



P. Andrew Riley <ariley@meimark.com>

RE: SHV v. Logic / JTI (Subpoenas for 30(b)(6) Depositions)

1 message

Gewirtz, Gregory S. <ggewirtz@lernerdavid.com>

Tue, Oct 24, 2023 at 11:16 PM

To: Jeff Pearson <jpearson@meimark.com>, "P. Andrew Riley" <ariley@meimark.com>, Robert Hall

<rhall@meimark.com>, Larry Sandell <lsandell@meimark.com>, Lei Mei <mei@meimark.com>

Cc: Dan Lazaro <dan.lazaro@bipc.com>, "Miranda L. Soto" <miranda.soto@bipc.com>, "Caro-Esposito, Daniela" <dcaro-esposito@lernerdavid.com>, "Dowell, Jonathan" <jdowell@lernerdavid.com>, "Rifai-Bashjawish, Hoda" <hrifai-bashjawish@lernerdavid.com>, "Humkey, Charles H." <chumkey@lernerdavid.com>

Jeff,

Your email is not complete and is not an accurate summary of various issues that we discussed today. Although we did discuss setting potential deposition dates, we agreed to continue that discussion tomorrow at 3:00. The following is an accurate summary of the issues that we discussed.

All of the discovery issues were discussed subject to Defendants' pending motion to dismiss for lack of venue and motion to stay discovery.

At the start of the meet and confer discussion today, we addressed Defendants' position that Plaintiff's RFA's are overly burdensome and not proportional to the needs of the case. I offered two options to try and resolve this dispute without the need for Defendants to file a motion for a protective order or other assistance from the Court. The first option is for you to agree to withdraw the original set of RFA's and serve a new set with a substantially reduced number of RFAs for us to consider this week. The second option is for you to withdraw the previously served RFA's and for us to stipulate that Plaintiff can serve a new set of RFAs within seven days after Plaintiff takes the 30(b)(6) deposition of each Defendant. I advised that the large majority of the RFAs should be mooted by that time, and it would be an efficient way to proceed. You initially said that you did not understand this second option so I re-explained it multiple times and you then advised that you understood it and would like to further consider it but asked that I put it in writing for you to understand. Thus, I have summarized it above. Please advise if you will agree to proceed as I proposed.

We next discussed the IPR petition that Defendants filed on 10/19. You commented about it at the outset of the discussion. I asked if Plaintiff would stipulate to stay the lawsuit in view of the IPR petition. We believe it clearly establishes that the asserted claims are invalid. We discussed that the PTAB's ruling will either be fully dispositive of the lawsuit if the patent claims are found to be invalid or would at least substantially simplify the issues in the case. A stay would not prejudice Plaintiff in any way and would provide a benefit of saving all parties a substantially amount of money, time and effort. You replied that you are not inclined to stipulate to the stay request, but I understood that you will discuss this with your client. I also advised that we may file a motion to stay the case. In either event, we will notify the Court about the IPR petition as it is a relevant parallel proceeding.

The third issue that we discussed is the upcoming mediation, which is set for 11/16. This was addressed in the context of the fact depositions that may proceed if the lawsuit is not dismissed or stayed in view of the pending motions, or through settlement. I suggested that if Plaintiff does not agree to stay the lawsuit in view of the IPR petition then I proposed that the parties should stipulate to extend fact discovery until 12/8 for the purpose of taking depositions of fact witnesses so that all fact depositions could commence after the mediation. This approach would not affect any other date in the present scheduling order, and we discussed that it was highly likely that the Court would grant an expedited joint motion to accomplish the proposed agreed upon extension. This approach would also help the parties

focus on the mediation without addressing contentious depositions. The depositions could either commence on 11/17 or on 11/20. If the lawsuit did not settle through mediation on 11/16, there would be ample time to take depositions the following week (11/20-22 as shortened by the Thanksgiving holiday) and during the next two weeks. You commented that "this was a productive discussion" and you would consider it with your client. You also commented that completing fact depositions by the present schedule deadline of 11/23 would be a huge task.

We then started discussing potential depositions under the present schedule. I advised that Defendants will take a 30(b)(6) deposition of Plaintiff and the 30(b)(1) deposition of its CEO (Mr. Lin, who we understood from his interrogatory responses will be Plaintiff's corporate representative) back-to-back on 11/20 and 21. I advised that we could schedule it at your offices in FLSD or at Buchanan's offices in either Fort Lauderdale or Miami. You advised that you preferred for those depositions to be taken at your offices in DC. I agreed to do so as a courtesy. We agreed that the deposition would be in-person.

We then discussed your proposed deposition dates for Defendants' representatives and asked if they would be in-person or virtual. We agreed that if the depositions proceed then those 30(b)(6) depositions would be in-person at Lerner David's offices in NJ. We also discussed that if Mr. Lemoult's deposition needed to be taken then it would also be in-person in NJ. With regard to other requested fact witnesses, I advised that those who lived in worked in NJ would also be taken live in NJ but we needed to further discuss the specific dates with our client early tomorrow afternoon. I also advised that no witness was lived or worked in Florida, so all would be taken either in NJ or some may agree to proceed by video if acceptable to both parties. I explained that if you did not agree to the proposed stipulation to extend the time to take fact depositions from 11/23 to 12/8 then Defendants would make its witnesses available starting next week. We agreed to discuss the deposition scheduling issue again tomorrow at 3:00.

You mentioned that you did not yet receive a 30(b)(6) notice for Plaintiff's deposition. I advised that we would send it following our discussion later today but we should confirm the deposition date and location now. As stated above, we then agreed that the 30(b)(6) deposition as well as Mr. Lin's personal deposition would be conducted in-person at your offices in DC on 11/20-21. As advised during our meet and confer discussion today, we then served the 30(b)(6) deposition notice today along with a 30(b)(1) notice for Mr. Lin and a subpoena that you requested as a back-up to the notice. Hoda explained these documents in the attached email that she sent to you tonight. Your comments below about a virtual deposition contradict the agreement that we made today. All four of the attorneys on the call representing Defendants can confirm that discussion and agreement.

Finally, we started to discuss the discovery deficiency notices. With regard to the alleged deficiencies that you identified, I explained that we expect to produce some additional documents (we already produced almost 70,000 pages of documents) and believe that the production is substantially complete, but we hope to resolve at least some, and hopefully most or all, of the issues that you raised shortly. We also discussed that Defendants believe that there are various deficiencies with Plaintiff's document production and interrogatory responses. We all agreed to reconvene on any remaining deficiency issue either Friday or more likely, early next week.

We look forward to our continued discussion about the deposition issues tomorrow at 3:00.

Regards,

Greg

Gregory S. Gewirtz

ggewirtz@lernerdavid.com

908-518-6343 Direct

908-447-7796 Mobile



Lerner David LLP

20 Commerce Drive, Cranford, NJ 07016

Bio • LinkedIn • vCard • lernerdavid.com

From: Jeff Pearson <jpearson@meimark.com>

Sent: Tuesday, October 24, 2023 3:43 PM

To: Gewirtz, Gregory S. <ggewirtz@lernerdavid.com>

Cc: P. Andrew Riley <ariley@meimark.com>; Robert Hall <rhall@meimark.com>; Larry Sandell <lsandell@meimark.com>; Lei Mei <mei@meimark.com>; Dan Lazaro <dan.lazaro@bipc.com>; Miranda L. Soto <miranda.soto@bipc.com>; Caro-Esposito, Daniela <dcaro-esposito@lernerdavid.com>; Dowell, Jonathan <jdowell@lernerdavid.com>; Rifai-Bashjawish, Hoda <hrifai-bashjawish@lernerdavid.com>; Humkey, Charles H. <chumkey@lernerdavid.com>

Subject: Re: SHV v. Logic / JTI (Subpoenas for 30(b)(6) Depositions)

EXTERNAL EMAIL: Use caution when opening attachments or links.

Dear Counsel,

Thank you for discussing the deposition schedule with us this morning. I'm following up with a list of witnesses (which are the same as sent in our prior deposition notices).

Chris Colon
Jerry Loftin
Brendan LeMoult
Howard Panes
Eli Alelov
Michael Mete
Miguel Martin
Nadezda Pshenitsyna
Emil Weiss
Smoore 30(b)(6)
Logic 30(b)(6)
JTI USA 30(b)(6)

All of the named persons above (except Emil Weiss) were named in Defendants' Trial Witness List. Emil Weiss was named in Defendants' Initial Disclosures. Per our notices, we scheduled these depositions for time periods between 8 and 21 November (or at a mutually agreeable time). We appreciate you working with us to schedule these before fact discovery ends.

In today's call, you said you wanted to depose Mike Lin on November 20th and 21st. This is the first time you've mentioned this. We have yet to receive a subpoena or notice. Notice of such a deposition this late in discovery is unreasonable and Plaintiff reserves its rights to object to the deposition. That said, in the interest of avoiding motion

practice, we are willing to try and make this deposition happen. It might be possible to arrange a deposition of Mr. Lin tentatively between November 14th and November 19th at a location near Mr. Lin, which would likely be in Hong Kong. Also, we would consider arranging a virtual deposition during that time frame.

As for the other witnesses above, we prefer in-person depositions, but will consider virtual depositions. We will also consider depositions at locations convenient for those witnesses. We can offer our offices in Washington, D.C. as a location for depositions. Furthermore, for some of the witnesses, we would consider cancelling certain depositions if Defendants agree not to call the witness at trial.

Best regards,

Jeff

On Mon, Oct 23, 2023 at 4:16 PM Jeff Pearson <jpearson@meimark.com> wrote:

Hello Greg,

I'm following up on this again, requesting that Defendants work with us to schedule the depositions at mutually agreeable times and locations during the days between 8 - 21 November (fact discovery ends 23 Nov, Thanksgiving Day). Please plan on discussing this at our meet-and-confer tomorrow. We appreciate your response.

Best regards,

Jeff

On Fri, Oct 13, 2023 at 2:57 PM Jeff Pearson <jpearson@meimark.com> wrote:

Hello Greg,

I'm following up on these messages. We hope to work with you to schedule these depositions for locations and times that are mutually agreeable. We appreciate your response.

Best regards,

Jeff

On Fri, Oct 6, 2023 at 8:46 PM Jeff Pearson <jpearson@meimark.com> wrote:

Hello Greg,

Please see the attached subpoenas. We serve these in hopes that the parties can schedule the depositions at mutually agreeable times and locations during the days between 8 - 21 November (fact discovery ends 23 Nov, Thanksgiving Day). All of these individuals and Smoore were listed either in Defendants' trial witness list or Defendants' initial disclosures. Moreover, Defendants should accept service for Smoore for matters related to this action because, on information and belief, Defendants have at least contractual control over Smoore as the importer of Smoore's manufactured goods (the Accused Products). Please note that we issued a subpoena for Chris Colon, assuming that Mr. Colon was the individual Defendants intended to name in their witness list rather than Chris Conlon (we found no one associated with JTI or Logic by that name).

The depositions are subject to Plaintiff receiving adequate discovery (including document production and responses to interrogatories) in a manner allowing for Plaintiff to conduct an adequate review of such discovery before the depositions. As Plaintiff has not yet received meaningful discovery (noting that we have not yet reviewed your production, received a few hours ago), Plaintiff reserves its right to depose other witnesses as necessary and allowed by the Federal Rules and/or the Court.

We look forward to your response and cooperation in scheduling these depositions.

Best Regards,

Jeff

On Mon, Oct 2, 2023 at 4:23 PM Jeff Pearson <jpearson@meimark.com> wrote:

Hello Greg,

Thank you for your response. We think that the best approach, with discovery ending on Nov 23rd, is to block off time from 8 - 21 November for depositions (for both 30(b)(6) and fact witness depositions). November 23rd is Thanksgiving Day. We can work together to find a mutually agreeable time and location. We would also consider virtual if necessary. **Will this approach work for you?** If so, then let's work together to identify the agreeable times and locations. We understand that some witnesses reside in Florida, others in New Jersey, and others elsewhere. We will certainly work to find locations to accommodate the witnesses.

We propose the 8 - 21 November because Plaintiff has still not received substantive discovery, especially discovery on sales, reasons for redesigning the Logic Pro device, overlap of operations between Logic and JTI USA, and any documents showing Defendants' awareness of the Asserted Patent. Such discovery is necessary for Plaintiff to fairly prepare for the depositions.

We intend to depose the witnesses that Defendants have identified in their trial witness list and initial disclosures. If Defendants intend to call these witnesses at trial, then they should make those witnesses available for depositions. **Please confirm that you will make these witnesses (that is, the witnesses Defendants have identified in their trial witness list and initial disclosures) available for deposition.** Or, please let us know if you no longer intend to call them at trial.

We look forward to your response.

Best regards,

Jeff

On Fri, Sep 29, 2023 at 2:55 PM Gewirtz, Gregory S. <ggewirtz@lernerdavid.com> wrote:

Jeff,

Subject to our pending motions to dismiss and to stay discovery, we plan to produce additional documents to you as early as today and no later than next week. As we move forward and resolve some issues, additional documents will be produced. This is consistent with the proposal that I discussed with you during the last two meet and confer discussions, where I asked you to identify (prioritize) the types of documents that you wanted so that we can attempt to resolve the present discovery disputes without continued and additional motion practice. We do not yet know the date that document production will not be substantially complete.

You were aware of the discovery status prior to serving 30(b)(6) deposition notices. We agreed to produce representatives on your proposed dates. It is clear from your email below that you declined to proceed with the noticed depositions next week, and would like to first receive substantially all production documents and then discuss when you would like to take the requested 30(b)(6) depositions. We are willing to work with you on the dates. The location of those depositions will be at our offices in NJ, which is where the Defendants are located.

Regards,

Greg

Gregory S. Gewirtz

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From: Jeff Pearson <jpearson@meimark.com>
Sent: Thursday, September 28, 2023 9:12 AM
To: Gewirtz, Gregory S. <ggewirtz@lernerdavid.com>
Cc: P. Andrew Riley <ariley@meimark.com>; Robert Hall <rhall@meimark.com>; Larry Sandell <lsandell@meimark.com>; Lei Mei <mei@meimark.com>; Dan Lazaro <dan.lazaro@bipc.com>; Miranda L. Soto <miranda.soto@bipc.com>; Caro-Esposito, Daniela <dcaro-esposito@lernerdavid.com>; Dowell, Jonathan <jdowell@lernerdavid.com>; Rifai-Bashjawish, Hoda <hrifai-bashjawish@lernerdavid.com>; Humkey, Charles H. <chumkey@lernerdavid.com>
Subject: Re: SHV v. Logic / JTI (Subpoenas for 30(b)(6) Depositions)

EXTERNAL EMAIL: Use caution when opening attachments or links.

Hello Greg,

Thank you for getting back to us. In your email, you state that Defendants will begin producing documents and written responses to Plaintiff's discovery requests "shortly." Please let us know on what date Defendants will begin producing documents and when that document production will be substantially complete.

With less than a week until the scheduled depositions, we don't see how Defendants can substantially complete their document production and written discovery responses in that short time frame such that Plaintiff can adequately review those materials and prepare for the corporate depositions of Defendants. **Please let us know when you intend to produce the documents requested by Plaintiff.** Once we have production of documents, we can schedule the 30(b)(6) depositions for a reasonable time afterwards at a mutually agreeable time and place.

Plaintiff cannot agree before the depositions occur, to not seek another opportunity to pursue testimony on one or more of the corporate deposition topics. Otherwise, what incentive would Defendant have to provide a witness or witnesses prepared to testify on the corporate deposition topics?

We look forward to hearing back from you shortly.

Best regards,

Jeff

On Tue, Sep 26, 2023 at 10:52 PM Gewirtz, Gregory S. <ggewirtz@lernerdavid.com> wrote:

Jeff,

The 30(b)(6) depositions for Defendants Logic and JTI USA can take place at Lerner David's offices in NJ. Subject to our objections, your proposed dates are acceptable. However, you are aware that Defendants have objected to Plaintiff's document requests. Subject to those objections and the pending motions to stay discovery and to dismiss the lawsuit, Defendants will begin producing documents and written responses shortly. Please confirm that you agree that if you proceed to take

the 30(b)(6) depositions on the requested dates prior to resolution of the present discovery disputes, there will not be another opportunity to take another 30(b)(6) deposition on the identified topics and that you will not later file a motion seeking to reopen the deposition due to the present discovery disputes.

Regards,

Greg

Gregory S. Gewirtz

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From: Jeff Pearson <jpearson@meimark.com>

Sent: Thursday, September 21, 2023 2:22 PM

To: Gewirtz, Gregory S. <ggewirtz@lernerdavid.com>; Dan Lazaro <dan.lazaro@bipc.com>; Humkey, Charles H. <chumkey@lernerdavid.com>; Miranda L. Soto <miranda.soto@bipc.com>; Caro-Esposito, Daniela <dcaro-esposito@lernerdavid.com>; Dowell, Jonathan <jdowell@lernerdavid.com>; Rifai-Bashjawish, Hoda <hrifai-bashjawish@lernerdavid.com>

Cc: P. Andrew Riley <ariley@meimark.com>; Robert Hall <rhall@meimark.com>; Larry Sandell <lsandell@meimark.com>; Lei Mei <mei@meimark.com>

Subject: Re: SHV v. Logic / JTI (Subpoenas for 30(b)(6) Depositions)

EXTERNAL EMAIL: Use caution when opening attachments or links.

Hello Greg,

I'm following up on this. Please advise whether the proposed dates/location for these depositions is suitable or provide proposed alternative dates/locations.

Regards,

Jeff

On Fri, Sep 8, 2023 at 5:25 PM Jeff Pearson <jpearson@meimark.com> wrote:

Counsel,

Please see the same subpoenas with Ex A attached to each.

Regards,

Jeff

On Fri, Sep 8, 2023 at 4:50 PM Jeff Pearson <jpearson@meimark.com> wrote:

Counsel,

Please see the attached subpoenas for 30(b)(6) depositions. Please advise whether the proposed dates/location for these depositions is suitable or provide proposed alternative dates/locations.

Regards,

Jeff

--

Jeff Pearson - "Do your job well. Respect everyone."

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Attorney at Law

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----- Forwarded message -----

From: "Rifai-Bashjawish, Hoda" <hrifai-bashjawish@lernerdavid.com>

To: Jeff Pearson <jpearson@meimark.com>, "P. Andrew Riley" <ariley@meimark.com>, Robert Hall <rhall@meimark.com>

Cc: "Gewirtz, Gregory S." <ggewirtz@lernerdavid.com>, "Caro-Esposito, Daniela" <dcaro-esposito@lernerdavid.com>, "Miranda L. Soto" <miranda.soto@bipc.com>, "Dowell, Jonathan" <jdowell@lernerdavid.com>, Dan Lazaro <dan.lazaro@bipc.com>

Bcc:

Date: Wed, 25 Oct 2023 00:15:46 +0000

Subject: SHV v. Logic/JTI - Depositions of Plaintiff and Lin

Jeff,

As discussed today, attached are the deposition notices to SHV (30(b)(6)) and Lin (30(b)(1)), along with a document and testimony subpoena to Lin with Exhibit A. We recognize that the subpoena is not necessary as Mr. Lin is the CEO of SHV, the knowledgeable corporate representative from your interrogatory responses, and the only person associated with Plaintiff disclosed in your initial disclosures or witnesses list with instructions to communicate with Mr. Lin through your office in Washington, DC on both. However, we are providing the attached duplicative subpoena to Mr. Lin to avoid any confusion and to confirm Mr. Lin is not withholding any documents alleged to be in his personal control. Please confirm you are accepting the subpoena of Mr. Lin on his behalf. Please also advise whether Mr. Lin will require a translator for his depositions. If you intend to offer anyone other than Mr. Lin in response to the 30(b)(6) deposition notice of SHV, please identify that individual and provide their relationship with SHV.

We provided in the notices and subpoena that that the depositions are to take place at your office in Washington, DC, pursuant to your request during the meet and confer today. We are willing to revert to the Southern District of Florida, if that is your preference. As Greg advised, we'd be happy to do it at your office or Buchanan's office in the Southern District of Florida. Alternatively, we are available to host the depositions at our office in Cranford, NJ. As further discussed on the meet and confer today and noted in the attached, we plan to take these depositions on November 20-21.

Best regards,

Hoda

Hoda Rifai-Bashjawish

hrifai-bashjawish@lernerdavid.com

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4 attachments



30(b)(6) Deposition Notice to SHV(7844165.1).pdf
116K



Deposition Notice of Lin(7844150.1).pdf
84K



Subpoena to Lin.pdf
719K



SHV v. Logic/JTI - Depositions of Plaintiff and Lin.eml
1290K