

1 MARTHA LUEMERS (SBN 104658)
E-MAIL: luemers.martha@dorsey.com
2 DORSEY & WHITNEY LLP
305 Lytton Ave.
3 Palo Alto, CA 94301
Telephone: (650) 857-1717
4 Facsimile: (650) 857-1288

5 PAUL T. MEIKLEJOHN (*Pro Hac Vice*)
E-Mail: meiklejohn.paul@dorsey.com
6 DOUGLAS F. STEWART (*Pro Hac Vice*)
E-Mail: stewart.douglas@dorsey.com
7 DORSEY & WHITNEY LLP
701 Fifth Avenue, Suite 6100
8 Seattle, WA 98104
Telephone: (206) 903-8800
9 Facsimile: (206) 903-8820

10 *Attorneys for Defendants*
Toshiba Corporation and
11 *Toshiba America Information Systems*

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

14 INNOVUS PRIME LLC,
15 Plaintiff,

16 v.

17 TOSHIBA CORP. AND TOSHIBA
18 AMERICA INFORMATION SYSTEMS,
19 INC,
20 Defendants.

CASE NO. 12-cv-00659-WHO

**STIPULATION AND ORDER
EXTENDING THE DATE FOR SERVICE
OF INVALIDITY CONTENTIONS AND
CLAIM CONSTRUCTION**

Judge: Hon. William H. Orrick

21
22 Pursuant to Civil Local Rules 6-2 and 7-12, Defendants Toshiba Corporation and Toshiba
23 America Information Systems, Inc. (“Toshiba”) and Plaintiff Innovus Prime LLC (“Innovus”)
24 (collectively “the Parties”), hereby stipulate to and request an order extending the due date for
25 Toshiba to serve its invalidity contentions in this matter, and also stipulate to and request an
26 extension of claim construction deadlines. This is the second request for a modification of time
27 for service of invalidity contentions. Schuettenhelm Decl. at ¶ 3. On March 12, 2013, the
28 Parties stipulated to an extension of the date for service of invalidity contentions until after the

1 Court decided Toshiba's First Motion to Strike Innovus's Infringement Contentions. *Id.* at ¶ 4.
2 On May 10, 2013, the Court granted Toshiba's Motion to Strike Innovus's First Amended
3 Infringement Contentions, and ordered Innovus to serve another set of amended infringement
4 contentions. *Id.* at ¶ 5. The Court also ordered Toshiba to serve its invalidity contentions and
5 accompanying production "45 days after receipt of Innovus's amended infringement
6 contentions." *Id.* ¶ 6. Pursuant to the Court's Order, Toshiba's invalidity contentions are
7 presently due on August 5, 2013. *Id.* at ¶ 8.

8 Toshiba is now preparing to file a Motion to Strike Innovus's Supplemental Amended
9 Infringement Contentions ("Second Motion to Strike"). *Id.* at ¶ 9. Under the Patent Local Rules,
10 service of invalidity contentions is predicated on the service of infringement contentions, (Patent
11 Local Rule 3-3), and, as discussed in Toshiba's Original Motion to Strike, courts in this district
12 generally stay defendant's discovery obligations, including service of invalidity contentions,
13 until issues regarding the sufficiency of infringement contentions are resolved. Dkt. No. 33 at
14 18. Thus, Toshiba's Second Motion to Strike will request that discovery be stayed until the
15 Motion is resolved. Schuettenhelm Decl. at ¶ 10.

16 However, pursuant to Civil Local Rule 7-2, a hearing on the Second Motion to Strike
17 cannot be scheduled until after the August 5, 2013, due date for filing invalidity contentions. *Id.*
18 at ¶ 11. As a result, the presently requested modification will provide time for the Parties to
19 complete the briefing on Toshiba's Second Motion to Strike, as well as for the Court to render its
20 decision on the Second Motion to Strike. *Id.* at ¶ 12. Absent an extension, Toshiba will be
21 placed in the position of having to provide its invalidity contentions before the hearing on the
22 sufficiency of Innovus's infringement contentions. *Id.*

23 In addition, the current schedule for this case provides deadlines for claim construction
24 activities predicated on the service of infringement contentions and invalidity contentions. *See*
25 Patent Local Rules 4-1 – 4-5. Accordingly, the parties further request that the Court extend the
26 claim construction deadlines based on the outcome of Toshiba's Second Motion to Strike. The
27 presently requested extension will provide time for the Court to render its decision on Toshiba's
28

1 Second Motion to Strike, which Toshiba believes should be dispositive of the case, and will
2 allow the parties to align the claim construction deadlines with the requirements of the Patent
3 Local Rules. Schuettenhelm Decl. at ¶ 13. Absent an extension, the parties will be placed in the
4 position of having claim construction occur before invalidity contentions are served, contrary to
5 the Patent Local Rules. *Id.*

6 Accordingly, it is hereby stipulated and agreed to extend the deadlines for invalidity
7 contentions and claim construction pending resolution of Toshiba's Second Motion to Strike.
8 The parties also agree that the claim construction deadlines shall be extended based on the date
9 that Toshiba's invalidity contentions are due pursuant to the Patent Local Rules.

10
11 DATED: July 22, 2013

DORSEY & WHITNEY LLP

12
13 BY: /S/ Paul T. Meiklejohn
14 PAUL T. MEIKLEJOHN (*Pro hac vice*)
15 EMail: meiklejohn.paul@dorsey.com
16 DOUGLAS F. STEWART (*Pro hac vice*)
17 EMail: stewart.douglas@dorsey.com
18 DORSEY & WHITNEY LLP
19 701 Fifth Avenue, Suite 6100
20 Seattle, WA 98104
21 Telephone: (206) 903-8800
22 Facsimile: (206) 903-8820

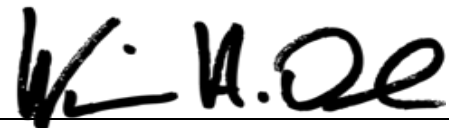
MARTHA LUEMERS (SBN 104658)
E-Mail: luemers.martha@dorsey.com
DORSEY & WHITNEY LLP
305 Lytton Ave.
Palo Alto, CA 94301
Telephone: (650) 857-1717
Facsimile: (650) 857-1288

23 Attorneys for Defendant, Toshiba Corporation
24 and Toshiba America Information Systems, 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

PURSUANT TO STIPULATION IT IS ORDERED THAT the August 5, 2013, due date for service of Toshiba's invalidity contentions is hereby extended pending the resolution of Toshiba's Motion to Strike Plaintiff's Supplemental Infringement Contentions. The Court further extends the claim construction deadlines pending resolution of Toshiba's Motion to Strike Plaintiff's Supplemental Infringement Contentions. The claim construction deadlines shall be extended based on the date that Toshiba's invalidity contentions are due pursuant to the Patent Local Rules.

DATED this 23rd day of July, 2013.



HONORABLE WILLIAM H. ORRICK
UNITED STATES DISTRICT JUDGE