

**** E-filed February 8, 2010 ****

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

20 NATHAN NYGREN, STEPHEN
 21 SHIFFLETTE and AMY FROMKIN, on
 22 behalf of themselves and all others
 23 similarly situated,

Plaintiffs,

v.

24 HEWLETT-PACKARD COMPANY, a
 25 Delaware corporation,

Defendant.

Case No. 07-05793 (JW)

**STIPULATED REQUEST FOR ORDER
 AND ~~PROPOSED~~ ORDER REGARDING
 EXPERT DISCOVERY**

Action filed: November 14, 2007
 Trial: October 5, 2010

1 IT IS HEREBY ORDERED that the following Stipulation and Order (“Order”) shall
2 govern expert discovery in this litigation:

3
4 1. In order to avoid consuming the parties’ and the Court’s time and resources on
5 potential discovery issues relating to experts, the parties have agreed to certain limitations on the
6 scope of expert-related discovery. Neither the terms of the Order nor the parties’ agreement to
7 them implies that any of the information restricted from discovery in this Order would otherwise
8 be discoverable. This Stipulation and Order represents the entire agreement between the parties
9 relating to expert discovery and all prior or contemporaneous agreements, understandings,
10 representations, and statements, whether oral or written by a party or such party’s legal counsel,
11 are merged herein.
12

13 2. Without expanding the scope of otherwise discoverable information, the following
14 categories of documents, data and information need not be disclosed by any party and are outside
15 the scope of permissible expert discovery for any time during the pendency of the above-
16 captioned litigation, including any time prior to the entry of this Order:
17

18 (a) any written or oral communications (including notes, emails and/or
19 memoranda memorializing the same) between or among: (1) expert witnesses and counsel
20 relating to the testimony of the expert and/or the drafting and/or preparation of any reports, except
21 as provided in ¶ 4; and/or (2) expert witnesses and their respective staffs relating to the testimony
22 of the expert and/or the drafting and/or preparation of any reports, except as provided in ¶ 4; and
23

24 (b) any notes, draft reports, draft studies, draft work papers or other
25 preliminary calculations, computations, data runs or work prepared by, for, or at the direction of
26 an expert witness
27
28

1 3. As a result of this Order, the parties and the experts do not have any obligation to
2 retain any of the materials identified in paragraph 2.

3 4. The protections against discovery contained in paragraph 2 above will not apply to
4 any communications, documents, data, statistical analyses, notes, computations, data runs, tests or
5 work or other information upon which an expert witness relies for any of his or her opinion(s) in
6 this matter. Data, statistical analyses, or other information (including any calculation or exhibit)
7 upon which an expert relies for any of his or her opinion(s) in this matter shall be produced or, if
8 already produced, identified to the other party. Notwithstanding the other provisions of this
9 Order, in the event an expert performs any physical tests on any computer or wireless device in
10 connection with his or her retention in this case, then all such physical tests performed or referred
11 to by that expert, and the results thereof, shall be subject to requests for discovery by an adverse
12 party, provided that nothing within this paragraph shall prohibit or prejudice any party from
13 asserting any appropriate objections to discovery and/or the admissibility of such physical tests
14 and/or the results thereof.

15 5. Nothing in this stipulation shall be construed to prevent deposition questions
16 relating to the substance of the testifying expert's opinions (including alternative theories,
17 methodologies, variables, or assumptions that the expert may or may not have considered in
18 formulating his or her opinions or in preparing his or her report), the process by which those
19 opinions and/or the experts report were developed; or to any communications (including
20 communications from counsel), documents, data, statistical analyses, or other information upon
21 which an expert witness relies for any of his or her opinion(s) in this matter.

22 6. Nothing in this stipulation shall be construed to preclude reasonable questions at
23 deposition concerning the expert's compensation, hours expended in preparing his or her report
24 and testimony, and frequency and duration of meetings with counsel regarding his or her report.

1 7. Each expert submitting a report shall list all matters in which the expert testified in
2 any deposition, trial, or hearing, or submitted a report, in the last five years. The disclosure shall
3 identify the case caption, the court in which it was pending, and the party that retained the expert.

4
5 8. No subpoenas (for depositions or documents) need be served on any testifying
6 expert from whom a report or declaration is provided. Instead, the party retaining such expert
7 will make the expert available for deposition at a time mutually agreed to by the parties and
8 consistent with the Court's scheduling orders. In the event a responding party fails to so
9 cooperate in good faith, the party seeking discovery may serve any appropriate subpoenas and
10 this Order will not be used as the basis for an objection to such subpoenas.

11
12 9. Notwithstanding the other provisions of this Order, all documents specifically
13 referred to and/or relied upon by an expert in rendering any opinions in this case and/or in any
14 expert report, declaration, affidavit or other such document submitted in this case shall be
15 identified in such expert submission and produced upon request by an adverse party.

16
17 10. The parties agree to comply with this Order pending the Court's approval and
18 entry of this Order.

19 11. A copy of the signed Order shall be served upon all counsel of record within seven
20 (7) days of its entry.

21
22 Dated: February 8, 2010

By: /s/ *Kristofor T. Henning*
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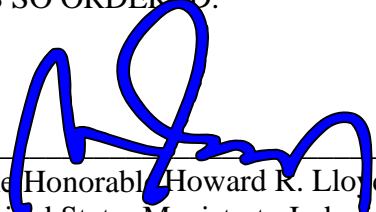
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Attorneys for Plaintiffs

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: February 8, 2010



The Honorable Howard K. Lloyd
United States Magistrate Judge