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Attorneys for Defendant  
 Lexmark International, Inc.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

NUANCE COMMUNICATIONS, INC., ) Case No. CV 08-02912 JSW

Plaintiff,

v.

ABBYY SOFTWARE HOUSE,  
 ABBYY USA SOFTWARE HOUSE,  
 and LEXMARK INTERNATIONAL,  
 INC.,

Defendants.

**STIPULATION ALLOWING  
 LEXMARK INTERNATIONAL, INC.  
 TO AMEND ITS AMENDED  
 ANSWER TO ADD AFFIRMATIVE  
 DEFENSES**

WHEREBY, the plaintiff, Nuance Communications, Inc. ("Nuance") has consented in writing to a request by Lexmark to amend its answer to add the following affirmative defenses, as set

1 forth in the proposed Second Amended Answer and Counterclaims of Lexmark International, Inc.  
2 attached as Exhibit A:

3  
4 **SIXTH AFFIRMATIVE DEFENSE**

5 Nuance's claims against Lexmark are barred in whole or in part by express or implied  
6 licenses and/or by the doctrine of patent exhaustion.

7  
8 **SEVENTH AFFIRMATIVE DEFENSE**

9 Nuance's claims against Lexmark are statutorily limited by 35 U.S.C. § 286 and/or Nuance's  
10 failure to comply with one or more provisions of 35 U.S.C. § 287.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 Any claims for injunctive relief against Lexmark are barred in light of the fact that Nuance  
13 has an adequate remedy at law.

14  
15  
16  
17 THEREFORE, pursuant to the consent provision of Fed.R.Civ.P. 15(a)(2), the parties  
18 stipulate that Lexmark may amend its answer to add the above-identified affirmative defenses, as set  
19 forth in the proposed Second Amended Answer and Counterclaims of Lexmark International, Inc.  
20 attached as Exhibit A.

21 ACCORDINGLY, pursuant to Fed.R.Civ.P. 15(a)(2), and particularly the consent provision  
22 thereof, Lexmark may amend its answer to add the above-identified affirmative defenses, as set forth  
23 in the proposed Second Amended Answer and Counterclaims of Lexmark International, Inc.  
24 attached as Exhibit A.  
25  
26  
27  
28

1 Dated: October 1, 2008

**LEXMARK INTERNATIONAL, INC.**

2 By its attorneys,

3 /s/ Eugene A. Feher

4 Eugene A. Feher

5 MINTZ LEVIN COHN FERRIS GLOVSKY

6 AND POPEO, P.C.

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11 *Attorneys for Defendant Lexmark, Inc.*

12 Dated: October 1, 2008

**ABBYY USA SOFTWARE HOUSE**

13 By its attorneys,

14 /s/ Grant E. Kinsel

15 Grant E. Kinsel

16 FOLEY & LARDNER LLP

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18 Suite 3500

19 Los Angeles, CA 90071-2411

20 Telephone: (213) 972-4500

21 Facsimile: (213) 486-0065

22 *Attorneys for Defendant Abbyy USA Software House*

1  
2 Dated: October 1, 2008

NUANCE COMMUNICATIONS, INC.

3 By its attorneys,

4 /s/ Tung-On Kong

5 Tung-On Kong

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11 Facsimile: 650-493-6811

12 *Attorneys for Nuance Communications, Inc.*

13 **PURSUANT TO STIPULATION,**  
14 **IT IS SO ORDERED.**

15  
16 Date: October 1, 2008

17   
18 JEFFREY S. WHITE  
19 United States District Court  
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