

1 M. CRAIG TYLER, *Pro Hac Vice*
 CTyler@wsgr.com
 2 ABRAHAM DELAO, *Pro Hac Vice*
 ADelao@wsgr.com
 3 HENRY PAN, *Pro Hac Vice*
 HPan@wsgr.com
 4 WILSON SONSINI GOODRICH & ROSATI
 Professional Corporation
 5 900 South Capital of Texas Highway
 Las Cimas IV, Fifth Floor
 6 Austin, Texas 78746-5546
 Telephone: 512.338.5400
 7 Facsimile: 512.338.5499

JAMES P. BENNETT (CA SBN 65179)
 JBennett@mofo.com
 MICHAEL A. JACOBS (CA SBN
 111664)
 MJacobs@mofo.com
 BROOKS M. BEARD (CA SBN 181271)
 BBeard@mofo.com
 RICHARD S.J. HUNG (CA SBN 197425)
 RHung@mofo.com
 MORRISON & FOERSTER LLP
 425 Market Street
 San Francisco, California 94105-2482
 Telephone: 415.268.7000
 Facsimile: 415.268.7522

8 JAMES C. YOON (CA SBN 177155)
 JYoon@wsgr.com
 9 CHRISTOPHER P. GREWE (CA SBN 245938)
 CGrewe@wsgr.com
 10 WILSON SONSINI GOODRICH & ROSATI
 Professional Corporation
 11 650 Page Mill Road
 Palo Alto, California 94304-1050
 12 Telephone: 650.493.9300
 Facsimile: 650.565.5100

13
 14 Attorneys for Plaintiff
 NUANCE COMMUNICATIONS, INC.

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN FRANCISCO DIVISION

19 NUANCE COMMUNICATIONS, INC.,
 20
 21 Plaintiff,
 22
 23 v.
 24 ABBYY USA SOFTWARE HOUSE, INC., a
 California corporation, ABBYY SOFTWARE,
 LTD., a Cyprus corporation, ABBYY
 25 PRODUCTION, LLC, a Russian corporation, and
 LEXMARK INTERNATIONAL, INC., a
 Delaware corporation,
 26
 27 Defendants.

Case No. C 08-02912 JSW MEJ

**STIPULATION AND
 [PROPOSED] ORDER
 REGARDING SUPPLEMENTAL
 TRADE DRESS EXPERT
 REPORTS**

1 Pursuant to Civil L.R. 6-2, Plaintiff Nuance Communications, Inc. (“Nuance”), and
2 Defendants ABBYY Software House, Inc., ABBYY Software, Ltd., ABBYY Production, LLC
3 (collectively, “ABBYY Defendants”), and Lexmark International, Inc. (“Lexmark”), file this joint
4 stipulation regarding supplemental trade dress expert reports.

5 WHEREAS, Nuance moved for discovery sanctions against the ABBYY Defendants for
6 late production of documents in August 2012 (Dkt. No. 499);

7 WHEREAS, Magistrate Judge James issued an order relating to Nuance’s request for
8 sanctions (Dkt. No. 571);

9 WHEREAS, in January 2013, the Court granted Nuance “an extension of eight weeks for
10 discovery limited to the discrete issues relating to the ABBYY Defendants’ later production and
11 require[d] the ABBYY Defendants to timely re-produce relevant witnesses[,]” (Dkt. No. 582);

12 WHEREAS, after completing the additional depositions, Nuance’s trade dress expert,
13 Dr. Frazier, prepared a supplemental expert report, a copy of which was provided to Defendants
14 on April 15, 2013;

15 WHEREAS, the parties had numerous meet and confer discussions, including one in
16 person meeting, to discuss whether Defendants would agree to permit Dr. Frazier’s supplemental
17 report to be added to the case, set a due date for a supplemental rebuttal report from Dr. Simonson
18 (one of Defendants’ trade dress experts), and identify dates for potential follow-up depositions;

19 WHEREAS, the parties reached agreement on these issues during the meet and confer
20 process;

21 WHEREAS, the Court’s April 2, 2013 Order Setting Schedule (Dkt. No. 649) set the
22 Pretrial Conference for July 22, 2013, at 2:00 p.m., Jury Selection for August 7, 2013, at
23 8:00 a.m., and Trial for August 12, 2013, at 8:00 a.m;

24 WHEREAS, the agreements set forth in this stipulation, if adopted by the Court via an
25 order, will have no effect on the remaining schedule for the case.

26 NOW, THEREFORE, IT IS HEREBY STIPULATED and agreed to by and between the
27 parties, through their respective counsel, as follows:
28

- 1 • Dr. Frazier’s supplemental expert report is deemed timely disclosed pursuant to
- 2 Rule 26 without requiring a motion for leave, but without prejudice to the ABBYY
- 3 Defendants’ ability to seek to strike the report, in whole or in part, on grounds
- 4 other than timeliness;
- 5 • Dr. Simonson’s supplemental rebuttal expert report will be provided to Nuance on
- 6 May 20, 2013;
- 7 • if Defendants so request, Dr. Simonson will have up to one additional week to
- 8 provide Nuance with his supplemental rebuttal expert report (by no later than
- 9 Monday, May 27, 2013);
- 10 • if Dr. Simonson’s supplemental rebuttal expert report is timely provided to
- 11 Nuance, it will be deemed timely disclosed pursuant to Rule 26 without requiring a
- 12 motion for leave, but without prejudice to Nuance’s ability to seek to strike the
- 13 report, in whole or in part, on grounds other than timeliness;
- 14 • if Defendants decide to conduct a follow-up deposition of Dr. Frazier, it will take
- 15 place in Los Angeles on a date to be determined by the parties, will proceed for no
- 16 more than two hours on-the-record, and questioning will be limited to the subject
- 17 matter of Dr. Frazier’s supplemental expert report; and
- 18 • if Nuance decides to conduct a follow-up deposition of Dr. Simonson, it will take
- 19 place in New York on June 3, 2013, starting at 9:30 am, will proceed for no more
- 20 than two hours on-the-record, and questioning will be limited to the subject matter
- 21 of Dr. Simonson’s supplemental expert report

22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED.

Dated: May 20, 2013

MORRISON & FOERSTER LLP

By: /s/ Brooks M. Beard

BROOKS M. BEARD

Attorneys for Plaintiff
NUANCE COMMUNICATIONS,
INC.

Dated: May 20, 2013

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

By: /s/ Erik R. Puknys

Erik R. Puknys

Attorneys for Defendants
ABBYY USA SOFTWARE HOUSE,
INC., ABBYY SOFTWARE, LTD.,
ABBYY PRODUCTION, LLC, and
LEXMARK INTERNATIONAL, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

Pursuant to stipulation,

IT IS SO ORDERED.

Dated: May21, 2013



Honorable Jeffrey S. White
United States District Judge