

**RUSS AUGUST & KABAT**

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

Digital CBT LLC,  
Plaintiff,

vs.

TiVo, Inc.,  
Defendant.

Case No. SACV 12-6418 CJC (RNBx)

**~~PROPOSED~~ PROTECTIVE  
ORDER**

The Honorable Cormac J. Carney  
United States District Court Judge

AND RELATED COUNTERCLAIMS

RUSS, AUGUST & KABAT

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1           The Parties, by and through their respective counsel, having stipulated and  
 2 agreed that an order pursuant to Federal Rule of Civil Procedure 26(c) is necessary  
 3 to protect the confidentiality of documents and other information obtained in the  
 4 course of discovery in this Action, it is hereby ORDERED THAT:

5           1.     **SCOPE OF ORDER.** This Stipulation and Protective Order includes  
 6 in its scope all documents, things and information (including all documents and  
 7 tangible things as defined in Rule 34(a) of the Federal Rules of Civil Procedure or  
 8 any applicable local rule) that are produced, disclosed or filed in the above-  
 9 captioned action (the "Action"), by or on behalf of any Party or non-Party,  
 10 voluntarily or involuntarily, whether pursuant to formal or informal discovery  
 11 requests, subpoena, deposition notice, or motion practice, and whether revealed in  
 12 a document, deposition, a response to any type of written discovery, a submission  
 13 to the Court or otherwise ("Litigation Material"). Nothing in this Order shall  
 14 obligate any Party or non-Party to produce any Litigation Material to any other  
 15 Party or non-Party that it is not otherwise required to produce under the Federal  
 16 Rules of Civil Procedure or any applicable local rule.

17           2.     **USE OF LITIGATION MATERIAL GENERALLY.** All  
 18 Litigation Material designated or reflecting CONFIDENTIAL INFORMATION,  
 19 CONFIDENTIAL OUTSIDE ATTORNEY'S EYES ONLY INFORMATION, or  
 20 CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY  
 21 INFORMATION, as defined below, shall be used solely for the purposes of  
 22 preparation, trial and appeal of this Action and for no other purpose, absent further  
 23 order of the Court. However, nothing herein shall prevent or in any way limit  
 24 disclosure, use, or dissemination of any documents, things, or information that are  
 25 in the public domain.

26           3.     **DEFINITIONS.**

27           a.     "Copy" shall mean any reproduction, depiction, or sample of  
 28 any Litigation Material, regardless of format, by photographic, scanning, imaging,

1 recording, manual input, or other electronic, magnetic, optical, or manual  
 2 reproduction means.

3           b. "In-House Counsel" shall mean in-house counsel for each of the  
 4 Parties who are attorneys actively involved in this dispute for their employers, as  
 5 well as their direct clerical and support staff, copy services, translators and other  
 6 similar vendors providing clerical or administrative support to such In-House  
 7 Counsel in connection with this matter.

8           c. "Outside Litigation Counsel" shall mean the outside counsel  
 9 regularly employed by the law firms of record for each Party in this Action,  
 10 including all attorneys, staff, and clerical personnel, as well as other support  
 11 personnel providing clerical or administrative support, employed by such outside  
 12 counsel, as well as copy services, translators and other similar vendors providing  
 13 clerical or administrative support to such outside counsel in connection with this  
 14 matter. "Outside Litigation Counsel" shall also include any other outside counsel  
 15 retained by the Parties for appellate or consulting purposes, notwithstanding that  
 16 such counsel is not counsel of record, so long as the Party engaging such counsel  
 17 provides the other Party with written notice, and the other Party may object to such  
 18 counsel on the same terms as set forth for objecting to a "Qualified Consultant" in  
 19 Paragraphs 8(c) and 8(d).

20           d. "Party" or "Parties" shall mean any or all parties to this Action.

21           e. "Producing Party" shall mean a Party or non-party, on behalf of  
 22 which documents, things or information are produced, furnished, or disclosed,  
 23 during the course of this Action, in response to Local Rules of the Court or  
 24 subpoena, requests for production of documents, interrogatories, requests for  
 25 admissions, depositions or any other formal or informal request for discovery  
 26 pursuant to the Federal Rules of Civil Procedure, or in the form of pleadings,  
 27 briefs, memoranda, materials filed with the court, or other forms of information  
 28 produced, furnished or disclosed by or on behalf of such a Party or non-party.

1           f. "Receiving Party" shall mean any Party or non-party to which  
 2 documents, things, or information are produced, furnished, or disclosed, whether  
 3 voluntarily or in response to formal or informal discovery requests, subpoena,  
 4 deposition notice, or court order, by any Producing Party in this Action.

5           g. "Source Code" shall mean source code and object code. For  
 6 avoidance of doubt, this includes source files, make files, intermediate output files,  
 7 executable files, header files, resource files, library files, module definition files,  
 8 map files, object files, linker files, browse info files, and debug files. Source Code  
 9 does not include documents that describe source code or object code, such as  
 10 hardware reference specifications, software reference specifications, application  
 11 programming interface ("API") specifications, technical specifications, and other  
 12 presentations about how source code or object code is built, organized, engineered,  
 13 designed or developed, except to the extent that any such document incorporates  
 14 source code and/or object code, in which case that portion of such document  
 15 qualifies as Source Code.

16           h. "CONFIDENTIAL INFORMATION" shall mean Litigation  
 17 Material that reflects or contains any of the following: (i) confidential or  
 18 proprietary technical or scientific information; (ii) confidential or proprietary  
 19 know-how; (iii) confidential, proprietary, or sensitive business or financial  
 20 information; (iv) product research and development information; (v) customer and  
 21 supplier information; (vi) marketing strategies and information; (vii) strategic  
 22 business information, including without limitation business plans, manufacturing  
 23 information, cost information, or logistical information; (viii) any confidential  
 24 information that the Producing Party would not normally reveal to third parties  
 25 without a confidentiality agreement; or (ix) information of a non-party that the  
 26 Producing Party is bound by a separate confidentiality agreement or court order to  
 27 maintain in confidence and that the Producing Party produces in the Action.  
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1           i. "CONFIDENTIAL OUTSIDE ATTORNEY'S EYES ONLY  
 2 INFORMATION" shall mean Litigation Material that is so sensitive that the  
 3 Producing Party in good faith believes its disclosure without further restrictions  
 4 will result in significant risk of competitive disadvantage or harm if disclosed to  
 5 another Party without restriction upon use or further disclosure, and that reflects or  
 6 contains any of the following: (i) licensing information; (ii) confidential,  
 7 proprietary, or highly sensitive design, development, technical, or manufacturing  
 8 information; (iii) trade secrets; (iv) confidential, proprietary, or highly sensitive  
 9 business planning, strategy, marketing, financial, pricing, or sales information; or  
 10 (v) confidential or proprietary information that affords the Producing Party an  
 11 actual or potential economic advantage over others.

12           j. "CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES  
 13 ONLY INFORMATION" shall mean Litigation Material of a Producing Party, or  
 14 of any non-parties that a Producing Party is permitted to produce in the Action, that  
 15 constitutes or contains Source Code.

16           k. "DESIGNATED INFORMATION" shall mean information  
 17 designated as CONFIDENTIAL INFORMATION, CONFIDENTIAL OUTSIDE  
 18 ATTORNEY'S EYES ONLY INFORMATION, or CONFIDENTIAL SOURCE  
 19 CODE – ATTORNEYS' EYES ONLY INFORMATION.

20           4. **DESIGNATION OF DOCUMENTS OR OTHER LITIGATION**  
 21 **MATERIAL.** A Producing Party designating Litigation Material as  
 22 DESIGNATED INFORMATION must have a good faith belief that the Litigation  
 23 Material meets the definition of CONFIDENTIAL INFORMATION,  
 24 CONFIDENTIAL OUTSIDE ATTORNEY'S EYES ONLY INFORMATION, or  
 25 CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY  
 26 INFORMATION as set forth in Paragraphs 3(h), 3(i), and 3(j), respectively. Based  
 27 on such a good faith belief, any Party or non-party may designate, at or prior to the  
 28 time of production, any non-public Litigation Material (and copies thereof)

1 produced or disclosed by or on behalf of such Party or non-party, or any portion of  
2 such material, as either:

3 a. CONFIDENTIAL INFORMATION, by placing on each page  
4 (or electronic file and medium containing electronic file(s)) and each thing  
5 (including electronic, optical, magneto-optical, magnetic, etc. media) to which the  
6 designation applies a legend substantially as follows: "CONFIDENTIAL  
7 INFORMATION SUBJECT TO PROTECTIVE ORDER," "CONFIDENTIAL  
8 INFORMATION," or other similar designation;

9 b. CONFIDENTIAL OUTSIDE ATTORNEY'S EYES ONLY  
10 INFORMATION, by placing on each page (or electronic file and or medium  
11 containing electronic file(s)) and each thing (including electronic, optical,  
12 magneto-optical, magnetic, etc. media) to which the designation applies a legend  
13 substantially as follows: "CONFIDENTIAL OUTSIDE ATTORNEY'S EYES  
14 ONLY INFORMATION SUBJECT TO PROTECTIVE ORDER,"  
15 "CONFIDENTIAL OUTSIDE ATTORNEY'S EYES ONLY INFORMATION,"  
16 or other similar designation; or

17 c. CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES  
18 ONLY INFORMATION, by placing on each page (or electronic file and or  
19 medium containing electronic file(s)) and each thing (including electronic, optical,  
20 magneto-optical, magnetic, etc. media) to which the designation applies a legend  
21 substantially as follows: "CONFIDENTIAL SOURCE CODE – ATTORNEYS'  
22 EYES ONLY INFORMATION SUBJECT TO PROTECTIVE ORDER" or other  
23 similar designation.

24 In the event the Producing Party elects to produce documents containing or  
25 reflecting DESIGNATED INFORMATION for inspection, no marking need be  
26 made by the Producing Party in advance of the inspection, and all inspected  
27 materials shall be deemed CONFIDENTIAL OUTSIDE ATTORNEY'S EYES  
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1 ONLY INFORMATION until designated otherwise at the time copies are  
 2 delivered to Receiving Party.

3 5. **USE OF DESIGNATED INFORMATION.** CONFIDENTIAL  
 4 INFORMATION shall not be made available, nor the contents thereof disclosed, to  
 5 persons other than QUALIFIED PERSONS, as defined in Paragraph 6 herein, and  
 6 CONFIDENTIAL OUTSIDE ATTORNEY’S EYES ONLY INFORMATION  
 7 shall not be made available, nor the contents thereof disclosed, to persons other  
 8 than SPECIALLY QUALIFIED PERSONS, as defined in Paragraph 7 herein,  
 9 except that CONFIDENTIAL INFORMATION and CONFIDENTIAL OUTSIDE  
 10 ATTORNEY’S EYES ONLY INFORMATION may be made available or the  
 11 contents thereof disclosed in accordance with the provisions of Paragraphs 9 and  
 12 10. Material designated CONFIDENTIAL SOURCE CODE – ATTORNEYS’  
 13 EYES ONLY INFORMATION and any portion of any transcript or other paper  
 14 that contains or reveals the contents of material so designated may only be  
 15 disclosed, subject to the provisions of Paragraph 27, to SOURCE CODE  
 16 QUALIFIED PERSONS, as defined in Paragraph 7, except in accordance with the  
 17 provisions of Paragraphs 9 and 10. All DESIGNATED INFORMATION shall be  
 18 carefully and securely maintained by the Receiving Party and access to such  
 19 DESIGNATED INFORMATION shall be permitted only to persons having access  
 20 thereto under the terms of this Protective Order. DESIGNATED INFORMATION  
 21 shall be stored at the offices or facilities (including any servers or databases) of the  
 22 Receiving Party only consistent with the terms of this Protective Order. In the  
 23 event that any QUALIFIED PERSON, SPECIALLY QUALIFIED PERSON, or  
 24 SOURCE CODE QUALIFIED PERSON ceases to be engaged in the litigation of  
 25 this Action, access by such person to DESIGNATED INFORMATION shall be  
 26 terminated. The provisions of this Protective Order, however, shall otherwise  
 27 remain in full force and effect as to such QUALIFIED PERSON, SPECIALLY  
 28 QUALIFIED PERSON, or SOURCE CODE QUALIFIED PERSON.

1           6.     **QUALIFIED PERSONS.** QUALIFIED PERSONS shall include  
2 only the following:

3           a.     Outside Litigation Counsel involved in the litigation of this  
4 Action;

5           b.     jury consultants, mock jurors, and personnel at document  
6 duplication, coding, imaging, or scanning services retained by (but not regularly  
7 employed by) Outside Litigation Counsel, as deemed in good faith to be  
8 reasonably necessary during the litigation of this Action;

9           c.     Qualified Consultants and Qualified Experts, as provided in  
10 Paragraph 8(b), and their regularly employed support personnel (such as  
11 administrative assistants, secretaries, clerical and administrative staff) as deemed in  
12 good faith to be reasonably necessary during the litigation of this Action;

13          d.     the Court, its personnel, jurors and alternate jurors, and court  
14 reporters, stenographers and videographers transcribing or recording testimony at  
15 depositions, hearings, or trial in this Action;

16          e.     In-House Counsel; and

17          f.     Up to three (3) Qualified Employees of each Party, as provided  
18 in Paragraph 8(a) herein.

19           7.     **SPECIALLY QUALIFIED PERSONS AND SOURCE CODE**  
20 **QUALIFIED PERSONS.**

21          a.     SPECIALLY QUALIFIED PERSONS shall include only those  
22 QUALIFIED PERSONS listed in Paragraphs 6(a)-6(d).

23          b.     SOURCE CODE QUALIFIED PERSONS as used herein shall  
24 include only those QUALIFIED PERSONS listed in Paragraphs 6(a), 6(b), 6(d),  
25 and Qualified Consultants and/or Qualified Experts under paragraph 8(b), in  
26 addition to their regularly employed support personnel, as long as such personnel  
27 become Qualified Consultants and Qualified Experts as provided in Paragraph  
28 8(b).



1           **8. APPROVAL OF PROPOSED QUALIFIED EMPLOYEES,**  
 2 **QUALIFIED CONSULTANTS, AND QUALIFIED EXPERTS.**

3           a. Other than In-House Counsel, an employee of a Party who does  
 4 not engage in competitive decision-making shall become a Qualified Employee as  
 5 to a particular Producing Party and may receive the CONFIDENTIAL  
 6 INFORMATION of that Producing Party only after the following conditions have  
 7 been satisfied: (i) the proposed Qualified Employee has executed an Agreement to  
 8 Abide By Protective Order in the form attached hereto as Exhibit A; (ii) the  
 9 executed Agreement has been served on the Producing Party; and (iii) the  
 10 Producing Party has not objected to the proposed Qualified Employee pursuant to  
 11 Paragraph 8(c), or the Court has ruled on an application by the Receiving Party that  
 12 the proposed Qualified Employee may receive the CONFIDENTIAL  
 13 INFORMATION of the Producing Party.

14           b. A consultant or expert retained by a Party shall become a  
 15 Qualified Consultant or Qualified Expert, as the case may be, as to a particular  
 16 Producing Party and may receive the DESIGNATED INFORMATION of that  
 17 Producing Party only after the following conditions have been satisfied: (i) the  
 18 proposed Qualified Consultant or Qualified Expert has executed an Agreement to  
 19 Abide By Protective Order in the form attached hereto as Exhibit B; (ii) the  
 20 executed Agreement and the proposed Qualified Consultant’s or Qualified Expert’s  
 21 curriculum vitae (including (1) their present employer and title, (2) a list of any  
 22 known present or former relationships or engagements between them and any Party  
 23 and any known present or former relationships or engagements between them and  
 24 any known competitor of a Party within the last seven years, (3) a list of other  
 25 cases (including case name, parties, and court) in which they have testified at trial  
 26 or deposition within the last seven years, and (4) a list of all companies with which  
 27 they have consulted or by which they have been employed within the last four  
 28 years, or, if the identity of the employer is confidential, a description of the

1 engagement and a statement that the employer was not a Party or a competitor of a  
 2 Party) have been served on the Producing Party; and (iii) the Producing Party has  
 3 not objected to the proposed Qualified Consultant or Qualified Expert pursuant to  
 4 Paragraph 8(c), or the Court has ruled on an application by the Receiving Party that  
 5 the proposed Qualified Consultant or Qualified Expert may receive  
 6 DESIGNATED INFORMATION of the Producing Party. A proposed Qualified  
 7 Consultant or Qualified Expert may only receive CONFIDENTIAL SOURCE  
 8 CODE – ATTORNEYS’ EYES ONLY INFORMATION after being expressly  
 9 identified to the Producing Party as seeking access to CONFIDENTIAL SOURCE  
 10 CODE – ATTORNEYS’ EYES ONLY INFORMATION. If the Receiving Party  
 11 wishes an already identified Qualified Consultant or Qualified Expert to receive  
 12 CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY  
 13 INFORMATION, it must re-comply with the provisions of this Paragraph and  
 14 identify the proposed Qualified Consultant or Qualified Expert as seeking access to  
 15 CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY  
 16 INFORMATION.

17 c. A Producing Party shall have seven (7) calendar days from the  
 18 date of facsimile or electronic mail service of the materials and information served  
 19 pursuant to Paragraphs 8(a) or 8(b), plus three (3) additional calendar days if  
 20 service is made by U.S. mail or overnight delivery (such as Federal Express), to  
 21 object to a proposed Qualified Employee, Qualified Consultant or Qualified  
 22 Expert. Such objection must be for good cause, stating with particularity the  
 23 reasons for the objection, and must be in writing served on all Parties. Failure to  
 24 object within the period referenced in this Paragraph shall constitute approval but  
 25 shall not preclude the non-objecting Party from later objecting to continued access  
 26 where facts suggesting a basis for objection could not have been earlier discovered  
 27 by exercising due diligence within the period for making a timely objection. If a  
 28 written notice of objection is served, no DESIGNATED INFORMATION of the

1 Producing Party shall be disclosed to the proposed Qualified Employee, Qualified  
 2 Consultant, or Qualified Expert until the objection is resolved by agreement or by  
 3 an order of the Court.

4 d. The Producing Party objecting to the disclosure of  
 5 DESIGNATED INFORMATION to a proposed Qualified Employee, Qualified  
 6 Consultant, or Qualified Expert bears the burden of seeking an order of the Court  
 7 and must demonstrate under applicable law why the proposed Qualified Employee,  
 8 Qualified Consultant, or Qualified Expert should not be permitted to receive  
 9 DESIGNATED INFORMATION. The objecting Producing Party must seek an  
 10 order of the Court within fourteen (14) calendar days of serving its objection under  
 11 Paragraph 8(c). Any such motion must be made in strict compliance with Central  
 12 District Local Rules 37-1 and 37-2 (including the Joint Stipulation requirement).  
 13 Failure to seek an order of the Court shall constitute approval but shall not  
 14 preclude the non-objecting Party from later objecting to continued access where  
 15 facts suggesting a basis for objection could not have been earlier discovered by  
 16 exercising due diligence within the period for making a timely objection.

17 e. The failure of a Producing Party to object to the receipt of its  
 18 CONFIDENTIAL INFORMATION, CONFIDENTIAL OUTSIDE  
 19 ATTORNEY’S EYES ONLY INFORMATION and/or CONFIDENTIAL  
 20 SOURCE CODE – ATTORNEYS’ EYES ONLY INFORMATION by a person  
 21 designated by a Receiving Party under Paragraph 8(b) shall in no way prejudice the  
 22 Producing Party’s right to later move to exclude such person’s testimony or written  
 23 report on grounds other than the propriety of such person’s access to the Producing  
 24 Party’s CONFIDENTIAL INFORMATION, CONFIDENTIAL OUTSIDE  
 25 ATTORNEY’S EYES ONLY INFORMATION and/or CONFIDENTIAL  
 26 SOURCE CODE – ATTORNEYS’ EYES ONLY INFORMATION.

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1           9.    **LIMITED DISCLOSURE TO PARTIES WITH PRIOR**  
2 **ACCESS.** Nothing herein shall prevent the disclosure of any DESIGNATED  
3 INFORMATION to any of the following:

4           a.    any current employee of the Producing Party;  
5           b.    any current employee of the Receiving Party if the  
6 DESIGNATED INFORMATION originated with, or was sent to, the current  
7 employee of the Receiving Party, as evidenced by the identification of the current  
8 employee as an author, recipient, or copy recipient on the face of the  
9 DESIGNATED INFORMATION; or

10          c.    during deposition, any former employee of the Receiving Party  
11 or Producing Party if the DESIGNATED INFORMATION originated with, or was  
12 sent to, the former employee during the term of employment of the former  
13 employee, as evidenced by the identification of the former employee as an author,  
14 recipient, or copy recipient on the face of the DESIGNATED INFORMATION.

15           10. **LIMITED DISCLOSURE TO WITNESSES TESTIFYING AT**  
16 **DEPOSITION.** Except insofar as a witness is otherwise qualified to receive  
17 DESIGNATED INFORMATION under any of Paragraphs 6 through 9,  
18 DESIGNATED INFORMATION may be made available, or the contents thereof  
19 disclosed, to witnesses testifying at deposition, or who provide an affidavit or  
20 certification, and their counsel, only if:

21           a.    in the case of a document, it appears that the witness has  
22 previously seen or received the DESIGNATED INFORMATION contained  
23 therein, either because the document identifies the witness as an author, recipient  
24 or copy recipient, or because the document comes from the files of the witness;

25           b.    the Producing Party agrees in writing that the witness may have  
26 access to the DESIGNATED INFORMATION for purposes of his or her testimony  
27 at deposition; or  
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1           c.     the witness is employed by the Producing Party and there is no  
 2 indication that, despite such employment, the witness should not be able to see the  
 3 document.

4 If the basis of the disclosure is (a) above, then if requested by the Producing Party,  
 5 immediately after the disclosure, the lawyer disclosing such DESIGNATED  
 6 INFORMATION must make an inquiry with respect to the witness's previous  
 7 access to such information, and if it becomes apparent on such inquiry that the  
 8 witness has not had previous access to the DESIGNATED INFORMATION, the  
 9 item shall be withdrawn and no further inquiry regarding the DESIGNATED  
 10 INFORMATION shall be permitted. Any witness testifying at deposition or who  
 11 provides an affidavit or certification, or their counsel who receives DESIGNATED  
 12 INFORMATION, shall not reveal or discuss the contents of that information to or  
 13 with any person who is not entitled to receive such information pursuant to this  
 14 Protective Order.

15           11.   **DESIGNATION OF DEPOSITION TESTIMONY.** A Party or  
 16 non-party may designate information disclosed during a deposition as  
 17 DESIGNATED INFORMATION by so indicating on the record at the deposition.  
 18 A Party or non-party deponent may also designate in writing, within thirty (30)  
 19 calendar days of the receipt of the certified transcript (the "Designation Period"),  
 20 that specific portions of testimony (by reference to specific pages and lines) and/or  
 21 exhibits be treated as DESIGNATED INFORMATION. If a Party has a good faith  
 22 belief that it needs the designation of a transcript to be made sooner, the Party may  
 23 ask the other Party (or non-party deponent) whether the other Party (or non-party  
 24 deponent) may designate all or part of the deposition transcript as DESIGNATED  
 25 INFORMATION. If such a request is made, specifically citing this Paragraph in  
 26 the inquiry, the Designation Period as to that Party or non-party deponent shall  
 27 expire if that Party or non-party deponent does not provide its designations within  
 28 fifteen (15) calendar days. A Party or non-party deponent designating information

1 as DESIGNATED INFORMATION must have a good faith belief that the  
2 information meets the definition of CONFIDENTIAL INFORMATION,  
3 CONFIDENTIAL OUTSIDE ATTORNEY'S EYES ONLY INFORMATION, or  
4 CONFIDENTIAL SOURCES CODE – ATTORNEYS' EYES ONLY  
5 INFORMATION and must only designate those portions of testimony or exhibits  
6 that qualify as such. Until the Designation Period has elapsed for a given  
7 transcript, that transcript shall be treated as CONFIDENTIAL OUTSIDE  
8 ATTORNEY'S EYES ONLY INFORMATION unless the Parties have earlier  
9 agreed that no designation will be made.

10 12. **ATTENDANCE AT DEPOSITIONS.** During depositions of any  
11 Party or nonparty, a Party or non-party claiming that information that is to be  
12 disclosed or upon which questions may be based is DESIGNATED  
13 INFORMATION may exclude from the room for that portion of the deposition any  
14 person, beside the witness and counsel representing the witness, who is not a  
15 QUALIFIED PERSON, SPECIALLY QUALIFIED PERSON, or SOURCE  
16 CODE QUALIFIED PERSON, as appropriate under this Protective Order.

17 13. **FILING DESIGNATED INFORMATION.** In accordance with  
18 Local Rule 79-5.1, if any papers to be filed with the Court contain any  
19 DESIGNATED INFORMATION, the proposed filing shall be accompanied by an  
20 application to file the papers or the portion thereof containing the DESIGNATED  
21 INFORMATION (if such portion is segregable) under seal; and the application  
22 shall be directed to the judge to whom the papers are directed. For motions, the  
23 parties shall publicly file a redacted version of the motion and supporting papers.  
24 Neither the fact that counsel have stipulated to an under seal filing nor the fact that  
25 a proposed filing contains DESIGNATED INFORMATION is sufficient in itself  
26 for the Court to find that good cause exists to file the papers or the portion  
27 containing the DESIGNATED INFORMATION under seal.

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1           14.    **PROCEDURE FOR POST-PRODUCTION DESIGNATION.** At  
 2 any time prior to the final pretrial conference in this Action, a Producing Party may  
 3 seek additional protection for previously produced Litigation Material by re-  
 4 producing and re-designating such Litigation Material as DESIGNATED  
 5 INFORMATION. If Litigation Material was properly shown to a person who  
 6 would not be entitled to see it as newly re-designated, that person shall be advised  
 7 that the Litigation Material has been re-designated as DESIGNATED  
 8 INFORMATION, as the case may be, and instructed not to use the Litigation  
 9 Material for any purpose other than the litigation of this Action.

10           15.    **PROCEDURE FOR OBJECTION TO DESIGNATION.**

11           a.     At any time prior to the final pretrial conference in this Action,  
 12 any Party may object in good faith to the designation or re-designation of any  
 13 Litigation Material as DESIGNATED INFORMATION by providing counsel for  
 14 the Producing Party with written notice of the reasons for its objection. The  
 15 Producing Party shall, within seven (7) calendar days after receiving such written  
 16 notice, advise the objecting Party, in writing, of the basis for its designation.  
 17 Within seven (7) calendar days thereafter, the Parties shall meet and confer in a  
 18 good faith effort to resolve the matter. If the Receiving Party applies to the Court  
 19 for relief from the designation, the Producing Party retains the burden of  
 20 establishing that the item was properly designated. Any such application to the  
 21 Court must be made in strict compliance with Central District Local Rules 37-1  
 22 and 37-2 (including the Joint Stipulation requirement).

23           b.     Notwithstanding any objection to the designation of Litigation  
 24 Material as DESIGNATED INFORMATION, Litigation Material designated as  
 25 DESIGNATED INFORMATION shall be treated as such and shall be subject to  
 26 the provisions hereof unless and until one of the following occurs: (i) the  
 27 Producing Party changes or removes such designation in writing; or (ii) the Court  
 28 orders a change in or removal of such designation. If Litigation Material was

1 properly shown to a person who would not be entitled to see it as reclassified, that  
 2 person shall be advised that the Litigation Material has been reclassified and  
 3 instructed not to use the Litigation Material for any purpose other than the  
 4 litigation of this Action.

5 c. The designation of an item as DESIGNATED INFORMATION  
 6 may be challenged, among other reasons, because: (i) the information is or comes  
 7 to be publicly disclosed in a printed publication, (ii) the information is or comes to  
 8 be generally publicly known, or (iii) the information is or comes to be otherwise  
 9 known to the Receiving Party without any breach of the confidentiality obligations  
 10 hereunder. Any disclosure of DESIGNATED INFORMATION under this  
 11 Protective Order shall not serve as a basis for challenging the DESIGNATED  
 12 INFORMATION designation of the information in question.

13 d. The failure of the Receiving Party to challenge the designation  
 14 of any item as DESIGNATED INFORMATION under this Protective Order at the  
 15 time of production or designation of the item shall not be deemed a waiver of the  
 16 Receiving Party’s right to challenge the propriety of such designation at any time  
 17 prior to the final pretrial conference in this Action.

18 16. **APPLICABILITY TO NON-PARTIES.** It is expressly  
 19 contemplated that the protections of this Protective Order apply to non-parties.

20 17. **NOTICE TO NON-PARTIES.** Any Party issuing a subpoena to a  
 21 non-party shall enclose a copy of this Protective Order and shall provide a copy of  
 22 the subpoena to all Parties in this Action.

23 18. **NO WAIVER.**

24 a. Nothing in this Protective Order shall prejudice the right of any  
 25 Party to object to the production of any document or part thereof upon any  
 26 appropriate ground, including any applicable privilege, and nothing herein shall be  
 27 construed as a waiver of such rights. Moreover, nothing in this Protective Order  
 28 shall prejudice the right of any Party to object to the admissibility at trial of any



1 Litigation Material or other evidentiary material on any appropriate ground, and  
2 nothing herein shall be construed as a waiver of such right.

3           b.     Entering into, agreeing to and/or complying with the terms of  
4 this Protective Order shall not: (i) operate as an admission by any Party that any  
5 particular Litigation Material contains or reflects currently valuable trade secrets or  
6 protected proprietary or commercial information; or (ii) operate as an admission by  
7 any Party that any particular Litigation Material is, or is not, relevant to this  
8 Action.

9           19.   **PARTIES' OWN INFORMATION.** Notwithstanding any other  
10 provision of this Protective Order, nothing shall limit any Producing Party's use of  
11 its own documents, things or information, nor shall anything in this Protective  
12 Order prevent any Producing Party from disclosing its DESIGNATED  
13 INFORMATION to any person. Such disclosures shall not affect any designation  
14 of such documents, things, or information as DESIGNATED INFORMATION  
15 pursuant to the terms of this Protective Order so long as the disclosure is made in a  
16 manner that is reasonably calculated to maintain the confidentiality of the  
17 documents, things, or information.

18           20.   **DISCLOSURES BEYOND PROTECTIVE ORDER.** Nothing in  
19 this Protective Order shall prevent disclosure beyond the terms of this Protective  
20 Order: (i) if the Producing Party(ies) consents to such disclosure; (ii) if the Court,  
21 after notice of all affected persons, allows such disclosure; or (iii) if the Receiving  
22 Party thereafter becomes obligated to disclose the information in response to a  
23 lawful subpoena or other legal process. The Receiving Party shall give prompt  
24 written notice to counsel for the Producing Party and shall, unless the time for  
25 allowed for compliance makes it impossible, provide counsel for that Party at least  
26 ten (10) calendar days from receipt of the written notice to object to the Receiving  
27 Party's production of any materials that reflect DESIGNATED INFORMATION  
28 produced by the Producing Party. However, nothing in this order shall require

1 violation of any order of another Court. Further, nothing in this Protective Order is  
 2 intended or should be construed as authorizing a party to disobey a lawful  
 3 subpoena issued in another action.

4 **21. INADVERTENT OR UNINTENTIONAL PRODUCTION OF**  
 5 **PRIVILEGED LITIGATION MATERIAL.** Any information (including  
 6 documents) produced in this action that a party or non-party ("Producing Party")  
 7 later claims should not have been produced due to a privilege or protection from  
 8 discovery, including but not limited to any attorney-client privilege, work product  
 9 privilege, joint defense privilege, or settlement privilege, shall not be deemed to  
 10 waive any such privilege or protection. A party or non-party may request the  
 11 return or destruction of such information, which request shall identify the  
 12 information and the basis for requesting its return. If a Receiving Party receives  
 13 information that the Receiving Party believes may be subject to a claim of  
 14 privilege or protection from discovery, the Receiving Party shall promptly identify  
 15 the information to the producing party or non-party.

16 When a Producing Party or Receiving Party identifies such privileged or  
 17 protected information, a Receiving Party: 1) shall not use, and shall immediately  
 18 cease any prior use of, such information; 2) shall take reasonable steps to retrieve  
 19 the information from others to which the receiving party disclosed the information;  
 20 3) shall within five (5) business days of the Producing Party's request return to the  
 21 Producing Party or destroy the information and destroy all copies thereof; and 4)  
 22 shall confirm to the Producing Party the destruction under 3) above of all copies of  
 23 the information not returned to the Producing Party. No one shall use the fact or  
 24 circumstances of production of the information in this action to argue that any  
 25 privilege or protection has been waived. Within thirty (30) days after a Producing  
 26 Party or Receiving Party identifies the information, and not thereafter, the  
 27 Receiving Party may file a motion to compel the production of the information on  
 28 the basis that: (a) the information was never privileged or protected from

1 disclosure; or (b) any applicable privilege or immunity has been waived by some  
 2 act other than the production of the information in this action. Any such motion  
 3 must be made in strict compliance with Central District Local Rules 37-1 and 37-2  
 4 (including the Joint Stipulation requirement).

5 **22. INADVERTENT DISCLOSURE OF DESIGNATED**  
 6 **INFORMATION.**

7 a. If any Litigation Material that a Party or non-party intends to  
 8 designate as DESIGNATED INFORMATION is inadvertently disclosed without  
 9 being marked in accordance with this Protective Order, the failure to so mark the  
 10 Litigation Material shall not be deemed a waiver of its confidentiality.

11 b. If any DESIGNATED INFORMATION is disclosed, through  
 12 inadvertence or otherwise, to a person or Party other than a QUALIFIED  
 13 PERSON, SPECIALLY QUALIFIED PERSON or SOURCE CODE QUALIFIED  
 14 PERSON, as the case may be, then the Party disclosing the information shall use  
 15 its best efforts to bind such person or Party to the terms of this Protective Order  
 16 and (a) such person shall be informed promptly of all the provisions of this  
 17 Protective Order by the disclosing Party; (b) such person shall be identified  
 18 immediately to the Party that designated the Litigation Material as DESIGNATED  
 19 INFORMATION; and (c) the person to whom disclosure was made shall be  
 20 requested to sign an Agreement to Abide By Protective Order in the form of  
 21 Exhibit B hereto, which signed Agreement shall be served on the Party that  
 22 designated the Litigation Material as DESIGNATED INFORMATION. Nothing in  
 23 this Paragraph shall affect the Producing Party’s remedies under this Protective  
 24 Order or otherwise for such unauthorized disclosure.

25 **23. RETURN OR DESTRUCTION OF DESIGNATED**  
 26 **INFORMATION UPON CONCLUSION OF THIS ACTION.**

27 a. At the Conclusion of this Action, each Party subject to the  
 28 terms of this Protective Order shall assemble and return to each Producing Party all

1 originals and reproductions of any Litigation Material containing DESIGNATED  
2 INFORMATION, including notes made therefrom or summaries thereof, within  
3 sixty (60) calendar days of the Conclusion of this Action. In lieu of returning  
4 Litigation Materials containing information designated as CONFIDENTIAL  
5 INFORMATION, or CONFIDENTIAL OUTSIDE ATTORNEY'S EYES ONLY  
6 INFORMATION, or notes or summaries of Litigation Material containing any  
7 DESIGNATED INFORMATION, a Party may destroy all such Litigation Material  
8 within sixty (60) calendar days of the Conclusion of this Action, provided the Party  
9 electing to undertake such destruction certifies to the Producing Party in writing  
10 that it has made a reasonable and good faith effort to destroy such Litigation  
11 Material, and that all such material has been destroyed to the best of its knowledge.

12           b. Notwithstanding Paragraph 23(a), Outside Litigation Counsel  
13 for each Party may retain a record including one unredacted copy of the following,  
14 regardless of whether CONFIDENTIAL INFORMATION or CONFIDENTIAL  
15 OUTSIDE ATTORNEY'S EYES ONLY INFORMATION of another Party or  
16 non-Party is included: (i) its correspondence file of this case; (ii) its pleadings file,  
17 including all briefs, memoranda, affidavits, supporting materials, and all papers  
18 served on the Party; (iii) any briefs and appendices on appeal; (iv) all legal  
19 research memoranda; (v) its file of deposition transcripts and accompanying  
20 exhibits; and (vi) its file of hearing and trial transcripts and accompanying exhibits.  
21 In the instance of CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES  
22 ONLY INFORMATION, the foregoing exception to Paragraph 23(a) shall not  
23 apply and no partial or complete Source Code shall be retained under any  
24 circumstances absent written consent from the Producing Party.

25           **24. SURVIVAL OF OBLIGATIONS.**

26           a. All the provisions of this Protective Order shall survive the  
27 Conclusion of this Action, and shall continue to be binding after the Conclusion of  
28

1 this Action unless subsequently modified by agreement among the Parties or  
 2 further order of the Court.

3 b. "Conclusion of this Action" shall mean all appeal periods have  
 4 expired and any settlement has become effective or judgment has become final.

5 c. For the purposes of enforcing this Protective Order and  
 6 resolving any disputes thereunder, the Court retains jurisdiction indefinitely over  
 7 the Parties and any persons provided access to DESIGNATED INFORMATION  
 8 under the terms of this Protective Order.

9 25. **VIOLATIONS SANCTIONABLE.** All persons bound by this  
 10 Protective Order are hereby notified that if this Protective Order is in any manner  
 11 violated, the person or entity who commits such violation may be subject, on  
 12 motion and after a hearing, to such sanctions as are provided by law.

13 26. **RELIEF FROM PROTECTIVE ORDER.** Entry of this Protective  
 14 Order shall be without prejudice to the application by any Party or non-Party (i) for  
 15 relief from any restriction contained herein or (ii) for any order compelling or  
 16 further restricting the production or use of any Litigation Material produced,  
 17 furnished, or disclosed in the course of discovery in this Action. The Parties may  
 18 amend or modify any provision of this Protective Order by mutual agreement,  
 19 which agreement shall be embodied in a written stipulation to be approved by the  
 20 Court.

21 27. **ADDITIONAL PROTECTIONS FOR CONFIDENTIAL**  
 22 **SOURCE CODE – ATTORNEY’S EYES ONLY INFORMATION.**  
 23 CONFIDENTIAL SOURCE CODE – ATTORNEY’S EYES ONLY  
 24 INFORMATION shall be subject to the additional protection of this Paragraph.

25 a. Nothing in this Protective Order shall obligate the Parties to  
 26 produce any Source Code, nor act as an admission that any particular Source Code  
 27 is discoverable.  
 28

1           b.     Access to Source Code will be given only to SOURCE CODE  
 2 QUALIFIED PERSONS.

3           c.     Access to Source Code shall be provided on one "stand-alone"  
 4 computer (that is, the computer may not be linked to any network, including a local  
 5 area network ("LAN"), an intranet, or the Internet and may not be connected to any  
 6 printer or storage device other than the internal hard disk drive of the computer)  
 7 (each such configured computer is hereinafter referred to as a "Secure Computer").  
 8 Each Secure Computer shall be kept in a secure location at the offices of the  
 9 Producing Party's Outside Litigation Counsel's office in Los Angeles, or at such  
 10 other location as the Producing and Receiving Parties mutually agree (the  
 11 "Inspection Room"). Each Secure Computer may be password protected and shall  
 12 have the Source Code stored on a hard drive contained inside the Secure  
 13 Computer. The Producing Party shall produce Source Code in computer  
 14 searchable format on each Secure Computer. Each Secure Computer shall, at the  
 15 Receiving Party's request, include reasonable analysis tools appropriate for the  
 16 type of Source Code. The Receiving Party shall be responsible for providing the  
 17 tools or licenses to the tools that it wishes to use to the Producing Party so that the  
 18 Producing Party may install such tools on the Secure Computers. Each Secure  
 19 Computer shall include a printer of commercially reasonable speeds. The  
 20 Receiving Party may make hard copy print outs (on the provided paper) from the  
 21 printer connected to each Secure Computer at the time of review. Absent written  
 22 agreement of the Producing Party, or Court order, no more than five hundred (500)  
 23 total pages of the Source Code shall be printed or requested by the Receiving  
 24 Party. At end of each day, Producing Party shall collect the printouts made by the  
 25 Receiving Party and shall Bates label and produce copies of the printouts to  
 26 Receiving Party within a reasonable time.

27           d.     The Receiving Party shall make reasonable efforts to restrict its  
 28 requests for access to the Secure Computers to normal business hours, which for

1 purposes of this Paragraph shall be 9:00 a.m. through 5:00 p.m. Upon reasonable  
 2 notice from the Receiving Party, which shall not be less than three (3) business  
 3 days in advance, the Producing Party shall make reasonable efforts to  
 4 accommodate the Receiving Party's request for access to the Secure Computers  
 5 outside of normal business hours. The Parties agree to cooperate in good faith  
 6 such that maintaining the Source Code at the offices of the Producing Party's  
 7 Outside Litigation Counsel shall not unreasonably hinder the Receiving Party's  
 8 ability to efficiently and effectively conduct the prosecution or defense of this  
 9 Action. The parties reserve their rights to request access to the Source Code at the  
 10 site of any hearing or trial.

11 e. All SOURCE CODE QUALIFIED PERSONS who will review  
 12 Source Code on behalf of a Receiving Party shall be identified in writing to the  
 13 Producing Party at least seven (7) business days in advance of the first time that  
 14 such person reviews such Source Code. Such identification shall be in addition to  
 15 any disclosure required under Paragraph 8(b) of this order. The Producing Party  
 16 shall provide these individuals with information explaining how to start, log on to,  
 17 and operate the Secure Computers in order to access the produced Source Code on  
 18 the Secure Computers.

19 f. No person other than the Producing Party may alter, dismantle,  
 20 disassemble or modify any Secure Computer in any way, or attempt to circumvent  
 21 any security feature of any Secure Computer.

22 g. SOURCE CODE QUALIFIED PERSONS may not use cellular  
 23 telephones, tablets, cameras, laptop computers, and/or similar devices in the  
 24 Inspection Room. The Producing Party shall make reasonable efforts to provide a  
 25 separate room where SOURCE CODE QUALIFIED PERSONS may use these  
 26 devices during their inspection of the Source Code.

27 h. Hard copy printouts of Source Code shall be maintained by the  
 28 Receiving Party's Outside Litigation Counsel or SOURCE CODE QUALIFIED

1 PERSONS in a secured locked area. The Receiving Party may also temporarily  
 2 keep the print outs at: (i) the Court for any proceedings(s) relating to the Source  
 3 Code, for the dates associated with the proceeding(s); (ii) the sites where any  
 4 deposition(s) relating to the Source Code are taken, for the dates associated with  
 5 the deposition(s); and (iii) any intermediate location reasonably necessary to  
 6 transport the print outs (e.g., a hotel prior to a Court proceeding or deposition). No  
 7 further hard copies of such Source Code shall be made and the Source Code shall  
 8 not be transferred into any electronic format or onto any electronic media except  
 9 that:

10 1. The Receiving Party is permitted to make a the number  
 11 of copies required for use in connection with a Court filing, hearing, or trial –  
 12 taking into account the Court’s procedural requirements and the needs of the Court,  
 13 counsel, and any applicable witness to see the exhibits – and of only the specific  
 14 pages deemed in good faith to be reasonably necessary for deciding the issue for  
 15 which the portions of the Source Code are being filed or offered. To the extent  
 16 portions of Source Code are quoted in a Court filing, either (1) the entire document  
 17 will be stamped and treated as CONFIDENTIAL SOURCE CODE –  
 18 ATTORNEY’S EYES ONLY INFORMATION; or (2) those pages containing  
 19 quoted Source Code will be separately stamped and treated as CONFIDENTIAL  
 20 SOURCE CODE – ATTORNEY’S EYES ONLY INFORMATION;

21 2. Electronic copies of Source Code printouts may be made  
 22 only as necessary to create documents which, pursuant to the Court’s rules,  
 23 procedures and order, must be filed or served electronically.

24 i. Nothing in this Protective Order shall be construed to limit how  
 25 a Producing Party may maintain material designated as CONFIDENTIAL  
 26 SOURCE CODE – ATTORNEY’S EYES ONLY INFORMATION.

27 j. Outside Litigation Counsel for the Receiving Party with  
 28 custody of CONFIDENTIAL SOURCE CODE – ATTORNEY’S EYES ONLY



1 INFORMATION shall maintain a source code log containing the following  
 2 information: (1) the date and time access CONFIDENTIAL SOURCE CODE –  
 3 ATTORNEY’S EYES ONLY INFORMATION began and ended; (2) the identity  
 4 of the person or people accessing the source code; and (3) the location the  
 5 CONFIDENTIAL SOURCE CODE – ATTORNEY’S EYES ONLY  
 6 INFORMATION was accessed from. Outside Litigation Counsel for the  
 7 Receiving Party will produce, upon request, each such source code log to the  
 8 Producing Party within sixty (60) days of the final determination of this Action.

9 28. **PROSECUTION BAR.** No attorney for or representing Plaintiff,  
 10 whether in-house or Outside Counsel of record, nor any other person associated  
 11 with Plaintiff, who is permitted to receive Protected Information pursuant to  
 12 Paragraph 7 herein, who obtains, receives, has access to, or otherwise learns, in  
 13 whole or in part, DESIGNATED INFORMATION of Defendant designated  
 14 CONFIDENTIAL OUTSIDE ATTORNEY’S EYES ONLY INFORMATION or  
 15 CONFIDENTIAL SOURCE CODE – ATTORNEY’S EYES ONLY  
 16 INFORMATION pursuant to Paragraphs 3(i) and (j) herein shall prepare,  
 17 prosecute, supervise, or assist in the preparation or prosecution of any patent  
 18 application, reexamination procedures, or reissue procedures for Plaintiff, or for  
 19 any affiliated or related entity or person, pertaining to video processing and/or  
 20 capturing (“Technical Field”) or the disclosed DESIGNATED INFORMATION  
 21 during the pendency of this action and for two years after the conclusion of this  
 22 action, including any appeals. Nothing in this paragraph shall be construed as a  
 23 waiver of the other provisions of this Order, including but not limited to those  
 24 provisions restricting the use and disclosure of DESIGNATED INFORMATION.

25 **IT IS SO ORDERED.**

26 Dated: November 27, 2013



27 \_\_\_\_\_  
 28 Honorable Robert N. Block  
 United States Magistrate Judge

**EXHIBIT A**  
**Qualified Employee**

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

Digital CBT LLC,

Plaintiff,

vs.

TiVo, Inc.,

Defendant.

Case No. SACV 12-6418 CJC (RNBx)

**AGREEMENT TO ABIDE BY  
PROTECTIVE ORDER**

The Honorable Cormac J. Carney  
United States District Court Judge

AND RELATED COUNTERCLAIMS

I, \_\_\_\_\_, declare under penalty of perjury that:

1. My address is \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

2. My present employer is \_\_\_\_\_,  
and the address of my present employment is \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

3. My present occupation or job description is \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

4. I hereby acknowledge that I have read the "Stipulated Protective Order" ("PROTECTIVE ORDER") in the above-captioned action (the "Action"), that I am familiar with the terms thereof, and that I agree to be bound by the terms thereof.

5. I hereby certify that I am not involved in competitive decision-making for my employer, nor will I be involved in competitive decision-making for my employer until at least one year after the Conclusion of this Action.

1           6. I hereby acknowledge that, pursuant to the PROTECTIVE ORDER, I may  
2 receive information designated as CONFIDENTIAL INFORMATION, but not  
3 CONFIDENTIAL OUTSIDE ATTORNEY'S EYES ONLY INFORMATION or  
4 CONFIDENTIAL SOURCE CODE – ATTORNEY'S EYES ONLY  
5 INFORMATION, in this Action, and certify my understanding that such  
6 information is provided to me pursuant to the terms and restrictions of the  
7 PROTECTIVE ORDER. I agree not to reveal any CONFIDENTIAL  
8 INFORMATION or any notes containing or reflecting CONFIDENTIAL  
9 INFORMATION to anyone not authorized to receive such information pursuant to  
10 the terms of the PROTECTIVE ORDER, and I agree not to use, directly or  
11 indirectly, or allow the use of any CONFIDENTIAL INFORMATION for any  
12 purpose other than directly associated with my duties in this litigation.

13           7. I understand that I am to retain all copies of the materials that I receive  
14 which have been designated as containing or reflecting CONFIDENTIAL  
15 INFORMATION in a container, cabinet, drawer, room or other safe place in a  
16 manner consistent with the PROTECTIVE ORDER. I understand that all copies of  
17 any such materials are to remain in my custody until the Conclusion of this Action  
18 or the completion of my assigned duties, whereupon the copies are to be destroyed  
19 or returned to the Producing Party. Such return or destruction shall not relieve me  
20 from the obligations imposed upon me by said PROTECTIVE ORDER. I further  
21 agree to notify any support personnel (such as paralegals, administrative assistants,  
22 secretaries, clerical and administrative staff) who are necessary to assist me of the  
23 terms of the PROTECTIVE ORDER and of their obligation not to reveal any  
24 CONFIDENTIAL INFORMATION to anyone not authorized to receive such  
25 information pursuant to the terms of the PROTECTIVE ORDER.

26           8. I understand that I shall be subject to the jurisdiction of the U.S. District  
27 Court for the Central District of California in any proceeding relating to my  
28 performance under, compliance with, or violation of the PROTECTIVE ORDER.

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Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**  
**Qualified Consultant Or Qualified Expert**  
**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

Digital CBT LLC,

Plaintiff,

vs.

TiVo, Inc.,

Defendant.

Case No. SACV 12-6418 CJC (RNBx)

**AGREEMENT TO ABIDE BY  
PROTECTIVE ORDER**

The Honorable Cormac J. Carney  
United States District Court Judge

AND RELATED COUNTERCLAIMS

I, \_\_\_\_\_,

declare under penalty of perjury that:

1. My address is \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

2. My present employer is \_\_\_\_\_,

and the address of my present employment is \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

3. My present occupation or job description is

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

4. I have attached hereto my current curriculum vitae and, to the best of my knowledge, a complete list of any present or former relationships or engagements between myself and any Party to the above-captioned action (the "Action") or any known competitor thereof.

1           5. I hereby acknowledge that I have read the "Stipulated Protective Order"  
 2 ("PROTECTIVE ORDER") in this Action, that I am familiar with the terms  
 3 thereof, and that I agree to be bound by the terms thereof.

4           6. I hereby acknowledge that, pursuant to the PROTECTIVE ORDER, I may  
 5 receive information designated as CONFIDENTIAL INFORMATION,  
 6 CONFIDENTIAL OUTSIDE ATTORNEY’S EYES ONLY INFORMATION, or  
 7 CONFIDENTIAL SOURCE CODE – ATTORNEY’S EYES ONLY  
 8 INFORMATION (collectively, "DESIGNATED INFORMATION") in this Action,  
 9 and certify my understanding that such information is provided to me pursuant to  
 10 the terms and restrictions of the PROTECTIVE ORDER. I agree not to reveal any  
 11 DESIGNATED INFORMATION or any notes containing DESIGNATED  
 12 INFORMATION to anyone not authorized to receive such information pursuant to  
 13 the terms of the PROTECTIVE ORDER, and I agree not to use, directly or  
 14 indirectly, or allow the use of any DESIGNATED INFORMATION for any  
 15 purpose other than directly associated with my duties in this litigation.

16           7. I understand that I am to retain all copies of the materials that I receive  
 17 which have been designated as containing or reflecting DESIGNATED  
 18 INFORMATION in a container, cabinet, drawer, room or other safe place in a  
 19 manner consistent with the PROTECTIVE ORDER. I understand that all copies of  
 20 any such materials are to remain in my custody until the Conclusion of this Action  
 21 or the completion of my assigned duties, whereupon the copies are to be destroyed  
 22 or returned to the Producing Party. Such return or destruction shall not relieve me  
 23 from the obligations imposed upon me by the PROTECTIVE ORDER. I  
 24 understand that material designated as or reflecting CONFIDENTIAL SOURCE  
 25 CODE – ATTORNEY’S EYES ONLY INFORMATION is subject to the  
 26 additional restrictions listed in the PROTECTIVE ORDER and that I am familiar  
 27 with and agree to abide by those restrictions. I further agree to notify any support  
 28 personnel (such as paralegals, administrative assistants, secretaries, clerical and

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administrative staff) who are necessary to assist me of the terms of the PROTECTIVE ORDER and of their obligation not to reveal any CONFIDENTIAL INFORMATION or CONFIDENTIAL OUTSIDE ATTORNEY’S EYES ONLY INFORMATION to anyone not authorized to receive such information pursuant to the terms of the PROTECTIVE ORDER. I also agree to notify any support personnel (such as paralegals, administrative assistants, secretaries, clerical and administrative staff) that they may not access CONFIDENTIAL SOURCE CODE – ATTORNEY’S EYES ONLY INFORMATION pursuant to the terms of the PROTECTIVE ORDER.

8. I understand that I shall be subject to the jurisdiction of the U.S. District Court for the Central District of California in any proceeding relating to my performance under, compliance with, or violation of the PROTECTIVE ORDER.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_