

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

PARKER-HANNIFIN CORP. and PARKER)	
INTANGIBLES, LLC,)	
)	
Plaintiffs,)	CASE NO. 1:17-cv-988-DCN
)	
v.)	JUDGE DONALD C. NUGENT
)	
LAIRD TECHNOLOGIES, INC.,)	
)	
Defendant.)	

STIPULATION AND ORDER CONCERNING PROTOCOL FOR CONDUCTING REMOTE DEPOSITIONS

Plaintiffs Parker-Hannifin Corporation (“Parker-Hannifin”) and Parker Intangibles, LLC (“PI”) (collectively “Parker”) and Defendant Laird Technologies, Inc. (“Laird”) (collectively, the “Parties”) jointly stipulate pursuant to Federal Rule of Civil Procedure 30(b)(4) to the following protocol for conducting remote depositions of claim construction experts in the above-captioned manner.

Background

A. The Parties appeared before the Court on May 12, 2020 to discuss upcoming expert depositions relating to claim construction and Defendant Laird’s desire to conduct such depositions in person.

B. Laird requested an in-person deposition of Parker’s claim construction expert and offered Laird’s claim construction experts for in-person depositions, and proposed certain precautionary measures. Parker objected to the request and expressed its concern for safety in view of the COVID-19 infection risk.

Stipulation

Now, therefore, in light of the foregoing, the parties agree that the following stipulations will govern claim construction expert depositions conducted in this case via remote means by Court Order or by agreement of the Parties, except as specifically noted:

1. For the depositions of claim construction experts, the Parties agree to use Veritext for court reporting, videoconference, and remote deposition services. The Parties agree that one or more employees of Veritext, or other service provider providing reporting, videoconference, and remote deposition services for this case (“Service Provider”) may attend, remotely, each remote deposition to video record the deposition, troubleshoot any technological issues that may arise, and administer the virtual breakout rooms, and that such persons are covered clerical persons under the Protective Order.

2. The Parties agree that video-recorded remote depositions conducted by agreement of the Parties or Order of the Court may be used at a trial or hearing pursuant to the provisions of Federal Rule of Civil Procedure 32 to the same extent that an in-person deposition may be used at trial or hearing, and the Parties agree not to object to the use of these video recordings on the basis that the deposition was taken remotely. The Parties reserve all other objections, consistent with the applicable Federal Rules of Civil Procedure, including Rules 30 and 32, to the use of any deposition testimony at trial or any other proceeding.

3. The deponent, court reporter, videographer, and opposing counsel will each participate in the videoconference deposition remotely and separately. If counsel for the party producing a deponent appears in-person, counsel for other parties may, but are not required to appear in-person. The witness and each counsel attending a deposition shall be visible to all other participants and their statements shall be audible to all participants. All participants, whether

counsel, consultants, or parties, will strive to ensure their environment is free from noise and distractions. Subject to technology restrictions of the Service Provider, only the deponent shall appear on the video recording of the deposition, unless otherwise agreed to by the parties or ordered by the Court.

4. No counsel, party, deponent, or other individual involved in this case in any manner shall initiate a private conference, including through text message, electronic mail, or the chat feature in the videoconferencing system, with any deponent while the deponent is on the record.

5. During breaks in the deposition, counsel for a party and an expert such counsel has disclosed may use the breakout room feature provided by Veritext or other Service Provider, which simulates a live breakout room through videoconference (consistent with governing law applicable to in-person depositions). Conversations in the breakout rooms shall not be recorded. The breakout rooms shall be established by Veritext or other Service Provider prior to the deposition and controlled by Veritext or other Service Provider. Counsel for a party may also communicate with an expert such counsel has disclosed during breaks (consistent with governing law applicable to in-person depositions) via other means than the virtual breakout room provided by Veritext or other Service Provider and such conversations shall not be recorded.

6. Remote depositions shall be recorded by stenographic means consistent with the requirements of Rule 30(b)(3) of the Federal Rules of Civil Procedure, but given the COVID-19 pandemic, the court reporter will not be physically present with the witness whose deposition is being taken. The Parties agree not to challenge the validity of any oath administered by the court reporter, even if the court reporter is not a notary public in the state where the deponent resides, so long as the court reporter is a notary.

7. The court reporter will stenographically record the testimony, and the court reporter's transcript shall constitute the official record, subject to right of a deponent or party to request correction based on the video recording and as set forth in Fed. R. Civ. P. 30(e). Veritext or other Service Provider will simultaneously videotape¹ the deposition and preserve the video recording. The court reporter may be given a copy of the video recording and may review the video recording to improve the accuracy of any written transcript.

8. The Parties agree that the court reporter is an "Officer" as defined by Federal Rule of Civil Procedure 28(a)(2) and shall be permitted to administer the oath to the witness via the videoconference. The deponent will be required to provide state or federal government-issued photo identification satisfactory to the court reporter, and this identification must be legible on the video record.

9. The Party that noticed the deposition shall be responsible for procuring a written transcript and video record of the remote deposition. The Parties shall bear their own costs in obtaining a transcript and/or video record of the deposition.

10. The Party that noticed the deposition shall provide Veritext or other Service Provider with a copy of this Stipulation and Order at least forty-eight hours in advance of the deposition.

11. At the beginning of each deposition, consistent with Rule 30(b)(5)(A) of the Federal Rules of Civil Procedure and Local Rule 32.1(b)(5), the employee of Veritext or other Service Provider responsible for video-recording the deposition shall begin the deposition with an on-the-record statement that includes: (i) the officer's name, company affiliation, and

¹ The terms "videotape" and "tape," as used herein, are intended to cover the recording of video images and the files or media on which the video images are recorded, regardless to the manner and mechanism of recording and storing.

business address; (ii) the date, time, and place of the deposition; (iii) the deponent's name and the caption of the action; (iv) the officer's administration of the oath or affirmation to the deponent; (v) the identity of all persons present; and (vi) the identity of the party on whose behalf the deposition is being taken. The employee shall also swear, on the videotape record, that he or she will record the deposition accurately and abide by all provisions of Local Rule 32.1.

12. At the beginning of each segment of the deposition, consistent with Rule 30(b)(5)(B) of the Federal Rules of Civil Procedure, the employee of Veritext or other Service Provider responsible for video-recording the deposition shall begin that segment of the remote deposition by: reciting: (i) the officer's name and business address; (ii) the date, time, and place of the deposition; and (iii) the deponent's name. Consistent with LR 32.1(b)(6), each time the tape is stopped or started, the deposition officer shall announce the time on the record. Consistent with Local Rule 32.1(b)(7), if the deposition requires the use of more than one tape, the employee responsible for video-recording the deposition shall announce orally on the videotape record the end of each tape and the beginning of the next. In addition, at the beginning of each tape, the deposition officer shall repeat: the officer's name and business address; the date, time, and place of the deposition; and the name of the deponent. At the end of the deposition, the officer shall state on the record that the deposition is complete.

13. The Parties agree to work collaboratively and in good faith with Veritext or other Service Provider to assess each deponent's technological abilities and to troubleshoot any issues at least 48 hours in advance of the deposition so any adjustments can be made.² Counsel for a

² Because of the proximity of the first claim construction deposition to the execution of this Stipulation, the Parties agree that the testing of Service Provider technology for this first deposition (and provision of this Stipulation) may occur on Monday, June 22, 2020.

deponent may request and be provided with an opportunity to test the technological systems with the deponent in advance of the deposition. The Parties also agree to work collaboratively to address and troubleshoot technological issues that arise during a deposition and make such provisions as are reasonable under the circumstances to address such issues. This provision shall not be interpreted to compel any Party to proceed with a deposition where the deponent cannot hear or understand the other participants or where the participants cannot hear or understand the deponent.

14. Counsel for the party producing a deponent shall communicate with counsel for the party noticing the deposition to ensure that if the deponent is not appearing at a Service Provider that such location where the deponent is appearing shall have required technology sufficient to allow the deponent to appear for a videotaped deposition (*e.g.*, a webcam, computer, and telephone audio), and bandwidth sufficient to sustain the remote deposition, and share with counsel for the party noticing the deposition the available webcam, computer, and internet speed information. Counsel for the party noticing the deposition and counsel for the party producing a deponent shall consult with the Service Provider prior to the deposition to ensure the Service Provider has the required technology.

15. The Parties agree that any of the following methods for administering exhibits may be employed during a remote deposition, or a combination of one or more methods:

(i) Counsel noticing the deposition may choose to mail physical copies of documents that may be used during the deposition to the deponent, the deponent's counsel, the other Party's counsel, and the court reporter. In that event, noticing counsel shall so inform the deponent's counsel, the other Party's counsel, and the court reporter prior to mailing the documents and shall provide tracking information for the package. Such documents shall be

delivered by 3:00 pm ET one business day before the deposition. Counsel for the deponent, the other Party's counsel, and the court reporter shall confirm receipt of the package by electronic mail to Counsel noticing the deposition. If physical copies are mailed, every recipient of a mailed package shall keep the package sealed until the deposition begins and shall only unseal the package on the record, on video, and during the deposition when directed to do so by the counsel taking the deposition. This same procedure shall apply to any physical copies of documents any other counsel intends to use for examining the witness.

(ii) Counsel noticing the deposition may choose to send a compressed .zip file of the documents that may be used during the deposition via electronic mail to the deponent, the deponent's counsel, the other Party's counsel, and the court reporter. The .zip file shall be delivered by 3:00 pm ET the business day before the deposition. Counsel for the deponent, the other Party's counsel, and the court reporter shall confirm receipt of the .zip file by electronic mail to Counsel noticing the deposition. The .zip file shall be password protected, and counsel taking the deposition shall supply the password via electronic email immediately prior to the commencement of the deposition. Every recipient of a .zip file shall not open the .zip file until the deposition begins and when directed to do so by the counsel taking the deposition. If sending documents by electronic mail, counsel will be mindful of file size limitations, which presumptively should be less than 50 MB.

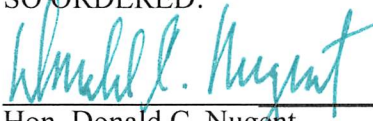
(iii) Counsel may introduce exhibits electronically during the deposition, by using the Veritext or other Service Provider document-sharing technology, by using the screen-sharing technology within the videoconferencing platform, or by sending the exhibit to the deponent and all individuals on the record via electronic mail.

16. All deponents receiving documents before or during a deposition, pursuant to Paragraph 15 above, shall return the documents to the counsel who sent them originally, within two business days following the completion of the deposition, and shall not retain them in any manner. Counsel noticing the deposition shall include a pre-paid return shipping label in any package of documents mailed to a deponent. Any exhibits marked during a deposition shall be provided to the court reporter.

17. Counsel for the Parties may keep any document or exhibit marked during the deposition consistent with the Stipulated Protective Order entered in this case. Counsel for the Parties shall return any documents not used during the deposition to the counsel who sent them originally, within two business days following the completion of the deposition, and shall not retain them in any manner.

Dated: June 12, 2020

SO ORDERED:



Hon. Donald C. Nugent

STIPULATED TO:

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