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16 *Attorneys for Plaintiffs*

17 **UNITED STATES DISTRICT COURT**  
 18 **CENTRAL DISTRICT OF CALIFORNIA**

19 MITSUBISHI ELECTRIC CORP.  
 20 (alternatively named MITSUBISHI  
 DENKI KABUSHIKI KAISHA),  
 21 KONINKLIJKE PHILIPS N.V.,  
 THOMSON LICENSING, GE  
 22 TECHNOLOGY DEVELOPMENT,  
 23 INC., PANASONIC CORPORATION,  
 and SONY CORPORATION,

24 Plaintiffs,

25 vs.

26 SCEPTRE, INC.,

27 Defendant.

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SCEPTRE, INC.

Case No. 2:14-cv-04994-ODW  
 (AJWx)

**DISCOVERY MATTER**

**ORDER ON STIPULATED  
 PROTECTIVE ORDER FOR  
 LITIGATION INVOLVING  
 HIGHLY SENSITIVE  
 CONFIDENTIAL INFORMATION**

1 The Court, having considered the Stipulation for Protective Order for  
2 Litigation Involving Highly Sensitive Confidential Information of Plaintiffs  
3 Mitsubishi Electric Corp. (alternatively named Mitsubishi Denki Kabushiki Kaisha),  
4 Koninklijke Philips N.V., Thomson Licensing, GE Technology Development, Inc.,  
5 Panasonic Corporation, and Sony Corporation, and Defendant Sceptre, Inc.  
6 (together, the “Parties”), and finding good cause appearing, HEREBY ORDERS the  
7 following protective order as its own.

8 **1. PURPOSES AND LIMITATIONS**

9 Good cause exists to enter into this Stipulated Protective Order because  
10 disclosure in this action during or in conjunction with pre-motion meet and confer  
11 discussions, settlement negotiations and discussions, initial disclosures, fact and  
12 expert discovery are likely to involve production of confidential and proprietary  
13 information of the Parties, including, without limitation, highly sensitive technical,  
14 financial or business information or proprietary information that has not been  
15 disseminated to the public at large, which is not readily discoverable by competitors  
16 and has been the subject of reasonable efforts by the respective parties to maintain  
17 its secrecy, and for which special protection from public disclosure and from use for  
18 any purpose other than prosecuting this litigation would be warranted. Accordingly,  
19 the Parties hereby stipulate to and petition the Court to enter the following  
20 Stipulated Protective Order. The Parties acknowledge that this Stipulated Protective  
21 Order does not confer blanket protections on all disclosures or responses to  
22 discovery and that the protection it affords from public disclosure and use extends  
23 only to the limited information or items that are entitled to confidential treatment  
24 under the applicable legal principles. The Parties further acknowledge that this  
25 Stipulated Protective Order does not entitle them to file confidential information  
26 under seal; Civil Local Rule 79-5.1 sets forth the procedures that must be followed  
27 and the standards that will be applied when a Party seeks permission from the Court  
28 to file material under seal.

1 **2. GOOD CAUSE STATEMENT**

2 This case involves competitors and allegations of patent infringement. The  
3 Parties believe that good cause exists to enter this Stipulated Protective Order in  
4 order to protect confidential information from disclosure and certain confidential  
5 information from disclosure to each other’s employees. That confidential  
6 information includes information and data that could be used by the Parties and/or  
7 actual or potential competitors to gain an improper and unlawful competitive  
8 advantage in the marketplace. For example, confidential information relevant to this  
9 action may include, among other things, customer lists and contact information;  
10 business and technical information; pricing and historical purchasing information;  
11 and customers’ business and technical needs and preferences; sales data; research,  
12 development, and manufacturing information related to the Parties’ products. The  
13 Parties have attempted to draft this Stipulated Protective Order narrowly and in a  
14 manner no more restrictive than necessary to protect confidential information from  
15 public disclosure.

16 **3. DEFINITIONS**

17 3.1 Challenging Party: a Party or Non-Party that challenges the designation  
18 of information or items under this Stipulated Protective Order.

19 3.2 “CONFIDENTIAL” Information or Items: information (regardless of  
20 how it is generated, stored or maintained) or tangible things that qualify for  
21 protection under Federal Rule of Civil Procedure 26(c).

22 3.3 Counsel (without qualifier): Outside Counsel of Record and In-House  
23 Counsel (as well as their support staff).

24 3.4 Designated In-House Counsel: In-House Counsel who seek access to  
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this  
26 matter.

27 3.5 Designating Party: a Party or Non-Party that designates information or  
28 items that it produces in disclosures, depositions or in responses to discovery as

1 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
2 ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY,” or  
3 “HIGHLY CONFIDENTIAL – SOURCE CODE”.

4 3.6 Disclosure or Discovery Material: all items or information, regardless  
5 of the medium or manner in which it is generated, stored, or maintained (including,  
6 among other things, testimony, transcripts, and tangible things), that are produced or  
7 generated in disclosures, depositions, or responses to discovery in this matter.

8 3.7 Expert: a person with specialized knowledge or experience in a matter  
9 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve  
10 as an expert witness or as a consultant in this action, (2) is not a past or current  
11 employee of the opposing Party in this litigation, and (3) is not anticipated to  
12 become an employee of an opposing Party in this litigation.

13 3.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
14 Information or Items: information (regardless of how it is generated, stored or  
15 maintained) or tangible things that the Designating Party believes in good faith  
16 would constitute trade secrets or information concerning confidential research and  
17 development, or other commercial information that has value from not being  
18 generally known, and the disclosure of which creates a substantial risk of serious  
19 harm to the Designating Party. Parties may also in appropriate circumstances use  
20 the designation “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES  
21 ONLY,” for which the same protections and procedures would apply, except that, in  
22 addition, the designated material cannot be disclosed to individuals described in  
23 section 8.3(b).

24 3.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or  
25 Items: extremely sensitive “Confidential” Information or Items representing  
26 computer code and associated comments and revision histories, and formulas that  
27 define or otherwise describe in detail the algorithms or structure of software or  
28

1 hardware designs, disclosure of which to another Party or Non-Party would create a  
2 substantial risk of serious harm that could not be avoided by less restrictive means.

3 3.10 In-House Counsel: attorneys who are employees of a Party to this  
4 action and whose job responsibility is legal in nature. In-House Counsel does not  
5 include Outside Counsel of Record or any other outside counsel.

6 3.11 Non-Party: any natural person, partnership, corporation, association, or  
7 other legal entity not named as a Party to this action.

8 3.12 Outside Counsel of Record: attorneys who are not employees of a Party  
9 but are retained to represent or advise a Party and have appeared in this action on  
10 behalf of that Party or are employed by a law firm which has appeared on behalf of  
11 that Party.

12 3.13 Party: any party to this action, including all of its officers, directors,  
13 and employees.

14 3.14 Producing Party: a Party or Non-Party that produces Discovery  
15 Material in this action.

16 3.15 Professional Vendors: persons or entities that provide litigation support  
17 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
18 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
19 and their employees and subcontractors.

20 3.16 Protected Material: any Discovery Material that is designated as  
21 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
22 ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY,” or  
23 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

24 3.17 Receiving Party: a Party that receives Discovery Material from a  
25 Producing Party.

26 **4. SCOPE**

27 4.1 The protections conferred by this Stipulation and Order cover not only  
28 Protected Material (as defined above), but also (1) any information copied or

1 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
2 compilations of Protected Material; and (3) any testimony, conversations, or  
3 presentations by Parties or their Counsel that might reveal Protected Material.  
4 However, the protections conferred by this Stipulation and Order do not cover the  
5 following information: (a) any information that is in the public domain at the time of  
6 disclosure to a Receiving Party or becomes part of the public domain after its  
7 disclosure to a Receiving Party as a result of publication not involving a violation of  
8 this Stipulated Protective Order, and (b) any information known to the Receiving  
9 Party prior to the disclosure or obtained by the Receiving Party after the disclosure  
10 from a source who obtained the information lawfully and under no obligation of  
11 confidentiality to the Designating Party.

12 **5. DURATION**

13 Even after Final Disposition of this litigation (as defined in Section), the  
14 confidentiality obligations imposed by this Stipulated Protective Order shall remain  
15 in effect until a Designating Party agrees otherwise in writing or a court order  
16 otherwise directs. “Final disposition” shall be deemed to be the later of (1)  
17 dismissal of all claims and defenses in this action, with or without prejudice; and (2)  
18 final judgment herein after the completion and exhaustion of all appeals, rehearings,  
19 remands, trials, or reviews of this action, including the time limits for filing any  
20 motions or applications for extension of time pursuant to applicable law.

21 **6. DESIGNATING PROTECTED MATERIAL**

22 6.1 Exercise of Restraint and Care in Designating Material for Protection.  
23 Each Party or Non-Party that designates information or items for protection under  
24 this Stipulated Protective Order must take care to limit any such designation to  
25 specific material that qualifies under the appropriate standards.

26 If it comes to a Designating Party’s attention that information or items that it  
27 designated for protection do not qualify for protection at all or do not qualify for the  
28

1 level of protection initially asserted, that Designating Party must promptly notify all  
2 other Parties that it is withdrawing the designation.

3 6.2 Manner and Timing of Designations. Except as otherwise provided in  
4 this Stipulated Protective Order (see, e.g., second paragraph of section 6.2(a)  
5 below), or as otherwise stipulated or ordered, Discovery Material that qualifies for  
6 protection under this Stipulated Protective Order must be clearly so designated  
7 before the material is disclosed or produced.

8 Designation in conformity with this Stipulated Protective Order requires:

9 (a) for information in documentary form (e.g., paper or electronic documents,  
10 but excluding transcripts of depositions or other pretrial or trial proceedings), that  
11 the Producing Party affix the legend “CONFIDENTIAL,” “HIGHLY  
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL –  
13 OUTSIDE COUNSEL EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
14 CODE” to each page of the document unless the document is produced in a native  
15 format, in which case the Producing Party may affix the legend to a cover sheet,  
16 electronic slip sheet, or the storage media associated with the native document.

17 A Party or Non-Party that makes original documents or materials available for  
18 inspection need not designate them for protection until after the inspecting Party has  
19 indicated which material it would like copied and produced. During the inspection  
20 and before the designation, all of the material made available for inspection shall be  
21 deemed “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY.”  
22 After the inspecting Party has identified the documents it wants copied and  
23 produced, the Producing Party must determine which documents qualify for  
24 protection under this Stipulated Protective Order. Then, before producing the  
25 specified documents, the Producing Party must affix the appropriate legend  
26 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
27 ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY,” or  
28 “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page of the document;

1 (b) for testimony given in deposition, the Designating Party may have up to  
2 twenty-one (21) days from the date the final transcript is provided to the  
3 Designating Party to identify the specific portions of the testimony as to which  
4 protection is sought and to specify the level of protection being asserted. Only those  
5 portions of the testimony that are appropriately designated for protection within the  
6 21 days shall be covered by the provisions of this Stipulated Protective Order.  
7 Pending this designation, the entire transcript and all testimony and information  
8 coming from the deposition, shall be treated as “HIGHLY CONFIDENTIAL –  
9 OUTSIDE COUNSEL EYES ONLY.”

10 Parties shall give the other Parties notice if they reasonably expect a  
11 deposition, hearing or other proceeding to include Protected Material so that the  
12 other Parties can ensure that only authorized individuals who have signed the  
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those  
14 proceedings. The use of a document as an exhibit at a deposition shall not in any  
15 way affect its designation as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
16 ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE  
17 COUNSEL EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

18 Transcripts containing Protected Material shall have an obvious legend on the  
19 title page that the transcript contains Protected Material, and the title page shall be  
20 followed by a list of all pages (including line numbers as appropriate) that have been  
21 designated as Protected Material and the level of protection being asserted by the  
22 Designating Party. The Designating Party shall inform the court reporter of these  
23 requirements; and

24 (c) for information produced in some form other than that contemplated by  
25 sections 6.2(a) and 6.2(b), that the Producing Party affix in a prominent place on the  
26 exterior of the container or containers in which the information or item is stored the  
27 legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
28



1 ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY,” or  
2 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

3 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
4 failure to designate qualified information or items does not, standing alone, waive  
5 the Designating Party’s right to secure protection under this Stipulated Protective  
6 Order for such material. Upon timely correction of a designation, the Receiving  
7 Party must make reasonable efforts to assure that the material is treated in  
8 accordance with the provisions of this Stipulated Protective Order.

9 6.4 Redactions. Counsel for a Party producing documents may redact  
10 material deemed exempt from discovery because it is protected from disclosure by  
11 an applicable privilege or privileges, and such privilege or immunity has not been  
12 waived. However, any document from which material is redacted must identify in  
13 the redacted area that redaction has occurred. The reason for such redaction must be  
14 stated either on the document itself or on a log to be provided within thirty (30) days  
15 after the production of the documents. The Parties reserve the right to pursue  
16 additional categories for redaction, by either consent of the Parties or order of the  
17 Court, to be addressed on a case-by-case basis.

## 18 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

19 7.1 Timing of Challenges. Any Party may challenge a designation of  
20 confidentiality at any time. A Party does not waive its right to challenge a  
21 confidentiality designation by electing not to mount a challenge promptly after the  
22 original designation is disclosed.

23 7.2 Meet and Confer. The Challenging Party shall initiate the dispute  
24 resolution process by providing written notice of each designation it is challenging  
25 and describing the basis for each challenge. To avoid ambiguity as to whether a  
26 challenge has been made, the written notice must recite that the challenge to  
27 confidentiality is being made in accordance with this specific paragraph of the  
28 Stipulated Protective Order. The Parties shall attempt to resolve each challenge in

1 good faith and must begin the process by conferring within 14 days of the date of  
2 service of notice. In conferring, the Challenging Party must explain the basis for its  
3 belief that the confidentiality designation was not proper and must give the  
4 Designating Party an opportunity to review the designated material, to reconsider  
5 the circumstances, and, if no change in designation is offered, to explain the basis  
6 for the chosen designation. A Challenging Party may proceed to the next stage of  
7 the challenge process only if it has engaged in this meet and confer process first or  
8 establishes that the Designating Party is unwilling to participate in the meet and  
9 confer process in a timely manner.

10       7.3 Judicial Intervention. If the Parties cannot resolve a challenge under  
11 section 7.2, the Challenging Party shall file and serve a motion to remove the  
12 confidentiality designation within 21 days of the initial notice of challenge or within  
13 14 days of the Parties agreeing that the meet and confer process will not resolve  
14 their dispute, whichever is earlier. Each such motion must be accompanied by a  
15 competent certification affirming that the movant has complied with the meet and  
16 confer requirements imposed in the preceding paragraph. Failure by the  
17 Challenging Party to make such a motion including the required certification within  
18 21 days (or earlier, if applicable) shall automatically waive the challenge to the  
19 confidentiality designation for each challenged designation. In addition, the  
20 Designating Party may file a motion upholding a confidentiality designation at any  
21 time it believes there is good cause for doing so. Any motion brought pursuant to  
22 this provision must be made in compliance with Local Rules 37-1 and 37-2  
23 (including the Joint Stipulation requirement).

24       The burden of persuasion in any such challenge proceeding shall be on the  
25 Designating Party. Frivolous challenges and those made for an improper purpose  
26 (e.g., to harass or impose unnecessary expenses and burdens on other Parties) may  
27 expose the Challenging Party to sanctions. Unless the Designating Party has waived  
28 the confidentiality designation by failing to file a motion to retain confidentiality as

1 described above, all Parties shall continue to afford the material in question the level  
2 of protection to which it is entitled under the Producing Party’s designation until the  
3 Court rules on the challenge.

4 **8. ACCESS TO AND USE OF PROTECTED MATERIAL**

5 8.1 Basic Principles. A Receiving Party may use Protected Material that is  
6 disclosed or produced by another Party or by a Non-Party in connection with this  
7 case only for prosecuting, defending, or attempting to settle this litigation. Such  
8 Protected Material may be disclosed only to the categories of persons and under the  
9 conditions described in this Stipulated Protective Order. When the litigation has  
10 been terminated, a Receiving Party must comply with the provisions of section 15  
11 below (FINAL DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a  
13 location and in a secure manner that ensures that access is limited to the persons  
14 authorized under this Stipulated Protective Order.

15 8.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
16 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
17 Receiving Party may disclose any information or item designated  
18 “CONFIDENTIAL” only to:

19 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
20 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
21 disclose the information for this litigation;

22 (b) the officers, directors, and employees (including In-House Counsel) of the  
23 Receiving Party to whom disclosure is reasonably necessary for this litigation and  
24 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (c) Experts (as defined in this Stipulated Protective Order) of the Receiving  
26 Party to whom disclosure is reasonably necessary for this litigation and who have  
27 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

28 (d) the Court and its personnel;

1 (e) court reporters and their staff, professional jury or trial consultants, and  
2 Professional Vendors to whom disclosure is reasonably necessary for this litigation  
3 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
4 A);

5 (f) during their depositions, and in compliance with this Stipulated Protective  
6 Order (see, e.g., section 14.4 below), witnesses in the action to whom disclosure is  
7 reasonably necessary and who have signed the “Acknowledgment and Agreement to  
8 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered  
9 by the Court. Pages of transcribed deposition testimony or exhibits to depositions  
10 that reveal Protected Material must be separately bound by the Court reporter and  
11 may not be disclosed to anyone except as permitted under this Stipulated Protective  
12 Order; and

13 (g) the author or recipient of a document containing the information or a  
14 custodian or other person who otherwise possessed or knew the information.

15 8.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
16 ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY,” and  
17 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless  
18 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
19 Receiving Party may disclose any information or item designated “HIGHLY  
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL –  
21 OUTSIDE COUNSEL EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
22 CODE” only to:

23 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
24 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
25 disclose the information for this litigation;

26 (b) a maximum of two (2) Designated In-House Counsel of the Receiving  
27 Party (1) who have no involvement in competitive non-legal decision-making, (2) to  
28 whom disclosure is reasonably necessary for this litigation, (3) who have signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to whom  
2 the procedures set forth in section 8.4(a)(1), below, have been followed, provided,  
3 however, that no information or item designated “HIGHLY CONFIDENTIAL –  
4 OUTSIDE COUNSEL EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
5 CODE” may be disclosed to Designated In-House Counsel;

6 (c) Experts (as defined in this Stipulated Protective Order) of the Receiving  
7 Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who  
8 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and  
9 (3) as to whom the procedures set forth in section 8.4(a)(2), below, have been  
10 followed;

11 (d) the Court and its personnel;

12 (e) during their depositions, and in compliance with this Stipulated Protective  
13 Order (see, e.g., section 14.4 below), witnesses in the action to whom disclosure is  
14 reasonably necessary and who have signed the “Acknowledgment and Agreement to  
15 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered  
16 by the Court. Pages of transcribed deposition testimony or exhibits to depositions  
17 that reveal Protected Material must be separately bound by the Court reporter and  
18 may not be disclosed to anyone except as permitted under this Stipulated Protective  
19 Order;

20 (f) court reporters and their staff, professional jury or trial consultants, and  
21 Professional Vendors to whom disclosure is reasonably necessary for this litigation  
22 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
23 A); and

24 (g) the author or recipient of a document containing the information or a  
25 custodian or other person who otherwise possessed or knew the information.

26 8.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL –  
28

1 OUTSIDE COUNSEL EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
2 CODE” Information or Items to Designated In-House Counsel or Experts.

3 (a)(1) Unless otherwise ordered by the Court or agreed to in writing by the  
4 Designating Party, a Party that seeks to disclose to Designated In-House Counsel  
5 any information or item that has been designated “HIGHLY CONFIDENTIAL –  
6 ATTORNEYS’ EYES ONLY” pursuant to section 8.3(b) first must make a written  
7 request to the Designating Party that (1) sets forth the full name of the Designated  
8 In-House Counsel and the city and state of his or her residence, and (2) describes the  
9 Designated In-House Counsel’s current and reasonably foreseeable future primary  
10 job duties and responsibilities in sufficient detail to determine if In-House Counsel  
11 is involved, or may become involved, in any competitive decision-making.

12 (a)(2) Unless otherwise ordered by the Court or agreed to in writing by the  
13 Designating Party, a Party that seeks to disclose to an Expert (as defined in this  
14 Stipulated Protective Order) any information or item that has been designated  
15 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” “HIGHLY  
16 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY,” or “HIGHLY  
17 CONFIDENTIAL – SOURCE CODE” pursuant to section 8.3(c) first must make a  
18 written request to the Designating Party that (1) sets forth the full name of the  
19 Expert and the city and state of his or her primary residence, (2) attaches a copy of  
20 the Expert’s current resume, (3) identifies the Expert’s current employer(s), (4)  
21 identifies each person or entity from whom the Expert has received compensation or  
22 funding for work in his or her areas of expertise or to whom the expert has provided  
23 professional services, including in connection with a litigation, at any time during  
24 the preceding five years<sup>1</sup>, and (5) identifies (by name and number of the case, filing  
25

26 <sup>1</sup> If any of this information is subject to a confidentiality obligation to a third-  
27 party, then the Party seeking to disclose to the Expert shall provide whatever  
28 information can be disclosed without violating any confidentiality agreements. The  
Party seeking to disclose to the Expert shall also be available to meet and confer

1 date, and location of court) any litigation in connection with which the Expert has  
2 offered expert testimony, including through a declaration, report, or testimony at a  
3 deposition or trial, during the preceding five years.

4 (b) A Party that makes a request and provides the information specified in the  
5 preceding respective paragraphs may disclose the subject Protected Material to the  
6 identified Designated In-House Counsel or Expert unless, within five (5) court days  
7 of delivering the request, the Party receives a written objection from the Designating  
8 Party. Any such objection must set forth in detail the grounds on which it is based.

9 (c) A Party that receives a timely written objection must meet and confer with  
10 the Designating Party to try to resolve the matter by agreement within five (5) court  
11 days of the written objection. If no agreement is reached, the Party seeking to make  
12 the disclosure to Designated In-House Counsel or the Expert may file a motion  
13 seeking permission from the Court to do so. In addition, any such motion must be  
14 accompanied by a competent certification describing the Parties' efforts to resolve  
15 the matter by agreement (i.e., the extent and the content of the meet and confer  
16 discussions) and setting forth the reasons advanced by the Designating Party for its  
17 refusal to approve the disclosure.

18 In any such proceeding, the Party opposing disclosure to Designated In-House  
19 Counsel or the Expert shall bear the burden of proving that the risk of harm that the  
20 disclosure would entail (under the safeguards proposed) outweighs the Receiving  
21 Party's need to disclose the Protected Material to its Designated In-House Counsel  
22 or Expert.

23 **9. SOURCE CODE**

24 Given the particularly sensitive nature of source code, additional protections  
25 for source code are warranted. In addition to all other restrictions and protections,

26  
27 with the Designating Party to substantiate, to the extent possible, the confidential  
28 nature of such engagements.

1 the following additional restrictions and protections shall govern source code  
2 designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”:

- 3 (a) only those persons qualified to receive “HIGHLY CONFIDENTIAL –  
4 SOURCE CODE” material under section 8.3 above shall be permitted  
5 access to source code disclosures;
- 6 (b) the Producing Party shall make its source code available electronically  
7 and in the form as kept in the ordinary course of business or other  
8 format suitable for review;
- 9 (c) the source code shall be made available for inspection on the premises  
10 of where such code is stored in the ordinary course of business or at the  
11 offices of producing counsel, and the source code shall be stored on a  
12 secured computer in a secured room without Internet access or network  
13 access to other computers, and the Receiving Party shall not copy,  
14 remove, or otherwise transfer any portion of the source code onto any  
15 recordable media or recordable device. The Producing Party may  
16 visually monitor the activities of the Receiving Party’s representatives  
17 during any source code review, but only to ensure that there is no  
18 unauthorized recording, copying, or transmission of the source code;
- 19 (d) the host computer shall be made available during normal business  
20 hours, 9 am to 5 pm local time, Monday through Friday (excluding  
21 holidays);
- 22 (e) counsel for the Receiving Party that requests a review of source code  
23 must give at least five (5) business days’ notice to counsel for the  
24 Producing Party that it will be sending specified individuals authorized  
25 under section 9(a) above to review the source code made available on  
26 the host computer;
- 27 (f) the Receiving Party’s outside counsel and retained experts or  
28 consultants otherwise allowed to view the source code shall be entitled



1 to take notes relating to the source code provided on a standalone  
2 laptop or on a paper notepad, however, no one may copy more than  
3 five (5) continuous lines of source code into said notes. No copies of  
4 all or any portion of the source code may leave the room in which the  
5 source code is inspected except as otherwise provided herein. Further,  
6 no other written or electronic record of the source code is permitted  
7 except as otherwise provided herein. Outside vendors shall not be used  
8 to copy the source code. During the remainder of discovery, no one  
9 from the Producing Party shall be permitted to log on to, boot up or  
10 otherwise access any files on the secured computer.

11 (g) the host computer shall be connected to a printer in the room with pre-  
12 marked paper for local printing and review. In this event, at the  
13 conclusion of each day of review, the Producing Party shall provide the  
14 copies to the Receiving Party by the conclusion of the daily review  
15 session;

16 (h) the Producing Party will produce source code in computer-searchable  
17 format on the secured computer(s) as described above. At a minimum,  
18 the search utilities or tools should provide the ability to (i) view,  
19 search, and line-number any source file, (ii) search for a given pattern  
20 of text through a number of files, and (iii) compare two files and  
21 display their differences. The Receiving Party, at its own expense,  
22 may request that the Producing Party install software on a source code  
23 review computer to perform searches of the Producing Party's source  
24 code. Timely requests for the installation of such search software will  
25 not be unreasonably denied so long as the requested search software is  
26 compatible with the operating system, and other software necessary to  
27 make the source code available for inspection, installed on a source  
28 code review computer, does not prevent or impede the Receiving

1 Party's access to the source code produced for inspection on a source  
2 code review computer and does not circumvent any of the security  
3 features enabled on a source code review computer (e.g. enable  
4 connection and use of a USB thumb drive);

5 (i) in no event is the Receiving Party entitled to receive from the  
6 Producing Party electronic copies of desired portions of the disclosed  
7 source code; furthermore no electronic copies of any portion of source  
8 code may be made;

9 (j) counsel for the Receiving Party may make limited paper copies of  
10 excerpts of "HIGHLY CONFIDENTIAL – SOURCE CODE"  
11 material, such paper copies to be used as an exhibit to testimony,  
12 motion, expert report or disclosure, or otherwise as reasonably  
13 necessary in connection with the litigation, but only if and to the extent  
14 believed in good faith to be necessary. Any paper copies of source  
15 code, if filed with the Court, shall be filed in accordance with section  
16 14.3;

17 (k) use of physical copies containing "HIGHLY CONFIDENTIAL –  
18 SOURCE CODE" material for depositions, motions and trial shall only  
19 occur in a manner that assures disclosure of such information only to  
20 those permitted access to it under this Stipulated Protective Order and  
21 only on a need-to-know and relevancy basis. Court reporters and/or  
22 videographers shall not retain copies of any "HIGHLY  
23 CONFIDENTIAL – SOURCE CODE" material;

24 (l) counsel for the Receiving Party shall keep a log of the working paper  
25 copies of the source code, when the copies were made, to whom they  
26 were provided, and when they were provided. Upon written request by  
27 the Producing Party, the Receiving Party must provide a copy of the  
28 log to the Producing Party within a reasonable time. At the final

1 conclusion of the litigation, the Receiving Party’s designated and  
2 identified expert(s) must certify in writing that all copies of the source  
3 code were returned to the counsel that provided the information.  
4 Furthermore, counsel for the Receiving Party must provide to counsel  
5 for the Producing Party the log and all paper copies of the source code  
6 in possession of counsel, with the exception of any documents retained  
7 in accordance with section 15;

8 (m) the Producing Party may challenge the amount of source code  
9 requested in hard copy form pursuant to the dispute resolution  
10 procedure and timeframes set forth in section 7 whereby the Producing  
11 Party is the “Designating Party” and the Receiving Party is the  
12 “Challenging Party” for purposes of dispute resolution;

13 (n) the Receiving Party shall maintain a record of any individual who has  
14 inspected any portion of the source code in electronic or paper form.  
15 The Receiving Party shall maintain all paper copies of any printed  
16 portions of the source code in a secured, locked area;

17 (o) subject to the restrictions of this Stipulated Protective Order, counsel  
18 for the Receiving Party and the designated and identified expert(s) who  
19 are allowed access to source code designated as “HIGHLY  
20 CONFIDENTIAL – SOURCE CODE” under this Stipulated Protective  
21 Order agree that the text of the source code or portions of the code  
22 itself shall not be disclosed to any other person at any time other than  
23 otherwise provided under this Stipulated Protective Order and the  
24 information gained from access to or review of the source code shall  
25 not be used for any purpose or reasons other than for the purposes of  
26 this litigation.

1 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
2 **PRODUCED IN OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation  
4 that compels disclosure of any information or items designated in this action as  
5 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
6 ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY,” or  
7 “HIGHLY CONFIDENTIAL – SOURCE CODE” that Party must:

8 (a) promptly notify in writing all other Parties, including the Designating  
9 Party. Such notification shall include a copy of the subpoena or court order;

10 (b) promptly notify in writing the Party who caused the subpoena or order to  
11 issue in the other litigation that some or all of the material covered by the subpoena  
12 or order is subject to this Stipulated Protective Order. Such notification shall  
13 include a copy of this Stipulated Protective Order; and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued  
15 by the Designating Party whose Protected Material may be affected.

16 The Designating Party shall bear the burden and expense of seeking  
17 protection in that court of its confidential material – and nothing in these provisions  
18 should be construed as authorizing or encouraging a Receiving Party in this action  
19 to disobey a lawful directive from another court.

20 **11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
21 **PRODUCED IN THIS LITIGATION**

22 11.1 The terms of this Stipulated Protective Order are applicable to  
23 information produced by a Non-Party in this action and designated as  
24 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
25 ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY,” or  
26 “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced by  
27 Non-Parties in connection with this litigation is protected by the remedies and relief  
28

1 provided by this Stipulated Protective Order. Nothing in these provisions should be  
2 construed as prohibiting a Non-Party from seeking additional protections.

3 11.2 In the event that a Party appears to be required, by a valid discovery  
4 request, to produce a Non-Party's confidential information in its possession, and the  
5 Party is subject to an agreement with the Non-Party not to produce the Non-Party's  
6 confidential information, then the Party shall:

7 (a) promptly notify in writing the party requesting production and the Non-  
8 Party that some or all of the information requested is subject to a confidentiality  
9 agreement with a Non-Party;

10 (b) promptly provide the Non-Party with a copy of the Stipulated  
11 Protective Order in this litigation, the relevant discovery request(s), and a  
12 reasonably specific description of the information requested; and

13 (c) make the information requested available for inspection by the Non-  
14 Party.

15 11.3 If the Non-Party fails to object or seek a protective order from this  
16 court within 14 days of receiving the notice and accompanying information, the  
17 Receiving Party may produce the Non-Party's confidential information responsive  
18 to the discovery request. If the Non-Party timely seeks a protective order, the  
19 Receiving Party shall not produce any information in its possession or control that is  
20 subject to the confidentiality agreement with the Non-Party before a determination  
21 by the Court. Absent a Court order to the contrary, the Non-Party shall bear the  
22 burden and expense of seeking protection in this Court of its Protected Material.

23 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
25 Protected Material to any person or in any circumstance not authorized under this  
26 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
27 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
28 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or

1 persons to whom unauthorized disclosures were made of all the terms of this  
2 Stipulated Protective Order, and (d) request such person or persons to execute the  
3 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
4 A.

5 **13. NO WAIVER OF PRIVILEGE; INADVERTENT PRODUCTION OF**  
6 **PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

7 Nothing in this Stipulated Protective Order shall require production of  
8 Discovery Material that a Party contends is protected from disclosure by the  
9 attorney-client privilege, the work product immunity, common interest doctrine, or  
10 other privilege, doctrine, right, or immunity (collectively “Privileged Information”).  
11 In accordance with Rule 502 of the Federal Rules of Evidence, the Parties hereby  
12 stipulate, and the Court orders, that no inadvertent or unintentional production of  
13 Privileged Information shall prejudice the Producing Party or otherwise constitute a  
14 waiver or estoppel as to any such privilege, doctrine, right or immunity. Any Party  
15 that inadvertently produces Privileged Information may obtain the return of those  
16 materials by promptly notifying the recipient(s) and expressly articulating the basis  
17 for the asserted privilege or immunity. The recipient(s) shall gather and return all  
18 copies of the inadvertently produced Privileged Information to the Producing Party,  
19 or certify to the Producing Party that they have been destroyed and/or deleted.

20 **14. MISCELLANEOUS**

21 14.1 Right to Further Relief. Nothing in this Stipulated Protective Order  
22 abridges the right of any person to seek its modification by the Court in the future.

23 14.2 Right to Assert Other Objections. By stipulating to the entry of this  
24 Stipulated Protective Order no Party waives any right it otherwise would have to  
25 object to disclosing or producing any information or item on any ground not  
26 addressed in this Stipulated Protective Order. Similarly, no Party waives any right to  
27 object on any ground to use in evidence of any of the material covered by this  
28 Stipulated Protective Order.

1           14.3 Filing Protected Material. In the event any of the parties decides to file  
2 or submit to the Court any document or material designated as Protected Material,  
3 unless otherwise agreed to in writing by the Designating Party, the party intending  
4 to make such a filing shall request in accordance with Local Rule 79-5.1 that the  
5 Court permit such document containing or making reference to Protected Material to  
6 be filed under seal. In addition the Designating Party shall have the right within  
7 three (3) court days to file a supplemental motion to seal or otherwise show cause  
8 for retaining the Protected Material under seal. Where possible, only the portion of  
9 the filing that contains Protected Material should be filed under seal, and the parties  
10 agree to work in good faith prior to the Court ruling to use redactions, stipulations of  
11 fact or other means to avoid the need of making Protected Material publicly  
12 available and avoid the need for any motion to seal or supplemental filing. Should  
13 the Court deny any motion to seal or any supplemental motion filed by the  
14 Designating party, the parties shall meet and confer within one (1) court day in a  
15 further attempt to avoid the need for publicly filing Protected Material; if no  
16 resolution is reached within that time, nothing shall preclude the party from filing  
17 such documents in the ordinary manner or the Court from unsealing the Protected  
18 Materials already filed, unless a writ has been taken.

19           14.4 Examination of Witnesses Using Protected Material. Except as the  
20 Court otherwise orders, any person may be examined as a witness at a deposition,  
21 hearing or trial and may testify concerning all information designated as  
22 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
23 ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY,” or  
24 “HIGHLY CONFIDENTIAL – SOURCE CODE” of which such person has prior  
25 personal knowledge. Specifically, but without limitation:

26           (a) A present director, officer, and/or employee of a Producing Party may  
27 be examined and may testify concerning all information designated as  
28 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

1 ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY,” or  
2 “HIGHLY CONFIDENTIAL – SOURCE CODE” which has been produced by that  
3 Producing Party;

4 (b) A former director, officer, agent and/or employee of a Producing Party  
5 may be interviewed, examined and may testify concerning all information  
6 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’  
7 EYES ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES  
8 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” of which he or she  
9 has prior personal knowledge; and

10 (c) Non-Parties may be examined or testify concerning any document  
11 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’  
12 EYES ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES  
13 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” if it appears on its  
14 face or from other documents or testimony to have been received from or  
15 communicated to the Non-Party as a result of any contact or relationship with the  
16 Producing Party, or a representative of such Producing Party. Any person other than  
17 the witness, his or her attorney(s), and any person qualified to receive documents  
18 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’  
19 EYES ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES  
20 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” under this Stipulated  
21 Protective Order must be excluded from the portion of the examination concerning  
22 such information, unless the Producing Party consents to such persons being present  
23 at the examination. If the witness is represented by an attorney who is not permitted  
24 under this Stipulated Protective Order to receive such information, then prior to the  
25 examination, the attorney must be requested to provide a Confidentiality Agreement  
26 in the form of Attachment A to this Stipulated Protective Order. If such attorney  
27 refuses to sign such a Confidentiality Agreement, the Parties, by their attorneys,  
28 may prior to the examination, jointly seek a protective Order from the Court



1 prohibiting such attorney from disclosing such documents designated as  
2 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
3 ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY,” or  
4 “HIGHLY CONFIDENTIAL – SOURCE CODE”.

5 **15. FINAL DISPOSITION**

6 Within 60 days after the Final Disposition of this action (as defined in section  
7 5) each Receiving Party must return all Protected Material to the Producing Party or  
8 destroy such material. As used in this subdivision, “all Protected Material” includes  
9 all copies, abstracts, compilations, summaries, and any other format reproducing or  
10 capturing any of the Protected Material. Whether the Protected Material is returned  
11 or destroyed, the Receiving Party must submit a written certification to the  
12 Producing Party (and, if not the same person or entity, to the Designating Party) by  
13 the 60-day deadline that (1) identifies (by category, where appropriate) all the  
14 Protected Material that was returned or destroyed and (2) affirms that the Receiving  
15 Party has not retained any copies, abstracts, compilations, summaries or any other  
16 format reproducing or capturing any of the Protected Material. Notwithstanding this  
17 provision, Counsel are entitled to retain an archival copy of all pleadings, motion  
18 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
19 deposition and trial exhibits, expert reports, attorney work product, and consultant  
20 and expert work product, even if such materials contain Protected Material. Any  
21 such archival copies that contain or constitute Protected Material remain subject to  
22 this Stipulated Protective Order as set forth in section 5 (DURATION).

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

24 Dated: December 17, 2014



25  
26  
27 \_\_\_\_\_  
United States District Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
5 that I have read in its entirety and understand the Stipulated Protective Order that  
6 was issued by the United States District Court for the Central District of California  
7 on [date] in the case of *Mitsubishi Electric Corp. et al. v. Sceptre, Inc.*, Case No.  
8 2:14-cv-04994-ODW (AJWx). I agree to comply with and to be bound by all the  
9 terms of this Stipulated Protective Order, and I understand and acknowledge that  
10 failure to so comply could expose me to sanctions and punishment in the nature of  
11 contempt. I solemnly promise that I will not disclose in any manner any  
12 information or item that is subject to this Stipulated Protective Order to any person  
13 or entity except in strict compliance with the provisions of this Stipulated Protective  
14 Order.

15 I further agree to submit to the jurisdiction of the United States District Court  
16 for the Central District of California for the purpose of enforcing the terms of this  
17 Stipulated Protective Order, even if such enforcement proceedings occur after  
18 termination of this action.

19 I hereby appoint \_\_\_\_\_ [print or type full name] of  
20 \_\_\_\_\_ [print or type full address and  
21 telephone number] as my California agent for service of process in connection with  
22 this action or any proceedings related to enforcement of this Stipulated Protective  
23 Order.

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

25 City and State where sworn and signed: \_\_\_\_\_

26 Printed name: \_\_\_\_\_

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

28