

Argenti, Matthew

From: Rosato, Michael
Sent: Thursday, July 09, 2015 3:00 PM
To: Eliot.Williams@bakerbotts.com
Cc: Argenti, Matthew; hop.guy@bakerbotts.com; brad.bowling@bakerbotts.com; Torczon, Richard
Subject: RE: Echostar/Hughes v. Caltech: IPR2015-00059

Eliot,

I am surprised anyone would consider objectionable our inquiring as to the circumstances of your witness' unavailability. Nevertheless, because you are either unwilling or unable to produce your witness, Hughes' formal withdrawal of Ms. Fradenburg's testimony is appropriate.

Regarding Dr. Pfister, after having further reviewed his direct testimony, his cross-examination is unnecessary.

Best regards,

- Mike

From: Eliot.Williams@bakerbotts.com [mailto:Eliot.Williams@bakerbotts.com]
Sent: Thursday, July 09, 2015 1:27 PM
To: Rosato, Michael
Cc: Argenti, Matthew; hop.guy@bakerbotts.com; brad.bowling@bakerbotts.com; Torczon, Richard
Subject: RE: Echostar/Hughes v. Caltech: IPR2015-00059

Mike:

We've responded to the non-objectionable portions of your inquiry. We reached out to Ms. Fradenburg's counsel promptly after receiving your request for her deposition, and learned late last week that she would not appear voluntarily. At that point, we obtained Dr. Pfister's availability. If you intend to move forward with Dr. Pfister on the 22nd, please let us know today. Otherwise, he will need to release that day from his schedule to accommodate other commitments.

The remainder of your inquiry seems to be based on flawed assumptions.

Regards,

Eliot D. Williams
BAKER BOTTS LLP
1001 Page Mill Road
Bldg. One, Ste. 200
Palo Alto, CA 94304-1007
+1 650 739-7511 (Direct Dial)
+1 650 739-7611 (Fax)

From: Rosato, Michael [mailto:mrosato@wsgr.com]
Sent: Thursday, July 09, 2015 11:29 AM

To: Williams, Eliot D.
Cc: Argenti, Matthew; Guy, Hop; Bowling, Brad; Torczon, Richard
Subject: RE: Echostar/Hughes v. Caltech: IPR2015-00059

Eliot,

Thank you for the comments. However, that is not fully responsive to my inquiry. When you procured Ms. Fradenburg's direct testimony on behalf of Hughes, was she instructed she would be required to appear for cross-examination if called? When did you first request she be made available for a deposition? Ms. Fradenburg is a Hughes witness, so I'm trying to understand how and why Hughes has put itself in this position. I am also trying to understand why it took you so long to bring this to my attention.

Thanks in advance.

- Mike

From: Eliot.Williams@bakerbotts.com [<mailto:Eliot.Williams@bakerbotts.com>]
Sent: Thursday, July 09, 2015 10:24 AM
To: Rosato, Michael
Cc: Argenti, Matthew; hop.guy@bakerbotts.com; brad.bowling@bakerbotts.com; Torczon, Richard
Subject: RE: Echostar/Hughes v. Caltech: IPR2015-00059

Mike:

Ms. Fradenburg is an employee of the University of Texas, a non-party, whom we understand to be represented by the University's legal affairs office. We have requested the University of Texas, via its Legal Affairs Office, to make Ms. Fradenburg available for a deposition. Counsel for the University responded that she would not appear voluntarily, and that subpoena would be required to secure her appearance.

Please let us know if you intend to move forward with the deposition of Dr. Pfister on the 22nd. His availability is limited.

Eliot D. Williams
BAKER BOTTS LLP
1001 Page Mill Road
Bldg. One, Ste. 200
Palo Alto, CA 94304-1007
+1 650 739-7511 (Direct Dial)
+1 650 739-7611 (Fax)

From: Rosato, Michael [<mailto:mrosato@wsgr.com>]
Sent: Wednesday, July 08, 2015 1:54 PM
To: Williams, Eliot D.
Cc: Argenti, Matthew; Guy, Hop; Bowling, Brad; Torczon, Richard
Subject: RE: Echostar/Hughes v. Caltech: IPR2015-00059

Eliot,

Thank you for the response. Although I am a bit confused – did you not instruct Ms. Fradenburg at the time of obtaining her direct testimony that she would be required to appear for cross-examination if called? Also, please clarify precisely what attempts you've made to gain her appearance.

Best regards,

- Mike

Michael T Rosato

Wilson Sonsini Goodrich & Rosati

[o] 206.883.2529 | [f] 206.883.2699

mrosato@wsgr.com

From: Eliot.Williams@bakerbotts.com [<mailto:Eliot.Williams@bakerbotts.com>]

Sent: Tuesday, July 07, 2015 4:29 PM

To: Rosato, Michael

Cc: Argenti, Matthew; hop.guy@bakerbotts.com; brad.bowling@bakerbotts.com

Subject: RE: Echostar/Hughes v. Caltech: IPR2015-00059

Michael:

We have attempted to schedule the deposition of Ms. Fradenburg, but she is unwilling to appear voluntarily. To the extent Patent Owner would like her deposition, we suggest that you request issuance of a subpoena to compel her deposition. *See Marvell v. IV*, IPR2014-00553, Paper 28 (April 8, 2015). We also question whether the authenticity and publication date of the reference at issue is genuinely in dispute in this proceeding.

Regarding Dr. Pfister's availability, we can make him available at our offices in Palo Alto on July 22nd. As that would be slightly outside the typical time for completing the deposition, we would be amenable to a slight adjustment to the due dates in the current schedule. Let us know if you would like to propose such a modification.

Regards,

Eliot D. Williams

BAKER BOTTS LLP 

1001 Page Mill Road

Bldg. One, Ste. 200

Palo Alto, CA 94304-1007

+1 650 739-7511 (Direct Dial)

+1 650 739-7611 (Fax)

From: Rosato, Michael [<mailto:mrosato@wsgr.com>]

Sent: Friday, June 12, 2015 3:42 PM

To: Williams, Eliot D.

Cc: Argenti, Matthew; Guy, Hop

Subject: Echostar/Hughes v. Caltech: IPR2015-00059

Eliot,

We would like to schedule cross-examination of the witnesses who provided affidavit testimony in support of the EchoStar/Hughes petition. As you know, Rule 42.53(d)(2) prescribes that the party requesting cross-examination

testimony choose the order in which the witnesses are to be cross-examined. As such, we will cross the witnesses in the following order, beginning with Ms. Fradenburg.

- Robin Fradenburg
- Dr. Pfister

Please provide us with dates on which the witnesses can be made available for cross-examination. You'll recall that the period for cross concludes on July 21st based on the scheduling order.

Best regards,

Michael T Rosato

Wilson Sonsini Goodrich & Rosati

[o] 206.883.2529 | [f] 206.883.2699

mrosato@wsgr.com

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