From: Cassella, Christopher
To: Yang, Christina Ji-Hye; Diner, Bryan; Hasford, Justin; Goldberg, Joshua; Luneack, Matthew; Officer, Kassandra; McDonnell, Ryan
Cc: extDG-Brimonidine
Subject: RE: IPR2024-00467, 00563: Depositions
Date: Tuesday, October 15, 2024 9:28:09 AM
Attachments: shield-advisory.png
chevron-light.png

External email

Counsel,

We can agree to treat the deposition transcripts and hearing transcripts from the preliminary injunction proceeding as if the testimony were taken in IPR2024-00467 and IPR2024-00563. We can also agree to abide by the Discovery Confidentiality Order entered in the district court litigation in the IPR proceedings until the parties file a stipulated protective order.

Although we still believe a three-hour limit on the depositions is more than sufficient, we will appreciate your efforts to be "as efficient as possible." On a related note, Dr. Galanis has a prior obligation the evening of October 19 and has requested that his deposition conclude no later than 3:00 p.m. CT.

Finally, we confirm that we will not objection to Bausch using Dr. Savic's deposition testimony in the claim construction proceedings even though it is scheduled to take place after the claim construction expert discovery cutoff date.

Best regards,

Chris

From: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>
Sent: Monday, October 14, 2024 1:30 PM
To: Cassella, Christopher <CCassella@goodwinlaw.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; Goldberg, Joshua <Joshua.Goldberg@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>
Cc: Cipriano, Linnea P <LCipriano@goodwinlaw.com>; Frederickson III, Robert <RFrederickson@goodwinlaw.com>; Lu, Alexandra <ALu@goodwinlaw.com>; Zhou, Anna <AZhou@goodwinlaw.com>
Subject: RE: IPR2024-00467, 00563: Depositions

EXTERNAL
Chris,

We still do not understand why you believe that Patent Owner must depose DRL's expert witnesses remotely just because they were deposed before in connection with the PI hearing in the district court.

In any event, to avoid further disputes on this issue, Patent Owner would agree to depose DRL's expert witnesses remotely if DRL agrees to treat the deposition transcripts and hearing transcripts for the preliminary injunction proceeding in the district court as if the testimony therein were taken in IPR2024-00467 and IPR2024-00563, and abide by the Discovery Confidentiality Order entered in the district court proceeding in the IPR proceedings until the parties file a stipulated Protective Order. Patent Owner cannot agree to limit these depositions to 3 hours on the record, but we will endeavor to be as efficient as possible if DRL agrees to Patent Owner's proposal.

Please also confirm as soon as possible today that Defendants will not raise any objections to using Dr. Savic's claim construction deposition testimony in the district court proceeding even though it is scheduled to take place after the claim construction expert discovery cutoff date.

Regards,
Christina

Christina Jihye Yang
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From: Cassella, Christopher <CCassella@goodwinlaw.com>
Sent: Friday, October 11, 2024 10:20 PM
To: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; Goldberg, Joshua <Joshua.Goldberg@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>
Cc: extDG-Brimonidine <extDG-Brimonidine@goodwinlaw.com>
Subject: RE: IPR2024-00467, 00563: Depositions

Counsel,

Dr. Galanis and Dr. Dana will be presented remotely. These are both practicing clinicians with obligations to their patients and busy schedules. Dr. Galanis has generously agreed to be deposed on a Saturday to avoid having to shuffle his patients. Dr. Dana has set aside time in his schedule to minimize any disruptions. As you know, the Board does not require depositions to be conducted in-person. Both witnesses have already been deposed by you in connection with substantially similar declarations from the preliminary injunction proceedings. There is simply no reason to demand less efficient, in-person depositions of these busy clinicians. We would like to proceed as efficiently as possible. If Patent Owner agrees to remote depositions, we would extend the same courtesy to Patent Owner's experts as well.

With respect to the transcripts of earlier depositions, we cannot agree to a "witness-by-witness" approach. Our proposal is aimed at efficiency—allowing the transcripts of earlier depositions to be used in the pending IPRs would circumvent the need to cover ground that has already been covered, which

we had hoped would allow for much shorter depositions. We cannot agree to evaluate whether a prior transcript should be used in the IPR *after* the IPR deposition has already been taken. If Patent Owner does not agree to this proposal before the upcoming IPR depositions, then we will have lost the opportunity to have shortened, more efficient depositions.

Please confirm that Patent Owner will proceed with remote depositions on the dates offered below, and please let us know whether Patent Owner will reconsider our proposal regarding the prior deposition transcripts.

Best regards,

Chris

From: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>
Sent: Friday, October 11, 2024 3:05 PM
To: Cassella, Christopher <CCassella@goodwinlaw.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; Goldberg, Joshua <Joshua.Goldberg@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>
Cc: Rodriguez, Frank <frodriguez@windelsmarx.com>; Weinstein, Louis <lweinstein@windelsmarx.com>; Cipriano, Linnea P <LCipriano@goodwinlaw.com>; Frederickson III, Robert <RFrederickson@goodwinlaw.com>; Lu, Alexandra <ALu@goodwinlaw.com>; Zhou, Anna <AZhou@goodwinlaw.com>
Subject: RE: IPR2024-00467, 00563: Depositions

EXTERNAL
Chris,

We are following up on the email below. Please confirm that Drs. Galanis and Dana will be made available for in-person depositions on the dates that DRL offered and provide the locations for each. If they cannot be made available for in-person depositions on the previously offered dates, please provide alternative dates for in-person depositions. We would appreciate a prompt response so that we can plan accordingly.

Regards,
Christina

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From: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>
Sent: Wednesday, October 9, 2024 10:18 AM

To: Cassella, Christopher <CCassella@goodwinlaw.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; Goldberg, Joshua <Joshua.Goldberg@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>
Cc: Rodriguez, Frank <frodriguez@windelsmarx.com>; Weinstein, Louis <lweinstein@windelsmarx.com>; Cipriano, Linnea P <LCipriano@goodwinlaw.com>; Frederickson III, Robert <RFrederickson@goodwinlaw.com>; Lu, Alexandra <ALu@goodwinlaw.com>; Zhou, Anna <AZhou@goodwinlaw.com>
Subject: RE: IPR2024-00467, 00563: Depositions

Chris,

We accept the deposition dates offered in your email below. But it does not logically follow that because the witnesses were previously deposed in connection with the PI hearing in the district court proceeding that the PTAB depositions must occur remotely. Of course, if you yourself choose to be remote, we have no problem with that. In the meantime, please confirm that at least Dr. Galanis and Dr. Dana will be made available for in-person depositions and provide the locations for each. Although we do not expect the depositions to last seven hours, and we will endeavor to conduct them in less time, please still confirm that each of DRL's witnesses will be available for a deposition lasting up to seven hours under 37 C.F.R. § 42.53(c).

Regarding your proposal to use the transcripts of depositions taken during the preliminary injunction proceedings or prior IPR in the current IPR proceedings, we again cannot agree to a wholesale agreement to do so, but we are willing to consider it on a witness-by-witness basis.

Regarding Dr. Savic's deposition, we are amenable to a single deposition addressing both her claim construction and IPR opinions, again provided that there will be no artificial time limit imposed on her deposition. Also, given that the date offered for Dr. Savic's deposition post-dates the claim construction expert discovery cutoff on the '245 patent, please confirm that DRL will not raise any objections to using Dr. Savic's deposition testimony in the district court proceeding.

Regards,
Christina

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From: Cassella, Christopher <CCassella@goodwinlaw.com>
Sent: Tuesday, October 8, 2024 11:22 AM
To: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; Goldberg, Joshua <Joshua.Goldberg@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>

Cc: extDG-Brimonidine <extDG-Brimonidine@goodwinlaw.com>; Rodriguez, Frank <frodriguez@windelsmarx.com>; Weinstein, Louis <lweinstein@windelsmarx.com>
Subject: RE: IPR2024-00467, 00563: Depositions

Counsel,

Petitioner's experts are available on the following dates for remote depositions in connection with IPR2024-00467 and IPR2024-00563. As you know, the substance of the expert declarations submitted in the IPRs overlaps significantly with the substance of the expert declarations submitted in the preliminary injunction proceedings in the district court litigation. Patent Owner has also already deposed all these witnesses at least once on these topics. Therefore, these witnesses will be presented remotely.

Expert	Date
Dr. Galanis	Saturday, October 19
Dr. Savic	Wednesday, October 23
Dr. Laskar	Tuesday, October 29
Dr. Dana	Friday, November 1

Petitioner also requests that the parties not use the IPR depositions to repeat the examination of issues that the parties have already thoroughly explored in prior depositions. To that end, we propose that the parties agree that (1) the transcripts of depositions taken during the preliminary injunction proceedings or prior IPR may be used in the current IPR proceedings as if taken for the purposes of these proceedings, and (2) each deposition of a witness who was also previously deposed during the PI or prior IPR will be limited to 3 hours on the record.

With respect to Dr. Galanis's deposition, if Patent Owner agrees to limit the deposition to three hours on the record, Dr. Galanis can be made available for deposition beginning at 2:00 p.m. CT on Friday, October 18.

On a related note, we understand that Plaintiffs are seeking to take Dr. Savic's deposition in connection with the claim construction proceedings in the district court litigation. Dr. Savic is unavailable on October 10 (the date listed in Plaintiffs' purported deposition notice). Although we continue to disagree that Plaintiffs are entitled to a second deposition of Dr. Savic for the reasons stated in my October 4 email, as a compromise, we can agree to treat Dr. Savic's October 23 deposition as both an IPR deposition and a district court deposition if Plaintiffs can agree to limit this combined deposition to four hours on the record.

Please let us know whether Patent Owner/Plaintiffs are amenable to the above proposals.

Best regards,

Chris

From: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>
Sent: Friday, October 4, 2024 8:44 AM
To: Cipriano, Linnea P <LCipriano@goodwinlaw.com>; Frederickson III, Robert <RFrederickson@goodwinlaw.com>; Lu, Alexandra <ALu@goodwinlaw.com>; Cassella, Christopher <CCassella@goodwinlaw.com>; Zhou, Anna <AZhou@goodwinlaw.com>
Cc: Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; Goldberg, Joshua <Joshua.Goldberg@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>
Subject: IPR2024-00467, 00563: Depositions

EXTERNAL
Counsel,

We intend to depose Petitioner's experts, Reza Dana, Paul A. Laskar, John Galanis, and Radojka Savic, in connection with the above-referenced proceedings. Please let us know their availabilities in October and where they will be made available for an in-person deposition.

Regards,
Christina

Christina Jihye Yang
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