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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

U.S. Ethernet Innovations, LLC,
Plaintiff,

NO. C 10-03724 JW
NO. C 10-05254 JW
NO. C 10-03481 JW

v.

**ORDER APPOINTING TECHNICAL
ADVISOR**

Acer, Inc., et al.,

_____ /

AT&T, Inc., et al.,

Defendants.

_____ /

Zions Bancorporation, et al.,

Plaintiffs,

v.

U.S. Ethernet Innovations, LLC,

Defendant.

_____ /

On September 29, 2011, the Court issued an Order apprising the parties of its intent to appoint a Technical Advisor, Kwan Chan.¹ The Order provided that any party to the litigation

¹ (Notice of Intent to Appoint a Technical Advisor, Kwan Chan, hereafter, "Order" Docket Item No. 553 in No. C 10-03724 JW.)

1 wishing to object to Mr. Chan’s appointment shall file its objection with the assigned Magistrate
2 Judge by October 14, 2011. (Order at 4.) On October 17, 2011, Judge Beeler notified the Court that
3 no objection has been filed.

4 Accordingly, the Court appoints Kwan Chan as a Technical Advisor for these related cases
5 under the following terms:

6 1. Any advice provided to the Court by Mr. Chan will not be based on any extra-record
7 information.

8 2. To the extent that the Court may ask Mr. Chan to provide a formal written report on
9 technical advice concerning the case, a copy of the formal written report prepared by Mr. Chan shall
10 be provided to the parties. However, the Court reserves the right to have informal verbal
11 communications with Mr. Chan which are not included in any formal written report.

12 3. Mr. Chan may attend all case-related court proceedings.

13 4. Mr. Chan may review any pleadings, motions or documents submitted to the Court.

14 5. As a Technical Advisor, Mr. Chan will make no written findings of fact and will not
15 supply any evidence to the Court. Thus, Mr. Chan will be outside the purview of “expert witnesses”
16 under Fed. R. Evid. 706. As such, the provisions in Rule 706 for depositions and questioning of
17 expert witnesses will be inapplicable to Mr. Chan. See Reilly v. United States, 863 F.2d 149, 155-
18 67 (1st Cir. 1988).

19 6. Mr. Chan will have no contact with any of the parties or their counsel except for billing
20 purposes.

21 7. Each party shall bear the cost of the Technical Advisor on a *per capita* basis, payable in
22 advance. Because the Court has advanced the Markman hearing to October 21, 2011, the parties
23 shall immediately meet and confer with Mr. Chan and develop a plan to set up a trust account
24 whereby the parties shall deposit, initially, \$10,000 each to cover the anticipated fees and costs. Mr.
25 Chan shall issue statements to the parties and draw from the trust account every fifteen (15) days for
26 his performance of the appointment. Mr. Chan will bill at the rate of \$450.00 per hour.

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The Technical Advisor shall report to the Court on a periodic basis, every sixty (60) days, regarding the state of his fees and expenses and make a recommendation to the Court as to whether the trust account needs additional deposits from the parties as the case progresses.

All matters pertaining to the fees of Mr. Chan are referred to the assigned Magistrate Judge.

8. On or before **October 18, 2011**, Mr. Chan shall file a declaration that he will adhere to the terms of his appointment.

The Clerk of Court shall immediately add Mr. Chan to the docket.

Dated: October 17, 2011



JAMES WARE
United States District Chief Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2

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Dated: October 17, 2011

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Susan Imbriani
Courtroom Deputy