

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Entangled Media, LLC v. Dropbox, Inc.

Entangled Media · No. 23-cv-03264-PCP (VKD) · Decided April 8, 2025

OPINION

Entangled Media, LLC v. Dropbox, Inc.

PER CURIAM.

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4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 SAN JOSE DIVISION

7 8 ENTANGLED MEDIA, LLC, Case No. 23-cv-03264-PCP (VKD) 9 Plaintiff, ORDER RE
DEFENDANT'S MOTION

TO AMEND SCHEDULING ORDER

10 v. AND TO COMPEL SUPPLEMENTAL

PRIVILEGE LOG AND PRODUCTION

11 DROPBOX INC., OF WAIVED PRIVILEGED
MATERIAL

Defendant. 12 Re: Dkt. No. 212 13 14 Defendant Dropbox, Inc. (“Dropbox”) moves for an order compelling plaintiff Entangled 15 Media, LLC (“Entangled Media”) to supplement its privilege log and produce documents for 16 which Dropbox contends a privilege or protection has been waived. Dkt. No. 212. Dropbox seeks 17 an amendment of the scheduling order to permit consideration of its motion to compel, which was 18 filed more than two weeks after the close of fact discovery.¹ Id. Entangled Media opposes the 19 motion. Dkt. No. 225. Having considered the parties’ written submissions and the oral arguments 20 presented at the hearing on this matter, the Court grants in part Dropbox’s motion as set forth 21 below.² 22 Dropbox’s motion challenges entries on several of Entangled Media’s privilege logs. See 23 Dkt. No. 212 at 1 fn.1, 25. As explained at the hearing on this motion, with one exception, the 24 Court finds that Dropbox has not shown good cause for relief from the deadline requiring all fact 25 1 The presiding judge has referred this aspect of the dispute to the undersigned for resolution. See 26 Dkt. No. 223 at 4; see also Dkt. No. 213. 27 2 The Court will issue a separate order on the associated sealing motions (Dkt. Nos. 211, 224, 1 discovery-related motions to be filed no later than seven days of the fact discovery deadline. See 2 Civil L.R. 37-3. Any deficiencies that appeared in the privilege logs served in August, September, 3 and October 2024 should have been raised before the close of fact discovery, or at a minimum, 4 within seven days of that deadline. 5 The circumstances are

different with respect to the portions of Dropbox's motion that 6 concern subject matter waiver and Entangled Media's Second Supplemental Privilege Log. Late 7 in the fact discovery period, Entangled Media produced email exchanges between its CEO, Erik 8 Caso, and its prosecuting attorney for the asserted patents, Dawn-Marie Bey, in an effort to rebut 9 Dropbox's allegations of improper inventorship and inequitable conduct. See Dkt. No. 212 at 2; 10 Dkt. No. 211-8 (Ex. G); Dkt. No. 211-15 (Ex. P). The parties apparently exchanged emails over 11 the next several weeks about the extent of the subject matter waiver attending this production. See 12 Dkt. No. 212 at 2, 7-8, 21. Then, on November 22, 2024, the last day of fact discovery, Entangled 13 Media produced its Second Supplemental Privilege Log (Dkt. No. 211-5). Dkt. No. 212 at 8. The 14 supplemental log contains over 750 entries, including some entries Dropbox believes are within 15 the scope of Entangled Media's subject matter waiver. In these circumstances, the Court agrees 16 that Dropbox may belatedly challenge Entangled Media's withholding of documents logged on the

17 November 22, 2024 supplemental log with respect to materials prepared by, and communications

18 exchanged with, Ms. Bey as to which Dropbox contends there has been subject matter waiver. 19 Applying Rule 502(b) of the Federal Rules of Evidence, the Court concludes that 20 Entangled Media has waived the attorney-client privilege and work product protections for 21 materials prepared by, or communications exchanged with, Ms. Bey regarding matters that bear on 22 the question of inventorship of the inventions claimed in the asserted patents. See Dkt. No. 212 at 23 2. Entangled Media must produce these materials, including those that constitute or refer to: 24 (1) inventorship of the inventions claimed in the asserted patents (not limited to specific mentions 25 of Matt Drew or his contribution or lack thereof); (2) conception of those aspects of the claimed 26 inventions that concern creation and use of "meta indices" of data files sent to a web service, 27 integrating the indices into a database and sending them to a local device, and/or receiving meta 1 Bey about Mr. Drew's work; and (4) the relevant portions of Ms. Bey's audio recording³ or notes 2 of the oral disclosure made to her. In addition, Entangled Media must produce Mr. Drew's 3 executed termination agreement.⁴ Entangled Media must produce these documents by April 21, 4 2025. 5 A more difficult question is how to address the balance of the disputed entries in the

6 November 22, 2024 supplemental log. These are summarized in the table at the end of Dropbox's

7 motion. See Dkt. No. 212 at 25 (referencing "Ex. B"). Dropbox raises concerns regarding 8 hundreds of entries. The Court has reviewed a number of the disputed entries and agrees that 9 many of them do not comply with the minimum requirements for establishing a prima facie case 10 of privilege or protection. For example, many entries omit important information, such as the date 11 of the document or the names of the people who sent, received, or were shown the document. See 12 *In re Grand Jury Investigation*, 974 F.2d 1068, 1071 (9th Cir. 1992) (citing *Dole*

v. Milonas, 889 13 F.2d 885, 888 n.3 (9th Cir. 1989)). More troubling, however, is that Entangled Media appears to 14 have claimed attorney-client privilege and/or work product protections for documents shared with 15 third-party investors and other third parties.⁵ Ordinarily, such disclosures would waive any 16 attorney-client privilege and may waive work product protection. See *Finjan, Inc. v. SonicWall, 17 Inc.*, No. 17-cv-04467-BLF (VKD), 2020 WL 4192285, at *4 (N.D. Cal. July 21, 2020). To the 18 extent Entangled Media asserts the privilege or protection survives disclosure to third parties, the 19 entries describing these documents do not permit the Court to ascertain whether this assertion is 20 correct and whether the privilege or protection is properly claimed. 21 It is Entangled Media’s burden to establish that a privilege or protection applies. See 22 *United States v. Martin*, 278 F.3d 988, 999-1000 (9th Cir. 2002). More to the point, Entangled 23 Media may not indiscriminately label every document disclosed to a third-party “work product,” 24 simply because the standard for work product waiver is “more lenient.” See Dkt. No. 225 at 17. 25 3 Entangled Media represents that it has not located this audio recording. 26 4 Entangled Media represents that it has not located an executed copy of the agreement but has 27 produced an unexecuted copy of the agreement. 1 For these reasons, the Court orders Entangled Media to amend its November 22, 2024 2 supplemental log to include the information identified as sufficient in *In re Grand Jury 3 Investigation*, 974 F.2d at 1071, to the extent that information is available, for all of the disputed 4 } entries identified in the summary table for “Exhibit B”. See Dkt. No. 212 at 25. The amended log 5 must be served no later than April 28, 2025. 6 If Entangled Media continues to withhold from production documents shared with third 7 parties, then Dropbox and Entangled Media shall each select five representative examples from 8 among this category (for a total of 10 documents) for review by the Court in camera. The in 9 camera submission, if any, is due on May 5, 2025. The Court will issue a further order after this 10 || review. 11 IT IS SO ORDERED. a 12 Dated: April 8, 2025 a ana □ 14 Virginia K. DeMarchi IS United States Magistrate Judge 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28