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 DIGITAL INSIGHT CORPORATION

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

20 MSHIFT, INC., a Delaware Corporation,

21 Plaintiff,

22 v.

23 DIGITAL INSIGHT CORPORATION, a  
 Delaware corporation, COMMUNITY  
 24 TRUST FINANCIAL CORPORATION, a  
 Louisiana corporation, and COMMUNITY  
 25 TRUST BANK, a Louisiana corporation,

26 Defendants.

CASE NO. C10-00710 (WHA)

~~PROPOSED~~ ORDER RE SCHEDULE  
 FOR CLAIM CONSTRUCTION

27 AND RELATED COUNTERCLAIMS  
 28

1 Pursuant to the Case Management Order and Reference to Magistrate Judge for  
2 Mediation/Settlement entered on May 14, 2010 ("CMC Order") (Docket Number 64), Plaintiff  
3 MShift, Inc. and Defendants Digital Insight Corporation, Community Trust Financial  
4 Corporation, and Community Trust Bank (collectively, "Defendants") submit the following  
5 proposed schedule for deadlines related to claim construction in this matter:

<u>Date</u>	<u>Event</u>
6 6/23/10	Invalidity Contentions
7 7/7/10	Exchange Proposed Claim Terms for Construction
8 7/21/10	Exchange Preliminary Claim Constructions and Extrinsic Evidence
9 8/4/10	Joint Claim Construction and Prehearing Statement
10 8/25/10	Opening Claim Construction Brief
11 9/8/10	Responsive Claim Construction Brief
12 9/15/10	Reply Claim Construction Brief
13 9/29/10	Claim Construction Hearing (per CMC Order)

14 The parties have not been able to reach an agreement on a date for the Claim Construction  
15 Discovery Cutoff.

16 Defendants propose 7/28/10 for the Claim Construction Discovery Cutoff. This is one  
17 week after the parties exchange preliminary claim constructions and extrinsic evidence, including  
18 the identification of any expert witness testimony a party intends to rely upon under Patent Local  
19 Rule 4-2(b). Counsel for the Defendants believe that depositions often are unnecessary on claim  
20 construction issues, but that if any are necessary, they can be conducted prior to or on 7/28/10.

21 Plaintiff proposes 8/18/10 for the Claim Construction Discovery Cutoff. Defendants have  
22 informed Plaintiff that they intend to have their motion for summary judgment on  
23 noninfringement heard on August 12, which means that Plaintiff's summary judgment opposition  
24 brief will be due on July 29, one day after Defendants' proposed Claim Construction Discovery  
25 Cutoff. Defendants' proposed schedule will put Plaintiff at a disadvantage, because Plaintiff's  
26 counsel will be forced to finalize the summary judgment opposition brief while simultaneously  
27 attempting to research and depose Defendants' experts. Plaintiff's cutoff date is a week before  
28

1 the opening brief is due, and three weeks before Defendants' responsive Claim Construction brief  
2 is due. This later date allows Plaintiff's counsel to focus on Defendants' early summary  
3 judgment motion and then have an opportunity to depose Defendants' claim construction experts.  
4 Plaintiff will be happy to agree to schedule any such depositions so as to allow Defendants time  
5 to finalize their reply on their summary judgment brief, which will be due on August 5. There is  
6 simply no need to compress the discovery timeline as much as Defendants propose. Therefore, as  
7 Defendants have not identified any prejudice from the August 18 Cutoff date, and Plaintiff has  
8 demonstrated that it would be prejudiced by the July 28 Cutoff date, Plaintiff respectfully requests  
9 that the Court enter the August 18 Cutoff date.

10 DATED: June 1, 2010

/s/ Brent Yamashita

11 ANDREW VALENTINE  
12 BRENT YAMASHITA  
13 ERIK FUEHRER

14 Attorneys for Defendants and Counterclaimants DIGITAL  
15 INSIGHT CORPORATION, COMMUNITY TRUST  
16 FINANCIAL CORPORATION, and COMMUNITY  
17 TRUST BANK

18 DATED: June 1, 2010

/s/ Melinda Morton

19 JAMES OTTESON  
20 DANIEL BERGESON  
21 MELINDA MORTON

22 Attorneys for Plaintiff MSHIFT, INC.  
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The Court adopts the schedule proposed by the parties and orders that the Claim Construction Discovery Cutoff shall be August 11, 2010 \*\*

**IT IS SO ORDERED.**

DATED: June 2, 2010.

Honorable  
United States



\*\* Counsel shall also note that the amended case management scheduling order (Dkt. No. 69) erroneously stated that the technology tutorial was to be held on June 22. The correct date and time of the technology tutorial, as set by the undersigned at the case management conference, is at **1:30 p.m. on September 22.**