

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ABAXIS, INC.,)	Case No.: 10-CV-2840-LHK
)	
Plaintiff,)	
)	
v.)	ORDER GRANTING-IN-PART AND
)	DENYING-IN-PART ABAXIS'S
CEPHEID,)	MOTION FOR RELIEF DUE TO LATE
)	DISCOVERY AND CASE
Defendant.)	MANAGEMENT ORDER
)	

A hearing on Abaxis's motion for relief due to late discovery was held on September 17, 2012. For the reasons stated on the record, the Court ruled as follows:

Abaxis's motion for relief due to late discovery is GRANTED-IN-PART and DENIED-IN-PART.

All of Cepheid's late produced documents are admissible for Abaxis's use at trial per Cepheid's concession.

Per the parties' statements at the hearing on Abaxis's motion for relief due to late discovery, the parties shall stipulate that Cepheid's late produced documents are admissible and were produced in August 2012, less than one month before trial.

Abaxis may depose former or current Cepheid employees, including, but not limited to Doug Dority, Lily Sanchez, Ron Chang, Jackie Tso, John Clark, Wayne Okada, Dale Peterson, Mark Levy, Francisco Dias Laorenco, Pierre Tschaepaet, and John Bishop, for a total of 15 hours.

1 Cepheid may not introduce the late produced documents as evidence at trial. However,
2 Cepheid may cross-examine Abaxis's witnesses about any late produced documents that Abaxis
3 introduces at trial. Cepheid also may call its own witnesses to rebut Abaxis's characterization of
4 any late produced documents that Abaxis introduces at trial. Cepheid's experts shall not rely on
5 the late produced documents, but may rebut Abaxis' characterization of any documents that Abaxis
6 introduces at trial.

7 Abaxis's MIL #1 to exclude Cepheid's non-infringement argument relating to the 3% CV
8 claim limitation is DENIED.

9 Abaxis's MIL #4 for an adverse inference instruction due to the late production of
10 documents is DENIED.

11 Cepheid's MIL #1 to exclude argument or suggestion concerning Cepheid's pre-suit advice
12 of counsel is GRANTED without prejudice. If Cepheid opens the door, Abaxis can then seek
13 reconsideration of this ruling.

14 **ADDITIONAL ISSUES RELATING TO CASE MANAGEMENT:**

15 The Court ordered the parties to reduce their exhibit lists to 250 exhibits per side. The
16 Court will grant Abaxis slight leeway to include exhibits above 250 if, after Abaxis has begun
17 culling its exhibit list, Abaxis recognizes material new exhibits among Cepheid's late produced
18 documents. The parties shall file amended exhibit lists by Friday, September 21, 2012, at noon.
19 The parties shall lodge with Chambers 3 binders of exhibits by Friday, September 21, 2012, at
20 noon.

21 The parties shall lodge 15 jury notebooks by Friday, September 21, 2012 at noon.

22 The parties shall file and email jury instructions and verdict forms consistent with the
23 Court's September 14, 2012, pretrial order by Wednesday, September 19, 2012.

24 The Court ordered the parties to email Ms. Parker-Brown with a mediation status report by
25 Wednesday, September 19, 2012, at 12:45 p.m.

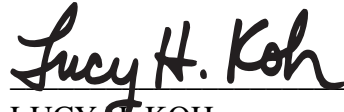
26 On September 14, 2012, the Court scheduled two additional days of trial. As a result, the
27 trial is scheduled to run into a third week. Accordingly, the Court orders that the jury shall include
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an additional juror, for a total of 9 jurors. The Court allows each party an additional preemptory challenge, for a total of 4 preemptory challenges per side.

IT IS SO ORDERED.

Dated: September 17, 2012



LUCY H. KOH
United States District Judge