

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

GRUPO PETROTEMEX, S.A. DE C.V. and  
DAK AMERICAS LLC,

Plaintiffs,

Civil Action No. 16-cv-02401 SRN-HB

v.

POLYMETRIX AG,

Defendant.

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**APPLICATION TO TAKE EVIDENCE PURSUANT TO CHAPTER II, ARTICLE  
17 OF THE HAGUE CONVENTION OF 18 MARCH 1970 ON THE TAKING OF  
EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS**

Based on the Joint Motion for Appointment of Commissioners filed by Plaintiffs Grupo Petrotex, S.A. de C.V. and DAK Americas LLC (collectively, “GPT/DAK”) and Defendant Polymetrix AG (“Polymetrix”) in the above-captioned action, the Court hereby requests authorization from the Swiss Federal Department of Justice and Police (“FDJP”) to take evidence and conduct remote depositions of witnesses located in Switzerland pursuant to Chapter II, Article 17 of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (the “Hague Convention”).

**1. The undersigned respectfully submits this request to the competent authority of:**

Kantonsgericht St. Gallen  
Klosterhof 1  
9001 St. Gallen  
Switzerland

**2. Names and addresses of the parties and their representatives**

a. Plaintiffs:

Grupo Petrotex, S.A. de C.V.  
Ricardo Margain No. 444, Torre sur, Piso 16  
Col. Valle del Campestre  
66265 San Pedro Garza Garcia  
Nuevo León, México

DAK Americas LLC  
5925 Carnegie Boulevard, Suite 500  
Charlotte, North Carolina 28209

b. U.S. counsel for Plaintiffs:

Eric W. Schweibenz  
John F. Presper  
OBLON, McCLELLAND, MAIER & NEUSTADT, L.L.P.  
1940 Duke Street  
Alexandria, Virginia 22314  
Telephone: (703) 413-3000  
Facsimile: (703) 413-2220  
eschweibenz@oblon.com  
jpresper@oblon.com

c. Defendant

Polymetrix AG  
Sandackerstrasse 24  
9245 Oberbüren  
Switzerland

d. U.S. counsel for Defendant

Todd A. Noah  
DERGOSITS & NOAH LLP  
One Embarcadero Center, Suite 350  
San Francisco, CA 94111  
(415) 705-6377  
tnoah@dergnoah.com

### **3. Nature and subject matter of the proceedings**

GPT/DAK sued Polymetrix for patent infringement in the U.S. District Court for the District of Minnesota on July 12, 2016. The complaint alleges, *inter alia*, that Polymetrix (located in Switzerland) has induced infringement by “designing and selling plants and equipment that perform the methods claimed in” the asserted patents, and specifically identifies Polymetrix’s EcoSphere™ technology as an accused process. (D. Minn. [Dkt. No. 0:16-cv-02401](#), ECF [Doc. 1](#), Compl., ¶¶ 27, 33, 39).

GPT/DAK served Polymetrix with deposition notices on February 14, 2020. The District of Minnesota then set a briefing schedule for the parties’ planned motions for summary judgment on the issue of inducement, to proceed after the depositions of Polymetrix have been completed. During a case management conference held on April 17, 2020, the parties and the Court discussed options for moving forward with the depositions of Polymetrix’s witnesses in Switzerland, which had been scheduled to take place during the week of April 20, 2020 outside of Switzerland but had to be postponed due to restrictions on travel associated with the COVID-19 pandemic. The Court instructed the parties that the depositions of Polymetrix’s employees must occur before the cross-motions of summary judgment are filed. (D. Minn. [Dkt. No. 0:16-cv-02401](#), ECF [Doc. 587](#) at 2). The Court also “instructed the parties to promptly initiate the Hague Convention process required to enable them to conduct the depositions by videoconference, while continuing to monitor travel restrictions and public health guidance that could permit the depositions to be taken legally and reasonably safely outside of Switzerland, either in person or by videoconferencing means, sooner than they could be arranged through the Hague Convention process.” *Id.* at 1.

The witnesses to be deposed are Polymetrix employees. Danil Polyakov is Head of Sales at Polymetrix. Martin Müller is Chief Executive Officer of Polymetrix. Andreas Christel is Chief Technical Officer of Polymetrix. All three Polymetrix witnesses have knowledge relevant to certain deposition topics listed in Exhibit 1 hereto.

### **4. Amount in controversy**

The litigation is of a commercial nature and the amount in controversy has yet to be determined. Plaintiffs agree to be charged the maximum amount of administrative fees for the processing of this application (which the parties understand is CHF 5,000 under applicable Swiss rules).

## **5. Evidence to be obtained or other judicial acts to be performed**

Cross-examination of witnesses testifying in their individual capacities and on behalf of Polymetrix regarding the topics listed in Exhibit 1 hereto, subject to the parties' agreement regarding the scope of the topics in the notice; and potentially one or more additional witnesses to be named later to testify on behalf of Polymetrix regarding the topics listed in Exhibit 1 hereto, subject to the parties' agreement regarding the scope of the topics in the notice.

A court reporter and a videographer will be involved in the depositions. The parties stipulate that the court reporter may swear in each witness using the following affirmation: "I solemnly affirm that the evidence that I shall give shall be the truth, the whole truth, and nothing but the truth."

## **6. Identity and address of the persons to be examined**

Danil Polyakov  
Sandackerstrasse 24  
9245 Oberbüren  
Switzerland

Martin Müller  
Sandackerstrasse 24  
9245 Oberbüren  
Switzerland

Andreas Christel  
Sandackerstrasse 24  
9245 Oberbüren  
Switzerland

One or more of the witnesses above who will be designated by Polymetrix under Rule 30(b)(6) to testify on behalf of

Polymetrix AG  
Sandackerstrasse 24  
9245 Oberbüren  
Switzerland

As indicated in Section 5 above, one or more additional witnesses may be designated to testify on behalf of Polymetrix, in which case the parties agree to (i) request an additional decision of the competent Swiss authorities for the

deposition of such additional witnesses, and (ii) not obtain any evidence from the additional witnesses prior to the issuance of such decision.

## **7. Appointed commissioners**

Eric W. Schweibenz  
John F. Presper  
OBLON, McCLELLAND, MAIER & NEUSTADT, L.L.P.  
1940 Duke Street  
Alexandria, Virginia 22314  
United States

Philipp Fischer  
Oberson Abels SA  
Rue De-Candolle 20  
CP 225  
CH-1211 Genève 12  
Switzerland

Todd A. Noah  
DERGOSITS & NOAH LLP  
One Embarcadero Center, Suite 350  
San Francisco, CA 94111  
United States

Martin Wilming  
Hepp Wenger Ryffel AG  
Friedtalweg 5  
CH-9500 Wil  
Switzerland

*See the decision of the United States District Court for the District of Minnesota appointing commissioners dated April 30, 2020 (attached as Exhibit 2).*

## **8. Election of domicile**

Based on the Joint Motion for Appointment of Commissioners filed by the parties, for all communications and notifications in relation to the proceedings to be conducted in Switzerland, the parties have elected domicile as follows:

GPT/DAK elect domicile at:

Oberson Abels SA

Rue De-Candolle 20  
CP 225  
CH-1211 Genève 12  
Switzerland

Polymetrix elects domicile at:

Hepp Wenger Ryffel AG  
Friedtalweg 5  
CH-9500 Wil  
Switzerland

**9. Proposed date for the taking of evidence**

June 22-26, 2020 (subject to the availability of the witnesses)

Date of request: May 6, 2020

s/ Hildy Bowbeer  
HILDY BOWBEER  
United States Magistrate Judge

A copy of this request is sent to: Federal Office of Justice FOJ  
Private International Law Unit  
3003 Bern, Switzerland

Exhibits:

1. Deposition notice with topics
2. Decision of the United States District Court for the District of Minnesota appointing commissioners dated April 30, 2020

# Exhibit 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

GRUPO PETROTEMEX, S.A. DE C.V. and DAK  
AMERICAS LLC,

Plaintiffs,

Civil Action No. 16-cv-02401 SRN-HB

v.

**JURY TRIAL DEMANDED**

POLYMETRIX AG,

Defendant.

/

**PLAINTIFFS' FIRST NOTICE OF DEPOSITION TO DEFENDANT POLYMETRIX AG**

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 30(b)(6)

Plaintiffs Grupo Petrotex, S.A. de C.V. and DAK Americas LLC (collectively “GPT/DAK”), by and through their counsel, will take the deposition of Defendant Polymetrix AG (“Polymetrix”) beginning on April 15, 2020 at the offices of Norton Rose Fulbright US LLP, 60 South Sixth Street, Suite 3100, Minneapolis, Minnesota 55402, or another location, date, and time that is mutually convenient for the parties, and continuing day to day, excluding Saturdays, Sundays and holidays unless otherwise agreed to by the parties, until completed. The deposition will be stenographically recorded and may be videotaped. You are invited to attend and examine the witness.

As required under Fed. R. Civ. P. 30(b)(6), Polymetrix shall designate one or more officers, directors, managing agents, or other person(s) who consent to testify on its behalf concerning the deposition topics set forth in Attachment B. The definitions in Attachment A apply to the deposition topics identified in Attachment B. GPT/DAK request that Polymetrix identify, for each person designated, the deposition topic(s) on which that person will testify no

later than: (a) eleven (11) days prior to the date of the deposition(s), or (b) in the event that the witness is offered outside of the United States, sixteen (16) days prior to the date of the deposition(s).

Dated: February 14, 2020

OBLON, McCLELLAND, MAIER &  
NEUSTADT, L.L.P

By: /s/ John F. Presper  
Eric W. Schweibenz (*Pro Hac Vice*)  
Robert C. Mattson (*Pro Hac Vice*)  
J. Derek Mason (*Pro Hac Vice*)  
John F. Presper (*Pro Hac Vice*)  
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*Attorneys for Plaintiffs Grupo Petrotex, S.A. de  
C.V. and DAK Americas LLC*

**ATTACHMENT A**

**DEFINITIONS**

1. “GPT/DAK” means Grupo Petrotex, S.A. de C.V. and DAK Americas LLC, both individually and collectively, and their present or former officers, directors, employees, attorneys, agents, consultants, representatives, predecessors, successors, parents, subsidiaries, affiliates, joint ventures, divisions and/or departments, and each person, foreign or domestic, acting or purporting to act on their behalf, or under their ownership or control, collectively or individually.
2. “Polymetrix” means Polymetrix AG and its present or former officers, directors, employees, attorneys, agents, consultants, representatives, predecessors, successors, parents, subsidiaries, affiliates, joint ventures, divisions and/or departments, and each person, foreign or domestic, acting or purporting to act on their behalf, or under their ownership or control, collectively or individually.
3. “You” or “Your” means Polymetrix, as defined in Definition No. 2 above.
4. “IVP” means Indorama Ventures Poland Sp. z o.o. and its present or former officers, directors, employees, attorneys, agents, consultants, representatives, predecessors, successors, parents, subsidiaries, affiliates, joint ventures, divisions and/or departments, and each person, foreign or domestic, acting or purporting to act on their behalf, or under their ownership or control, collectively or individually.
5. “Person” means, without limitation, any natural person or individual, juristic person or business entity such as an association, business organization, partnership, corporation, governmental organization, or formal or informal group or subdivision thereof, and its officers, directors, employees, attorneys, agents, or representatives and all other persons acting or purporting to act on behalf thereof.

6. "Director," "officer," "employee," "agent," and "representative" means any individual serving as such and any individual serving at any relevant time in such capacity, even though no longer serving in such capacity.

7. "Date" means the exact day, month, and year, if ascertainable, or, if not, the best approximation (including relationship to other events).

8. "Thing" includes any tangible object.

9. "United States" or "U.S." shall mean the United States of America, its states, territories, possessions, districts and federal enclaves.

10. "The '840 patent" means U.S. Patent No. 7,790,840 and all underlying patent applications and Foreign Counterparts.

11. "The '125 patent" means U.S. Patent No. 7,868,125 and all underlying patent applications and Foreign Counterparts.

12. "The '545 patent" means U.S. Patent No. 7,192,545 and all underlying patent applications and Foreign Counterparts.

13. The terms/symbols "and," "or," "and/or," and "/" are to be interpreted both in the conjunctive and the disjunctive, as necessary to bring within the scope of a request any response, document, thing or source of information which might otherwise be construed to be outside its scope.

14. The singular form of a word shall be interpreted to include the plural, and the plural shall be interpreted to include the singular, as necessary to bring within the scope of a request any response, document, thing or source of information which might otherwise be construed to be outside its scope.

15. "Complaint" refers to the complaint filed in this action.

16. “Answer and Counterclaims” refers to the Answer and Counterclaims of Defendant Polymetrix AG filed in this action on August 11, 2016 and the Amended Answer and Amended Counterclaims filed in this action on December 14, 2016.

17. “Patents-in-Suit” or “Asserted Patents” means the ’840 patent, the ’125 patent, and the ’545 patent both individually and collectively.

18. “Foreign Counterpart” or “Foreign Counterparts” refers to any and all non-U.S. patents corresponding to or claiming priority from the referenced patent(s), or any non-U.S. application related to the referenced patent(s) or the subject matter of the referenced patent(s), regardless of whether such application is now abandoned.

19. “Related Application” or “Related Applications” means any and all applications related to the patent(s) referenced in the request, any continuations, continuations-in-part, divisions, interferences, reexaminations, reissues, parents, foreign counterpart applications, and any other applications disclosing, describing, or claiming any invention disclosed, described, or claimed in the referenced patent or patents, or claiming the benefit of the filing date of any application whose benefit is claimed in the referenced patent or patents, whether or not abandoned and whether or not issued.

20. “Related Patent” or “Related Patents” means any or all patents, including any Foreign Counterparts and any patents which may have been opposed, contested or subjected to any nullity proceedings, based upon any Related Application or Related Applications.

21. “Document” and “thing” shall be defined to the broadest extent possible permitted by Fed. R. Civ. P. 34(a)(1).

22. “Product” and “process” include any experimental, developmental, or commercially available or used product or process.

23. “Covered by the Patents-in-Suit,” “covered by one or more claims,” “covered by claims of,” and “covered by any claims” means that the referenced product, process, or component uses, practices, or embodies a claim or claims in one or more of the referenced patent(s).

24. “Sale,” “sales,” or “sold” shall mean the transfer of ownership, possession, or control from one person to another with or without monetary consideration and shall include any offer of sale, lease or transfer of ownership, possession, or control.

25. “Regarding” means relating or referring to, incorporating, comprising, touching upon, indicating, evidencing, affirming, denying, concerned with, relevant to, or likely to lead to admissible evidence concerning.

26. “PET” means polyethylene terephthalate.

27. “Latent Heat Crystallization” means any PET manufacturing process or technology in which crystallization of the PET occurs as resin from the melt phase is cooled from a molten resin to a solid using residual heat in the melt phase resin.

28. “EcoSphere™ Process” means all processes and portions thereof marketed, advertised, or commercialized under the trade name EcoSphere™, including but not limited to melt production and particle production, as well as process steps such as forming, quenching, drying, crystallizing, annealing, and cooling, either alone or in combination.

29. “FDA” means the U.S. Food and Drug Administration.

**ATTACHMENT B**

**DEPOSITION TOPICS**

1. All activities undertaken to meet Polymetrix's document-related discovery obligations in the present litigation, including the identity and location of all document repositories that You identified and/or searched in responding to GPT/DAK's discovery requests; and all steps that Polymetrix has taken to obtain consent from any third party to produce in the present litigation such documents or materials. For purposes of this topic, "document repositories" shall include, without limitation, centralized and non-centralized servers or networks; shared drives; email servers; hard copy files; engineer, developer, researcher, consultant and employee desktop and/or laptop computers; databases; product data management; and FTP sites, secure portals, or any other means provided to You by a third party containing electronically stored information.
2. The steps Polymetrix has taken to preserve Documents relevant to the present litigation, including but not limited to: (a) all steps taken in accordance with Polymetrix's document retention policy as administered during the normal course of business; (b) all steps taken that differ from Polymetrix's document retention policy as administered during the ordinary course of business; and (c) all Polymetrix personnel involved in the preservation of Documents relevant to the present litigation and/or responsive to any discovery requests GPT/DAK has served on Polymetrix in the present litigation.
3. The identity, location, and process for accessing all technical Documents (*e.g.*, specifications, flowcharts, product flow diagrams, etc.) (a) in Polymetrix's possession, custody, or control, (b) that Polymetrix received from, or was supplied access to by, third parties, and (c) that Polymetrix supplied to, or provided access to, third parties, relating to PET manufactured using Latent Heat Crystallization or any equipment or processes relating thereto, including without limitation, the EcoSphere™ Process.
4. The conception, design, development, research, and testing of Polymetrix's PET manufacturing processes using Latent Heat Crystallization technology, including without limitation the EcoSphere™ Process; the identity of the individuals and/or third parties involved in such conception, design, development, research, and testing and their duties; the identity of records relating to or supporting such conception, design, development, research, and testing; roadmaps, schedules, timelines, and forecasts related to such conception, design, development, research, and testing; and Polymetrix's corporate organization and departmental structure relating to such conception, design, development, research, and testing.
5. The role played by any third party in the conception, design, development, research, and testing of PET manufacturing processes using Latent Heat Crystallization technology or any part thereof, including without limitation the EcoSphere™ Process; the relationship between You and any third party related to such conception, design, development, research, and testing; and the reason for the involvement of any third party in such conception, design, development, research, and testing.

6. The information, facts, Documents, and circumstances relating to Polymetrix's right, authority, and/or practical ability to obtain Documents from third parties related to PET manufacturing processes using Latent Heat Crystallization technology, including without limitation the EcoSphere™ Process.
7. All types of Polymetrix's technical Documents—including but not limited to process flow diagrams, piping and instrumentation diagrams, flowsheets, and specifications, as well as third-party technical Documents—relating to Polymetrix's PET manufacturing processes using Latent Heat Crystallization technology, including without limitation the EcoSphere™ Process.
8. Testing, repair, quality control, and quality assurance regarding Polymetrix's PET manufacturing processes using Latent Heat Crystallization technology, including without limitation the EcoSphere™ Process.
9. All information, facts, and documents provided to or exchanged with purchasers, potential purchasers, or customers regarding Polymetrix's PET manufacturing processes using Latent Heat Crystallization technology, including without limitation the EcoSphere™ Process.
10. All information, facts, and Documents regarding Polymetrix's contention that the claims of the Asserted Patents are not infringed by Polymetrix.
11. All information, facts, and Documents regarding Polymetrix's contention that the claims of the Asserted Patents are invalid.
12. All information, facts, and Documents regarding Polymetrix's contention that the claims of the Asserted Patents are unenforceable.
13. All information, facts, Documents, and bases upon which Polymetrix relied or relies to support its Answer and Counterclaims.
14. Any non-privileged communications regarding or relating to the infringement, validity, and/or licensing of the Asserted Patents, including without limitation the identity of those persons who engaged in such communications; the dates of such communications; the content of such communications; and the identity of any Documents recording, evidencing, or relating to such communications.
15. The circumstance(s), including the date(s), relating to Polymetrix's first knowledge of the existence of the Asserted Patents and/or the inventions described in the Asserted Patents.
16. Any non-privileged communications between Polymetrix and any other person regarding any of the Asserted Patents or the technology of any of the Asserted Patents.

17. Any license(s) and/or covenant(s) not to sue regarding Polymetrix's PET manufacturing processes using Latent Heat Crystallization technology (including without limitation the EcoSphere™ Process) and/or the fields of technology related to the Asserted Patents.
18. Any indemnification request or request for release made or received by Polymetrix arising from GPT/DAK's allegations that Polymetrix infringes the Asserted Patents, and the nature, identity, and location of all communications and Documents relating to such requests.
19. The gross U.S. sales for PET and products containing PET that were produced (in whole or in part) by Polymetrix's processes using Latent Heat Crystallization technology, including without limitation the EcoSphere™ Process, from 2010 to the present, as well as the projected sales for such PET and products containing PET through 2028.
20. The amount of PET manufactured by IVP and imported into the U.S. on a quarterly basis from 2014 to the present, as well as the projected sales for such PET through 2028.
21. The relevant market for all PET and products containing PET that were produced (in whole or in part) by Polymetrix's processes using Latent Heat Crystallization technology, including without limitation the EcoSphere™ Process, the total share of such market for the aggregate of all such PET and products containing PET from 2010 to the present, and the projected share of such market for the aggregate of all such PET and products containing PET from the present through 2028.
22. The identity of: (a) Polymetrix's competitors for PET processing technology; (b) the total market size of Polymetrix' share of the respective market for PET processing technology and the respective market share for each of Polymetrix's competitors, (i) from 2010 through the present and (ii) projected through 2028, in each case, including (x) revenue and units and (y) U.S. and non-U.S. markets; and (c) the segmentation in the market(s) for PET processing technology and, on a segment by segment basis, which market segments Polymetrix targets for each item of PET processing technology.
23. The organizational structure of Polymetrix, including but not limited to the job assignment, location, and/or identification of personnel involved in the conception, design, research, development, testing, performance, marketing, advertising, promotion, and/or sales of process design or engineering packages for processes using Latent Heat Crystallization technology, including without limitation the EcoSphere™ Process.
24. Any opinions of counsel regarding the Patents-in-Suit or any Related Patent or Related Application.
25. The composition of PET produced by Polymetrix's processes using Latent Heat Crystallization technology, including without limitation the EcoSphere™ Process.

26. The actual operating conditions of each step of Polymetrix's processes using Latent Heat Crystallization technology, including without limitation the EcoSphere™ Process performed by IVP, including but not limited to heat and material balances for same.
27. The determination of the glass-transition temperature ( $T_g$ ) of homopolymer and/or copolymer PET formed by Polymetrix's processes using Latent Heat Crystallization technology, including without limitation the EcoSphere™ Process performed by IVP, including but not limited to differential scanning calorimetry (DSC) data used for same, and the composition of the polymer for any copolymer PET.
28. Competitive analyses, market analyses, sales analyses, marketing plans, marketing strategies, market research, forecasts of sales or demand, business plans, development plans, and consumer research or surveys or other evaluations regarding the U.S. market or potential market for PET.
29. Any communication between Polymetrix and IVP or any other third party concerning the Wloclawek plant or PET made at such plant.
30. Promotional, advertising, and marketing materials relating to the EcoSphere™ Process and any other Polymetrix process using Latent Heat Crystallization technology, including but not limited to promotional, advertising, or marketing materials describing the advantages or benefits of such processes over alternative processes.
31. Any alleged non-infringing alternative versions, experimental versions, test versions, or prior versions of Polymetrix processes using Latent Heat Crystallization technology, including but not limited to the EcoSphere™ Process and pilot plant versions of any of the foregoing.
32. Technology alternatives considered by Polymetrix in the development of the EcoSphere™ Process and any other Polymetrix processes using Latent Heat Crystallization technology.
33. Reasons for the rejection of any technology alternative considered by Polymetrix in the development of the EcoSphere™ Process or any other processes using Latent Heat Crystallization technology.
34. Due diligence conducted by Polymetrix with respect to any entity that produces PET.
35. Testing of PET made by IVP, including but not limited to testing performed by any of IVP's sister companies in the U.S.
36. All offers by Polymetrix to sell PET manufacturing technology to AlphaPet, Inc. from 2012 to the present, including all communications with AlphaPet, Inc. and/or and any third party (including but not limited to IVP or Indorama Ventures Public Company Limited) relating to same.

37. The acceptance or approval of PET made by Polymetrix's processes using Latent Heat Crystallization technology (including but not limited to the EcoSphere™ Process) by the FDA.
38. The importation into the U.S., sale for importation into the U.S., and sale within the U.S. after importation of PET made by IVP or products made from such PET from 2014 to the present.

**CERTIFICATE OF SERVICE**

I, John F. Presper, hereby certify that on February 14, 2020, a copy of the foregoing document was served via hand-delivery upon the following attorney of record:

Todd Noah, Esq.  
DERGOSITS & NOAH LLP  
One Embarcadero Center, Suite 350  
San Francisco, California 94111  
tnoah@dergnoah.com

Bernard E. Nodzon, Jr.  
FAEGRE BAKER DANIELS LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, Minnesota 55402-3901  
bj.nodzon@faegrebd.com

/s/ John F. Presper

# Exhibit 2

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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GRUPO PETROTEMEX, S.A. DE C.V.  
and DAK AMERICAS LLC,

Civil No. 16-cv-2401 (SRN/HB)

Plaintiffs,

v.

POLYMETRIX AG,

Defendant.

---

**ORDER APPOINTING COMMISSIONERS TO TAKE EVIDENCE  
PURSUANT TO CHAPTER II, ARTICLE 17 OF THE HAGUE CONVENTION  
OF 18 MARCH 1970 ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR  
COMMERCIAL MATTERS**

The Court, having reviewed the Joint Motion for Appointment of Commissioners to Take Evidence Pursuant to Chapter II, Article 17 of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (ECF No. 591), and supporting papers submitted by Plaintiffs Grupo Petrotex, S.A. de C.V. and DAK Americas LLC (collectively, “GPT/DAK”) and Defendant Polymetrix AG’s (“Polymetrix”),

**IT IS HEREBY ORDERED THAT:**

- (a) The Motion (ECF No. 591) is **GRANTED**;
- (b) Pursuant to Article 17 of the Hague Convention, Eric W. Schweibenz, John F. Presper, Philipp Fischer, Todd A. Noah, and Martin Wilming (the “Commissioners”) are duly appointed, pending the approval of the Swiss Federal

Department of Justice and Police (“FDJP”), as Commissioners to take evidence in the above-captioned action, specifically in connection with the depositions of Danil Polyakov, Martin Müller, and Andreas Christel in their individual capacities and one or more witnesses to testify on behalf of Polymetrix pursuant to GPT/DAK’s Rule 30(b)(6) notice served on Polymetrix on February 14, 2020, subject to the parties’ agreement regarding the scope of the topics in the notice;

- (c) This signed Order will be given to the counsel for the parties who are directed to file it together with the necessary application for authorization from the relevant Swiss authorities within five (5) business days of the date of this order;
- (d) Neither this Order, nor the terms of the Court’s Request (which is incorporated into this Order) shall constitute or operate as a waiver of the attorney-client privilege, the work product doctrine, or any other privileges, rights, or protections that may apply to evidence under the laws of Switzerland or the United States.

**IT IS SO ORDERED.**

Dated: April 30, 2020

s/ Hildy Bowbeer  
HILDY BOWBEER  
United States Magistrate Judge