

Kramer, Seth A.

From: Schwartz, Jeff E.
Sent: Tuesday, September 09, 2014 2:25 PM
To: Michael A. Amon; Stuart Nelson
Cc: Kramer, Seth A.; Michael Hawkins; Steve Schaefer
Subject: RE: IPR2013-00506; IPR2013-00507; and IPR2013-00508 - Deposition Dates

Mike

We will look into the Swiss question you raised and revert back.

As to the unredacted documents requested, we disagree that they are routine discovery. We see no basis for suggesting that they fit within routine discovery but are willing to listen to any explanation you can provide on that subject. The provisions of routine discovery you cite to only require us to serve on you the exhibit we relied upon, which we have done. Can you please elaborate further on why you believe you are entitled to information that is not part of the exhibit and upon which we do not rely and how the regulation you point to supports your position or has been interpreted in a manner to support your position?

As to the question of why Loic Josse should be deposed in Switzerland, this seems a curious question given the fact that he is located in Switzerland, the parties have consistently deposed the witnesses where they are located, and you indicated a willingness to do so in your email below, i.e.: “we are in principle, willing to discuss jointly requesting that the Board provide an order with a variance to the mandate of 37 C.F.R. 42.53(b)(2).” Additionally, given the minimal testimony being offered for a very limited purpose, it would seem more appropriate to handle this deposition in a manner consistent with the scope of the testimony offered, such as, for example, taking this deposition by telephone or video conference.

You have also not addressed the protective order issues previously raised.

Sincerely,

Jeff Schwartz

Partner

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From: Michael A. Amon [mailto:Amon@fr.com]
Sent: Tuesday, September 09, 2014 2:08 PM
To: Schwartz, Jeff E.; Stuart Nelson
Cc: Kramer, Seth A.; Michael Hawkins; Steve Schaefer

Hi Jeff,

The only procedures we are aware of for conducting a deposition in Switzerland is either through the Hague Convention or through the letters rogatory process. We don't have time for either of these procedures given the deadlines imposed by the IPR schedule. Please let us know if you are aware of other procedures that do not violate Swiss law for deposing individuals in Switzerland. In addition, please let us know Medtronic's position as to why Loic Josse should be deposed in Switzerland as opposed to the United States, as required by 37 C.F.R. 42.53(b)(2).

The documents cited in the Josse Declaration are routine discovery under 37 CFR 42.51(b)(1)(i). Thus, please produce unredacted versions.

We will accept Sept. 30 for the deposition of Dr. Hynes.

Best,
Mike

Michael A. Amon

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From: Schwartz, Jeff E. [<mailto:JESchwartz@foxrothschild.com>]
Sent: Monday, September 08, 2014 4:28 PM
To: Michael A. Amon; Stuart Nelson
Cc: Kramer, Seth A.; Michael Hawkins; Steve Schaefer
Subject: RE: IPR2013-00506; IPR2013-00507; and IPR2013-00508 - Deposition Dates

Mike

There are procedures available to enable the taking of depositions in Switzerland and to the extent you need our cooperation in that process we are certainly willing to cooperate.

As to your request for unredacted documents, please advise as to the basis for your request. That is, on what basis do you believe that you are entitled to this confidential information and on what basis do you believe Medtronic is obliged to produce it.

As a separate matter, you are no doubt fully aware of the communications we have previously had pertaining to the terms of a protective order. Our position remains unchanged on that issue.

Dr. Hynes is not available for deposition on September 23rd. He can move around some surgeries to make the 30th of September available instead of the 16th of September, but would need to know by mid-day tomorrow so that he can make the necessary arrangements to reschedule the O-R and make the necessary arrangements to shift around his patients' surgeries.

Sincerely,

Jeff

Jeff Schwartz

Partner

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From: Michael A. Amon [<mailto:Amon@fr.com>]

Sent: Monday, September 08, 2014 6:01 PM

To: Schwartz, Jeff E.; Stuart Nelson

Cc: Kramer, Seth A.; Michael Hawkins; Steve Schaefer

Subject: RE: IPR2013-00506; IPR2013-00507; and IPR2013-00508 - Deposition Dates

Dear Jeff,

Regarding the deposition of Loic Josse, while we are, in principle, willing to discuss jointly requesting that the Board provide an order with a variance to the mandate of 37 C.F.R. 42.53(b)(2) which requires that IPR depositions be conducted within the United States, it is our understanding that Swiss law (including Penal Code Section 271) prohibits taking depositions in Switzerland related to non-Swiss legal proceedings. Please let us know your thoughts on how to proceed.

Relatedly, please produce the redacted documents from Loic Josse in unredacted format. Even though they may have been produced unredacted in the district court litigation, we are unable to use them in these IPR proceedings because of the Protective Order entered by the district court. As such, please produce them unredacted in these proceedings within two days. To the extent Medtronic believes the redacted portions are truly confidential, we will agree to your use of the default protective order in the IPR proceedings.

Regarding Dr. Hynes, we cannot proceed on Sept. 16 and request he be available for deposition on Sept. 23. Please confirm whether that date will work so that we can make the necessary arrangements.

Best regards,
Mike

Michael A. Amon

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From: Schwartz, Jeff E. [<mailto:JESchwartz@foxrothschild.com>]
Sent: Monday, September 08, 2014 8:22 AM
To: Stuart Nelson
Cc: Michael A. Amon; Kramer, Seth A.; Michael Hawkins; Steve Schaefer
Subject: RE: IPR2013-00506; IPR2013-00507; and IPR2013-00508 - Deposition Dates

Stuart

Loic Josse is available for deposition in Switzerland on the following dates:

- Sept 11
- Sept 19
- Sept 22

Please confirm if you plan to go forward with Dr. Hynes on September 16th.

Jeff

From: Schwartz, Jeff E.
Sent: Saturday, September 06, 2014 12:03 AM
To: 'Stuart Nelson'
Cc: Michael A. Amon; Kramer, Seth A.; Michael Hawkins; Steve Schaefer
Subject: RE: IPR2013-00506; IPR2013-00507; and IPR2013-00508 - Deposition Dates

Stuart

Loic Josse is located in Switzerland, therefore he is not available at the same location. He is also not available on 16 September.

I will report back on what days he is available, in Switzerland, for a deposition. .

Jeff

Jeff Schwartz

Partner

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From: Stuart Nelson [<mailto:snelson@fr.com>]

Sent: Friday, September 05, 2014 11:52 PM

To: Schwartz, Jeff E.

Cc: Michael A. Amon; Kramer, Seth A.; Michael Hawkins; Steve Schaefer

Subject: RE: IPR2013-00506; IPR2013-00507; and IPR2013-00508 - Deposition Dates

Jeff:

Is Loic Josse available the same date and location? Are there other dates available?

Thanks,

Stuart Nelson :: Associate

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From: Schwartz, Jeff E. [<mailto:JESchwartz@foxrothschild.com>]

Sent: Friday, September 05, 2014 10:40 PM

To: Stuart Nelson

Cc: Michael A. Amon; Kramer, Seth A.; Michael Hawkins; Steve Schaefer

Subject: RE: IPR2013-00506; IPR2013-00507; and IPR2013-00508 - Deposition Dates

Stuart

As I mentioned at Dr Yuan's deposition, the 16th of September is when our declarant is available. That is Dr Hynes and would be in the same location as last time.

Jeff

Sent from my Verizon Wireless 4G LTE Smartphone

----- Original message -----

From: Stuart Nelson

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