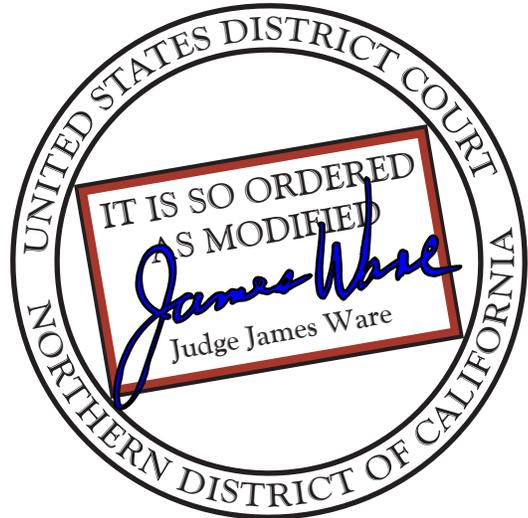


1 ROBERT E. FREITAS (STATE BAR NO. 80948)  
 2 [rfreitas@orrick.com](mailto:rfreitas@orrick.com)  
 3 DANIEL J. WEINBERG (STATE BAR NO. 227159)  
 4 [dweinberg@orrick.com](mailto:dweinberg@orrick.com)  
 5 ORRICK, HERRINGTON & SUTCLIFFE LLP  
 1000 Marsh Road  
 6 Menlo Park, California 94025  
 Telephone: 650-614-7400  
 7 Facsimile: 650-614-7401

8 Attorneys for Plaintiff  
 9 Seagate Technology LLC



10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN JOSE DIVISION

13 SEAGATE TECHNOLOGY LLC,  
 14 Plaintiff,  
 15 v.  
 16 NATIONAL UNION FIRE INSURANCE  
 COMPANY OF PITTSBURGH, PA, a  
 17 Pennsylvania corporation,  
 18 Defendant.

CASE NO: C 07 05700 JW  
**JOINT PRELIMINARY PRETRIAL AND  
 TRIAL SETTING CONFERENCE  
 STATEMENT AND [PROPOSED] ORDER**  
 Date: November 17, 2008  
 Time: 11:00 a.m.  
 Dept.: Courtroom 8, 4th Floor  
 Judge: Hon. James Ware  
 Complaint Filed: November 8, 2007

1                   The parties to the above-entitled action jointly submit this Joint Preliminary  
2 Pretrial and Trial Setting Conference Statement and [Proposed] Order.

3 **I.       BRIEF STATEMENT OF THE CASE.**

4                   This is an action for breach of contract and tortious breach of the implied covenant  
5 of good faith and fair dealing. Defendant and insurer National Union Fire Insurance Company of  
6 Pittsburgh, PA (“National Union”) issued plaintiff and insured Seagate Technology LLC  
7 (“Seagate”) commercial general liability insurance policy No. RM GL 480-58-47 with a policy  
8 period from July 1, 2003 through at least August 1, 2004 (“Policy No. RM GL 480-58-47”).

9                   On or about June 22, 2004, Seagate filed a lawsuit against Cornice, Inc.  
10 (“Cornice”) in the United States District Court for the District of Delaware entitled *Seagate*  
11 *Technology LLC v. Cornice, Inc.*, Case No. 04-418 SLR (“*Cornice* Litigation”). Seagate alleged  
12 that Cornice infringed seven United States patents. Cornice filed a counterclaim in which it  
13 alleged that Seagate disparaged Cornice’s goods, products, and services. Among other defenses,  
14 Seagate defended against the counterclaim by establishing that Cornice’s products infringed  
15 Seagate’s patents. National Union was provided with notice of the Cornice counterclaim and  
16 National Union stated that it would defend Seagate, subject to a reservation of rights.

17 **II.       READINESS FOR TRIAL.**

18                   The parties are not presently ready for trial because of scheduling conflicts,  
19 witness unavailability, delays in discovery, and both parties’ continued desire to conduct a  
20 settlement conference. Accordingly, the parties seek modification of the trial schedule and  
21 request that the Court schedule a Second Preliminary Pretrial Conference as described in Section  
22 VI.

23 **III.      AMOUNT OF TIME TO ALLOCATE TO TRIAL.**

24                   As stated in the Joint Case Management Statement and [Proposed] Order (Docket  
25 Item No. 12), the parties anticipate that trial will last approximately 3-5 days. However, it may  
26 be possible to reduce the length of trial through stipulations and/or motions for summary  
27 judgment/adjudication. Accordingly, the parties request that the Court defer trial time allocation  
28 to a Second Preliminary Pretrial Conference.

1 **IV. CALENDAR PERIOD FOR TRIAL.**

2 The parties seek modification of the trial schedule. *See infra* Section VI.  
3 Therefore, the parties request that the Court defer setting a trial calendar period until a Second  
4 Preliminary Pretrial Conference.

5 **V. SETTLEMENT AND ADR.**

6 The parties have agreed to conduct a settlement conference and believe this case  
7 can be settled. The parties have attempted to schedule mediation with private mediators and  
8 settlement conferences with Magistrate Judges of the Northern District of California. Because of  
9 scheduling difficulties, no mediation or conference has occurred.

10 On September 22, 2008, counsel for Seagate and National Union attended a Case  
11 Management Conference before this Court in the unrelated case *National Union, et. al. v. Seagate*  
12 *Technology, Inc.*, Case No. C 04-01593 JW. During that conference, the Court referred the  
13 parties to Magistrate Judge Richard Seeborg for purposes of conducting a settlement conference  
14 in that case. Pursuant to National Union counsel's request, the Court also referred the parties in  
15 this action to Magistrate Judge Seeborg for a settlement conference. The parties scheduled a  
16 settlement conference for December 15 and 16, 2008. However, as a result of the magistrate  
17 judge's trial schedule, the settlement conference had to be rescheduled. As of the date of this  
18 filing, the parties are seeking available dates from Magistrate Judges Seeborg, Chen and  
19 Trumbull.

20 **VI. SCHEDULING.**

21 Pursuant to Court Order dated July 30, 2007, the Court set the following case  
22 schedule:

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24 Fact discovery cut-off	December 15, 2008
25 Last Date for Hearing 26 Dispositive Motions	February 23, 2009 at 9:00 a.m.
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Preliminary Pretrial Conference	November 17, 2008
Preliminary Pretrial Conference Statements	November 7, 2008

As a result of scheduling conflicts, witness unavailability, and delays in discovery, as well as the scheduled settlement conference, the parties propose the following schedule modifications:

Fact discovery cut-off	February 23, 2009
Last Date for Hearing Dispositive Motions	March 23, 2009 at 9:00 a.m.
Second Preliminary PreTrial Conference	January 26, 2009
Second Preliminary Pretrial Conference Statement	January 16, 2009

Dated: November 7, 2008

Respectfully submitted,  
ORRICK, HERRINGTON & SUTCLIFFE LLP

\_\_\_\_\_  
/s/ Robert E. Freitas /s/  
Robert E. Freitas  
Attorneys for Plaintiff  
Seagate Technology LLC

Dated: November 7, 2008

DRINKER, BIDDLE & REATH LLP

\_\_\_\_\_  
/s/ Mark D. Sheridan /s/  
Mark D. Sheridan  
Attorneys for Defendant  
National Union Fire Insurance Company  
Of Pittsburgh, PA

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**Filer's Attestation:** Pursuant to General Order No. 45, §X(B), I attest under penalty of perjury that concurrence in the filing of the document has been obtained from its signatory.

Respectfully submitted,

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/s/ Daniel J. Weinberg /s/  
Daniel J. Weinberg

