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Attorneys for Plaintiff
Roche Molecular Systems, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CEPHEID,

Plaintiff,

v.

ROCHE MOLECULAR SYSTEMS, INC. and
F. HOFFMANN-LA ROCHE LTD.,

Defendants.

CASE NO. 3:12-CV-04411-EMC

**JOINT REQUEST TO CONTINUE
CASE MANAGEMENT
CONFERENCE; [PROPOSED] ORDER**

1 Plaintiff Cepheid filed this declaratory judgment action on August 21, 2012, seeking, *inter*
2 *alia*, a declaration that the claims of U.S. Patent Nos. 5,804,375 (“the ’375 patent”) and 6,127,155
3 (“the ’155 patent”) are not infringed, are invalid, and are otherwise unenforceable. Defendant Roche
4 Molecular Systems, Inc. moved to stay Counts I and II related to the ’375 patent pending final
5 resolution of a Swiss arbitration between the parties and moved to dismiss Counts III and IV related
6 to the ’155 patent for lack of subject matter jurisdiction. On January 17, 2013, the Court issued its
7 Order Granting Defendant’s Motion to Stay and Motion to Dismiss (“Order”). ECF No. 68. The
8 Court stayed Counts I and II until further order of this Court and dismissed Counts III and IV for
9 lack of subject matter jurisdiction. With respect to Counts I and II, the Court directed the parties to
10 “update this Court within 30 days of the issuance of the Arbitral Tribunal’s decision on the issue of
11 jurisdiction.” *Id.* at 8.

12 Pursuant to the Order, the parties notified the Court that on August 1, 2013, the International
13 Chamber of Commerce (ICC) International Court of Arbitration issued a letter notifying the parties
14 that the Arbitral Tribunal had rendered a Partial Award on arbitral jurisdiction, dated July 30, 2013.
15 ECF No. 77. The Partial Award included an order concerning jurisdiction, in which the Arbitral
16 Tribunal concluded that it has jurisdiction to decide on the relief sought by the claimants (i.e., Roche
17 Molecular Systems, Inc. and F. Hoffmann-La Roche Ltd). Cepheid appealed the Arbitral Tribunal’s
18 jurisdictional decision. *Id.* On February 28, 2014 the Swiss Federal Court dismissed Cepheid’s
19 appeal in its entirety. On April 20, 2016 the Arbitral Tribunal issued a second Partial Award on
20 liability issues. The Arbitration is proceeding in accordance with the schedule set by the Arbitral
21 Tribunal.

22 Since the Court issued its January 2013 Order, the parties have jointly filed several
23 stipulations to continue the Initial Case Management Conference and the Court has entered those
24 stipulations. Specifically, on March 11, 2013, the Court reset the Case Management Conference
25 from March 14, 2013 to June 20, 2013 (ECF Nos. 72, 73); on June 7, 2013 the Court reset the Case
26 Management Conference from June 20, 2013 to October 10, 2013 (ECF Nos. 74, 75); on September
27 23, 2013 the Court reset the Case Management Conference from October 10, 2013 to March 6, 2014
28 (ECF Nos. 77, 78); on February 26, 2014 the Court reset the Case Management Conference from

1 March 6, 2014 to November 13, 2014 (ECF Nos. 81, 82); on November 7, 2014 the Court reset the
2 Case Management Conference from November 13, 2014 to March 26, 2015 (ECF Nos. 84, 85); on
3 March 13, 2015 the Court reset the Case Management Conference from March 26, 2015 to
4 September 24, 2015 (ECF Nos. 86, 87),), which was reset *sua sponte* to September 23, 2015 (ECF
5 No. 88); on September 16, 2015, the Court reset the Case Management Conference from September
6 23, 2015 to April 21, 2016 (ECF Nos. 89, 90), on April 14, 2016, the Court reset the Case
7 Management Conference from April 21, 2016 to October 27, 2016 (ECF Nos. 92, 93), which the
8 Court then rescheduled *sua sponte* to November 8, 2016 (ECF No. 94); and on November 3, 2016
9 the Court reset the Case Management Conference from November 8, 2016 to June 15, 2017 (ECF
10 Nos. 96, 97).

11 As of this time, the parties continue to believe that it is not appropriate to lift the Court's stay.
12 Specifically, the Arbitral Tribunal has issued its Partial Award on liability and a final decision is
13 expected in June 2017.

14 Accordingly, the parties respectfully request that the Initial Case Management Conference,
15 currently scheduled for June 15, 2017, be continued until November 16, 2017, or any other date that
16 the Court deems appropriate. The parties will contact the Court before then if anything of substance
17 occurs in the arbitration that may affect the status of this case.

18 By his signature below, Counsel for Defendant Roche Molecular Systems, Inc. certifies that
19 Counsel for Plaintiff and Counsel for Defendant F. Hoffmann-La Roche Ltd. concur in the filing of
20 this notice.

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1 Dated: June 8, 2017

HUGHES HUBBARD & REED LLP

2 /s/ Stephen S. Rabinowitz
3 Stephen S. Rabinowitz
4 Attorney for Defendant Roche Molecular Systems, Inc.

4 FINNEGAN, HENDERSON, FARABOW,
5 GARRETT & DUNNER, LLP

6 /s/ Erik R. Puknys
7 Erik R. Puknys
8 Attorney for Plaintiff Cepheid

8 WILMER CUTLER PICKERING HALE AND
9 DORR LLP

10 /s/ Robert J. Gunther, Jr.
11 Robert J. Gunther, Jr.
12 Attorney for Defendant F. Hoffmann-La Roche Ltd.

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~~[PROPOSED]~~ ORDER

Pursuant to the stipulation of the parties and good cause appearing therefor;

IT IS SO ORDERED.



6/13/17

Dated: _____

United States District Judge