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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91213605
Party	Defendant Applied Micro Circuits Corporation
Correspondence Address	PAULO A DE ALMEIDA PATEL & ALMEIDA PC 16830 VENTURA BLVD, SUITE 360 ENCINO, CA 91436 UNITED STATES Paulo@PatelAlmeida.com
Submission	Motion to Compel Discovery
Filer's Name	Paulo A. de Almeida
Filer's e-mail	Paulo@PatelAlmeida.com
Signature	/Paulo A. de Almeida/
Date	12/01/2014
Attachments	X-Gene_Motion to Compel Deposition_Sanctions.pdf(2676642 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

US Trademark Application Serial No. 85/442,829 for X-Gene
Filed: October 8, 2011
Published: July 29, 2013

Spec Research, Inc.,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91213605
	)	Serial No. 85/442,829; X-Gene
)	
Applied Micro Circuits Corporation,)	
A/K/A APM)	
)	
Applicant)	
_____)	

**APPLICANT'S MOTION TO COMPEL DISCOVERY DEPOSITION AND MOTION
FOR SANCTIONS**

Applicant, Applied Micro Circuits Corporation, A/K/A APM ("Appliant"), hereby moves the Trademark Trial and Appeal Board ("Board") to compel Opposer, Spec Research, Inc. ("Opposer") to produce its president, Joseph Shih, for a discovery deposition. Joseph Shih is the *sole* individual identified in Opposer's Rule 26 initial disclosures and the *only* individual possessing knowledge of Opposer's alleged common-law rights in "X Gene". Moreover, Opposer's repeated and willful failures to cooperate in the scheduling of a deposition, followed by Opposer's express agreement to produce Mr. Shih for a duly noticed deposition on November 14th, 2014, and his subsequent failure to appear, are particularly egregious in this case, warranting sanctions. Applicant further respectfully requests that the proceedings be suspended pending the disposition of this motion and the pending deadlines in the matter be reset upon the ruling of this motion.

Applicant, through its undersigned counsel, has made numerous good faith efforts, by email correspondence, to resolve with Opposer's counsel the issues presented in the motion, and has been unable to obtain cooperation or reach agreement. *See* Declaration of Paulo A. de Almeida ("de Almeida Decl."), Ex. A (Applicant's attempts to schedule a deposition over a period of three (3) months; Opposer's repeated refusals to cooperate; Opposer's agreement to produce Mr. Shih for deposition on November 14th, 2014), Ex. B (Notice of Deposition), Ex. C (certificate of non-appearance).

LEGAL STANDARD

A party to an *inter partes* proceeding before the Board may, after proper notice and a good faith effort to resolve the matter, file a motion to compel a party to attend a deposition. *See* Trademark Rule 2.120(e); *S. Industries Inc. v. Lamb-Weston Inc.*, 45 USPQ2d, 1293, 1298 (TTAB 1997); *see also HighBeam Marketing LLC v. Highbeam Research LLC*, 85 USPQ2d 1902, 1907 (TTAB 2008) (motion to compel attendance of employees for depositions granted where moving party made good faith effort to schedule depositions but opposer failed to cooperate).

OPPOSER'S REFUSALS TO COOPERATE AND NON-APPEARANCE

On October 20, 2013, Opposer commenced this opposition. On July 9, 2014, the parties agreed to suspend the proceeding pending settlement discussions. *See* TTABVUE Dkt. # 15. Shortly after Opposer rejected Applicant's last settlement offer on August 13, 2014, Applicant's counsel requested the availability dates of Opposer's president, Joseph Shih, for a discovery deposition. *See* de Almeida Decl., Ex. A, email dated August 19, 2014 ("Please provide Joseph Shih's dates of availability for a deposition during the first week of September"). Opposer's counsel did not respond to that email, and Applicant's counsel sent a follow-up email six days

later. *Id.*, email dated August 25, 2014 ("I am following up on my email below [P]lease provide Joseph Shih's dates of availability for a deposition."). Opposer's counsel refused to provide dates, explaining

[y]our proposed time frame of the first week of September for our client's deposition falls within the current suspension period. Nevertheless, this will confirm that our client remains unavailable for a deposition during the parties' remaining discovery period.

Id., email dated August 25, 2014.

In view of Mr. Shih's claimed "unavailability" during the remainder of the discovery period, Applicant's counsel proposed a stipulated extension of the discovery period to accommodate Mr. Shih's schedule. *Id.*, email dated August 26, 2014 ("If he is not available during the discovery period, please provide the soonest dates he is available after the close of discovery, and we may consider an extension of the discovery period to accommodate the parties"). Opposer's counsel ignored this email. In fact, Opposer's counsel set an automatic "away" message to be sent in response to Applicant's counsel's email, despite the fact that counsel for the parties had been actively communicating by email only *20 minutes* earlier. *See id.* Moreover, both of Opposer's attorneys—Mr. Thomas Chan and Ms. Lisa Karczewski—were included in these email exchanges, but *neither* bothered to reply.

By this time, it was clear that Opposer intended to stonewall Applicant through the remainder of the discovery period, as Opposer had (a) utterly refused to provide a single date of availability for Joseph Shih's deposition *even after* the close of discovery, and (b) had ignored Applicant's proposal to extend the discovery deadline. Thus, on August 29, 2014, Applicant notified Opposer's counsel that refusing to cooperate in the scheduling of a deposition is a violation of TBMP § 408 (duty to cooperate in discovery) and that it would seek sanctions if Opposer continued to refuse to cooperate. *Id.*, email dated August 29, 2014. Applicant also

served a Notice of Deposition setting Mr. Shih's deposition date for September 15, 2014, but offered to reschedule that deposition for any date that would be convenient for Mr. Shih. *Id.* ("We are flexible on the date. If Opposer wants to change the date, please contact me as soon as possible to work out a mutually convenient time for deposition").

Again, Opposer's counsel ignored Applicant's August 29, 2014 email and did not acknowledge the Notice of Deposition. On September 9, 2014—6 days before the deposition—Applicant's counsel sent a follow up email to confirm whether Mr. Shih would be attending the deposition. *Id.*, email dated September 9, 2014 ("Please confirm whether Joseph Shih will be attending his deposition on September 15th"). Opposer's counsel, Thomas Chan, snarkily remarked, "May I propose rescheduling to a date a couple weeks after the decision on your motion is decided"? *Id.* Applicant's counsel informed Mr. Chan that it would be forced to file a motion to compel if Opposer refused to produce Mr. Shih or provide alternate dates of availability. *Id.*, email of September 11, 2014. Opposer's counsel stated "I don't believe [Mr. Shih] will come, best if we stipulate to an extension so you don't waste the court reporter's time."

Finally, after exchanging a few more emails, Opposer's counsel stated, "Nov 14 is best, but October 20 is possible. How about we agree to Nov 14, and if he is in the U.S. on Oct 20, he will provide testimony on Oct 20". *Id.* Counsel agreed to set a deposition for November 14, 2014; *see id.* ("So stipulate"); and the parties jointly moved to suspend the proceedings for 60 days to allow time for a deposition. *Id.*; TTABVUE Dkt. # 18. On October 1, 2014, Applicant served a Notice of Deposition for November 14, 2014, giving Opposer **44 days of notice**. *Id.*, Ex. B.

On October 20, 2014, after having *expressly agreed* to appear, Opposer's counsel disingenuously demanded a Mandarin interpreter as a condition of Mr. Shih's appearance. de

Almeida Decl., Ex. A., email dated October 20, 2014 ("The deponent will need a Mandarin interpreter"). Applicant did not refuse to provide an interpreter, but instead inquired as to the basis for Opposer's request. *Id.*, email of October 21, 2014. Applicant's inquiry was well-justified given that Mr. Shih claims to have operated a successful U.S.-based business for many years, resides in the U.S., and—according to Opposer's initial disclosures—is *solely* responsible for *all* of the company's operations,¹ including its advertising, which is conducted solely in English. Further, Opposer's own internal company records (produced in discovery) are in English.

Despite Mr. Shih's demonstrated ability to communicate proficiently in English, Mr. Chan replied, "[Mr. Shih] does not speak English fluently". *Id.* Applicant explained that the federal rules, which apply in Board proceedings unless supplanted by specific trademark rules, provide that interpreters may be provided for "persons who speak only or primarily a language other than the English language", citing 28 U.S.C. §1827, and asked for a detailed explanation as to why Opposer believes Mr. Shih meets this standard—so that Applicant could determine whether an interpreter would be necessary. *Id.* Opposer's demand for an interpreter required at least *some* explanation, given the high costs of securing an interpreter for a deposition, the expected increased length of the deposition, and the simple fact that Mr. Shih already appears to speak English proficiently. Mr. Chan refused to provide an explanation, stating only "English is not his primary language". *Id.*

To avoid an unnecessary dispute, Applicant conceded to Opposer's demand for an interpreter based on its representation that Mr. Shih does not speak English. *Id.*, email of October 31, 2014 ("[B]ased on your representation we are willing to secure a Mandarin interpreter for the

¹ Opposer's Initial Disclosures list Mr. Shih as the *sole* individual with knowledge of the Opposer's alleged trademark rights. *See de Almeida Decl., Ex. D.*

deposition"). Applicant's counsel also requested confirmation that Mr. Shih would be attending the deposition on November 14th. *Id.* Mr. Chan failed to respond until November 11, 2014, *three days before the deposition*, stating, "I regret I am still not able to confirm whether client will be able to attend". *Id.*, email of November 11, 2014. Applicant's counsel pointed out that Opposer had expressly agreed to produce Mr. Shih on November 14th, and had no excuse for failing to appear—particularly where Applicant had already secured (and paid for) a Mandarin interpreter. *Id.*, email of November 12, 2014. Opposing counsel again snarkily remarked, "When you refused to provide translator earlier, the scheduled time got vacated", *id.*, even though Applicant never refused to provide a translator, and further never agreed to "vacate" the agreed-upon date. On November 14th, 2014, Mr. Shih failed to appear for his deposition. *Id.*, Ex. C (certificate of non-appearance).

The foregoing email correspondence shows that Opposer has utterly failed to cooperate in scheduling and producing Mr. Shih for deposition, and has no intention to cooperate in the future. Applicant made every possible effort to accommodate Opposer, including offering to schedule (and re-schedule) the deposition to another mutually agreeable date, and even conceded to Opposer's last-minute, unreasonable demand for a Mandarin interpreter. Thus, it is clear that Applicant made numerous good faith efforts to resolve the dispute, but Opposer's counsel thwarted every effort to schedule a deposition.

Further, Applicant incurred substantial costs for the attendance of a court reporter and a Mandarin interpreter at the deposition. Opposer knew that Applicant would incur substantial costs for a non-appearance, but clearly never had any intention to appear. Absent a Board order, Opposer will continue to thwart Applicant's efforts to depose Mr. Shih. Thus, an order compelling Mr. Shih's attendance is necessary.

OPPOSER'S CONDUCT IS EGREGIOUS AND SANCTIONS ARE WARRANTED

Although Trademark Rule 2.120(g) generally authorizes sanctions only when a party fails to comply with a Board order relating to discovery, the Board nevertheless has inherent authority to enter sanctions when appropriate. *See Central Manufacturing Inc. v. Third Millennium Technology Inc.*, 61 USPQ2d 1210 (TTAB 2001) (discussing Supreme Court and District Court decisions explaining that inherent authority to sanction is independent of other sources of authority to sanction, such as Trademark Rule 2.120(g), and is used when applicable statutes or rules do not appear to cover a particular instance of bad conduct); *see also HighBeam, supra* (sanctions imposed under Board's inherent authority).

Here, Opposer's repeated failures to cooperate in the scheduling and taking of Mr. Shih's deposition were intentional and for the sole purpose of delay, multiplying the proceedings, and significantly increasing Applicant's costs. Mr. Chan's comment, "[m]ay I propose rescheduling to a date a couple weeks after the decision on your motion is decided" is particularly illustrative of Opposer's intent to resist a deposition *unless* and *until* Board intervention. Opposer's dilatory efforts have delayed the proceeding by three months and needlessly increased Applicant's litigation costs. The Board should not condone Opposer's intentional flouting of discovery rules, and sanctions are warranted.

As an appropriate sanction, Applicant moves the Board for an order precluding Mr. Shih from testifying at trial regarding Opposer's alleged common-law rights in X Gene. Since Opposer has consistently evaded producing Mr. Shih for a discovery deposition to satisfy Applicant's legitimate discovery needs, then Opposer cannot—and should not, as a matter of fairness—be permitted to take a testimony deposition of Mr. Shih at trial on the same subject matter. Further, no less drastic a remedy is appropriate, as an order merely compelling Mr. Shih

to appear for a discovery deposition, without more, would not deter Opposer from future misconduct. In fact, based on Opposer's demonstrated willingness to flout the Board's rules, it is highly likely that Opposer (through Mr. Chan) will engage in future violations of the rules.

Based on the foregoing, Applicant respectfully moves the Board for an order:

- 1) Compelling Opposer to produce Joseph Shih for a discovery deposition within 30 days of its decision on this motion;
- 2) Permitting Applicant to take Mr. Shih's deposition in English, without a Mandarin interpreter; or alternatively, permitting an interpreter but requiring Opposer to secure the interpreter and bear its own costs for such interpreter;
- 3) Sanctions in the nature of an order precluding Mr. Shih from testifying at trial on the subject of Opposer's alleged common-law rights in X Gene; and
- 4) Allowing (for Applicant only) a 60-day extension of the discovery period to allow for the taking of Mr. Shih's discovery deposition and additional time for related follow-up discovery.

Respectfully submitted,

Dated as of: December 1, 2014

By: /Paulo A. de Almeida/

Paulo A. de Almeida
Alex D. Patel
Michael W. Schroeder
Patel & Almeida, P.C.
16830 Ventura Blvd., Suite 360
Encino, CA 91436
(818) 380-1900

Attorneys for Applicant,
Applied Micro Circuits Corporation

CERTIFICATE OF SERVICE

I hereby certify that In the Matter of Trademark opposition proceeding for Application Serial No. 85/442,829 a true and accurate copy of **APPLICANT'S MOTION TO COMPEL DISCOVERY DEPOSITION AND MOTION FOR SANCTIONS** has been served on the following by delivering said copy on December 1, 2014, via First Class Mail, postage prepaid, with a courtesy copy by electronic mail, to counsel for Opposer at the following address:

Thomas T. Chan. Esq.
Fox Rothschild LLP
1055 West 7th St, Suite 1880
Los Angeles, CA 90017
United States

By: /Paulo A. de Almeida
Paulo A. de Almeida

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Spec Research. Inc.,)	
)	
Opposer,	)	Opposition No. 91213605
	)	Registration No. 85/442,829
v.	)	Mark: X-Gene
)	
Applied Micro Circuits Corporation, A/K/A	)	DECLARATION OF PAULO A. DE
APM,	)	ALMEIDA IN SUPPORT OF
	)	APPLICANT'S MOTION TO
Applicant.	)	COMPEL DISCOVERY DEPOSITION
	)	AND MOTION FOR SANCTIONS
)	
)	
)	

I, PAULO A. DE ALMEIDA, declare as follows:

1. I am an attorney in good standing with the bar of the State of California, am an attorney at Patel & Almeida, P.C., and am the counsel of record for Applicant, Applied Micro Circuits Corporation, A/K/A APM ("Applicant") in the above-captioned proceeding.
2. The facts set forth in this declaration are true of my own knowledge unless otherwise noted and if called upon as a witness I could and would testify competently thereto.
3. I have made numerous good faith efforts on behalf of Applicant, by email correspondence, to resolve with counsel for Opposer, Spec Research, Inc. ("Opposer") the issues presented in this motion, and have been unable to obtain cooperation or reach agreement. The facts, including all of my attempts to resolve the matter prior to this motion, are as follows:
4. On October 20, 2013, Opposer commenced this opposition. On July 9, 2014, the parties agreed to suspend the proceeding pending settlement discussions. Shortly after Opposer rejected Applicant's last settlement offer on August 13, 2014, I requested the availability dates of Opposer's president, Joseph Shih, for a discovery deposition. A true and correct

copy of my email dated August 19, 2014, is attached hereto, along with other email correspondence, as **Exhibit A** ("Please provide Joseph Shih's dates of availability for a deposition during the first week of September"). Opposer's counsel did not respond to that email, and I sent a follow-up email six days later. *Id.*, email dated August 25, 2014 ("I am following up on my email below . . . [P]lease provide Joseph Shih's dates of availability for a deposition."). Opposer's counsel refused to provide dates, explaining

[y]our proposed time frame of the first week of September for our client's deposition falls within the current suspension period. Nevertheless, this will confirm that our client remains unavailable for a deposition during the parties' remaining discovery period.

Id., email dated August 25, 2014.

5. In view of Mr. Shih's claimed "unavailability" during the remainder of the discovery period, I proposed a stipulated extension of the discovery period to accommodate Mr. Shih's schedule. *Id.*, email dated August 26, 2014 ("If he is not available during the discovery period, please provide the soonest dates he is available after the close of discovery, and we may consider an extension of the discovery period to accommodate the parties"). Opposer's counsel ignored this email. In fact, Opposer's counsel set an automatic "away" message to be sent in response to my email, despite the fact that counsel for the parties had been actively communicating by email only *20 minutes* earlier. *See id.* Moreover, both of Opposer's attorneys—Mr. Thomas Chan and Ms. Lisa Karczewski—were included in these email exchanges, but *neither* bothered to reply.
6. By this time, it was clear that Opposer intended to stonewall Applicant through the remainder of the discovery period, as Opposer had (a) utterly refused to provide a single date of availability for Joseph Shih's deposition *even after* the close of discovery, and (b) had ignored Applicant's proposal to extend the discovery deadline. Thus, on August 29,

2014, I notified Opposer's counsel that refusing to cooperate in the scheduling of a deposition is a violation of TBMP § 408 (duty to cooperate in discovery) and that Applicant would seek sanctions if Opposer continued to refuse to cooperate. *Id.*, email dated August 29, 2014. I also served a Notice of Deposition setting Mr. Shih's deposition date for September 15, 2014, but offered to reschedule that deposition for any date that would be convenient for Mr. Shih. *Id.* ("We are flexible on the date. If Opposer wants to change the date, please contact me as soon as possible to work out a mutually convenient time for deposition").

7. Again, Opposer's counsel ignored Applicant's August 29, 2014 email and did not acknowledge the Notice of Deposition. On September 9, 2014—6 days before the deposition—I sent a follow up email to confirm whether Mr. Shih would be attending the deposition. *Id.*, email dated September 9, 2014 ("Please confirm whether Joseph Shih will be attending his deposition on September 15th"). Opposer's counsel, Thomas Chan, snarkily remarked, "May I propose rescheduling to a date a couple weeks after the decision on your motion is decided"? *Id.* I informed Mr. Chan that Applicant would be forced to file a motion to compel if Opposer refused to produce Mr. Shih or provide alternate dates of availability. *Id.*, email of September 11, 2014. Opposer's counsel stated "I don't believe [Mr. Shih] will come, best if we stipulate to an extension so you don't waste the court reporter's time." *Id.*
8. Finally, after exchanging a few more emails, Opposer's counsel stated, "Nov 14 is best, but October 20 is possible. How about we agree to Nov 14, and if he is in the U.S. on Oct 20, he will provide testimony on Oct 20". *Id.* Counsel agreed to set a deposition for November 14, 2014; *see id.* ("So stipulate"); and the parties jointly moved to suspend the proceedings

for 60 days to allow time for a deposition. *Id.*; TTABVUE Dkt. # 18. On October 1, 2014, I served a Notice of Deposition for November 14, 2014, giving Opposer 44 days of notice. A true and correct copy of the Notice of Deposition is attached hereto as **Exhibit B**.

9. On October 20, 2014, after having expressly agreed to appear, Opposer's counsel disingenuously demanded a Mandarin interpreter as a condition of Mr. Shih's appearance. Ex. A., email dated October 20, 2014 ("The deponent will need a Mandarin interpreter"). I did not refuse on behalf of Applicant to provide an interpreter, but instead inquired as to the basis for Opposer's request. *Id.*, email of October 21, 2014. My inquiry was well-justified given that Mr. Shih claims to have operated a successful U.S.-based business for many years, resides in the U.S., and—according to Opposer's initial disclosures—is *solely* responsible for *all* of the company's operations,¹ including its advertising, which is conducted solely in English. Further, Opposer's own internal company records (produced in discovery) are in English.
10. Despite Mr. Shih's demonstrated ability to communicate proficiently in English, Mr. Chan replied, "[Mr. Shih] does not speak English fluently". *Id.* I explained that the federal rules, which apply in Board proceedings unless supplanted by specific trademark rules, provide that interpreters may be provided for "persons who speak only or primarily a language other than the English language", citing 28 U.S.C. §1827, and asked for a detailed explanation as to why Opposer believes Mr. Shih meets this standard—so that I could determine whether an interpreter would be necessary. *Id.* Mr. Chan refused to provide an explanation, stating only "English is not [Mr. Shih's] primary language". *Id.*
11. To avoid an unnecessary dispute, Applicant conceded to Opposer's demand for an

interpreter based on its representation that Mr. Shih does not speak English. *Id.*, email of October 31, 2014 ("[B]ased on your representation we are willing to secure a Mandarin interpreter for the deposition"). I also requested confirmation that Mr. Shih would be attending the deposition on November 14th. *Id.* Mr. Chan failed to respond until November 11, 2014, *three days before the deposition*, stating, "I regret I am still not able to confirm whether client will be able to attend". *Id.*, email of November 11, 2014. I pointed out that Opposer had expressly agreed to produce Mr. Shih on November 14th, and had no excuse for failing to appear—particularly where Applicant had already secured (and paid for) a Mandarin interpreter. *Id.*, email of November 12, 2014. Opposing counsel remarked, "When you refused to provide translator earlier, the scheduled time got vacated", *id.*, even though Applicant never refused to provide a translator, and further never agreed to "vacate" the agreed-upon date. On November 14th, 2014, I waited at my offices to take Mr. Shih's deposition, along with the court reporter and interpreter, but Mr. Shih failed to appear. A true and correct copy of the certificate of non-appearance issued by the court reporter is attached hereto as **Exhibit C**.

12. Applicant incurred substantial costs for the attendance of a court reporter and a Mandarin interpreter at the deposition.

13. I declare under penalty of perjury that the foregoing is true and correct.

Dated as of: December 1, 2014

By: /Paulo A. de Almeida
Paulo A. de Almeida

¹ Opposer's Initial Disclosures list Mr. Shih as the *sole* individual with knowledge of the Opposer's alleged trademark rights. A true and correct copy of Opposer's Initial Disclosures are attached hereto as **Exhibit D**.

CERTIFICATE OF SERVICE

I hereby certify that In the Matter of Trademark opposition proceeding for Application Serial No. 85/442,829 a true and accurate copy of the **DECLARATION OF PAULO A. DE ALMEIDA IN SUPPORT OF APPLICANT'S MOTION TO COMPEL DISCOVERY DEPOSITION AND MOTION FOR SANCTIONS** has been served on the following by delivering said copy on December 1, 2014, via First Class Mail, postage prepaid, with a courtesy copy by electronic mail, to counsel for Opposer at the following address:

Thomas T. Chan. Esq.
Fox Rothschild LLP
1055 West 7th St, Suite 1880
Los Angeles, CA 90017
United States

By: /Paulo A. de Almeida
Paulo A. de Almeida

EXHIBIT A

Patel & Almeida, P.C.

From: "Chan, Thomas T." <TChan@foxrothschild.com>
Date: Wednesday, November 12, 2014 5:59 PM
To: "'Patel & Almeida, P.C.'" <paulo@patelalmeida.com>
Cc: <alex@patelalmeida.com>; "Michael Schroeder" <michael@paiplaw.com>
Subject: RE: Spec Research depo

Paulo,

When you refused to provide translator earlier, the scheduled time got vacated. So I have to re-confirm.

Tom

Thomas T. Chan
Partner/Mediator
Fox Rothschild LLP
1055 W. 7th Street Suite 1880, Los Angeles, CA 90017-2544
Direct 213-225-2611 | Mobile 213-842-2443 | Main 213-624-6560 | Fax 310 556-9828
Email| Lawyer Profile | Firm Profile

-----Original Message-----

From: Patel & Almeida, P.C. [mailto:paulo@patelalmeida.com]
Sent: Wednesday, November 12, 2014 4:03 PM
To: Chan, Thomas T.
Cc: alex@patelalmeida.com; Michael Schroeder
Subject: Re: Spec Research depo

Tom,

You've already confirmed that your client is available, and his deposition has been duly noticed more than 1 month in advance. Before that, your client repeatedly refused to make himself available for deposition, citing various excuses. Further, we have already secured an interpreter based on your representation that he does not speak English. Thus, we expect your client to appear for his own deposition in his own opposition. If he does not appear, we will seek to exclude him from testifying at trial. We will see you on Friday.

Very truly yours,

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com
www.patelalmeida.com
tel: 818.380.1900
fax: 818.380.1908

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-----Original Message-----

From: Chan, Thomas T.
Sent: Tuesday, November 11, 2014 7:02 PM
To: Patel & Almeida, P.C.
Cc: alex@patelalmeida.com ; Michael Schroeder
Subject: RE: Spec Research depo

Paulo,

I regret I am still not able to confirm whether client will be able to attend. Will let you know once I hear from client.

Tom

Thomas T. Chan
Partner
Fox Rothschild LLP
1055 W. 7th Street Suite 1880, Los Angeles, CA 90017-2544
Direct 213-225-2611 | Mobile 213-842-2443 | Main 213-624-6560 | Fax 310
556-9828
Email| [Lawyer Profile](#) | [Firm Profile](#)

-----Original Message-----

From: Patel & Almeida, P.C. [mailto:paulo@patelalmeida.com]

Sent: Friday, October 31, 2014 11:22 AM

To: Chan, Thomas T.

Cc: alex@patelalmeida.com; Michael Schroeder

Subject: Re: Spec Research depo

Dear Thomas:

You have represented that your client is unable to testify in English and requires a Mandarin interpreter. While we do not agree, based on your representation we are willing to secure a Mandarin interpreter for the deposition.

We have asked you several times to confirm that your client will attend the deposition. Please confirm. If we do not receive such confirmation by November 4th (10 days prior to the deposition), we will treat your failure to so notify us as confirmation that he will be attending his deposition.

Very truly yours,

Paulo A. de Almeida

Attorney at Law

Patel & Almeida, P.C.

paulo@patelalmeida.com

www.patelalmeida.com

tel: 818.380.1900

fax: 818.380.1908

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-----Original Message-----

From: Chan, Thomas T.

Sent: Tuesday, October 21, 2014 2:33 PM

To: Patel & Almeida, P.C.

Cc: alex@patelalmeida.com ; Michael Schroeder

Subject: Re: Spec Research depo

Alex,

English is not his primary language.

Tom 213-842-2443

From iPhone pardon my typos

> On Oct 21, 2014, at 2:14 PM, Patel & Almeida, P.C.

> <paulo@patelalmeida.com> wrote:

>

> Thomas:

>

> The federal rules provide that interpreters may be provided for "persons
> who speak only or primarily a language other than the English language"
> or those who have a hearing impairment. 28 U.S.C. § 1827. The federal
> rules apply unless supplanted by specific trademark rules. There are no
> trademark rules allowing deponents to demand foreign language interpreters
> in Board proceedings (through which your client is now seeking the benefit
> of U.S. trademark protection under U.S. law).

>

> Please confirm that your client "speaks only or primarily a language other
> than English" per the federal rule. If your client claims that he speaks
> "only or primarily" Mandarin, we require a detailed factual explanation
> for this claim, particularly in light of his alleged extensive advertising
> and sales using X GENE (all purportedly conducted in English, without the
> assistance of English-speaking third parties), and the alleged success of
> his U.S. business, which appears (based on internal documents) to conduct
> its affairs only in English. "Fluency" in Mandarin or English is
> irrelevant; we require proof that your client cannot understand English or
> primarily speaks Mandarin in the U.S., where he has resided for many
> years.

>

> We require this explanation to determine whether an interpreter is
> necessary under the federal rules. If an interpreter is not necessary,
> Joseph will be required to attend and testify in English; otherwise you
> may file a motion for a protective order.

>

> Last, please confirm that your client will be attending the deposition.
> You did not confirm whether he will be attending in your last email.

>

> Very truly yours,

>
> Paulo A. de Almeida
> Attorney at Law
> Patel & Almeida, P.C.
> paulo@patelalmeida.com
> www.patelalmeida.com
> tel: 818.380.1900
> fax: 818.380.1908
>
> ** CONFIDENTIALITY NOTICE: This e-mail message may contain legally
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> disclosure under applicable law. If you are not the intended recipient of
> this e-mail, please notify this sender immediately and do not deliver,
> distribute or copy this e-mail, or disclose its contents or take any
> action in reliance on the information it contains.
> -----Original Message----- From: Chan, Thomas T.
> Sent: Tuesday, October 21, 2014 11:55 AM
> To: Patel & Almeida, P.C.
> Cc: alex@patelalmeida.com ; Michael Schroeder
> Subject: Re: Spec Research depo
>
> Because he does not speak English fluently.
>
> Tom 213-842-2443
>
> From iPhone pardon my typos
>
>> On Oct 21, 2014, at 11:53 AM, Patel & Almeida, P.C.
>> <paulo@patelalmeida.com> wrote:
>>
>> Thomas:
>>
>> Your client is the CEO of a U.S. company and claims to have operated a
>> successful business for many years. All of the company's alleged sales
>> and advertising materials are in English (including internal records),
>> and no other individuals were listed in Opposer's Rule 26 initial
>> disclosures. What is the basis for Joseph's request for a Mandarin
>> interpreter?
>>
>> Also, please confirm that your client will be attending the deposition
>> noticed for November 14th, 2014.
>>

>> Very truly yours,

>>

>> Paulo A. de Almeida

>> Attorney at Law

>> Patel & Almeida, P.C.

>> paulo@patelalmeida.com

>> www.patelalmeida.com

>> tel: 818.380.1900

>> fax: 818.380.1908

>>

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>> -----Original Message----- From: Chan, Thomas T.

>> Sent: Monday, October 20, 2014 2:54 PM

>> To: Paulo@PatelAlmeida.com

>> Subject: Spec Research depo

>>

>> Paulo,

>>

>> The deponent will need a Mandarin interpreter.

>>

>> Tom 213-842-2443

>>

>> From iPhone pardon my typos

>>

>>> On Sep 12, 2014, at 4:50 PM, "estta-server@uspto.gov"

>>> <estta-server@uspto.gov> wrote:

>>>

>>> Stipulated/Consent Motion.

>>>

>>> Tracking No: ESTTA626923

>>>

>>>

>>>

>>> ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt

>>>

>>> We have received your Stipulated/Consent Motion. submitted through

>>> the Trademark Trial and Appeal Board's ESTTA electronic filing

Patel & Almeida, P.C.

From: "Patel & Almeida, P.C." <paulo@patelalmeida.com>
Date: Wednesday, October 1, 2014 11:28 AM
To: "Chan, Thomas T." <TChan@foxrothschild.com>
Cc: "michael schroeder" <michael@paiplaw.com>; "Alex Patel" <alex@patelalmeida.com>
Attach: Notice of Deposition of Joseph Shih.pdf
Subject: Re: X-Gene; Notice of Deposition

Thomas:

Please see the attached Notice of Deposition of Joseph Shih. A hard copy will follow by mail.

Very truly yours,

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com
www.patelalmeida.com
tel: 818.380.1900
fax: 818.380.1908

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From: Chan, Thomas T.
Sent: Thursday, September 11, 2014 5:31 PM
To: 'Patel & Almeida, P.C.'
Cc: michael schroeder ; Alex Patel
Subject: RE: X-Gene; Notice of Deposition

So stipulate.

From: Patel & Almeida, P.C. [mailto:paulo@patelalmeida.com]
Sent: Thursday, September 11, 2014 5:24 PM
To: Chan, Thomas T.
Cc: michael schroeder; Alex Patel
Subject: Re: X-Gene; Notice of Deposition

Thomas:

Agreed. The deposition will be rescheduled for November 14th. I will serve a Notice of Deposition for November 14th. The time of the deposition will be 10:00 a.m. If you want to change the time, let me know.

Further, if Joseph is in the U.S. on October 20, 2014, we will reschedule the deposition for that earlier date, and I will send an amended Notice of Deposition. I will inquire with you into his whereabouts in early October.

This agreement will require a 60-day extension of all deadlines in this proceeding. Please confirm that I have your consent to file a 60-day extension of all deadlines in this proceeding.

Very truly yours,

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com
www.patelalmeida.com
tel: 818.380.1900
fax: 818.380.1908

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From: [Chan, Thomas T.](#)
Sent: Thursday, September 11, 2014 4:00 PM
To: 'Patel & Almeida, P.C.'
Cc: [michael schroeder](#) ; [Alex Patel](#)
Subject: RE: X-Gene; Notice of Deposition

Paulo,

Nov 14 is best, but October 20 is possible. How about we agree to Nov 14, and if he is in U.S. on Oct 20, he will provide testimony on Oct 20?

Tom

Thomas T. Chan
Partner/Mediator
Fox Rothschild LLP
1055 W. 7th Street Suite 1880, Los Angeles, CA 90017-2544
Direct 213-225-2611 | Mobile 213-842-2443 | Main 213-624-6560 | Fax 310 556-9828
[Email](#) | [Lawyer Profile](#) | [Firm Profile](#)

From: Patel & Almeida, P.C. [<mailto:paulo@patelalmeida.com>]
Sent: Thursday, September 11, 2014 3:52 PM
To: Chan, Thomas T.
Cc: Karczewski, Lisa A.; michael schroeder; Alex Patel

11/21/2014

Subject: Re: X-Gene; Notice of Deposition

Thomas:

The motion to amend does not suspend the proceeding, and the Board has not issued a suspension order. Dates continue to run, so if your client will not attend on Monday (and you have affirmatively stated that he probably will not), we need to know when he is available for deposition before the current discovery cutoff deadline – or – we need to reschedule for a reasonable time after that and stipulate to an extension.

Please confirm his dates of availability.

Very truly yours,

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com
www.patelalmeida.com
tel: 818.380.1900
fax: 818.380.1908

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From: [Chan, Thomas T.](#)
Sent: Thursday, September 11, 2014 3:39 PM
To: 'Patel & Almeida, P.C.'
Cc: [Karczewski, Lisa A.](#) ; [michael schroeder](#) ; [Alex Patel](#)
Subject: RE: X-Gene; Notice of Deposition

No, no need for motion to compel, just after the motion to amend.

From: Patel & Almeida, P.C. [<mailto:paulo@patelalmeida.com>]
Sent: Thursday, September 11, 2014 3:34 PM
To: Chan, Thomas T.
Cc: Karczewski, Lisa A.; michael schroeder; Alex Patel
Subject: Re: X-Gene; Notice of Deposition

Thomas:

So you are continuing to refuse to provide dates of availability until after we file a motion to compel Joseph's attendance and the Board rules on the motion?

Very truly yours,

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com
www.patelalmeida.com
tel: 818.380.1900
fax: 818.380.1908

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From: [Chan, Thomas T.](#)
Sent: Thursday, September 11, 2014 3:27 PM
To: 'Patel & Almeida, P.C.'
Cc: [Karczewski, Lisa A.](#) ; [michael schroeder](#) ; [Alex Patel](#)
Subject: RE: X-Gene; Notice of Deposition

Paul;

Best if we make it 30 days after your motion is decided, which has been very prompt so far.

Tom

Thomas T. Chan
Partner/Mediator
Fox Rothschild LLP
1055 W. 7th Street Suite 1880, Los Angeles, CA 90017-2544
Direct 213-225-2611 | Mobile 213-842-2443 | Main 213-624-6560 | Fax 310 556-9828
[Email](#) | [Lawyer Profile](#) | [Firm Profile](#)

From: Patel & Almeida, P.C. [<mailto:paulo@patelalmeida.com>]
Sent: Thursday, September 11, 2014 3:20 PM
To: Chan, Thomas T.
Cc: Karczewski, Lisa A.; michael schroeder; Alex Patel
Subject: Re: X-Gene; Notice of Deposition

Thomas:

- (1) How much time does he need? 30 days?
- (2) What are his dates of availability within 30 days after discovery cutoff?

Very truly yours,

11/21/2014

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com
www.patelalmeida.com
tel: 818.380.1900
fax: 818.380.1908

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From: Chan, Thomas T.
Sent: Thursday, September 11, 2014 3:15 PM
To: 'Patel & Almeida, P.C.'
Cc: Karczewski, Lisa A. ; michael schroeder ; Alex Patel
Subject: RE: X-Gene; Notice of Deposition

Paulo,

I don't believe he will come, best if we stipulate to an extension so you don't waste the court reporter's time.

Tom

Thomas T. Chan
Partner/Mediator
Fox Rothschild LLP
1055 W. 7th Street Suite 1880, Los Angeles, CA 90017-2544
Direct 213-225-2611 | Mobile 213-842-2443 | Main 213-624-6560 | Fax 310 556-9828
[Email](#) | [Lawyer Profile](#) | [Firm Profile](#)

From: Patel & Almeida, P.C. [<mailto:paulo@patelalmeida.com>]
Sent: Thursday, September 11, 2014 3:09 PM
To: Chan, Thomas T.
Cc: Karczewski, Lisa A.; michael schroeder; Alex Patel
Subject: Re: X-Gene; Notice of Deposition

Thomas:

Joseph Shih's deposition is scheduled for Monday, September 15th, and you have repeatedly refused to confirm whether he will be attending. You continue to refuse to indicate when he is available or make any efforts to cooperate in setting a time for deposition. You refused our offer to stipulate to an extension of the discovery period to accommodate Joseph Shih's unspecified "travel plans". You did not file a motion for a protective order.

We ask you again to confirm whether Joseph Shih will be attending his deposition, and, if not, to provide his dates of availability for a deposition before discovery cutoff.

If Joseph Shih does not attend and continues to refuse to cooperate in the scheduling of his deposition, we will be forced to bring the matter to the attention of the Board.

Very truly yours,

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com
www.patelalmeida.com
tel: 818.380.1900
fax: 818.380.1908

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From: [Patel & Almeida, P.C.](#)
Sent: Tuesday, September 09, 2014 1:48 PM
To: [Chan, Thomas T.](#)
Cc: [Karczewski, Lisa A.](#) ; [michael schroeder](#) ; [Alex Patel](#)
Subject: Re: X-Gene; Notice of Deposition

Thomas:

We intend to file a motion to compel Joseph Shih's attendance at a deposition if he does not appear for his September 15 deposition. We will also seek sanctions against Opposer.

Again -- will Joseph Shih be attending his deposition scheduled for September 15th? We need to know before we undertake the expenses to have the court reporter show up on the scheduled date.

Very truly yours,

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com
www.patelalmeida.com
tel: 818.380.1900
fax: 818.380.1908

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recipient of this e-mail, please notify this sender immediately and do not deliver, distribute or copy this e-mail, or disclose its contents or take any action in reliance on the information it contains.

From: Chan, Thomas T.
Sent: Tuesday, September 09, 2014 1:31 PM
To: Patel & Almeida, P.C.
Cc: Karczewski, Lisa A. ; michael schroeder ; Alex Patel
Subject: Re: X-Gene; Notice of Deposition

I dont recall anything about a motion to compel.

Tom 213-842-2443

From iPhone pardon my typos

On Sep 9, 2014, at 10:53 AM, "Patel & Almeida, P.C." <paulo@patelalmeida.com> wrote:

Thomas:

We are amenable to rescheduling the deposition for a date that is "convenient" for Joseph Shih before discovery cutoff (as currently set or reset by consented extension). However, your insistence that we file a motion to compel as a condition to Joseph's attendance violates discovery rules and is grounds for sanctions.

Again -- will Joseph Shih be attending his deposition scheduled for September 15th? We need to know before we undertake the expenses to have the court reporter show up on the scheduled date.

Very truly yours,

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com
www.patelalmeida.com
tel: 818.380.1900
fax: 818.380.1908

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From: Chan, Thomas T.
Sent: Tuesday, September 09, 2014 10:31 AM

To: Patel & Almeida, P.C.
Subject: Re: X-Gene; Notice of Deposition

Paulo,

He would like to schedule a more convenient date after the motion is decided.

Tom 213-842-2443

From iPhone pardon my typos

On Sep 9, 2014, at 10:07 AM, "Patel & Almeida, P.C." <paulo@patelalmeida.com> wrote:

Thomas:

Am I to understand that Joseph Shih is refusing to attend a deposition or schedule a date until after the Board rules on a motion to compel?

Please answer the question: will Joseph Shih be attending his deposition scheduled for September 15th?

Very truly yours,

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com
www.patelalmeida.com
tel: 818.380.1900
fax: 818.380.1908

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From: Chan, Thomas T.
Sent: Tuesday, September 09, 2014 9:14 AM
To: Patel & Almeida, P.C.
Cc: Karczewski, Lisa A. ; IPDocket ; Alex Patel ; michael schroeder ; Nikki Steen
Subject: Re: X-Gene; Notice of Deposition

Paulo,

May I propose rescheduling to a date a couple weeks after the decision on your motion is decided?

Tom 213-842-2443

From iPhone pardon my typos

On Sep 9, 2014, at 8:16 AM, "Patel & Almeida, P.C."
<paulo@patelalmeida.com> wrote:

Dear Lisa and Thomas:

Please confirm whether Joseph Shih will be attending his deposition on September 15th.

Very truly yours,

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com
www.patelalmeida.com
tel: 818.380.1900
fax: 818.380.1908

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From: [Patel & Almeida, P.C.](#)
Sent: Friday, August 29, 2014 11:08 AM
To: [Thomas T. Chan](#) ; [Lisa A. Karczewski](#)
Cc: [IPDocket](#) ; [Alex Patel](#) ; [michael schroeder](#) ; [Nikki Steen](#)
Subject: X-Gene; Notice of Deposition

Dear Lisa and Thomas:

We asked you five (5) times to provide Joseph Shih's dates of availability for deposition. Each time, you refused to provide his dates of availability.

My first request for Joseph's availability dates was on July 1,

2014. You indicated that Joseph was “unavailable” during the second half of July due to “travel plans”. When settlement negotiations failed in August, I requested his availability three additional times – twice on August 25 and twice on August 26, and you stated that he was “unavailable” without providing any dates of availability. Your last response to me on August 26, 2014, at 3:14 p.m., was:

“we simply confirmed that Mr. Shih remains unavailable for a deposition during the remaining discovery period, including the proposed September dates”.

When I responded 20 minutes later at 3:34 p.m. again requesting his soonest availability, you had set your email to send an automatic “away” message. Your co-counsel, Mr. Chan, never responded, despite the fact that he is the listed attorney of record and copied on all emails.

Given Opposer’s unwillingness to even provide dates of availability, it is clear that Opposer is refusing to cooperate in the scheduling of a deposition in violation of TBMP Section 408 (“The Board expects parties (and their attorneys or other authorized representatives) to cooperate with one another in the discovery process, and looks with extreme disfavor on those who do not. Each party and its attorney or other authorized representative has a duty not only to make a good faith effort to satisfy the discovery needs of its adversary, but also to make a good faith effort to seek only such discovery as is proper and relevant to the issues in the case.”)

Accordingly, we are noticing Joseph’s deposition for September 15, 2014, to be taken at our offices in Encino. See attached Notice of Deposition. A hard copy will follow by mail.

We are flexible on the date. If Opposer wants to change the date, please contact me as soon as possible to work out a mutually convenient time for deposition. If Mr. Shih is truly “unavailable” through the rest of the discovery period, then he should be available within a reasonable time after the close of discovery, and we are amenable to a consented extension of the discovery period (for a reasonable time) to accommodate the parties. Otherwise, and if Shih continues to refuse to cooperate in the scheduling of a deposition, we expect that he will appear on September 15, 2014, failing which, we will seek sanctions against Opposer.

Very truly yours,

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com

www.patelalmeida.com

tel: 818.380.1900

fax: 818.380.1908

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Patel & Almeida, P.C.

From: "Patel & Almeida, P.C." <paulo@patelalmeida.com>
Date: Tuesday, August 26, 2014 3:34 PM
To: "Karczewski, Lisa A." <LKarczewski@foxrothschild.com>
Cc: "Alex Patel" <alex@patelalmeida.com>; "michael schroeder" <michael@paiplaw.com>; "Chan, Thomas T." <TChan@foxrothschild.com>; "IPDocket" <IPDocket@foxrothschild.com>
Subject: Re: X-Gene opposition

Lisa:

In my last email, I asked you:

"If he is not available during the discovery period, please provide the soonest dates he is available after the close of discovery, and we may consider an extension of the discovery period to accommodate the parties."

I need to know the soonest dates he is available. Please provide dates by the close of business today.

Very truly yours,

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com
www.patelalmeida.com
tel: 818.380.1900
fax: 818.380.1908

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From: Karczewski, Lisa A.
Sent: Tuesday, August 26, 2014 3:14 PM
To: 'Patel & Almeida, P.C.'
Cc: Alex Patel ; michael schroeder ; Chan, Thomas T. ; IPDocket
Subject: RE: X-Gene opposition

Paulo,

Noted regarding below. To be clear, we did not state that our client refuses to be available for a deposition, we simply confirmed that Mr. Shih remains unavailable for a deposition during the remaining discovery period, including the proposed September dates below.

Regards,

Lisa A. Karczewski
Attorney At Law
Fox Rothschild LLP
1055 W. 7th Street
Suite 1880
Los Angeles, CA 90017
(213) 225-2602 - direct
(310) 556-9828 - fax
LKarczewski@foxrothschild.com
www.foxrothschild.com

From: Patel & Almeida, P.C. [mailto:paulo@patelalmeida.com]
Sent: Monday, August 25, 2014 4:09 PM
To: Karczewski, Lisa A.
Cc: Alex Patel; michael schroeder; Chan, Thomas T.; IPDocket
Subject: Re: X-Gene opposition

Lisa:

(1) We will proceed without your consent.

(2) ~~To be clear, we sent over a draft agreement, and your client~~ simply insisted on APM's payment of "50,000" in exchange for a dismissal of the opposition. We had expressly rejected payment of any monetary amount long before you (twice) invited us to send over a draft co-existence agreement.

(3) Suspension is subject to the right of either party to request resumption at any time. Opposer rejected our offer, and we are resuming the proceeding for discovery as we have the right to do. If Mr. Shih refuses to be available for deposition between September 1 and 5, then we are willing to take his deposition the next week -- between September 8 and 12.

(4) In your email below, you have "confirmed" that Mr. Shih "remains unavailable for a deposition during the parties' remaining discovery period". Mr. Shih cannot simply refuse to sit for deposition. Please provide his availability for a deposition prior to the end of the discovery period. If he is not available during the discovery period, please provide the soonest dates he is available after the close of discovery, and we may consider an extension of the discovery period to accommodate the parties.

Very truly yours,

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com
www.patelalmeida.com
tel: 818.380.1900
fax: 818.380.1908

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From: [Karczewski, Lisa A.](#)
Sent: Monday, August 25, 2014 3:19 PM
To: 'Patel & Almeida, P.C.'
Cc: [Alex Patel](#) ; [michael schroeder](#) ; [Chan, Thomas T.](#) ; [IPDocket](#)
Subject: RE: X-Gene opposition

Paulo,

Our client cannot consent to APM's proposed motion to amend its identification of goods and services. Accordingly, APM's proposed motion will need to be revised and filed as an unconsented motion with the Board.

Regarding your request for Mr. Shih's availability for a deposition, we note the first time you requested our client's availability along with a suspension request and/or discovery extension request, we promptly informed you that our client was unavailable due to already scheduled travel plans to be abroad during the proposed time frame. As you know from our recent e-mail exchanges below, proceedings were subsequently suspended to enable the parties to engage in settlement discussions (we waited an entire month for receipt of a proposed coexistence agreement from your end to which we countered and did not receive any further counter from your client) and proceedings remain suspended for settlement through September 7th. Your proposed time frame of the first week in September for our client's deposition falls within the current suspension period. Nevertheless, this will confirm that our client remains unavailable for a deposition during the parties' remaining discovery period.

Regards,

Lisa A. Karczewski
Attorney At Law
Fox Rothschild LLP
1055 W. 7th Street
Suite 1880
Los Angeles, CA 90017
(213) 225-2602 - direct
(310) 556-9828 - fax
LKarczewski@foxrothschild.com
www.foxrothschild.com

From: Patel & Almeida, P.C. [<mailto:paulo@patelalmeida.com>]
Sent: Monday, August 25, 2014 11:52 AM
To: Karczewski, Lisa A.
Cc: Alex Patel; michael schroeder; Weston, Scott N.; Chan, Thomas T.; IPDocket
Subject: Re: X-Gene opposition

Lisa:

Patel & Almeida, P.C.

From: "Patel & Almeida, P.C." <paulo@patelalmeida.com>
Date: Monday, August 25, 2014 11:52 AM
To: "Karczewski, Lisa A." <LKarczewski@foxrothschild.com>
Cc: "Alex Patel" <alex@patelalmeida.com>; "michael schroeder" <michael@paiplaw.com>; "Weston, Scott N." <SWeston@foxrothschild.com>; "Chan, Thomas T." <TChan@foxrothschild.com>; "IPDocket" <IPDocket@foxrothschild.com>
Subject: Re: X-Gene opposition

Lisa:

I am following up on my email below.

Please let me know by the close of business today whether we have your consent to file the motion to amend.

Also, please provide Joseph Shih's dates of availability for a deposition. This is the *third* time we have asked you for Joseph's availability. The first time, you indicated that he was simply unavailable during the month of July. We did not receive a response to our second request of last week. Discovery cutoff is approaching. If we do not have a response before the close of business today, we will need to go ahead and notice the deposition.

Very truly yours,

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com
www.patelalmeida.com
tel: 818.380.1900
fax: 818.380.1908

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From: Patel & Almeida, P.C.
Sent: Tuesday, August 19, 2014 12:33 PM
To: Karczewski, Lisa A.
Cc: Alex Patel ; michael schroeder ; Weston, Scott N. ; Chan, Thomas T. ; IPDocket
Subject: Re: X-Gene opposition

Lisa:

Please provide Joseph Shih's dates of availability for a deposition during the first week of September (September 1-5).

Also, please review the attached proposed consented motion to amend Applicant's application. We would like to have your consent before the end of the week.

Very truly yours,

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com
www.patelalmeida.com
tel: 818.380.1900
fax: 818.380.1908

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From: Karczewski, Lisa A.
Sent: Wednesday, August 13, 2014 5:11 PM
To: mailto:paulo@patelalmeida.com
Cc: Alex Patel ; michael schroeder ; Weston, Scott N. ; Chan, Thomas T. ; IPDocket
Subject: RE: X-Gene opposition; FRE 408; all rights reserved

Paulo,

Thank you for your e-mail below. We have had an opportunity to review APM's proposed coexistence agreement with our client. Attached for your and your client's review are clean and redline versions of the proposed coexistence agreement. Our client is prepared to sign this latest version.

We believe that our client's rights in its XGENE [and Design] mark trumps APM's rights and that we would be successful in having our Notice of Opposition sustained given that our client has priority and we can prove continuous use of the mark. Our client is willing to enter into a coexistence in exchange for the payment of \$50,000 from your client. This amount represents the legal fees and costs incurred to date in addition to costs which will impact the value, or rather devaluation, of our client's brand.

As you can appreciate, we expect this estimation may continue to rise if APM proceeds with this case, including the remainder of the discovery phase and the subsequent trial testimony and briefing phases of these proceedings. Further, your client will likely spend more than this amount if it continues with these proceedings. Our client believes that this is more than a fair amount given what our respective clients stand to gain and lose.

We look forward to receiving your client's comments to our client's clean and redline versions of the coexistence agreement.

Regards,

11/21/2014

Patel & Almeida, P.C.

From: "Patel & Almeida, P.C." <paulo@patelalmeida.com>
Date: Tuesday, July 1, 2014 12:37 PM
To: "Karczewski, Lisa A." <LKarczewski@foxrothschild.com>
Cc: "Alex Patel" <alex@patelalmeida.com>; "michael schroeder" <michael@paiplaw.com>; "Weston, Scott N." <SWeston@foxrothschild.com>; "Chan, Thomas T." <TChan@foxrothschild.com>; "IPDocket" <IPDocket@foxrothschild.com>
Subject: Re: X-Gene opposition; FRE 408; all rights reserved

Lisa:

Yes – I plan to send over a draft co-existence agreement shortly. I've had a few federal court deadlines recently which prevented me from doing that earlier. I will also send you a draft of Applicant's proposed motion to amend its application.

We are also planning to take the deposition of Joseph Shih during the month of July. Can you kindly provide some dates for his availability for deposition between July 14 and July 31, 2014?

If dates during this period are inconvenient for Mr. Shih, we are amenable to either (1) a 30 or 60 day suspension of the proceeding pending settlement discussions or (2) a 30 or 60 day extension of the discovery period to allow for some additional time to complete discovery and discuss a possible settlement.

Our view is that either a suspension or extension would be a good idea in view of the parties' willingness to discuss a first draft of a written agreement and Opposer's consideration of Applicant's motion to amend prior to filing. A suspension or extension would also provide the parties with some flexibility for selecting a convenient deposition date for Mr. Shih. A deposition would only be necessary if the parties cannot reach an agreement.

Please let me know your thoughts on a 30 or 60 day suspension of the proceeding or extension of the discovery period. Meanwhile, I will send you a draft agreement and motion to amend shortly.

Thank you.

Very truly yours,

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com
www.patelalmeida.com
tel: 818.380.1900
fax: 818.380.1908

**** CONFIDENTIALITY NOTICE:** This e-mail message may contain legally privileged and confidential information exempt or prohibited from disclosure under applicable law. If you are not the intended

Paulo,

Thank you for your e-mail. Please note Mr. Shih is unavailable from mid to late July for a deposition as he already has travel plans to be abroad during the proposed time frame.

We agree that a suspension of proceedings for settlement discussions would be a good idea. In that regard, this is to confirm that Opposer consents to a 60-day suspension of proceedings so that the parties may discuss settlement, including a first draft of a coexistence agreement, and Opposer may consider Applicant's proposed motion to amend its application prior to filing. Please proceed accordingly with the filing of the consented 60-day suspension with the Board. Thank you.

Regards,

Lisa A. Karczewski
Attorney At Law
Fox Rothschild LLP
1055 W. 7th Street
Suite 1880
Los Angeles, CA 90017
(213) 225-2602 - direct
(310) 556-9828 - fax
LKarczewski@foxrothschild.com
www.foxrothschild.com

From: Patel & Almeida, P.C. [<mailto:paulo@patelalmeida.com>]
Sent: Tuesday, July 01, 2014 12:37 PM
To: Karczewski, Lisa A.
Cc: Alex Patel; michael schroeder; Weston, Scott N.; Chan, Thomas T.; IPDocket
Subject: Re: X-Gene opposition; FRE 408; all rights reserved

Lisa:

Yes – I plan to send over a draft co-existence agreement shortly. I've had a few federal court deadlines recently which prevented me from doing that earlier. I will also send you a draft of Applicant's proposed motion to amend its application.

We are also planning to take the deposition of Joseph Shih during the month of July. Can you kindly provide some dates for his availability for deposition between July 14 and July 31, 2014?

If dates during this period are inconvenient for Mr. Shih, we are amenable to either (1) a 30 or 60 day suspension of the proceeding pending settlement discussions or (2) a 30 or 60 day extension of the discovery period to allow for some additional time to complete discovery and discuss a possible settlement.

Our view is that either a suspension or extension would be a good idea in view of the parties'

11/21/2014

willingness to discuss a first draft of a written agreement and Opposer's consideration of Applicant's motion to amend prior to filing. A suspension or extension would also provide the parties with some flexibility for selecting a convenient deposition date for Mr. Shih. A deposition would only be necessary if the parties cannot reach an agreement.

Please let me know your thoughts on a 30 or 60 day suspension of the proceeding or extension of the discovery period. Meanwhile, I will send you a draft agreement and motion to amend shortly.

Thank you.

Very truly yours,

Paulo A. de Almeida
Attorney at Law
Patel & Almeida, P.C.
paulo@patelalmeida.com
www.patelalmeida.com
tel: 818.380.1900
fax: 818.380.1908

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From: [Karczewski, Lisa A.](#)
Sent: Monday, June 30, 2014 4:16 PM
To: [Patel & Almeida, P.C.](#)
Cc: [Alex Patel](#) ; [michael schroeder](#) ; [Weston, Scott N.](#) ; [Chan, Thomas T.](#) ; [IPDocket](#)
Subject: RE: X-Gene opposition; FRE 408; all rights reserved

Dear Paulo,

If you would like to forward us a proposed coexistence agreement, we will review same with our client.

Regards,

Lisa A. Karczewski
Attorney At Law
Fox Rothschild LLP
1055 W. 7th Street
Suite 1880
Los Angeles, CA 90017
(213) 225-2602 - direct
(310) 556-9828 - fax
LKarczewski@foxrothschild.com

EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Spec Research, Inc.,)	
)	
Opposer,	)	Opposition No. 91213605
	)	Serial No. 85/442,829
	)	Mark: X-Gene
v.)	
)	
Applied Micro Circuits Corporation)	
A/K/A APM,)	
)	
)	
Applicant.)	
<hr/>		

NOTICE OF DEPOSITION OF JOSEPH SHIH

PLEASE TAKE NOTICE that, pursuant to Rules 26 and 30(b)(1) of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, notice is hereby given that Applicant, Applied Micro Circuits Corporation A/K/A APM, will take the deposition upon oral examination of Joseph Shih in the above-captioned action. The deposition will commence at 10:00 a.m. on November 14, 2014, at the offices of Patel & Almeida, P.C., 16830 Ventura Blvd., Suite 360, Encino, California 91436, and will continue from day to day until it is completed or as otherwise agreed by counsel. The deposition will be taken upon oral examination before an officer authorized by law to administer oaths. The deposition will be recorded by stenographic means.

Dated: October 1, 2014

By: /Paulo A. de Almeida
Paulo A. de Almeida
Alex D. Patel
Michael W. Schroeder
16380 Ventura Blvd., Suite 360
Encino, CA 91436
Attorneys for Applicant,
Applied Micro Circuits Corporation
A/K/A APM

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing **NOTICE OF DEPOSITION OF JOSEPH SHIH** has been served on Thomas T. Chan, Esq., counsel for Opposer, on October 1, 2014, via First Class U.S. Mail, postage prepaid to:

Thomas T. Chan. Esq.
Fox Rothschild LLP
1055 West 7th St, Suite 1880
Los Angeles, CA 90017
United States

/Paulo A. de Almeida
Paulo A. de Almeida

EXHIBIT C

ORIGINAL

In The Matter Of:

SPEC RESEARCH, INC.

v.

APPLIED MICRO CIRCUITS CORPORATION

NONAPPEARANCE OF JOSEPH SHIH

November 14, 2014

MERRILL CORPORATION

Legalink, Inc.

20750 Ventura Boulevard
Suite 205
Woodland Hills, CA 91364
Phone: 818.593.2300
Fax: 818.593.2301

IN THE U.S. PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ORIGINAL

SPEC RESEARCH, INC.)
)
 Opposer,)
)
 VS.) OPP NO. 91213605
)
APPLIED MICRO CIRCUITS)
)
CORPORATION, A/K/A APM,)
)
 Applicant.)
)
_____)

STATEMENT OF NONAPPEARANCE OF:

 JOSEPH SHIH
 FRIDAY, NOVEMBER 14, 2014
 10:15 A.M.

REPORTED BY:

SARI M. KNUDSEN, CSR NO. 13109

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ENCINO, CALIFORNIA

FRIDAY, NOVEMBER 14, 2014; 10:15 A.M.

I, SARI M. KNUDSEN, a Certified Shorthand Reporter, No. 13109, in and for the County of Los Angeles, declare as follows:

That pursuant to the request of Paulo de Almeida of Patel & Almeida, PC, I did appear at 10:00 A.M. on Friday, November 14, 2014, at 16830 Ventura Boulevard, Suite 360, Encino, California for the purpose of reporting the testimony of Joseph Shih;

That I remained at the above-referenced address until 10:15 A.M. on said date during which time Joseph Shih did not appear;

Also during this time, Catherine Shu, a Mandarin interpreter, Certification #301530, was present for the deposition;

That I am neither counsel for, nor related to, any party to said action, nor in anywise interested in the outcome thereof;

EXHIBIT D

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial No. 85/442,829
Filed on October 8, 2011
For the mark X-GENE
Published in the *Official Gazette* on July 23, 2013

SPEC RESEARCH, INC.,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91213605
)	
APPLIED MICRO CIRCUITS CORP.,)	
A/K/A APM,)	
)	
Applicant.)	
)	

OPPOSER SPEC RESEARCH INC.’S INITIAL DISCLOSURES

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure and 37 CFR § 2.120 of the Trademark Rules of Practice, Opposer SPEC RESEARCH, INC. (“Opposer”) hereby makes its Initial Disclosures as follows:

Opposer’s Initial Disclosures are made without the benefit of any discovery. Opposer reserves its right to further supplement these disclosures as new information and documents become known to Opposer.

Opposer notes that damages and insurance agreements, namely, Rule 26(a)(1)(A)(iii) and (iv), are inapplicable to proceedings before the Trademark Trial and Appeal Board.

A. INDIVIDUAL(S) LIKELY TO HAVE DISCOVERABLE INFORMATION THAT MAY BE USED TO SUPPORT OPPOSER'S CLAIMS

As for individuals currently known to Opposer as likely to have discoverable information that Opposer may use to support its claims (except for attorneys whose knowledge or information is based on or derived from their work on these proceedings or their representation of Opposer in any related proceedings), Opposer provides the following list based on currently available information without any concession, agreement, admission or waiver of any ultimate determination of relevance or admissibility of particular information for any purpose, and without waiver of the attorney-client privilege or work-product doctrine or any other privilege, doctrine or immunity.

Joseph Shih
President
Spec Research, Inc.
19433 San Jose Avenue
City of Industry, California 91748

As to the allegations set forth in Opposer's Notice of Opposition. Mr. Shih can be contacted through counsel for Opposer.

B. DESCRIPTION OF DOCUMENTS BY CATEGORY AND LOCATION

As to description by category and location of all documents, electronically stored information, and tangible things that Opposer has in its possession, custody, or control and may use to support its claims, Opposer provides the following list without any concession, agreement, admission or waiver of any ultimate determination of relevance or admissibility of particular information for any purpose, and without waiver of the attorney-client privilege or work-product doctrine or any other privilege, doctrine or immunity.

1. Representative documents regarding Opposer's Trademark Act section 2(d) grounds.

2. Representative documents regarding Opposer's sales, marketing, and advertising materials, including past and present examples of Opposer's marketing and advertising using Opposer's Mark.

3. Representative documents regarding the prosecution file history of Opposer's formerly Registered Mark, namely, U.S. Trademark Registration No. 3,173,778.

4. Representative documents regarding Opposer's common law rights in the XGENE [and Design] mark, including Opposer's exclusive and continuous use of such mark, at all times since November 1, 2005, in commerce in connection with computer cursor control devices, namely, computer mice.

All of the above documents, information and things, are located at Opposer's address at 19433 San Jose Avenue, City of Industry, California 91748, and/or the offices of counsel for Opposer, Fox Rothschild LLP, 1055 W. 7th Street, Suite 1880, Los Angeles, California 90017.

Respectfully submitted,

FOX ROTHSCHILD LLP

Dated: February 28, 2014

By: /Lisa A. Karczewski/
Thomas T. Chan
Lisa A. Karczewski
Attorneys for Opposer
SPEC RESEARCH, INC.

FOX ROTHSCHILD LLP
1055 W. 7th Street, Suite 1880
Los Angeles, California 90017
Tel: (213) 624-6560
Fax: (310) 556-9828
E-mail: ipdocket@foxrothschild.com, tchan@foxrothschild.com,
lkarczewski@foxrothschild.com

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2014, I served a true copy of the foregoing **OPPOSER SPEC RESEARCH, INC.'S INITIAL DISCLOSURES** upon Applicant's Attorney of Record via U.S. First Class mail and a courtesy copy via e-mail, addressed as follows:

Belinda J. Scrimenti
Pattishall McAuliffe Newbury Hilliard & Geraldson LLP
200 South Wacker Drive, Suite 2900
Chicago, IL 60606
Tel: (312) 554-8000
E-mail: bjs@pattishall.com, eo@pattishall.com,
sm@pattishall.com, rm@pattishall.com

/Tina Wang/

Tina Wang