

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WINTEK CORPORATION,
Petitioner,
v.
TPK TOUCH SOLUTIONS,
Patent Owner.

Case IPR2013-00567
Case IPR2014-00541¹
Case IPR2013-00568²
Patent 8,217,902

Before TONI R. SCHEINER, JOSIAH C. COCKS, and RICHARD E. RICE,
Administrative Patent Judges.

COCKS, *Administrative Patent Judge.*

ORDER
Conduct of Proceeding
37 C.F.R. § 42.5

¹ IPR2014-00541 has been joined with IPR2013-00567. *See* IPR2013-00567, Paper 23.

² This Order addresses matters pertaining to all identified proceedings. Therefore, we exercise our discretion to issue one Order to be filed in each of IPR2013-00567 and IPR2013-00568. The parties are not authorized to use this style heading for any subsequent papers.

1. Introduction

On August 27, 2014, a phone call was held between respective counsel for the parties and judges Scheiner, Cocks, and Rice. Petitioner, Wintek Corporation (“Wintek”), had requested the call to discuss an issue concerning the deposition of a witness, Mr. Ted Tsai, who has been relied upon by Patent Owner, TPK Touch Solutions (“TPK”), as a part of its briefings in this proceeding. Counsel for Wintek represented that a court reporter was present on the call.

2. Discussion

During the call, Wintek explained to the panel that its counsel had arrived in California to cross-examine Mr. Tsai in a scheduled deposition only to discover that an interpreter was necessary for the deposition. Wintek represented that at no time prior to its counsel’s arrival at the deposition had TPK conveyed to Wintek that an interpreter was necessary for Mr. Tsai, and that it was not apparent from any portion of the record in this proceeding that an interpreter was necessary. Indeed, in reviewing the declaration testimony of Mr. Tsai submitted by TPK (Ex. 2017), we observe that it is presented in English, and there is no indication that Mr. Tsai was not proficient in English in giving the testimony. Wintek explained that, although TPK had an interpreter available for the deposition, Wintek desired to have its own check interpreter present also. Given the time constraints in obtaining a suitable check interpreter for the deposition scheduled for August 27, 2014, Wintek indicated that it had requested that the deposition be rescheduled for some time in September, but that TPK had represented that Mr. Tsai is not available at any time in September for a deposition within the United States.

TPK indicated to the panel that it had neglected to inform Wintek of the necessity of an interpreter for Mr. Tsai, and that TPK was “at fault” in failing to do

so. TPK expressed that it had attempted to obtain an additional interpreter for use by Wintek at the deposition. Wintek conveyed to the panel that such an arrangement was not satisfactory, and that it desired adequate time and opportunity to select its own interpreter for a deposition at a later date.

The panel questioned TPK as to when Mr. Tsai could be made available for a rescheduled deposition. After conferring with Mr. Tsai, TPK stated that Mr. Tsai was not available in the near future for the deposition to be taken in the United States, but may have time for the deposition to be taken in Taiwan during the month of September. The parties agreed to continue discussing that possibility between themselves. The parties are encouraged to work together to reach agreement. Wintek further queried the panel as to the possibility of recouping incurred costs from TPK in connection with the discontinued deposition on August 27, and any subsequent costs of a later scheduled deposition. The panel indicated that, should the parties be unable to reach agreement in that regard, Wintek is authorized to file a motion seeking recuperation of costs ultimately necessary to conduct Mr. Tsai's deposition.

3. Order

It is

ORDERED that the parties should attempt to reach agreement as to the time and place for the deposition of Mr. Tsai;

FURTHER ORDERED that Wintek is authorized to file a motion seeking recuperation of costs ultimately necessary to conduct Mr. Tsai's deposition, should the parties be unable to reach agreement in that regard; and

FURTHER ORDERED that Wintek should file, as its next available exhibit, a transcript of the involved conference call when the transcript becomes available.

Cases IPR2013-00567 (IPR2014-00541); IPR2013-00568
Patent 8,217,902

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