

Hedvat, Shannon H.

From: Hedvat, Shannon H.
Sent: Wednesday, March 18, 2020 10:31 AM
To: Vakili, Kamran; Baghdassarian, Mark; Federico, Alexis; Caplan, Jonathan S.; provner@potteranderson.com; ~Choa, Jonathan
Cc: Yorks, Ben; McPhie, David; Michael J. Farnan; Brian E. Farnan (bfarnan@farnanlaw.com); Holland, Eileen
Subject: RE: Fraunhofer v. Sirius XM

Kamran,

Thank you for your e-mail.

Unfortunately, your response does not address the issues raised in our e-mail or during our meet and confer yesterday and these issues will need to be presented to the Court today.

With respect to Dr. Lyon's deposition, you had agreed to let us know yesterday if Fraunhofer will proceed with his deposition. Please let us know immediately if Fraunhofer will proceed with the deposition.

Shannon

From: Vakili, Kamran <KVakili@irell.com>
Sent: Tuesday, March 17, 2020 9:07 PM
To: Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Baghdassarian, Mark <MBaghdassarian@KRAMERLEVIN.com>; Federico, Alexis <AFederico@irell.com>; Caplan, Jonathan S. <JCaplan@KRAMERLEVIN.com>; provner@potteranderson.com; ~Choa, Jonathan <jchoa@potteranderson.com>
Cc: Yorks, Ben <BYorks@irell.com>; McPhie, David <DMcPhie@irell.com>; Michael J. Farnan <mfarnan@farnanlaw.com>; Brian E. Farnan (bfarnan@farnanlaw.com) <bfarnan@farnanlaw.com>; Holland, Eileen <EHolland@irell.com>
Subject: [EXTERNAL] RE: Fraunhofer v. Sirius XM

Shannon,

See below for some further responses from Fraunhofer in view of the parties' meet-and-confer this afternoon and your most recent email.

Chart: Fraunhofer agrees to forego the early Rule 30(b)(6) deposition of SXM (D.I. 163) if SXM confirms that it will provide the information Fraunhofer has been seeking in the written format of our proposed February 28 chart as we have requested. If SXM agrees, please confirm by email before the hearing tomorrow that this issue has been resolved, except for the question of by what deadline SXM will provide the requested chart.

IPR Deposition: Fraunhofer appreciates SXM's offer to make Dr. Lyon available for a telephonic deposition, in light of the circumstances surrounding COVID-19. Fraunhofer is considering SXM's offer and will respond shortly. We think the remainder of your commentary is beside the point (and we do not agree in any event).

Code Review: As we explained during the call today, Fraunhofer needs to be able to proceed with the source code review right away. Please confirm whether SXM will or will not agree to facilitate a source code review in the near term, whether in person or over a secure remote connection. If SXM refuses to do this, Fraunhofer will need to seek the

assistance of the Court. Note that Fraunhofer's code expert is located in the New York City area, which is where you previously indicated the code would be produced for inspection.

Schedule: Fraunhofer objects to SXM's continued mischaracterization of its purported need to modify the case schedule. SXM still has not explained why the timing of the non-pseudonymized email production (which was directly attributable to SXM's lack of cooperation and delay) or the filing of the Amended Complaint requires a modification of the schedule. And we do not view SXM's previous proposal (i.e., that we simply push the fact discovery cut off until the day before opening expert reports are due) as a reasonable approach. Nonetheless, as we discussed during today's call, we understand that the situation surrounding COVID-19 has been rapidly evolving and may ultimately impact the case schedule. As of a few hours ago, we are in receipt of SXM's new scheduling proposal to change the fact discovery deadline to July 1 and to move out all other deadlines by 60 days. We are currently considering that proposal. Given that we received the proposal less than 24 hours before the hearing and have not had the opportunity to consult with our client, it is unlikely that we will have a final response for you at the hearing. That said, we are willing to continue to meet and confer with SXM on this issue.

Best,
Kamran

Kamran Vakili, Ph.D

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From: Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>

Sent: Tuesday, March 17, 2020 2:42 PM

To: Vakili, Kamran <KVakili@irell.com>; Baghdassarian, Mark <MBaghdassarian@KRAMERLEVIN.com>; Federico, Alexis <AFederico@irell.com>; Caplan, Jonathan S. <JCaplan@KRAMERLEVIN.com>; ~Rovner, Phil <provner@potteranderson.com>; ~Choa, Jonathan <jchoa@potteranderson.com>

Cc: Yorks, Ben <BYorks@irell.com>; McPhie, David <DMcPhie@irell.com>; Michael J. Farnan <mfarnan@farnanlaw.com>; Brian E. Farnan (<bfarnan@farnanlaw.com> <bfarnan@farnanlaw.com>); Holland, Eileen <EHolland@irell.com>

Subject: RE: Fraunhofer v. Sirius XM

Kamran,

Per our discussion earlier today, both parties agreed to get back to each other on the various issues discussed. Below please find SXM's updates. We look forward to Fraunhofer's positions, including on the 30(b)(6) and chart issue, and those outlined below, by today.

IPR Deposition: For purposes of the IPR only, and in an effort to address Fraunhofer's April 1 deadline as you raised during the call, SXM is amenable to making Dr. Lyon available for a telephonic deposition in light of the travel restrictions and other concerns surrounding COVID-19. We understood your proposal to be one whereby Fraunhofer would forego the deposition of Dr. Lyon if SXM would forego the deposition of Fraunhofer's expert who will submit a responsive declaration. However, under the PTAB rules, Fraunhofer is prohibited from submitting any additional evidence, including in the form of an expert declaration, in its sur-reply. Accordingly, SXM does not consent to Fraunhofer's submission of a declaration with its sur-reply. Please confirm whether Fraunhofer wishes to proceed with a telephonic deposition of Dr. Lyon next Tuesday.

Schedule: As we explained during the call, and in our various correspondence last week, SXM proposes to push out the fact discovery deadline, and potentially other deadlines in the schedule, to account for Fraunhofer's belated decision to proceed with the Amended Complaint, Fraunhofer's delayed e-mail production, to resolve issues relating to case narrowing and additional *Markman* proceedings for outstanding disputed claim terms, and now to account for the uncertainties surrounding the COVID-19 pandemic including its impact on depositions, such as for SXM witnesses located in New York and elsewhere as well as Fraunhofer's witnesses many of which are located in Germany. Notwithstanding that circumstances globally are changing almost daily, and noting that the parties can agree to work with the Court to amend any deadlines as needed to account for such uncertainty, SXM proposes (as it did last week) to change the fact discovery deadline to July 1 and to move out all other deadlines by the same number of days (60). As part of this schedule, we would want to include dates for case narrowing and for the Court to resolve remaining claim construction issues.

Fraunhofer's Response to ROG 10: In anticipation of the hearing tomorrow, and in light of Fraunhofer's newly identified case law in its letter of Friday, March 13, as a matter of courtesy, SXM identifies the following case that it intends to raise with the Court tomorrow in order to properly present the law on the issue surrounding Fraunhofer's ongoing insufficient response to ROG 10: *Knauf Insulation, LLC v. Johns Manville Corp.*, No. 1:15-CV-00111-WTL-MJD, 2018 WL 6659726 (S.D. Ind. Jun. 28, 2018).

Shannon

Shannon H. Hedvat
Associate

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From: Vakili, Kamran <KVakili@irell.com>
Sent: Monday, March 16, 2020 7:19 PM
To: Baghdassarian, Mark <MBaghdassarian@KRAMERLEVIN.com>; Federico, Alexis <AFederico@irell.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Caplan, Jonathan S. <JCaplan@KRAMERLEVIN.com>; provner@potteranderson.com; ~Choa, Jonathan <jchoa@potteranderson.com>
Cc: Yorks, Ben <BYorks@irell.com>; McPhie, David <DMcPhie@irell.com>; Michael J. Farnan <mfarnan@farnanlaw.com>; Brian E. Farnan (<bfarnan@farnanlaw.com> <bfarnan@farnanlaw.com>); Holland, Eileen <EHolland@irell.com>
Subject: [EXTERNAL] RE: Fraunhofer v. Sirius XM

Mark,

I understand your email to mean that SXM is now refusing to provide the requested information in chart form. If that is right, then please immediately identify available dates for the Rule 30(b)(6) deposition as we have requested numerous times.

We have yet to receive a complete scheduling proposal from SXM and this is not an issue that has been properly raised for this week's hearing. That said, we are willing to consider any scheduling proposal you may have and can meet and confer once we have had the opportunity to discuss with our client.

Regards,
Kamran

Kamran Vakili, Ph.D

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From: Baghdassarian, Mark <MBaghdassarian@KRAMERLEVIN.com>

Sent: Monday, March 16, 2020 3:57 PM

To: Vakili, Kamran <KVakili@irell.com>; Federico, Alexis <AFederico@irell.com>; ~Hedvat, Shannon <shedvat@kramerlevin.com>; Caplan, Jonathan S. <JCaplan@KRAMERLEVIN.com>; ~Rovner, Phil <provner@potteranderson.com>; ~Choa, Jonathan <jchoa@potteranderson.com>

Cc: Yorks, Ben <BYorks@irell.com>; McPhie, David <DMcPhie@irell.com>; Michael J. Farnan <mfarnan@farnanlaw.com>; Brian E. Farnan (<bfarnan@farnanlaw.com> <bfarnan@farnanlaw.com>); Holland, Eileen <EHolland@irell.com>

Subject: RE: Fraunhofer v. Sirius XM

Kamran:

Thank you for confirming the meet and confer. Sirius XM's letter outlines its position, but we will be prepared to discuss these issues. Please confirm that Fraunhofer will be prepared to discuss the scheduling issues we previously identified in my email from this morning and Shannon's e-mail dated March 9 and provide Fraunhofer's position on these issues prior to tomorrow's meet and confer.

Thanks.
-Mark

Mark Baghdassarian
Partner

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From: Vakili, Kamran [KVakili@irell.com]

Sent: Monday, March 16, 2020 4:06 PM

To: Baghdassarian, Mark; Federico, Alexis; Hedvat, Shannon H.; Caplan, Jonathan S.; provner@potteranderson.com;

~Choa, Jonathan

Cc: Yorks, Ben; McPhie, David; Michael J. Farnan; Brian E. Farnan (bfarnan@farnanlaw.com); Holland, Eileen

Subject: [EXTERNAL] RE: Fraunhofer v. Sirius XM

Dear Mark,

We confirm for 1 pm ET (10 am PT) tomorrow. Please use the following bridge:

Dial-in: (866) 349-7797

Passcode: 9497605151

Can SXM confirm that it will provide the accused product information we have been seeking in the written format of our proposed February 28 chart so as to avoid the need for deposition practice? If not, what are SXM's available dates for a deposition (either remote or in person) in the next 2-3 weeks to provide that information?

Regards,

Kamran

Kamran Vakili, Ph.D

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From: Baghdassarian, Mark <MBaghdassarian@KRAMERLEVIN.com>

Sent: Monday, March 16, 2020 12:35 PM

To: Vakili, Kamran <KVakili@irell.com>; Federico, Alexis <AFederico@irell.com>; ~Hedvat, Shannon <shedvat@kramerlevin.com>; Caplan, Jonathan S. <JCaplan@KRAMERLEVIN.com>; ~Rovner, Phil <provner@potteranderson.com>; ~Choa, Jonathan <jchoa@potteranderson.com>

Cc: Yorks, Ben <BYorks@irell.com>; McPhie, David <DMcPhie@irell.com>; Michael J. Farnan <mfarnan@farnanlaw.com>; Brian E. Farnan (bfarnan@farnanlaw.com) <bfarnan@farnanlaw.com>; Holland, Eileen <EHolland@irell.com>

Subject: RE: Fraunhofer v. Sirius XM

Kamran,

Let's plan on speaking at 1pm ET tomorrow to discuss these issues.

Thanks.

-Mark

Mark Baghdassarian

Partner

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