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January 24, 2008

VIA CMF AND HAND DELIVERY

The Honorable Mary Pat Thynge
United States Magistrate Judge
U.S. District Court for the District of Delaware
844 King Street
Wilmington, DE 19801

Re: *McKesson Automation, Inc. v. Swisslog Italia S.p.A. et al.*;
C.A. No. 06-028-MPT

Your Honor:

We write to seek the Court's assistance in the depositions Swisslog's Italian counsel, Messrs. Provvisionato and Balsamo. These individuals authored certain opinions being relied upon by Swisslog as a defense to willful infringement. During the November 29, 2007 hearing, the Court ruled that McKesson was entitled to depose these gentleman. D.I. 213, p.37. McKesson has been unable to secure the voluntary appearance of these witnesses. McKesson is currently working with its Italian counsel and the Italian Court in an effort to compel these gentlemen to appear for deposition.

To that end, McKesson requests that the Court appoint Blair Jacobs as a Commissioner for the depositions of Messrs. Balsamo and Provvisionato pursuant to Rule 28 of the Federal Rules of Civil Procedure and Article 17 of the Convention on the Taking of Evidence in Civil Matters, opened for signature March 18, 1970, 23 U.S.T. 2555, T.I.A.S. No. 7444, 847 U.N.T.S. 231, reprinted at 28 U.S.C. § 1781 ("Hague Evidence Convention"). A proposed Order is attached.

Respectfully,

Dale R. Dube
No. 2863

DRD:pb
Enclosure
cc: Clerk of Court (by CM/ECF)
Julia Heaney, Esquire (by CM/ECF and hand delivery)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MCKESSON AUTOMATION, INC. a Delaware Corporation, Plaintiff, v. TRANSLOGIC CORPORATION a Delaware Corporation, and SWISSLOG ITALIA S.P.A. an Italian Corporation, Defendants.	Civil Action No. 06-028 (MPT)

[PROPOSED] ORDER

On the motion of Plaintiff McKesson Automation, Inc. for issuance of a Commission pursuant to Fed. R. Civ. P. 28(b), Articles 16 and 17 of the Convention on the Taking of Evidence in Civil Matters, opened for signature March 18, 1970, 23 U.S.T. 2555, T.I.A.S. No. 7444, 847 U.N.T.S. 231, reprinted at 28 U.S.C. § 1781 ("Hague Evidence Convention" or "Convention"), calling for the taking of the testimony of Andrea Balsamo and Paolo Provvisionato of Provvisionato & Co., Bologna, Italy for the purpose of obtaining material and relevant testimony regarding the subject matter of this action, IT IS HEREBY ORDERED THAT:

1. The Clerk of this Court shall issue a Commission to Blair Jacobs, Attorney, Sutherland Asbill & Brennan LLP, Washington DC, authorizing him to take the testimony of Andrea Balsamo and Paolo Provvisionato of Provvisionato & Co., Bologna, Italy, on such date and in such place as described in the Subpoenas served on Messrs. Balsamo and Provvisionato

pursuant to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters. 20 U.S.T. 361; 658 U.N.T.S. 163, T.I.A.S. No. 6638; 28 U.S.C.A. (Appendix following Fed. R. Civ. P. 4).

2. The Commission shall direct that the testimony of Messrs. Balsamo and Provvisionato be reduced to writing, signed by Messrs. Balsamo and Provvisionato, and returned to this Court, together with the Commission, by mail, with all convenient speed.

SO ORDERED, this ____ day of _____, 2008.

_____
The Honorable Mary Pat Thynge
Magistrate Judge