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 6 **BAXTER HEALTHCARE SA**

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 15 **FRESENIUS MEDICAL CARE HOLDINGS,**
INC. AND FRESENIUS USA, INC.

17 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
 18 **SAN FRANCISCO DIVISION**

19 BAXTER HEALTHCARE
 20 CORPORATION,
 BAXTER INTERNATIONAL INC.,
 21 BAXTER HEALTHCARE SA, AND
 22 DEKA LIMITED PARTNERSHIP,

23 *Plaintiffs and Counter-defendants,*

24 vs.

25 FRESENIUS MEDICAL CARE
 26 HOLDINGS, INC., d/b/a FRESENIUS
 MEDICAL CARE NORTH AMERICA,
 and FRESENIUS USA, INC.,

27 *Defendants and Counter-claimants.*

Case No. C 07-01359 PJH (JL)

**FIRST AMENDED STIPULATION TO SET
 CASE DATES OCCURRING BETWEEN
 THE MARKMAN HEARING AND TRIAL
 AND ORDER**

1 WHEREAS, the Court previously entered a schedule, based on the parties' stipulation,
2 [Dkt. Nos. 119, 120]for the case proceedings between the *Markman* Hearing and trial date;

3 WHEREAS, the prior schedule was based, in part, on the assumption that it would take
4 five weeks to issue a claim construction Order; and;

5 WHEREAS, the Court has advised the parties that the claim construction Order may not
6 issue in time to adhere to the current schedule,

7 NOW, THEREFORE, it is stipulated by the respective parties and their counsel of
8 record:

9 parties
At the claim construction hearing the ~~Court~~ raised the possibility that further claim
10 limitations might require construction following issuance of the claim construction Order. ~~The~~
A schedule for any further claim construction will be set at the case management conference which
11 ~~parties agree that, absent special circumstances, they will raise any such further claim~~
will follow the initial claim construction ruling.
12 ~~construction issues in the context of summary judgment motions.~~

13 The following table is commended to the Court for its adoption as the dates by which the
14 present case shall proceed.

EVENT	By Local Rule or Court Order	Parties' Proposed Stipulated Dates
Subsequent Case Management Conference (PJH patent order ¶12)	Date set at same time as claim construction ruling	
Final Infringement Contentions (Patent L.R. 3-6(a))	Not later than 30 days after Claim Construction Ruling	
Final Invalidity Contentions (Patent L.R. 3-6(a))	Not later than 50 days after Claim Construction Ruling	
Defendants' Disclosure of Reliance on Advice of Counsel and Production of Opinion (Patent L.R. 3-8)	Not later than 50 days after Claim Construction Ruling	
Fact Discovery Cut-Off		December 1, 2008
Final Date for Motions to Compel Fact Discovery (Civ. L.R. 26)	No more than 7 days after cut-off	

1	Willfulness Discovery Cut-Off	14 calendar days after Defendants' Disclosure of Reliance on Advice of Counsel and Production of Opinion	
2			
3	Deadline for Expert Reports for Issues on which the Parties Bear the Burden	60 days following claim construction ruling	
4			
5	Deadline for Rebuttal Expert Reports	88 days after claim construction ruling	
6			
7	Expert Discovery Cut-Off	110 days after claim construction ruling	
8			
9	Final Date for Motions to Compel Expert Discovery (Civ. L.R. 26)	No more than 7 days after cut-off	
10			
11	Deadline for Filing of Dispositive Pretrial Motions	To be determined	
12			
13	Deadline for Hearing Dispositive Motions (Dkt 87)	Not later than 35 days after filing of motion (Civ. L.R. 7-2)	
14			
15	Final Pretrial Conference meet and confer (Dkt 87)	Not less than 40 days prior to Pretrial Conference	
16			
17	Joint Pretrial Statement, trial briefs, motions <i>in limine</i> , etc (Dkt 87)	Not less than 30 days prior to Pretrial Conference	
18			
19	Oppositions to Motions <i>in limine</i>	Not less than 15 days prior to the pretrial conference	
20			
21	Pretrial Conference		March 12, 2009 2:30 p.m.
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23	Trial		April 6, 2009 8:30 a.m.
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September 2, 2008

By: /s/ David K. Callahan

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September 2, 2008

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September 2, 2008

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HOLDINGS, INC. AND FRESENIUS USA,
INC.*

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ELECTRONIC FILING DECLARATION OF DAVID K. CALLAHAN, P.C.

I, David K. Callahan, declare as follows:

1. I am a partner at Kirkland & Ellis LLP, and I am Baxter Healthcare Corporation’s legal counsel in the above-captioned litigation.
2. Pursuant to the Northern District of California Electronic Filing Procedures and General Order No. 45, I attest that Michael E. Florey, counsel for Defendants, Fresenius Medical Care Holdings, Inc., d/b/a Fresenius Medical Care North America, and Fresenius USA, Inc., (collectively “Fresenius”), and Maureen K. Toohey, counsel for Plaintiff DEKA Products Limited Partnership, concur in the filing of this document and have granted me permission to electronically file this document absent their actual signatures.

Dated: September 2, 2008

Respectfully submitted,
Kirkland & Ellis LLP

By: /s David K. Callahan s/
David K. Callahan, P.C. (IL 620227),
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Attorney for Plaintiff and Counter-defendant
BAXTER HEALTHCARE CORPORATION

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

BAXTER HEALTHCARE
CORPORATION,
BAXTER INTERNATIONAL INC.,
BAXTER HEALTHCARE SA, AND
DEKA LIMITED PARTNERSHIP,

Plaintiffs and Counter-defendants,

vs.

FRESENIUS MEDICAL CARE
HOLDINGS, INC., d/b/a FRESENIUS
MEDICAL CARE NORTH AMERICA,
and FRESENIUS USA, INC.,

Defendants and Counter-claimants.

Case No. C 07-01359 PJH (JL)

**[PROPOSED] ORDER TO SET CASE
DATES OCCURRING BETWEEN THE
MARKMAN HEARING AND TRIAL**

AS MODIFIED BY THE COURT, IT IS SO ORDERED
PURSUANT TO STIPULATION, ~~IT IS SO ORDERED~~, the dates set forth in the FIRST
AMENDED STIPULATION TO SET CASE DATES OCCURRING BETWEEN THE
MARKMAN HEARING AND TRIAL are adopted by the Court and shall govern the
proceedings of the case.

DATED: September 3, 2008

