

From: Scott McKeown
Sent: Wednesday, April 22, 2015 4:06 PM
To: 'Miller, Samuel'; Christopher Ricciuti
Cc: CP Docket McKeown; CP Docket Kiklis; Crosby, Clint; Ramage, W. Edward; Gibbs, Sharon
Subject: RE: Depositions

Mr. Ramage/Miller,

Thank you for your letter of April 20, 2015. As your letter expresses considerable confusion as to PTAB trial practice, as well as to the content of our April 16, 2015 communication, please allow me to clarify.

Petitioners' email communication of April 16th was captioned "Supplemental Evidence." Likewise, the cover sheet for each proceeding references Rule 42.64(b)(2). This rule provides that supplemental evidence may be served within 10 days of an objection. As such our 4/16, communication is clearly not a petitioner response, supplemental information, or an opposition to your motion to exclude. It is supplemental evidence, which is plainly permissible under the cited rule—and entirely unremarkable as far as PTAB trial practice is concerned. Further, for a motion to exclude to be proper under Rule 42.64(c), it must "identify the objections in the record in order and must explain the objections." As you explain at great length in your "Motion to Exclude," you did not object to Mr. Suetens' declaration and the Apogee exhibit before April 2nd. Accordingly, for your "Motion to Exclude" to be proper under the PTAB's rules, which Petitioners do not concede, your 4/2 filing would have to contemporaneously be considered an objection to evidence, thereby triggering Petitioners' right to submit supplemental evidence under Rule 42.64(b)(2).

You argue that petitioners' supplemental evidence is a violation of Board rules, yet you have not cited any PTAB rule for this assertion. On the other hand, petitioners have cited to the Rule 42.64(b)(2). It seems your argument is against this rule, not any improper conduct of petitioners.

Further, your complaints pertaining to "due process" evince a fundamental misunderstanding of PTAB practice and procedure. Not only is patentee discovery not "closed" you have a second period of discovery that has yet to even begin. That is, patentees are accorded two separate discovery periods in IPR to account for information in petitioner replies. "Once the time for taking discovery in the trial has ended, the parties will be authorized to file motions to exclude evidence believed to be inadmissible." *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48758 (Aug. 14, 2012). Motions to exclude are authorized at the close of trial, Due Date 4, which is June 11th.

On this last point, as stipulated changes to the schedule have left you with a limited second discovery period, Mr. Suetens and Mr. Jahn will be made available early, as a professional courtesy, as follows:

Suetens: May 6th
Jahn: May 12-15th

Please advise as to your intention in this regard.

Scott

From: Miller, Samuel [mailto:SamuelMiller@bakerdonelson.com]
Sent: Monday, April 20, 2015 5:20 PM
To: Scott McKeown; Christopher Ricciuti

Cc: CP Docket McKeown; CP Docket Kiklis; Crosby, Clint; Ramage, W. Edward; Gibbs, Sharon
Subject: RE: Depositions

Please see correspondence attached.

Samuel F. Miller

Shareholder and Co-Chair - Intellectual Property and Technology Litigation

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