



UNITED STATES | ENGLAND | CHINA

June 18, 2010

Magistrate Judge Jeanne J. Graham
United States District Court, District of Minnesota
316 North Robert Street, Suite 600
St. Paul, Minnesota 550101

VIA EMAIL AND MESSENGER

Re: TimeBase Pty Ltd. v. The Thomson Corp. et al., Civ. No. 07-1687

Dear Judge Graham:

Please find enclosed the second round of Defendants' Requests for International Judicial Assistance Pursuant to the Hague Convention ("letters rogatory"). On behalf of the defendants in the above-named matter, we request that the Court issue the enclosed letters rogatory so that the defendants may seek oral testimony from two witnesses: Abha Lessing and Christoph Schnelle, who reside in Australia. We understand that TimeBase's counsel filed a letter preemptively objecting to these requests yesterday. For the reasons explained, we ask that the Court disregard the objections and issue the letters without delay.

Background

As you are aware, foreign discovery has been and continues to be a critical part of this case. Plaintiffs in this case are an Australian company, whose business exists solely in Australia. The patented invention was developed in Australia. The named inventors reside in Australia. Key prior art exists in Australia. In fact, the patents-in-suit claim priority to an Australian patent.

At the Pretrial Scheduling Conference last July, we explained that the defendants intended to conduct Australian discovery in two phases. First, we would seek documents from TimeBase and relevant third parties. Second, we would seek oral testimony through depositions. We anticipated that document collection would assist the defendants in choosing proper defendants and focusing those depositions, and indeed this has been the case.

As you may recall, in September 2009, we asked the Court to issue an initial series of letters rogatory seeking documents from several entities in Australia under the Hague Convention. Following issuance from this Court, those letters were presented to and approved by the Office of the Australian Attorney General. However, so far we have not needed to proceed any further with the letters, as we have been able to accomplish document collection through other, more efficient means. For example, several of the witnesses agreed to produce

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documents voluntarily. One government entity produced documents in response to an Australian FOIA request. Another corporate entity produced documents in response to a subpoena served on its parent company in the United States. By working through these less costly and more efficient processes, we were able to accomplish document discovery without burdening the Australian courts. We think the process worked well.

Now, we are ready to move to the second phase of foreign discovery and wish to seek oral testimony from several witnesses. For the past months, we have been working in consultation with TimeBase's counsel to schedule depositions for certain witnesses in Australia. At this point, we believe depositions will take place during the first two weeks of August. For those witnesses who are represented by Mr. Hosteny, we have been working with him to arrange voluntary production of witnesses to avoid burdening the Australian courts (and this Court) with letters rogatory. We are hopeful that this will be finalized shortly.

For two witnesses, however, letters rogatory will be necessary. In particular, the defendants seek to take oral testimony from Abha Lessing and Christoph Schnelle, who are the founders and former owners of TimeBase and who are named inventors on both of the patents-in-suit. Mr. Hosteny has stated many times that he does not represent Ms. Lessing and Mr. Schnelle. In addition, although we have reached out to the inventors, they have been unwilling to participate in this case so far. Accordingly, we seek to compel the testimony of Ms. Lessing and Mr. Schnelle under the procedures established by the Hague Convention.

The Letters Rogatory

The attached letters rogatory are straightforward requests for oral testimony under the Hague Convention. They contain the same background information as contained in the first round of letters rogatory, which the Court approved in September 2009. We provided copies of these letters to TimeBase's counsel last week and sought their input. In response, the only objection raised by Mr. Hosteny was that he believed that the letters could not be executed within the timeframe for discovery established in this case. We assured Mr. Hosteny that, at this point, we believe that we will be able to schedule depositions for Ms. Lessing and Mr. Schnelle by the close of discovery. Nonetheless, to address his concern, we incorporated into each of the letters a deadline for completing the depositions by August 31, 2010. (See Letters Rogatory at Paragraph 8.2). We informed Mr. Hosteny about the new deadline and sent revised letters for his review. Again, we asked Mr. Hosteny to let us know whether he had any additional concerns about the letters. We did not receive a response and believed TimeBase's concerns had been resolved.

Accordingly, we were surprised to see the letter that Mr. Hosteny filed with the Court yesterday. In short, we believe that the objections raised by TimeBase are inappropriate. First, we disagree with the basis for the objection. As we informed Mr. Hosteny, we believe that there remains enough time to execute the letters rogatory properly, such that depositions will take place in August. Second, we already have addressed this objection by incorporating a deadline for oral testimony into the letters rogatory themselves. Third, at this point, the objection by TimeBase is merely hypothetical and does not form a proper basis for cutting the defendants off from discovery altogether. Finally, to the extent TimeBase is genuinely concerned about

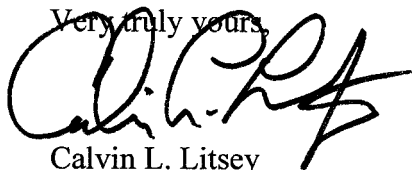
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complying with the schedule for discovery in this case, its objections only delay the process further.

The attached letters rogatory seek access to evidence from key witnesses in this case. There is simply no reason to foreclose discovery on the basis of hypothetical and unwarranted objections, and no reason to delay discovery any further. We respectfully request that the Court issue the letters promptly, so that the defendants can continue with foreign discovery as planned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Calvin L. Litsey". The signature is stylized and cursive, with a large initial "C" and "L".

Calvin L. Litsey

Enclosures

cc Joseph N. Hosteny (w/encs.)

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