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Attorney for Plaintiff Gregory Bender

5 Attorneys for Defendant
 6 International Business Machines
 Corporation

E-FILED - 5/6/10

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION

12 Gregory Bender,
 13 Plaintiff,
 14 v.
 15 International Business Machines
 Corporation,
 16 Defendant.
 17

Case No. C 09-01249 RMW (PVT)
STIPULATION AND []
ORDER REGARDING SELECTED
ADR PROCESS

18 Plaintiff Gregory Bender (“Plaintiff”) and Defendant International Business Machines
 19 Corporation (“Defendant”), through their respective counsel, hereby make the following
 20 stipulation:

21 WHEREAS, on August 17, 2009, the parties filed a Stipulation and Proposed Order
 22 Selecting ADR Process, which selected Court Mediation Process under ADR L.R. 6. (D.I. 14).

23 WHEREAS, on September 3, 2009, the Court granted the proposed order and referred the
 24 parties to Court Mediation Process. (D.I. 16).

25 WHEREAS, the parties now wish to change the designated ADR process to private
 26 mediation.

27 THE PARTIES HEREBY STIPULATE THAT:

28 (1) This case will be removed from the Court Mediation Process.

STIPULATION AND [ORDER
 REGARDING SELECTED ADR PROCESS
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1 (2) The parties instead stipulate to private mediation with mediator Randall Wulff of
2 Wulff, Quinby & Sochynsky, or, if Mr. Wulff is unavailable and both parties agree on a different
3 mediator, with a different mediator.

4 (3) The private mediation will be completed by 90 days following the issuance of the
5 claim construction order in this action.

6 Respectfully submitted,

7 Dated: April 2, 2010

Jones Day

8
9 By: /s/ Gregory Lippetz

10 Greg L. Lippetz
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18
19 Counsel for Defendant International Business
20 Machines Corporation

21 In accordance with General Order No. 45, Section X(B), the above signatory attests that
22 concurrence in the filing of this document has been obtained from the signatory below.

23 Dated: April 2, 2010

24 By: /s/ David Kuhn

25 David N. Kuhn
26 Attorney-at-Law
27 144 Hagar Avenue
28 Piedmont, California 94611
Telephone: (510) 653-4983

Counsel for Plaintiff Gregory Bender

PURSUANT TO STIPULATION, IT IS SO ORDERED:

29 DATED: 5/6, 2010

30 By: Ronald M. Whyte

31 THE HON. RONALD M. WHYTE
32 United States District Court Judge

33 SVI-79175v1