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11 Attorneys for Defendants  
12 DEVICEVM, INC. a Delaware corporation, and  
BENEDICT CHONG, an individual

13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA**

15  
16 PHOENIX TECHNOLOGIES, LTD., a  
Delaware corporation,

17 Plaintiff,

18 v.

19 DEVICEVM, Inc., a Delaware corporation,  
20 and BENEDICT CHONG, an individual,

21 Defendants.

22 DEVICESVM, Inc., a Delaware corporation,

23 Counterclaimant,

24 v.

25 PHOENIX TECHNOLOGIES LTD., a  
26 Delaware corporation,

27 Counterclaim-defendant.  
28

CASE NO. C 09-04697-CW (EDL)

**JOINT STIPULATION AND ORDER  
REGARDING RESPONSE TO SECOND  
AMENDED COMPLAINT**

Judge: Hon. Claudia A. Wilken  
Trial Date: None Set

1 **STIPULATION**

2 WHEREAS, on October 1, 2009, Defendant/Counterclaimant DeviceVM, Inc.  
3 (“DeviceVM”) and Defendant Benedict Chong (“Chong”) (collectively, “Defendants”) removed  
4 this action from Santa Clara County Superior Court to this Court in the Northern District of  
5 California (Doc. No. 1);

6 WHEREAS, on January 8, 2010, DeviceVM filed Amended Counterclaims against  
7 Plaintiff/Counterclaim-Defendant Phoenix Technologies, Ltd. (“Phoenix”), including a claim for  
8 patent infringement (Doc. No. 63);

9 WHEREAS, on February 4, 2010, Phoenix filed a separate action in the Northern District  
10 of California, San Jose Division, for patent infringement against DeviceVM (*see* Case No.  
11 10cv00514);

12 WHEREAS, on March 1, 2010, Defendants and Phoenix filed a stipulation and proposed  
13 order (the “Stipulation”) agreeing that Phoenix would dismiss its separate patent suit against  
14 DeviceVM without prejudice and file a Second Amended Complaint in the instant case, which  
15 would include Phoenix’s patent claim (Doc. No. 100);

16 WHEREAS, the Stipulation provided that Phoenix would file the Second Amended  
17 Complaint within five days of the Court entering an Order granting the Stipulation, and that  
18 Defendants would respond to the Second Amended Complaint by March 19, 2010;

19 WHEREAS, on March 22, 2010, the Court entered an Order approving the Stipulation as  
20 submitted by the parties (Doc. No. 104);

21 WHEREAS, because the due date for Defendants’ responses to the Second Amended  
22 Complaint under the Court’s Order granting the Stipulation has already passed, but Phoenix has  
23 not yet filed the Second Amended Complaint, the parties have agreed that Defendants should  
24 have five days from the filing of the Second Amended Complaint to file their responses;

25  
26  
27  
28

1           NOW, THEREFORE, the undersigned parties hereby stipulate and agree, and respectfully  
2 request that the Court enter an Order, as follows:

3           1. Defendants' deadline to file an answer or otherwise respond to the Second  
4 Amended Complaint shall be within five (5) of the date of its filing with the Court.

5           **IT IS SO STIPULATED.**

6           Dated: March 23, 2010

DAVID ENZMINGER  
ERIC J. AMDURSKY  
PETER T. SNOW  
JILLIAN R. WEADER

O'MELVENY & MYERS LLP

10           By: \_\_\_\_\_ /s/  
Peter T. Snow  
Attorneys for Defendants  
DeviceVM, Inc. and Benedict Chong

13           Dated: March 23, 2010

KARINEH KHACHATOURIAN  
BRYAN J. SINCLAIR  
  
K&L GATES LLP

17           By: \_\_\_\_\_ /s/  
Karineh Khachatourian  
Attorneys for Plaintiff  
Phoenix Technologies Ltd.

19           I, Peter T. Snow, am the ECF user whose ID and password are being used to file this  
20 stipulation and [Proposed] Order. In compliance with General Order 45, X B, I hereby attest that  
Karineh Khachatourian has concurred in this filing.

21           O'MELVENY & MYERS LLP

22           By: \_\_\_\_\_ /s/  
Peter T. Snow

24           **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

26           Dated: 3/26/2010

By:   
\_\_\_\_\_  
The Honorable Claudia A. Wilken  
United States District Judge