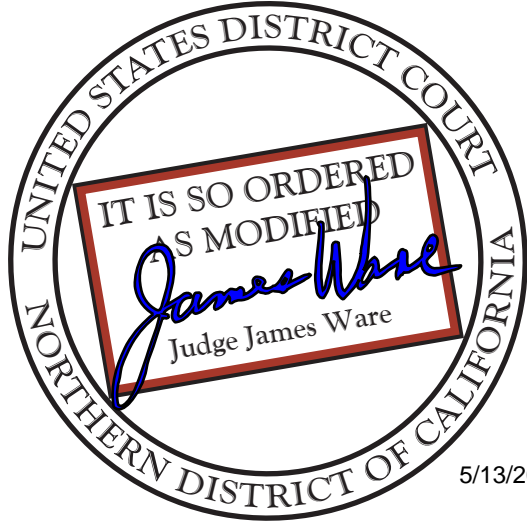


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5/13/2010

21 UNITED STATES DISTRICT COURT  
 22 NORTHERN DISTRICT OF CALIFORNIA

23 THE NVIDIA GPU LITIGATION )

24 CLASS ACTION

25 Case No. C 08-4312 JW

26 This Document Relates To: )

27 STIPULATION AND [PROPOSED]  
 28 ORDER TO MODIFY DISCOVERY CUT-  
 OFF DATE

29 ALL ACTIONS.

30 STIP. AND ORDER TO MODIFY DISCOVERY CUT-OFF DATE Case No. C 08-4312 JW		
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1 The Court, in its Scheduling Order dated May 14, 2009, set dates for class certification,  
2 dispositive motions, close of discovery and a preliminary pretrial conference. Since that time,  
3 several of the dates were continued, issues specific to the discovery in this case surfaced and the  
4 parties continue to engage in extensive settlement efforts, including three mediations to date.  
5 Based on new circumstances in the litigation, including (1) currently pending motions to dismiss  
6 and for class certification, (2) particularly voluminous discovery and (3) ongoing settlement  
7 efforts, the parties request the Court continue the discovery cut-off date from July 12, 2010 to  
8 January 21, 2011, and continue using the related time frames stemming from the discovery cut-  
9 off and thus the framework of the Court's original Scheduling Order, to allow sufficient time for  
10 resolution of important issues prior to the close of discovery.

11 The parties request continuing the discovery close date to January 2011 because they  
12 wish to keep the Court's date format in place but agree among themselves to set additional  
13 deadlines - within the Court's Scheduling Order - for close of merits discovery, close of expert  
14 discovery and briefing on dispositive motions. The parties intend to end merits discovery some  
15 time before the close of discovery and leave more time for expert discovery, and the parties  
16 intend to allow more time for dispositive motion briefing. Setting the discovery cut-off for  
17 January 21, 2011 allows the parties to respect these agreed upon internal deadlines and still  
18 adhere to the time frames set in the Court's Scheduling Order.

19 **1. Pending Motions**

20 The Court decided NVIDIA's first Motion to Dismiss on November 19, 2009. A second  
21 Motion to Dismiss was filed that is still in the process of briefing and is set for hearing on June  
22 14, 2010.

23 The parties will complete briefing on class certification on May 24, 2010, and the Court  
24 is set to hear the motion on June 14, 2010.

25 In addition, the Court set a case management conference for June 14, 2010, vacating the  
26 Preliminary Pretrial Conference originally set for that date. The parties believe it is premature to  
27

1 complete discovery and incur the expense of expert reports before critical issues in the case are  
2 decided.

3 **2. Discovery Status**

4 The parties are working together very cooperatively with respect to discovery and, to  
5 date, needed the Court’s assistance on a motion to compel in only one instance, against a non-  
6 party. The parties continue to resolve discovery issues as informally as possible without the need  
7 for court intervention. However, the discovery process is time consuming in light of the volume  
8 of documents at issue and the number of third parties involved with the case, including 12  
9 original equipment manufacturers (“OEMs”) plus a supplier, retailers and insurers. The parties  
10 and the third parties are meeting and conferring regularly, but a number of discovery issues  
11 remain in progress as discovery continues on a rolling basis. For example, one of the primary  
12 OEMs agreed to produce documents but is requesting more time, and Plaintiffs would like to  
13 extend this courtesy. The parties anticipate the need for additional discovery including  
14 depositions of NVIDIA and representatives of non-parties and from designation of expert  
15 witnesses.

16 **3. Continued Settlement Efforts**

17 The parties engaged in active settlement efforts with the Honorable Layn R. Phillips  
18 (Ret.) and have direct communications among themselves. The parties continue to pursue  
19 settlement based on Judge Phillips’ observation that litigation costs would be minimized, and the  
20 interests of all parties would be best served, by the parties continuing their discussions. In light  
21 of these efforts, the parties are attempting to minimize costs by not enlisting outside experts and  
22 incurring other litigation expenses that will impact the cost of settlement. Settlement discussions  
23 will continue. The parties also believe it is beneficial to have a settled and operative complaint,  
24 through adjudication of the pending Motion to Dismiss and adjudication of class certification,  
25  
26  
27

1 before discovery is closed, as was anticipated by the Court in its May 14, 2009 Scheduling  
 2 Order.<sup>1</sup>

3 For all of these reasons, the parties are in agreement that the discovery cut-off date should  
 4 be modified as indicated below and adopted by the Court, while continuing to key the dates  
 5 stemming from the discovery cut-off under the same time spacing as set in the Court's  
 6 Scheduling Order, which is reproduced below showing the proposed dates.

7 **Case Schedule**

8	<b>DEADLINE/HEARING</b>	<b>CURRENT DATE</b>	<b>PROPOSED DATE</b>
9	Hearing on Rule 12 Motions	June 14, 2010 at 9:00 a.m. <sup>2</sup>	
10	Close of Briefing on Motion for Class Certification	May 24, 2010 <sup>3</sup>	
11	Hearing on Motion for Class Certification	June 14, 2010 at 9:00 a.m. <sup>4</sup>	
12			
13	Close of All Discovery (¶ 9)	July 12, 2010	January 21, 2011
14	Last Date for Hearing Dispositive Motions (¶ 10)	September 13, 2010	March 22, 2011
15	(~60 days after the Close of All Discovery)		
16	Preliminary Pretrial Conference at 11 a.m. (¶ 12)		<b>December 13, 2010</b>
17	(~30 days before the Close of All Discovery)		
18			
19	Preliminary Pretrial Conference Statements (¶ 11)		<b>December 3, 2010</b>
20	(Due 10 days before conference)		

21  
 22  
 23 <sup>1</sup> Plaintiffs filed the Third Amended Consolidated Complaint which replaces former - voluntarily dismissed - Plaintiff Inicom Networks, Inc. with new name Plaintiffs Nathan DeBockler and John Russo on May 5, 2010, pursuant to the Court's Order.

24 <sup>2</sup> Continued from September 28, 2009 pursuant to March 8, 2010 Order granting Stipulation.

25 <sup>3</sup> Continued from November 16, 2009 pursuant to March 8, 2010 Order granting Stipulation.

26 <sup>4</sup> Continued from December 7, 2009 pursuant to March 8, 2010 Order granting Stipulation.

1 None of the dates set in this Order may be changed without an order of the Court made  
2 after a motion is filed pursuant to the Civil Local Rules of Court.

3 **Standing Order to Lodge Printed Copy of "ECF" Papers**

4 1. In all cases, including cases covered by the Electronic Case Filing System of the  
5 Court "ECF," when filing papers in connection with any motion or any pretrial conference, in  
6 addition to filing the paper electronically, the filing parties shall lodge with the Clerk's Office a  
7 printed copy of the papers, in an envelop clearly marked "Chamber's Copy – Lodged for the  
8 Chambers of Judge James Ware." The "Chamber's Copy" envelop must state the case name and  
9 case number and be delivered on or before the close of the next court day following the day the  
10 papers are filed electronically. See Standing Order Regarding Case Management in Civil Cases.

11 **Compliance with Discovery Plan and Reference to Magistrate Judge**

12 2. The Court adopts the Discovery Plan proposed by the parties in their Joint Case  
13 Management Statement. The parties are ordered to comply with the discovery plan. Any disputes  
14 with respect to the implementation of the discovery plan and all disclosure or discovery disputes  
15 are referred to the assigned Magistrate Judge. In addition, any disputes pertaining to service or  
16 joinder of parties or claims are referred to the assigned Magistrate Judge.

17 **Document Management During Pretrial Discovery and Electronic Evidence Presentation**

18 3. This Court has available a digital and video electronic evidence presentation  
19 system. Before commencement of pretrial discovery, the parties are ordered to familiarize  
20 themselves with the system, and to meet and confer about whether the case will involve  
21 voluminous documentary. If so, as the parties identify documentary material which is likely to be  
22 used as trial exhibits, the parties are ordered to electronically store these materials in a fashion  
23 which will facilitate displaying them electronically during the trial. The parties are reminded that  
24 Civil L.R. 30-2(b) requires sequential numbering of exhibits during depositions and that  
25 numbering must be maintained for those exhibits throughout the litigation. Each proposed  
26 exhibit shall be pre-marked for identification. All exhibits shall be marked with numerals. The  
27

1 parties shall meet and confer on a division which will avoid duplication (e.g., Plaintiff: 1-99,000;  
2 Defendant #1: 100,000-299,999; Defendant #2: 300,000-500,000).

3 **Disclosure of Expert Witnesses**

4 4. Any party wishing to present expert witness testimony with respect to a claim or a  
5 defense shall lodge with the Court and serve on all other parties the name, address,  
6 qualifications, résumé and a written report which complies with Fed. R. Civ. P. 26(a)(2)(B) **63**  
7 **days before close of discovery.** Expert witness disclosure must be made with respect to a person  
8 who is either (a) specially retained or specially employed to provide expert testimony pursuant to  
9 Fed.R.Evid. 702 or (b) a regular employee or agent or treating physician who may be called to  
10 provide expert opinion testimony.

11 5. The parties are also required to lodge any supplemental reports to which an expert  
12 will testify at trial in accordance with Fed. R. Civ. P. 26(a)(2)(B).

13 6. Any party objecting to the qualifications or proposed testimony of an expert must  
14 file, serve and notice a motion to exclude the expert or any portion of the expert's testimony in  
15 writing in accordance with Civil Local Rule 7-2, for hearing no later than **42 DAYS AFTER**  
16 **BOTH EXPERT AND REBUTTAL EXPERT DISCLOSURES ON A MONDAY (LAW**  
17 **AND MOTION DAY) at 9:00 a.m.** and preferably before or on the same day as the discovery  
18 cutoff date at 9:00 a.m.

19 **Rebuttal Expert Witnesses**

20 7. If the testimony of the expert is intended solely to contradict or rebut opinion  
21 testimony on the same subject matter identified by another party, the party proffering a rebuttal  
22 expert shall make the disclosures required by Fed. R. Civ. P. 26(a)(2)(B), no later than **49 days**  
23 **prior to discovery cutoff.**

24 **Limitation on Testimony by Expert Witnesses**

25 8. Unless the parties enter into a written stipulation otherwise, upon timely  
26 objection, an expert witness shall be precluded from testifying about any actions or opinions not  
27 disclosed prior to the expert's deposition. This is to ensure that all factual material upon which

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STIP. AND ORDER TO MODIFY DISCOVERY CUT-OFF DATE Case No. C 08-4312 JW	- 5 -	
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1 expert opinion may be based and all tests and reports are completed prior to the expert  
2 deposition. Unless application is made prior to the close of expert discovery, each party will be  
3 limited to calling only one expert witness in each discipline involved in the case.

4 **Close of Discovery**

5 9. Pursuant to Civil L.R. 26-2, all discovery, including supplemental disclosure,  
6 depositions of fact witness and expert witnesses, must be completed on or before the deadline set  
7 forth in the Case Schedule above.

8 **Last Date for Hearing Dispositive Motions**

9 10. The last day for hearing dispositive motions is set forth in the Case Schedule  
10 above. Any motions must be noticed in accordance with the Civil Local Rules of this Court.

11 **Preliminary Pretrial and Trial Setting Conference Statement and Proposed Order**

12 11. The attorneys who will try the case are ordered to confer with one another and to  
13 file and lodge with Chambers on or before the deadline set forth in the Case Schedule above a  
14 Preliminary Pretrial and Trial Setting Conference Statement and Proposed Order, stating their  
15 readiness for trial, the amount of time which the Court should allocate for trial and the calendar  
16 period for the trial.

17 12. The attorneys who will try the case are ordered to appear on the date set in the  
18 Case Schedule at 11:00 a.m. for a Preliminary Pretrial and Trial Setting Conference.

19 13. With respect to the time allocation for trial, at the Preliminary Pretrial and Trial  
20 Setting Conference trial counsel will be asked to stipulate to a time allocation to each side for the  
21 trial of the case. Once a stipulated allocation has been entered, the parties must plan their  
22 presentations to conform to the stipulated time allocation.

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STIP. AND ORDER TO MODIFY DISCOVERY CUT-OFF DATE Case No. C 08-4312 JW	- 6 -	
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1 IT IS STIPULATED AND AGREED, by and between Plaintiffs and NVIDIA, through  
2 their counsel of record, subject to Court approval, that the Scheduling Order above be adopted by  
3 the Court.

4 DATED: May 6, 2010

MILBERG LLP  
JEFF S. WESTERMAN  
NICOLE M. DUCKETT

*/s/ Nicole M. Duckett*  
\_\_\_\_\_  
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13 DATED: May 6, 2010

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ROBERT P. VARIAN  
JAMES NEIL KRAMER  
JUSTIN MYER LICHTERMAN  
JOSHUA DANIEL WATTS

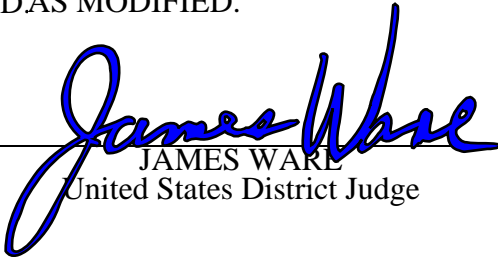
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*Counsel for Defendant NVIDIA Corporation*

21  
22 PURSUANT TO STIPULATION, IT IS SO ORDERED AS MODIFIED.

23  
24 DATED: May 13, 2010

  
\_\_\_\_\_  
JAMES WARE  
United States District Judge

25  
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STIP. AND ORDER TO MODIFY DISCOVERY CUT-OFF DATE Case No. C 08-4312 JW	- 7 -	
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DECLARATION OF SERVICE BY CM/ECF AND/OR MAIL

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I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, employed in the County of Los Angeles, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is One California Plaza, 300 South Grand Avenue, Suite 3900, Los Angeles, California 90071-3149.

2. Declarant hereby certifies that on May 6, 2010, declarant served the **STIPULATION AND [PROPOSED] ORDER TO MODIFY DISCOVERY CUT-OFF DATE** by electronically filing the foregoing document listed above by using the Case Management/ Electronic Case filing system.

3. Declarant further certifies:

All participants in the case are registered CM/ECF users and that service will be accomplished by the court's CM/ECF system

Participants in the case who are registered CM/ECF users will be served by the court's CM/ECF system. Participants in the case that are not registered CM/ECF users will be served by First-Class Mail, postage pre-paid or have dispatched to a third-party commercial carrier for delivery to the non-CM/ECF participants as addressed and listed in the Service List.

4. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day of May, 2010, at Los Angeles, California.

  
\_\_\_\_\_  
CECILLE CHAFFINS

STIP. AND ORDER TO MODIFY DISCOVERY CUT-OFF DATE Case No. C 08-4312 JW	- 8 -	
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# Mailing Information for a Case 5:08-cv-04312-JW

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## Manual Notice List

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