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15 Attorneys for Defendant and Counterclaim-Plaintiff
 Apple Inc.

17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA**
 19 **OAKLAND DIVISION**

19 AFFINITY LABS OF TEXAS, LLC, a
 20 Texas Limited Liability Company,
 21 Plaintiff and
 Counterclaim-Defendant,
 22 v.
 23 APPLE INC., a California Corporation,
 24 Defendant and
 25 Counterclaim-Plaintiff.

CASE NO. CV 09-4436-CW

**STIPULATION REGARDING
 SUFFICIENCY OF CERTAIN
 INTERROGATORY RESPONSES AND
 EXPERT DISCOVERY; ORDER**

Judge: Hon. Claudia Wilken

1 IT IS HEREBY STIPULATED by and between Plaintiff and Counterclaim-Defendant
2 Affinity Labs of Texas, LLC (“Affinity”) and Defendant and Counterclaim-Plaintiff Apple Inc.
3 (“Apple”) as follows:

4 WHEREAS, a disagreement has arisen as to the sufficiency of Affinity’s response to
5 Apple Interrogatory No. 8 and the sufficiency of Apple’s response to Affinity Interrogatory
6 No. 3;

7 WHEREAS, a disagreement has arisen concerning when Apple made source code
8 available for Affinity’s inspection; and

9 WHEREAS, the parties have reached agreement on how to proceed with supplemental
10 expert reports and expert depositions in resolution of these disagreements, as described below:

11 NOW, THEREFORE, IT IS HEREBY STIPULATED BY AND BETWEEN THE
12 PARTIES HERETO, THROUGH THEIR RESPECTIVE COUNSEL AND SUBJECT TO THE
13 APPROVAL OF THE COURT, AS FOLLOWS:

14 1. Apple shall continue to make the source code available to Affinity and/or its
15 experts after serving Apple’s rebuttal expert report on infringement so that (if
16 Affinity chooses) Affinity’s expert (or a colleague authorized under the
17 Protective Order) can inspect Apple’s source code. Affinity shall be entitled to
18 serve a supplemental expert report by April 22, 2011, based solely upon
19 Affinity’s expert’s review of source code set forth in this paragraph and
20 limited in scope to rebutting positions set forth in Apple’s rebuttal expert
21 report based on Apple’s source code;

22 2. Affinity served on Apple on Friday, March 18, 2011, a supplemental response
23 to Apple Interrogatory No. 8 identifying all grounds of which Affinity was
24 aware that support Affinity’s contention that there are secondary indicia of
25 non-obviousness. Affinity’s expert report on validity to be served on April 12,
26 2011, shall also address the issue of secondary indicia of non-obviousness.

27 Apple shall be entitled to serve a supplemental expert report by April 22, 2011,
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- on the issue of validity limited in scope to rebutting positions set forth in Affinity’s expert report on the issue of secondary indicia of non-obviousness;
- 3. Neither Affinity’s nor Apple’s expert shall be required to disclose in a written report any rebuttal to the supplemental reports on the issues of secondary indicia of non-obviousness or infringement, respectively. Both experts shall be required to disclose any such rebuttal testimony in response to questions in deposition and such rebuttal shall not include new opinions beyond those disclosed in the expert’s written reports; and
- 4. The parties agree to move the close of expert discovery to May 3, 2011 to complete the depositions of Affinity’s and Apple’s technical expert(s).

Dated: April 11, 2011

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By: /s/ Darin J. Glasser
 Darin J. Glasser

Attorneys for Defendant and Counterclaim-Plaintiff APPLE INC.

Dated: April 11, 2011

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Pursuant to General Order No. 45 X(B), I hereby attest that concurrence in the filing of this document has been obtained from Matt Gaudet.

Dated: April 11, 2011

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Attorneys for Defendant and Counterclaim-
Plaintiff APPLE INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED:

Dated: 4/11/2011



Honorable Claudia Wilken
United States District Judge

LA2:927557.2