

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MARYLAND

IN RE: CTP INNOVATIONS, LLC
PATENT LITIGATION) CIVIL NO.: MJG-14-2581

Transcript of Proceedings
Before the Honorable Marvin J. Garbis
Tuesday, December 15th, 2015; 10:00 a.m.
Baltimore, Maryland

APPEARANCES:

For the Plaintiffs:

Samuel F. Miller, Esquire
L. Clint Crosby, Esquire

For Defendant Arandell Corp., Schumann Printers & Times
Printing, Liason counsel for Tag-Along defendants:

Thomas P. Heneghan, Esquire

For Defendant Versa Press, Worldwide Tickets and Labels,
Indexx, Inc., Liason counsel for the original defendants:

John M. Jackson, Esquire
Nathaniel St. Clair, Esquire (by telephone)
Blake Dietrich, Esquire (by telephone)

For Defendant Valassis Communications, Inc.:

Ahmad Jamal Davis, Esquire

For Defendant Jet Printing, LLC:

David B. Jinkins, Esquire (by telephone)
Matthew Braunel, Esquire (by telephone)

Christine T. Asif, RPR, FCRR
Federal Official Court Reporter
101 W. Lombard Street, 4th Floor
Baltimore, Maryland 21201

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P R O C E E D I N G S

THE COURT: Thank you, good morning. We must have
some people on the telephone.

THE CLERK: We do, Your Honor.

The matter now pending before this Court is civil
docket number MJG-14-2581, et al, CTP Innovations, et al.
versus Specialty Promotions, et al. Counsel for the plaintiff
that is present in court is Clint Crosby and Sam Miller.
Counsel for the defendants that are present in court is Tom
Heneghan, John Jackson and Ahmad Davis.

Counsel on the phone, if you would please identify
yourselves and the company that you represent.

MR. ST. CLAIR: Your Honor, this is Nathaniel St.
Clair and Blake Dietrich from Jackson Walker in Dallas, Texas,
we represent Worldwide Ticket & Publishing, Indexx Inc., and
Versa Press.

THE COURT: Okay. Anybody else?

MR. BRUNELLI: Your Honor, this is Rob Brunelli in
Denver, Colorado, representing Publication Printers
Corporation.

MR. JINKINS: David Jinkins and Matt Braunel
representing Jet Printing.

THE COURT: Where are you located?

MR. VEAL: Robert Veal representing EBSCO
Industries.

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APPEARANCES: (cont'd)

For Defendant F.C.L. Graphics, Inc.:

Michael J. Curley, Esquire (by telephone)

For Defendant Journal Graphics, Inc.:

Elizabeth A. Milesnick, Esquire (by telephone)

For Defendant Trend Offset Printing Services, Inc.:

Neil J. Cooper, Esquire (by telephone)

For Defendant American Printin Company, Inc.:

Stephen C. Hall, Esquire (by telephone)

For Defendant GEO Graphics, Inc.:

Emily Chambers, Esquire (by telephone)
Derek S. Neilson, Esquire (by telephone)

For Defendant Walton Press, Inc.:

Barry Caplan, Esquire (by telephone)

For Defendant Cenveo Corporation:

Benjamin C. White, Esquire (by telephone)
Johathan A. Winter, Esquire (by telephone)

For Defendant Command Web Offsite Company, Worzalla Publishing
Company, Sandy Alexander Incorporated, and Specialty Promotions
Incorporated.:

Scott McKeown, Esquire (by telephone)
Christopher Ricciuti, Esquire (by telephone)

For Defendant Directmail.com:

Peter J. Davis, Esquire

Christine T. Asif, RPR, FCRR
Federal Official Court Reporter
101 W. Lombard Street, 4th Floor
Baltimore, Maryland 21201

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THE COURT: Mr. Jinkins --

MR. CURLEY: Michael Curley --

THE COURT: Okay. I'm sorry. Mr. Jinkins, where are
you located?

MR. JINKINS: This is Mr. Jinkins and Matt Braunel,
we are in St. Louis, Missouri.

THE COURT: Okay.

MS. MILESニック: This is Elizabeth Milesnick in
Portland, Oregon, representing Journal Graphics.

MR. CURLEY: This is Michael Curley in Tucson,
Arizona, representing F.C.L. Graphics.

MR. COOPER: Good morning, this is Neil Cooper in
Irvine, California, representing Trend Offset Printing
Services.

MR. HALL: This is Stephen Hall, Louisville,
Kentucky, representing American Printing Company.

MS. CHAMBERS: This is -- Emily Chambers, I'm in
Atlanta, Georgia, representing GEO Graphics, Inc. And with me
from my Dallas office is Derek Neilson.

MR. CAPLAN: This is Barry Caplan, standing in for
Robert Hughes calling from Atlanta, Georgia, on behalf of
Walton Press.

MR. WHITE: This is Benjamin White and Jonathan
Winter in Stanford, Connecticut, and we represent Cenveo.

MR. McKEOWN: This is Scott McKeown and Chris

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1 Ricciuti at Oblon in Alexandria, Virginia, we represent Command
2 Web Offsite Company, Worzalla Publishing Company, Sandy
3 Alexander, Incorporated, and Specialty Promotions,
4 Incorporated.

5 THE COURT: Okay. I think the only one I missed is
6 Fields, where are you from? Is there a Fields?

7 MR. VEAL: This is Robert Veal for EBSCO, I'm in
8 Atlanta.

9 THE COURT: Okay. Thank you. All right. And
10 present, would you just announce who you guys are, besides the
11 plaintiff, Mr. Miller, Mr. Crosby. Mr. Heneghan, you are?

12 MR. HENEGHAN: Good morning, Judge, Tom Heneghan from
13 Madison, Wisconsin. I represent Arandell Corp., Schumann
14 Printers & Times Printing Company. Also I am acting as liaison
15 counsel for the tag-along defendants today.

16 THE COURT: Okay. Mr. Jackson, you're --

17 MR. JACKSON: Yes, good morning, Your Honor. John
18 Jackson from Dallas, Texas. I'm representing defendants
19 Worldwide Ticket, Taylor Publishing, Indexx, and Versa Press.
20 And I'm also serving as liaison counsel for the original
21 defendants.

22 THE COURT: Okay. Mr. Davis.

23 MR. AHMAD DAVIS: Good morning, Your Honor. Ahmad
24 Davis from Fish and Richardson in Washington, D.C. I'm here on
25 behalf of Valassis Communications.

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1 you have a significant number of plaintiffs and you have one or
2 a few defendants. And as such, the plaintiffs tend to
3 organize. And I guess Mr. Heneghan, Mr. Jackson, Mr. Davis,
4 you have some familiarity with what happens in -- I see Mr.
5 Heneghan is nodding his head -- that generally the plaintiffs
6 organize and there's a lead counsel and all that. I'm not sure
7 how this is going to turn out for us. But this is the ultimate
8 objective. And also to see how far we can go before there is a
9 transfer back to the transfer cases.

10 THE COURT: What's the problem?

11 THE CLERK: He said holy smoke, he's on his way.
12 That's what he said.

13 THE COURT: Okay. Let's find out what you folks
14 think about the PTAB decision and what it does, I suppose.

15 Mr. Miller, what do you perceive that the PTAB
16 decisions have done for us? And anything else you want to
17 comment on. Then I can hear from the defendants.

18 Now, I'm going to hear from the -- I suppose the
19 liaison counsel. And because we have so many people on the
20 telephone, I'm going to have -- I guess if you want to speak,
21 speak. And if a number of people speak, I'll try and keep
22 track and call on you. Mr. Heneghan, you've got -- do you
23 understand that it's likely that most of the counsel will want
24 to speak a lot or maybe just infrequently?

25 MR. HENEGHAN: Judge, we've talked about it, and I

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1 THE COURT: Okay. Now, since I don't have all the
2 names, Mr. Davis, is your client the Maryland defendant?

3 MR. AHMAD DAVIS: It is not Direct Mail, we were
4 originally sued in the Northern District of Georgia and
5 transferred here under the MDL.

6 THE COURT: Well, there's an order that the Maryland
7 defendant counsel be here. Does somebody have some idea why
8 he's not here or they're not here?

9 MR. MILLER: No idea, Your Honor.

10 THE COURT: Well, I think you're going to have to
11 call his office and immediately we have to talk to somebody.
12 This is -- I mean, you all got the notice, I assume?

13 MR. MILLER: Yes, Your Honor.

14 MR. HENEGHAN: Your Honor, if I could approach the
15 clerk I have a contact list, rather than her having to look it
16 up I have it right here.

17 THE COURT: Mr. Heneghan, why don't you help the
18 clerk and see what the problem is. We'll just take a moment.
19 I don't want to delay you folks, but as you can imagine, this
20 is fairly -- it's going to be helpful.

21 Meanwhile, I think we can get started, the ultimate
22 objective is to resolve these cases in the most efficient and
23 expeditious manner. My observation of this patent case is that
24 this case, and probably all patent cases, are a mirror image of
25 a typical multidistrict case. In a typical multidistrict case

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1 think that it would be -- if there is a specific question that
2 one of the individual defendants is better in a position to
3 answer, they're prepared to talk about it. But I think for the
4 most part they're going to rely on Mr. Jackson and I to answer
5 the Court's questions.

6 THE COURT: Okay. Well, let's see how it goes. At
7 least I can see Mr. Davis. If he wants to speak, he can let it
8 be known.

9 Okay. From the plaintiff's point of view, could you
10 tell us what you perceive as the impact or significance of
11 these PTAB decisions.

12 MR. MILLER: Your Honor, as a general matter, we're
13 pleased with most of the decisions of PTAB at this point. As
14 the Court may recall from our complaint and following the
15 history of this case, initially we filed these cases in 2003,
16 or I should say we filed a majority of the first tranche of
17 cases in 2000 -- or 2013, other than Taylor Publishing, which
18 beat us to the punch by one day. Subsequently there were two
19 interparty -- petitions for interparty review filed with PTAB.
20 They were filed by the Printing Industries of America. Both of
21 those were denied and no IPR was initiated. We now have been
22 through four additional IPRs, and our success rate in keeping
23 these patents were five out of six. We lost claims 1 through 9
24 of the '155.

25 It's our position that PTAB in conjunction with the

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1 Eastern District of Texas through Magistrate Payne, who has
2 construed these terms and done a lot of the work to move these
3 cases forward, and have taken constructions that we believe,
4 for the most part, other than one particular term that you
5 identified, the remoteness issue, we can take -- we can take
6 forward in this court and will take a lot of burden off this
7 court.

8 We do intend to, at least at this point in time, we
9 do intend to appeal IPR =2014 00789, that's the one case that
10 we lost of the six. And if Kodak appeals, which we think is
11 probably going to happen, given the history of this case, we
12 will counter appeal the remote printer construction adopted by
13 PTAB in regards to that one -- well, in regards to the Claim 10
14 of both -- so it's Claim 10 of both of the patents if they
15 should appeal. And Claim 16, I believe of the '349. So that's
16 our position regarding this. We would further state, Your
17 Honor, we're prepared to go forward and press this with all due
18 haste. We don't believe that a stay or any delay due to any
19 appeal that would go forward of the PTAB decisions is warranted
20 at this time.

21 THE COURT: Okay. Well, I won't ask anything until I
22 hear from the other side. What's your view of what these
23 decisions mean, et cetera? I mean, you can ask -- are you
24 pleased, displeased, is important but not critical.

25 MR. HENECHAN: Well, Judge, in general, I would say

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1 that we would prefer that the patents had all been invalidated,
2 but they weren't. And we recognize that and we understand the
3 ramifications of that. I do think that perhaps the plaintiffs
4 are jumping a little bit ahead to talk about the appeal. I do
5 not directly represent any of the parties in the IPR. But my
6 understanding from other counsel who do, is that they intend to
7 file a motion for rehearing with the PTAB.

8 So I think that there is a procedural step that's
9 going to be before any appeal that keeps those IPRs in front of
10 the PTAB, at least for some period of time. My understanding
11 is that in the typical practice that would probably take it
12 until about March by the time a motion for rehearing is filed.
13 The PTAB then decides whether or not the patent holder should
14 respond. And then they typical rule in about one to three
15 months, which takes us to March give or take.

16 So I think that that really is where we are
17 procedurally. Whether or not any of parties appeal then is a
18 question after what happens with that rehearing. So I think
19 that for the defendants as a whole, we're waiting to see how
20 that plays out. And see -- because the feeling from the folks
21 who handled the IPRs is that there was some fundamental misses
22 of the evidence. And they want to point those out and see if
23 it makes a difference with the PTAB.

24 THE COURT: All right. Well, Mr. Miller, I
25 understand that you might be appealing also?

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1 MR. MILLER: We may appeal the one denial.

2 THE COURT: All right. But are you suggesting that
3 we should just proceed on this case as if the PTAB decisions
4 are final, rather than await rehearing or await an appeal? I
5 think that's what you're saying.

6 MR. MILLER: I believe we should proceed as if
7 they're final. And we're prepared to press forward with our
8 claims in this case, without pressing Claims 1 and 3, or 1
9 through 9 of the '155.

10 THE COURT: Okay. Well, how would you --
11 procedurally how are we going to handle that. Are you going
12 to -- obviously, you have to preserve your rights for rehearing
13 or for appeal. But just as obviously, at least while it
14 stands, I have to treat them as being invalid, don't I?

15 MR. MILLER: Yes.

16 THE COURT: Okay. So in a sense, you're suggesting
17 that you're going to assert those claims and then they're going
18 to be dismissed without prejudice if the PTAB changes.

19 MR. MILLER: No, Your Honor.

20 THE COURT: No?

21 MR. MILLER: No, we're saying that we're not going to
22 assert those claims in this litigation against the 28
23 defendants here.

24 THE COURT: Right. That's fine. Okay. So that
25 makes that simple.

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1 All right. Now, tell me about the significance or
2 importance of this remoteness position that the plaintiff took.
3 That I assume is the position that will effect these cases, Mr.
4 Miller.

5 MR. MILLER: It will effect some of the cases, Your
6 Honor, we anticipate. We are still going through our list and
7 checking it twice, noted the holiday season, to make sure that
8 we have claimed positions and assessing those claimed positions
9 in light of the PTAB decisions. We believe that PTAB, to the
10 extent there is something they got it wrong, that they got it
11 wrong inserting "offsite" in reference to "remote printer."
12 And I've gathered that that is what Your Honor is discussing in
13 terms of remoteness.

14 It's our position that when it comes to remote
15 printer, they took the word "offsite" out of context. Offsite,
16 as they cited in the specification in column 5, line 29 -- I
17 believe it's line 29 through 30, they reference offsite storage
18 facility coupled to essential service facility, that's really
19 in reference to a remote back up system, in case of a disaster
20 contingency. And that really has nothing to do with the claims
21 in the patent.

22 THE COURT: Did I misread -- I can't say I studied
23 this as fully as I will have to, but didn't PTAB say that you,
24 the plaintiff, had taken a position regarding remoteness?

25 MR. MILLER: We had not previously taken a position

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1 regarding remote printer in any of the briefing. In fact, we
2 said it should be plain and ordinary construction, as with our
3 claim construction filings in the Eastern District of Texas and
4 the Northern District of Texas. We did not take a position in
5 the preliminary response or the formal response on that issue.

6 THE COURT: Mr. Heneghan, is that correct? I thought
7 that the PTAB said they had taken a position.

8 MR. HENEGHAN: Judge, I believe that's what the PTAB
9 said. Whether or not that is correct on the record, I am not
10 familiar enough with the patent holder's filings to say. But I
11 believe that is what the PTAB said.

12 THE COURT: Well, okay. Let's just see. We have --
13 Mr. Miller, it's fine, you're saying you didn't take that
14 position?

15 MR. MILLER: Did not take the offsite position, is
16 that what you're referring to?

17 THE COURT: Let me see. Can you find the part where
18 they say plaintiffs -- the PTAB said you took a certain
19 position. The first cut is whether you did take that
20 position.

21 MR. MILLER: Your Honor, the briefs -- the relevant
22 briefs at issue on remote printer are paper 35 in the '788 IPR,
23 page 10 through -- 10 through 12.

24 THE COURT: Let me see.

25 MR. MILLER: And it says neither party proposes a

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1 the plaintiff.

2 All right. Mr. Miller, what are you referring to?

3 MR. MILLER: Your Honor, the issue, as I understood
4 remoteness was referring to remote printer. And the term
5 remote printer in two of the decisions. The language is very
6 similar, so I'm referring to paper 35, IPR 2014 =00788 on page
7 10. There's a sub heading that says, "3, remote printer,
8 paren, all claims, end paren." It's the second sentence, "It
9 says neither party proposes a construction for the term."

10 THE COURT: Right. And then it similarly, in -- it's
11 similarly in paper 47 of IPR 2014 =00791. And this begins on
12 page 9, where it again says -- this refers to subheading 3,
13 "Remote printer, all claims." Second sentence, "Neither party
14 proposes a construction for the term."

15 THE COURT: All right. So, in other words, you're
16 saying the PTAB never said you took a position.

17 MR. MILLER: That is correct, Your Honor.

18 THE COURT: All right. Mr. Heneghan, is that
19 correct.

20 MR. HENEGHAN: Your Honor, I'm not familiar enough
21 with the decision to say off the top of my head.

22 THE COURT: All right.

23 MR. HALL: Your Honor, this is Steve Hall on the
24 phone, if I may?

25 THE COURT: Yes.

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1 construction for this term.

2 THE COURT: I'm sorry, we're on page 11?

3 MR. MILLER: Page 10 of paper 35 of IPR 2014,
4 00788.

5 THE COURT: Yeah.

6 MR. MILLER: It's on page 10. It's the third
7 sub-heading where it refers to remote printer, all claims.

8 THE COURT: All right. Is this counsel?

9 MR. PETER DAVIS: Yes, Peter Davis, Your Honor.

10 THE COURT: Is there some reason why you didn't
11 comply with the order?

12 MR. PETER DAVIS: Your Honor, I don't have a good
13 explanation. The case close to settling. And I have not been
14 paying sufficient attention to the deadlines, Your Honor. In
15 fact, I just came immediately upon getting the call. I didn't
16 even look over the docket to see what it was --

17 THE COURT: What case is close to settling?

18 MR. PETER DAVIS: My client's case with the plaintiff
19 in this case. I just need to wordsmith some --

20 THE COURT: I've got to tell you, I think it's very
21 serious, that we've had five lawyers and God knows how many on
22 the telephone, and that's -- come forward, you represent a
23 client. I'm really shocked.

24 MR. PETER DAVIS: Defendants, Your Honor --

25 THE COURT: Well, I don't think you're sitting with

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1 MR. HALL: I'm looking at the decision on the '155
2 patent, Claims 10 through 20, near the bottom of page 30 of
3 that.

4 THE COURT: Yes.

5 MR. HALL: Where it gives a reference to patent
6 owner's response 40.

7 THE COURT: Yes.

8 MR. HALL: And it states, quote, "In response to the
9 petitioner's petition on providing said plate filed to a remote
10 printer. In response patent argues that Claim 10 requires a
11 separate central service facility and printing company
12 facility, but emergent central service facility and the
13 printing company facility, which are described as all being
14 present at the same remote location. For example, the
15 facilities of a commercial printing service."

16 THE COURT: Thank you, Mr. Hall. That's -- I believe
17 that's what I'm referring.

18 Mr. Miller, did you, in fact, make that argument to
19 the PTAB?

20 MR. MILLER: No, Your Honor. We did not make the
21 argument the remote printer meant what PTAB defined as offsite.
22 We have taken consistently, through every paper filed in every
23 court and every PTAB, that they are distinct components,
24 defined by their function. That is the position. And that's
25 consistent with that sentence. However, if you take out

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1 "remote printer," that's their definition of remote printer
2 they're asserting, not our definition of remote printer.

3 THE COURT: All right. That's -- the PTAB, as
4 pointed out by Mr. Hall, states, "Patent owner argues that
5 Claim 10," and there's a quote, that is an accurate quote of
6 what you said?

7 MR. MILLER: That's a quote from the language of the
8 patent, Your Honor, that's not a quote from us. That's the
9 language of the patent.

10 THE COURT: All right. So in other words, if I look
11 at the response at 40 it -- in other words, you did not take
12 that position?

13 MR. MILLER: That is correct, Your Honor, that's a
14 claim --

15 THE COURT: All right. Okay. If it's important --
16 and that's not the position you take here?

17 MR. MILLER: The position we take here -- there's two
18 separate issues here. There's one, remote printer and the
19 definition that PTAB has applied to it, which includes the word
20 "offsite." Our quarrel is with the word "offsite." PTAB has
21 taken the position that "central service facility," the
22 "printing facility," and the "end-user facility," all have to
23 be distinct components. And I can point the Court to the
24 language where they've taken that consistently through their
25 brief.

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1 therefore, different. But I think that we're still in the PTAB
2 proceeding until that rehearing is decided.

3 THE COURT: Okay. But considering where I think
4 we're going, I don't, at this point, see any reason to be
5 delaying for that. Where we're going is getting any amended
6 complaints filed. Having the plaintiff tell us which claims
7 are being asserted against which defendants. I don't see any
8 reason to delay any of that. Maybe there's something else, but
9 I understand. Thank you.

10 MR. HENEGHAN: Thank you.

11 THE COURT: All right. With regard to -- I'd like to
12 talk about the defendants. And first of all, in general terms,
13 and I don't think I'm asking anything that's very confidential,
14 but Mr. Heneghan and Mr. Jackson, if it is just tell me.

15 Inevitably we have to have consolidated proceedings on behalf
16 of all defendants for part of these things. To what ex --
17 analogous to what plaintiffs would do in a typical case, is
18 there some organization? I'll give you an example, which I'll
19 get to later. Pretty clearly there's going to have to be
20 discovery from the plaintiff as to invalidity issues. Mr.
21 Jackson, Mr. Heneghan, you'd agree with that?

22 MR. JACKSON: Yes, Your Honor.

23 THE COURT: And forgetting -- not forgetting, but
24 understanding that damages issues can be defendant specific, I
25 don't see any defendant-specific invalidity discovery. It just

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1 THE COURT: No, I just want to know if you're saying
2 that you didn't make this argument. If you say you didn't, you
3 didn't. But the PTAB, when they say you argued it, you did not
4 make that argument, whatever the argument is here, that's an
5 inaccurate statement.

6 MR. MILLER: That is an inaccurate statement. And
7 they quoted the language from the patents, it's not a quote
8 from us.

9 THE COURT: All right. That's not your position.
10 All right. If it's significant, we can debate it. I just
11 wanted to get clear where we are. Okay.

12 And we now know the further proceedings that are
13 possible in the PTAB. Mr. Heneghan or any defendant, my
14 position would be that while the plaintiff may appeal, they're
15 not asserting the invalidated claims in this case. And we're
16 going to proceed. But if something happens in the PTAB,
17 they'll -- we'll have to adjust to it.

18 Mr. Heneghan or Mr. Jackson?

19 MR. HENEGHAN: Well, Judge, the only thing I would
20 say in response to that is that your original order, back in
21 January, about the stay of original defendants, talked about
22 the review proceedings before the PTAB. And I would say until
23 the rehearing is decided, the review proceedings from the PTAB
24 are still going on. I realize that the Court may view an
25 appeal of the Federal Circuit as a separate proceeding, and

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1 seems to me that we're not going to have the plaintiff
2 subjected to 27 different depositions, et cetera. Don't we
3 need to have a process whereby there is one discovery
4 proceeding against the plaintiff?

5 MR. HENEGHAN: Your Honor, I think that in general
6 that the defendants are in agreement with that concept. But
7 there are some differences. I would say that the lack of
8 commonality extends beyond damages in this case. It also
9 extends to infringement.

10 THE COURT: I will get to that, Mr. Heneghan.

11 MR. HENEGHAN: Okay.

12 THE COURT: But in terms of invalidity, I'm not
13 cutting anybody off, I'm saying you can have a deposition of
14 somebody, the inventor, somebody. Is there any reason why
15 you're going to have to have 27 or ten different depositions
16 rather than one?

17 MR. HENEGHAN: We don't think so, Judge. And I can
18 say that up to this point, the defendants have cooperated, you
19 know, pretty well with each other. And everybody seems to be
20 moving in the same direction. So I don't think anyone would
21 stand up and say we need to have 15 different depositions of
22 the inventor. I think that those kind of issues that are truly
23 common, the defendants will be able to cooperate and get it
24 done in the most efficient way possible. I have no doubt of
25 that.

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