UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FUBOTV MEDIA INC. AND YANKA INDUSTRIES, INC.,

Petitioners,

v.

DISH TECHNOLOGIES L.L.C.,

Patent Owner.

IPR2024-00919
Patent No. 8,868,772

PATENT OWNER'S UNOPPOSED MOTION FOR AUTHORIZATION TO COMPEL DEPOSITION TESTIMONY OF MARK MITCHELL UNDER 37 C.F.R. § 42.52(a) AND 35 U.S.C. § 24

Patent Owner moves for an order granting authorization to apply for a subpoena compelling the deposition testimony of Mark Mitchell, the Manager of Business Intelligence at Brigham Young University ("BYU") Broadcasting, pursuant to 37 C.F.R. § 42.52(a) and 35 U.S.C. § 24. The Board authorized this motion via email on May 5, 2025. Petitioners have indicated that they are not opposed to the motion.

I. Background

Mr. Mitchell submitted a seven-paragraph declaration alongside Patent Owner's Response (EX2127) that generally (1) attests to the authenticity of prior deposition testimony he provided in the ITC Action[1] relating to the challenged patents, (2) attests to MOVE Networks' first public use of the patented MOVE Media Player in connection with the October 2005 General Conference for the Church of Jesus Christ of Latter-Day Saints, and (3) explains certain statements Mr. Mitchell provided in his prior deposition in the ITC Action.

Similar to the prior ITC Action, Brigham Young University, Mr. Mitchell's employer, will not voluntarily allow him to appear for a deposition in this case absent the service of a subpoena. Accordingly, Patent Owner requests authorization from

[1] The "ITC Action" refers to *In re Certain Fitness Devices, Streaming Components Thereof, and Systems Containing the Same*, Inv. No. 337-TA-1265, before the International Trade Commission.

the Board to apply for a subpoena from the district in which Mr. Mitchell's deposition testimony is expected to be provided—the District of Utah.

II. Legal Standard

Cross-examination testimony of an opposing party's declarant is ordinarily provided under routine discovery. 37 C.F.R. § 42.51(b)(1)(ii). If the declarant is unwilling to appear voluntarily for cross-examination, a party in a contested case before the United States Patent and Trademark Office may apply for a subpoena to compel the testimony in the United States District Court presiding over the location where the testimony is to be provided. 35 U.S.C. § 24. A party seeking a subpoena to compel testimony must first obtain authorization from the Board. 37 C.F.R. § 42.52(a).

III. Argument

Petitioners have requested to cross-examine Mr. Mitchell regarding his declaration as part of routine discovery under 37 C.F.R. § 42.51(b)(1)(ii). Because BYU requires a subpoena before allowing Mr. Mitchell to appear for deposition testimony, Petitioners and Patent Owner must seek a subpoena, and respectfully move the Board to authorize the parties to apply for a subpoena from the United States District Court for the District of Utah. Due to the limited scope of Mr. Mitchell's declaration, a subpoena and subsequent deposition testimony would not present a burden in meeting any scheduling deadlines for this proceeding.

Authorizing Patent Owner to apply for a subpoena is in the shared interests of the Board and parties because Mr. Mitchell's deposition will aid in securing the "just, speedy, and inexpensive resolution of [this] proceeding." 37 C.F.R. § 1(b). Authorizing Patent Owner to apply for a subpoena additionally provides Patent Owner with the opportunity to fulfill its duty to make Mr. Mitchell available for cross-examination, *see generally* 37 C.F.R. § 42.51(b)(ii), and Petitioners with the opportunity to cross-examine Mr. Mitchell, *see generally* 37 C.F.R. § 42.52(a).

Additionally, authorization is appropriate here because the Board has repeatedly authorized parties to apply for subpoenas in similar situations. *See, e.g.*, *Qualcomm, Inc. et al. v. Network System Techs., LLC*, IPR2024-00343, Paper 32 (PTAB Sep. 11, 2024); *Activision Blizzard, Inc. et al. v. Acceleration Bay, Inc.*, IPR2015-01951, Paper 17 (PTAB June 3, 2016); *Marvell Semiconductor, Inc. v. Intell. Ventures LLC*, IPR2014-00553, Paper 28 (PTAB Apr. 8, 2015).

IV. Conclusion

For the foregoing reasons, Patent Owner respectfully requests that the Board grant its motion for authorization.

Date: May 6, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e)(4), the undersigned certifies that on May 6, 2025, a complete and entire copy of the **PATENT OWNER'S UNOPPOSED MOTION FOR AUTHORIZATION TO COMPEL DEPOSITION TESTIMONY OF MARK MITCHELL UNDER 37 C.F.R. § 42.52(a) AND 35 U.S.C. § 24** was provided via email to the Petitioner by serving the correspondence email addresses of record as follows:

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