

1 COOLEY LLP
 RICARDO RODRIGUEZ (No. 173003) (rr@cooley.com)
 2 BRYAN J. BOYLE (No. 253725) (bryan.boyle@cooley.com)
 LAM K. NGUYEN (No. 265285) (lnguyen@cooley.com)
 3 Five Palo Alto Square
 3000 El Camino Real
 4 Palo Alto, CA 94306-2155
 Tel: (650) 843-5000
 5 Fax: (650) 857-0663

6 Attorneys for Plaintiff-Counterdefendant
 ABAXIS, INC.

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

11 ABAXIS, INC.,
 12
 13 Plaintiff-
 Counterdefendant,
 14 v.
 15 CEPHEID,
 16
 17 Defendant-
 Counterclaimant.

Case No. C 10-2840 LHK (HRL)

**STIPULATION AND [~~PROPOSED~~] ORDER
 MODIFYING SCHEDULE FOR EXPERT
 REPORTS**

DEMAND FOR JURY TRIAL

18 Pursuant to Civil Local Rules 6-1, 6-2, and 7-12 Plaintiff-Counterdefendant Abaxis, Inc.
 19 (“Abaxis”) and Defendant-Counterclaimant Cepheid (“Cepheid”) respectfully submit the
 20 following Stipulation and Proposed Order.

21 WHEREAS, the parties have agreed to forgo filing reply expert reports which were
 22 previously scheduled in this case, with the limited exception of Cepheid’s ability to address any
 23 secondary considerations of non-obviousness;

24 WHEREAS, the parties desire additional time to prepare rebuttal expert reports, which
 25 can be accommodated by the elimination of reply reports;

26 WHEREAS, the previous time modifications in this case include the Stipulation and Order
 27 Extending (1) Cepheid’s Time to File Its Answer and Amended Counterclaims to Amended

28

1 Complaint, and (2) Abaxis' Time to File Its Response to Counterclaims (Dkt No. 28), the
2 Stipulation and Order Modifying Case Schedule (Dkt. No. 31); the Stipulation and Order
3 Continuing Hearing and Case Management Conference (Dkt. No. 38); the Minute Order and Case
4 Management Order (Dkt. No. 44); the Stipulation and Order Extending Deadlines for Mediation
5 and Joint Case Management Statement (Dkt. No. 65); the Order Regarding Case Schedule and
6 Briefing of Motion to Dismiss (Dkt. No. 67); the Minute Order and Case Management Order
7 (Dkt. No. 84); the Stipulation and Order Extending Time for Abaxis to Respond to Cepheid's
8 Motion for Partial Summary Judgment (Dkt. No. 90); the Minute and Order and Case
9 Management Order (Dkt. No. 110); the Minute Order and Case Management Order (Dkt. No.
10 133); and the Order re Expediting Briefing Schedule (Dkt. No. 145);

11 WHEREAS this stipulation modifying schedule for expert reports will minimize any
12 potential disruption to the case schedule governing expert discovery;

13 NOW, THEREFORE, the Parties hereby stipulate and agree as follows:

14 The parties agree to forgo reply expert reports, with the exception of Cepheid's ability to
15 respond on secondary considerations of non-obviousness, which reply shall be due on April 17;

16 The deadline for the parties' technical experts' rebuttal reports is moved from April 4 to
17 April 13;¹

18 The deadline for Cepheid's damages expert's rebuttal report is moved from April 4 to
19 April 20.

20 //

21 //

22 //

23 //

24 //

25 ¹ **Cepheid's Statement**: On March 1, 2012, Abaxis filed a motion for leave to amend its
26 infringement contentions, which remains under submission. Cepheid expressly reserves the right
27 to seek leave of Court to supplement its expert disclosures to address Abaxis' amendments should
the Court grant Abaxis' motion.

28 **Abaxis' Statement**: As per the briefing on this issue, Abaxis does not agree that Cepheid's
reservation of rights is appropriate.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED.

Dated: April 4, 2012

COOLEY LLP
/s/ Ricardo Rodriguez
Ricardo Rodriguez (Bar. No. 173003)
Bryan Boyle (Bar No. 253725)
Attorneys for Plaintiff and
Counterdefendant
ABAXIS INC.

Dated: April 4, 2012

FISH & RICHARDSON PC
/s/ Steven Carlson
Steven Carlson (Bar No. 206451)
Limin Zheng (Bar No. 226875)
Attorneys for Defendant and
Counterclaimaint
CEPHEID

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION

4
5 ABAXIS, INC.,
6 Plaintiff-
Counterdefendant,
7 v.
8 CEPHEID,
9 Defendant-
10 Counterclaimant.

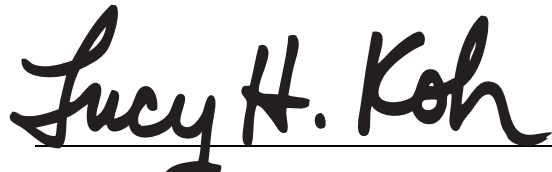
Case No. C 10-2840 LHK (HRL)

**[PROPOSED] ORDER MODIFYING
SCHEDULE FOR EXPERT REPORTS**

DEMAND FOR JURY TRIAL

11
12
13 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

14
15
16 Dated: April 10, 2012



HON. LUCY H. KOH
United States District Judge