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7 Attorneys for Plaintiff and Counter-Defendant,
 PHOENIX TECHNOLOGIES, LTD.

9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**
 11 **OAKLAND DIVISION**

13 PHOENIX TECHNOLOGIES, LTD., a
 Delaware corporation,

14 Plaintiff,

15 vs.

16 DEVICEVM, INC., a Delaware corporation,
 17 and BENEDICT CHONG, an individual,

18 Defendants.

19 DEVICEVM, Inc., a Delaware corporation,

20 Counterclaimant,

21 v.

22 PHOENIX TECHNOLOGIES LTD., a Delaware
 corporation,

23 Counterclaim-defendant.
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Case No.: 4:09-CV-04697-CW (EDL)

**STIPULATION AND ORDER
 REGARDING LEAVE TO FILE SECOND
 AMENDED COMPLAINT**

Judge: Honorable Claudia Wilken
 Room: Courtroom 2, 4th Floor

Complaint Filed: July 17, 2009
 Trial Date: TBD

1 WHEREAS, on August 31, 2009, plaintiff Phoenix Technologies Ltd. (“Plaintiff”) filed the
2 First Amended Complaint in the Superior Court of the State of California in and for the County of
3 Santa Clara;

4 WHEREAS, on October 1, 2009, defendants DeviceVM, Inc. and Benedict Chong
5 (“Defendants”) timely removed the case to this Court pursuant to its federal question jurisdiction
6 under 28 U.S.C. § 1441(a);

7 WHEREAS, on December 21, 2009, Defendants filed their Answers and Affirmative
8 Defenses to the First Amended Complaint, and on January 8, 2010, Defendant DeviceVM filed
9 Amended Counterclaims against Plaintiff;

10 WHEREAS, on February 4, 2010, Plaintiff filed a separate action in the United States District
11 Court for the Northern District of California against Defendant DeviceVM, Inc. for the alleged
12 infringement of U.S. Patent No. 6,519,659 styled *Phoenix Technologies, LTD v. DeviceVM, Inc.* Case
13 No. 3:10-cv-00514-VRW (the “Phoenix Patent Infringement Case”);

14 WHEREAS, the parties have met and conferred and have reached an agreement that will
15 result in: (a) Phoenix being granted leave to further amend the First Amended Complaint in this case
16 by filing a Second Amended Complaint which asserts one additional count for infringement of U.S.
17 Patent No. 6,519,659; and (b) concurrent with the filing of the Second Amended Complaint in this
18 case, Phoenix will file a Notice of Dismissal of Complaint Without Prejudice in the Phoenix Patent
19 Infringement Case;

20 NOW, THEREFORE, the undersigned parties hereby stipulate and agree, and respectfully
21 request that the Court enter an order, as follows:

22 1. Phoenix is granted leave to file a Second Amended Complaint asserting one additional
23 claim for patent infringement within five (5) days of entry of this Order;

24 2. Defendants responsive pleading shall be due on or before March 19, 2010.

25 IT IS SO STIPULATED.

26 O’MELVENY & MYERS LLP

27 By: /s/ Stephen J. Akerley

Stephen J. Akerley

28 Dated: March 1, 2010

Attorneys for Defendants / Counterclaimants,
DeviceVM, Inc. and Benedict Chong

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K&L GATES LLP

Dated: March 1, 2010

By: /s/ Bryan J. Sinclair
Bryan J. Sinclair

Attorneys for Plaintiff / Counter-Defendant,
Phoenix Technologies, Ltd.

I, Bryan J. Sinclair, am the ECF User whose ID and password are being used to file this Stipulation and [Proposed] Order Regarding Scheduling Matters. In compliance with General Order 45, X.B., I hereby attest that Bryan J. Sinclair has concurred in this filing.

By: /s/ Bryan J. Sinclair
Bryan J. Sinclair

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: March 22, 2010



THE HONORABLE CLAUDIA WILKEN
UNITED STATES DISTRICT COURT JUDGE