

Kramer, Seth A.

From: Schwartz, Jeff E.
Sent: Wednesday, September 17, 2014 7:34 PM
To: Stuart Nelson
Cc: Kramer, Seth A.; Michael A. Amon
Subject: RE: IPR2013-00506; IPR2013-00507; and IPR2013-00508 - Loic Josse Documents

Stuart

As to the Loic Josse documents, so the record is clear, you expressed your position during our call, as identified by Michael in his email original request, that routine discovery entitles you to "any exhibit" upon which we rely.

I pointed out to you that we produced all of our exhibits to you, including the Loic Josse declaration and attached appendices, hence we have already provided "any exhibit cited in a paper" to you.

Beyond that, we understand it is your position that you are entitled to additional information that is not an actual exhibit, but rather exists in an unredacted form as documents that were not otherwise included in an exhibit. We of course disagree that routine discovery entitles you to more than the production of the actual exhibits, which we provided. Further I explained that the information you requested is not relevant and pertains to confidential information such as financial information or detailed design information that is not otherwise publicly available.

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From: Schwartz, Jeff E.
Sent: Wednesday, September 17, 2014 4:59 PM
To: 'Stuart Nelson'; Michael A. Amon
Cc: Kramer, Seth A.
Subject: RE: IPR2013-00506; IPR2013-00507; and IPR2013-00508 - Deposition of Loic Josse
Importance: High

Stuart

We did not request a deposition to occur telephonically in London on September 23rd. We did offer to make Loic Josse available in London on September 23rd, that offer coming early morning [Pacific Time] on 10 September and subject to you responding back to us by the evening of September 11th. For whatever reason you failed or refused to respond and quite honestly have never made clear what you were proposing in the alternative. We proposed, instead of making Mr. Josse travel, that you take his deposition by phone or video. So it is still not clear if you expect him to travel just so that

If you are now asking that the deposition occur in London on September 23rd even though you plan to conduct it telephonically, please actually say so and explain why it matters where he is located if it is being conducted telephonically.

Additionally, if we are going to ask Mr. Josse to travel to London we need to know where you want him to be, he needs to know what airport to fly into, if he should just dial the phone from that airport, if you have a space provided for him, etc. etc. As you should be aware, there are several airports in London and they are fairly spaced apart, and travel in London is not simple and may be unnecessary if for example you intend to make a space available in the airport for him. Further, if he is going to travel to London for that deposition he needs to know precisely when it will occur so he can arrange his travel to arrive and depart and still be available at whatever location you are proposing at whatever time you are proposing, leaving him sufficient time to catch a flight home. Since you have not proposed an actual location it is unclear exactly where it is you expect him to show up, or when.

My email to you requested these details, and requested them by this morning Pacific Time so that we could actually communicate with the witness and have him arrange for this travel. Right now he has no idea where you want him to be and when and you have still not provided any information on this with your email below.

As to the documents you requested in unredacted form, I remind you that no one has ever responded to my email that responded to your request. That email is attached for your reference. As stated in that email, dated September 9th, to which you have never responded on this issue:

“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?”

Since you never responded to our email of September 9th on this issue we presume that you agree with our conclusions. Please explain, on what basis, you believe you are entitled to exclude documents which we have actually provided to you. If you refuse to explain, as repeatedly requested, we will continue to presume you have no actual basis grounded in any legal reasoning or precedent and that you do not actually intend to move to exclude or plan to do so on an entirely meritless basis in a frivolous motion that will invite sanctions from the PTAB which we will of course request based on your continuing refusal and baseless threat.

Sincerely,

Jeff Schwartz

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From: Stuart Nelson [<mailto:snelson@fr.com>]
Sent: Wednesday, September 17, 2014 4:39 PM
To: Schwartz, Jeff E.; Michael A. Amon
Cc: Kramer, Seth A.
Subject: RE: IPR2013-00506; IPR2013-00507; and IPR2013-00508 - Deposition of Loic Josse

Jeff:

I just left you a voicemail. We wanted to depose Loic Josse in the United States as required by 37 CFR 42.53(b)(2). Conducting the deposition telephonically, on September 23, and in London were all your requests. We agreed to these requests to be accommodating, and we are trying to make them work. But if you are telling me that this is a problem, then either make your witness available for deposition in the United States or withdraw his declaration. If you plan to reserve any objection to this telephonic deposition, then either make your witness available for deposition in the United States or withdraw his declaration. We want to take his deposition. Are you available this afternoon to discuss? I can also be available this evening or at 9:00 central tomorrow morning.

Also, I want to remind you that you have so far refused our request to produce the attachments to Mr. Josse's declaration in unredacted form. If you have not done so well before the deposition, we will move to have the exhibit excluded.

Regarding Dr. Hynes' deposition, as a courtesy we told you that we do not intend to use the entire allotted time for his deposition. We do not want to limit ourselves to a smaller number.

Regarding the surreply, let's discuss that this afternoon as well. Otherwise, we will take your emails as a refusal to agree to a surreply.

Stuart Nelson :: Associate

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