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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	<b>January 21, 2021 at 8:00 a.m.</b>

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: October 20, 2020.

  
\_\_\_\_\_  
Honorable William Alsup  
United States District Judge

## Notes

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