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| 16 | | |
| 17 | | S DISTRICT COURT |
| | | RICT OF CALIFORNIA ISCO DIVISION |
| 18 | | |
| 19 | POSITIVE TECHNOLOGIES, INC., Plaintiff, | Case No.: 11-CV-2226 SI |
| 20 |) | |
| 21 | v.) | CTIDIU ATION DECADDING USACE OF |
| 22 | SONY ELECTRONICS, INC., ACER) | STIPULATION REGARDING USAGE OF CLAIM CONSTRUCTION EXPERTS |
| 23 | AMERICA CORPORATION, GATEWAY,) INC., DELL INC., ASUS COMPUTER) | AND CONFIDENTIALITY OF EXPERT DRAFTS AND COMMUNICATIONS |
| | INTERNATIONAL, MSI COMPUTER) | AND [RROPOSED] ORDER |
| 24 25 | CORPORATION, AMAZON.COM, INC.,) BARNES & NOBLE, INC., AND KOBO) | |
| | INC., | |
| 26 | Defendants, | |
| 27 | , | |
| 28 | STIPULATION REGARDING USAGE OF CLAIM CON EXPERT DRAFTS AND COMMUNICATIONS AND [PROPOSED] ORDER Case No.: 11-CV-2226 SI | |

| |) |
|-------------------------------|---------|
| and |) |
| CHUNGHWA PICTURE TUBES, LTD., | |
| Intervenor. | _)) |
| | |

Defendants Sony Electronics, Inc., Dell Inc., ASUS Computer International, MSI Computer Corporation, Amazon.com, Inc., Barnes & Noble, Inc., Kobo Inc., and Intervenor Chunghwa Picture Tubes, Ltd. (cumulatively "Defendants") and Plaintiff Positive Technologies Inc. ("PTI") hereby stipulate and agree that our claim construction experts shall provide opinion testimony in the form of expert declarations in lieu of providing live testimony at the Court's May 31, 2012 *Markman* hearing.

The parties further stipulate and agree to confidentiality regarding testifying experts including claim construction experts that provide testimony in the form of declarations. Specifically, the parties agree that any communications with testifying experts and any draft declarations and reports are not discoverable in accordance with Fed. Rule Civ. Proc. 26 except, and only, to the extent that they (i) relate to compensation for the expert's study or testimony, or (ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed. In an effort to avoid future disputes as to the meaning of what constitutes an "assumption", the parties further agree Fed. Rule Civ. Proc. 26(b)(4)(C)(iii) shall not be in effect and communications that "identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed" shall also be regarded as protected, non-discoverable work product.

This stipulation affirms, and in certain respects expands, the scope of protection provided for in Fed. Rule Civ. Proc. 26(b)(4)(B)-(C), and nothing herein is intended to, or shall be construed to, in any way limit the protection provided for in Fed. Rule Civ. Proc. 26(b)(4)(B)-(C).

Dated: January 5, 2012

Respectfully submitted,

STIPULATION REGARDING USAGE OF CLAIM CONSTRUCTION EXPERTS AND CONFIDENTIALITY OF EXPERT DRAFTS AND COMMUNICATIONS

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EXPERT DRAFTS AND COMMUNICATIONS AND [PROPOSED] ORDER Case No.: 11-CV-2226 SI

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EXPERT DRAFTS AND COMMUNICATIONS AND [PROPOSED] ORDER Case No.: 11-CV-2226 SI

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STIPULATION REGARDING USAGE OF CLAIM CONSTRUCTION EXPERTS AND CONFIDENTIALITY OF EXPERT DRAFTS AND COMMUNICATIONS
AND [PROPOSED] ORDER
Case No.: 11-CV-2226 SI 5

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EXPERT DRAFTS AND COMMUNICATIONS AND [PROPOSED] ORDER Case No.: 11-CV-2226 SI

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| 13 | |
| 14 | DUDGUANT TO STIDIU ATION IT IS SO ODDEDED |
| 15 | PURSUANT TO STIPULATION, IT IS SO ORDERED. |
| 16 | Detect. 1/c 2012 |
| 17 | Dated:, 2012 |
| 18 | Suran Illaton |
| 19 | |
| 20 | the court anticipates that declarations relating to claim construction will be filed openly, not under seal" |
| 21 | under Sear |
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| 28 | STIPULATION REGARDING USAGE OF CLAIM CONSTRUCTION EXPERTS AND CONFIDENTIALITY OF EXPERT DRAFTS AND COMMUNICATIONS AND [PROPOSED] ORDER Case No.: 11-CV-2226 SI 7 |

1 CERTIFICATION BY STEPHANIE WOOD PURSUANT TO GENERAL RULE. NO. 45, 2 SECTION X, RE E-FILING ON BEHALF OF MULTIPLE SIGNATORIES 3 4 I am an attorney licensed to practice law in the states of California and Texas, and an 1. 5 associate in the law firm of Novak Druce + Quigg LLP, counsel for defendant Dell Inc. The 6 statements herein are made on my personal knowledge and if called as a witness I could and would 7 testify thereto. 8 2. The above e-filed document contains multiple signatures. I declare that concurrence has been 9 obtained from each of the other signatories to file this jointly prepared document with the Court. 10 Pursuant to General Rule No. 45, I shall maintain records to support this concurrence for subsequent 11 production for the Court if so ordered, or for inspection upon request by a party until one year after 12 final resolution of the action (including appeal, if any). 13 14 15 I declare under penalty of perjury under the laws of the United States of America that the foregoing 16 is true and correct. 17 18 Executed this 5th day of January 2012, at San Francisco, California. 19 /s/ Stephanie R. Wood Stephanie R. Wood (State Bar No. 242572) 20 21 22 23 24 25 26 27 28

STIPULATION REGARDING USAGE OF CLAIM CONSTRUCTION EXPERTS AND CONFIDENTIALITY OF EXPERT DRAFTS AND COMMUNICATIONS AND [PROPOSED] ORDER

Case No.: 11-CV-2226 SI