From: Venkat Konda
To: Anderson, Paul M.; Modi, Naveen; Jairam, Arvind; Hsieh, Courtney A.
Cc: Venkat Konda
Subject: [EXT] Re: Availability of Dr. Chaudhary for Deposition
Date: Friday, December 18, 2020 6:07:03 PM

Mr. Anderson:

In reply to your email, I propose the following for the taking of Dr. Chaudhary's deposition:

1. The deposition will be scheduled for December 30, 2020 at 9:00 AM EST continuing as per the rules. Please serve a formal notice of deposition to that effect setting forth the logistics for the taking of the deposition (presumably by Zoom, Blue Jeans or other videoconferencing system which Petitioner will provide).
2. Petitioner's cross-examination, Patent Owner's redirect examination (if any), and Petitioner's re-cross-examination (if any) will of course be limited to Dr. Chaudhary's declaration according to 37 C.F.R. 42.53(d)(5)(ii).
3. I will be retaining a registered patent attorney to make a special appearance on behalf of Patent Owner at the deposition.

Please let me know if you agree to the above so that the matter can be resolved without the necessity of involving the Board.

Very Truly Yours,
Venkat Konda Ph.D

From: **Anderson, Paul M.** <paulanderson@paulhastings.com>
Date: Fri, Dec 18, 2020 at 1:18 PM
Subject: RE: Availability of Dr. Chaudhary for Deposition
To: Venkat Konda <venkat@kondatech.com>
Cc: Modi, Naveen <naveenmodi@paulhastings.com>, Jairam, Arvind <arvindjairam@paulhastings.com>, Hsieh, Courtney A. <courtneyhsieh@paulhastings.com>, Anderson, Paul M. <paulanderson@paulhastings.com>

Dr. Konda,

Thank you for getting back to us. It seems like we should just seek the Board's guidance on these issues. Below is an email we plan to send to the Board later today. Please insert your position and availability for a call.

****

Petitioner Flex Logix seeks the Board's guidance on the following issues that have arisen in the above-mentioned proceedings:

First, as the Board is aware, Patent Owner has submitted a declaration from Dr. Vipin Chaudhary, PH.D. (Ex. 2005) in these proceedings. Petitioner has been conferring with Patent Owner on three issues with respect to deposing Dr. Chaudhary and seeks the Board's guidance:

1. Petitioner has been trying to meet and confer to arrive at a deposition time that is appropriate. Patent Owner proposed only December 30th within a three week period with a 2 PM ET start time. Patent Owner has provided no justification for the late start time. Based on the interaction with Patent Owner during the meet and confer to establish a deposition time, it has become clear that Patent Owner's conduct during the deposition is likely to require intervention by the Board, and, as such, having the deposition take place outside of normal business hours is unduly burdensome on both Petitioner and the Board.

2. Patent Owner is not committing to producing Dr. Chaudhry for the entire time period that is provided by the rules. See 37 C.F.R. 42.53(c)(2) ("Unless stipulated by the parties or ordered by the Board, cross-examination, redirect examination, and re-cross examination for uncompelled direct testimony shall be subject to the follow time limits: Seven hours for cross-examination, four hours for redirect examination, and two hours for re-cross examination.") Petitioner certainly plans to be efficient with its examination, but cannot at this time say how long the deposition will last and has asked Patent Owner to commit to providing Dr. Chaudhary for the time period provided by the rules. Patent Owner has refused to do so.

3. Patent Owner believes that he can defend Dr. Chaudhary at the deposition. Patent Owner is not an attorney and is not registered to practice before the USPTO. As such, Petitioner does not believe that Patent Owner is qualified to defend the deposition and allowing him to do so would be inefficient, disruptive to the cross-examination, and prejudicial to Petitioner.

Second, Petitioner seeks the Board's guidance with respect to Patent Owner's behavior. Even after being instructed by the Board to exhibit proper decorum, Patent Owner continues to use insulting, personal language that is inappropriate and unnecessary. *See* IPR2020-00260, Paper 11 at 6 (noting that "Patent Owner does not exhibit proper decorum in his email communications with Petitioner" and encouraging "Patent Owner to review the Board's rules and Consolidated Practice Guide, and request[ing] Patent Owner refrain from such behavior in the future"). Petitioner seeks leave to submit an example of Patent Owner's improper behavior and regrettably seeks the Board's guidance on this issue.

To the extent the Board deems a call is necessary, Petitioner is available for a call at the Board's convenience. Patent Owner is available [Insert availability]

Patent Owner's Positon: [Insert]

From: Venkat Konda <venkat@kondatech.com>
Sent: Friday, December 18, 2020 1:44 AM
To: Anderson, Paul M. <paulanderson@paulhastings.com>
Cc: Modi, Naveen <naveenmodi@paulhastings.com>; Jairam, Arvind <arvindjairam@paulhastings.com>; Hsieh, Courtney A. <courtneyhsieh@paulhastings.com>; Venkat Konda <venkat@kondatech.com>
Subject: [EXT] Re: Availability of Dr. Chaudhary for Deposition

Mr. Anderson:

1. With respect to the deposition time, it appears to me you are lying big time! Nowhere in this thread, I said Dr Chaudhary and I are available at 9 AM on December 30, 2020 let alone at 9 AM EST. I challenge you to prove otherwise, if not shut up!
2. Dr. Chaudhary and I are available at 11 AM PST on December 30, 2020. (read this email thread again)
3. As I said before, we will abide by the rules.
4. I repeatedly mentioned Dr. Chadhury's deposition is limited to the scope and content of Dr. Chaudhary's declaration.
5. I suspect the deposition will be taken on a video conference call. Once you confirm, I will answer follow on questions.
6. I am representing Dr. Chaudhary at the deposition as a Pro Se Counsel on the IPRs.

Very Truly Yours,

Venkat Konda Ph.D.

On Thu, Dec 17, 2020 at 6:33 AM Anderson, Paul M. <paulanderson@paulhastings.com> wrote:

> Dr. Konda,
>
> Thank you for your email.
>
> With respect to the deposition time, it appears that you agree that you need to make Dr. Chaudhry available for the entire time period provided by the rules. Please confirm that we can start his deposition at 9 AM ET on December 30th. Please also let us know where in Cleveland the deposition will take place so we can issue a deposition notice.
>
> As for costs, Rule 42.53 (g) states that "[e]xcept as the Board may order or the parties may agree in writing, the proponent of the direct testimony shall bear all costs associated with the testimony, including the reasonable costs associated with making the witness available for the cross-examination." The proponent of the direct testimony here is Patent Owner, not Petitioner. In any event, the rules provide for costs associated with the court reporter, etc., not the costs you are referring to in your email.
>
> Finally, we do object to you representing Dr. Chaudhary at his deposition. It seems like you will retain counsel for him to the extent you want, but please confirm that you will not be representing him at the deposition.
>
> If you disagree with any of the above, please let us know and we can seek the Board's guidance as appropriate.
>
> Regards,
>
> Paul
>
> **From:** Venkat Konda <venkat@kondatech.com>
> **Sent:** Thursday, December 17, 2020 1:16 AM
> **To:** Anderson, Paul M. <paulanderson@paulhastings.com>
> **Cc:** Modi, Naveen <naveenmodi@paulhastings.com>; Jairam, Arvind <arvindjairam@paulhastings.com>; Hsieh, Courtney A. <courtneyhsieh@paulhastings.com>; Venkat Konda <venkat@kondatech.com>
> **Subject:** [EXT] Re: Availability of Dr. Chaudhary for Deposition
>
> Mr. Anderson:

1. Firstly, it is Dr. Chaudhary and I are accommodating within the schedule you proposed i.e. December 30, 2020. It is not the other way around as you stated.
2. Secondly, you neither got it nor would not want to get it. I never requested you as you wrote "our (your) intended areas of cross-examination".
3. Thirdly, I warned you several times in this thread, that Dr. Chaudhary's deposition is limited to the scope and content of Dr. Chaudhary's declaration i.e. ¶¶ 27-38 in Exhibit 2025. Anything outside of that will be appropriately objected. After that it is your stupidity of how many hours you want to repeatedly ask the same y=1 question for the IPR eligibility of '523 patent.
4. Fourthly, Dr. Chaudhary will be represented by the Pro Se counsel Dr. Konda.
5. Fifthly, If you object and prove that Dr. Konda is not qualified as Counsel to represent, we will hire an attorney to represent at the deposition.
6. Sixthly, 37 CFR § 42.53 (g) states:

    1. **Costs**. Except as the Board may order or the parties may agree in writing, the proponent of the direct testimony shall bear all costs associated with the testimony, including the reasonable costs associated with making the witness available for the cross-examination."

7. Accordingly i.e. pursuant to 37 CFR § 42.53 (g), all the costs for Dr. Chaudhary's deposition are on you and your client.
8. Whether it is Dr. Konda or Dr. Konda & a registered attorney representing Dr. Chaudhary's deposition, one or two people need to travel and stay in Cleveland for Dr. Chaudhary's deposition.
9. Due to Covid-19 and stay-in-place orders, the people (as stated above) travelling and staying in cleveland need to quarantine for appropriate duration both ways of travel to Cleveland. You need to bear all these costs pursuant to 37 CFR § 42.53 (g).

Figure out all the above details and make the funds available ASAP upfront, for Dr. Konda to hire a registered attorney soon if needed and make the travel/lodging arrangements soon as there is not a lot of time till December 30, 2020. Finally I have sent enough emails on this matter and so you need to decide fast of what you want to do on this matter.

Very Truly Yours,

Venkat Konda Ph.D.

On Wed, Dec 16, 2020 at 12:49 PM Anderson, Paul M. <paulanderson@paulhastings.com> wrote:

> Dr. Konda,
>
> We are trying to be accommodating of Dr. Chaudhary's schedule and are willing to hold the deposition on the only day you indicate Dr. Chaudhary is available over a three week span. As we previously informed you, the maximum number of hours on the record for the deposition is set forth in the rule. The total time that will be required for the deposition depends on many factors, some of which relate to how Dr. Chaudhary responds to the questions presented and some of which relate to the particular aspects of Dr. Chaudhary's declaration that Petitioner chooses to cross-examine him on. Needless to say, we are under no obligation to inform you in advance of our intended areas of cross-examination.
>
> Will Dr. Chaudhary be represented by counsel at the deposition? Your emails suggest that you intend to attend the deposition as well. Based on our understanding, you are not an attorney and you do not have a registration number for practicing before the USPTO, and, as such, you are not qualified to defend Dr. Chaudhary at his deposition.
>
> Regards,
>
> Paul
>
> **From:** Venkat Konda <venkat@kondatech.com>
> **Sent:** Wednesday, December 16, 2020 1:16 AM
> **To:** Anderson, Paul M. <paulanderson@paulhastings.com>
> **Cc:** Modi, Naveen <naveenmodi@paulhastings.com>; Jairam, Arvind <arvindjairam@paulhastings.com>; Hsieh, Courtney A. <courtneyhsieh@paulhastings.com>; Venkat Konda <venkat@kondatech.com>
> **Subject:** [EXT] Re: Availability of Dr. Chaudhary for Deposition
>
> Mr. Anderson:
>
> First, I am thrilled to know you will take ONLY one deposition that applies to BOTH IPR2020-00260 and -00261. It is so generous of you, Sir.
>
> However you are not still getting it! Let me break this into separate questions:
>
> 1. You seem to have trouble understanding "with respect to Dr. Chaudhary's declaration and its scope in IPRs 2020-00260 and -00261"
>
>   1. To understand **scope** of a declaration refer to § 37 C.F.R. 42.53(d)(5)
>
> 2. "How many hours are you planning to take Dr. Chaudhary's deposition" means what is the maximum number of hours?
>
>   1. Engineers do this sort of planning all the time. So the direct question to you is given **the scope and content** of Dr. Chaudhary's declaration, how many **maximum** hours of deposition is going to be according to the rules you are referring to?
>
>   1. Of course, Dr. Chaudhary and I need to allocate that maximum number of hours in our schedules, after you respond with a direct answer.
>   2. BTW, December 30, 2020 is the only day that works for both Dr. Chaudhary and me.

2. Also I hope you have already read Dr. Chaudhary's deposition. If not please read it first to understand the **scope and content of** of it and then answer my questions.

Finally of course I agree to follow the rules.

Very Truly Yours,

Venkat Konda Ph.D.

On Tue, Dec 15, 2020 at 4:31 PM Anderson, Paul M. <paulanderson@paulhastings.com> wrote:

> Dr. Konda,
>
> At this point I don't know how long the deposition will take, but the witness needs to be made available for the entirety of the time period provided by the rules. There are many factors that will influence the time required for the deposition, and some of those involve decisions with respect to the specific questions that will be asked of the witness.
>
> Regards,
>
> Paul
>
> **From:** Venkat Konda <venkat@kondatech.com>
> **Sent:** Tuesday, December 15, 2020 6:23 PM
> **To:** Anderson, Paul M. <paulanderson@paulhastings.com>
> **Cc:** Modi, Naveen <naveenmodi@paulhastings.com>; Jairam, Arvind <arvindjairam@paulhastings.com>; Hsieh, Courtney A. <courtneyhsieh@paulhastings.com>; Venkat Konda <venkat@kondatech.com>
> **Subject:** [EXT] Re: Availability of Dr. Chaudhary for Deposition
>
> Mr. Anderson:
>
> You did not answer my question. Again here is the question:
>
> 1. With respect to Dr. Chaudhary's declaration and its scope in IPRs 2020-00260 and -00261, how many hours are you planning to take Dr. Chaudhary's deposition?
>
> Very Truly Yours,
>
> Venkat Konda Ph.D.
>
> On Tue, Dec 15, 2020 at 4:00 PM Anderson, Paul M. <paulanderson@paulhastings.com> wrote:
>
> > Dr. Konda,
> >
> > We are willing to have one deposition that will apply to both IPR2020-00260 and -00261. However, the witness needs to be made available for the entirety of the time period provided by the rules.
> >
> > Regards,
> >
> > Paul
> >
> > **From:** Venkat Konda <venkat@kondatech.com>
> > **Sent:** Tuesday, December 15, 2020 5:07 PM
> > **To:** Anderson, Paul M. <paulanderson@paulhastings.com>
> > **Cc:** Modi, Naveen <naveenmodi@paulhastings.com>; Jairam, Arvind <arvindjairam@paulhastings.com>; Hsieh, Courtney A. <courtneyhsieh@paulhastings.com>; Venkat Konda <venkat@kondatech.com>
> > **Subject:** [EXT] Re: Availability of Dr. Chaudhary for Deposition
> >
> > Mr. Anderson:

Of course I know § 37 C.F.R. 42.53. With respect to Dr. Chaudhary's declaration and its scope in IPRs 2020-00260 and -00261, how many hours are you planning to take Dr. Chaudhary's deposition?

Very Truly Yours,

Venkat Konda Ph.D.

On Tue, Dec 15, 2020 at 8:13 AM Anderson, Paul M. <paulanderson@paulhastings.com> wrote:

> Dr. Konda,
>
> Depositions can be lengthy and therefore starting earlier helps to ensure that the deposition can be completed within a single day.
>
> *See* 37 C.F.R. 42.53(c)(2) ("Unless stipulated by the parties or ordered by the Board, cross-examination, redirect examination, and re-cross examination for uncompelled direct testimony shall be subject to the follow time limits: Seven hours for cross-examination, four hours for redirect examination, and two hours for re-cross examination.")
>
> Regards,
>
> Paul
>
> **From:** Venkat Konda <venkat@kondatech.com>
> **Sent:** Tuesday, December 15, 2020 2:24 AM
> **To:** Anderson, Paul M. <paulanderson@paulhastings.com>
> **Cc:** Modi, Naveen <naveenmodi@paulhastings.com>; Jairam, Arvind <arvindjairam@paulhastings.com>; Hsieh, Courtney A. <courtneyhsieh@paulhastings.com>; Venkat Konda <venkat@kondatech.com>
> **Subject:** [EXT] Re: Availability of Dr. Chaudhary for Deposition
>
> Mr. Anderson:
>
> What is the purpose to start earlier in the day for Dr. Chaudhary's deposition?
>
> Very Truly Yours,
>
> Venkat Konda Ph.D.
>
> On Mon, Dec 14, 2020 at 6:08 PM Anderson, Paul M. <paulanderson@paulhastings.com> wrote:
>
> > Dr. Konda,
> >
> > December 30th will work for the deposition, but a 2pm EST is very late in the day to start a deposition. Is Dr. Chaudhary available to start earlier in the day on the 30th? If not, can you please propose a different date where we can start earlier?
> >
> > Regards,
> >
> > Paul
> >
> > **From:** Venkat Konda <venkat@kondatech.com>
> > **Sent:** Saturday, December 12, 2020 10:28 PM
> > **To:** Anderson, Paul M. <paulanderson@paulhastings.com>
> > **Cc:** Modi, Naveen <naveenmodi@paulhastings.com>; Jairam, Arvind <arvindjairam@paulhastings.com>; Hsieh, Courtney A. <courtneyhsieh@paulhastings.com>; Venkat Konda <venkat@kondatech.com>
> > **Subject:** [EXT] Re: Availability of Dr. Chaudhary for Deposition
> >
> > Mr. Anderson:

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