

Augsburger, Jennifer L.

From: Arnold, Jeffery <JArnold@CantorColburn.com>
Sent: Friday, September 09, 2016 5:25 PM
To: 'Abramic, John'
Cc: Hagerty, Peter; Maxwell, Anne; Ryan, Andrew; Fox, Harold; Reister, Andrea; Sawyer, Michael; Dustin.Weeks@troutmansanders.com; Daniel.Ladow@troutmansanders.com
Subject: RE: IPR2016-01111, -01112, and -01113

Dear John,

Petitioner interprets the email below as a service of interrogatories impermissibly seeking additional discovery in violation of the respective Boards' Orders of 31 August 2016 denying Patent Owners' respective motions for additional discovery. Petitioner in its oppositions to Patent Owners' motions explained in detail its position on additional discovery. Accordingly, Petitioner will not respond to the interrogatories.

Based upon the first paragraph of your email below, Patent Owners have a quarrel with a sentence in the Boards' Decision. Petitioner declines to comment on the sentence-at-issue. Any questions regarding the Orders should be addressed with the Boards.

Regards,

Jeff

Jeffery B. Arnold
Partner



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HARTFORD WASHINGTON, D.C. ATLANTA HOUSTON DETROIT

From: Abramic, John [<mailto:jabramic@Steptoe.com>]
Sent: Thursday, September 08, 2016 10:51 AM
To: Arnold, Jeffery
Cc: Hagerty, Peter; Maxwell, Anne; Ryan, Andrew; Fox, Harold; Reister, Andrea (areister@cov.com); Sawyer, Michael (msawyer@cov.com); Dustin.Weeks@troutmansanders.com; Daniel.Ladow@troutmansanders.com
Subject: IPR2016-01111, -01112, and -01113

Dear Jeffery,

The Board's recent decisions denying motions for additional discovery in the above-referenced IPR's contain the following statement: "With respect to Patent Owner's second and third Requests for Production, Petitioner

represents that no responsive documents exist. Opp. 18.” We believe that this statement regarding Petitioner’s representation is incorrect.

Petitioner’s response to category 2 of Patent Owners’ requests states the following: “Notwithstanding this objection and the objections of category (1), and subject to them, no correspondence or communications directed to terms sheets or letters of intent exist. No common interest agreements or other agreements related to the Agreement prior to the execution of the “definitive agreement” identified in category (1) exist.” We do not read Petitioner’s response as representing that no responsive documents exist. For example, category 2 of Patent Owners’ requests call for correspondence or communications related to the “definitive agreement.” We do not read Petitioner’s response as representing that there is no correspondence or communications between the parties that ultimately led to the executed definitive agreement, as this would be difficult, if not impossible, to imagine in practice.

Accordingly, we are seeking clarification regarding Petitioner’s response to category 2 of Patent Owners’ requests, and we ask that Petitioner provide answers to the following questions so that we may assess the accuracy of the Board’s statement. We request your answers by 10:00 AM Eastern time on September 12, 2016, which should be achievable given the diligence you have previously done on these issues.

- (1) Does Petitioner represent that no documents responsive to category 2 exist?
- (2) Does any correspondence or communication related to the “definitive agreement” exist? For clarity, this category includes any correspondence or communication, prior to execution of the “definitive agreement,” regarding the subject matter of the transaction memorialized in the “definitive agreement.” Put another way, correspondence and communication leading up to the execution of the “definitive agreement” are related to the “definitive agreement” even though they occurred prior to execution.
- (3) Do any drafts of the “definitive agreement” exist?
- (4) Does any correspondence or communication related to any drafts of the “definitive agreement” exist?

Regards,

John L. Abramic | **Steptoe**

Partner

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