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

Proceeding	92053315
Party	Plaintiff American University
Correspondence Address	EDWARD W GRAY JR FITCH EVEN TABIN & FLANNERY 120 SOUTH LASALLE STREET , SUITE 1600 CHICAGO, IL 60603 UNITED STATES trademark@fitcheven.com, asimmons@fitcheven.com
Submission	Motion to Compel Discovery
Filer's Name	Alisa C. Simmons
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Signature	/Alisa C. Simmons/
Date	08/18/2014
Attachments	August 18 2014 Motion to Compel Discovery Depositions.pdf(53951 bytes) Exhibit A AUSTC Initial Disclosures.pdf(64340 bytes) Exhibit B - Notice of Deposition of Dr M A Wahab.pdf(461806 bytes) Exhibit C - Notice of Deposition of 30(b)(6) Witness for The American University for Science and Technology.pdf(287554 bytes) Exhibit D - July 30, 2014 to August 16, 2014 Email Exchanges between Counsel for American University and AUSTC.pdf(124753 bytes)

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

In re Supplemental Registration No. 3836388

American University,

Petitioner,

v.

The American University for
Science and Technology

Respondent.

Cancellation No. 92053315

Motion to Compel Discovery Depositions

Pursuant to TBMP §523.01 and 37 C.F.R. §2.120(e), Petitioner American University (“American University”), moves the Board for an order compelling Respondent The American University for Science and Technology (“AUSTC”), to produce Dr. M.A. Wahab, its President, for his deposition individually and its designee for AUSTC’s 30(b)(6) deposition to be recorded via stenographic means (with back-up audio recording) by a court reporter. As explained below, AUSTC’s conduct shows that an order from the Board is needed to resolve the parties’ discovery deposition dispute and to enable the parties to complete discovery.

Background

American University is a Congressionally chartered non-profit corporation that has, for more than one hundred years, provided undergraduate and graduate level education services in the fields of politics, science, history, languages, computer technology, math, arts, and music. American University owns currently suspended U.S. Application Serial No. 75901070 for its AMERICAN UNIVERSITY trademark for education services in Class 41, as well as for use on other goods and services. American University filed the petition to cancel AUSTC’s

Registration No. 3836388 that issued on the Supplemental Register for the mark THE AMERICAN UNIVERSITY FOR SCIENCE AND TECHNOLOGY for, “Education services, namely, providing courses of instruction at the graduate level,” on the basis of a likelihood of confusion with American University’s AMERICAN UNIVERSITY trademark.

As required by 37 C.F.R. §2.120 and before AUSTC’s prior counsel subsequently withdrew from the case, the parties conducted and participated in a discovery conference and exchanged initial disclosures. AUSTC’s initial disclosures identified Dr. M.A. Wahab as a person likely to have discoverable information that may be used to support AUSTC’s positions in this case. A copy of AUSTC’s initial disclosures is attached as Exhibit A to this Motion. Counsel for American University previously noticed a deposition of Dr. M.A. Wahab¹ individually and a 30(b)(6) deposition of AUSTC. Copies of these notices of deposition are included as Exhibits B and C, respectively, to this Motion. Subsequent to American University noticing those depositions, the parties began settlement discussions (most recently summarized for the Board in Docket Nos. 31, 33 and 36). For the convenience of the parties and to further settlement discussions, American University held off taking the noticed depositions of Dr. Wahab and AUSTC. While settlement has not yet been reached, the parties renewed efforts this summer to pursue discovery simultaneously with settlement considerations. As consented to by the parties (Docket No. 36), discovery in this proceeding is currently scheduled to close on August 22, 2014.

In July and August, 2014, the parties exchanged emails to reschedule Dr. Wahab’s deposition and the deposition of the 30(b)(6) designee of AUSTC. Copies of the parties’ July 30, 2014, to August 16, 2014 email exchanges are included as Exhibit D to this Motion. Dr. Wahab

¹ AUSTC now represents itself pro se in this proceeding, and Dr. M.A. Wahab, the President of AUSTC, serves as its representative before the Board.

confirmed in those email exchanges that he would serve as the 30(b)(6) designee for AUSTC, and the parties agreed to consolidate into one deposition his individual deposition and the 30(b)(6) deposition of AUSTC. The parties agreed on Wednesday, August 20, 2014, as the day to start the combined deposition, and to accommodate Dr. Wahab, the parties agreed to take the deposition at the office of AUSTC rather than the previously noticed location. However, starting in his August 1, 2014, email, Dr. Wahab conditioned his participation in the deposition on American University's agreement to not video or make an audio recording of the deposition testimony. To accommodate and reassure Dr. Wahab, American University indicated that it would not video his deposition testimony. However, counsel for American University informed Dr. Wahab that the court reporter would be making an audio recording via his stenography equipment to use as a back-up to his stenographic notes when preparing the written transcript. Regardless, Dr. Wahab has insisted that his demands of no audio or video recording be met and offers AUSTC's concerns over privacy and confidentiality as the reasons for his demands.

Per his August 16, 2014 email, Dr. Wahab has made it clear that he will only permit American University to take his deposition if American University will agree to not permit audio recording of any kind, even the back-up audio recording made by a court reporter for stenographic purposes for aid with preparing the written deposition transcript for the parties. Dr. Wahab's insistence on this condition for the taking of his deposition is unfair and unauthorized by the Trademark Rules. The court reporter needs to make the back-up audio recording of the deposition testimony, and doing so is standard practice for court reporters to help ensure the accuracy of the court reporter's stenographic notes, if necessary, when preparing the deposition transcript. The deposition transcript will be used by the parties and the Board, so the accuracy of the information in the final deposition transcript is of great consequence.

In August 13, 14, 15, 2014 emails to Dr. Wahab, counsel for American University tried to reassure Dr. Wahab and AUSTC about the reasons why the court reporter makes the audio recording, how the court reporter uses the recording, what the Trademark Rules permit, and how AUSTC may use the protections provided in the Board's standard protective order to maintain the confidentiality of any confidential information disclosed during the deposition testimony. Despite these reassurances, Dr. Wahab still refuses to permit the audio recording of his deposition by anyone, even by the court reporter for back-up purposes.

Under these circumstances, American University respectfully submits that it is unfair to make it incur expenses for its counsel to travel from the Midwest to California to take Dr. Wahab's deposition and to engage the services of a court reporter for a full day, only to arrive at the deposition in Tarzana, California, and have Dr. Wahab continue to refuse to participate unless his demands that no audio recording of the deposition testimony be made. Dr. Wahab's August 16, 2014, email makes clear that AUSTC stands firm with its demand that no audio recording of any kind be made of the deposition transcript. In light of these circumstances, American University decided to postpone the depositions of Dr. Wahab individually and as AUSTC's 30(b)(6) designee scheduled for Wednesday, August 20, 2014, and to seek the relief and direction of the Board by filing this Motion.

Argument

Under Trademark Rule 2.120(e), a party to an inter partes proceeding before the Board may, after proper notice and a good faith effort to resolve the issues, file a motion to compel a party to attend a deposition. *S. Industries Inc. v. Lamb-Weston Inc.*, 45 U.S.P.Q.2d 1293, 1298 (T.T.A.B. 1997)(granting motion to compel appearance at discovery deposition); *HighBeam Marketing LLC v. Highbeam Research LLC*, 85 U.S.P.Q.2d 1902, 1907 (T.T.A.B. 2008)

(granting motion to compel discovery depositions of employees after movant made good faith effort to resolve dispute prior to seeking Board intervention).

Trademark Rule 2.120 makes the Federal Rules of Civil Procedure applicable to discovery in Board proceedings. Federal Rule of Civil Procedure 30(b)(3) authorizes deposition testimony to be recorded by audio, audio-visual or stenographic means, unless a federal court orders otherwise. Fed.R.Civ.P. 30(b)(6). To counsel for American University's knowledge, Dr. Wahab lacks a federal district court order prohibiting the audio recording of his deposition testimony. The notices of deposition (Exhibits B and C) indicated that Dr. Wahab's testimony and that of the 30(b)(6) designee of AUSTC would be recorded via stenographic means and may be videotaped. The court reporter, recording the deposition via stenographic means, needs to make the back-up audio recording of the deposition testimony to help ensure the accuracy of the deposition transcript. Counsel for American University respectfully submits that its August email communications with Dr. Wahab (set forth in Exhibit D) demonstrate a good faith effort to resolve the dispute for the parties before turning to the Board for help and guidance. However, such efforts have been to no avail because Dr. Wahab refuses to participate unless his conditions are met.

American University has concerns over prejudice from being unable to record properly and accurately the discovery deposition testimony of Dr. Wahab and AUSTC's 30(b)(6) designee, from being unable to take its discovery depositions of Dr. Wahab and AUSTC due to AUSTC's unreasonable demands, and from being able (before discovery closes) to issue any needed follow up discovery requests based on facts learned during the depositions. AUSTC's disruptive and uncooperative demands in the current dispute make an order under Trademark Rule 2.120(e) to compel discovery appropriate.

Conclusion

AUSTC's unwillingness to cooperate by submitting its officer and employee to the duly noticed depositions to be recorded by stenographic means (including permitting the court reporter to make an audio recording of the testimony for back up to ensure integrity of resulting transcript) is disruptive to the proceeding and demonstrates disregard for the Trademark Rules and discovery process. Because AUSTC has failed to cooperate on a good faith basis with the discovery process in this proceeding, it is appropriate for the Board to issue an order compelling Dr. Wahab to appear and for a 30(b)(6) designee of AUSTC (if not Wahab) to appear for the discovery depositions on a certain date convenient to both parties and to permit the court reporter to record the deposition testimony using stenographic means, including making any needed back-up audio recording.

Petitioner also respectfully requests that the Board suspend this case pending the Board's decision on this Motion, pursuant to TMBP § 523.01 and 37 C.F.R. 2.120(e)(2), and that the discovery and trial dates be reset after as appropriate.

Respectfully submitted,



August 18, 2014

Joseph T. Nabor
Edward W. Gray, Jr.
Alisa C. Simmons
Fitch, Even, Tabin & Flannery LLP
120 South LaSalle Street, Suite 1600
Chicago, Illinois 60603-3406
Telephone: 312.577.7000
Facsimile: 312.577.7007

Attorneys for Petitioner

Certificate Of Service

The undersigned hereby certifies that a copy of the foregoing **Motion to Compel**

Discovery Depositions was served via first class mail, postage paid, upon:

Dr. M.A. Wahab
The American University for Science and Technology
18345 Ventura Boulevard, Suite 210
Tarzana, CA 91356

on this 18th day of August, 2014.



Alisa C. Simmons
Fitch, Even, Tabin & Flannery LLP
120 South LaSalle Street, Suite 1600
Chicago, Illinois 60603-3406
Telephone: 312.577.7000
Facsimile: 312.577.7007
Attorneys for Petitioner

Exhibit A

2. Copies or descriptions of all documents, electronically stored information, and tangible things that Applicant has in its possession, custody, or control and may use to support its claims or defenses:

Applicant retains business records, trademark applications and registrations and other pertinent documents which it may use to support its claims in the instant matter.

3. For inspection and copying any insurance agreement:

None.

Respectfully submitted this 10th day of March, 2011.

THE SWYERS LAW FIRM, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esquire
344 Maple Avenue West, Suite 389
Vienna, VA 22180
Telephone (866) 455-8800 x704
Facsimile (270) 477-4574
mswyers@SwyersLaw.com
Attorney for Applicant Mr. Richard L. Morris Jr.

Exhibit B

Along with this Notice, Plaintiff includes a Request for Production of Documents at Deposition under Rules 30(b)(2) and 34 of the Federal Rules of Civil Procedure.

Dated: July 1, 2011

Respectfully submitted,
Fitch, Even, Tabin & Flannery

By: Alisa Simmons
Edward W. Gray, Jr.
Alisa C. Simmons
Fitch, Even, Tabin & Flannery
120 South LaSalle Street, Suite 1600
Chicago, Illinois 60603-3406
(312) 577-7000
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, Alisa C. Simmons, one of the Attorneys for the Plaintiff, hereby certifies that a copy of the foregoing *PLAINTIFF'S NOTICE OF DEPOSITION OF DR. M.A. WAHAB* was served via hand delivery (with courtesy copy via email) upon:

Matthew H. Swyers
The Trademark Company, PLLC
344 Maple Avenue West, Suite 151
Vienna, VA 22180
mswyers@TheTrademarkCompany.com

Attorneys for Defendant

on this 1st day of July, 2011.

Alisa Simmons

Alisa C. Simmons
Fitch, Even, Tabin & Flannery
120 South LaSalle Street, Suite 1600
Chicago, Illinois 60603-3406
Telephone: 312.577.7000
Facsimile: 312.577.7007

TECHNOLOGY” and any similar or related marks.

C. Photocopies of documents may be produced in lieu of originals when necessary, but all versions of non-identical copies must be produced.

D. The documents requested shall be produced as they are kept in the usual course of business, or organized and labeled to correspond with the requests to which they are responsive. If there are no documents responsive to any particular discovery request, then Defendant should so state in writing rather than leave the request unanswered.

E. If Defendant is aware of any document requested but is unable to produce it, state this fact, give particular reasons for Defendant’s inability to produce the document and state, to the extent possible, the name and address of the author, the document’s date, the name and address of the person to whom the document was addressed or for whom it was created, the name and address of any and all recipients of the document, the name and address of each person Defendant believes now has a copy or original of the document.

F. Regarding each document Defendant contends is privileged or otherwise non-discoverable, state the basis for the privilege or exclusion from discovery, the name and address of the author, the document's date, the name and address of the person to whom the document was addressed or for whom it was created, the name and address of any and all recipients of the document, the name and address of each person Defendant believes now has a copy or original of the document, and identify the files and the file location where the original and any copies are normally kept, including any computer and electronic files.

G. The request for production of a document is a request for production of the entire document, including any attachments, exhibits, appendices and the like.

DOCUMENTS REQUESTED

1. Representative specimens of brochures and promotional pieces used by Defendant in connection with its sale, offer for sale or distribution of goods or services bearing the Mark.
2. Documents referring or relating to Defendant's creation, consideration, selection, adoption, and first use of the Mark.
3. Documents referring or relating to marketing studies, focus group studies, polls or surveys conducted by or caused to be conducted or obtained for Defendant which relate to the Mark.
4. Documents referring or relating to the actual date and manner of first use of Defendant's Mark.
5. Documents referring or relating to any trademark search conducted or caused to be conducted by Defendant relating to the Mark, including but not limited to, any anti-dilution search or any other search intended to or designed to identify any trademark which is similar or confusingly similar to the Mark.
6. Documents referring or relating to any person having, or having had, any right to use the Mark.
7. Documents referring or relating to any person who through which, or under which, Defendant claims any rights in the Mark.
8. Documents referring or relating to Defendant's knowledge of Plaintiff.
9. Documents referring or relating to Defendant's knowledge of Plaintiff's adoption or use of its AMERICAN UNIVERSITY trademark.

10. Documents referring or relating to a likelihood of confusion or instances of actual confusion caused by Plaintiff's use of its AMERICAN UNIVERSITY mark and Defendant's use of its THE AMERICAN UNIVERSITY FOR SCIENCE AND TECHNOLOGY mark.
11. Documents referring or relating to any state or federal application to register the Mark ever granted to, considered, applied for, sought, or acquired by Defendant.
12. Documents referring or relating to any application by Defendant to register to do business or offer academic instruction ever filed with any State Officer, Agency, or accrediting authority regardless of whether the application was granted or denied.
13. Documents referring or relating to each cease and desist letter, correspondence, complaint, objection, opposition, cancellation, administrative proceeding, legal opinion or civil action brought by a third party involving Defendant's Mark or Defendant's use of the Mark.
14. Documents referring or relating to each cease and desist letter, correspondence, complaint, objection, opposition, cancellation, administrative proceeding, legal opinion or civil action filed by, instituted by or sent by Defendant against any third party related to or involving Defendant's Mark or Defendant's use of the Mark.
15. Documents referring or relating to any inquiry or complaint Defendant has received from students, faculty, alumni, prospective students, applicants, distributors, salesmen, customers, or other persons involved in the marketing, distribution or receipt of Defendant's goods or services related in any way to Plaintiff or its use of the AMERICAN UNIVERSITY mark.
16. Documents summarizing or memorializing Defendant's sales and/or Defendant's

- projected sales of each service or product sold in connection with the Mark.
17. Documents summarizing or memorializing Defendant's expenditures for promoting and advertising the goods and services sold by Defendant under the Mark.
 18. Documents referring or relating to any instance of confusion, deception, or mistake between the source, sponsorship, or approval of Plaintiff's goods and services and Defendant's goods and services.
 19. Representative specimens of advertising, promotion or publicity material used by Defendant to promote its goods and services under the Mark.
 20. Representative specimens of the academic course catalogs, course descriptions, course offerings, course syllabi or syllabuses used by Defendant for any educational services offered by Defendant in connection with the Mark.
 21. Documents identifying the educational degrees offered by Defendant.
 22. Representative specimens of diplomas, certificates of course completion, certificates of study completion, student graduation documents, and documents awarding degrees to students used by Defendant in connection with offering any educational services under the Mark.
 23. Representative specimens of student identification cards, student enrollment cards or the equivalent of such documents used by Defendant in connection with offering any educational services under the Mark.
 24. Representative specimens of any trade journals or educational publications or journals distributed by or for Defendant in connection with offering any educational services under the Mark.
 25. Representative specimens illustrating the appearance and content of any social media

sites or web pages, such as Facebook, MySpace or Twitter, used by or for Defendant in connection with promoting or offering any educational services under the Mark.

Respectfully Submitted,

American University



Dated: July 1, 2011

Edward W. Gray, Jr.

Alisa C. Simmons

FITCH, EVEN, TABIN & FLANNERY

120 S. LaSalle Street, Suite 1600

Chicago, Illinois 60603

Tel: 312.577.7000 Fax: 312.577.7007

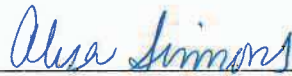
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS AT DEPOSITION OF DR. M.A. WAHAB was served via hand delivery, upon:

Matthew H. Swyers
The Trademark Company, PLLC
344 Maple Avenue West, Suite 151
Vienna, Virginia 22180
mswyers@TheTrademarkCompany.com

on this 1st day of July, 2011.



Edward W. Gray, Jr.
Alisa C. Simmons
FITCH, EVEN, TABIN & FLANNERY
120 South LaSalle Street, Suite 1600
Chicago, Illinois 60603-3406
Telephone: 312.577.7000
Facsimile: 312.577.7007

Attorneys for Plaintiff

Exhibit C

to inform himself/herself on each identified matter as to what information is known or reasonably available to Defendant to the extent provided for under Fed.R.Civ.P. 30(b)(6). In addition, each designated person(s) will be examined as to his or her personal knowledge regarding information relevant to this action. On or before July 22, 2011, counsel for Defendant shall notify counsel for Plaintiff of (i) the name(s) of each person or persons who will testify, and as to each person, the matters on which he or she will testify, and (ii) any objections that Defendant may have with respect to the matters set forth in Schedule A.

The testimony derived pursuant to this Notice of Deposition shall be used for any and all appropriate purposes as provided by the Federal Rules of Civil Procedure and Evidence.

The foregoing deposition will take place upon oral examination before a notary public or other officer authorized by law to administer oaths, will be recorded by stenographic means, may be videotaped, and will continue from day-to-day until completed, with such adjournments as to time and place as may be necessary.

Respectfully submitted,
Fitch, Even, Tabin & Flannery

Dated: July 1, 2011

By: Alisa Simmons
Edward W. Gray, Jr.
Alisa C. Simmons
Fitch, Even, Tabin & Flannery
120 South LaSalle Street, Suite 1600
Chicago, Illinois 60603-3406
(312) 577-7000

Attorney for Plaintiff

SCHEDULE A

Definitions

1. The term "Defendant" shall refer to The American University for Science and Technology, its assigns, agents and all other persons or entities acting or purporting to act on its behalf.

2. The term "Plaintiff" shall refer to American University its assigns, agents and all other persons or entities acting or purporting to act on its behalf.

3. "Defendant's Mark" shall refer to the mark AMERICAN UNIVERSITY FOR SCIENCE AND TECHNOLOGY, including but not limited to the mark THE AMERICAN UNIVERSITY FOR SCIENCE AND TECHNOLOGY shown in Supplemental Registration No. 3836388 at issue in this proceeding.

4. "Plaintiff's Marks" shall refer to the mark AMERICAN UNIVERSITY and any similar or related marks used or licensed by Plaintiff, including Serial No. 75901070 for AMERICAN UNIVERSITY, U.S. Registration No. 3559022 for A NEW AMERICAN UNIVERSITY, U.S. Registration No. 3510753 for AU AMERICAN, and U.S. Registration No. 3487343 for AMERICAN & Design.

Matters to Be Addressed

1. The dates and circumstances surrounding Defendant's first knowledge of (a) Plaintiff, (b) Plaintiff's Mark AMERICAN UNIVERSITY, and (c) Plaintiff's Marks.

2. Defendant's decision to adopt Defendant's Mark and the circumstances surrounding that decision.

3. All trademark searches that Applicant conducted or has caused to be conducted involving Defendant's Mark.

4. All market studies (including but not limited to surveys, polls and questionnaires) which Defendant conducted or has caused to be conducted relating to Defendant's Mark, and/or Plaintiff's Marks.

5. The first use of Defendant's Mark anywhere and first use in commerce.

6. The goods or services that Defendant offers for sale, or, intends to offer for sale in connection with Defendant's Mark and the volume of any such sales and pricing of such goods and services.

7. The actual or intended channels of trade for the goods and services offered for sale or intended to be offered for sale in connection with the Defendant's Mark.

8. Defendant's advertising and promotion of goods or services offered for sale, or, intended to be offered for sale in connection with Defendant's Mark.

9. The trade shows, educational fairs, college fairs, conventions, or professional meetings that Defendant attends or has attended to promote, advertise or offer its goods and services, including post secondary education services, undergraduate education services, graduate level education services, or any other of education services.

10. The publications and periodicals in which the Defendant promotes, advertises, or offers its goods and services, including post secondary education services, undergraduate education services, graduate level education services, or any other of education services.

11. The online and electronic media in which the Defendant promotes, advertises, or offers its goods and services, including post secondary education services, undergraduate education services, graduate level education services, or any other of education services.

12. The identities and types of actual or intended consumers of the goods or services offered for sale, or, intended to be offered for sale in connection with Defendant's Mark.

13. Information concerning all sales, marketing, and advertising data concerning the Defendant's Mark.

14. The accreditation status of Defendant's educational services.

15. Defendant's knowledge of Plaintiff, its products and services, and Plaintiff's Marks.

16. Complaints of consumer confusion, or mistake as to the source or origin of the goods or services bearing Defendant's Mark, and/or of goods or services offered for sale, or, intended to be offered for sale in connection with Defendant's Mark.

17. The filing and prosecution of Defendant's Trademark Application Serial No. 77934189 resulting in Supplemental Registration No. 3836388.

18. The Defendant's known competitors for the goods and services which Defendant offers or intends to offer in connection with the Mark.

19. The officers, directors, managers and managerial structure of Defendant.

20. The allegations contained in Defendant's Answer in this proceeding.

21. The documents that Defendant produced in this proceeding.

22. Defendant's Response to Plaintiff's First Set of Interrogatories to Defendant and Defendant's Response to Plaintiff's First Set of Document Requests to Defendant.

23. Defendant's document retention policy and its compliance with discovery.

24. The identity and involvement of each person who participated in or has knowledge of the matters described in Subjects 1-23 above.

25. The existence, location and substance of any documents created or used related to the matters described in Subjects 1-23 above.

CERTIFICATE OF SERVICE

I, Alisa C. Simmons, one of the Attorneys for the Plaintiff, hereby certifies that a copy of the foregoing *PLAINTIFF'S NOTICE OF DEPOSITION PURSUANT TO RULE 30(b)(6)* was served via hand delivery (with courtesy copy via email) upon:

Matthew H. Swyers
The Trademark Company, PLLC
344 Maple Avenue West, Suite 151
Vienna, VA 22180
mswyers@The TrademarkCompany.com

Attorneys for Defendant

on this 1st day of July, 2011.



Alisa C. Simmons
Fitch, Even, Tabin & Flannery
120 South LaSalle Street, Suite 1600
Chicago, Illinois 60603-3406
Telephone: 312.577.7000
Facsimile: 312.577.7007

Exhibit D

Alisa C. Simmons

From: AUSTC President <president@austc.us>
Sent: Saturday, August 16, 2014 3:06 AM
To: Alisa C. Simmons
Subject: RE: Scheduling Discovery Depositions during Week of August 18-22, 2014 - Cancellation between American University and The American University for Science and Technology - No. 92053315

Dear Alisa C. Simmons,

We confirm that AUSTC's office has a conference space that is sufficient to accommodate Mr. Jon Birmingham, you, the court reporter, and myself. Our conference table and seating are more than enough for the planned attendees.

Due to our work schedule and business commitments at and scheduled lectures elsewhere, I'll be available for only two or three hours a day. If you'll not be able to complete the business in one session, we may not have any problem at all to schedule other meeting(s) during weekdays and within the same time frame (10 a.m. to 1 p.m. excluding Tuesdays).

Regarding audio recording, we don't argue if audio recording is a standard method or not, as we attended hundreds of highly sensitive legal and contracting meetings where minutes are taken using other methods including shorthand and stenography without any audio recording.

Once again, we confirm that we don't authorize any video or audio recording of our meetings, and you may not consider that as noncooperation because we use our legal rights, specially, when confidential materials restrictions are subject to written agreement that may be signed by the two parties. Sequences cannot be expected or controlled if a certain issue is missed here or there while signing such a confidential materials restrictions agreement.

Please, cooperate and let us finish this little but very much time consuming issue.

Regards,

Prof. M. A. Wahab, PhD. FI AP. SMI EEE
President, AUSTC

From: Alisa C. Simmons [<mailto:ASimmons@fitcheven.com>]
Sent: Friday, August 15, 2014 3:26 PM
To: AUSTC President
Subject: RE: Scheduling Discovery Depositions during Week of August 18-22, 2014 - Cancellation between American University and The American University for Science and Technology - No. 92053315

P.S. In my email below, I sent it before including the attached email. [Here is the attachment.](#)

Kind regards,
Alisa

From: Alisa C. Simmons

Sent: Friday, August 15, 2014 5:14 PM

To: 'AUSTC President'

Subject: RE: Scheduling Discovery Depositions during Week of August 18-22, 2014 - Cancellation between American University and The American University for Science and Technology - No. 92053315

Re: August 20, 2014 Discovery Depositions
Of Dr. M.A. Wahab and of 30(b)(6) Designee of AUSTC
Cancellation No. 92053315 between American University
And The American University for Science and Technology

Dear Dr. Wahab,

Thank you for your email from yesterday. We need to confirm a few details with you concerning these depositions. Please confirm that AUSTC's office will have space sufficient to accommodate you, Mr. Jon Birmingham, me and the court reporter. Does AUSTC have a meeting room with a conference table and seating for a group of this size? The court reporter will have his or her stenography equipment, and we will have documents and other materials for reference. Please confirm about the meeting room accommodations at AUSTC.

We will do our best to accommodate your request that we aim to finish the depositions by 1:00 p.m. Pacific. Please know, however, that the Trademark Trial and Appeal Board (TTAB) rules permit us up to seven hours for the duration of the deposition. If we should reach the 1:00 p.m. mark on Wednesday and not be finished, we reserve the right to schedule a follow up time to continue the remainder of your depositions on another day, using up the full time made available to us per the TTAB rules.

Also, for the audio recording, we will have to allow the court reporter to make the audio recording of the deposition testimony. Please know that it is now standard practice for court reporters to make an audio recording of the deposition testimony. This recording is not for the parties. Instead, the court reporter only uses it for reference, if at all, when preparing the deposition transcript. The court reporter's stenography machine is what will be making the recording, not separate audio recording equipment that our firm brings. The parties will not receive a copy of the audio recording. Attached for reference is an email from the court reporting company providing the court reporter for the deposition, in which that company describes how it is common practice for court reporters to make the audio recordings. Also, the Federal Rules of Civil Procedure, which are applicable in proceedings before the TTAB permit deposition testimony to be recorded by audio, audio-visual, or stenographic means. We have already agreed to not make a video of the deposition, but we cannot agree to forgo the recording of the deposition by the court reporter. If there is confidential material covered during the deposition that AUSTC wants to maintain the confidentiality of, then AUSTC may utilize the provisions of the standard protective order already in place between the parties per the rules of the TTAB to protect that material as it appears in the deposition transcript. This link will show you the terms of that protective order, <http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp>, and Section 8 specifically covers depositions. If you have any questions about this information, please let us know.

With this additional information, please immediately let us know whether you will be willing to permit an audio recording of the deposition testimony to be made by the court reporter at the depositions on Wednesday, August 20. We need to know whether you will cooperate on this point at the deposition on Wednesday in advance of our traveling to Tarzana, California, and arranging for the court reporter to attend the deposition.

We look forward to hearing further from you about whether the making of the audio recording by the court reporter is now acceptable and about the accommodations of the AUSTC meeting rooms as soon as possible. Thank you.

Kind regards,
Alisa

Alisa C. Simmons | Attorney

FITCH EVEN

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From: AUSTC President [<mailto:president@austc.us>]

Sent: Thursday, August 14, 2014 1:51 PM

To: Alisa C. Simmons

Subject: RE: Scheduling Discovery Depositions during Week of August 18-22, 2014 - Cancellation between American University and The American University for Science and Technology - No. 92053315

Dear Alisa C. Simmons,

We don't authorize any video or audio recording being made by any party and it is our right to protect our privacy without showing any other reason.

If your court reporter does not have the ability to fulfill his/her duty without video or audio recording, you should find a replacement who can.

We don't have to explain privacy and confidentiality legal protection.

Regards,

Prof. M. A. Wahab, PhD. FI AP. SMI EEE
President, AUSTC

From: Alisa C. Simmons [<mailto:ASimmons@fitcheven.com>]

Sent: Thursday, August 14, 2014 9:06 AM

To: AUSTC President

Cc: Jon Birmingham

Subject: RE: Scheduling Discovery Depositions during Week of August 18-22, 2014 - Cancellation between American University and The American University for Science and Technology - No. 92053315

Hello Dr. Wahab,

Thank you for your email. We need to know right away the nature of your objection to an audio recording being made of your depositions. In your email, you indicate that AUSTC does not authorize any capturing method, either video or audio. It is often standard course for most court reporters that take deposition testimony to make an audio recording of the deposition for the their later reference when transcribing and preparing for the parties the written transcript of the deposition testimony. Please get back to us right away about the nature of your objection to an audio recording being made by the court reporter taking down your testimony. We look forward to hearing from you.

Kind regards,
Alisa

Alisa C. Simmons | Attorney

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From: AUSTC President [<mailto:president@austc.us>]
Sent: Wednesday, August 13, 2014 7:41 PM
To: Alisa C. Simmons
Subject: RE: Scheduling Discovery Depositions during Week of August 18-22, 2014 - Cancellation between American University and The American University for Science and Technology - No. 92053315

Dear Alisa C. Simmons,

Thank you for your message.

Kindly, be advised that we accept your planned proposal to meet on Wednesday, August 20, 2014, at our office as detailed below, starting at 10:00 a.m. We need this meeting to be for two hours with a possibility to extend, but not to exceed 1 p.m. for any reason.

I, Prof. M. A. Wahab shall represent AUSTC in this Discovery Depositions.

You mentioned in your message that you do not plan on videoing the depositions, and I want to confirm that we don't authorize any capturing method either Video or Audio.

Be assured that I'm doing my best to successfully complete this business, but as you know, we all have our commitments and the best way is to cooperate with each other in order to reach the objective without affecting any obligations.

If you have any questions, please don't hesitate to call my office (818) 996-1863 weekdays between 10 a.m. and 1.30 p.m. or after 4 p.m. (P.T.)

Regards,

Prof. M. A. Wahab, PhD. FI AP. SMI EEE
President, AUSTC

From: Alisa C. Simmons [<mailto:ASimmons@fitcheven.com>]
Sent: Wednesday, August 13, 2014 2:42 PM
To: AUSTC President
Subject: RE: Scheduling Discovery Depositions during Week of August 18-22, 2014 - Cancellation between American University and The American University for Science and Technology - No. 92053315
Importance: High

Re: Scheduling Discovery Depositions on August 20 and 21, 2014

Discovery Deposition of Dr. M.A. Wahab
30(b)(6) Deposition of Representative of AUSTC
In Cancellation between American University and The American
University For Science and Technology (AUSTC)

Dear Dr. Wahab,

Thank you for your August 1, 2014 email communicating your availability to be deposed next week. Coordinating our schedules with your availability, we have determined that both Wednesday, August 20, and Thursday, August 21, 2014, will work best. We are happy to accommodate your request to take these discovery depositions of you individually and as the 30(b)(6) representative of AUSTC at AUSTC's office located at 18345 Ventura Boulevard, Suite 210, Tarzana, CA. For the depositions, we will need sufficient space, such as a meeting or conference room that is able to accommodate comfortably and provide seating for you, my colleague Jon Birmingham (whom you met with previously), a court reporter that will make a written record of your deposition testimony and his stenography equipment, and me. The start time of 10:00 a.m. should work just fine. Please let us know if you have a preference for Wednesday, August 20, or Thursday, August 21, 2014. If either day is acceptable to you, then we propose that we plan for Wednesday, August 20, 2014, at your office, starting at 10:00 a.m.

We also need you to confirm before the end of the week whether you will be the representative that AUSTC provides for the purposes of the 30(b)(6) deposition of AUSTC, or if another representative of AUSTC will appear. If you will also be the designated representative for the 30(b)(6) deposition, then please confirm that it is acceptable to AUSTC to combine into one deposition your personal deposition and your deposition as the designated representative of AUSTC.

While we will be able to take short breaks during the course of the deposition and will break for lunch, you will need to plan to be available for the full business day of your deposition. We will not be able to take long breaks, while you attend to other work or business. Doing so is not fair to our client that is paying to take the depositions.

The testimony taken during the depositions will be taken down in written form by a court reporter, who will then prepare a written transcript of the testimony for the parties. We do not plan on videoing the depositions, so we are able to accommodate your request to not video the depositions.

Please let us also schedule a phone discussion for this week to confirm the day, start time, and place for the depositions. I am generally available by phone this week and will be glad to phone you at the time most convenient for you. Please let me know when I may reach you by phone today or tomorrow.

Please ask any questions that you may have.

Kind regards,
Alisa

Alisa C. Simmons | Attorney

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From: AUSTC President [<mailto:president@austc.us>]

Sent: Friday, August 01, 2014 6:48 PM

To: Alisa C. Simmons

Subject: RE: Scheduling Discovery Depositions during Week of August 18-22, 2014 - Cancellation between American University and The American University for Science and Technology - No. 92053315

Dear Alisa C. Simmons,

We have reviewed your proposed arrangement and find it more convenient for us if we meet at our office located 18345 Ventura Boulevard, suite 210, Tarzana, CA.

We may schedule starting time to be 10:00 a.m. during the week of August 18-22, 2014 but not to exceed two hours at a time because I don't want to confuse my lecturing schedules and we don't authorize video or voice capturing of our meetings.

Please , consent acceptance of the above and let me know.

Regards,

Prof. M. A. Wahab, PhD. FI AP. SMI EEE

President, AUSTC

From: Alisa C. Simmons [<mailto:ASimmons@fitcheven.com>]

Sent: Wednesday, July 30, 2014 3:00 PM

To: president@austc.us

Cc: Alisa C. Simmons

Subject: Scheduling Discovery Depositions during Week of August 18-22, 2014 - Cancellation between American University and The American University for Science and Technology - No. 92053315

Re: Follow Up to Schedule Discovery Depositions
Cancellation No. 92053315
American University v. The American University for Science
and Technology (AUSTC)

Dear Dr. Wahab,

We previously served on AUSTC the attached notices of deposition in this proceeding in July, 2011, when AUSTC was still represented by Attorney Matthew Swyers. These notices of deposition include a notice of deposition for you and a notice of deposition under Federal Rule of Civil Procedure 30(b)(6) for a representative of AUSTC. Because the parties concentrated efforts on settlement discussions, we did not previously take these depositions. We now need to proceed with rescheduling and taking these discovery depositions. If you, in your role as President of AUSTC, will be the witness appearing on behalf of AUSTC for the 30(b)(6) deposition, then, with your and our stipulation that doing so is acceptable, we

should be able combine your personal deposition and that of the 30(b)(6) witness of AUSTC into just one deposition. As indicated in the notices, we plan to take these deposition(s) at our firm's office in Woodland Hills, CA, at 21700 Oxnard Street, Suite 1740, Woodland Hills, CA, which is located about a ten minute drive from your office in Tarzana. We propose taking these depositions during the week of August 18-22, 2014, starting at approximately 9:30 a.m. or 10:00 a.m., depending on the day selected. Please check your schedule and confirm for us which day of that week will work best for you. If another week in August suits your schedule better, then please let us know which days you would prefer instead.

We look forward to hearing from you about your preferred days during the week of August 18-22, 2014. Please let us know if you have any questions about the taking of these depositions.

Kind regards,
Alisa

Alisa C. Simmons | Attorney

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