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Attorneys for Defendant *IONpath, Inc.*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FLUIDIGM CORPORATION, a Delaware
corporation; and FLUIDIGM CANADA INC.,
a foreign corporation,

Plaintiffs,

v.

IONPATH, INC., a Delaware corporation,

Defendant.

Case No. 3:19-cv-05639

**STIPULATION AND [PROPOSED]
ORDER TO ENLARGE TIME FOR
SHOWDOWN PROCEDURE DUE TO
RECENT ILLNESS IMPACTING
EXPERT AVAILABILITY**

1 Pursuant to Civil Local Rule 6-2, Plaintiffs Fluidigm Corporation and Fluidigm Canada
2 Inc. (“Fluidigm”) and Defendant IONpath, Inc. (“IONpath”), by and through their respective
3 counsel, hereby stipulate as follows:

4 WHEREAS, on April 16, 2020, the Court entered a Patent Showdown Scheduling Order,
5 instituting the Court’s “showdown” procedure set forth therein (D.I. 75);

6 WHEREAS, to facilitate an orderly process for the showdown procedure, the parties
7 agreed on a schedule for expert reports and expert depositions relating to the showdown claims
8 (D.I. 86 at 5 n.6);

9 WHEREAS, pursuant to that agreed schedule, the parties agreed to exchange opening
10 expert reports on July 27, 2020, and rebuttal expert reports on August 10, 2020;

11 WHEREAS, Fluidigm’s opening claim construction brief and supporting evidence was
12 filed July 16, 2020 pursuant Patent L.R. 4-5(a), IONpath’s responsive briefing and supporting
13 evidence was filed July 30, 2020 pursuant Patent L.R. 4-5(b), and Fluidigm’s reply brief was filed
14 August 6, 2020 pursuant Patent L.R. 4-5(c);

15 WHEREAS the parties exchanged expert reports between July 16, 2020 and October 15,
16 2020;

17 WHEREAS among the reports submitted by Fluidigm were reports by Fluidigm’s expert,
18 Gary Hieftje, Ph.D., on the topics of infringement and validity;

19 WHEREAS, on August 24, 2020, the Court continued the Patent Showdown schedule in
20 response to a Joint Stipulation arising from a medical diagnosis impacting the availability of
21 IONpath’s expert witness (D.I. 127);

22 WHEREAS, on August 25, 2020, in its Order Re Timely Amendment of Patent
23 Contentions (D.I. 128), the Court further continued the Patent Showdown Schedule (as further
24 described below), including an October 29, 2020 deadline for opening summary judgment briefs;

25 WHEREAS, the parties have been preparing to proceed with showdown summary
26 judgment briefing as scheduled;

27 WHEREAS, the parties have previously conferred and agreed on a schedule whereby the
28 parties’ respective expert depositions would occur after the exchange of supplemental reports,

1 concluding on October 15, 2020;

2 WHEREAS, the deposition of Dr. Gary Hieftje, Fluidigm's expert witness (who is
3 Fluidigm's sole expert on validity and infringement of the showdown claims), was scheduled to
4 occur on October 20, 2020;

5 WHEREAS, Dr. Hieftje has recently begun experiencing symptoms consistent with
6 COVID-19;

7 WHEREAS, on October 14, 2020, Fluidigm's counsel first learned of Dr. Hieftje's
8 symptoms, including high fever, loss of taste and smell, congestion, coughing, and other upper
9 respiratory symptoms;

10 WHEREAS, Dr. Hieftje further advised Fluidigm's counsel that he has learned that a
11 person with whom he had recent exposure has since tested positive for COVID-19;

12 WHEREAS, Dr. Hieftje is a 78-year-old male, and thus at a heightened risk for
13 complications related to COVID-19;

14 WHEREAS, on October 15, 2020, Fluidigm's counsel contacted Dr. Hieftje to assess his
15 health, at which time he informed Fluidigm's counsel that he woke up with a high fever, is self-
16 isolating, and sounded to be in poor health consistent with upper-respiratory illness;

17 WHEREAS, the sudden and unforeseen illness substantially impacts Dr. Hieftje's ability
18 to prepare for and provide deposition testimony on the topics for which he has provided expert
19 reports;

20 WHEREAS, immediately upon learning of Dr. Hieftje's condition on October 14, 2020,
21 Fluidigm's counsel contacted IONpath's counsel, informed IONpath's counsel of Dr. Hieftje's
22 condition, and discussed the strong possibility that Dr. Hieftje would not be available to testify as
23 scheduled;

24 WHEREAS, on October 15, 2020, after Fluidigm's counsel received an update on Dr.
25 Hieftje's condition and learned that it had worsened, the parties met and conferred on an
26 anticipated request to the Court to continue the showdown summary judgment deadlines by a
27 four-week extension to allow Dr. Hieftje to recover and to reschedule his deposition at a time that
28 will not be impacted by his current illness;

1 WHEREAS, the parties agree that Dr. Hieftje's deposition occurring as part of the
2 showdown claim process is important and necessary as Dr. Hieftje is Fluidigm's sole expert
3 witness opining on issues of infringement and validity of the showdown claims;

4 WHEREAS, IONpath has consented to the requested extension;

5 WHEREAS, Fluidigm respectfully submits and requests that the Court permit a four-week
6 extension of time in these circumstances. While Fluidigm is cognizant that the Court rarely, if
7 ever, grants extensions of time for its showdown proceedings, Fluidigm respectfully submits that
8 good cause exists in this case. The additional time will allow Dr. Hieftje to recover from his
9 illness, including, if necessary, the receipt of in-patient treatments should his symptoms worsen in
10 the coming weeks as is often consistent with the course of COVID-19 in symptomatic patients.
11 Allowing time for the rescheduling of Dr. Hieftje's deposition will also permit him to prepare for
12 and provide deposition testimony in good health and without suffering through his present serious
13 symptoms consistent with COVID-19, and thus present a more complete and fair record for Court
14 to consider in the showdown;

15 WHEREAS, in the August 25, 2020 Order (D.I. 128), the Court has entered the following
16 briefing schedule:

Showdown Event	Current Deadline
Opening Summary Judgment Briefs	October 29, 2020 at noon
Opposition Briefs	November 12, 2020 at noon
Reply Briefs	November 19, 2020 at noon
Showdown Hearing	December 17, 2020 at 8:00 a.m.

1 WHEREAS, subject to the Court's approval, a four-week extension of the showdown
2 briefing would result in the following deadlines:

Showdown Event	Proposed Deadline
Opening Summary Judgment Briefs	November 25, 2020 at noon
Opposition Briefs	December 10, 2020 at noon
Reply Briefs	December 17, 2020 at noon
Showdown Hearing	January 14, 2020 (subject to the Court's availability)

10 WHEREAS, the parties will meet and confer to determine an appropriate rescheduling of
11 their respective witnesses' depositions;

12 WHEREAS, Fluidigm has agreed that it will make Dr. Hieftje available for deposition no
13 later than November 12, 2020. To the extent Dr. Hieftje remains unavailable to sit for a
14 deposition by November 12, 2020 because of continued illness, the parties have agreed to meet
15 and confer regarding what, if any, additional scheduling modifications are necessary and to raise
16 the same promptly with the Court;

17 WHEREAS, enlarging the briefing schedule and hearing date for the showdown
18 procedure will not alter the date of any other event or deadline already fixed by Court order.

19 **IT IS HEREBY STIPULATED AND AGREED** by Fluidigm and IONpath, subject to
20 the Court's approval, that the Showdown Procedure shall be enlarged as follows:

Showdown Event	Date
Opening Summary Judgment Briefs	November 25, 2020 at noon
Opposition Briefs	December 10, 2020 at noon
Reply Briefs	December 17, 2020 at noon
Showdown Hearing	January 14, 2020 (subject to the Court's availability)

1 Dated: October 15, 2020

2 By: /s/ Jason S. Meyer

By: /s/ Taylor Gooch

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____

Honorable William Alsup
United States District Judge

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SIGNATURE ATTESTATION

I am the ECF User whose identification and password are being used to file the foregoing Stipulation. Pursuant to Civil Local Rule 5-1(i), I hereby attest that the other signatories have concurred in this filing.

Dated: October 15, 2020

By: /s/ Jason S. Meyer
Jason S. Meyer

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2020, I electronically filed the above document with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to all registered counsel.

Dated: October 15, 2020

By: /s/ Jason S. Meyer
Jason S. Meyer