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8 Attorneys for Defendant  
 9 SILVER PEAK SYSTEMS, INC.

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 OAKLAND DIVISION

FENWICK & WEST LLP  
 ATTORNEYS AT LAW  
 SAN FRANCISCO

14 RIVERBED TECHNOLOGY, INC.,  
 15 Plaintiff,  
 16 v.  
 17 SILVER PEAK SYSTEMS, INC.,  
 18 Defendant.

Case No. 13-CV-2980-JSW

**STIPULATION REGARDING CLAIM  
 CONSTRUCTION DEADLINES AND  
 MOTION TO CONSTRUE MORE  
 THAN TEN TERMS; REQUEST FOR  
 STATUS CONFERENCE**

19  
 20 WHEREAS on June 28, 2013, Riverbed Technology, Inc. (“Riverbed”) filed a complaint  
 21 asserting infringement of U.S. Patent Nos. 8,271,688 and 8,321,580 against Silver Peak Systems,  
 22 Inc. (“Silver Peak”);

23 WHEREAS, on August 12, 2013, Silver Peak counterclaimed asserting infringement of  
 24 U.S. Patent No. 8,392,684 against Riverbed;

25 WHEREAS, on March 14, 2014, the Court stayed the present action pending the  
 26 resolution of petitions for *inter partes* review filed with the Patent and Trademark Appeal Board  
 27 by both parties;

1 WHEREAS, on July 29, 2014, because the *inter partes* review as to Riverbed's patents  
2 had concluded, the Court lifted the stay as Riverbed's asserted patents;

3 WHEREAS, on August 29, 2014, the Court held a case management conference and set a  
4 schedule for patent disclosures and claim construction proceedings for the Riverbed asserted  
5 patents;

6 WHEREAS, on December 4, 2014, Silver Peak filed an administrative motion to construe  
7 more than ten terms;

8 WHEREAS, on December 16, 2014, Riverbed filed an amended complaint, adding a  
9 claim for infringement of U.S. Patent No. 7,336,682;

10 WHEREAS, the parties were scheduled to submit a joint claim construction chart for the  
11 two previously-asserted Riverbed patents on December 18, 2014;

12 WHEREAS, in light of Riverbed's amended complaint, which asserts a claim for  
13 infringement of a previously-unasserted patent, the Parties agree that moving forward with the  
14 current claim construction deadlines would result in needless duplication of efforts on the part of  
15 the Parties and the Court, including multiple *Markman* hearings;

16 WHEREAS, the Parties agree that the most efficient manner to proceed would be to  
17 vacate the Joint Case Management Statement and all dates therein and enter a new schedule, to  
18 allow the Parties to conduct the necessary investigation and disclosures relating to the newly-  
19 asserted '682 patent;

20 WHEREAS, in light of the newly-asserted patent and the need to propose additional terms  
21 for construction, the Parties agree that Silver Peak's motion to construe more than ten terms  
22 should be withdrawn, without prejudice to re-file the motion at the appropriate time, if necessary,  
23 addressing the proposed terms for construction of all of the patents-in-suit;

24 WHEREAS, the Parties agree that a status conference should be held to set a case  
25 schedule, including without limitation new deadlines for compliance with the Court's Patent  
26 Local Rules;

27 WHEREAS, the Parties agree that Silver Peak shall have until January 30, 2015 to  
28 respond to Riverbed's amended complaint;

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NOW THEREFORE, the Parties request that the Court:

1. Vacate the Joint Case Management Statement and all dates therein and schedule a status conference for the purpose of setting a case schedule;
2. Terminate without prejudice Silver Peak’s administrative motion to construe more than ten claim terms;
3. Extend Silver Peak’s time to respond to the amended complaint until January 30, 2015.

**IT IS SO STIPULATED.**

Dated: December 18, 2014

Respectfully submitted,

DAVIS POLK & WARDWELL LLP

By: /s/ Matthew B. Lehr

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Dated: December 18 2014

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**ATTORNEY ATTESTATION**

Pursuant to General Order 45, Part X-B and Civil Local Rule 5-1(i)(3), the filer attests that concurrence in the filing of this document has been obtained from each of the above signatories.

Dated: December 18 2014

/s/ Michael J. Sacksteder  
Michael J. Sacksteder

**PROPOSED ORDER**

The Court having considered the stipulation of the parties, and good cause appearing therefor, orders as follows:

1. The Joint Case Management Statement and all dates therein are vacated;
2. A status conference is set for February 6, 2015;
3. The Parties shall submit a proposed case schedule seven days prior to the status conference;
4. Silver Peak’s administrative motion to construe more than ten claim terms is terminated without prejudice;

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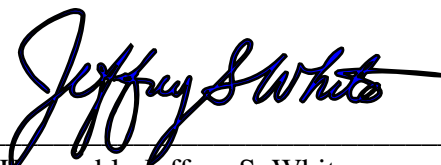
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5. Silver Peak's deadline to respond to the amended complaint shall be January 30, 2015.

**IT IS SO ORDERED.**

Dated: December 30, 2014



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The Honorable Jeffrey S. White  
United States District Court Judge  
Northern District of California

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