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Attorneys for Defendants
APPARENT INC, APPARENT ENERGY INC.,
APPARENT SOLAR INC., AND XSLENT
ENERGY TECHNOLOGIES, LLC; APPARENT
SOLAR INVESTMENTS (II), LLC
ERRONEOUSLY SUED HEREIN AS APPARENT
SOLAR INVESTMENTS, LLC and
Counterclaimants Apparent Inc. and Apparent
Energy Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AI-DAIWA, LTD.,
Plaintiff,

v.

APPARENT, INC., a Delaware
Corporation; APPARENT ENERGY,
INC., a Delaware Corporation;
APPARENT SOLAR, INC., a Delaware
Corporation; APPARENT SOLAR
INVESTMENTS, LLC, a Hawaii limited
liability company; XSLENT, LLC, a
Delaware limited liability company;
XSLENT ENERGY TECHNOLOGIES,
LLC, a Delaware limited liability
company; and DOES 1-10 inclusive,

CASE NO. CV13-4156 VC

**STIPULATION AND ~~PROPOSED~~
ORDER TO EXTEND THE DATE FOR
PRODUCTION TO THE COURT
APPOINTED EXPERT**

Defendants.

AND RELATED CROSS ACTION

Pursuant to Local Rules 6-1, 6-2, and 7-12, Plaintiff AI-Daiwa, Ltd. (AI-Daiwa) and Defendants Apparent, Inc., Apparent Energy Inc., Apparent Solar Inc., Xslent Energy Technologies, LLC; Apparent Solar Investments (Ii), LLC erroneously sued herein as Apparent Solar Investments, LLC (collectively “Defendants”) and Apparent Inc and Apparent Energy Inc (collectively Counterclaimants) (all collectively, the “Parties”), by and through their undersigned counsel, submit this Stipulated Joint Request to Continue the deadlines for production of documents and devices to the Court-Appointed Expert.

WHEREAS, the Court entered an Order on May 16, 2014, appointing Mark McNeely as the Court appointed expert and requiring certain documents and devices be produced to the expert – as set forth in the Order. (See Docket No. 54);

WHEREAS, immediately after the Order, the parties’ counsel participated in a conference call with each other to discuss the next steps. That call was followed by a conference call with the Court-Appointed expert, Mr. McNeely. The parties agreed to a procedure for production of data to each other for review and the opportunity to object, if necessary, prior to the production of those documents to Mr. McNeely;

WHEREAS, Mr. McNeely was provided publicly available documents from the Court’s docket, including the aforementioned Order (Docket No. 54), AI-Daiwa’s First Amended Complaint (Docket No. 5), Defendants’ Answer and Counterclaims (Docket No. 37), the Stipulation with Proposed Protective Order (Docket No. 42), and the Stipulation with Proposed ESI Order (Docket No. 44). Mr. McNeely signed Exhibit A to the Protective Order – Acknowledgement and Agreement to be Bound;

WHEREAS, when the May 16, 2014 Order was entered, no documents or devices had been produced in this litigation;

WHEREAS, since that time, the parties have worked diligently to collect and produce

1 information to the expert, subject to the safeguard referenced above. On May 26, 2014, counsel
2 for AI-Daiwa visited the manufacturing facilities in Heyuan, China. On June 6, 2014, Apparent
3 produced three CDs containing emails from three custodians (Stefan Matan, Frank Marrone, and
4 Jacqueline DeSouza). In a cover letter, Apparent informed AI Daiwa that production was delayed
5 due to technical issues. Apparent is also working on associating in new counsel, in part, to handle
6 discovery matters and overcome technical issues that occurred with the recent production;

7 WHEREAS, to date, counsel for AI-Daiwa has received one potted device and one
8 un-potted device and is awaiting an additional ten (10) units of MG1 devices produced in the
9 period 2011-2012 and have completed the required testing but have not been delivered to
10 Apparent for production to the expert;

11 WHEREAS, Apparent has prepared and has ready for production ten (10) devices that do
12 not operate and that were not previously used or sold by Apparent, or otherwise modified by
13 Apparent; and ten (10) devices that failed in the field;

14 WHEREAS, the Parties are also working to review and approve the appropriate
15 documentation that should be submitted to the Expert. As set forth in the Order appointing Mr.
16 McNeely as the Court-Appointed Expert, those documents include the bill of materials used for
17 the manufacture of the devices; specification sheets for manufacture of the devices; the Supply
18 Chain Agreement, Addendum, and quality and testing standards provided to AI-Daiwa for the
19 manufacture of the devices; and additional information the Parties deem relevant. (Docket No. 54,
20 Paragraphs III.B.3 and III.B.4.)

21 WHEREAS, the Parties agree to produce documents to the expert within sixty (60) days
22 of the Court entering the [Proposed] Order attached to this Joint Stipulation to the Court.

23 WHEREAS, L.R. 6-1 permits the parties to stipulate in writing without a court order, "to
24 enlarge or shorten the time in matters not required to be filed or lodged with the Court provided
25 the change will not alter the date of any event or any deadline already fixed by Court order."
26 N.D.C.A. Local Rule 6-1;

27 WHEREAS, the Parties are not aware of any date fixed by Court order that will be altered
28

1 by the Parties' stipulated request, absent the Court's execution of this [Proposed] Order;

2 WHEREAS, the requested extension will not otherwise alter the schedule of this case; and

3 WHEREAS, good cause exists to grant the Parties' Stipulated Joint Request.

4
5 **NOW THEREFORE, THE PARTIES STIPULATE AND JOINTLY REQUEST AN**
6 **ORDER STATING:**

7 1. The Parties have sixty (60) days from the entry of the attached Order to produce the
8 documents and devices set forth in Docket No. 54 to the Court-Appointed Expert Mark McNeely.

9 IT IS SO STIPULATED.

10
11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12 DATED: 6/20/2014 /Lael D. Andara/
13 Attorneys for AI-Daiwa

14
15 DATED: 6/20/2014 /Jacqueline deSouza/
16 Attorneys for Defendants

17
18 **~~Proposed~~ ORDER**

19
20 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

21 Dated: June 23, 2014

