

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

4 ABAXIS, INC.,

5 Plaintiff and Counter-Defendant,

6 v.

7 CEPHEID,

8 Defendant and Counter-Claimant.

Civil Case No. 10-2840 LHK (HRL)

**STIPULATION AND ~~PROPOSED~~  
ORDER MODIFYING CASE SCHEDULE**

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12 Pursuant to Civil Local Rules 6-1 and 6-2, Plaintiff-Counterdefendant Abaxis Inc.  
13 (“Abaxis”) and Defendant-Counterclaimant Cepheid (“Cepheid”) respectfully submit the  
14 following stipulation and proposed order extending the deadlines for the events set forth below  
15 concerning invalidity disclosures and claim construction. The following amendment to the current  
16 scheduling order (Dkt Nos. 18, 20) is proposed in light of Cepheid’s recent retaining of Fish &  
17 Richardson PC as lead counsel in the above-captioned matter and will not affect the dates for  
18 claim construction briefing or the hearing.

19 1. The time for disclosure of invalidity contentions and producing accompanying  
20 documents pursuant to Patent Local Rule (“Pat. L.R.”) 3.3-3.4 shall be extended from January 12,  
21 2011 to January 26, 2011.

22 2. The time for exchanging proposed terms and claim elements for construction  
23 pursuant to Pat. L.R. 4.1(a)-(b) shall be extended from January 26, 2011 to February 9, 2011.

24 3. The time for amending the pleadings shall be extended from January 19, 2011 to  
25 February 2, 2011.

26 4. The time to meet and confer to discuss a list of proposed terms and claim elements  
27 for construction shall be extended from February 2, 2011 to February 16, 2011.

1           5.       The time to simultaneously exchange preliminary claim constructions and  
2 preliminary identifications of extrinsic evidence pursuant to Pat. L.R. 4.2(a)-(b) shall be extended  
3 from February 16 to March 2, 2011.

4           6.       The time to meet and confer to discuss preliminary claim constructions and  
5 extrinsic evidence shall be extended from February 28, 2011 to March 14, 2011.

6           7.       The time to simultaneously exchange responsive claim constructions shall be  
7 extended from March 4, 2011 to March 18, 2011.

8           8.       The time to file a Joint Claim Construction and Prehearing Statement pursuant to  
9 Pat. L.R. 4.3 shall be extended from March 11, 2011 to March 25, 2011.

10          9.       The time to complete claim construction related discovery pursuant to Pat. L.R. 4.4  
11 shall be extended from April 1, 2011 to April 8, 2011.

12           All other dates shall be unaffected.

13           The previous time modifications in this case include the Stipulation and Order Extending  
14 (1) Cepheid's Time to File Its Answer and Amended Counterclaims to Amended Complaint, and  
15 (2) Abaxis' Time to File Its Response to Counterclaims (Dkt No. 28).

16           The new-~~proposed~~ case schedule, including the dates proposed herein and those  
17 previously set by Court Order (Dkt. Nos. 20, 28), is as follows:

<b>Event</b>	<b>Dates</b>
19 Disclosure of Asserted Claims and Infringement 20 Contentions and accompanying document production [Pat. L.R. 3.1-3.2]	November 17, 2010
21 Deadline for Cepheid to file its Answer and Amended Counterclaims to Abaxis's Amended Complaint	December 17, 2010
22 Deadline for Abaxis to file its response to Cepheid's Amended Counterclaims	January 14, 2011
23 Invalidity Contentions and accompanying document production [Pat. L.R. 3.3-3.4]	January 26, 2011
24 Deadline to Amend Pleadings	February 2, 2011
25 Exchange of Proposed Terms and Claim Elements for Construction [Pat. L.R. 4.1.a-b.]	February 9, 2011
26 The parties meet and confer to discuss list of proposed terms and claim elements for construction	February 16, 2011
27 Further Case Management Conference [per Court Order (Dkt. No. 20)]	March 2, 2011, at 2:00 P.M.
28 Simultaneous Exchange of Preliminary Claim Constructions and Preliminary Identifications of Extrinsic	March 2, 2011

<b>Event</b>	<b>Dates</b>
Evidence [Pat. L.R. 4.2.a-b.]	
The parties meet and confer to discuss preliminary claim constructions and extrinsic evidence	March 14, 2011
Simultaneous Exchange of Responsive Claim Constructions	March 18, 2011
Filing of Joint Claim Construction and Prehearing Statement [Pat. L.R. 4.3]	March 25, 2011
Completion of Claim Construction Discovery [Pat. L.R. 4.4]	April 8, 2010
Opening Claim Construction Brief [Pat. L.R. 4.5.a.]	April 22, 2011
Responsive Claim Construction Brief [Pat. L.R.4.5.b]	May 13, 2011
Reply Claim Construction Brief [Pat. L.R. 4.5.c]	May 27, 2011
Tutorial [per Court Order (Dkt. No. 20)]	June 15, 2011 at 2:00 P.M.
Claim Construction Hearing [per Court Order (Dkt. No. 20)]	June 21, 2011 at 1:30 P.M
Deadline for the parties to attend ADR session [per Court Order (Dkt. No. 20)]	September 1, 2011
Disclosure of Advice of Counsel [Pat. L.R. 3.7]	Feb. 2, 2012 or +7 days from claims construction ruling, whichever is later.
Close of Fact Discovery	Mar. 23, 2012 or +60 days from claims construction ruling, whichever is later.
Exchange of Initial Expert Reports for which party bears burden	April 13, 2012 or +81 days from claim construction ruling, whichever is later.
Exchange of Rebuttal Expert Reports	May 25, 2012 or +42 days from initial expert reports, whichever is later.
Close of Expert Discovery	Jun. 27, 2012 or +30 days from rebuttal reports, whichever is later.
Deadline to File Dispositive Motions and any motion to limit or exclude Expert Testimony	Jul. 27, 2012 or +30 days from close of expert discovery, whichever is later.
Suggested Date of Pretrial Conference	TBD

**IT IS SO STIPULATED.**

Dated: 12/15/2010

Dated: 12/15/2010

COOLEY LLP

FISH & RICHARDSON PC

/s/Adam M. Pivovar

/s/ Steven Carlson

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Attorneys for Plaintiff and Counterdefendant

Attorneys for Defendant and Counterclaimant

ABAXIS INC.

CEPHEID

1 **~~PROPOSED~~ ORDER**

2 Pursuant to the stipulation of the parties and good cause appearing therefore;

3 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

4 Dated: December 17  
5 \_\_\_\_\_, 2010

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8 Lucy H. Koh  
9 United States District Judge

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