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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL Board

----- X
WATSON LABORATORIES,)
INC.,) Case No. IRP2017-01621
Petitioner,) Patent No. 9,358,240
vs.) Case No. IRP2017-01622
UNITED THERAPEUTICS,) Patent No. 9,339-507
INC.,)
Patent Owner.) Pages 1-36
----- X

TELEPHONE CONFERENCE
HELD BEFORE ADMINISTRATIVE PATENT JUDGES
DAVID COTTA, TONI SCHEINER AND ERICA FRANKLIN
Wednesday, June 20, 2018
1:11 p.m.
Foley & Lardner
Washington Harbour
3000 K Street, N.W., Suite 600
Washington, D.C.
Sara A. Watt, RPR, RMR, CRR



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P R O C E E D I N G S

MR. QUILLIN: This is George Quillin on behalf of the Patent Owner joining the call.

MR. MAEBIUS: Also Steve Maebius on behalf of Patent Owner.

MS. IYER: Natasha Iyer on behalf of Patent Owner.

JUDGE COTTA: Is there anyone from Petitioner on the line?

MR. QUILLIN: This is George Quillin for the Patent Owner. Mr. Kurt Mathas is attempting to call in.

MR. MATHAS: Hi, George. I just joined. Thank you.

MR. QUILLIN: Wonderful.

JUDGE COTTA: Okay. Is there anybody else that's going to be attending from Petitioner or do we have the complete roster of attendees?

MR. MATHAS: It's just me. Thank you.

JUDGE COTTA: So it sounds like we're good to go?

MR. QUILLIN: I believe so, Your Honor.



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1 JUDGE COTTA: Okay. Now, I understand
2 that Patent Owner has arranged for a court reporter
3 to be present; is that correct?

4 MR. QUILLIN: Yes, Your Honor. This is
5 George Quillin. We have a court reporter here on
6 location with us.

7 JUDGE COTTA: Okay. And could you please
8 provide a transcript of the call to Petitioner and
9 file the transcript with the Board as an exhibit?

10 MR. QUILLIN: Yes, Your Honor, we will.

11 Because the court reporter is here with
12 me, we joined the call after there were any
13 introductions by the Board. If you'd like the
14 court reporter to have the names of the panel, now
15 would be a good time, I suggest.

16 JUDGE COTTA: Understood. Thank you for
17 the heads up.

18 For the benefit of the court reporter,
19 this is Judge Cotta speaking. And with me on the
20 line are Judges Scheiner and Franklin. And this is
21 a conference call concerning IPR2017-01621 and
22 IPR2017-01622.



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1 So my understanding is that Patent Owner
2 is requesting this conference call to address two
3 separate issues. The first issue relates to the
4 scheduling and location of four non-party fact
5 witnesses, all of whom are located in Germany. And
6 the second issue relates to Patent Owner's reliance
7 on its post-SAS supplemental response or reliance
8 on arguments that were presented in the preliminary
9 responses in the post-SAS supplemental response.

10 So let's start with the first issue.
11 Patent Owner, since you requested the call can you
12 please explain the nature of the problem.

13 MR. QUILLIN: Yes, Your Honor. This is
14 George Quillin.

15 This has to do with the authorship of a
16 particular paragraph, actually portions of a
17 particular paragraph of a journal article called
18 Ghofrani, which is Exhibit 1005. These four
19 declarants are listed as co-authors on the entire
20 article, but they're not, they're not all authors
21 of this particular excerpt. And these four
22 witnesses are not under the control of the Patent



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1 Owner.

2 The Board's rules, as you know, say the
3 cross-examination depositions should be in the U.S.
4 unless, unless the parties agree otherwise or the
5 Board orders. We have been attempting to agree
6 with the Petitioner for a location not in the U.S.,
7 and in our view the Petitioner has unreasonably
8 withheld agreement. I've got six broad points that
9 I'd like to make.

10 So the first one, the first point has to
11 do with the length and the nature of the
12 declarations. I had e-mailed the Board earlier
13 with the names of these four witnesses and their
14 exhibit numbers. I'll take the two of them in the
15 middle.

16 So Dr. Grimminger and Dr. Reichenberger,
17 each testify as to this excerpt, saying, I'm not
18 the author. I didn't write that. And so
19 Grimminger says he didn't write it and he says
20 Reichenberger did not write it.

21 Reichenberger, in his very short
22 declaration, says the same thing. I,



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1 Reichenberger, didn't write it; and Grimminger
2 didn't write it. He says Ghofrani wrote other
3 portions and he says Seeger and another co-author,
4 Voswinckel, wrote this excerpt. So those two
5 witnesses say, in their very short declarations,
6 say this.

7 Ghofrani in his first declaration, 2026,
8 says the same thing. I, Ghofrani, didn't write
9 this excerpt. I wrote something else. And to my
10 knowledge, it's Seeger and Voswinckel that wrote
11 this excerpt.

12 So those three witnesses all say the same
13 thing, that they didn't write this excerpt.

14 Dr. Seeger, in his excerpt, says, I,
15 Seeger, did write it, along with Voswinckel. And
16 these other guys, they did not write it.

17 So the length of the declarations and the
18 content are very short. They go to the facts of
19 who authored this thing, not in any technological
20 detail. So that's the first point.

21 In our view, in our view the case law
22 from the Board is clear to us that on those facts



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1 there's no case where the Board has compelled such
2 a witness to come to the United States to be
3 cross-examined on such a short factual declaration.
4 But these are not --

5 JUDGE COTTA: Are there cases that you
6 want to refer us to?

7 MR. QUILLIN: Yes, Your Honor, there are
8 three cases. I can address those now. Three cases
9 are Instradent against Noble, IPR2015-01786. This
10 is Paper 61.

11 The other case is Activision, Activision
12 Blizzard against Acceleration Bay. That's
13 IPR2015-01951. It's Paper 17.

14 And the third one is IBM against
15 Intellectual Ventures, IPR2014-01385, Paper 19.

16 So in our view, just on those facts, the
17 Board has not compelled bringing the witness all
18 the way to the United States. But as the saying
19 goes, wait, there's more.

20 So our second point has to do with the
21 identity of these witnesses. These witnesses are
22 not our witnesses. They're not our employees.



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1 They're not under our control. And they're not
2 expert witness, they're fact witnesses. These are
3 the listed co-authors of an article that Watson,
4 the Petitioner, picked out.

5 It's not as though there was a set of
6 U.S. co-authors and a different set of German
7 authors, and we picked the German authors just to
8 cause trouble. That's not what's going on. It's
9 not as though we've brought this on ourselves, Your
10 Honor. These are four fact witnesses listed in the
11 article that Watson itself has picked out and
12 relied on. And these folks are not under our
13 control. That's the second point.

14 The third point --

15 JUDGE COTTA: So with respect to that
16 point, I just wanted to ask, Dr. Seeger states that
17 he's a paid consultant for UTC.

18 MR. QUILLIN: Correct, Your Honor.

19 JUDGE COTTA: Does that situate him
20 differently from the other three?

21 MR. QUILLIN: From two of them.
22 Grimminger and Reichenberger were not paid, and



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1 Ghofrani in his second declaration makes clear that
2 he is a paid consultant.

3 So although these folks are paid, they're
4 not our employees and they're not under our control
5 in that sense. They've got their own counsel. We
6 can't -- at the present time, we can't even
7 communicate directly with them. We've got to go,
8 as you can appreciate, through their counsel.

9 And it's burdensome on these witnesses.
10 These are not -- these are not retirees lounging on
11 the Riviera. These are active folks with their own
12 business.

13 What sort of business are they in? Well,
14 these are not fungible guys on some production
15 line. These are medical professionals, these are
16 physicians, they're clinicians with an ongoing
17 responsibility to patients and their colleagues and
18 their staff and their employer.

19 They're not only not under our control,
20 but not, in a sense, not even under their own
21 control, putting Seeger aside for the moment. He's
22 a little different because he's the head. But



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1 these three, Ghofrani, Grimminger, and
2 Reichenberger, are employees of their respective
3 clinics or hospitals, and they got to get -- you
4 know, they got to get permission from the employer.
5 They can't just up and walk away.

6 JUDGE COTTA: In connection with the paid
7 consultant, are you just -- to the extent you can
8 disclose it, are you -- are Dr. Seeger and
9 Dr. Ghofrani getting compensated only for their
10 time in connection with this deposition and their
11 declarations or --

12 MR. QUILLIN: Yes, Your Honor.

13 JUDGE COTTA: Or is there a relationship
14 with UTC beyond that?

15 MR. QUILLIN: I'm not -- it's my
16 understanding that there is not a relationship with
17 UTC beyond that.

18 All of these witnesses work as internists
19 and professors in hospitals in a variety of
20 locations, including Bad Nauheim, Giessen/Marburg,
21 Friedberg. They treat patients directly. Many of
22 these patients, you know, they're not coming in



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1 with, you know, toenail problems. These may have
2 life-threatening diseases. And at least
3 Drs. Ghofrani and Seeger are the heads and
4 directors of their divisions and clinics.

5 All, all the doctors' practices include
6 operating on patients and other invasive
7 procedures. Each clinic, as we understand it, has
8 prescheduled days for operations and other
9 procedures, which entails scheduling and staffing
10 that may be set months in advance.

11 Any travel to the United States would
12 realistically require these witnesses to be away
13 from their clinics for four to five working days.
14 That's an entire working week. Even depositions in
15 Frankfurt would pull them away from their clinical
16 responsibilities and their patients.

17 They're willing, as we understand it,
18 they're willing to appear as witnesses, but of
19 course the well-being and the life of their
20 patients is their top priority. So replacing any
21 of them, much less all of them, for required
22 planned clinics and procedures if they were to



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1 travel to the U.S. would be next to impossible for
2 them.

3 JUDGE COTTA: So you say they're willing
4 to participate as witnesses.

5 What have you offered as an accommodation
6 to Petitioner in terms of their availability for
7 depositions?

8 MR. QUILLIN: We've offered to make them
9 available for a deposition in Germany, going
10 through the procedures that are there. We have
11 offered to reimburse travel expenses for Watson's
12 counsel.

13 And I don't want to jump too far ahead,
14 but I'm believing, Your Honor -- I obviously can't
15 speak for the Petitioner, but I believe that if you
16 say that Patent Owner is not required to bring
17 those four to the U.S., then the parties will be
18 able to work out suitable locations and times and
19 that sort of thing that are mutually convenient.

20 We've got a relatively good working
21 relationship, I think. And as I understand it,
22 there's no reason, there's no -- there's no



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1 articulated reason why the Petitioner is not
2 willing to have the depositions in Germany.

3 So that has to do with the burden on the
4 witnesses, which includes, you know, the summer
5 months and German hospitals are understaffed and
6 there's a lot of other stuff going on about they're
7 trying to rearrange their schedules and doing it
8 all in advance.

9 And that plays into the fourth point,
10 which has to do with the logistics of taking a
11 deposition in Germany. We have to go, as I
12 understand it under the rules, we have to go
13 through the consulate, which is in Frankfurt. And
14 the consulate then has to convey the request to the
15 embassy in Berlin. The embassy then communicates
16 to the German department of -- Ministry of Justice.
17 So there's a long lead time. As we understand it,
18 it could be six to eight weeks.

19 We raised this topic with Petitioner's
20 counsel, like, three weeks ago and haven't been
21 able to make much progress. And from our view, the
22 longer Watson waits to deal with this, the less



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1 likely we're able to get approval on time, which we
2 say falls on Watson.

3 We certainly -- you know, we, United
4 Therapeutics, we're not in control of the
5 consulate. There may be logistical problems with
6 things going on there. But we're confident that if
7 you tell us that we're not required to bring them
8 to the U.S., we can work through whatever the
9 situation is and both sides, you know, working
10 hard, will do their best to make them available for
11 a deposition.

12 The fifth point has to do with the case
13 law. I've already mentioned the three cases that
14 we say support us. In Instradent, the Board found
15 it was unnecessarily burdensome to make an Israeli
16 third-party witness appear in the U.S. for
17 cross-examination, and ordering the deposition
18 occur in Israel or by video.

19 In Activision, the Board found it
20 unnecessarily costly and burdensome to make an
21 Australian declarant available for a live
22 deposition in the U.S. regarding a three-page



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1 declaration, and ordering that they be made
2 available for a video deposition.

3 And in IBM, the Board permitted a
4 telephonic deposition of no more than an hour where
5 the declaration was three pages.

6 Now, there are a couple cases that Watson
7 has pointed out, but we think those are clearly
8 distinguishable.

9 One of them is HTC Corporation, that's
10 IPR2014-01198. It had to do with a French witness.
11 And, again, as I understand it, he had to do with
12 more like expert testimony, but he was -- he was
13 someone who was not willing to be deposed in the
14 U.S., and the Board encouraged the parties to work
15 together and come up with a solution. I think -- I
16 think if the Board were to tell us that we can have
17 the deposition in Europe, that the parties would be
18 able to work out a solution.

19 And there's another case that they've
20 cited which is Valve Corporation, which is
21 IPR2017-00136. But I -- again, those cases don't
22 control here. They're easily distinguishable from



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1 what we have here.

2 JUDGE COTTA: Okay. Just to get you back
3 to your six points, I think I've got 1, 2, 4, and
4 5. Maybe I missed 3 and 6.

5 MR. QUILLIN: 3 was the burden on the
6 witnesses. So 2 was the identity of the witnesses.
7 These are third parties, not employees, not under
8 our control. 3 was the burden on the witnesses.
9 These guys are, as I say --

10 JUDGE COTTA: Yeah.

11 MR. QUILLIN: 4 had to do with the
12 logistics of the deposition.

13 JUDGE COTTA: 5 is the case law.

14 MR. QUILLIN: 5 is the case law.

15 And 6 was the question you asked about
16 the status of negotiations so far. We're working
17 back and forth and we've -- I think have been
18 negotiating in good faith. But the sticking point
19 seems to be the Petitioner's, in our view,
20 unreasonable unwillingness.

21 JUDGE COTTA: Okay.

22 MR. QUILLIN: So the final thing has to



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1 do with the ask. What do we want from the Board?

2 All we're looking for really, Your Honor,
3 is an order saying that the depositions are not
4 required in the U.S. We'll do our best, working
5 with the witnesses, over whom we don't have any
6 control, and with Petitioner to come up with a
7 mutually satisfactory location for the deposition
8 in Europe.

9 JUDGE COTTA: Okay. Can I hear from the
10 Petitioner, please?

11 MR. MATHAS: Yes, Your Honor. This is
12 Kurt Mathas for Petitioner. Let me respond to a
13 few things that Mr. Quillin just said.

14 As the Board noted in the questioning,
15 two of these witnesses are paid consultants for
16 United Therapeutics. At least Dr. Seeger has a
17 long history with United Therapeutics, consulting
18 relationships going back into the early 2000s.

19 Over the course of that history and as
20 recently as a couple years ago Dr. Seeger has been
21 in the United States for meetings in connection
22 with United Therapeutics business. And so we



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1 certainly think that that is relevant to the claims
2 of burden and the alleged unavailability of these
3 folks to be able to travel to the U.S.

4 By the same token, there was a point made
5 about that this is all really about one paragraph
6 and three guys who said, "I didn't write it," and
7 one guy who said, "I did write it." I would
8 respectfully suggest that that is underselling the
9 evidence and the importance of the evidence here,
10 Your Honor.

11 As the actual declarations go, the Seeger
12 declaration, there's two of them. One is six
13 pages, one is ten pages. The Ghofrani declaration,
14 again there's two of them, one is four pages, one
15 is six pages. Grimminger and Reichenberger do in
16 fact have shorter depositions and are not paid
17 consultants of UTC at this point.

18 One other point about the importance of
19 these declarations, Your Honor, is this issue was
20 at the center of the pre-institution fight. And,
21 in fact, four of the six declarations were
22 submitted in connection with the Patent Owner's



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1 preliminary response. And as Your Honors may
2 recall, there was this dispute about the authorship
3 of Ghofrani and the inventorship of the claims at
4 issue. Four of these declarations were submitted
5 with the Patent Owner's preliminary response.

6 Watson sought leave and was granted
7 permission to put in a reply to Patent Owner's
8 preliminary response to raise questions as to some
9 of the statements made in the declarations with
10 respect to other evidence of record that called
11 into question some of the statements in the
12 declarations.

13 We submitted that reply brief and Your
14 Honors, in your institution decision, found that
15 this issue of what the inventors said in their
16 declarations versus some of this other evidence of
17 record raised a general issue of material fact as
18 to the contribution of the non-inventors to the
19 references in question.

20 And so we think that that piece of this,
21 Your Honors, distinguishes our case and the
22 importance of these individual witnesses where



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1 their credibility has already been called into
2 question and will be critical in these depositions
3 from the cases relied upon by Patent Owner that he
4 cited to you in his remarks. And in each of those,
5 the depositions were -- or the declarations were
6 limited and on limited issues. Here, at least two
7 of the declarations span ten pages cumulatively, or
8 more, and all of them go to a critical issue as
9 between the parties.

10 With respect to the case law, counsel for
11 Patent Owner cited two of the cases that we would
12 rely on, but we would also note two things about
13 those cases and their analysis of the rules that
14 require depositions within the United States unless
15 otherwise directed.

16 With respect to the HTC case, the panel
17 there notes that in fact the default of position
18 established by the rules is that the party
19 proffering a declarant's testimony shall make that
20 declarant available for cross-examination within
21 the United States.

22 The Valve Corp. case, which was also



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1 mentioned, also has a discussion of the reason
2 behind the rules and what it means when you submit
3 a declaration. And there the panel noted that
4 Patent Owner chose to submit a declaration from
5 Mr. Rubinger. That choice came with certain
6 foreseeable consequences. Specifically, it was
7 foreseeable that the witness would be subject to
8 cross-examination and that the burden and expense
9 of producing that witness would fall on Patent
10 Owner.

11 A third case that we cited to Patent
12 Owner which wasn't mentioned in the previous
13 comments is Square, Inc., versus REM Holding 3,
14 LLC. That's IPR2014-312, at Paper 37.

15 And there, Your Honors, there was a
16 declarant who was an author of one of the prior art
17 references, and he had put in a declaration about
18 the subject matter of the prior art references.
19 And he happened to be located in Hong Kong and he
20 didn't want to come to the U.S. to be deposed.

21 The Board, in Paper 37 in Square, Inc.,
22 v. REM Holdings 3, ordered that the witness, quote,



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1 must be made available in the United States for
2 cross-examination or Patent Owner may request to
3 withdraw his declaration from consideration in this
4 proceeding.

5 So, Your Honors, we do think that there
6 is case law that goes in our favor. We think the
7 cases which Patent Owner has cited are themselves
8 distinguishable, given the issues at play here.

9 In addition, Your Honor --

10 JUDGE COTTA: Let me interrupt you for a
11 second, just to get the paper number for
12 IPR2017-00136, just to save some trouble.

13 MR. MATHAS: Yes. That is Paper 29, Your
14 Honor. And the quote that I read is at page 30.

15 JUDGE COTTA: Okay.

16 MR. MATHAS: And in 2014-1198, the quote
17 that I read is also at page 30.

18 Two more points I think, Your Honor, is
19 that -- one of the things I think that here is that
20 there is an overstatement, perhaps, of the burden
21 on the doctors involved in this case.

22 I recognize that being deposed is not



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1 probably high on many people's list. However,
2 based on the fact, especially with Dr. Seeger who
3 has come to the U.S. multiple occasions on behalf
4 of UTC business, and the fact that these folks can
5 come during different periods within the discovery
6 period, and that these folks are presumably out of
7 the office from time to time on personal or other
8 business matters, it seems to me that the burden,
9 respectfully, may be overstated in that they are
10 unable to get away and come to the United States.

11 And then the last thing I guess I would
12 say is -- well, maybe two more things. One is that
13 it is -- I think Patent Owner's position is
14 ignoring the burden that they are attempting to
15 place on Petitioner here.

16 We are under a tight timeframe, Your
17 Honor, with respect to our discovery period,
18 because of the subsequent institution decision and
19 the way the schedule played out after that. We
20 have approximately seven weeks to take discovery
21 from when we will get Patent Owner's supplemental
22 response before our reply is due.



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1 During that period of time, as it
2 currently stands, we are going to be required to
3 take at least ten depositions of declarants that
4 have put in declarations so far. There may be
5 additional declarations. So with that kind of
6 truncated discovery period, in light of the way the
7 schedule shook out, we have to not only take these
8 depositions, we have to prepare our reply brief and
9 apparently also go to Germany for a week or however
10 long it takes to get these depositions done.

11 And, apparently, I learned this morning
12 that, as counsel indicated, this is not a simple
13 process of going to a court, a conference room in
14 Germany, but instead we apparently have to go
15 through these formal processes. And I was, I
16 guess, under the misimpression that Patent Owner
17 was offering to make those arrangements. As of
18 this morning, that additional burden was going to
19 fall on us to get the depositions of their
20 declarants.

21 With respect to the negotiations between
22 the parties, we have had them, as counsel said.



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1 One of the compromises we proposed was that Patent
2 Owner bring their two paid consultants to the
3 United States, Dr. Ghofrani and Dr. Seeger, and
4 that we would go to Germany for the other two,
5 Dr. Reichenberger and Grimminger. In part because,
6 as Your Honor noted, there does seem to be a
7 distinction between paid and unpaid consultants,
8 and we thought that is a reasonable compromise in
9 order to bring some resolution to this, rather than
10 demanding that all four of the declarants be
11 brought to the United States.

12 JUDGE COTTA: Okay. So just to
13 summarize, it seems to me like the principal
14 objection that Petitioner has to taking the
15 depositions in Germany is just the logistics and
16 the tight timeframe that Petitioner is under in
17 terms of responding to the Patent Owner's
18 supplemental response and the Patent Owner's
19 response and squeezing in ten depositions in seven
20 weeks?

21 MR. MATHAS: That's right, Your Honor,
22 the burden and inconvenience of doing that work.



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1 JUDGE COTTA: Okay. Can I ask Patent
2 Owner just a quick question?

3 Have you checked to see whether any of
4 the witnesses have plans to be in the United
5 States, independent of this, during the relevant
6 time period?

7 MR. QUILLIN: We've checked to the extent
8 we can, Your Honor. As I say, they're not under
9 our control, we got to go through their counsel.

10 We have checked publicly available
11 schedules and it appears that they're not
12 participating in conferences in the U.S., for
13 example. So to our knowledge, to our knowledge
14 they are not otherwise coming to the U.S. during
15 this time period.

16 JUDGE COTTA: Okay.

17 MR. QUILLIN: And it's not -- it's not
18 our position, Your Honor, that these guys are
19 somehow chained to their desks or in a cage or
20 something and can't get out. That's not the point.
21 It had to do with the -- or that they've never been
22 to the U.S. That's not our point. You know,



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1 Seeger came, evidently, a couple years ago on
2 something that was evidently in a capacity opposed
3 to UTC.

4 Our point is to do with the lead time and
5 the scheduling. It's -- as I say, aside from
6 Seeger, these are not folks who are even under full
7 control of their own schedule. They've got
8 employers from whom they must get permission. And
9 on the case law, there's no case that we're aware
10 of, no case that requires three witnesses, four
11 witnesses to come.

12 If we're going to have, as Petitioner has
13 offered, a pair of depositions in Germany, we say
14 that Ghofrani is in that same, ought to be in that
15 same group. If we're going to have two or three of
16 them in Germany, what's the point of bringing
17 Seeger here? There's no need, there's no marginal
18 need to have him further disrupt what's going on
19 there. They all four, in our view, can be made
20 available, we will trust, in Europe.

21 And that's all we're asking for. If the
22 Board says we don't need to bring them to the U.S.,



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1 we will work our very best to make them available
2 in Europe.

3 JUDGE COTTA: Okay. I think we
4 understand the issue.

5 Is there anything else that either party
6 wants to add before we take the issue under
7 advisement?

8 MR. QUILLIN: Not from Patent Owner, Your
9 Honor.

10 MR. MATHAS: Nothing from Petitioner,
11 Your Honor.

12 JUDGE COTTA: Okay. And in timing, I
13 assume you're looking for a decision as soon as
14 possible so that you can move forward to resolving
15 this?

16 MR. QUILLIN: Please, Your Honor, yes.

17 JUDGE COTTA: Is there any hard-and-fast
18 deadline that you have, other than as soon as
19 possible?

20 MR. QUILLIN: As we understand it from
21 the website on the U.S. consulate, it's going to
22 take, like, six to eight weeks, which is why we



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1 tried to reach out to Petitioner three weeks ago.

2 Beyond that, I'm not aware, Your Honor.

3 JUDGE COTTA: Okay. Let me ask you -- I
4 guess before I take it under advisement, I'm going
5 to put you guys on mute and confer with the panel,
6 see if they -- please hold.

7 MR. QUILLIN: Yes.

8 MR. MATHAS: Yes, Your Honor.

9 (Pause in the proceedings at 1:44 p.m.)

10 (Proceedings resumed at 1:48 p.m.)

11 JUDGE COTTA: Okay. Is everybody still
12 here?

13 MR. QUILLIN: Patent Owner is here, Your
14 Honor.

15 MR. MATHAS: Yes for Petitioner, Your
16 Honor.

17 JUDGE COTTA: Okay. I just wanted to
18 follow up on one question and that's to ask whether
19 the parties have considered taking the deposition
20 by video or phone or -- and/or elsewhere in Europe
21 more proximate to Germany to solve the logistical
22 concerns raised by the Petitioner.



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1 MR. QUILLIN: Patent Owner is willing to
2 do that, Your Honor. And in terms of have we
3 discussed it, it's been broached.

4 JUDGE COTTA: So I guess my understanding
5 is, at least from Patent Owner's perspective, if we
6 were to order the depositions to occur outside the
7 United States, you'd find a way to amicably resolve
8 it?

9 MR. QUILLIN: Yes, Your Honor, we will
10 certainly do our best. Again, these are not our
11 guys, we're not in control of them, but we will
12 certainly work, do our level best to accommodate
13 both the witnesses and Petitioner.

14 MR. MATHAS: Your Honor, from Patent
15 Owner's [sic.] perspective, we have discussed
16 elsewhere in Europe as a potential for resolving
17 the issues that would be upon us by the German
18 proceedings. We still maintain that they should
19 proceed in the U.S., but under the idea that they
20 are going to be or that they would take place in
21 Europe, that one way that we might be able to avoid
22 some of the logistical issues would be by exploring



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1 other venues.

2 With respect to a video deposition, I
3 think two things about that. One is if it takes
4 place in Germany, I don't think that -- I don't --
5 I think it would have to be in person, in that the
6 witness would be made available at the consulate's
7 office. And at any rate, we intend to question the
8 witnesses in person in light of the credibility
9 issues that I spoke of before.

10 JUDGE COTTA: Okay. Okay. We will take
11 the issue under advisement.

12 And I guess move on to the second issue,
13 which I guess was a question relating to the Patent
14 Owner's reliance on its preliminary response and
15 its post-SAS supplemental response.

16 MR. QUILLIN: Right, Your Honor. This is
17 George Quillin.

18 JUDGE COTTA: Can you tell me what the
19 issue is there?

20 MR. QUILLIN: Well, it may be a
21 non-issue. We discussed with Petitioner and we
22 think -- we think Petitioner is not going to



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1 oppose.

2 But the notion is that there are
3 arguments that have been made in our Patent Owner
4 response that need to be reflected in our
5 supplemental response. So if they were all in one
6 paper and we were on page 30, we would say,
7 "Regarding this issue, see what we wrote on page
8 10."

9 That's the sort of thing we're talking
10 about doing here. All we want to do is refer back
11 to arguments that have previously been made. You
12 know, for example, Voswinckel and Ghofrani were
13 relied on for ground 1; Voswinckel's relied on for
14 grounds 2 and 3. The sort of thing we want to say
15 is that "See what we wrote before." I don't
16 imagine that you need to read it all again.

17 JUDGE COTTA: Are these referring back to
18 the preliminary response or the Patent Owner
19 response?

20 MR. QUILLIN: Our Patent Owner response.

21 JUDGE COTTA: Okay. So I think that one
22 I can resolve or we can resolve here, if you'd just



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1 let me put you on mute and confer with the panel to
2 make sure.

3 (Pause in the proceedings at 1:52 p.m.)

4 (Proceedings resumed at 1:53 p.m.)

5 JUDGE COTTA: Okay. So the panel has
6 conferred and in response to your question we are
7 fine with your referring back to the Patent Owner's
8 response in the supplemental response.

9 MR. QUILLIN: Very well, Your Honor.
10 Thank you very much.

11 JUDGE COTTA: Is there anything further
12 that we should address while we're convened here?

13 MR. QUILLIN: Not on behalf of the Patent
14 Owner, Your Honor.

15 MR. MATHAS: Nothing for Petitioner, Your
16 Honor.

17 JUDGE COTTA: Okay. Well, I thank you
18 both for your time. We will take the deposition
19 matter under advisement and issue an order in due
20 course, hopefully sooner rather than later.

21 MR. QUILLIN: We'd be very grateful.

22 JUDGE COTTA: To the extent you can make



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1 the transcript available sooner rather than later,
2 that would facilitate that.

3 MR. QUILLIN: Very well, Your Honor.
4 We'll press ahead on that and get it to you as soon
5 as we can.

6 JUDGE COTTA: Okay. Thank you. This
7 call is adjourned.

8 MR. QUILLIN: Thank you, Your Honor.

9 - - -

10 (Proceedings concluded at 1:54 p.m.)

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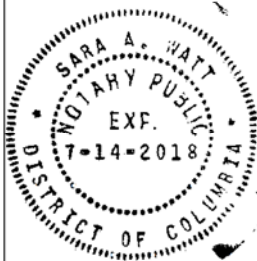
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C E R T I F I C A T E

I, Sara A. Watt, Registered Professional Reporter, the officer before whom these proceedings were taken, duly commissioned and qualified, do hereby certify that the proceedings were by me reduced to Stenotypy, afterwards transcribed upon a computer; that the foregoing is a true and correct transcription of the proceedings so given as aforesaid; that these proceedings were taken at the time and place in the foregoing caption specified, and were completed without adjournment; and that I am not a relative, council or attorney of any party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 20th day of June, 2018.



Sara A. Watt, Notary Public

in and for the District of Columbia.

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