

The court finds that, at this time, defendants have not sufficiently demonstrated that there are no other reasonable means available to obtain the information. Specifically, at the hearing, the court was informed that the parties have not yet completed the depositions of Robert Sullivan and Adrian Battison, two key agents of the defendants who communicated with Mlotkowski during the patent prosecution. The court finds that, at minimum, defendants should complete these two depositions before seeking to depose plaintiff's trial counsel, as it may be the case that those two depositions - coupled with discovery requests tailored to Mlotkowski's communications - might render a deposition of Mlotkowski unnecessary. Therefore, the motion is DENIED without prejudice. Defendants may renew their motion after completing the depositions of Sullivan and Battison.

IT IS SO ORDERED.

s/ Tu M. Pham
TU M. PHAM
United States Magistrate Judge

December 22, 2008
Date