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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Hensoldt Optronics GmbH,

10 Plaintiff,

11 v.

12 Nivisys LLC, et al.,

13 Defendants.
14

No. CV-14-02399-PHX-JAT

ORDER

15 Having considered the briefs of the parties, Defendants' request (Doc. 396) to
16 present an out-of-state representative of CapitalSource Finance, LLC ("CapSource") via
17 video teleconference is hereby denied.

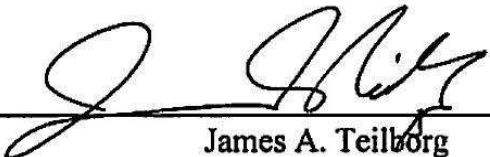
18 The Court finds significant that the witness is, and at all times has been, beyond
19 the Court's subpoena power. Defendants state that the witness has not agreed to
20 voluntarily appear; there is no suggestion that the witness ever agreed to appear and then
21 changed his intentions. (See Doc. 396 at 2). Though Defendants suggest that exhibits,
22 including impeachment exhibits, can (and should) be furnished to the witness ahead of
23 time, especially in a documents case, the direct examination may demonstrate a need for
24 cross-examination with documents not earlier foreseen. Furnishing the witness with
25 impeachment documents ahead of his direct testimony further detracts from the normal
26 efficacy of impeachment exhibits. Given these considerations, the Court concludes that
27 Defendants failed to show "good cause in compelling circumstances" to allow the witness
28 to testify via video teleconference. Fed. R. Civ. P. 43(a).

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Based on the foregoing,

IT IS ORDERED that Defendants' request to present an out-of-state representative of CapSource via video teleconference is **DENIED**.

Dated this 30th day of January, 2018.



James A. Teilborg
Senior United States District Judge