
From: Cunningham, Laura
Sent: Monday, May 26, 2014 11:15 PM
To: Schmidt, Leslie M.
Cc: Hollis, Amanda; Graves, Jon; Altieri, Stephen; Wang, Jing; z/IPR2014-00003; J. Mitchell Jones; Holland, Elizabeth; Hardman, Cynthia Lambert; Martinez, Alana
Subject: RE: IR2014-00003

Leslie,

This is my third request. Please provide AKBM's availability for a call with the Board tomorrow or Wednesday to discuss a motion for supplemental discovery regarding these documents.

The relevance of this discovery, and the reasons why its production serves the interests of justice, are obvious. In short, as we argued extensively in the ITC, Aker is relying on these experiments as proof of invalidity and we are entitled to see the documentation Mr. Haugsgjerd created and provided to Aker, not just the few bullet points included in his declaration.

We will review the ITC privilege log to attempt to identify the entries you reference, but your email fails to explain why the Nofima reports Mr. Haugsgjerd created and sent to Mr. Jones are privileged. And regardless, Mr. Haugsgjerd also testified that he provided the Nofima reports to Nils Hoem at Aker. As to your assertion that Neptune must seek discovery of the lab notebooks from Mr. Haugsgjerd personally, it is Aker's position that it does not have control over files created by Aker's own expert regarding experiments Aker commissioned for purposes of these proceedings?

Regarding why Neptune was surprised to learn of the existence of these documents, I have already identified the opposed motion to compel filed in the ITC case. I believe your team should be familiar with the representations made by Aker in the ITC, but if you are looking for more context I'd be happy to discuss it with you.

Regards,
Laura

From: Schmidt, Leslie M. [leslie.schmidt@kirkland.com]
Sent: Monday, May 26, 2014 7:17 PM
To: Cunningham, Laura
Cc: Hollis, Amanda; Graves, Jon; Altieri, Stephen; Wang, Jing; z/IPR2014-00003; J. Mitchell Jones; Holland, Elizabeth; Hardman, Cynthia Lambert
Subject: RE: IR2014-00003

Dear Laura:

Your email "request[s] that Aker immediately produce" all lab notebooks and Nofima reports (including drafts) created by Mr. Haugsgjerd in connection with his Beaudoin experiments.

Regarding the requested lab notebooks, we understand that any such notebooks are Mr. Haugsgjerd's and to the extent you seek discovery of them we understand you must seek it from him. Mr. Haugsgjerd testified at this deposition that he did not give his lab notebooks to anyone at AKBM. (Haugsgjerd Rough Dep. Tr. at 136:11-12). You also have identified no basis for seeking discovery of such notebooks. You have not identified any reason why discovery of such notebooks serves the interests of justice nor identified any evidence that in fact something useful in them will be uncovered. Nevertheless, if you believe you have a basis for asserting such notebooks are discoverable we are happy to discuss that with you and the Board.

Regarding the Nofima reports, as noted in our privilege log in the ITC case, such reports are privileged confidential communications between Mr. Haugsgjerd (AKBM's retained expert) and AKBM's legal team, and AKBM is not willing to waive privilege. Even if they were not privileged, you also have not identified any reason why the reports meet the "interests of justice" standard for discovery. To the extent you disagree that the reports are privileged, however, or believe you have a basis for asserting such reports are discoverable we again are willing to discuss these issues with you and the Board.

You state that you were "surprised" to learn about lab notebooks and reports in light of alleged representations by AKBM. You do not identify any representations to which you refer nor any explanation for your alleged "surprise." If it becomes relevant we are happy to address any specific concerns you may have about any representations you believe AKBM made about the reports and notebook mentioned above.

Best regards,
Leslie

-----Original Message-----

From: Cunningham, Laura [mailto:lcunningham@cooley.com]

Sent: Monday, May 26, 2014 7:13 PM

To: Schmidt, Leslie M.

Cc: Hollis, Amanda; Graves, Jon; Altieri, Stephen; Wang, Jing; z/IPR2014-00003; J. Mitchell Jones; Holland, Elizabeth; Hardman, Cynthia Lambert

Subject: Re: IR2014-00003

Leslie,

It is now well into Monday evening and we have heard no response from you on this time-sensitive issue. Please immediately provide AKBM's availability for a Board call tomorrow or Wednesday as I requested in my email last Thursday. We will be emailing the Board first thing in the morning to schedule a call on this issue.

Regards,
Laura

On May 23, 2014, at 4:52 PM, "Schmidt, Leslie M." <leslie.schmidt@kirkland.com<mailto:leslie.schmidt@kirkland.com>> wrote:

Dear Laura,

We are considering your email and will respond by Monday.

Best regards,
Leslie

From: Cunningham, Laura [mailto:lcunningham@cooley.com]

Sent: Thursday, May 22, 2014 6:05 PM

To: Hollis, Amanda

Cc: Graves, Jon; Altieri, Stephen; Wang, Jing; z/IPR2014-00003; J. Mitchell Jones; Holland, Elizabeth; Hardman, Cynthia Lambert; Schmidt, Leslie M.

Subject: IR2014-00003

Amanda,

Yesterday during Mr. Haugsgjerd's deposition, we learned for the first time that Mr. Haugsgjerd created documents in connection with his Beaudoin experiments, including lab notebooks and Nofima reports. As you know, Neptune sought and moved to compel such documents from both Aker and Mr. Jones in the ITC case. Based on Aker's representations to us and in its opposition to our motion to compel, we were surprised to learn that Mr. Haugsgjerd in fact created lab notebooks and reports regarding his experiments and sent at least some of these documents to Aker and Mr. Jones.

We request that Aker immediately produce all Nofima reports (including drafts) and lab notebooks created by Mr. Haugsgjerd in connection his Beaudoin experiments.

Please let us know by close of business tomorrow whether Aker will produce these documents, and if not, provide tomorrow your availability for a call with the Board next Tuesday or Wednesday (May 27/28) to discuss Neptune's filing of a motion for additional discovery, which would seek production of these documents.

Regards,
Laura

Laura J. Cunningham
Cooley LLP * One Freedom Square * Reston Town Center
11951 Freedom Drive * Reston, VA 20190-5656
Direct: (703) 456-8091* Fax: (703) 456-8100
Email: lcunningham@cooley.com<mailto:lcunningham@cooley.com> * www.cooley.com<http://www.cooley.com>

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