Bird, Joe

From: Andrew Maslow [andy@andymaslow.com]
Sent: Wednesday, June 11, 2014 5:12 PM
To: Bird, Joseph S.; pclotfelter@bakerdonelson.com
Cc: John Krisik
Subject: Re: Extension

Joe,

As you know I have been trying to find a way for the all parties to settle the pending litigations. I have concluded from my conversations with you that, at the present time, the parties are so far apart from their evaluations of the actions that settlement discussions would be futile.

The main impediment is that Chums and Croakies firmly believe that a reasonable patent examiner, who considered the Visser expert report, would not have allowed any of the claims of the patent in suit. You have stated that you believe that a patent examiner would allow the current claims after considering the Visser report, including the Sosin website.

As a result, it is imperative that the PTO be given an opportunity to consider the Visser report and make a determination as to what claims, if any, would be allowable in view of the extensive prior art contained in it. Once such a determination is made, in all likelihood both the Chums and Croakies cases can be settled.

Under the America Invents Act there is a new proceeding called Inter Parties Review ('IPR"). It is nothing like an Interference. It is becoming very common for parties in litigation to use an IPR to resolve questions of validity, exactly like the issue I discussed above. For more information about IPR proceedings see:

http://www.uspto.gov/aia_implementation/faqs_inter_partes_review.jsp

In order to reduce needless litigation expenses in both cases, and especially the Chums action, I propose the following:

1) within one week Chums will file a petition for an IPR; and

2) All parties agree to move the Alabama courts to stay both actions while the question is sought before the Patent and Trademark Appeals Board (in the IPR) as to which claims, if any, would be allowable considering the prior art in the Visser expert report.

There are distinct advantages to Cablz under this proposal. First, the PTAB is required to make a decision no later than one year after the petition for an IPR is granted. Second, in the instant actions all discovery, the need for expert reports, filing and briefing motions (which may be extensive), etc will be stayed pending the decision from the PTAB. This

will be a huge saving for both Chums and Cablz. Second, the decision by the PTAB would be binding on Chums and Croakies. Hence, in all likelihood once a decision is made by the PTAB the parties are very likely to reach a resolution without having to resort to the huge expense of discovery, motions and a trial.

I have spoken to the attorneys for Chums and they are agreeable to my proposal above.

Please give this proposal serious consideration and discuss with your client to see if we can agree to proceed in this manner.

Best regards,

Andy

Andy

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Sent: Wednesday, June 11, 2014 1:35 PM
Subject: Extension

Dear Andy/Pat,

With all the discovery going in the Chums case, and your introduction of the Sherman Act counterclaim, we were hoping to get 12 extra days to respond to the counterclaim. This would make our reply to the counterclaim due on July 2. Is that okay?

Many thanks,

Joe Bird

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