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

19 **POSITIVE TECHNOLOGIES, INC.,**) **Case No.: 11-CV-2226 SI**
 20 **Plaintiff,**)
 21 **v.**)
 22 **SONY ELECTRONICS, INC., ACER)** **STIPULATION REGARDING USAGE OF**
 23 **AMERICA CORPORATION, GATEWAY,) CLAIM CONSTRUCTION EXPERTS**
 24 **INC., DELL INC., ASUS COMPUTER) AND CONFIDENTIALITY OF EXPERT**
 25 **INTERNATIONAL, MSI COMPUTER) DRAFTS AND COMMUNICATIONS**
 26 **CORPORATION, AMAZON.COM, INC.,) AND [PROPOSED] ORDER**
 27 **BARNES & NOBLE, INC., AND KOBO)**
 28 **INC.,**)
Defendants,)

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

1)
2)
3 **and**)
4 **CHUNGHWA PICTURE TUBES, LTD.,**)
5 **Intervenor.**)

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

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

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

26 Dated: January 5, 2012

27 Respectfully submitted,

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 1/6 , 2012



the court anticipates that declarations relating to claim construction will be filed openly, not under seal"

