

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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Schiedmayer Celesta GmbH,

Cancellation No.: 92/061,215

Petitioner,

Reg. No. 3,340,759

v.

Mark: SCHIEDMAYER

Piano Factory Group, Inc. and  
Sweet 16 Musical Properties, Inc.

Registration Date: November 20, 2007

Respondents.

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**RESPONDENT’S RESPONSE TO PETITIONER’S OBJECTION TO NOTICE  
TO TAKE TESTIMONIAL CROSS-EXAMINATION BY WRITTEN  
QUESTIONS**

Pursuant to 37 CFR 2.124(a), Rule 28 of the Federal Rules of Civil Procedure, and TBMP 703.02 et seq., Respondents Piano Factory Group, Inc. and Sweet 16 Musical Properties, Inc. (“Respondents”) hereby submit their reply to Petitioner’s objection to the notice filed on June 8, 2017 to take testimonial cross-examination of Petitioner’s witness Elianne Schiedmayer by written questions.

Petitioner’s first objects to the form of the notice as it does not specifically identify an official in Germany before which the questions would be answered. Since the undersigned is not as familiar with German officials, the hope had been that an agreement as to the particular type of official to be quickly made between the parties as to the particular German official that would be most convenient for Ms. Schiedmayer to use. However, since it is apparent that no discussion on this question, much less a stipulation, is likely, Respondent hereby amends its original notice to request that the written questions be answered by Ms. Schiedmayer before a Germany notary—if possible, the

same Germany notary that certified Exhibit 1 to Petitioner's Response to Respondent's Motion to Strike filed June 8, 2017 and who is identified therein. As Petitioner's counsel helpfully pointed out in his Response, a Germany notary has the power to authenticate documents and powers beyond that of a US notary public and appears to be a qualified official to both take and record Ms. Schiedmayer's answers to the written questions proffered to her for cross-examination.

Petitioner's second objection is that the written question cross examination should not be conducted because counsel for Petitioner on June 14<sup>th</sup> sent the undersigned an email stating that Ms. Schiedmayer is allegedly going to be in the United States in July—in New York City between July 5 to July 8, in Iowa (no city identified) July 9 and 10<sup>th</sup>, and in St. Louis (assuming Missouri) July 11, to July 15. Counsel for Petitioner stated that "This is a business trip and Mrs Schiedmayer will be extremely preoccupied . Nevertheless, she will be available for a deposition at some convenient time."

The problem with Petitioner's offer is that these proposed times for oral cross-examination are long after Petitioner's testimony period has ended (the 8<sup>th</sup> of June)—almost a month afterward. As the Board knows, "A party may not take testimony or present evidence outside of its assigned testimony period, except by stipulation of the parties approved by the Board, or, on motion, by order of the Board." TBMP 701. In the past, during discovery when Respondent indicated to Petitioner's counsel that he planned to take Ms. Schiedmayer's discovery deposition, counsel for Petitioner reminded the undersigned of the need to take a deposition of a foreign national not in the US via written question. The undersigned interpreted this statement to mean that counsel for Petitioner had no intention to ever make Ms. Schiedmayer available for an oral deposition

in the US and so written questions would be the only option. The undersigned at the time of receipt of Petitioner's testimony materials was not aware of any US travel plans for Ms. Schiedmayer or any intent for Petitioner's counsel to make her available for oral cross examination.

Petitioner's testimony materials were provided to Respondent on the 24<sup>th</sup> of May, or about two weeks and a day before the end of Petitioner's testimony period. Respondent's counsel, based on all information available to him at the time, believed the only way to seek cross examination would be via written question. Respondent's counsel also had to parse the volume of information in Petitioner's testimony materials, much of which Respondent saw for the first time over that two week period and prepare the list of written questions. This is why Respondent's filing occurred on the 8<sup>th</sup> of June.

Given that Respondent is located in California and Respondent's counsel is located in Arizona and the closest Ms. Schiedmayer will get to them is somewhere in Iowa (or perhaps St. Louis) it seems the least costly approach for both parties would be to pursue cross examination written questions. Furthermore, since Ms. Schiedmayer is going to be "extremely preoccupied" during all three of her stops, it seems it would be more helpful for her to give her the opportunity to answer the questions presented at her convenience when she has returned home to Germany in July.

Because of this, and that Petitioner did not provide at any time Respondent with any indication or information prior to the expiration of Petitioner's testimony period that oral cross examination of Ms. Schiedmayer was an option, Petitioner's objection should be overruled and cross examination should proceed by written question.

There has been no stipulation between the parties to extend Petitioner's testimony period, no motion filed prior to the expiration of the testimony period to extend the time, and no order of the Board extending the time. Because of this, Petitioner is not procedurally entitled to replace the already noticed taking of cross examination via written question with an oral cross examination in July. The only procedural way for cross examination to proceed at this point is for the Board to suspend the proceedings under the process established for taking testimonial depositions by written question. Otherwise, the cross examination could not proceed at all. The Board has suspended these proceedings already pending the outcome of the motions, and so all that needs to be done is for the Board to schedule the remaining written question process deadlines.

In view of the foregoing, the Respondent respectfully requests that Petitioner's objection be overruled and the Board set the time periods for the raising of objections to questions, preparation and service of recross questions, etc. according to the procedure in the TBMP.

Dated: June 29, 2017

Respectfully submitted,

/s/ Adam R. Stephenson  
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