

1 BRUCE J. WECKER (CA Bar. No. 078530)
bwecker@hausfeldllp.com
2 CHRISTOPHER L. LEBSOCK (CA Bar
No.184546)
3 clebsock@hausfeldllp.com
4 **HAUSFELD LLP**
44 Montgomery Street, Suite 3400
5 San Francisco, CA 94104
Tel: (415) 633-1908
6 Fax: (415) 358-4980

Robert W. Stone (CA Bar No. 163513)
robertstone@quinnemanuel.com
Andrew J. Bramhall (CA Bar No. 253115)
andrewbramhall@quinnemanuel.com
Brice C. Lynch (CA Bar No. 288567)
bricelynch@quinnemanuel.com
**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
Tel: 650.801.5000
Fax: 650.801.5100

8 *Attorneys for Plaintiff Twin Peaks Software Inc. Attorneys for Defendant IBM Corporation*

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 TWIN PEAKS SOFTWARE INC., a)
14 California company)

15 Plaintiff,)

16 vs.)

17 IBM CORPORATION, a New York)
18 corporation,)

19 Defendant.)
20)
21)

Case No. 3:14-cv-03933-JST

**STIPULATION & [PROPOSED] ORDER RE:
DISCOVERY OF ELECTRONICALLY
STORED INFORMATION FOR PATENT
LITIGATION**

22 Upon the stipulation of the parties, the Court ORDERS that responsive electronically
23 stored information (“ESI”) will be produced as follows:

24 1. All documents will be exchanged on discs, by e-mail, or other digital storage
25 medium (including but not limited to “zip” files and FTP transfer).

26 2. The parties will produce ESI as single-page, black and white Group IV .tiff images.
27 The ESI shall be produced with production numbers, and appropriate image-based or data “load”
28 files, as necessary. The parties shall meet and confer on the appropriate “load” files to accompany

Case No. 3:14-cv-03933-JST

STIPULATED & [PROPOSED] ORDER RE: DISCOVERY OF
ELECTRONICALLY STORED INFORMATION FOR PATENT LITIGATION

1 their respective document productions. At a minimum, the “load” files must provide the location
2 and unitization of the .tiff files. Native files of ESI may be produced at the producing party's
3 discretion when reasonably necessary to make the information contained therein accessible (this
4 would include, for example, spreadsheets or other data compilations) and upon reasonable request
5 of the requesting party. To the extent the ESI originally existed in text-searchable format
6 independent of this litigation, the ESI shall be produced with searchable text.

7 3. The parties will not be required to produce metadata accompanying otherwise
8 responsive ESI absent a showing of good cause; and the parties are not required to preserve
9 metadata fields accompanying otherwise responsive ESI that are frequently updated in the
10 ordinary course of business such as last-opened dates.

11 4. Absent a showing of good cause, voice-mails, instant messages, text messages
12 (MMS or SMS) as well as mobile devices such as tablets, PDAs, and mobile phones are deemed
13 not reasonably accessible and need not be collected and preserved.

14 5. General ESI production requests under Federal Rules of Civil Procedure 34 and 45
15 shall not include email or other forms of electronic correspondence (collectively “email”). To
16 obtain email parties must propound specific email production requests.

17 6. Email production requests shall only be propounded for specific issues, rather than
18 general discovery of a product or business.

19 7. Email production requests shall be phased to occur after the parties have exchanged
20 initial disclosures and basic documentation about the patents, the prior art, the accused
21 instrumentalities, and the relevant finances.

22 8. Absent a showing of good cause, email production requests shall be limited to five
23 custodians selected by the requesting party. The email production requests shall identify the
24 custodian by name for the search of the proposed responsive ESI. Each requesting party shall
25 limit its e-mail production requests to a total of five search terms per custodian. The search terms
26 shall be narrowly tailored to particular issues. Indiscriminate terms, such as the producing
27 company’s name or its product name, are inappropriate unless combined with narrowing search
28 criteria that sufficiently reduce the risk of overproduction. A conjunctive combination of multiple

1 words or phrases (e.g., “computer” and “system”) narrows the search and shall count as a single
2 search term. A disjunctive combination of multiple words or phrases (e.g., “computer” or
3 “system”) broadens the search, and thus each word or phrase shall count as a separate search term
4 unless they are variants of the same word. Use of narrowing search criteria (e.g., “and,” “but not,”
5 “w/x”) is encouraged to limit the production.

6 9. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a
7 privileged or work product protected ESI is not a waiver in the pending case or in any other
8 federal or state proceeding. The production of later claimed privileged material within the ESI
9 produced in this litigation shall be considered an inadvertent production under Rule 502 and shall
10 not itself constitute a waiver for any purpose.

11 10. The parties may jointly agree to modify this limit without the Court’s leave. The
12 Court shall consider contested requests for up to five additional custodians per producing party or
13 additional search terms, upon showing a distinct need based on the size, complexity, and issues of
14 this specific case. Cost-shifting may be considered as part of any such request.

15
16 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

17
18 DATED: April 28, 2015

Respectfully submitted,
HAUSFELD LLP

/s/ Bruce Wecker
Bruce Wecker
Attorneys for Plaintiff Twin Peaks Software Inc.

19
20
21
22
23 DATED: April 28, 2015

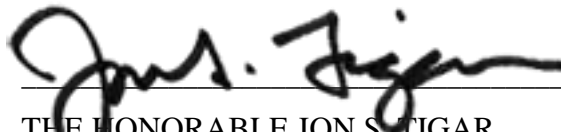
Respectfully submitted,
QUINN EMANUEL URQUHART &
SULLIVAN, LLP

/s/ Robert W. Stone
Robert W. Stone
Attorneys for Defendant IBM Corporation

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

IT IS ORDERED that the forgoing Agreement is approved.

DATED: April 30, 2015



THE HONORABLE JON S. TIGAR
UNITED STATES DISTRICT JUDGE