

Olinger, Jonathan

From: Parezo, Jessica <jparezo@cov.com>
Sent: Thursday, August 10, 2017 3:42 PM
To: Olinger, Jonathan; Holloway, Clay; Mylan-WC-IPR; Stockwell, Mitch
Cc: Reister, Andrea; Kamholz, Scott; MaryAnne Armstrong - Birch, Stewart, Kolasch & Birch, LLP (maa@bskb.com); Lynde Herzbach - Birch, Stewart, Kolasch & Birch, LLP (Lynde.Herzbach@bskb.com)
Subject: RE: IPR2017-00203: Dr. McConville's Deposition

Jonathan,

The scope of any Board-ordered cross-examination of Mr. Tanjoh in the IPR would be limited to the declaration submitted during prosecution of the '180 patent, and which formed the basis of your additional discovery request. Petitioner appears to be trying to take advantage of Patent Owner's offer to file the Tanjoh deposition transcript as a means to introduce into the IPR documents to which Petitioner would not otherwise be entitled in the IPR. Such an approach is not well-taken, and we do not consent to filing with the Reply exhibits designated Restricted—Attorneys' Eyes Only.

Regards,
Jessica

Jessica Parezo

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From: Olinger, Jonathan [mailto:JOlinger@kilpatricktownsend.com]
Sent: Thursday, August 10, 2017 9:40 AM
To: Parezo, Jessica <jparezo@cov.com>; Holloway, Clay <CHolloway@kilpatricktownsend.com>; Mylan-WC-IPR <Mylan-WC-IPR@kilpatricktownsend.com>; Stockwell, Mitch <MStockwell@kilpatricktownsend.com>
Cc: Reister, Andrea <areister@cov.com>; Kamholz, Scott <SKamholz@cov.com>; MaryAnne Armstrong - Birch, Stewart, Kolasch & Birch, LLP (maa@bskb.com) <maa@bskb.com>; Lynde Herzbach - Birch, Stewart, Kolasch & Birch, LLP (Lynde.Herzbach@bskb.com) <Lynde.Herzbach@bskb.com>
Subject: RE: IPR2017-00203: Dr. McConville's Deposition

Jessica,

Patent Owner's offer to use the deposition transcript of Mr. Tanjoh without the use of exhibits designated Attorney's Eyes Only is a hollow offer. Petitioner seeks Mr. Tanjoh's deposition for the purposes of evaluating his declaration

Tanjoh has to support his arguments regarding unexpected results and any request from Petitioner for Mr. Tanjoh's deposition would include a request that Mr. Tanjoh produce those documents as well.

Given that Patent Owner has already represented that it "would work with Petitioner to file the appropriate protective order papers, if necessary," we believe that any concerns regarding the use of exhibits designated Attorney's Eyes Only could be addressed through a protective order.

Please confirm by 1:00 p.m. EST that Patent Owner will consent to the use of all exhibits from Mr. Tanjoh's deposition, including those marked Attorney's Eyes Only, under the terms of a protective order.

Best regards,
Jonathan

Jonathan D. Olinger

Kilpatrick Townsend & Stockton LLP

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From: Parezo, Jessica [<mailto:jparezo@cov.com>]

Sent: Wednesday, August 09, 2017 12:22 PM

To: Olinger, Jonathan; Holloway, Clay; Mylan-WC-IPR; Stockwell, Mitch

Cc: Reister, Andrea; Kamholz, Scott; MaryAnne Armstrong - Birch, Stewart, Kolasch & Birch, LLP (maa@bskb.com);

Lynde Herzbach - Birch, Stewart, Kolasch & Birch, LLP (Lynde.Herzbach@bskb.com)

Subject: RE: IPR2017-00203: Dr. McConville's Deposition

Jonathan,

In response to your request for clarification dated Monday, August 7, 2017, Patent Owner consents to filing with the Reply the Tanjoh deposition transcript and exhibits except for all exhibits designated Restricted—Attorneys' Eyes Only, which Petitioner would not be entitled to use in any Board-ordered deposition of Mr. Tanjoh. Filing of the permitted Tanjoh deposition exhibits is subject to any evidentiary objections we may lodge.

You have provided no basis, much less one grounded in the patent trial rules, for the request on Tuesday, August 8, 2017 to use the deposition transcripts of Drs. Bodmeier and Pinal. We respectfully decline.

Regards,
Jessica

Jessica Parezo

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From: Olinger, Jonathan [<mailto:JOlinger@kilpatricktownsend.com>]

Sent: Tuesday, August 08, 2017 1:56 PM

To: Parezo, Jessica <jparezo@cov.com>; Holloway, Clay <CHolloway@kilpatricktownsend.com>; Mylan-WC-IPR <Mylan-WC-IPR@kilpatricktownsend.com>; Stockwell, Mitch <MStockwell@kilpatricktownsend.com>

Cc: Reister, Andrea <areister@cov.com>; Kamholz, Scott <SKamholz@cov.com>; MaryAnne Armstrong - Birch, Stewart, Kolasch & Birch, LLP (maa@bskb.com) <maa@bskb.com>; Lynde Herzbach - Birch, Stewart, Kolasch & Birch, LLP (Lynde.Herzbach@bskb.com) <Lynde.Herzbach@bskb.com>

Subject: RE: IPR2017-00203: Dr. McConville's Deposition

Jessica,

Petitioner will accept your proposal to consent to the use of the March 2017 deposition transcript from the litigation in the IPR proceeding subject to the following conditions.

- All exhibits from Mr. Tanjoh's deposition can be used in the IPR proceedings;
- The deposition transcripts for Dr. Bodmeier and Dr. Pinal, and exhibits to those transcripts can be used in the IPR proceedings.

Please confirm by tomorrow at 5 EST that the above is acceptable to Patent Owner.

Best,
Jonathan

Jonathan D. Olinger

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From: Olinger, Jonathan

Sent: Monday, August 07, 2017 10:15 AM

To: 'Parezo, Jessica'; Holloway, Clay; Mylan-WC-IPR; Stockwell, Mitch

Cc: Reister, Andrea; Kamholz, Scott; MaryAnne Armstrong - Birch, Stewart, Kolasch & Birch, LLP (maa@bskb.com); Lynde Herzbach - Birch, Stewart, Kolasch & Birch, LLP (Lynde.Herzbach@bskb.com)

Subject: RE: IPR2017-00203: Dr. McConville's Deposition

Jessica,

Thank you for your proposal. We are considering it and will get back to you as soon as possible.

For clarification, can you confirm whether Patent Owner would also consent to using all exhibits from Mr. Tanjoh's deposition in the IPR proceeding?

Best,
Jonathan

Jonathan D. Olinger

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Suite 2800 | 1100 Peachtree Street NE | Atlanta, GA 30309-4528

From: Parezo, Jessica [<mailto:jparezo@cov.com>]
Sent: Friday, August 04, 2017 4:22 PM
To: Olinger, Jonathan; Holloway, Clay; Mylan-WC-IPR; Stockwell, Mitch
Cc: Reister, Andrea; Kamholz, Scott; MaryAnne Armstrong - Birch, Stewart, Kolasch & Birch, LLP (maa@bskb.com); Lynde Herzbach - Birch, Stewart, Kolasch & Birch, LLP (Lynde.Herzbach@bskb.com)
Subject: RE: IPR2017-00203: Dr. McConville's Deposition

Jonathan,

We decline to produce Mr. Tanjoh for cross-examination in the IPR proceeding. Instead, however, Patent Owner would consent to using the March 2017 deposition transcript from the litigation in the IPR proceeding, and would work with Petitioner to file the appropriate protective order papers, if necessary, in the district court and the IPR proceeding.

In the event Petitioner chooses to proceed with a motion for additional discovery in the IPR proceeding, Patent Owner will provide its arguments in the opposition paper.

Regards,
Jessica

Jessica Parezo

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From: Olinger, Jonathan [<mailto:JOlinger@kilpatricktownsend.com>]
Sent: Thursday, August 03, 2017 5:20 PM
To: Parezo, Jessica [jparezo@cov.com]; Holloway, Clay <CHolloway@kilpatricktownsend.com>; Mylan-WC-IPR <Mylan-WC-IPR@kilpatricktownsend.com>; Stockwell, Mitch <MStockwell@kilpatricktownsend.com>
Cc: Reister, Andrea <areister@cov.com>; Kamholz, Scott <SKamholz@cov.com>; MaryAnne Armstrong - Birch, Stewart, Kolasch & Birch, LLP (maa@bskb.com) <maa@bskb.com>; Lynde Herzbach - Birch, Stewart, Kolasch & Birch, LLP (Lynde.Herzbach@bskb.com) <Lynde.Herzbach@bskb.com>
Subject: RE: IPR2017-00203: Dr. McConville's Deposition

Jessica,

Following up on the Board's response to our request for a teleconference, please confirm by Monday, August 7th whether Patent Owner will agree to make its declarant, Mr. Tanjoh, available for cross-examination. If Patent Owner continues to refuse to make Mr. Tanjoh available, please provide an explanation as to the basis for Patent Owner's refusal. We request more than a simple statement that you disagree with our analysis.

Best regards,
Jonathan

Jonathan D. Olinger

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From: Parezo, Jessica [<mailto:jparezo@cov.com>]

Sent: Thursday, August 03, 2017 2:34 PM

To: Holloway, Clay; Olinger, Jonathan; Mylan-WC-IPR; Stockwell, Mitch

Cc: Reister, Andrea; Kamholz, Scott; MaryAnne Armstrong - Birch, Stewart, Kolasch & Birch, LLP (maa@bskb.com);
Lynde Herzbach - Birch, Stewart, Kolasch & Birch, LLP (Lynde.Herzbach@bskb.com)

Subject: RE: IPR2017-00203: Dr. McConville's Deposition

Clay,

Yes, we are available tomorrow morning. We are also available in the afternoon, if that is more convenient for the Board. If any of those times are acceptable, please proceed to coordinate with the Board.

We are not available on Tuesday, August 8. We can provide availability for later in the week if necessary.

Regards,
Jessica

Jessica Parezo

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From: Holloway, Clay [<mailto:CHolloway@kilpatricktownsend.com>]

Sent: Thursday, August 03, 2017 1:02 PM

To: Parezo, Jessica <jparezo@cov.com>; Olinger, Jonathan <JOlinger@kilpatricktownsend.com>; Mylan-WC-IPR <Mylan-WC-IPR@kilpatricktownsend.com>; Stockwell, Mitch <MStockwell@kilpatricktownsend.com>

Cc: Reister, Andrea <areister@cov.com>; Kamholz, Scott <SKamholz@cov.com>; MaryAnne Armstrong - Birch, Stewart, Kolasch & Birch, LLP (maa@bskb.com) <maa@bskb.com>; Lynde Herzbach - Birch, Stewart, Kolasch & Birch, LLP (Lynde.Herzbach@bskb.com) <Lynde.Herzbach@bskb.com>

Subject: RE: IPR2017-00203: Dr. McConville's Deposition

I received a voicemail about having the call tomorrow. Could we do before noon?

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