

KAYE SCHOLER LLP

1 Michael J. Malecek (State Bar No. 171034)
 michael.malecek@kayescholer.com
 2 Peter E. Root (State Bar No. 142348)
 peter.root@kayescholer.com
 3 Stephen C. Holmes (State Bar No. 200727)
 stephen.holmes@kayescholer.com
 4 KAYE SCHOLER LLP
 Two Palo Alto Square Suite 400
 5 3000 El Camino Real
 Palo Alto, CA 94306
 6 Telephone: (650) 319-4500
 Facsimile: (650) 319-4700
 7

8 Attorneys for Defendant/
 Counterclaim-Plaintiff
 SEQUENOM, INC.
 9

10 **UNITED STATES DISTRICT COURT**
 11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 12

13 ARIA DIAGNOSTICS, INC.,)
 14)
 Plaintiff,)
 15)
 v.)
 16)
 SEQUENOM, INC,)
 17)
 Defendant/)
 18 Counterclaim-Plaintiff,)
 19)
 v.)
 20)
 ARIA DIAGNOSTICS, INC.,)
 21)
 Counterclaim-Defendant,)
 22)
 and)
 23)
 ISIS INNOVATION LIMITED)
 24)
 Nominal Counterclaim-)
 25 Defendant.)
 26)
 27)
 28)

Case No. 3:11-cv-06391-SI
**STIPULATION AND [PROPOSED]
 ORDER RE: EXPEDITED DISCOVERY
 AND AMENDED SCHEDULE FOR
 HEARING ON PRELIMINARY
 INJUNCTION**
 Judge: Hon. Susan Illston
 Current Hearing Date: April 13, 2012
 Proposed Hearing Date: June 15, 2012

STIPULATION

Plaintiff and Counterclaim-Defendant Aria Diagnostics, Inc. (“Aria”) and Defendant and Counterclaim-Plaintiff Sequenom, Inc. (“Sequenom”), by and through their undersigned counsel, hereby agree and stipulate, subject to the Court’s approval, as to the scope, form, and schedule for expedited discovery in connection with Sequenom’s pending motion for preliminary injunction, and as to a schedule for briefing and hearing on the motion, as follows:

A. SCOPE AND FORM OF EXPEDITED DISCOVERY

1. Each Party is entitled to propound one set of informal written document requests to the other Party in the form of a letter comprising no more than fifteen (15) numbered requests that seek information relevant to the issues presented by the pending motion for preliminary injunction, which document requests shall not include either a “definitions” section or an “instructions” section typical of formal requests for production of documents;

2. Each Party will produce responsive documents and electronically stored information as single-page TIFF images with corresponding load files on CDs, DVDs, hard drives, or other conventional digital media, labeled with the beginning and ending Bates numbers, except that files containing technical or other information in a non-standard format (including but not limited to 2-D and 3-D design files, video and audio files, and other “exotic” file formats) shall be produced in native format;

3. The Parties shall cooperate on further mechanics of document production;

4. Each Party shall be entitled to depose the other Party’s fact and expert witness declarants supporting or opposing the pending motion for preliminary injunction, as the case may be, and to take one (1) additional individual deposition of a percipient witness whose testimony is relevant to the pending motion for preliminary injunction and who is a current employee of Sequenom or Aria (as the case may be) and resides in California;

5. For the avoidance of doubt, the Parties agree that the foregoing allowed depositions shall not include depositions of the inventors of the patent-in-suit or depositions of an organization under Rule 30(b)(6) of the Federal Rules of Civil Procedure;

6. Other than the document and deposition discovery specified above, neither Party shall be entitled to any further expedited discovery in connection with the pending motion for preliminary injunction unless, for good cause shown by the Party seeking additional discovery, this Court orders such additional discovery;

7. Neither Party is required to provide a privilege log of documents or testimony withheld from production on the basis of attorney-client privilege, attorney work product, common interest privilege, or other applicable privilege or doctrine with respect to the expedited discovery provided for herein;

8. With respect to the expedited discovery provided for herein, the Parties shall cooperate and make a good faith effort to reach agreement on a protective order for discovery activities involving production of confidential, proprietary, or private information, but in the event that the Parties are not able to reach agreement by April 9, 2012, the expedited discovery activities in connection with the pending motion for preliminary injunction shall be governed by this Court’s Patent Local Rule 2-2 Interim Model Protective Order, as provided in Local Patent Rule 2-2; and,

9. Each Party shall serve all discovery requests and other papers pertaining to the pending preliminary injunction motion on the other Party via email to the group email address that each Party shall supply to the other Party.

A. DISCOVERY, BRIEFING, AND HEARING SCHEDULE

Date	Event
March 19, 2012	Parties to exchange informal written document requests
April 11, 2012	Parties to produce responsive documents by hand delivery of CD-ROM or other digital media with load file identifying start and end of each document
April 11 to May 4, 2012	Aria to depose Sequenom’s declarants and no more than one additional percipient witness
May 11, 2012	Aria Opposition Brief due

1 2 3	May 11 to May 25, 2012	Sequenom to depose Aria's declarants and no more than one additional percipient witness
4 5	June 1, 2012	Sequenom's Reply Brief due
6 7	June 15, 2012	Hearing on Sequenom's motion for preliminary injunction

8 The Parties jointly request that the Court approve the foregoing stipulation as to the scope,
9 form, and schedule for expedited discovery in connection with the pending motion for preliminary
10 injunction, and the proposed schedule for briefing and hearing of the pending motion for
11 preliminary injunction, including rescheduling the hearing for the motion for preliminary
12 injunction from the currently set date of April 13, 2012, to the rescheduled date of June 15, 2012,
13 at 9:00 a.m., or as soon thereafter as the matter may be heard by the Court.

14 Respectfully submitted,

15 Dated: March 20, 2012

KAYE SCHOLER LLP

16 By: s/ Peter E. Root
17 Peter E. Root
18 Attorneys for Defendant/Counterclaim-Plaintiff
19 SEQUENOM, INC.

20 Dated: March 20, 2012

IRELL & MANELLA LLP

21 By: s/ David I. Gindler
22 David I. Gindler
23 Attorneys for Plaintiff/Counterclaim-Defendant
24 ARIA DIAGNOSTICS, INC.

25 FILER'S ATTESTATION: I, Peter E. Root, am the ECF User whose identification and password
26 are being used to file this Stipulation and [Proposed] Order. In compliance with General Order
27 45.X.B, I hereby attest that David I. Gindler has concurred in this filing.
28

1 **[PROPOSED] ORDER**

2 Based on the stipulation of the Parties and for good cause shown, the Court hereby
3 approves the foregoing Stipulation of the Parties, and IT IS HEREBY ORDERED that:

4 1. The scope, form, and schedule for expedited discovery in connection with the
5 pending motion for preliminary injunction is and shall be as set forth in the foregoing Stipulation;
6 and,

7 2. The briefing and hearing schedule is and shall be as set forth in the foregoing
8 Stipulation, including that the hearing for the pending motion for preliminary injunction is hereby
9 rescheduled from April 13, 2012, to June 15, 2012, at 9:00 a.m.

10
11 **IT IS SO ORDERED.**

12
13 Dated: March 16, 2012



14 _____
15 SUSAN ILLSTON
16 United States District Judge

KAYE SCHOLER LLP