

1 James F. Valentine (SBN 149269)
valentinej@howrey.com
 2 Matthew E. Hocker (SBN 188546)
hockerm@howrey.com
 3 Marilee C. Wang (SBN 232432)
wangm@howrey.com
 4 HOWREY LLP
 1950 University Avenue, 4th Floor
 5 East Palo Alto, California 94303
 Telephone: (650) 798-3500
 6 Facsimile: (650) 798-3600

7 Attorneys for Third-Party Defendants
 PHILIPS TAIWAN, LTD.
 8 BUSINESS LINE DATA PHILIPS OPTICAL STORAGE

9 *Additional counsel on next page*

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION
 13

14 VICTOR COMPANY OF JAPAN, LTD.,)
 15)
 16 Plaintiff,)
 17 v.)
 18 QUANTA COMPUTER, INC., QUANTA)
 STORAGE, INC., QUANTA COMPUTER USA,)
 19 INC., QUANTA STORAGE AMERICA, INC.,)
 20)
 Defendants.)
 21)

Case No. C 06 4222 WHA

**THIRD-PARTY DEFENDANTS' NOTICE
 OF MOTION AND MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT OF MOTION FOR EXTENSION
 OF CASE MANAGEMENT SCHEDULE**

22 QUANTA STORAGE, INC.,)
 23)
 Third-Party Plaintiff,)
 24 v.)
 25 PHILIPS TAIWAN, LTD., BUSINESS LINE)
 DATA PHILIPS OPTICAL STORAGE,)
 26)
 Third-Party Defendants.)
 27)
 28)

Date: March 15, 2007
 Time: 8:00 a.m.
 Judge: Hon. William H. Alsup
 Ctrm: 9, 19th Floor

1 *Additional counsel:*

2 Alan Grimaldi (DC State Bar No. 108407)

3 grimaldia@howrey.com

4 Thomas M. Dunham (DC State Bar No. 448407)

5 dunhamt@howrey.com

6 HOWREY LLP

7 1299 Pennsylvania Avenue, N.W.

8 Washington, DC 20004-2402

9 Telephone: (202) 783-0800

10 Facsimile: (202) 383-6610

11 Steven Yovits (IL State Bar No. 6257262)

12 yovitss@howrey.com

13 321 North Clark Street, Suite 3400

14 Chicago, IL 60610

15 Telephone: (312) 595-1239

16 Facsimile: (312) 595-2250

17 Attorneys for Third-Party Defendants

18 PHILIPS TAIWAN, LTD.

19 BUSINESS LINE DATA PHILIPS OPTICAL STORAGE

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1 **NOTICE OF MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on March 15, 2007 at 8:00 a.m., Third-Party Defendants Philips
4 Taiwan Ltd. and Business Line Data Philips Optical Storage will move pursuant to Fed. R. Civ. P.
5 16(b) for an Order of this Court to extend the case management schedule. This Motion is based on this
6 Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of
7 Matthew E. Hocker in Support of Motion for Extension of Case Management Schedule, and the
8 accompanying [Proposed] Order.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. INTRODUCTION**

11 On November 28, 2006, Quanta Storage, Inc. (“QSI”) served Defendants Philips Taiwan Ltd.
12 and Business Line Data Philips Optical Storage (collectively, “Philips-BLD”) with a third-party
13 complaint for indemnification. Accordingly, Philips-BLD now has a substantial interest in the
14 outcome of this case, and its rights are affected by the case management schedule that the Court issued
15 prior to Philips-BLD’s joining this lawsuit.

16 Since answering the third-party complaint about a month ago, Philips-BLD has diligently
17 worked to develop its defenses. This has involved the time-consuming process of gathering
18 information and documents located in Eindhoven, The Netherlands; Taipei, Taiwan; and Tokyo, Japan.
19 The current case schedule unfairly prejudices Philips-BLD because it does not allow Philips-BLD
20 adequate time to gather and analyze this information. Philips-BLD therefore respectfully moves the
21 Court to extend the case management schedule for good cause as proposed below. Philips-BLD has
22 met and conferred with all parties in this case, and the Quanta defendants do not oppose this motion.

23 **II. SUMMARY OF PROCEDURAL FACTS**

24 In its Complaint, filed on July 10, 2006, and later amended on September 21, 2006, Victor
25 Company of Japan, Ltd. (“JVC”) accuses Quanta Computer, Inc., Quanta Storage, Inc., Quanta
26 Computer USA, Inc., and Quanta Storage American, Inc. (collectively, “Quanta”) of infringing U.S.
27 Patent Nos. 5,535,008 (the “’008 patent”), 5,862,115 (“the ’115 patent”), and 6,141,491 (“the ‘491
28 patent”). The case was assigned Case No. C 06 4222 WHA (N.D. Cal.) (“JVC lawsuit”).

1 On November 6, 2006, Quanta Storage, Inc. (“QSI”) filed a third-party complaint against
2 Philips-BLD alleging that Philips-BLD is obligated to defend and indemnify QSI for any and all
3 liability resulting from JVC’s lawsuit against QSI. Even though it was filed on November 6, the third-
4 party complaint was not served on Philips-BLD until November 28, 2006.

5 On November 13, 2006, JVC and Quanta filed a Joint Case Management Statement, which
6 proposed an “alternative schedule should the Court extend the CMC date to allow time for third-party
7 defendants to answer Quanta Storage Inc.’s third-party complaint.” The Court declined to postpone
8 the case management conference, and on November 16, 2006, before the third-party complaint was
9 served on Philips-BLD, the Court issued a Case Management Order.

10 On December 27, 2006, Philips-BLD timely filed its answer, counterclaim, and cross-claim.
11 On January 16, 2007, JVC and QSI filed their Reply and Defenses to Philips-BLD’s cross-claims and
12 Answer to Philips-BLD’s counterclaim, respectively.

13 **III. LEGAL STANDARD**

14 Under Rule 16(b) of the Federal Rules of Civil Procedure, a court-ordered schedule may be
15 modified “upon a showing of good cause and by leave of the district judge, or when authorized by
16 local rule, by a magistrate judge.” Fed. R. Civ. P. 16(b) (2007).

17 “The inquiry under Rule 16(b)’s good-cause standard first focuses on the diligence of the party
18 seeking the amendment. The district court may modify the pretrial schedule if it cannot reasonably be
19 met despite the diligence of the party seeking the extension.” *Nippon Yusen Kaisha v. BASF Corp.*,
20 2007 U.S. Dist. LEXIS 3089 at *5 (N.D. Cal. 2007)(No. C 06-03704 WHA) (*granting* modification of
21 scheduling order by way of granting motion leave to amend complaint after the deadline established in
22 case management order to amend pleadings had lapsed); *Harbert v. Preibe*, 2006 U.S. Dist. LEXIS
23 93845 at *4-9 (N.D. Cal. 2006) (No. C 06-01145 WHA) (*granting* motion for leave to file an amended
24 complaint and thereby modifying pretrial schedule because plaintiffs had exercised good cause and
25 diligence under Rule 16(b)).

26 Diligence under Fed. R. Civ. P. 16(b)’s “good cause” standard includes a showing of one or
27 more of the following:

- 28 (1) that [the movant] is diligent in assisting the court in creating a
workable Fed. R. Civ. P. 16 order, (2) that [the movant’s] noncompliance

1 with a Fed. R. Civ. P. 16 deadline occurred or will occur,
2 notwithstanding [the movant's] diligent efforts to comply, because of the
3 development of matters which cannot be reasonably foreseen or
4 anticipated at the time of the Fed. R. Civ. P. 16 scheduling conference;
and (3) that [the movant] was diligent in seeking amendment of the Fed.
R. Civ. P. 16 order, once it becomes apparent that [the movant] cannot
comply with the order.

5 *Jackson v. Laureate*, 186 F.R.D. 605, 607-608 (E.D. Cal. 1999) (internal citations omitted) (*denying*
6 motion because none of the three standards were shown).

7 **IV. ARGUMENT AND PROPOSED CASE MANAGEMENT SCHEDULE**

8 **A. Despite Its Diligence, Philips-BLD Is Unable To Comply With The Current Case 9 Management Deadlines.**

10 Philips-BLD was not served with the third-party complaint until November 28, 2006. The case
11 scheduling conference (and the issuing of a Case Management Scheduling Order) took place on
12 November 16, 2006, before Philips-BLD was served with the third-party complaint.

13 Due to the above-described sequence of events, Philips-BLD has not had sufficient time to
14 prepare its defenses or conduct necessary discovery, and deadlines under the current case schedule are
15 quickly approaching. For example, under the schedule, the parties are to exchange terms for claim
16 construction on March 14, 2007. JVC and Quanta, which have been litigating this case since July
17 2006, have had ample time to develop their own claim construction positions; in contrast, Philips-
18 BLD, which was served only in late November, has not had sufficient time to do the same.
19 Accordingly, Philips-BLD requests a slight adjustment in the case schedule to allow it reasonable time
20 to develop its positions with respect to claim construction and to prepare for trial.

21 **B. Philips-BLD Brought The Present Motion For Amendment Of The Fed. R. Civ. P. 22 16 Order As Soon As It Became Apparent That Philips-BLD Could Not Comply 23 With The Existing Schedule.**

24 Philips-BLD is diligently investigating its defenses and has recently determined that technical
25 documents related to non-infringement are located in Philips offices in Taipei, Taiwan, and possibly
26 Philips's offices in Tokyo, Japan. Philips-BLD further believes that prior art documents are located in
27 Philips Electronics' offices in Eindhoven, The Netherlands. The far-away and widespread locations of
28 such information have made Philips-BLD's investigation of its defenses very time-consuming.
Philips-BLD has brought the present Motion promptly upon realizing that, due to the complexity

1 attendant to documents located in foreign countries and in foreign languages, it cannot complete its
2 investigation in time to meet the deadlines of the existing case schedule.¹

3 **C. Philips-BLD's Proposed Modifications To The Case Management Schedule.**

4 Philips-BLD has met and conferred with counsel for JVC and the Quanta defendants regarding
5 an extension of the case management schedule. While JVC would agree to a two-week extension of
6 the dates associated with the *Markman* hearing, it would not agree to a three-week extension and
7 indicated that it would oppose any movement of the trial date. JVC also opposed a proposed *Markman*
8 hearing date of June 13, but said it might be able to make a June 26 *Markman* hearing. Counsel for the
9 Quanta defendants said that the only dates in June they could be available for the *Markman* hearing are
10 June 13, 14, 25 and 26. Counsel for the Quanta defendants agrees to all of Philips-BLD's proposed
11 dates, except they request a trial date in April 2008, due to a multi-week trial that they have set at the
12 end of January 2008. Considering the foregoing and its own need for schedule adjustments, Philips-
13 BLD respectfully proposes the following schedule revisions:

Event	Current Date	Proposed Date
JVC, QSI, and QCI settlement discussion in Taiwan	January 29, 2007	Same
Conference call with Magistrate Judge Zimmerman re settlement	February 12, 2007	Same
JVC and Quanta exchange list of proposed terms for claim construction (6 phrase maximum for <i>Markman</i>)	March 14, 2007	April 4, 2007
Mediation with Magistrate Judge Zimmerman	March 23, 2007	Same
JVC and Quanta exchange preliminary claim constructions	March 28, 2007	April 18, 2007
JVC and Quanta file Joint claim Construction and Prehearing Statement	April 11, 2007	May 2, 2007
Deadline for JVC to file opening claim construction brief	April 18, 2007	May 9, 2007
Deadline for Quanta to file responsive claim construction brief	May 2, 2007	May 23, 2007
Deadline for JVC to file reply claim construction brief	May 9, 2007	May 30, 2007
Tutorial for the Court to be conducted by counsel only	May 9, 2007	May 30, 2007

24 _____
25 ¹ Philips-BLD and Matsushita Electric Industrial Co., Ltd. ("MEI"), JVC's parent company, have
26 had a cross-license agreement, and have been in renewed negotiations regarding a cross-license
27 agreement since the second quarter of 2006. As a result of those ongoing and good faith negotiations,
28 Philips-BLD reasonably believed that JVC did not intend to include Philips' drives made by Quanta
Storage in the products JVC accused of infringement in this action. In a letter dated January 16, 2007,
however, JVC's counsel made clear that it intended to assert its patents against Philips-BLD's
products.

Event	Current Date	Proposed Date
Court conducts claim construction hearing	May 23, 2007	June 26, 2007
Deadline for producing opinions of counsel	July 27, 2007	August 17, 2007
Disclosure of issues for expert opinions	July 27, 2007	August 17, 2007
End of fact discovery	August 24, 2007	September 14, 2007
Parties exchange expert reports on issues for which they have the burden of proof	August 24, 2007	September 14, 2007
Parties exchange expert opposition reports	September 7, 2007	September 28, 2007
Parties exchange rebuttal expert reports	September 14, 2007	October 5, 2007
Close of expert discovery	September 28, 2007	October 19, 2007
Last day to file dispositive motions	October 11, 2007	November 1, 2007
Last day for hearing of dispositive motions	November 15, 2007	December 6, 2007
Final Pretrial Conference	December 17, 2007	January 30, 2008 or March 27, 2008 to accommodate Quanta
Trial (15 days)	January 7, 2008	March 3, 2008 or April 14, 2008 to accommodate Quanta

V. CONCLUSION

For the reasons set forth above, Philips-BLD respectfully requests the Court to grant Philips-BLD's motion for extension of the case management schedule.

Dated: February 8, 2007

Respectfully submitted,

MATTHEW E. HOCKER
 JAMES F. VALENTINE
 MARILEE C. WANG
 HOWREY LLP

By: /s/ Matthew E. Hocker
 Matthew E. Hocker

Attorneys for Third-Party Defendants
 Philips Taiwan, Ltd. and
 Business Line Data Philips Optical Storage