Transcript of Teleconference

Date: May 28, 2024
Case: Sony Interactive Entertainment LLC -v- Quantum Imaging LLC (PTAB)

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

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4 SONY INTERACTIVE ENTERTAINMENT LLC, :

5 PETITIONER, :

6 v. :

7 QUANTUM IMAGING LLC, :

8 PATENT OWNER. :

9 - - - - - - - - - - - - - x

10

11 TELECONFERENCE BEFORE THE BOARD REGARDING

12 IPR2023-00954

13 IPR2023-00995

14 IPR2023-00996

15

16 MAY 28, 2024

17 1:02 P.M. CT

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20 JOB NO.: 539832

21 PAGES: 1 - 42

22 REPORTED BY: KARISA EKENSEAIR, CCR RPR RMR

1 TRANSCRIPT OF PROCEEDINGS, CONDUCTED VIA
2 TELECONFERENCE.
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10 Pursuant to notice, before Karisa J.
11 Ekenseair, Certified Shorthand Reporter in and for
12 the States of Arkansas, Oklahoma, Illinois,
13 Missouri, Tennessee, Georgia, New Mexico,
14 Washington, and California; National Registered
15 Professional Reporter; National Registered Merit
16 Reporter; Notary Public.
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1 P R O C E E D I N G S
2 * * * * *
3 JUDGE MAYBERRY: Good afternoon. This is
4 Judge Mayberry of the Patent Trials Appeal Board.
5 With me on the line is Judges Daniels and Cherry.
6 This call concerns IPR2023-00954, also
7 0095 -- sorry, 00995 and 00996, each styled Sony
8 Interactive Entertainment LLC v Quantum Imaging
9 LLC.
10 We would like to start with appearances.
11 Who do we have on the line for Petitioner?
12 MR. ARJOMAND: Good afternoon, Your Honor
13 Mehran Arjomand of Morrison & Foerster for
14 Petitioner. With me is Bryan Blumenkopf of
15 Morrison & Foerster as well for Petitioner.
16 JUDGE MAYBERRY: All right. Thank you.
17 And did Petitioner provide for a court reporter
18 for this call?
19 MR. ARJOMAND: No. We did not, Your
20 Honor.
21 JUDGE MAYBERRY: All right. Thank you.
22 And who do we have on the line for Patent Owner?

1 MR. TUTTLE: For Patent owner you have
2 Kevin Tuttle and Homayoon Rafatijo. Also
3 listening in is Mark Brockhaus and Patrick Dunn.
4 And Patent Owner has provided a court reporter for
5 this teleconference.
6 JUDGE MAYBERRY: All right. Thank you,
7 Counsel.
8 We'll ask you to file the transcript of
9 this call in each of the three proceedings as soon
10 as it is practical.
11 So with that, Counsel for Petitioner
12 requested this call to address the availability of
13 Patent Owner's declarant, Dr. Medvidovic for a
14 deposition. We'll hear from Petitioner first,
15 then allow Patent Owner to respond. We'll then
16 return to Petitioner for a brief reply to that
17 response.
18 So Petitioner, you may begin when ready.
19 MR. ARJOMAND: Thank you, Your Honor. So
20 I want to thank you for having set up this
21 conference call on short notice. Petitioner has
22 tried for two weeks to meet and confer on Dr.

1 Medvidovic's deposition without success.
2 The correspondence began on May 8th when
3 we, Morrison & Foerster, requested to substitute
4 in as Petitioner's counsel. On May 10th, we
5 requested availability of Dr. Medvidovic for the
6 week of May 27th. That began a lengthy back and
7 forth between Petitioner's counsel and Patent
8 Owner's counsel.
9 I believe that the essence of the dispute
10 is that Petitioner is requesting two days of
11 in-person cross-examination of Dr. Medvidovic and
12 Patent Owner has refused to provide Dr. Medvidovic
13 for two days of in-person cross-examination.
14 Until just last week, Patent Owner had
15 only offered one day of deposition, and that one
16 day was by Zoom. Patent -- Petitioner couldn't
17 agree to that and we made that clear in the
18 correspondence.
19 There is typically no live testimony in
20 IPR proceedings, so in-person cross-examination is
21 really the only opportunity for Petitioner to
22 cross-examine Dr. Medvidovic in person.

1 Furthermore, as Your Honor indicated, there are
2 three pending IPRs in this matter so we are
3 entitled to three depositions. But Petitioner
4 is -- has been willing to compromise to just two
5 days of deposition in view of the fact that the
6 '941 and the '165 patents in the '995 and '996
7 proceedings are related.
8 We had thought we had reached agreement,
9 Your Honors, and -- and had hoped to obviate to
10 need for this call on May 22nd. Patent Owner's
11 counsel had provided finally an offer in which
12 they had made Dr. Medvidovic available for two
13 days of in-person deposition in Kansas City on
14 June 22nd -- on June 21st and June 22nd. And
15 because that was after Due Date 2, they also
16 offered an extension on Due Date 2 by three weeks
17 and Due Date 3 by five weeks.
18 We -- on that same day, on May 22nd
19 accepted the offer. We were willing to depose
20 Dr. Medvidovic in Kansas City for two days in
21 person. And the only issue that we raised was
22 that we felt that the extension period should be

1 equalized to four weeks for Due Date 2 and four
2 weeks for Due Date 3.
3 However, the next day on May 23rd, Patent
4 Owner's counsel withdrew the offer saying that
5 Dr. Medvidovic is no longer available on June 20th
6 and 21st and asked that -- basically revised
7 their -- their previous offer. They had, again,
8 indicated that they would only make Dr. Medvidovic
9 available for 8.5 hours. He would be available
10 for five and a half hours of in-person deposition
11 on the 29th and then -- then another three hours
12 on Friday -- or on the 30th by Zoom.
13 Now, we couldn't agree to that because
14 that doesn't provide what we had asked, not even
15 close to what we had requested. It's not even one
16 full day of in-person cross-examination. And so
17 we reached out to the Board for this call.
18 I think that pretty much summarizes the
19 back and forth between the parties. There are
20 three points that I'd just like to make before I
21 turn over to Your Honors.
22 First, I think Patent Owner may argue that

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1 we had delayed in requesting Dr. Medvidovic's
2 deposition. As you know, we subbed in as
3 Petitioner's counsel on May 8th. That's when we
4 requested from Patent Owner's counsel they opposed
5 our substitution; they did not. And on May 10th,
6 we requested Dr. Medvidovic's deposition for this
7 week.
8 In addition, in the correspondence between
9 the parties --
10 JUDGE MAYBERRY: Excuse me, Counsel --
11 MR. ARJOMAND: Yes.
12 JUDGE MAYBERRY: Excuse me, Counsel.
13 Sorry to interrupt you. Judge Mayberry here.
14 Did previous counsel reach out to Patent
15 Owner at all to try to start planning for the
16 deposition of Patent Owner's declarant?
17 MR. ARJOMAND: I do not know.
18 JUDGE MAYBERRY: That you know of?
19 MR. ARJOMAND: Not that I know of.
20 JUDGE MAYBERRY: Okay. Thank you.
21 MR. ARJOMAND: And then, Your Honor, you
22 know, as the correspondence shows, we responded

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1 promptly to every e-mail from Patent Owner's
2 counsel. There was never a delay at our end in
3 responding to Patent Owner's counsel. Whereas, we
4 had to remind Patent Owner's counsel on at least
5 one occasion to respond to our e-mails.
6 Secondly, I think Patent Owner may also
7 indicate that there was a back-and-forth exchange
8 in Mr. Crane's deposition regarding the length of
9 what is -- basically the length of what is a
10 proper deposition in this proceeding. And in that
11 exchange, Petitioner's former counsel indicated a
12 limitation of only seven hours for
13 cross-examination.
14 Now, mind you, that's less than what
15 Petitioner -- that's less than what Patent Owner
16 is currently offering at 5.5 in-person. But if
17 you take a look at that transcript, and that's
18 Exhibit 2009 in the 94 -- '954 proceeding, on
19 page 280, Patent Owner's counsel indicates that
20 they're entitled to two days of in-person
21 deposition for 14 hours.
22 So it's their position I think in that

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1 deposition that is consistent with our position,
2 that is Petitioner's position here.
3 And I think one other final point that I'd
4 like to raise is that if you take a look at
5 Mr. Crane's deposition, both days, they resulted
6 in the depositions being suspended and calls to
7 the Board. And we think that having the
8 deposition proceed now on May 29th, which is
9 tomorrow, and then on May 30th, which is the day
10 that, my understanding, is Dr. Medvidovic is
11 planning to go on international travel, runs the
12 risk that the deposition might not be completed
13 because there could be, given the past
14 proceedings, there could be an issue with the --
15 deposition being suspended.
16 That's why we were open to accepting the
17 offer of having the deposition after
18 Dr. Medvidovic returns from his international
19 travel on June 13th, having it in person. And we
20 would be open to -- at that point to -- if there's
21 any issues in that deposition for calling the
22 Board or -- or doing what is necessary to try to

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1 resolve the disputes. But trying to do that
2 before, you know, hours before Dr. Medvidovic gets
3 on a plane I think is -- is going to be difficult.
4 So we think our position is -- our
5 position throughout the meet-and-confer has been
6 consistent and reasonable. And we'd ask the Board
7 to respectfully rule in our favor, that we should
8 have two days of in-person deposition of
9 Dr. Medvidovic after his return from India on
10 June 13th.
11 JUDGE MAYBERRY: Okay. Thank you,
12 Counsel. Counsel for Patent Owner.
13 MR. TUTTLE: Yes. This is Kevin Tuttle,
14 counsel for Patent Owner. Mr. Rafatijo will be
15 speaking on our behalf.
16 MR. RAFATIJO: Good afternoon, Your
17 Honors.
18 I'd like to start by pointing out the fact
19 that the Petitioner's conduct throughout these
20 proceeding has unfairly prejudiced Patent Owner.
21 And in this specific incident, you heard from the
22 Petitioner's counsel, it is designed to compel an

1 extension and delay the resolution of these
2 proceeding.
3 Now, the -- the counsel on the other side
4 mentioned that they had to remind us to get back
5 to them. But I'll portray the whole picture for
6 your, Your Honors. Back when we requested the
7 availability of their expert for the Petition,
8 first we requested one week after the discovery
9 open. The discovery opened for us in
10 January 12th. We sent an e-mail to them on
11 January 19th. We didn't hear from --
12 JUDGE MAYBERRY: Excuse me, Counsel.
13 MR. RAFATIJO: -- until -- yes?
14 JUDGE MAYBERRY: This is Judge Mayberry.
15 Are you making the -- taking the position that
16 conduct with respect to taking the deposition of
17 Petitioner's declarant should impact how you
18 respond to request to provide your declarant's
19 deposition?
20 MR. RAFATIJO: No, not at all.
21 JUDGE MAYBERRY: Because I really don't
22 see that that's relevant.

1 MR. RAFATIJO: Sure. Your Honor, I
2 proceed. All I'm just trying to portray to you
3 the we -- we only responded to them after four
4 days. It took them over 20 days to respond to us.
5 So and we needed to get back to Dr. Medvidovic.
6 He's the chair of the department and is sitting of
7 head -- had a conference overseas scheduled from
8 October 2023. And that's why it took us four days
9 to get back to the patent owner -- the petitioner.
10 And -- and you know, we have reached out
11 to them promptly after the discovery opened. But
12 you were asking the other side if the previous
13 counsel ever reach out to us within the seven-week
14 period they have after discovery open, and the
15 answer is no, Your Honor. The very first time
16 Petitioner contacted us requesting for the
17 availability of Dr. Medvidovic was May 10. And
18 even on that e-mail, they did not ask for an
19 in-person deposition. The request for in-person
20 deposition came only on May 16.
21 And they -- and they required, they demand
22 us to work them on -- in the week of May 27, which

1 as we know, Your Honor, May 27th was a national
2 holiday. So essentially, they give us only four
3 days to provide availability for Dr. Medvidovic
4 and -- which is just the week before the close of
5 discovery on June 3rd.
6 So and we -- we worked with them. We
7 offered a lot of compromises. And eventually we
8 said, look, if you want Dr. Medvidovic's
9 deposition over two days and if you want to have
10 him in person, we are willing to come to LA where
11 counsel is residing, where Dr. Medvidovic is
12 residing to have the in-person deposition take
13 place tomorrow on May 29 beginning at 1:00 p.m.
14 for five and a half hours on the record. And then
15 the remainder can proceed on the next day, but
16 remotely, just because Dr. Medvidovic has a flight
17 at 9:30 p.m.
18 And you know, the problem is LA is very
19 busy. And we don't want Dr. Medvidovic sitting on
20 pins and needles all the time during the
21 deposition thinking whether or not he's going to
22 catch the flight. And what we offered is exactly

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1 what we get from them for our -- for their expert.
2 They offered their expert ten-and-a-half
3 hours with the second day being conducted remotely
4 for the convenience of the expert. And honestly,
5 Your Honor, we didn't think that that dispute
6 would merit Your Honor's time and wasting the
7 judicial resources, so we took the offer. We
8 extended the -- the courtesy of, you know,
9 honoring the expert's desire to have the second
10 day being conducted remotely.
11 And Your Honor, this is the position that
12 Petitioner's counsel all along took with respect
13 to these depositions. At the time of Mr. Crane's
14 deposition, there were four IPRs pending before
15 Your Honor. And for four IPRs, and I'm quoting
16 right now from Petitioner's counsel, you have
17 seven hours which is typical standard procedure
18 and process within an IPR proceeding. And seven
19 hours adequate time as for standard proceeding --
20 it is standard proceeding, specifically because
21 according to the deposition counsel, these are --
22 patents are on the same topic.

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1 And then only after we said we going to go
2 to Your Honor for additional time, they agreed to
3 grant us an additional three-and-a-half hours only
4 remotely. And the counsel wrote to us, this
5 additional time would be the total for all IPR
6 proceeding.
7 So as we are doing just simple math here,
8 like, if your position at the time was
9 ten-and-a-half hours is sufficient for four
10 declarations, four patents, four IPR, then
11 eight-and-a-half hours is more than adequate for
12 three declarations, three patents, three IPRs. So
13 what happened that a sudden that you don't -- you
14 can't live with the same time that you extended to
15 us.
16 And as the issue of, you know -- you know
17 that the -- the deposition were suspended, I need
18 to address that, why the depositions were
19 suspended.
20 Well, we came before Your Honors the
21 months --
22 JUDGE MAYBERRY: Well, sir --

1 MR. RAFATIJO: Yes.
2 JUDGE MAYBERRY: Excuse me, this is Judge
3 Mayberry -- before you get into that, I guess I'm
4 much more interested in getting to some type of
5 resolution. So let me see if I understand.
6 I have a question for you first, and that
7 is: After your declarant returns from his trip to
8 India, what, do you know his availability? So his
9 availability in the next, you know, month, I --
10 considering that, you know, for half of it he'll
11 be gone? Does he have availability for two days
12 of deposition?
13 MR. RAFATIJO: Well, Your Honor, our
14 expert indicated initially that he had
15 availability. He was not aware of his faculty
16 retreat meeting that was scheduled for the
17 university. And the rest of June, as I spoke with
18 him yesterday, he said the rest of June is
19 complete booked.
20 So the two days that he thought he could
21 make it happen and he offered initially, how he's
22 saying to us that he has faculty retreat and he

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1 cannot do deposition because he was not aware of
2 the Juneteenth holiday on June 19. So he offered
3 June 20 and June 21st, and he's no longer
4 available because he was not aware of at the time
5 as he communicated to us, because he was not aware
6 of at that time the faculty retreat meeting.
7 And then when he comes back, he needs to
8 adjust for the time travel -- I mean, the jet lag
9 and the time changes. So you know, and you know,
10 all along, Petitioner's position was that we want
11 your availability for the week of May 27. And we
12 are offering that availability right now, Your
13 Honor.
14 We are saying, you have five-and-a-half
15 hours in-person deposition and let's proceed
16 remotely the very next day. And I am actually
17 flying tonight to meet the expert and the
18 Petitioner's counsel tomorrow. So you know, if
19 he -- you know, I understand the counsel you
20 indicate -- but all -- Petitioner has all the
21 right to substitute counsel, but that substitution
22 should not prejudice Patent Owner by forcing us to

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1 grant an extension for a month or more.
2 And one --
3 JUDGE MAYBERRY: Couple things. Excuse
4 me, Counsel.
5 Judge Mayberry, couple things. I also
6 want to clear up because I've heard a couple of
7 different numbers thrown around. Is it the case
8 that because this is a pending flight on Friday
9 evening, that all total, your declarant would be
10 available for eight-and-a-half hours of deposition
11 and it's your position that that should be
12 adequately given that we're only talking about
13 three instead of four proceedings in -- and
14 Mr. Crane testified for ten-and-a-half covering
15 four proceedings?
16 Did I get that right?
17 MR. RAFATIJO: Correct. Except that
18 Dr. Medvidovic's flight is on May 30 at 9:40, not
19 Friday. On Thursday, actually. 9:40 p.m. from
20 LAX airport. And we are only -- you know, we
21 don't want him traveling from home to some law
22 office, our law office, in Santa Monica, and he

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1 always in the rush of whether or not he's going to
2 get back to home and from home to the airport.
3 And we would like to have the time for redirect
4 and recross.
5 And to your second point, Your Honor,
6 you're correct. When Petitioner's counsel limited
7 us to ten-and-a-half hours, they were four
8 proceedings before Your Honor and now there are
9 only three. So we are hoping that
10 eight-and-a-half hours more than adequate given
11 the proportionality to ten-and-half hours for four
12 IPRs. So probably we know eight hours for three
13 IPRs and we added an extra 30 minutes for
14 petitioner to have an efficient -- an effective
15 cross-examination.
16 JUDGE MAYBERRY: Okay. Thank you,
17 Counsel. And we're going to turn back to
18 Petitioner and get a response.
19 And one thing I'm interested to hear in
20 your reply, Petitioner, is why it's limited to
21 availability this week in your request.
22 MR. ARJOMAND: I'm sorry, Your Honor.

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1 Just to follow up on what you're interested in
2 hearing from us, as opposed to -- are you -- are
3 you asking why May 27th as opposed to a week
4 earlier or two weeks earlier?
5 JUDGE MAYBERRY: Yeah. My understanding
6 is you had request and correct me if I'm wrong,
7 please, but my understanding from the
8 back-and-forth that I heard here is that you
9 requested specifically availability of the
10 declarant this week.
11 MR. ARJOMAND: That's right. We -- I'm
12 just looking at the calendar here. On May 10th we
13 had requested for availability of Dr. Medvidovic
14 on the week of May 27th. And we didn't ask for
15 the previous week of May 20th just because we
16 needed some time to get up to speed and be ready
17 for the deposition.
18 We had no idea, Your Honors, until I guess
19 on May 14th that Dr. Medvidovic was going to
20 travel on -- on May 31st to June 13th. That's
21 when Patent Owner's counsel informed us. And so
22 we -- we tried to -- we tried to actually work

1 with them to -- Patent Owner's counsel that is, to
2 have two days of in-person deposition on the 29th
3 of May and also on the 30th of May. That was what
4 we tried to work out with them.
5 But they insisted that they wanted to have
6 it on Zoom instead of in person. And they
7 insisted, again, on the fact that Dr. Medvidovic
8 was traveling internationally.
9 And I think that the offer that Patent
10 Owner's counsel is currently making is really,
11 one, not an offer, because it's only 5.5 hours of
12 in-person cross which is less than even what
13 Patent Owner had with respect to Mr. Crane; but
14 even more importantly as you just heard from
15 Patent owner's counsel, May 30th would be the next
16 day.
17 You know, LA is busy. They're planning on
18 potentially recross -- or I should say redirect.
19 We might have recross. And given the conduct of
20 the past two depositions with Mr. Crane, there's a
21 chance that this could get disbanded. So it just
22 doesn't seem like it's feasible or practical to

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1 have the deposition go on May 30th given, you
2 know, the history here.
3 So that's why we think, you know, a
4 deposition after Dr. Medvidovic has returned to
5 the US would make sense.
6 And we had accepted that offer, Your
7 Honors. You saw that in the correspondence
8 between the parties. And that's the reason we
9 forwarded the correspondence to you, because the
10 summary of what happened back and forth between
11 the parties didn't include that offer which I
12 think is very, very important.
13 Finally, with regard to Dr. Medvidovic's
14 availability on -- in June, we're -- we
15 understand, you know, that the need to work with
16 Patent Owner's counsel to try to resolve these
17 issues and not burden the Court. We would make
18 ourselves available to depose Dr. Medvidovic in
19 person on a weekend, if necessary.
20 We don't -- we don't want to delay this
21 proceeding. We want to get -- you know, get our
22 reapplies in and -- and have the proceeding reach

1 a final written decision. So we're open to any
2 kind of resolution that grants us our -- our, you
3 know, our request for two days of in-person cross.
4 Once that's given to us, we're open to working
5 with Patent Owner's counsel on -- on an
6 appropriate time and manner for the deposition.
7 MR. RAFATIJO: Your Honor --
8 JUDGE MAYBERRY: Counsel --
9 MR. RAFATIJO: -- if I may.
10 JUDGE MAYBERRY: Just a second, Counsel.
11 Counsel, this is Judge Mayberry.
12 There's -- the one thing I want to, again,
13 understand, Mr. Crane, he gave ten-and-a-half
14 hours of testimony with -- with some of it being
15 over Zoom or some other type of media, not in
16 person; is that correct?
17 MR. ARJOMAND: That's my understanding,
18 Your Honor, based on the transcripts. He gave --
19 I think the first day was a full day that went all
20 the way to 7:00 o'clock at night before there was
21 dispute between parties.
22 And then the second day, which was not

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1 the -- the following day, but some time later
2 was -- was by Zoom and it was only at -- a handful
3 of hours. I think total was over ten hours.
4 JUDGE MAYBERRY: And counsel, you -- you
5 talked about two days of in-person depositions.
6 Are you counting a day at seven hours of
7 deposition time?
8 MR. ARJOMAND: That's right. Seven
9 hours --
10 JUDGE MAYBERRY: So you're --
11 MR. ARJOMAND: -- seven hours of cross.
12 JUDGE MAYBERRY: You're looking for
13 14 hours of deposition time?
14 MR. ARJOMAND: Yes. And that's consistent
15 with Patent Owner's counsel's position in the
16 Crane deposition. This is, again, Exhibit 2009 on
17 page --
18 JUDGE MAYBERRY: Excuse me, Counsel.
19 MR. ARJOMAND: Yes.
20 JUDGE MAYBERRY: Excuse me, Counsel. It's
21 not, though, what actually happened with doc --
22 Mr. Cranes's deposition, correct?

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1 MR. ARJOMAND: That's right. That's
2 Patent Owner's counsel thought that they --
3 indicated that they believed that they were
4 entitled to 14 hours.
5 JUDGE MAYBERRY: Okay. Thank you.
6 If I understood, Patent Owner's counsel
7 wanted to make a remark and we will go ahead and
8 indulge. So please, go ahead.
9 MR. RAFATIJO: Just two brief remarks.
10 First, the counsel for the second time mentioned a
11 suspension. It's -- I'd just like to put it
12 before the Court. Because the last time it was
13 suspended, we were on the right and we were trying
14 to introduce evidence day after the -- the
15 deadline for curing the objection to evidence and
16 cross --
17 JUDGE MAYBERRY: Excuse me, Counsel.
18 MR. RAFATIJO: Yes.
19 JUDGE MAYBERRY: Yeah. We don't really
20 need to hear about that.
21 MR. RAFATIJO: Sure. Sure.
22 JUDGE MAYBERRY: Really want to solve this

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1 issue.
2 MR. RAFATIJO: Sure. And one last
3 point -- one last point, Your Honor. Our --
4 Patent Owner counsel indicated during the
5 transcript that if this was a district court, we
6 would have -- we would be entitled to 14 hours,
7 but we agreed to ten-and-a-half hours for four
8 IPR.
9 So their position all along was that seven
10 hours is enough for four IPRs and then they gave
11 us the extra three-and-a-half hours. They said
12 that's all we can give you at this point. And the
13 three-and-a-half hours are conducted remotely.
14 So we are -- we would love to offer
15 Dr. Medvidovic in person for two days, but he has
16 meetings all along today and tomorrow morning.
17 He's willing to travel to our office. We worked
18 with him to move his stuff around and his
19 schedule. He's going to travel to our office for
20 five-and-a-half hours at least. And then the
21 remainder is going to go for the second day, just
22 for his convenience to ensure that he's going to

1 catch his flight. We are ready to go there. If
2 the Petitioner is ready, we are going to meet them
3 tomorrow there.
4 JUDGE MAYBERRY: Okay. Thank you,
5 Counsel.
6 And so one thing I do want to, you know,
7 mention to counsel for Patent Owner, and I'm going
8 to say -- start it by saying, I understand this
9 situation is not normal. We have had a -- a
10 change of Petitioner's counsel which is on
11 Petitioner. But Patent Owner does have the
12 responsibility to offer their declarant for
13 deposition.
14 And so -- so really, that's going to
15 happen. And if that has to happen after the
16 current schedule, then the schedule is going to be
17 modified. So I just wanted to that -- I wanted to
18 say that, make sure everybody understands that --
19 seems like both parties have some -- some -- I
20 don't want to say blame, but some responsibility
21 in leading to where we're at this call right now.
22 And I think that we need to resolve it together

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1 now.
2 And so I am going to give some last words
3 to each party before we put you on mute so that we
4 can converse among ourselves, so one more word
5 from Patent Owner's counsel, to the extent you
6 have anything else to say.
7 MR. RAFATIJO: Sure. Your Honor, we
8 are -- we know we understand our obligation to
9 offer. That's why we've worked with them. We try
10 everything possibly we could to offer
11 Dr. Medvidovic in person at least for -- in some
12 capacity. The counsel is residing in LA, the
13 other side. Dr. Medvidovic is residing in LA.
14 And I am going to fly to LA to have this done and
15 over with tomorrow and the day after.
16 And if, however, Your Honor, decides to
17 extend, you know -- extend the deadline and you
18 think that the proper course of action, two
19 things, you know, I'd like to remind you: The
20 other side did not extend the same courtesy to us
21 even though it took them five -- four weeks to get
22 back to us with availability. But we -- we

1 understand. And if that's your position, Your
2 Honor, we going to work with Dr. Medvidovic see if
3 he can over the weekend maybe after he returned if
4 he doesn't have meeting or anything or if he can
5 work with Dr. Medvidovic over the weekend.
6 The only thing is we would like to know if
7 Petitioner is willing to waive the seven-days
8 requirement prior to -- the seven-day gap that
9 is -- that is built in the rules between the end
10 of discovery and the due date so we -- we can at
11 least move Due Date Two by only one week. And
12 hoping that we can offer Dr. Medvidovic over the
13 week and after he returns from India.
14 If Petitioner's counsel might be ready for
15 that compromise, we going to talk to
16 Dr. Medvidovic to see if he's available. But the
17 last -- yesterday when I talked to him, Your
18 Honor, he said he had a faculty retreat. He has
19 an important position in the University of
20 Southern California. And he was very skeptical of
21 having any openings in the month of June. And I
22 see what we can do about that.

1 JUDGE MAYBERRY: All right. Thank you,
2 Counsel. And counsel for Petitioner, something
3 brief?
4 MR. ARJOMAND: Your Honor, I -- I would
5 just say that we appreciate the Board's
6 willingness to get on this call on short notice.
7 We recognize that we burdened the Board with what
8 appears to be yet another deposition-related
9 issue.
10 We've tried for two weeks to -- to resolve
11 this without reaching out to the Board. And you
12 know, the -- the reality is that we were only
13 given this LA in-person deposition on Thursday.
14 Up to that point, Patent Owner's counsel has
15 repeatedly indicated that Dr. Medvidovic was only
16 available by Zoom on May 30 or, at most, on May
17 29th and May 30.
18 So we would be happy to work with Patent
19 Owner's counsel if Dr. Medvidovic is available
20 after his return. We already accepted one offer
21 that reduced our time for cross-examination in the
22 spirit of compromise. So if they're willing to

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1 provide an offer that is in line with, you know,
2 our -- our desire to depose Dr. Medvidovic in
3 person, we would be open to considering it and
4 trying to resolve this without the
5 Board's -- without burdening the Board further.
6 JUDGE MAYBERRY: All right. Thank you,
7 counsel. We're going to put this call on hold and
8 we are going to talk amongst ourselves and we'll
9 be back to you as soon as we can. Thank you.
10 (Whereupon a break was had.)
11 JUDGE MAYBERRY: The panel is back and we
12 want to thank you for your patience. The first
13 thing, we'd like to confirm that the parties are
14 still on the line.
15 Do we have counsel for Petitioner?
16 MR. ARJOMAND: Yes. We're here.
17 JUDGE MAYBERRY: And counsel for Patent
18 Owner?
19 MR. RAFATIJO: Yes, Your Honor.
20 JUDGE MAYBERRY: And we did just want to
21 confirm one thing just because of all the stuff
22 that went back and forth.

1 But there is still a possibility of some
2 type of deposition this week in LA of Patent
3 Owner's declarant, correct?
4 MR. RAFATIJO: Absolutely, Your Honor.
5 MR. ARJOMAND: Correct.
6 JUDGE MAYBERRY: And Petitioner's counsel,
7 that's your understanding, there -- there is at
8 least an opportunity for that to happen?
9 MR. ARJOMAND: Yes. My understanding is
10 that they're making him available tomorrow at 1:00
11 o'clock for five hours -- five-and-a-half hours.
12 JUDGE MAYBERRY: Okay. Thank you,
13 Counsels.
14 Okay. So what we have decided is that
15 Patent Owner is to make Dr. Medvidovic available
16 for ten-and-a-half hours, with at least half of
17 that in person. If that can be made to happen
18 this week, that would be great. If not, then that
19 has to happen in June upon his return.
20 We're going to leave that up to the
21 parties to figure out how to make that happen,
22 including if it happens in June the required

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1 changes in the scheduling order.
2 Now, again, we do expect the parties to be
3 able to work this out together. Should that not
4 able to happen, then we'll step in and -- and make
5 it happen. Typically, when that happens, though,
6 people aren't happy.
7 So any final questions? We'll go to
8 Petitioner.
9 MR. ARJOMAND: I don't believe we have any
10 further questions, Your Honor.
11 JUDGE MAYBERRY: And Patent Owner?
12 MR. RAFATIJO: Correct, Your Honor. Just
13 one clarification. So if we -- if offered
14 Dr. Medvidovic tomorrow and the day after for
15 ten-and-a-half hours, then there would be no need
16 for a June deposition, correct? Is that your
17 ruling, Your Honor?
18 JUDGE MAYBERRY: That's correct.
19 MR. RAFATIJO: Okay. Thank you.
20 MR. ARJOMAND: Your Honor, let me just
21 follow up on that though. I mean, I just want to
22 be clear, given the way the correspondence has

1 gone for the past two weeks.
2 When Patent Owner said that they'll offer
3 Dr. Medvidovic for ten-and-a-half hours in person,
4 if that offer on the second day requires us to
5 start at 7:00 in the morning, or something like
6 that, to make time for Dr. Medvidovic -- for, you
7 know, redirect, recross, and for Dr. Medvidovic to
8 catch his plane and so he's not nervous, then I
9 don't think that would constitute a good-faith
10 offer.
11 So I want that -- that point to be made
12 clear, that it's not simply an offer of 10.5 hours
13 of in-person deposition. It has to be 10.5 hours
14 of, you know, reasonable time and manner, if that
15 makes sense.
16 JUDGE MAYBERRY: Counsel -- counsel, this
17 is Judge Mayberry. We do respect that.
18 Unfortunately, we're not really in that situation
19 where we can have a perfect world.
20 Again, as I said, both parties kind of
21 have a role they played that's led up to this,
22 including Petitioner getting new counsel at a

1 later date.
2 So because of that, that is one of the
3 reasons where we're here right now. So to the
4 extent that Patent Owner can make their declarant
5 available this week for ten-and-a-half hours, I
6 would expect Petitioner to make every possible
7 effort to get that deposition taken care of.
8 MR. RAFATIJO: Your Honor, one question
9 from Patent Owner.
10 JUDGE MAYBERRY: Yes, please.
11 MR. RAFATIJO: Sure. So I -- I think
12 earlier you said that Patent Owner Should make
13 half of that ten-and-a-half hours in person and
14 the other half can be remote, or all of that
15 should be in person?
16 JUDGE MAYBERRY: No. At least half of it
17 needs to be in person.
18 MR. RAFATIJO: At least half of it. Thank
19 you, Your Honor.
20 MR. ARJOMAND: I'm sorry, Your Honor.
21 My -- my understanding was that it was
22 ten-and-a-half hours in person. Did I -- I wrote

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1 that down in my note.
2 JUDGE MAYBERRY: Well, I -- I apologize,
3 Counsel. I -- I probably didn't speak clearly
4 enough. What I did say, and if I didn't say it, I
5 will say it again, that is the deposition that --
6 Patent Owner needs to make their declarant
7 available for ten-and-a-half hours, at least half
8 of that needs to be in person.
9 MR. ARJOMAND: Okay. All right. I'm
10 sorry, Your Honor, I think I misheard you. I
11 thought initially you said there would be
12 ten-and-a-half hours in person. And now that
13 you've clarified that, I appreciate it.
14 One point of housekeeping, Your Honor. In
15 the event that we proceed with the deposition
16 tomorrow, we have not provided -- we haven't filed
17 a notice of deposition. We, of course, will do
18 that today. But that would be within -- or under
19 the time typically allowed for a notice of
20 deposition.
21 Is it possible that that notice rule be
22 waived in this situation?

1 JUDGE MAYBERRY: I am looking towards --
2 to my colleagues just to confirm.
3 Yeah. We would waive that requirement.
4 So to the extent, once you guys get it worked out,
5 you could file the notice even if it's not -- not
6 within the appropriate timing as set in our rule.
7 MR. ARJOMAND: Okay. Thank you. And --
8 JUDGE MAYBERRY: And again --
9 MR. ARJOMAND: I don't have any further
10 questions.
11 JUDGE MAYBERRY: Okay. Thank you. And
12 I'm sorry to keep on going back and forth.
13 I speak for the Board, but I did want to
14 confirm that Patent Owner would have no issue
15 with -- with the notice being less than the time
16 specified in the rules.
17 MR. RAFATIJO: No, Your Honor. We waive
18 that requirement.
19 JUDGE MAYBERRY: All right. Great. Thank
20 you.
21 With that, I think we are adjourned. I do
22 want to remind counsel for Patent Owner that as

1 soon as practical, to file the transcript from
2 this call in all three procedures. Thank you all.
3 (Whereupon the proceedings were concluded at
4 1:54 p.m. CT)
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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC
2
3 I, Karisa Ekenseair, Certified Reporter
4 and Notary Public within and for the State of
5 Arkansas do hereby certify: That the
6 teleconference hereinbefore set forth, was duly
7 sworn by me before the commencement of
8 such deposition and that such deposition was taken
9 before me and is a true record of the testimony
10 given by such witness.
11 I further certify that the adverse party,
12 Petitioner, was represented by counsel at
13 the deposition.
14 I further certify that the proceedings
15 occurred telephonically on May 28, 2024,
16 commencing at 1:02 p.m. CT to 1:54 p.m.
17 I further certify the inspection,
18 reading and signing of said proceedings was
19 waived on the record by agreement of all parties.
20 I further certify that I am not related
21 to any of the parties to this action by blood
22 or marriage, I am not employed by or an attorney

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1 to any of the parties to this action, and that I
2 am in no way interested, financially or otherwise,
3 in the outcome of this matter.
4
5 IN WITNESS WHEREOF, I have hereunto set my
6 hand and affixed my notarial seal this the 28th
7 day of May, 2024.
8 My commission expires: 6-18-2028
9
10
11 Karisa Ekenseair, CCR, RPR RMR LS #802
12 Notary Public in and for
13 Pulaski County, Arkansas
14 Commission No. 12704567
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