From:	Trials
To:	Shepard, Zach; Trials
Cc:	fubotv_masterclassiprs.lwteam@lw.com; Inge.Osman@lw.com; Tara.Elliott@lw.com; Rick.Frenkel@lw.com; Rebecca.Rabenstein@lw.com; Steven.Peters@lw.com; cnaples@cgsh.com; fmgasparo@venable.com; Ian G. Paquette; Philip T. Sheng; Williams, Eliot D.; Lynn, Jamie; Wilson, Andrew; Dhanani, Ali; Carter, Thomas; DishvMindGeek; DISHvFubo
Subject:	RE: IPR2024-00917; -00918; -00919; and -00940
Date:	Monday, May 5, 2025 1:53:39 PM

Counsel,

Based on the e-mail communication below, we understand that Patent Owner's request to file motions for authorization to apply for a subpoena under 35 U.S.C. § 24 to compel deposition testimony from Mr. Mark Mitchell is unopposed. Accordingly, we authorize Patent Owner to file such motion in each of the identified proceedings.

Regards,

Andrew Kellogg,
Deputy Chief Clerk, Trials
Patent Trial and Appeal Board
USPTO
andrew.kellogg@uspto.gov
(571) 272-5366

From: Shepard, Zach <zach.shepard@bakerbotts.com>
Sent: Thursday, May 1, 2025 12:33 PM
To: Trials <Trials@USPTO.GOV>
Cc: fubotv_masterclassiprs.lwteam@lw.com; Inge.Osman@lw.com; Tara.Elliott@lw.com; Rick.Frenkel@lw.com; Rebecca.Rabenstein@lw.com; Steven.Peters@lw.com; cnaples@cgsh.com; fmgasparo@venable.com; Ian G. Paquette <IGPaquette@venable.com>; Philip T. Sheng <PTSheng@venable.com>; Williams, Eliot D. <Eliot.Williams@BakerBotts.com>; Lynn, Jamie <Jamie.Lynn@BakerBotts.com>; Wilson, Andrew <andrew.wilson@BakerBotts.com>; Dhanani, Ali <ali.dhanani@bakerbotts.com>; Carter, Thomas <thomas.carter@bakerbotts.com>; DishvMindGeek <DishvMindGeek@BakerBotts.com>; DISHvFubo <dishvfubo@BakerBotts.com>
Subject: IPR2024-00917; -00918; -00919; and -00940

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IPR2024-00917, -00918, -00919, and -00940

Dear Honorable Board,

Patent Owner respectfully requests the Board's permission to file **unopposed** motions

pursuant to 37 C.F.R. § 42.52(a) to issue a subpoena under 35 U.S.C. §24 to BYU for the deposition testimony of Mark Mitchell—a third-party fact witness whose declaration Patent Owner submitted—in order to permit Petitioners to cross examine Mr. Mitchell.

In support of these motions, Patent Owner would show the following:

- On April 17, Patent Owner received a request from Petitioner Aylo Freesites Ltd (IPR2024-00940) for the deposition of, among other witnesses, Mark Mitchell—a third-party fact witness not under Patent Owner's control. Mr. Mitchell submitted a three-page declaration (EX2127) in the above-listed proceedings attesting to the authenticity of Exhibits 2120 and 2128 and recounting certain sworn testimony Mr. Mitchell provided in *In re Certain Fitness Devices, Streaming Components Thereof, and Systems Containing the Same,* Inv. No. 337-TA-1265 (Int'l Trade Comm.). Patent Owner reached out to the Office of General Counsel at Brigham Young University ("BYU")—Mr. Mitchell's employer—inquiring about his availability.
- On April 25, after receiving Patent Owner's request for Mr. Mitchell's availability, counsel for BYU informed Patent Owner that Mr. Mitchell could only be made available for a deposition if an officer or lawful agent of BYU is served with a subpoena. In that same correspondence, counsel for BYU requested Patent Owner's justification for why Mr. Mitchell's availability is necessary for these proceedings. Patent owner provided its response on April 28.
- On April 29, counsel for BYU responded to Patent Owner, stating that "[i]t is [BYU's] policy not to have employees voluntarily testify without a subpoena in a case where BYU is not a party. Mr. Mitchell stands by his former deposition (and declaration), but he has little desire to be questioned on the same topics again. Of course, we will comply with any lawfully issued subpoena. Please let me know if Petitioner is able to obtain a subpoena." Shortly after receiving its response from BYU, Patent Owner notified Petitioners of BYU's request for a subpoena.

After further discussion with Petitioners, Patent Owner agreed to take the lead in requesting the Board's authorization to obtain a subpoena for Mr. Mitchell's deposition. While Patent Owner maintains that Mr. Mitchell's deposition is not necessary, particularly because Mr. Mitchell stands by his former deposition and declaration and has little desire to be questioned on the same topics again, Patent Owner is nonetheless willing to satisfy any obligation to further secure Mr. Michell's availability. As stated above, Petitioners do not oppose Patent Owner's request.

Should the Board desire a call to discuss this request further, the parties are jointly available Monday, May 5, 2025 from 12:00PM ET until 5:00PM ET.

Respectfully,

Zacharias Shepard
Pronouns: he/him/his
Associate

Baker Botts L.L.P.
zach.shepard@bakerbotts.com
T +1.713.229.6234
M +1.832.350.6478
910 Louisiana Street
Houston, TX 77002
USA

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