

From: Scott McKeown
Sent: Friday, May 01, 2015 7:25 PM
To: 'Miller, Samuel'; Ramage, W. Edward; Christopher Ricciuti
Cc: CP Docket McKeown; CP Docket Kiklis; Crosby, Clint; Gibbs, Sharon
Subject: RE: Depositions

Sam,

I stated that there is an option to take these depositions now, but Edward's email expresses a choice to delay them for some date in the future. Thus, regardless of the rationale for your choice, I understand that you are not presently interested in taking the depositions of Mr. Suetens and Jahn. Please let me know if this is incorrect.

Further, I do not understand why CTP believes Mr. Suetens and Jahn's declarations must be filed in PRPS before taking their depositions. You were served with this evidence weeks ago, and the Board's rulings are quite clear that supplemental evidence is effective when served. If you are of the position that you can ignore supplemental evidence unless it is uploaded to PRPS, that is plainly at odds with well-established PTAB practice and precedent.

If CTP is now willing to take depositions of Mr. Suetens and Jahn, please let me know as soon as possible so that we can arrange for mutually agreeable dates. Thank you for the response.

Scott

From: Miller, Samuel [mailto:SamuelMiller@bakerdonelson.com]
Sent: Friday, May 01, 2015 5:06 PM
To: Scott McKeown; Ramage, W. Edward; Christopher Ricciuti
Cc: CP Docket McKeown; CP Docket Kiklis; Crosby, Clint; Gibbs, Sharon
Subject: RE: Depositions

Scott: Your email misrepresents Edward's email. We have not in any way indicated such a waiver. Is there a legitimate reason that you cannot file the supplemental evidence?

Sam

Samuel F. Miller
Direct: 615.726.5594 (Nashville)

From: Scott McKeown [mailto:SMcKeown@oblon.com]
Sent: Friday, May 01, 2015 4:03 PM
To: Ramage, W. Edward; Miller, Samuel; Christopher Ricciuti
Cc: CP Docket McKeown; CP Docket Kiklis; Crosby, Clint; Gibbs, Sharon
Subject: RE: Depositions

Edward,

Rule 42.53 in no way prevents these depositions from occurring now. In fact, parties are free to agree to discovery between themselves at any time. 42.51(b)(2)(i). While I don't believe this point is in any way controversial, if you require explicit confirmation from the Board, I remain available to discuss this with the Board at your convenience. In the case of such straightforward inquiries, the Board will typically decline the teleconference offer and simply confirm the understanding of the parties via email.

Because we can easily secure the Board's guidance in a day or two, I understand that you are choosing to decline our proposed dates for Mr. Suetens and Jahn in favor of as yet undetermined, later dates.

I will await your response on Mr. Stevenson.

Scott

From: Ramage, W. Edward [<mailto:eramage@bakerdonelson.com>]
Sent: Friday, May 01, 2015 1:53 PM
To: Scott McKeown; Miller, Samuel; Christopher Ricciuti
Cc: CP Docket McKeown; CP Docket Kiklis; Crosby, Clint; Gibbs, Sharon
Subject: RE: Depositions

Scott:

Thank you for clarifying that the declarations are intended to be supplemental evidence. As such, we maintain that the declarations are improper for all of the reasons in our letter of April 22, 2015.

With regard to cross-examination by deposition, we appreciate your willingness to be flexible on timing. However, we do not appear to be permitted under 37 CFR 42.53 to take the depositions of these declarants as the proposed supplemental evidence has not been filed. If these declarations are filed, we can address the need for any depositions, and their timing within the rules and deadlines set by the Scheduling Order as amended by the parties, at that point.

I am checking with Mr. Stevenson with regard to some deposition dates later this month, and will revert.

Best regards,

Edward Ramage

W. Edward Ramage

Chair, Intellectual Property Group
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
Direct: 615.726.5771
Fax: 615.744.5771
Email: eramage@bakerdonelson.com
www.bakerdonelson.com

From: Scott McKeown [<mailto:SMcKeown@oblon.com>]
Sent: Wednesday, April 22, 2015 3:06 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

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
Baker Donelson Center, Suite 800
211 Commerce Street
Nashville, TN 37201
Direct: 615.726.5594 (Nashville)
Fax: 615.744.5594 (Nashville)
Alt. Direct: 901.577.2175 (Memphis)
Alt. Fax: 901.577.4227 (Memphis)
Email: smiller@bakerdonelson.com
www.bakerdonelson.com[\[bakerdonelson.com\]](http://bakerdonelson.com)

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
represents clients across the U.S. and abroad from offices
in Alabama, Florida, Georgia, Louisiana, Mississippi, Tennessee, Texas, and Washington, D.C.

Under requirements imposed by the IRS, we inform you that, if any advice concerning one or more U.S. federal tax issues is contained in this communication (including in any attachments and, if this communication is by email, then in any part of the same series of emails), such advice was not intended or written by the sender or by Baker, Donelson, Bearman, Caldwell & Berkowitz, PC to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

This electronic mail transmission may constitute an attorney-client communication that is privileged at law. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this electronic mail transmission in error, please delete it from your system without copying it, and notify the sender by reply e-mail, so that our address record can be corrected.

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact Oblon by reply email and destroy all copies of the original message. If you are the intended recipient, please be advised that the content of this message is subject to access, review and disclosure by the sender's Email System Administrator.