogatory Nos. 27, 30, 33, 34, and Document Request No. 23.

Petitioners next complain about Schneider's reliance on Rule 33(d) for a number of its interrogatory answers, but fail to point out that Schneider provided information and documents in response to Petitioners' relevant interrogatories, 19-26, 28, 31-33. For example:

Petitioners Interrogatory No. 20: "Identify all documents that Respondent is aware of that support Respondent's claim that Petitioners "are not using NEO for any services besides a webbased software program that calculates the cost-effectiveness of HVAC systems for a particular building project."

Schneider's Response: "Respondent objects to Interrogatory No. 20 on the ground that it is overly broad, unduly burdensome, and not proportional to the needs of the case because it seeks the production of "all" documents. Respondent further objects to this interrogatory on the basis that the requested information is readily available to Petitioners, including from their own document production and prior website.

Subject to and without waiving the foregoing general and specific objections, Respondent states that it will identify and produce documents, including Bates Nos. Pet00037 and Pet00072, in accordance with Fed. R. Civ. P. 33(d) from which Petitioners can derive an answer to this Interrogatory and will supplement this interrogatory response as information becomes available.

As set forth in its response, Schneider identifies documents responsive to this interrogatory (Bates Nos. Pet00037 and Pet00072). Moreover, as Schneider identified in the response itself, the information requested in this interrogatory must be in Petitioners' possession, as the interrogatory's focuses on Petitioners' alleged overstatement of the scope of their services. Finally, Schneider stated that it would supplement its response should additional information become available – Petitioners did not supplement their responses or document production in the several years of discovery in this proceeding, so Respondent did not obtain any further

documents or information on point. The same points apply to Schneider's responses to Petitioners' Interrogatory Nos. 19, 21-26, 28, 31-33 for its reliance on Rule 33(d) and its responses to Petitioners' Interrogatory Nos. 19-26, relating to the allegations in Schneider's counterclaim.

3. Schneider's Answers to Petitioners' Requests to Admit are Sufficient

Finally, Petitioners complain about certain of Schneider's answers to eight of Petitioners' requests to admit ("RTA"). However, Schneider's answer to Petitioners' RTA are proper and comply with the federal rules. Pursuant to Fed. R. Civ. P. 36(a)(4):

> If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

RTA Nos. 47 and 48 highlight Schneider's good faith compliance with the federal rules. Specifically:

Request No. 47: "Admit that Respondent made the following statement on its website 'Streamlines connections with solution providers and accelerates the most attractive opportunities towards net zero buildings'."

Schneider's Answer: "Respondent objects to Request No. 47 on the grounds that the phrase "its website" is vague, ambiguous, and overly broad.

Subject to and without waiving the foregoing general and specific objections and to the extent that Respondent understands this request Respondent admits that the statement is reflected on https://perspectives.se.com/news/schneider-electric-s-neo-network-announces-collaboration-with-station-a-for-new-ai-based-der-calculator."

Request No. 48: "Admit that Respondent made the following statement on its website 'NEO Network and Station A share a similar mission to accelerate climate action with cleantech solutions. Through this collaboration, NEO Network will leverage Station A's technology, which

automatically evaluates the geospatial characteristics, business information, grid constraints, and electricity costs of any U.S. or Ontario building to proactively generate clean energy recommendations. NEO Network members will seamlessly gain an independent view of onsite clean energy opportunities—without upfront data—for their buildings to accelerate their energy goals, estimate savings potential, and increase resilience on the journey to net zero.'"

Schneider's Answer: "Respondent objects to Request No. 48 on the grounds that the phrase "its website" is vague, ambiguous, and overly broad.

Subject to and without waiving the foregoing general and specific objections and to the extent that Respondent understands this request Respondent admits that the statement is reflected on https://perspectives.se.com/news/schneider-electric-s-neo-network-announces-collaboration-with-station-a-for-new-ai-based-der-calculator."

Schneider's answers to these requests are proper and correct. As provided by, Fed. R. Civ. P. 36(a)(4) states, "and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest". Here, Petitioners failed to identify which of Schneider's websites were being referred to in the RTAs. As Schneider owns many websites, in good faith, Schneider clarified which of its numerous websites contained the statements in each of Petitioners' requests before admitting to them.

Schneider's answers to RTA Nos. 33 and 36 also demonstrate its full compliance with the federal rules.

Request No. 33: "Admit that Respondent's NEO NETWORK platform provides information that helps users identify potential energy usage reduction measures for buildings."

Schneider's Answer: "Respondent objects to Request No. 33 on the grounds that the phrase 'potential energy usage reduction measures' is vague, ambiguous, and overly broad.

Subject to and without waiving the foregoing general and specific objections and to the extent that Respondent understands this request, Respondent admits that it provides its members with information to allow them to adopt clean energy solutions for their buildings. Respondent's platform is designed to help users identify replacement sources of energy and not necessarily a reduction in energy usage. Therefore, Respondent denies the remainder of this Request."

Request No. 36: "Admit that some of the information provided through the NEO NETWORK platform includes solutions for more efficient use of electricity for buildings."

Schneider's Answer: "Respondent objects to Request No. 36 on the grounds that the phrase "solutions for more efficient use of electricity for buildings" is vague, ambiguous, and overly broad.

Subject to and without waiving the foregoing general and specific objections and to the extent that Respondent understands this request, Respondent admits that it provides its members with information to allow them to adopt various clean energy solutions for their buildings. Respondent's platform is designed to help users identify replacement sources of energy and not necessarily a more efficient use of electricity for buildings. Therefore, Respondent denies the remainder of this Request."

Due to the inarticulate wording of Petitioners RTAs 33 and 36, Schneider could have outright denied these two requests. Schneider, however, complying with Fed. R. Civ. P. 36(a)(4), provided context before it admitted a portion of the requests while it qualified/denied the remaining portion.

Schneider's answers to Petitioners' RTA Nos. 49, 57 and 58 are similarly sufficient.

Request No. 49: "Admit that Respondent has referred to a DER Calculator offered as part of Respondent's Goods and Services as "the NEO Network DER Calculator".

Schneider's Answer: "Subject to and without waiving the foregoing general objections, Respondent admits that it has referred to a DER Calculator offered as part of Respondent's Goods and Services as "the NEO Network DER Calculator" powered by Station A."

Request No. 57: "Admit that Respondent's EcoStruxure Resource Advisor includes capability to "analyze bills to identify errors and energy savings opportunities".

Schneider's Answer: "Subject to and without waiving the foregoing general objections and to the extent that Respondent understands this request, Respondent admits that its EcoStruxure Resource Advisor is available for its members to utilize in order to manage their energy and sustainability footprint by collecting, analyzing and automating information for their energy sustainability goals."

Request No. 58: "Admit that Respondent's EcoStruxure Resource Advisor includes capability to 'Compare and benchmark facilities with raw or normalized data using energy monitoring'."

Schneider's Answer: "Subject to and without waiving the foregoing general objections and to the extent that Respondent understands this request, Respondent admits that its EcoStruxure Resource Advisor is available for its members to utilize in order to manage their energy and

sustainability footprint by collecting, analyzing and automating information for their energy sustainability goals."

Schneider's answers to RTAs 49, 57 and 58, fully comply with the federal rules. In these RTAs, Petitioners include quoted language, but without identifying from where Petitioners copied the language. Rather than simply denying these RTAs, Schneider, in good faith, answered them to the best of its ability. In short, in answering Petitioners' inarticulate RTAs, Schneider went beyond what the federal rules require.

Finally, Schneider's answer to Petitioners' RTA Nos. 34 is also sufficient.

Request No. 34: "Admit that Respondent has no documents that demonstrate that Petitioner has ever subjectively believed that Respondent has superior rights over Petitioner in relation to Petitioners' NEO mark and Respondent's NEO NETWORK mark."

Schneider's Answer: "Subject to and without waiving the foregoing objections Respondent states that it does not understand this Request and on that basis denies it."

As set for in TBMP Rule Section 407.03(b) "[i]f the responding party objects to a request for admission, the reasons for objection must be stated. If a responding party believes that a matter of which an admission has been requested presents a genuine issue for trial, the party may not object to the request on that ground alone. Rather, the party may deny the matter; alternatively, the party may set forth reasons why it cannot admit or deny the matter." Here, Schneider simply could not decipher Petitioners' RTA 34, and therefore had no choice but to deny this Request.

CONCLUSION

As explained herein, Schneider has thoroughly considered Petitioners' discovery requests, asserted specific and valid objections based on reasonable explanations, and has produced to date over 600 pages of documents. But Petitioners' desire for additional documents is insatiable – an appetite that is inconsistent with its failure to depose any Schneider employees or issue even one subpoena. At bottom, Petitioners' complaint is not that Schneider has failed to

comply with its discovery obligations; it is that Schneider has failed to produce the evidence Petitioners wish existed to bolster its claims. That is not a valid basis for a motion to compel, and Petitioners' motion should be denied in its entirety.

Dated: April 11, 2022

Respectfully submitted,

PATTISHALL, McAULIFFE, NEWBURY, HILLIARD & GERALDSON

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CERTIFICATE OF SERVICE

I, Joshua A.R. Aldort, hereby certify that a copy of the foregoing **RESPONDENT'S OPPOSITION TO PETITIONERS' MOTION TO COMPEL**, was electronically served to Timothy Sitzmann at TSitzmann@winthrop.com and Michael Olsen MOlsen@winthrop.com, Attorneys for Petitioners, The Weidt Group and Willdan Energy Solutions, on this 11th day of April, 2022.

/Joshua A.R. Aldort/