



1 agree on a proposed modified schedule through the date of the claim construction hearing, but do not  
2 agree on the schedule for the dates thereafter. Accordingly, the parties submit with this Joint Motion  
3 to Amend the Scheduling Order proposed orders reflecting the parties' agreed upon deadlines leading  
4 up to the claim construction hearing, and the parties' differing proposals, as set forth below, for the  
5 case schedule following the claim construction hearing.

6 **Reason for the requested enlargement or shortening of time**

7 At the January 7, 2020 Subsequent Case Management Conference, the Court set key dates in  
8 the case schedule, including dates for the Claim Construction Hearing, Final Pretrial Conference,  
9 and Trial. (Dkt. 50). On January 13, 2020, the Court entered the Stipulated Request for Order  
10 Changing Time submitted by the parties. (Dkt. 52). In the time since, COVID-19 has impacted the  
11 parties, outside counsel, and various others involved in the case, such that an adjustment of the  
12 schedule is warranted.

13 More particularly, the governor of California declared a state of emergency as a result of  
14 COVID-19 on March 4. Just over two weeks later, the governor ordered that all individuals living  
15 in the State of California stay at home until further notice, and set the penalty of violation of that  
16 order as a criminal misdemeanor.<sup>2</sup> Palo Alto Networks and some of the attorneys for both parties  
17 are located in Northern California, and thus have been impacted by these mandates. And states  
18 across the country have issued similar orders in response to the risks associated with COVID-19.

19 Also, many states including California have closed schools temporarily or for the remainder  
20 of the school year. For example, the governor of California indicated on March 17 that few if any  
21 California public schools will reopen before the fall. As such, many individuals involved in this  
22 case, including outside counsel, are working from home as well as caring for and educating their  
23 children.

24 Further, Chief District Judge Hamilton has issued General Order No. 72, IN RE: Coronavirus  
25 Disease Public Health Emergency (effective March 16, 2020), addressing concerns regarding the  
26 health of jurors, witnesses, parties, attorneys, the public, court staff, Probation and Pretrial Services  
27 staff, chambers staff, and judges due to COVID-19.

28 \_\_\_\_\_  
<sup>2</sup> Pursuant to Government Code §8665.

1 As such, the parties jointly propose a modification of the case schedule to address the health,  
 2 safety, and availability of this Court and its staff, the parties, their employees, their experts, and their  
 3 counsel. And if the Court is unable to determine a date for the claim construction hearing at this time  
 4 given the uncertainty of the impact of COVID-19, the parties respectfully request that the Court enter  
 5 the proposed dates leading up to the hearing.

6 The Parties jointly propose the modifications to the schedule set forth below up through the  
 7 date of the claim construction hearing. Those modifications ensure continued alignment of the claim  
 8 construction hearing in this case with the related *Juniper* suit, in which the Court recently entered an  
 9 amended scheduling order, pursuant to stipulation of the parties, moving the date of that hearing.  
 10 *See Juniper* suit, Dkt. 48.<sup>3</sup> The modifications set forth below would align the claim construction  
 11 process with the related *Juniper* suit, and accords with the typical schedule contemplated by the  
 12 Local Civil and Patent Rules.

13 The parties have set forth separate proposals in section 2 below regarding the deadlines that  
 14 occur subsequent to the claim construction hearing.

	<u>EVENT</u>	<u>PREVIOUS DATE</u>	<u>AGREED PROPOSED DATE</u>
18 19 20 21	1 Completion of Claim Construction Discovery pursuant to Patent L.R. 4-4, including the deposition of any expert that submitted an expert declaration concerning claim construction, if any	April 24, 2020  (Per Court Order, Dkt. 50)	May 21, 2020
22 23 24	2 Packet Intelligence’s Opening Claim Construction Brief pursuant to Patent L.R. 4-5(a)	May 8, 2020  (Per Court Order, Dkt. 50)	June 4, 2020
25 26	3 Palo Alto Networks’ Responsive Claim Construction Brief	May 22, 2020  (Per Court Order, Dkt. 50)	July 2, 2020

28 <sup>3</sup> On August 14, 2019, Packet Intelligence filed a motion urging the Court to relate this suit to the *Juniper* suit. *See* Dkt. 28.

1		pursuant to Patent L.R. 4-5(b)	
2	4	Packet Intelligence's Reply Claim Construction Brief pursuant to Patent L.R. 4-5(c)	June 1, 2020 (Per Court Order, Dkt. 50)
3			July 21, 2020
4	5	Technology Tutorial <sup>4</sup>	June 15, 2020 (Per Court Order, Dkt. 50)
5			August 11, 2020, or as the Court determines
6	6	Claim Construction Hearing pursuant to Patent L.R. 4.6	June 19, 2020 at 10:00 a.m. (Per Court Order, Dkt. 50)
7			August 14, 2020, or as the Court determines
8			
9			

### 1. Separate Proposals for Deadlines After Claim Construction Hearing

While the parties jointly propose the modifications above for the deadlines leading up to the claim construction hearing, the parties propose different schedules following the claim construction hearing.

#### a. Palo Alto Networks' Position

Palo Alto Networks' proposal enhances judicial and party economy by aligning the post-claim construction deadlines in this case with the corresponding deadlines in the related *Juniper* suit, up to the Pretrial Conference. This suit and the *Juniper* suit are closely related, with overlapping asserted claims and similar accused products (firewalls). Alignment of deadlines is economical because, among other things, (1) there are likely to be summary judgment issues that overlap between this suit and the *Juniper* suit, and aligning the dispositive motion schedules will ensure the Court need deal with those issues once, not twice; (2) there likely will be overlapping *Daubert* issues that the Court would need to address once, not twice, with the schedules aligned; (3) aligning the fact discovery deadlines will ensure that the parties in this case will not need to seek leave to supplement

<sup>4</sup> The Parties previously proposed, and the schedule presently in place includes, a date for a live technology tutorial to be presented to the Court by counsel for the Parties. *See* Dkt. 52. In the *Juniper* case, instead of proposing a live technology tutorial, the parties there agreed to submit a technology tutorial to the Court. *See Juniper* suit, Dkt. 48. The Parties in the present suit would be pleased to proceed with either a live technology tutorial or a submission to the Court, whichever approach would best assist the Court in understanding the technology at issue in this case.

1 expert reports to take into consideration relevant fact discovery that may be uncovered in the related  
2 *Juniper* suit during any additional fact discovery period in that suit; and (4) aligning fact and expert  
3 discovery dates across the two suits increases the likelihood that the parties would present to the  
4 Court any overlapping discovery issues once, not twice. Accordingly, Palo Alto Networks' proposed  
5 dates in rows 10 through 17 of the table below are the same as the dates for those same events in the  
6 related *Juniper* suit.

7 Palo Alto Networks' proposed schedule also provides needed time for the parties to conduct  
8 and complete fact discovery while having the benefit of the Court's anticipated claim construction  
9 rulings, and accords with the scheduling framework discussed and adopted at the January 7, 2020  
10 Subsequent Case Management Conference ("January 7th CMC"). See Dkt. 55, Transcript of  
11 Proceedings held on 01/07/2020. At the January 7th CMC, the parties agreed to a close of fact  
12 discovery approximately four months after the claim construction hearing. *Id.* at 5:17-6:10.<sup>5</sup>  
13 Accordingly, Palo Alto Networks' proposed date of December 22, 2020 for the close of fact  
14 discovery is approximately four months after the August 14, 2020 claim construction hearing. In  
15 contrast, Packet Intelligence's proposal provides significantly less time to complete fact discovery  
16 after the Court's anticipated claim construction rulings, and provides less time for post-claim  
17 construction discovery than is typical in patent cases in this District. Accordingly, Palo Alto  
18 Networks respectfully submits that its proposed schedule should be adopted.

19 Packet Intelligence contends below that the schedules should be staggered "to avoid the  
20 burden" to Packet Intelligence of concurrent deadlines, but that argument ignores the judicial  
21 economies flowing from concurrent schedules based on overlapping issues and avoidance of  
22 conflicting results, points that Packet Intelligence itself argued in its motion to relate cases.<sup>6</sup> Further,  
23

24 <sup>5</sup> The parties agreed to the end of fact discovery "three months after" a claim construction ruling,  
25 which the Court assumed would issue approximately one month after the claim construction hearing.  
26 *Id.* ("THE COURT: So then if you assume that it will take me about a month to do the ruling, that  
27 gets us to towards the end of July. ... Okay. So three months after that? MR. VOWELL: I think that  
28 would be fine, Your Honor. THE COURT: So that's August, September -- the end of October. From  
Palo Alto's perspective? MR. BATCHELDER: That should be fine.").

<sup>6</sup> Packet Intelligence argued "the cases involve the same patent owner, the same Patents-in-Suit, and  
infringement of the same claims of the Patents-in-Suit" and the "issues that arise out of the litigation

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