

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. The Arbitration is proceeding in accordance with the schedule set by the
20 Arbitral Tribunal.

21 Since the Court issued its January 2013 Order, the parties have jointly filed several
22 stipulations to continue the Initial Case Management Conference and the Court has entered those
23 stipulations. Specifically, on March 11, 2013, the Court reset the Case Management Conference
24 from March 14, 2013 to June 20, 2013 (ECF Nos. 72, 73); on June 7, 2013 the Court reset the Case
25 Management Conference from June 20, 2013 to October 10, 2013 (ECF Nos. 74, 75); on September
26 23, 2013 the Court reset the Case Management Conference from October 10, 2013 to March 6, 2014
27 (ECF Nos. 77, 78); on February 26, 2014 the Court reset the Case Management Conference from
28 March 6, 2014 to November 13, 2014 (ECF Nos. 81, 82); on November 7, 2014 the Court reset the

1 Case Management Conference from November 13, 2014 to March 26, 2015 (ECF Nos. 84, 85); and
2 on March 13, 2015 the Court reset the Case Management Conference from March 26, 2015 to
3 September 24, 2015 (ECF Nos. 86, 87), which was recently reset *sua sponte* to September 23, 2015
4 (ECF No. 88). Most recently, the Court reset the Case Management Conference from September 23,
5 2015 to April 21, 2016 (ECF Nos. 89, 90).

6 As of this time, the parties continue to believe that it is not appropriate to lift the Court's stay.
7 Specifically, the evidentiary hearing for the liability phase of the Arbitration has taken place and the
8 parties are waiting for the Arbitral Tribunal to issue its award on liability.

9 Accordingly, the parties respectfully request that the Initial Case Management Conference,
10 currently scheduled for April 21, 2016, be continued until October 27, 2016, or any other date that
11 the Court deems appropriate. The parties will contact the Court before then if anything of substance
12 occurs in the arbitration that may affect the status of this case.

13 By his signature below, Counsel for Plaintiff certifies that Counsel for Defendants concur in
14 the filing of this notice.

15
16 Dated: April 13, 2016

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

/s/ Erik R. Puknys

Erik R. Puknys
Attorney for Plaintiff Cepheid

20 WILMER CUTLER PICKERING HALE AND
21 DORR LLP

/s/ Robert J. Gunther, Jr.

Robert J. Gunther, Jr.
Attorney for Defendant F. Hoffmann-La Roche Ltd.

24 HUGHES HUBBARD & REED LLP

/s/ Stephen S. Rabinowitz

26 Stephen S. Rabinowitz
Attorney for Defendant Roche Molecular 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

[~~PROPOSED~~] ORDER

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

IT IS SO ORDERED.

Dated: _____ 4/14/16 _____

