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BACKWEB TECHNOLOGIES, LTD.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

BACKWEB TECHNOLOGIES, LTD.,

Plaintiff,

v.

HEWLETT-PACKARD COMPANY,

Defendant.

Case No. C 10-4311 PJH

**STIPULATION AND [PROPOSED]
ORDER FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT**

1 Plaintiff BackWeb Technologies, Ltd. (“Plaintiff”) and defendant Hewlett-
2 Packard Company (“Defendant”), hereby stipulate through their respective counsel of
3 record as follows:

4 WHEREAS, on or about September 24, 2010, Plaintiff served its Original Complaint
5 upon Defendant;

6 WHEREAS, Plaintiff’s Complaint alleges counts for patent infringement, including
7 direct infringement, induced infringement, contributory infringement and willful
8 infringement;

9 WHEREAS, Defendant filed its First Motion to Dismiss in Part Count 1 of Plaintiff’s
10 Complaint Pursuant to Fed. R. Civ. P. 12(B)(6) for Failure to State A Claim on or about
11 November 5, 2010 (challenging the sufficiency of the allegations of induced infringement,
12 contributory infringement and willful infringement);

13 WHEREAS, Plaintiff has drafted its First Amended Complaint, in order to allege in
14 more detail facts stating claims for relief for induced infringement, contributory infringement
15 and willful infringement;

16 WHEREAS, Defendant and Plaintiff have agreed and stipulated to Plaintiff’s filing of
17 the First Amended Complaint, and to Defendant’s withdrawal of its current motion to dismiss
18 (without prejudice to Defendant’s right to file a subsequent motion, to dismiss the First
19 Amended Complaint, should it dispute the sufficiency of those allegations), and that it would
20 be more expeditious for any motion practice on the pleadings to be with respect to the more
21 detailed pleading stated in the First Amended Complaint; and

22 WHEREAS, no trial date has yet been set in this action;

1 WHEREFORE IT IS HEREBY STIPULATED BY THE PARTIES HERETO that
2 Plaintiff may have leave to file its First Amended Complaint, attached hereto as Exhibit 1.
3 Plaintiff and Defendant, through their respective counsel of record, have agreed to this filing.

4 DATED: November 22, 2010

5 HOSIE RICE LLP

6
7 By: /s/ George Bishop
8 George Bishop
9 Attorneys for Plaintiff
BackWeb Technologies, Ltd.

10 FISH & RICHARDSON P.C.

11
12 By: /s/ Shelley K. Mack
13 Shelley K. Mack
14 Attorneys for Defendant
Hewlett-Packard Company

15 I hereby attest pursuant to General Order 45.X.B. that concurrence in the electronic
16 filing of this document has been obtained from the other signatories.

17 DATED: November 22, 2010

18
19 /s/ George Bishop
20 George Bishop

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PURSUANT TO STIPULATION IT IS ORDERED THAT

Leave to file Plaintiff's First Amended Complaint is GRANTED.

Dated: November 29, 2010

