

From: [Love, Jane M.](#)
To: [Trials](#)
Cc: [Love, Jane M.](#); [Trenchard, Robert W.](#); [Rea, Teresa](#); [Yellin, Deborah](#); [Lentz, Shannon](#); [Parmelee, Steve](#); [Rosato, Michael](#); [Mills, Jad](#)
Subject: IPR2017-0854 - Request for Conference Call
Date: Tuesday, August 08, 2017 1:30:31 PM
Attachments: [Giesser Deposition Email Chain.pdf](#)

Re: IPR2017-00854 and IPR2017-01550

To the Patent Trial and Appeal Board:

Patent Owner writes to request a conference call with the Board regarding the scheduling of a deposition of Dr. Giesser offered by Petitioner.

Patent Owner and Petitioner cannot agree on a deposition date. The parties have gone back and forth for two weeks (emails attached) and had a call today and are at an impasse.

Patent Owner regrettably must seek the Board's assistance in scheduling this deposition.

Regards,

Jane M. Love, Ph.D. (Lead Counsel for Patent Owner)

Jane M. Love, Ph.D.

GIBSON DUNN

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Trenchard, Robert W.

From: Trenchard, Robert W.
Sent: Tuesday, August 8, 2017 1:21 PM
To: Love, Jane M.; Rosato, Michael
Cc: Mills, Jad; Parmelee, Steve; Yellin, Deborah; Rea, Teresa; Lentz, Shannon
Subject: RE: IPR2017-00854: Gilenya IPR—Dr. Giesser Examination

Hi Mike. To recap and follow up on our 12:30 EST call today:

1. Petitioner refused our offer of two new October dates below (the 3d or 4th), on your representation that Dr. Giesser is traveling.
2. Petitioner refused to provide any reason why Dr. Giesser is not available on the 5 other dates we have offered (Sept. 18, 19, 20, 27, and 28). You said that our requests for explanations are unproductive. We disagree, and we indeed have provided explanations for why the dates Petitioner has proposed do not work. Understanding Dr. Giesser's schedule would allow us to more productively move forward on scheduling.
3. We also suggested that we could extend the discovery schedule by one week to accommodate Dr. Giesser's schedule. You refused, without explanation.
4. We pointed out that the burden was on Petitioner in proffering Dr. Giesser to offer her reasonably for deposition in the discovery period. Petitioner never reached out to Patent Owner to identify Dr. Giesser's scheduling challenges in advance of our seeking a deposition. We still do not have a full sense of when in the discovery period Dr. Giesser might be available.
5. On that note, we asked if your representation was that Dr. Giesser is free only on the three dates you have offered. You refused to answer, and instead took the position that the three dates Petitioner has offered are all that will be forthcoming. We have previously explained why those dates don't work.
6. You asked if Jane and I were Jewish, presumably to probe whether we observe the Jewish holiday (Rosh Hashanah) on which you have offered to produce Dr. Giesser. We explained that this was a grossly inappropriate question but that, in any event, both of our families do observe Rosh Hashanah.
7. You asked if other Gibson Dunn lawyers were available on the 3 dates you have offered. We explained that Jane and I have been working on this matter for years and that our client is entitled to have the partners invested in the matter conduct the examination. In any event, Jane and I are lead and backup counsel, and there are no others. Only lead and backup counsel are permitted to take depositions.
8. We now have no choice but to ask the Board to intervene. As we previously explained, the three dates Petitioner has offered are unworkable. One is on a Saturday (Sept. 23); one is on a Jewish holiday (Sept. 22); and one conflicts with a trial (Sept. 8).

Robert Trenchard

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From: Love, Jane M.

Sent: Tuesday, August 8, 2017 8:47 AM

To: Rosato, Michael <mrosato@wsgr.com>

Cc: Mills, Jad <jmills@wsgr.com>; Trenchard, Robert W. <RTrenchard@gibsondunn.com>; Parmelee, Steve <sparmelee@wsgr.com>; Yellin, Deborah <DYellin@crowell.com>; Rea, Teresa <TRea@crowell.com>; Lentz, Shannon <SLentz@crowell.com>; Love, Jane M. <JLove@gibsondunn.com>

Subject: Re: IPR2017-00854: Gilenya IPR—Dr. Giesser Examination

Mike, Thank you for your email last night, but you have not responded to our request to know if Dr. Giesser is available on either of [Oct 3rd](#) or 4th. Is she available? At this point, we are not sure what a call will do to advance this simple scheduling issue. Please let us know also in advance what you want to discuss?

We can be available at the following conference number: Dial-In Number: (USA) [1-866-747-5969](#) or (International) [1-631-812-8554](#). [Passcode: 212-351-3922](#)

Regards, Jane and Bob

Jane M. Love, Ph.D.

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On Aug 7, 2017, at 11:13 PM, Rosato, Michael <mrosato@wsgr.com> wrote:

Great, let's connect at 9:30am Pacific/12:30 eastern. Let us know a good number at which you can be reached. Otherwise, we will plan to dial your direct line listed below.

- Mike

On Aug 7, 2017, at 7:29 PM, Love, Jane M. <JLove@gibsondunn.com> wrote:

Hi Mike, We have been with a witness all day today and were not able to break free for a call. Tomorrow, [August 8th](#), we can be available for a call [between 11:30 AM and 2 PM Eastern](#). Unfortunately, tomorrow is the only day this week we are available due to demands on another case. Let us know a time that works for you in that window. In the meantime, our discussion tomorrow will be more fruitful if you would let us know as soon as possible Dr. Giesser's availability for the October dates we proposed. Regards, Jane and Bob

Jane M. Love, Ph.D.

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On Aug 7, 2017, at 1:41 PM, Rosato, Michael <mrosato@wsgr.com> wrote:

Jane,

We are available for a telephone call after noon pacific. How is 1pm Pacific for you?

- Mike

From: Love, Jane M. [<mailto:JLove@gibsondunn.com>]
Sent: Saturday, August 05, 2017 5:31 AM
To: Rosato, Michael; Mills, Jad; Trenchard, Robert W.; Parmelee, Steve
Cc: Yellin, Deborah; Rea, Teresa; Lentz, Shannon; Love, Jane M.
Subject: RE: IPR2017-00854: Gilenya IPR—Dr. Giesser Examination

Hi Michael,

The days you have offered do not work for us. September 23 is a Saturday. September 22 is on a Jewish holiday. And the third day, September 8, is in conflict with another trial we have. We appreciate that Dr. Giesser has a busy medical practice but her declaration obliges her to be available for cross-examination on a reasonable schedule. We have tried to accommodate her schedule by offering five different dates nine weeks in advance. We have also explained why the dates Petitioner has offered are unworkable, a courtesy we have not received in return.

Is Dr. Giesser available on either of Oct 3 or 4? If not, we would like to discuss adding a week or two onto this discovery period in order to accommodate Dr. Giesser's schedule.

Thanks for your offer to shift the office location, but that is not helpful to the scheduling, and of course, we are both traveling from New York in any event. We will proceed with our prior agreement: that for this case the party offering the witness will provide the witness at an office of the party's law firm.

We are open to a phone call to discuss, although this is a straightforward, ministerial issue of scheduling a deposition. We look forward to hearing from you on the new dates we are suggesting above.

Regards,
Jane and Bob

Jane M. Love, Ph.D.

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From: Rosato, Michael [<mailto:mrosato@wsgr.com>]
Sent: Friday, August 04, 2017 5:41 PM
To: Love, Jane M.; Mills, Jad; Trenchard, Robert W.; Parmelee, Steve
Cc: Yellin, Deborah; Rea, Teresa; Lentz, Shannon
Subject: RE: IPR2017-00854: Gilenya IPR—Dr. Giesser Examination

Counsel,

The recriminations are not helpful in what should be a simple scheduling exercise. Dr. Giesser can be available for deposition on one of the following days: September 8, 22, 23.

We are willing to conduct the deposition at your firm's Century City office as a courtesy. With dates of availability identified, please let us know *by Monday August 7th* whether you plan to call Dr. Giesser for cross-examination and on precisely which one of the above identified days. We cannot guarantee the above dates remain available past Monday, as Dr. Giesser's medical practice is demanding.

If you would like to discuss the matter, we are happy to have a telephone meet and confer today or Monday. If you find this approach unacceptable, we are happy to provide times of availability for a call with the Board should you wish to seek Board intervention.

Best regards,

Michael T Rosato
Wilson Sonsini Goodrich & Rosati
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mrosato@wsgr.com

From: Love, Jane M. [<mailto:JLove@gibsondunn.com>]
Sent: Friday, August 04, 2017 8:07 AM
To: Mills, Jad; Trenchard, Robert W.; Parmelee, Steve; Rosato, Michael
Cc: Yellin, Deborah; Rea, Teresa; Lentz, Shannon; Love, Jane M.
Subject: RE: IPR2017-00854: Gilenya IPR—Dr. Giesser Examination

Jad,

As you may know, there are several Jewish holidays in the month of September and thus, as we noted, makes scheduling more difficult. September 22 falls within one of the Jewish holidays and thus we cannot accept that date. Is Dr. Giesser available on September 20th? Again, we are interested to know why all four dates we have suggested so far are impossible for Dr. Giesser. Understanding the scheduling issues in play could help us find a mutually workable date. Your reiteration of "pre-existing commitments" obviously ignores our question.

If Dr. Giesser cannot accept this fourth date, September 20th, please tell us why.

Best,
Jane and Bob

Jane M. Love, Ph.D.

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