

From: [Trials](#)
To: [William Nelson](#); [Trials](#)
Cc: [Patents](#); [Thomas Banks](#); [Mark Miller](#); [IPDOCKET](#); [Stephen E. Kelly](#); [Andriy Lytvyn](#)
Subject: RE: IPR2023-00625 - Mr. Drewry Deposition Request (SIPL ref. 13079.04.DIS03) [IWOV-FirmLive.FID1886307]
Date: Wednesday, May 8, 2024 12:53:47 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)

Counsel,

In response to Patent Owner's email of May 7, 2024 (and Petitioner's follow-up email the same day), concerning the schedule in this proceeding, we instruct the parties to immediately jointly respond by email to identify a time between 11:00am - 3:00pm ET on Friday, May 10, 2024, for a conference call (Due Date 3, and subsequent due dates, will be held in abeyance until the schedule is resolved).

The Board recognizes Patent Owner's desire to cross-examine Petitioner's witness, Troy D. Drewry (see Ex. 1017 and Ex. 1022), by deposition, as well as Petitioner's apparent willingness to make the witness available and adjust the schedule here to that end. Based on the record in this proceeding, it appears that Mr. Drewry has been deposed once by Patent Owner (see Ex. 2004) and the second deposition would be directed to his second round of testimony.

With this understanding, we also recognize that the parties' stipulated adjustments to the schedule in this proceeding would move Due Date 3 (for Patent Owner's sur-reply) to June 12, 2024, putting it after originally-scheduled Due Date 4 (May 8 for requesting oral argument), Due Date 5 (May 29 for motions to exclude evidence), and Due Date 6 (June 5 for oppositions to such motions), and to coincide with Due Date 7 (June 12 for replies to such oppositions). The parties' proposed schedule neither makes logical sense nor provides the Board sufficient time to adequately prepare for oral argument, and may limit the Board's ability to fully address the parties' arguments in a final written decision.

The final hearing will be held in this proceeding on July 1, 2024, in the afternoon (likely remotely by video). We instruct the parties to meet and confer in advance of the conference call to be scheduled for this Friday, May 7, 2024, to develop a joint proposal for a logical sequence of Due Dates 3-7 with this final hearing date in mind; this proposal is to be provided the Panel in advance of the conference.

Regards,

Andrew Kellogg,
Deputy Chief Clerk, Trials
Patent Trial and Appeal Board
USPTO
andrew.kellogg@uspto.gov
(571)272-7822

From: William Nelson <WNelson@sierraplalaw.com>
Sent: Tuesday, May 7, 2024 7:19 PM
To: Trials <Trials@USPTO.GOV>
Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraplalaw.com>; IPDOCKET <IPDOCKET@sierraplalaw.com>; Stephen E. Kelly <stephen.kelly@hwhlaw.com>; Andriy Lytvyn <Andriy.Lytvyn@hwhlaw.com>
Subject: RE: IPR2023-00625 - Mr. Drewry Deposition Request (SIPL ref. 13079.04.DIS03) [IWOV-FirmLive.FID1886307]

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Dear Board,

Petitioner's counsel responded to Patent Owner's request for its request to confer at its earliest opportunity shortly before sending this email. The stipulation to extend Due Date 3 to June 12th was done to accommodate a second deposition of Petitioner's expert, Troy Drewry, regarding his second declaration filed with the Board on March 29th, and was in accordance with the guidance provided in the original scheduling order. As Patent Owner's counsel is aware, Mr. Drewry has also served as an expert witness in litigation in the Middle District of Florida (CASE NO. 8:20-cv-02805-VMC-AAS) in which PainTEQ, LLC (Patent Owner) is a party. Mr. Drewry was preparing his expert report in the litigation in April and is scheduled to be deposed in the litigation on May 16th. Mr. Drewry is also a professor at the University of Mississippi and is in the midst of wrapping up the spring semester. The requested extension was intended to accommodate both Mr. Drewry's tight schedule and provide sufficient time for Patent Owner to depose Mr. Drewry and file its sur-reply.

Petitioner requests a conference call with the Board to discuss granting further time to allow for Mr. Drewry's deposition and Patent Owner's sur-reply, rather than extend time for Patent Owner's requested motion to strike.

Best regards,

William K. Nelson
Patent Attorney
Shareholder

Sierra IP Law, PC
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Fresno, CA 93755-5637
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From: Andriy Lytvyn <Andriy.Lytvyn@hwhlaw.com>
Sent: Tuesday, May 7, 2024 1:09 PM
To: Trials <Trials@USPTO.GOV>
Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraiplaw.com>; IPDOCKET <IPDOCKET@sierraiplaw.com>; Stephen E. Kelly <stephen.kelly@hwhlaw.com>; William Nelson <WNelson@sierraiplaw.com>
Subject: RE: IPR2023-00625 - Mr. Drewry Deposition Request (SIPL ref. 13079.04.DIS03) [IWOV-FirmLive.FID1886307]

Dear Board,

Pursuant to the Modified Scheduling Order (Paper 22) issued today, Patent Owner is requesting a conference call with the Board. Patent Owner has sent a conferral email to Petitioner, but has not yet received a response.

By way of factual background, yesterday, the parties filed a joint stipulation (Paper 21) to extend Due Date 3 for Patent Owner's Sur-Reply to June 12, 2024, as was permitted in the Board's Original Scheduling Order (Paper 11). The reason for this extension was to accommodate Petitioner's expert Mr. Drewry, who has not been available and remains to be unavailable for cross examination until May 28, 2024. Please see the email string below reflecting Patent Owner's repeated requests to schedule this deposition and being left in a holding pattern for weeks.

Today's Modified Scheduling Order effectively denies the parties' joint stipulation to extend the due date for Patent Owner's Sur-Reply to June 12th, thereby foreclosing possibility of Mr. Drewry's cross-examination.

In light of these facts, Patent Owner requests a conference call with the Board to discuss the following topics:

1. Pursuant to 37 C.F.R. §§ 42.5(a) and 42.51(b)(1)(ii), Patent Owner respectfully requests the Board's authorization to file a Motion to Strike Mr. Drewry's second declaration (Exhibit 1022) due to his unavailability for cross examination. *See, e.g., HTC CORP., et al. v. NFC TECH., LLC*, IPR2014-01198, Paper 38 (PTAB Oct. 21, 2015).
2. Patent Owner respectfully requests that the due date for Patent Owner's Sur-Reply be set for five (5) business days from the Board's Order on the Motion to Strike.

Very respectfully,

Andriy Lytvyn
Shareholder
Registered Patent Attorney
Board Certified Intellectual Property Law

[o: 813.221.3900](tel:813.221.3900) | [d: 813.222.3149](tel:813.222.3149) | Andriy.Lytvyn@hwhlaw.com | hwhlaw.com
[101 E. Kennedy Blvd., Suite 3700, Tampa, FL 33602](#)



From: Andriy Lytvyn

Sent: Tuesday, May 7, 2024 1:32 PM

To: William Nelson <WNelson@sierraplalaw.com>

Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraplalaw.com>; IPDOCKET <IPDOCKET@sierraplalaw.com>; Stephen E. Kelly <stephen.kelly@hwhlaw.com>

Subject: RE: IPR2023-00625 - Mr. Drewry Deposition Request (SIPL ref. 13079.04.DIS03) [IWOV-FirmLive.FID1886307]

Mr. Nelson,

Further to our email below, because the Board denied our joint stipulation to reschedule the due date for Patent Owner's sur-reply, which remains set for May 10th, and because Mr. Drewry has not been available and remains unavailable for deposition prior to this date, we will seek Board's authorization to strike the second declaration of Mr. Drewry (Exhibit 1022) from the record. This email serves as a good faith conferral prior to our request to schedule a conference call with the Board.

Best regards,

Andriy Lytvyn

Shareholder

Registered Patent Attorney

Board Certified Intellectual Property Law

[o: 813.221.3900](tel:813.221.3900) | [d: 813.222.3149](tel:813.222.3149) | Andriy.Lytvyn@hwhlaw.com | hwhlaw.com
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From: Andriy Lytvyn

Sent: Tuesday, May 7, 2024 12:21 PM

To: William Nelson <WNelson@sierraplalaw.com>

Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraplalaw.com>; IPDOCKET <IPDOCKET@sierraplalaw.com>; Stephen E. Kelly <stephen.kelly@hwhlaw.com>

Subject: RE: IPR2023-00625 - Mr. Drewry Deposition Request (SIPL ref. 13079.04.DIS03) [IWOV-FirmLive.FID1886307]

Mr. Nelson,

The Board just issued a modified scheduling order in which the Board set the date for Patent Owner's sur-reply for this Friday, May 10th. To make additional changes, the Order requires the parties to confer and then schedule a conference call with the Board. So the purpose of this email to comply with the conferral requirement.

As soon as we receive your response agreeing that the conference call with the Board is in order, we will request the Board to schedule the conference call. We look forward to your prompt reply as time is of essence.

Thanks,

Andriy Lytvyn

Shareholder

Registered Patent Attorney

Board Certified Intellectual Property Law

[o: 813.221.3900](tel:813.221.3900) | [d: 813.222.3149](tel:813.222.3149) | Andriy.Lytvyn@hwhlaw.com | hwhlaw.com

[101 E. Kennedy Blvd., Suite 3700, Tampa, FL 33602](#)



From: William Nelson <WNelson@sierraiplaw.com>

Sent: Monday, May 6, 2024 1:22 PM

To: Andriy Lytvyn <Andriy.Lytvyn@hwhlaw.com>

Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraiplaw.com>; IPDOCKET <IPDOCKET@sierraiplaw.com>; Stephen E. Kelly <stephen.kelly@hwhlaw.com>

Subject: RE: IPR2023-00625 - Mr. Drewry Deposition Request [IWOV-FirmLive.FID1886307] (SIPL ref. 13079.04.DIS03)

[External email; exercise caution]

Mr. Lytvyn,

We approve the stipulation for filing.

Best regards,

William K. Nelson
Patent Attorney
Shareholder

Sierra IP Law, PC
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Fresno, CA 93755-5637
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From: Andriy Lytvyn <Andriy.Lytvyn@hwhlaw.com>
Sent: Monday, May 6, 2024 10:04 AM
To: William Nelson <WNelson@sierraiplaw.com>
Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraiplaw.com>; IPDOCKET <IPDOCKET@sierraiplaw.com>; Stephen E. Kelly <stephen.kelly@hwhlaw.com>
Subject: RE: IPR2023-00625 - Mr. Drewry Deposition Request [IWOV-FirmLive.FID1886307]

Mr. Nelson,

The stipulation to extend the due date for the Patent Owner's sur-reply to June 12, 2024 is attached and will be filed as soon as we receive your approval.

With respect to the deposition scheduling, we propose that it be held virtually on May 29 at 9:30 A.M.—please confirm whether this works for Mr. Drewry.

Thanks,

Andriy Lytvyn
Shareholder
Registered Patent Attorney
Board Certified Intellectual Property Law

o: 813.221.3900 | d: 813.222.3149 | Andriy.Lytvyn@hwhlaw.com | hwhlaw.com
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From: William Nelson <WNelson@sierraiplaw.com>
Sent: Monday, May 6, 2024 12:34 PM
To: Andriy Lytvyn <Andriy.Lytvyn@hwhlaw.com>
Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraiplaw.com>; IPDOCKET <IPDOCKET@sierraiplaw.com>; Stephen E. Kelly <stephen.kelly@hwhlaw.com>
Subject: RE: IPR2023-00625 - Mr. Drewry Deposition Request [IWOV-FirmLive.FID1886307]

[External email; exercise caution]

Mr. Lytvyn,

Mr. Drewry is available for the deposition May 28-31. We are willing to extend the sur-reply due date our to June 12. Please send the stipulation.

Best regards,

William K. Nelson
Patent Attorney
Shareholder

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From: William Nelson <WNelson@sierraplawn.com>
Sent: Friday, May 3, 2024 1:25 PM
To: Andriy Lytvyn <Andriy.Lytvyn@hwhlaw.com>
Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraplawn.com>; IPDOCKET <IPDOCKET@sierraplawn.com>; Stephen E. Kelly <stephen.kelly@hwhlaw.com>
Subject: RE: IPR2023-00625 - Mr. Drewry Deposition Request [IWOV-FirmLive.FID1886307]

Mr. Lytvyn,

We agree to the extension. Please send the draft stipulation.

Best regards,

William K. Nelson
Patent Attorney
Shareholder

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From: Andriy Lytvyn <Andriy.Lytvyn@hwhlaw.com>
Sent: Wednesday, May 1, 2024 12:12 PM

To: William Nelson <WNelson@sierraiplaw.com>

Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraiplaw.com>; IPDOCKET <IPDOCKET@sierraiplaw.com>; Stephen E. Kelly <stephen.kelly@hwhlaw.com>

Subject: RE: IPR2023-00625 - Mr. Drewry Deposition Request [IWOV-FirmLive.FID1886307]

Hello Mr. Nelson,

While we await Mr. Drewry's availability, we are getting dangerously close to the current due date for Patent Owner's Sur-Reply, which is set for May 10th. We propose filing a joint stipulation to modify the scheduling order to push the due date to May 31st to give us sufficient time to conduct the deposition, obtain the transcript, and then prepare the sur-reply. If you agree, we will send a draft of the stipulation for your review prior to filing.

Thanks,

Andriy Lytvyn

Shareholder

Registered Patent Attorney

Board Certified Intellectual Property Law

o: 813.221.3900 | d: 813.222.3149 | Andriy.Lytvyn@hwhlaw.com | hwhlaw.com

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From: William Nelson <WNelson@sierraiplaw.com>

Sent: Tuesday, April 30, 2024 1:44 PM

To: Andriy Lytvyn <Andriy.Lytvyn@hwhlaw.com>

Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraiplaw.com>; IPDOCKET <IPDOCKET@sierraiplaw.com>; Stephen E. Kelly <stephen.kelly@hwhlaw.com>

Subject: RE: IPR2023-00625 - Mr. Drewry Deposition Request [IWOV-FirmLive.FID1886307]

[External email; exercise caution]

Mr. Lytvyn,

I have followed up with Mr. Drewry on his availability and I am waiting on his response. I will be back in touch soon.

Best regards,

William K. Nelson
Patent Attorney

Shareholder

Sierra IP Law, PC

P.O. Box 5637

Fresno, CA 93755-5637

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From: Andriy Lytvyn <Andriy.Lytvyn@hwhlaw.com>

Sent: Monday, April 29, 2024 7:59 AM

To: William Nelson <WNelson@sierraiplaw.com>

Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraiplaw.com>; IPDOCKET <IPDOCKET@sierraiplaw.com>; Stephen E. Kelly <stephen.kelly@hwhlaw.com>

Subject: RE: IPR2023-00625 - Mr. Drewry Deposition Request [IWOV-FirmLive.FID1886307]

Good morning Mr. Nelson,

Following up regarding Mr. Drewry's availability for a deposition in the above-referenced IPR.

Thanks,

Andriy Lytvyn

Shareholder

Registered Patent Attorney

Board Certified Intellectual Property Law

o: 813.221.3900 | d: 813.222.3149 | Andriy.Lytvyn@hwhlaw.com | hwhlaw.com
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From: William Nelson <WNelson@sierraplawn.com>
Sent: Monday, April 22, 2024 1:45 PM
To: Andriy Lytvyn <Andriy.Lytvyn@hwhlaw.com>
Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraplawn.com>; IPDOCKET <IPDOCKET@sierraplawn.com>; Stephen E. Kelly <stephen.kelly@hwhlaw.com>
Subject: RE: IPR2023-00625 - Mr. Drewry Deposition Request [IWOV-FirmLive.FID1886307]

[External email; exercise caution]

Mr. Lytvyn,

As you likely know, there are presently multiple requests for depositions of Mr. Drewry. He is currently working with other counsel to schedule the deposition in the Florida litigation. We can extend the time for Patent Owner's sur-reply in the IPR, if we are not able to schedule the deposition to allow for sufficient time to prepare the sur-reply.

I will get back to you this week.

Best regards,

William K. Nelson
Patent Attorney
Shareholder

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Fresno, CA 93755-5637
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Direct: (559) 436-3893
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From: Andriy Lytvyn <Andriy.Lytvyn@hwhlaw.com>
Sent: Friday, April 19, 2024 2:18 PM
To: William Nelson <WNelson@sierraplalaw.com>
Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraplalaw.com>; IPDOCKET <IPDOCKET@sierraplalaw.com>; Stephen E. Kelly <stephen.kelly@hwhlaw.com>
Subject: RE: IPR2023-00625 - Mr. Drewry Deposition Request [IWOV-FirmLive.FID1886307]

Hello Mr. Nelson—were you able to ascertain Mr. Drewry’s availability for a deposition next week?

Thanks,

Andriy Lytvyn

Shareholder

Registered Patent Attorney

Board Certified Intellectual Property Law

[o: 813.221.3900](tel:813.221.3900) | [d: 813.222.3149](tel:813.222.3149) | Andriy.Lytvyn@hwhlaw.com | hwhlaw.com
[101 E. Kennedy Blvd., Suite 3700, Tampa, FL 33602](http://101.E.KennedyBlvd.Suite3700.Tampa.FL.33602)



From: Andriy Lytvyn
Sent: Tuesday, April 16, 2024 2:52 PM
To: William Nelson <WNelson@sierraplalaw.com>
Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraplalaw.com>; IPDOCKET <IPDOCKET@sierraplalaw.com>; Stephen E. Kelly <stephen.kelly@hwhlaw.com>
Subject: RE: IPR2023-00625 - Mr. Drewry Deposition Request [IWOV-FirmLive.FID1886307]

We don’t anticipate that the deposition will require more than 4 hours.

Andriy Lytvyn

Shareholder

Registered Patent Attorney

Board Certified Intellectual Property Law

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From: William Nelson <WNelson@sierraiplaw.com>
Sent: Tuesday, April 16, 2024 1:55 PM
To: Andriy Lytvyn <Andriy.Lytvyn@hwhlaw.com>
Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraiplaw.com>; IPDOCKET <IPDOCKET@sierraiplaw.com>; Stephen E. Kelly <stephen.kelly@hwhlaw.com>
Subject: RE: IPR2023-00625 - Mr. Drewry Deposition Request [IWOV-FirmLive.FID1886307]

[External email; exercise caution]

Mr. Lytvyn,

Mr. Drewry is trying to accommodate your request for a deposition in the next two weeks. Do you have an estimate on the amount of time necessary for the deposition?

Best regards,

William K. Nelson
Patent Attorney
Shareholder

Sierra IP Law, PC
P.O. Box 5637
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used, and cannot be used, for purposes of (i) avoiding penalties imposed under the United States Internal Revenue Code or (ii) promoting, marketing, or recommending to another person any transaction or matter addressed herein.

From: William Nelson <WNelson@sierraplawn.com>
Sent: Monday, April 15, 2024 9:29 PM
To: Andriy Lytvyn <Andriy.Lytvyn@hwhlaw.com>
Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraplawn.com>; IPDOCKET <IPDOCKET@sierraplawn.com>; Stephen E. Kelly <stephen.kelly@hwhlaw.com>
Subject: Re: IPR2023-00625 - Mr. Drewry Deposition Request [IWOV-FirmLive.FID1886307]

Mr. Lytvyn,

Received. I will contact Mr. Drewry and get back to you soon.

Best regards,

William K. Nelson

Patent Attorney

Shareholder

Sierra IP Law, PC

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From: Andriy Lytvyn <Andriy.Lytvyn@hwhlaw.com>
Sent: Monday, April 15, 2024 1:09 PM
To: William Nelson <WNelson@sierraplalaw.com>
Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraplalaw.com>; IPDOCKET <IPDOCKET@sierraplalaw.com>; Stephen E. Kelly <stephen.kelly@hwhlaw.com>
Subject: IPR2023-00625 - Mr. Drewry Deposition Request [IWOV-FirmLive.FID1886307]

Hello Mr. Nelson,

PTL Opco would like to depose Mr. Drewry. Please provide Mr. Drewry's availability for the next two weeks for a deposition to be held virtually.

Thanks,

Andriy Lytvyn
Shareholder
Registered Patent Attorney
Board Certified Intellectual Property Law

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From: William Nelson <WNelson@sierraplalaw.com>
Sent: Saturday, March 30, 2024 12:07 AM
To: Stephen E. Kelly <stephen.kelly@hwhlaw.com>; Andriy Lytvyn <Andriy.Lytvyn@hwhlaw.com>
Cc: Patents <Patents@hwhlaw.com>; Thomas Banks <Thomas.Banks@hwhlaw.com>; Mark Miller <MMiller@sierraplalaw.com>; IPDOCKET <IPDOCKET@sierraplalaw.com>
Subject: RE: SERVICE OF COURT DOCUMENT - IPR2023-00625 ORTHOCISION, INC. v. PTL OPCO LLC

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Court in which the proceeding is pending:	In the United States Patent and Trademark Office
Case No.	IPR2023-00625
Name of Initial Party on Each Side:	Orthocision, Inc. v. PTL Opco LLC
Server's Name / Represented Party:	Thomas Banks / PTL Opco LLC
Title of Document(s) Served:	• Petitioner's Reply Patent Owner's Response to Petition • Ex. 1021 • Ex. 1022 • Ex. 1023 • Ex. 1024

Best regards,

William K. Nelson
Patent Attorney
Shareholder

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From: Thomas Banks <Thomas.Banks@hwhlaw.com>
Sent: Friday, December 22, 2023 2:39 PM
To: William Nelson <wnelson@sierraiplaw.com>; Mark Miller <mmiller@sierraiplaw.com>
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Subject: SERVICE OF COURT DOCUMENT - IPR2023-00625 ORTHOCISION, INC. v. PTL OPCO LLC [IWOV-FirmLive.FID1886307]

Court in which the proceeding is pending:	In the United States Patent and Trademark Office
Case No.	IPR2023-00625
Name of Initial Party on Each Side:	Orthocision, Inc. v. PTL Opco LLC
Server's Name / Represented Party:	Thomas Banks / PTL Opco LLC
Title of Document(s) Served:	• Patent Owner's Response to Petition • Ex. 2003 • Ex. 2004 • Ex. 2005

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