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1	2) The	first phase will address all issues triable to a jury other than damages	
2	(including infringement, invalidity, and willfulness), and defendants' equitable claim of		
3	inequitable conduct, and will proceed in accordance with the schedule adopted by the Court in its		
4	August 27, 2008 Order re Case Schedule;		
5	3) If fo	ollowing the first phase any defendant is found to infringe a valid and	
6	enforceable patent claim and the parties are unable to reach agreement as to the amount of		
7	damages that should be assessed, a second phase will address the issue of damages;		
8	4) The	parties agree to meet and confer regarding the schedule for damages-related	
9	expert disclosures and discovery following resolution of liability;		
10	5) In th	ne event the court declines to bifurcate damages, the parties agree to meet and	
11	confer to schedule and complete any remaining damages discovery and damages-related expert		
12	disclosures within the current schedule set forth in the August 27, 2008 Order re Case Schedule.		
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	1	Dated: November 17, 2008	FENWICK & WEST LLP
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FENWICK & WEST LLP Attorneys at Law Mountain View	14	Dated: November 17, 2008	FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P.
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	28		
		STIPULATION AND [PROPOSED] ORDER RE: BIFURCATION OF DAMAGES	3 CASE No. C-05-03955 MHP

## FENWICK & WEST LLP

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## **ORDER**

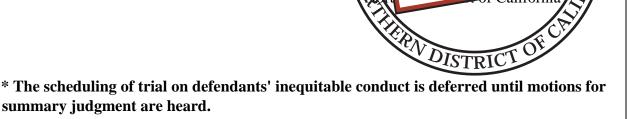
Pursuant to the foregoing Stipulation, and good cause appearing therefore, the Court hereby ORDERS:

- 1) Trial in this matter be bifurcated into two phases;
- 2) The first phase will address all issues triable to a jury other than damages (including infringement, invalidity, and willfulness), and defendants' equitable claim of inequitable conduct, and will proceed in accordance with the schedule adopted by the Court in its August 27, 2008 Order re Case Schedule; \*
- 3) If following the first phase any defendant is found to infringe a valid and enforceable patent claim and the parties are unable to reach agreement as to the amount of damages that should be assessed, a second phase will address the issue of damages;
- 4) The parties agree to meet and confer regarding the schedule for damages-related expert disclosures and discovery following resolution of liability.

IT IS SO ORDERED.

Dated: November <u>24</u>, 2008

summary judgment are heard.



IT IS SO ORDEREI

Judge Marilyn H. Patel