

1 All Counsel Listed On Signature Page

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BRANDYWINE COMMUNICATIONS  
TECHNOLOGIES, LLC,

Plaintiff,

v.

AT&T CORP, et al.,

Defendants.

Civil Action No. 4-12-02494 CW

**PARTIES' STIPULATION AND JOINT  
MOTION TO AMEND CASE SCHEDULE  
OR ALTERNATIVELY REQUEST FOR A  
FURTHER CASE MANAGEMENT  
CONFERENCE**

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Plaintiff Brandywine Communications Technologies, LLC (“Brandywine”) and Defendants AT&T Corp. and SBC Internet Services, Inc. (“Defendants”), (collectively the “Parties”) hereby stipulate and respectfully submit this stipulation and joint motion to amend certain dates in the case schedule, while preserving the mediation deadline, final pretrial conference, and trial date in the current case schedule; or alternatively request for a further case management conference (“Stipulation”). In support, the Parties state as follows:

On June 13, 2013, the Court issued an Order temporarily staying this case pending a decision by the Judicial Panel on Multidistrict Litigation (“JPML”) on Brandywine’s motion to consolidate. (Dkt. No. 81.) On August 8, 2013, the JPML denied Brandywine’s motion. (*See* Dkt. No. 82.) On August 12, 2013, the Court lifted the stay and reset the claim construction hearing that had been scheduled for June 27, 2013 to September 5, 2013. (Dkt. No. 83). On August 26, 2013, the Parties filed a Stipulation and Joint Motion to Amend Case Schedule. (Dkt. No. 86.) The next day, the stipulation was granted in part. (Dkt. No. 87.) In particular, the meditation deadline, close of fact discovery, and due dates for expert reports were adjusted. (*Id.*) The other dates on the

1 schedule were left unchanged. (*Id.*)<sup>1</sup> On October 1, 2013, the Parties submitted a stipulation and  
2 joint motion to extend the case schedule by approximately three months. (Dkt. No. 95.) On  
3 October 7, 2013, the Court denied the stipulation. (Dkt. No. 96.)

4 Since receiving the Court's denial of the Parties' stipulation (Dkt. No. 95), the Parties have  
5 conferred and respectfully submit this Stipulation that seeks to amend the schedule as set forth in  
6 Attachment A in order to allow additional time for the Parties to complete necessary third party  
7 discovery while preserving the mediation deadline, final pretrial conference, and trial date in the  
8 current case schedule. The Parties state that there is good cause for this Stipulation for the  
9 following reasons.

10 First, the Parties are currently in the process of coordinating discovery with numerous third  
11 parties, including over ten equipment vendors, seven inventors, and several other parties with prior  
12 and/or current interests in the asserted patents (collectively "Third Parties"). Because discovery of  
13 many of these Third Parties overlap with discovery required in other pending cases involving the  
14 asserted patents, Brandywine is attempting to coordinate discovery between several pending cases  
15 in order to reduce the burdens on these Third Parties (*e.g.*, Brandywine is attempting to schedule  
16 depositions of inventors at the same time for multiple cases). The proposed schedule in  
17 Attachment A helps to better align the close of fact discovery with other pending cases in order to  
18 assist the Parties in scheduling Third Party discovery. Second, the additional time for discovery  
19 will assist the Parties in completing discovery that they were not able to complete during the time  
20 this case was stayed during the JPML proceedings. Third, the Parties' Stipulation maintains the  
21 present deadlines for mediation, the final pre-trial conference, and trial date in order to maintain the  
22 current timeline to resolve this case and address any reservations the Court may have had to alter  
23 these deadlines in its denial of the Parties' prior stipulation. (Dkt. No. 96.) The only date on the  
24 Court's calendar the Parties' Stipulation seek to change is the motion hearing on dispositive  
25 motions and further case management conference presently scheduled on April 17, 2014. The  
26 Parties' Stipulation seeks to move this date two weeks until on or after May 1, 2014 at a time and

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27 <sup>1</sup> The only other modification to the schedule occurred on September 27, 2012 when the Parties  
28 filed a stipulation to extend the time to serve infringement and invalidity contentions. (Dkt. No.  
60). That stipulation was entered on October 2, 2012. (Dkt. No. 61).

1 date convenient for the Court. As a result, the Parties' Stipulation allows the Parties to better  
2 schedule remaining discovery in a manner less burdensome on Third Parties while maintaining the  
3 overall case schedule and mediation deadline. In further support of this Stipulation, the Parties  
4 submit the attached declaration from Brandywine's counsel as set forth in L.R. 6-2.

5 Finally, should the Court find that this proposed amendment to the schedule is not  
6 acceptable, the Parties respectfully request a telephonic case management conference in order to  
7 allow the Parties to address any concerns the Court has with the Parties' proposed Stipulation.

8 IT IS SO STIPULATED.

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**ATTACHMENT A**

**PARTIES' PROPOSED AMENDED SCHEDULE**

<b>EVENT</b>	<b>Current Schedule</b>	<b>Parties' Proposal</b>
Mediation Deadline	11/1/13	No change
Close of Fact Discovery	12/6/13	1/17/14
Plaintiff Serves Opening Infringement and Damages Expert Reports; Defendants Serve Opening Invalidity Expert Report	12/13/13	1/24/14
Parties Serve Rebuttal Expert Reports	1/31/14	2/28/14
Expert Discovery Deadline	2/21/14	3/19/14
Plaintiff's Opening Dispositive and <i>Daubert</i> Motions Deadline	2/20/14	3/19/14
Defendants' Dispositive and <i>Daubert</i> Motions and Oppositions	3/13/14	4/2/14
Plaintiff's Replies	3/27/14	4/9/14
Defendants' Last Round of Replies	4/3/14	4/16/14
Hearing on All Dispositive Motions	4/17/14 2:00 p.m.	On or after 5/1/14 as set by the Court based on its availability
Further Case Management Conference	4/17/14	On or after 5/1/14 as set by the Court based on its availability
Final Pretrial Conference	7/30/14 2:00 p.m.	No change
Jury Trial	8/11/14 8:30 a.m.	No change

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**ORDER**

**PURSUANT TO STIPULATION, IT IS SO ORDERED:**

DATED: 11/18/2013



Hon. Claudia Wilken  
United States District Court Judge

1 Timothy Devlin (admitted *pro hac vice*)  
Jonathan D. Baker (Cal. Bar No. 196062)  
2 Brian H. VanderZanden (Cal Bar No. 233134)  
Lei Sun (Cal. Bar No. 251304)  
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8 Attorneys for Defendants  
BRANDYWINE COMMUNICATIONS TECHNOLOGIES, LLC  
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11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
13 **OAKLAND DIVISION**

14 BRANDYWINE COMMUNICATIONS  
15 TECHNOLOGIES, LLC,

16 Plaintiff,

17 v.

18 AT&T CORP, et al.,

19 Defendants.  
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Civil Action No. 4-12-02494 CW

**DECLARATION OF LEI SUN IN  
SUPPORT OF PARTIES' STIPULATION  
AND JOINT MOTION TO AMEND CASE  
SCHEDULE OR ALTERNATIVELY  
REQUEST FOR A FURTHER CASE  
MANAGEMENT CONFERENCE**

1 I, Lei Sun, declare as follows:

2 1. I am an attorney in the firm Farney Daniels PC, and one of the attorneys for Plaintiff  
3 Brandywine Communications Technologies, LLC (“Plaintiff”). I have personal knowledge of the  
4 matters stated herein and, if called as a witness, could competently testify thereto under oath.

5 2. The Parties stipulate and move to amend the case schedule or alternatively request  
6 for a further case management conference as set forth in Attachment A to the Parties’ Stipulation  
7 and Joint Motion to Amend Case Schedule or Alternatively Request For A Further Case  
8 Management Conference (“Stipulation”).

9 3. The schedule in this case has previously been amended as follows. On June 13,  
10 2013, the Court issued an Order temporarily staying this case pending a decision by the Judicial  
11 Panel on Multidistrict Litigation (“JPML”) on Brandywine’s motion to consolidate. (Dkt. No. 81.)  
12 On August 8, 2013, the JPML denied Brandywine’s motion. (See Dkt. No. 82.) On August 12,  
13 2013, the Court lifted the stay and reset the claim construction hearing that had been scheduled for  
14 June 27, 2013 to September 5, 2013. (Dkt. No. 83). On August 26, 2013, the Parties filed a  
15 Stipulation and Joint Motion to Amend Case Schedule. (Dkt. No. 86.) The next day, the stipulation  
16 was granted in part. (Dkt. No. 87.) In particular, the meditation deadline, close of fact discovery,  
17 and due dates for expert reports were adjusted. (*Id.*) The other dates on the schedule were left  
18 unchanged. (*Id.*)<sup>1</sup> On October 1, 2013, the Parties submitted a stipulation and joint motion to  
19 extend the case schedule by approximately three months. (Dkt. No. 95.) On October 7, 2013, the  
20 Court denied the stipulation. (Dkt. No. 96.)

21 4. There is good cause for the continuance because the Parties are currently in the  
22 process of coordinating discovery with numerous third parties, including over ten equipment  
23 vendors, seven inventors, and several other parties with prior and/or current interests in the asserted  
24 patents (collectively “Third Parties”). Because discovery of many of these Third Parties overlap  
25 with discovery required in other pending cases involving the asserted patents, Brandywine is

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27 <sup>1</sup> The only other modification to the schedule occurred on September 27, 2012 when the Parties filed  
28 a stipulation to extend the time to serve infringement and invalidity contentions. (Dkt. No. 60).  
That stipulation was entered on October 2, 2012. (Dkt. No. 61).

1 attempting to coordinate discovery between several pending cases in order to reduce the burdens on  
2 these Third Parties (*e.g.*, Brandywine is attempting to schedule depositions of inventors at the same  
3 time for multiple cases). The proposed schedule in Attachment A helps to better align the close of  
4 fact discovery with other pending cases in order to assist the Parties in scheduling Third Party  
5 discovery.

6 5. There further is good cause for the continuance because the additional time for  
7 discovery will assist the Parties in completing discovery that they were not able to complete during  
8 the time this case was stayed during the JPML proceedings.

9 6. Finally, there is good cause for the continuance because the Parties' Stipulation  
10 maintains the present deadlines for mediation, the final pre-trial conference, and trial date in order  
11 to maintain the current timeline to resolve this case and address any reservations the Court may  
12 have had to alter these deadlines in its denial of the Parties' prior stipulation. (Dkt. No. 96.) The  
13 only date on the Court's calendar the Parties' Stipulation seek to change is the motion hearing on  
14 dispositive motions and further case management conference presently scheduled on April 17,  
15 2014. The Parties' Stipulation seeks to move this date two weeks until on or after May 1, 2014 at a  
16 time and date convenient for the Court. As a result, the Parties' Stipulation allows the Parties to  
17 better schedule remaining discovery in a manner less burdensome on Third Parties while  
18 maintaining the overall case schedule and mediation deadline.

19 7. Thus, the Parties' Stipulation does not affect the July 30, 2014 Final Pretrial  
20 Conference date or the August 11, 2014 trial date set by Court order.

21 8. For the reasons set forth above, good cause exists to amend the case schedule. The  
22 Parties agree to the schedule set forth in Attachment A to the Parties' Stipulation.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Executed this 16th day of October, 2013 at Georgetown, Texas.

/s/ Lei Sun  
Lei Sun

Attorney for Plaintiff  
BRANDYWINE COMMUNICATIONS  
TECHNOLOGIES, LLC