
From: Bender, James (DC)
Sent: Monday, July 04, 2016 5:19 PM
To: Steve Kelber; Gross, Gabe (SV); ncristler@crislerip.com; fkiblawi@sughrue.com; wmandir@sughrue.com; pspark@sughrue.com
Cc: pmorton@cooley.com; dallen@cooley.com; dori.hines@finnegan.com; luke.mccammon@finnegan.com; #C-M APPLE-GLOBAL TOUCH - LW TEAM; Susan Hoover
Subject: RE: Global Touch IPRs: Case Nos. IPR2015-01171, IPR2015-01172, IPR2015-01173, IPR2015-01174, IPR2015-01175, IPR2015-01603, IPR2015-01616

Steve,

Thank you. Petitioners have filed corrected replacement declarations in all seven cases. We have notified Mr. Beard that the deposition is cancelled and have cancelled our travel plans.

Best,
James

From: Steve Kelber [mailto:steve@kelberlawgroup.com]
Sent: Monday, July 04, 2016 11:15 AM
To: Bender, James (DC); Gross, Gabe (SV); ncristler@crislerip.com; fkiblawi@sughrue.com; wmandir@sughrue.com; pspark@sughrue.com
Cc: pmorton@cooley.com; dallen@cooley.com; dori.hines@finnegan.com; luke.mccammon@finnegan.com; #C-M APPLE-GLOBAL TOUCH - LW TEAM; Susan Hoover
Subject: RE: Global Touch IPRs: Case Nos. IPR2015-01171, IPR2015-01172, IPR2015-01173, IPR2015-01174, IPR2015-01175, IPR2015-01603, IPR2015-01616

Counsel:

We understand it is Petitioners' intention to **replace** certain declarations in the referenced proceedings with the papers served. On that basis, and that basis only, **the deposition of Paul Beard previously scheduled for July 7 is cancelled.** Will you be taking action to that effect?

Reference is had in the email below to 'the Board's order.' To the best of my knowledge, no Order has been issued. If you are referring to anything other than the transcript of the conference call, please send it along. Many thanks.

Steven B. Kelber
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steve@kelberlawgroup.com

From: James.Bender@lw.com [mailto:James.Bender@lw.com]
Sent: Sunday, July 03, 2016 5:15 PM

Apple Inc., et al. Exhibit 1039 Apple Inc., et al. v. Global Touch Solutions, LLC IPR2015-01173
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Cc: pmorton@cooley.com; dallen@cooley.com; dori.hines@finnegan.com; luke.mccammon@finnegan.com; #C-MAPPLE-GLOBALTOUCH.LWTEAM@lw.com; Susan Hoover

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Steve,

Attached are the corrected declarations. Per the Board's order, the only change is the addition of the perjury acknowledgment on the last page of each declaration. We plan to file these shortly. If you intend to go forward with the deposition, please let us know by **11am Eastern tomorrow morning**. We will notify Mr. Beard and cancel our travel plans if we have not heard from you by then.

You state that the "normal practice set forth in the Rules is for Petitioners to serve supplemental evidence in response to an Objection to Evidence. You have eschewed that remedy." This is incorrect. We timely served supplemental evidence in response to each of Global Touch's objections. You also refer to "direct testimony that is going to be replaced." This is again incorrect. As you well know, these merely make a clerical correction, as authorized by the Board, and do not replace any part of Mr. Beard's testimony. And you refer to the Microsoft proceedings. This is irrelevant. What happens in those proceedings, which involve a different expert, has nothing to do with the IPRs filed by Petitioners.

Best,
James

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

From: Steve Kelber [<mailto:steve@kelberlawgroup.com>]

Sent: Sunday, July 03, 2016 11:16 AM

To: Gross, Gabe (SV); Bender, James (DC); ncristler@crislerip.com; fkiblawi@sughrue.com; wmandir@sughrue.com; pspark@sughrue.com

Cc: pmorton@cooley.com; dallen@cooley.com; dori.hines@finnegan.com; luke.mccammon@finnegan.com; #C-MAPPLE-GLOBAL TOUCH - LW TEAM; Susan Hoover

Subject: RE: Global Touch IPRs: Case Nos. IPR2015-01171, IPR2015-01172, IPR2015-01173, IPR2015-01174, IPR2015-01175, IPR2015-01603, IPR2015-01616

Counsel:

I am not sure what rights and remedies you are reserving. Perhaps it does not matter.

We are not deposing Mr. Beard in Montana on June 7, 2016 because you have indicated you are replacing the Declarations currently of record that are the basis for our Notices of Deposition. The normal practice set forth in the Rules is for Petitioners to serve supplemental evidence in response to an Objection to Evidence. You have eschewed that remedy and stated your intention to replace the Declarations of record but not provided us copies of the replacement Declarations you advised the Board you were going to file. To the best of my knowledge, they have not been filed, either.

On that basis, it seems pointless to take a deposition on cross-examination of direct testimony that is going to be replaced. When and if you file the replacement Declarations Petitioners have indicated will be filed, we will make a determination at that time whether to seek cross-examination under Rule 53. We make this observation specifically in light of the events in the corresponding IPRs instituted by Microsoft and related parties. In those proceedings, we objected to declarations by Petitioners' expert on the same grounds we objected to Mr. Beard's declarations. Petitioners served supplemental evidence as provided for in the rules. The supplemental evidence was flawed in various ways, and cross-examination ensued. Petitioners in those IPRs, realizing AFTER the depositions were taken and expressly in light of the answers Declarant Horenstein provided, that the supplemental evidence was more flawed than the original evidence they sought to supplement, now wish to replace all Declarations - essentially nullifying the cross-examination and the incredible cost of proceeding in such a fashion. We do not wish to duplicate the even more expensive process here.

Accordingly - if you agree to proceed with the original Reply Declarations objected to, supplemented as you already have, we will go forward with the deposition on the 7th. I note in this respect that you have no obligation to replace those declarations, this is a solution of your choosing, not Patent Owner's. If however you are going to replace those declarations, we will wait until we have a chance to review the replacement Declarations before making a decision to depose Mr. Beard.

I look forward to your answer on whether you will rely on the documents you have already prepared and served, or on replacement documents.

Have a very good Fourth of July everyone. Be safe.

Steven B. Kelber
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-----Original Message-----

From: Gabe.Gross@lw.com [mailto:Gabe.Gross@lw.com]

Sent: Saturday, July 02, 2016 11:40 PM

To: Steve Kelber; James.Bender@lw.com; ncristler@crislerip.com; fkiblawi@sughrue.com; wmandir@sughrue.com; pspark@sughrue.com

Cc: pmorton@cooley.com; dallen@cooley.com; dori.hines@finnegan.com; luke.mccammon@finnegan.com; #C-MAPPLE-GLOBALTOUCH.LWTEAM@lw.com

Subject: RE: Global Touch IPRs: Case Nos. IPR2015-01171, IPR2015-01172, IPR2015-01173, IPR2015-01174, IPR2015-01175, IPR2015-01603, IPR2015-01616

Dear Steve:

We take this as confirmation that Global Touch will not be deposing Mr. Beard on his reply declarations. We will advise Mr. Beard and cancel our travel plans. As I mentioned before, Petitioners reserve all rights and remedies, including the right to recover their travel and other costs and expenses incurred in connection with the deposition you have unilaterally canceled.

Yours,

Gabe

From: Steve Kelber <steve@kelberlawgroup.com>

Sent: Saturday, July 2, 2016 1:29:45 PM

To: Gross, Gabe (SV); Bender, James (DC); ncristler@crislerip.com; fkiblawi@sughrue.com; wmandir@sughrue.com; pspark@sughrue.com

Cc: pmorton@cooley.com; dallen@cooley.com; dori.hines@finnegan.com; luke.mccammon@finnegan.com; #C-MAPPLE-GLOBAL TOUCH - LW TEAM

Subject: RE: Global Touch IPRs: Case Nos. IPR2015-01171, IPR2015-01172, IPR2015-01173, IPR2015-01174, IPR2015-01175, IPR2015-01603, IPR2015-01616

Gabe:

Lots of words, but I thought the issue was simple. You are not adding declarations, you are replacing them with new ones. So it would be silly to conduct a deposition on a Declaration that is being replaced, no?

Steven B. Kelber
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From: Gabe.Gross@lw.com [mailto:Gabe.Gross@lw.com]
Sent: Saturday, July 02, 2016 4:01 PM
To: Steve Kelber; James.Bender@lw.com; ncristler@crislerip.com; fkiblawi@sughrue.com; wmandir@sughrue.com; pspark@sughrue.com
Cc: pmorton@cooley.com; dallen@cooley.com; dori.hines@finnegan.com; luke.mccammon@finnegan.com; #C-MAPPLE-GLOBALTOUCH.LWTEAM@lw.com
Subject: RE: Global Touch IPRs: Case Nos. IPR2015-01171, IPR2015-01172, IPR2015-01173, IPR2015-01174, IPR2015-01175, IPR2015-01603, IPR2015-01616

Dear Steve:

While it's certainly within your client's discretion to cancel the July 7, 2016 second deposition it demanded of Petitioner's expert witness, Petitioners do not agree that the witness will necessarily be made available at any other time, or that the deposition can be unilaterally "deferred" by you until some later date. Petitioners also do not agree to extend Due Date 4 beyond the previously agreed extension to July 11. Expert witness Mr. Beard already accommodated your schedule changes more than once to schedule this deposition, and has pre-arranged plans to travel abroad beginning July 9. He made himself available for a second deposition as scheduled on July 7 at your insistence. **By choosing not to depose him again on July 7, you and your client appear to be voluntarily forgoing the opportunity to take this deposition.**

Moreover, you have not provided any legitimate reason why the deposition should be or can be deferred. The Board concluded only that Petitioners have leave to file corrected expert declarations for a ministerial reason that has no impact on the substance or content of Mr. Beard's opinions. These corrections will simply add the acknowledgement that he stated his opinions under penalty of perjury (opinions which you and your client have known about for weeks and months, deposed him about once already, and have addressed in your papers). You already have had the chance to confirm the clerical nature of the corrections, having received three corrected declarations from Mr. Beard, in response to your three objections on the same issue. And Petitioners would serve you with the additional corrected declarations before the July 7 deposition, if it were to proceed. After listening to both your and your co-counsel's arguments attempting to prevent these corrections from being made, Judge Shaw at the hearing was clear and unequivocal in her ruling rejecting your position:

"The Panel is going to allow the petitioners permission to file the corrected expert declarations, adding only the inadvertently omitted penalty of perjury acknowledgement as discussed between the parties."

Judge Shaw noted your further protestations for the record and concluded the hearing without any change to the Panel's conclusions. Your attempt to suggest that the Board having not "posted" a written order confirming Judge Shaw's ruling somehow permits you and your client to defer and reschedule the noticed deposition is not well taken. Petitioners reserve all rights and remedies, including the right to recover their travel and other costs and expenses necessarily incurred in connection with the deposition you have unilaterally canceled.

Yours,

Gabe

Gabriel S. Gross

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From: Steve Kelber [mailto:steve@kelberlawgroup.com]
Sent: Saturday, July 02, 2016 7:32 AM
To: Bender, James (DC); ncristler@crislerip.com<mailto:ncristler@crislerip.com>;
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Subject: RE: Global Touch IPRs: Case Nos. IPR2015-01171, IPR2015-01172, IPR2015-01173, IPR2015-01174, IPR2015-01175, IPR2015-01603, IPR2015-01616

Counsel:

Given that a Deposition in certain of the above-captioned proceedings had been scheduled by agreement for Wednesday in advance of Petitioners' request to alter all Declarations filed by Petitioners in those cases; given that the Board, as of the cob Friday had not yet posted its order in these matters; given that Petitioners have not yet served the replacement declarations in these matters and the likelihood that Patent Owner will request rehearing of the anticipated Order - all of which will impact the proposed deposition, **Patent Owner is withdrawing its Notice of Deposition and deferring any deposition of Paul Beard** until the Declarations Petitioners will rely on are made of record and the rationale for the substitution of those records is of record as well.

Thank you for your attention to this matter.

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