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13 *Appearing Pro Hac Vice*

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10 Attorneys for Defendant  
11 DIVATEX HOME FASHION, INC.

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION

16 E&E CO., LTD., a California corporation,  
17 Plaintiff,  
18 v.  
19 DIVATEX HOME FASHION, INC., a  
20 New York corporation, et al.,  
21 Defendants.

CASE NO. 5:08-CV-05660-RMW

**MOTION TO MODIFY SCHEDULING  
ORDER: DISCOVERY STIPULATION  
AND [ ] ORDER**

**[Fed. Rule. Civ. Proc. 16]**

**Complaint Filed: December 18, 2008**

23 Plaintiff E&E Co., Ltd. and Defendant Divatex Home Fashion, Inc., through their  
24 respective undersigned counsel, stipulate that there is good cause to modify the scheduling order  
25 to allow sufficient time to complete written discovery and depositions previously served.

26 WHEREAS the Court's current scheduling order of August 11, 2009, creates an  
27 obligation on the parties to complete fact discovery by December 15, 2009, the parties have  
28 stipulated and respectfully request the Court modify the deadlines as set forth in order to prevent

1 motion practice and expedited expense related to holiday travel of key personnel:

2 <b>EVENT</b>	<b>CURRENT DEADLINE</b>	<b>STIPULATED DEADLINE</b>
3 <i>Discovery Cut-off</i>	December 15, 2009	<i>February 15, 2010</i>
4 <i>Expert Disclosure/Reports</i>	January 15, 2009	<i>February 15, 2010</i>
5 <i>Expert Rebuttal Reports</i>	February 1, 2010	<i>March 1, 2010</i>
6 <i>Expert Cut-off</i>	March 1, 2010	<i>April 1, 2010</i>

7 WHEREAS E&E's CEO Edmund Jin and other key employees of plaintiff are out of the  
8 country until after December 15, 2009, and unable to be deposed;

9 WHEREAS Divatex Home Fashion Inc.'s employees will be deposed in New York,  
10 requiring extensive scheduling and travel to be made;

11 WHEREAS the plaintiff has attempted to produce substantive responses to written  
12 discovery on a timely basis, but many of its key personnel are out of the country for the holidays  
13 and the remaining staff is in its busiest time of year, the parties agree that rather than do  
14 piecemeal production that will likely result in serial motions to compel, a thirty day extension  
15 until January 14, 2010 will reduce cost and delay as a result of holiday travel plans, and will  
16 allow adequate time for production of written discovery prior to the depositions;

17 WHEREAS the parties agree that this does not reopen discovery for all purposes, but  
18 rather allows for completion of discovery previously served prior to the December 15, 2009  
19 deadline; and

20 WHEREAS counsel recognize that there is good cause to modify the scheduling order and  
21 that the parties have worked in good faith to meet the deadline previously been set by the Court,  
22 but based on circumstances beyond their control, cannot reasonably meet the set deadlines.

23 The parties in the above-captioned matter, by and through their attorneys of record, hereby  
24 stipulate and jointly request that this Court extend all the fact and expert discovery dates by one  
25 month for the purpose of allowing the parties to conduct the fact depositions previously discussed  
26 pursuant to Local Rule 30-1 and in turn allow the experts to consider the deposition testimony  
27 that may be taken as it may be relevant to their expert opinions.

28 ///

1 Dated: December 14, 2009

SHARTSIS FRIESE LLP

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By: /s/ Felicia A. Draper

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FELICIA A. DRAPER

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Attorneys for Plaintiff

E&E CO., LTD.

5 Dated: December 14, 2009

ROPERS, MAJESKI, KOHN & BENTLEY

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By: /s/ Lael D. Andara

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ROBERT P. ANDRIS

LAEL D. ANDARA

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Attorneys for Defendant

DIVATEX HOME FASHION, INC.

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**¶ ORDER**

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**The Scheduling Order of August 11, 2009, is hereby modified as follows:**

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1. The Court referred the case to Court Mediation which was conducted on

14

November 18, 2009.

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2. The Discovery cutoff is **February 15, 2010**.

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3. Disclosure of experts is set for **February 15, 2010**.

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4. Disclosure of rebuttal experts is set for **March 1, 2010**.

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5. Expert discovery cutoff is set for **April 1, 2010**.

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6. A hearing is scheduled for dispositive motions on June 18, 2010 at 9 a.m..

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7. The Pretrial Conference Statement is due July 16, 2010.

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8. The Pretrial Conference is scheduled for July 22, 2010, at 2 p.m.

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9. The trial date is August 2, 2010, at 1:30 p.m., before a jury.

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IT IS SO ORDERED:

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Dated: \_\_\_\_\_

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HONORABLE RONALD M. WHYTE

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UNITED DISTRICT COURT JUDGE

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