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9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN FRANCISCO DIVISION
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13 PHOENIX TECHNOLOGIES LTD., a
 Delaware corporation
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 Plaintiff,
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 v.
 16 VMWARE, INC., a Delaware Corporation
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 Defendant.
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Case No. 15-cv-01414-HSG

STIPULATION TO MODIFY EXPERT REPORT DEADLINES AND ORDER

[CIVIL L.R. 6-2]

DEMAND FOR JURY TRIAL

Trial Date: November 28, 2016

21 VMWARE, INC., a Delaware Corporation,
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 Counterclaimant,
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 v.
 24 PHOENIX TECHNOLOGIES LTD. a
 Delaware Corporation,
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 Counterdefendant.
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STIPULATION

Pursuant to Civil Local Rule 6-2, Phoenix Technologies Ltd. (“Plaintiff”) and Defendant VMware, Inc. (“Defendant”) (collectively, the “Parties”) file this joint stipulation requesting that the Court issue an order modifying certain deadlines in order to streamline expert discovery relating to damages in this case. The parties accordingly stipulate as follows:

WHEREAS, the Court’s case management schedule requires opening expert disclosures by May 6, 2016 and rebuttal expert disclosures by May 27, 2016;

WHEREAS, to allow the completion of fact discovery in this matter, the Parties believe a slight extension to the schedule for expert reports would be beneficial;

WHEREAS, the remedy of infringer’s profits includes issues on which Phoenix and VMware, respectively, bear the burden of proof;

WHEREAS, the Parties wish to streamline the presentation of expert reports;

WHEREAS, the Parties agree that both VMware and Phoenix shall serve opening technical reports on the Opening Expert Disclosure date, and then a set of rebuttal technical reports, if appropriate, on the Rebuttal Expert Disclosure date;

WHEREAS, the Parties agree that Phoenix shall serve an opening expert report on all damages issues for which it bears the burden of proof on the Opening Expert Disclosure date, VMware shall serve a single expert report rebutting Phoenix’s damages report and offering opinions and analysis regarding damages issues for which VMware bears the burden of proof on the Rebuttal Expert Disclosure date, and Phoenix shall serve a reply report rebutting VMware’s damages report on the Reply Expert Disclosure date,

NOW, THEREFORE, the Parties hereby stipulate and agree to the following deadlines for expert reports:

	Prior Deadline	New Deadline
Opening Expert Disclosures. For Phoenix: Phoenix’s opening damages report from Mr. Lynde, and technical expert reports from Mr. Zeidman and Mr. Polish. For VMware: VMware’s technical expert reports from Mr. Cullimore and Mr. Mowry.	May 6, 2016	May 13, 2016

	Prior Deadline	New Deadline
Rebuttal Expert Disclosures. For Phoenix: rebuttal technical expert reports from Mr. Zeidman and Mr. Polish. For VMware: damages expert report rebutting Mr. Lynde and on issues for which it bears the burden of proof (i.e., for the remedy of infringer's profits, deductible expenses and the portion of profit attributable to the copyrighted work) from Ms. Davis and rebuttal technical expert reports from Mr. Cullimore and Mr. Mowry.	May 27, 2016	June 10, 2016
Phoenix's Reply Damages Expert Report from Mr. Lynde rebutting VMware's damages expert report.	--	June 27, 2016
Expert Discovery Cutoff	June 24, 2016	July 8, 2016
Last Day to File Motion to Compel Expert Discovery	July 1, 2016	July 15, 2016

The parties have also mutually agreed to withdraw certain 30(b)(6) deposition topics. To the extent an expert relies upon information obtained from an employee who has not already been deposed in rendering their opinions that would have been the subject of one of the withdrawn 30(b)(6) topics, the opposing party may have the opportunity to depose that employee, notwithstanding the fact discovery cut-off of April 29, 2016. Any such deposition would be limited solely to the information provided by the employee that the expert relied upon. Should a party request an additional fact witness deposition pursuant to this provision, the notice must be served no later than five days after service of the expert report that relies upon the employee information, or if it is not clear from the report, within five days of the deposition of that expert.

The Parties submit that the schedule modification proposed above would not change any other deadlines in this case or for the Court.

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Dated: April 8, 2016

COOLEY LLP

/s/ Whitty Somvichian
Whitty Somvichian
Attorneys for Plaintiff
PHOENIX TECHNOLOGIES LTD.


Dated: April 8, 2016

MORRISON & FOERSTER LLP

/s/ Arturo J. González¹
Arturo J. González
Attorneys for Defendant
VMWARE, INC.

PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED.

Dated: 4/11/2016

By: 
HAYWOOD S. GILLIAM, JR.
United States District Judge

¹ I, Arturo J. González, am the ECF User whose ID and password are being used to file this Declaration. In compliance with Civil L.R. 5-1(i)(3) I hereby attest that Whitty Somvichian has concurred in this filing.