

1 MANATT, PHELPS & PHILLIPS, LLP
 ROBERT D. BECKER (Bar No. CA 160648)
 2 E-mail: rbecker@manatt.com
 RONALD S. KATZ (Bar No. CA 085713)
 3 E-mail: rkatz@manatt.com
 SHAWN G. HANSEN (Bar No. CA 197033)
 4 E-mail: shansen@manatt.com
 1001 Page Mill Road, Building 2
 5 Palo Alto, CA 94304-1006
 Telephone: (650) 812-1300
 6 Facsimile: (650) 213-0260

7 *Attorneys for Plaintiff*
 KELORA SYSTEMS, LLC
 8

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

12 Kelora Systems, LLC,
 13

Plaintiff,

14 vs.
 15

16 Target Corporation, et al.,

Defendants.
 17

No. 11-CV-1548-CW

STIPULATION PURSUANT TO FED. R. CIV. P. 21 AND 15(A)(2) TO ADD DEFENDANTS HEWLETT-PACKARD COMPANY, ZAPPOS.COM, INC., AND AUDIBLE, INC., AND TO DROP DEFENDANT HEWLETT-PACKARD DEVELOPMENT COMPANY, L.P.

18
 19
 20 **I. INTRODUCTION**

21 Pursuant to Federal Rules of Civil Procedure 21 and 15(a)(2) and Civil L.R. 7-12, Plaintiff
 22 Kelora Systems, LLC (“Kelora”), and Defendants Hewlett-Packard Development Company, L.P.
 23 (“HPDC”), and Amazon.com, Inc. (“Amazon”), hereby stipulate to add and drop certain entities
 24 related to HPDC and Amazon, as discussed further below. The remaining Defendants and
 25 Counterclaimants in the above-captioned action do not oppose this Stipulation. The relief sought
 26 in this Stipulation will not affect any hearing or proceeding on the Court’s calendar.
 27
 28

1 **II. HEWLETT-PACKARD ENTITIES**

2 HPDC represents that it is a wholly-owned subsidiary of Hewlett-Packard Company
3 (“HP”), is a holding company for Hewlett-Packard Company’s intellectual property rights, and
4 has never been involved in the hosting, operation, maintenance, development, or design of any e-
5 commerce websites, including the Accused Instrumentality that is identified in Appendix P of
6 Kelora’s Patent L.R. 3-1 Disclosure of Asserted Claims and Infringement Contentions.

7 Consistent with the Court’s guidance provided during the May 31, 2011, Case
8 Management Conference (*see* Tr. at p. 14), Kelora, HPDC, and HP have agreed pursuant to
9 Federal Rules of Civil Procedure 21 and 15(a)(2) to add HP and drop HPDC as Defendants in this
10 case as follows:

11 (1) HP is responsible for any infringement that may be found regarding the Accused
12 Instrumentalities identified in Kelora’s infringement contentions served on HPDC; in this regard
13 HP agrees to step into the shoes of HPDC and that HPDC may be treated as the correct entity for
14 purposes of the alleged infringement and liability related to such Accused Instrumentalities.

15 (2) No defense will be raised that HPDC is a necessary party for such claims.

16 (3) Kelora will be entitled to re-instate HPDC as a Defendant if any such defense is
17 asserted.

18 **III. AMAZON ENTITIES**

19 Kelora’s infringement contentions regarding Amazon in Appendix K of Kelora’s Patent
20 L.R. 3-1 Disclosure of Asserted Claims and Infringement Contentions identify five websites:
21 www.amazon.com, www.abebooks.com, www.audible.com, www.endless.com, and
22 www.zappos.com. Amazon represents that www.abebooks.com, www.audible.com (“Audible”),
23 and www.zappos.com (“Zappos”), are not operated by Amazon.com, Inc. As Audible and
24 Zappos are wholly-owned subsidiaries of Amazon, Kelora and Amazon agree that Audible and
25 Zappos will be added as Defendants and subject to the corresponding infringement contentions in
26 Appendix K of Kelora’s Patent L.R. 3-1 Disclosure of Asserted Claims and Infringement
27 Contentions.

1 **VI. PROCEDURAL MATTERS**

2 Submitted herewith as Exhibit A is Kelora’s proposed Second Amended Complaint
3 reflecting the changes to the parties discussed herein. Defendants that have been dismissed since
4 the filing of Kelora’s First Amended Complaint have been omitted in the draft Second Amended
5 Complaint. No other substantive changes have been made with respect to the allegations
6 regarding other Defendants.

7 To avoid unnecessary filings on the Court’s docket, pleadings responsive to Kelora’s
8 Second Amended Complaint need only be filed by the new parties, Audible and Zappos. As HP
9 will be stepping into the shoes of HPDC, HP will adopt HPDC’s Answer and Counterclaims
10 (Docket No. 279). The previously filed Answers and Counterclaims of Defendants Target
11 Corporation (Docket No. 281), OfficeMax Incorporated (Docket No. 285), Rockler Companies,
12 Inc. (Docket No.280) , 1-800-Flowers.com, Inc. (Docket No. 283), Amazon.com, Inc. (Docket
13 No. 286), Dell, Inc. (Docket No. 272), Office Depot, Inc. (Docket No. 282), Newegg Inc. (Docket
14 No. 275), Costco Wholesale Corporation (Docket No. 284), and CircuitCity.com Inc. (Docket No.
15 276), will be deemed filed in response to Kelora’s proposed Second Amended Complaint.

16 Kelora, HP, Audible, and Zappos will meet and confer regarding dates for initial
17 disclosures and Patent L.R. 3-4(a) document productions by HP, Audible, and Zappos.

18
19 DATED: August 11, 2011

20 By: /s/ Robert D. Becker
21 Robert D. Becker
22 Ronald S. Katz
23 Shawn G. Hansen
24 MANATT, PHELPS & PHILLIPS, LLP
25 1001 Page Mill Road, Building 2
26 Palo Alto, CA 94304
27 Telephone: (650) 812-1300
28 Email: rbecker@manatt.com
 Email: rkatz@manatt.com
 Email: shansen@manatt.com

 Attorneys for Plaintiff
 KELORA SYSTEMS, LLC

By: /s/ Richard S. Zembek
 Dan D. Davison
 Richard S. Zembek
 Daniel S. Leventhal
 FULBRIGHT & JAWORSKI L.L.P.
 2200 Ross Avenue, Suite 2800
 Dallas, Texas 75201-2784
 Telephone: (214) 855-8000
 Email: ddavison@fulbright.com
 Email: rzembek@fulbright.com
 Email: dleventhal@fulbright.com

 Gilbert A. Greene
 FULBRIGHT & JAWORSKI, LLP
 98 San Jacinto Blvd., Suite 1100
 Austin, TX 78701-4255
 Telephone: (512) 536-3097

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Email: ggreene@fulbright.com

John A. O'Malley
FULBRIGHT & JAWORSKI LLP
555 South Flower Street, 41st Floor
Los Angeles, CA 90071
Telephone: (213) 892-9200
Email: jomalley@fulbright.com

Attorneys for Defendants
AMAZON.COM, INC., AND HEWLETT-
PACKARD DEVELOPMENT COMPANY,
L.P.

SIGNATURE ATTESTATION

Pursuant to General Order No. 45(X)(B), I hereby certify that concurrence in the filing of this document has been obtained from the other signatory shown above.

/s/Robert D. Becker

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 8/11/2011



Hon. Claudia Wilken
U.S. District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 11, 2011, all counsel of record who are deemed to have consented to electronic service are being served, via the Court’s CM/ECF system pursuant to Civil L.R. 5-4 and General Order 45, with a copy of the foregoing STIPULATION PURSUANT TO FED. R. CIV. P. 21 AND 15(A)(2) TO ADD DEFENDANTS HEWLETT-PACKARD COMPANY, ZAPPOS.COM, INC., AND AUDIBLE, INC., AND TO DROP DEFENDANT HEWLETT-PACKARD DEVELOPMENT COMPANY, L.P.

By: /s/ Robert D. Becker
Robert D. Becker

300363749.1