

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IOENGINE, LLC,

Plaintiff,

v.

PAYPAL HOLDINGS, INC.,

Defendant.

Civil Action No. 18-452-WCB

INGENICO INC.,

Plaintiff,

v.

IOENGINE, LLC,

Defendant.

Civil Action No. 18-826-WCB

IOENGINE, LLC,

Counterclaim Plaintiff,

v.

INGENICO INC.,
INGENICO CORP., and
INGENICO GROUP S.A.,

Counterclaim Defendants.

ORDER

This order addresses a discovery dispute regarding the deposition of an Ingenico employee, Alain Soubirane, who has been designated by the Ingenico parties as a Rule 30(b)(6) witness on several topics.¹ IOENGINE argues that the deposition should take place in the United States. Ingenico argues that it should take place in France, M. Soubirane's country of residence. The court ordered the parties to submit letter briefs addressing the issue and, specifically, the possibility of conducting the deposition in a third country. The parties submitted briefs addressing the various possible locations for the deposition. Case No. 18-826, Dkt. Nos. 274, 278, 280.

IOENGINE argues that the deposition should occur in the United States. IOENGINE relies on the general principles that an examining party customarily chooses the location for a deposition, and that a Rule 30(b)(6) witness may ordinarily be deposed at the principal place of business of the entity being deposed. Because M. Soubirane has been designated as a representative of two entities that have principal places of business in the United States, IOENGINE argues that he should be directed to appear for his deposition in this country. In the alternative, IOENGINE argues that the deposition should be held in the United Kingdom or in Belgium, where the procedures for depositions conducted in connection with foreign litigation are not as burdensome as in France. Case No. 18-826, Dkt. No. 274.

Ingenico responds that the court should order the deposition to be conducted in France and that, consistent with French law, the deposition should be conducted pursuant to the procedures of the Hague Convention on the Taking of Evidence Abroad. Ingenico argues that Chapter II of the Hague Convention provides a quick and efficient means for taking the deposition because the procedures

¹ "Ingenico" refers to the three Ingenico parties, Ingenico Inc., Ingenico Corp., and Ingenico Group S.A.

under that chapter merely require the appointment of a commissioner in France who can supervise the deposition. Particularly in light of the pandemic and related restrictions on international travel, the court should not order M. Soubirane to travel abroad, but should order the video deposition to be conducted in France, which would not require international travel. Case No. 18-826, Dkt. No. 278.

The dispute between the parties turns mainly on whether the Hague Convention procedures advocated by Ingenico would be too slow to ensure that the deposition will be completed before the October 22, 2021, close of fact discovery. *See* Case No. 18-826, Dkt. No 268 (fourth revised scheduling order). Ingenico argues that all that needs to be done is for the parties to agree on the appointment of a commissioner and for the court to send a letter to the pertinent French authorities regarding the need for the deposition. Those steps can be done quickly, according to Ingenico.

In light of the pandemic, it is preferable to conduct the deposition in a manner that will not require international travel. In addition, the interest in comity supports attempting to comply with French law to the extent practicable. *See Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court. for Southern Dist. of Iowa*, 482 U.S. 522, 546 (1987) (“American courts should therefore take care to demonstrate due respect for any special problem confronted by the foreign litigant on account of its nationality or the location of its operations, and for any sovereign interest expressed by a foreign state.”). Given Ingenico’s representations that the process of authorizing a French deposition under the Hague Convention can be expedited, I will direct that the deposition be conducted by video with M. Soubirane in France if Ingenico can arrange for the deposition to take place by September 20, 2021.² If Ingenico cannot arrange for the deposition to be taken by that date, Ingenico will be

² Ingenico shall provide the necessary letter, and an attached translation, in electronic form, for my signature. That step should be taken immediately. I will sign the letter electronically and return it by email to Ingenico’s counsel, who will be responsible for ensuring that the letter is conveyed to the proper French authorities without delay.

given the choice of either conducting the deposition in a third country near France (presumably either Belgium or the United Kingdom) or in the United States. In either of those events, Ingenico will be required to present M. Soubirane for a deposition in one of those locations by October 10, 2021.

IT IS SO ORDERED.

SIGNED this 19th day of August, 2021.

A handwritten signature in cursive script that reads "William C. Bryson". The signature is written in black ink and is positioned above a horizontal line.

WILLIAM C. BRYSON
UNITED STATES CIRCUIT JUDGE