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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MITSUI SUMITOMO
INSURANCE USA, INC.; and
MITSUI SUMITOMO
INSURANCE COMPANY OF
AMERICA,

Plaintiffs,

vs.

KYOCERA MITA
CORPORATION, a Japan
corporation; KYOCERA
DOCUMENT SOLUTIONS, INC., a
Japan corporation; KYOCERA
DOCUMENT TECHNOLOGY CO.,
LTD, a China corporation;
SHINDENGEN ELECTRIC
MANUFACTURING COMPANY,
LTD., a Japan corporation; and
DOES 1-40, inclusive,

Defendants.

CASE NO. 2-15-cv-01860-ODW-FFM

**ORDER ON STIPULATION FOR
THE TREATMENT OF
CONFIDENTIAL INFORMATION
PRODUCED IN DISCOVERY**

DISCOVERY MATTER

The Court has reviewed the stipulation by and between Plaintiff Mitsui Sumitomo Insurance, USA and Mitsui Sumitomo Insurance Company of America (collectively, "Plaintiffs") and Defendants Kyocera Document Solutions, Inc. and Kyocera Document Technology Co., Ltd. (collectively, "Kyocera") for the treatment of confidential information produced in discovery. Good cause

1103678/27191869v.1

1 appearing, it is hereby **ORDERED** as follows

2 I. SCOPE:

3 A. This Protective Order shall limit the use and/or disclosure of
4 documents, deposition testimony, and related information which are,
5 or which embody or disclose any information, designated hereunder
6 as “CONFIDENTIAL” or as “CONFIDENTIAL--ATTORNEYS’
7 EYES ONLY” and shall apply to:

- 8 1. All such documents so designated in accordance with this
9 Protective Order and all information contained therein;
- 10 2. Portions of deposition testimony and transcripts and exhibits
11 thereto which include, refer, or relate to any designated
12 “CONFIDENTIAL” or “CONFIDENTIAL--ATTORNEYS’
13 EYES ONLY” information;
- 14 3. All information, copies, extracts, and complete or partial
15 summaries prepared or derived from information that was
16 designated “CONFIDENTIAL” or “CONFIDENTIAL--
17 ATTORNEYS’ EYES ONLY”; and
- 18 4. Portions of briefs, memoranda, or any writing filed with or
19 otherwise supplied to the Court under seal, which include or
20 refer to any information designated “CONFIDENTIAL” or
21 “CONFIDENTIAL--ATTORNEYS’ EYES ONLY”.

22 B. Any person (i.e., any individual or entity) designating documents,
23 testimony, or other information as “CONFIDENTIAL” or
24 “CONFIDENTIAL--ATTORNEYS’ EYES ONLY” hereunder asserts
25 that he, she, or it believes in good faith that such material is his, her,
26 or its Confidential Information which is not otherwise available to the
27 public generally, or is Confidential Information which the person

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1 believes is or may be encompassed by a pre-existing confidentiality
2 agreement with any other person.

3 C. “Confidential Information” is defined as documents, material, or
4 testimony that is private or constitutes and/or relates to (a) trade
5 secrets; (b) business strategies, decisions, and/or negotiations;
6 (c) financial, budgeting, and/or accounting information; (d) customer
7 information, including prospective customers; and (e) marketing
8 studies, proformas, projections, and similar information relating to the
9 value and/or potential value of stock, science and technology, and/or
10 other assets or liabilities.

11 D. Confidential Information ordinarily should be designated as
12 “CONFIDENTIAL” rather than “CONFIDENTIAL--ATTORNEYS’
13 EYES ONLY.” A “CONFIDENTIAL--ATTORNEYS’ EYES
14 ONLY” designation is appropriate only where the Confidential
15 Information is so extremely sensitive in the context of this case that
16 there is a real danger that the party producing the information could be
17 prejudiced if the information is disclosed under the protection
18 provided by a “CONFIDENTIAL” designation. Examples of
19 information warranting a “CONFIDENTIAL--ATTORNEYS’ EYES
20 ONLY” designation are documents which contain, disclose, or reflect
21 trade secrets, sensitive customer information, business and marketing
22 plans and information, or similarly competitively sensitive
23 information.

24 E. Nothing in this Order and no party’s designation of any document or
25 information as “CONFIDENTIAL” or “CONFIDENTIAL--
26 ATTORNEYS’ EYES ONLY” shall be construed to constrain,
27 preclude, or otherwise affect in any manner the independent research
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1 and development, marketing, product development, or other technical
2 activities of the parties.

3 F. Nothing in this Order and no party's designation of any document as
4 "CONFIDENTIAL" or "CONFIDENTIAL--ATTORNEYS' EYES
5 ONLY" shall be construed to constrain, preclude, or otherwise affect
6 the use (including the ability to include the document or information
7 in papers not filed under seal) of another party's documents which are
8 duplicates of such designated documents provided that such duplicate
9 documents were lawfully obtained by such party through means
10 independent of the discovery process.

11 G. A party's failure to designate a document as its Confidential
12 Information where the document was produced by another party and
13 designated by the producing party as that party's Confidential
14 Information shall not be construed to waive the non-designating
15 party's claim, with respect to present and future litigation between
16 these or other parties, that the document contains the non-designating
17 party's Confidential Information.

18 H. Any use of Confidential Information at trial shall be governed by the
19 orders of the trial judge. This order does not govern the use of
20 Confidential Information at trial.

21 II. DESIGNATION OF DOCUMENTS AND DEPOSITIONS AS
22 "CONFIDENTIAL" OR "CONFIDENTIAL--ATTORNEYS' EYES
23 ONLY":

24 A. Designation of a document as "CONFIDENTIAL" by the producing
25 party shall be made by conspicuously stamping or writing
26 "CONFIDENTIAL" on each page, or portion thereof, which is
27 deemed "CONFIDENTIAL."

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1 B. Designation of a document as “CONFIDENTIAL--ATTORNEYS’
2 EYES ONLY” by the producing party shall be made by conspicuously
3 stamping or writing “CONFIDENTIAL--ATTORNEYS’ EYES
4 ONLY” on each page, or portion thereof, which is deemed
5 “CONFIDENTIAL--ATTORNEYS’ EYES ONLY.”

6 C. Designation of a deposition or other pretrial testimony, or portions
7 thereof, as “CONFIDENTIAL” or “CONFIDENTIAL--
8 ATTORNEYS’ EYES ONLY” shall be made by a statement on the
9 record by counsel for the party or other person making the claim of
10 confidentiality at the time of such testimony. The portions of
11 depositions so designated as “CONFIDENTIAL” or
12 “CONFIDENTIAL--ATTORNEYS’ EYES ONLY” shall be taken
13 only in the presence of persons qualified to receive such information
14 pursuant to the terms of this Protective Order, the court reporter, the
15 videographer, the deponent, and the deponent’s attorney. Failure of
16 any person to comply with a request to leave the deposition room will
17 constitute sufficient justification for the witness to refuse to answer
18 any question calling for disclosure of Confidential Information so
19 long as persons not entitled by this Protective Order to have access to
20 such information are in attendance. Thereafter, any counsel may
21 reopen the deposition into areas which the witness refused to answer
22 after bringing a motion for protective order to resolve whether the
23 person who refused to leave the deposition should be allowed to be
24 present during questioning. After resolution of said motion, counsel
25 shall be allowed to continue said deposition with respect to the
26 questions, and lines of questioning, which the deponent refused to
27 answer, though the Court may order that the deposition continue
28 outside the presence of the ₅ person who refused to leave the initial

1 deposition. The applicable portions of such deposition transcripts
2 shall be clearly marked “CONFIDENTIAL” or “CONFIDENTIAL
3 ATTORNEYS’ EYES ONLY” on each page containing the
4 Confidential Information.

5 D. Any party may designate documents or portions of deposition
6 transcripts as containing Confidential Information even if not initially
7 marked as “CONFIDENTIAL” or “CONFIDENTIAL--
8 ATTORNEYS’ EYES ONLY” in accordance with the terms of this
9 Protective Order by so advising counsel for each party in writing
10 within twenty-one (21) calendar days of the receipt of the document
11 or deposition transcript which he, she, or it wishes to designate as
12 Confidential Information. Thereafter each such document or
13 transcript shall be treated in accordance with the terms of this
14 Protective Order. Any person served with written notice of any such
15 designation of previously produced documents or deposition
16 transcripts as containing Confidential Information shall thereafter treat
17 such information as if it had been designated as “CONFIDENTIAL”
18 or “CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” at the time
19 he, she, or it first received it in connection with this action and shall
20 mark all copies of such documents in his, her, or its possession
21 accordingly.

22 III. LIMITATIONS ON DISCLOSURE OF CONFIDENTIAL
23 INFORMATION:

24 A. No Confidential Information shall be disclosed by anyone receiving
25 such information to anyone other than those persons designated
26 herein, and in no event shall Confidential Information be used, either
27 directly or indirectly, by anyone receiving such information for any
28 business, commercial or competitive purpose or for any purpose

1 whatsoever other than the preparation for or trial of this action in
2 accordance with the provisions of this Protective Order.

3 B. Confidential Information designated “CONFIDENTIAL” shall not be
4 disclosed by any person who has received such information through
5 discovery in this action to any other person except to:

6 1. Retained counsel for any party to this action and their
7 respective associates, clerks and employees involved in the
8 conduct of this litigation and also to employees of the Parties’
9 insurers who are responsible for administering or adjusting the
10 claims asserted in the litigation.

11 2. The parties hereto, and their present officers, directors and
12 employees;

13 3. Outside experts and consultants retained by a party for the
14 purpose of preparing or assisting in this litigation, and their
15 respective clerks and employees involved in assisting them in
16 this litigation, to the extent deemed necessary by counsel;

17 4. Any person who actually was involved in the preparation of the
18 document or who appears on the face of the document as the
19 author, addressee, or other recipient or currently is affiliated
20 with the party that produced or appears to have prepared said
21 document;

22 5. Court reporters, the Court and its personnel;

23 6. Deponents with respect to whom the attorney for the examining
24 party believes in good faith that disclosure of Confidential
25 Information should be made in order to conduct relevant
26 examination of such deponent on topics about which the
27 attorney in good faith believes the deponent may have relevant
28 information. In the case of a deponent who was not an author

1 or recipient of the Confidential Information, and who has not
2 previously agreed to be bound by the terms of this Order, the
3 attorney conducting the examination shall limit disclosure of
4 confidential information by any means practicable (i.e.,
5 redaction or severance of non-relevant portions) to only that
6 which is in good faith required to conduct a meaningful
7 examination of the witness, and shall show all counsel a copy
8 of said redacted document before showing it to the witness; and

- 9 7. Any other person, either with the prior written consent of the
10 party who has designated such information as confidential or
11 pursuant to a Court order.

12 C. Confidential Information designated “CONFIDENTIAL--
13 ATTORNEYS’ EYES ONLY” shall not be disclosed by any person
14 who has received such information through discovery in this action to
15 any other person except to:

- 16 1. Retained counsel for any party to this action and their
17 respective associates, clerks and employees involved in the
18 conduct of this litigation, but not including in-house counsel to
19 either party, defined as counsel regularly employed or paid by,
20 or associated with, a party, and/or whose offices are located
21 within any premises of a party;
- 22 2. Outside experts and outside consultants assisting in this
23 litigation, and their respective clerks and employees involved in
24 assisting them in this litigation, to the extent deemed necessary
25 by counsel;
- 26 3. Any person who actually was involved in the preparation of the
27 document or who appears on the face of document as the
28 author, addressee, or other recipient, or is currently affiliated

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with the party that produced or appears to have prepared said document;

- 4. Court reporters, the Court and its personnel;
- 5. Deponents with respect to whom the attorney for the examining party believes in good faith that disclosure of Confidential Information should be made in order to conduct relevant examination of such deponent on topics about which the attorney in good faith believes the deponent may have relevant information. In the case of a deponent who was not an author or recipient of the Confidential Information, and who has not previously agreed to be bound by the terms of this Order, the attorney conducting the examination shall limit disclosure of confidential information by any means practicable (i.e., redaction or severance of non-relevant portions) to only that which is in good faith required to conduct a meaningful examination of the witness, and shall show all counsel a copy of said redacted document before showing it to the witness; and
- 6. Any other person, either with the prior written consent of the party who has designated such information as confidential or pursuant to a Court order.
- 7. Any designation of documents, or portions thereof, as “CONFIDENTIAL--ATTORNEYS’ EYES ONLY” shall be reserved for only those instances in which it is truly justified. If an objection to such designation is brought to the Court’s attention, and the Court determines that such “CONFIDENTIAL--ATTORNEYS’ EYES ONLY” designation was not truly justified and without merit, the Court

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1 reserves the right to de-designate all “CONFIDENTIAL--
2 ATTORNEYS’ EYES ONLY” to “CONFIDENTIAL.”

3 D. Before any person described in paragraphs 3(b)(iii), 3(b)(vii), 3(c)(ii)
4 or 3(c)(vi) receives or is shown any document or information which
5 has been designated as confidential, such person shall be given a copy
6 of this Protective Order and shall agree in writing, in the form of the
7 “Agreement to be Bound By Terms Of The Protective Order” attached
8 hereto as Exhibit A, to be bound by the terms hereof. The original of
9 each such Acknowledgment and Agreement shall be maintained by
10 counsel, and transmitted by facsimile to all other counsel of record. If
11 any counsel objects to showing the signatory documents subject to
12 this Order, the objecting party shall give facsimile notice of its
13 objections and the grounds therefore and shall have five business days
14 to file and serve a motion for protective order. If no objection is
15 raised or no motion for protective order is filed and served within five
16 days thereafter, all objections to showing the signatory documents
17 shall be waived and the signatory may be shown the documents
18 subject to this Order. If the person does not so agree, the person may
19 not be shown the document until after a motion for protective order is
20 brought and an order obtained preventing the person from misusing
21 any information in the document.

22 E. Nothing in this Protective Order shall be construed to require
23 execution of the written Acknowledgement and Agreement referred to
24 in paragraph 3(d) above, or to prevent disclosure of Confidential
25 Information, by the party producing and designating such Confidential
26 Information, or by any employee of such party. Nothing in this
27 Protective Order shall prevent counsel for either party from
28 summarizing or discussing in general terms the nature of documents

1 designated as “CONFIDENTIAL” or “CONFIDENTIAL--
2 ATTORNEYS’ EYES ONLY” with representatives of their respective
3 clients, outside experts and consultants, deponents or potential
4 witnesses, provided such summary or discussion does not disclose, in
5 any way, the substance of the document so designated, the
6 Confidential Information contained therein, and/or trade secret
7 information of another party.

8 IV. FILE UNDER SEAL:

9 Nothing may be filed under seal without separate prior order by the Judge
10 before whom the hearing or proceeding will take place, after application by the
11 affected party with appropriate notice to opposing counsel pursuant to Local Rule
12 79-5. At the time of such application, the party seeking the order shall file in the
13 public record a redacted version of the documents sought to be filed under seal.
14 The parties shall follow and abide by applicable law, including local rules and the
15 chambers’ rules, if any, with respect to filing documents under seal.

16 Prior to filing any document marked as “CONFIDENTIAL” or
17 “CONFIDENTIAL-ATTORNEY’S EYES ONLY,” not under seal, the party
18 desiring to file such a document will meet and confer with the party marking the
19 document as confidential to discuss whether and how the document can be
20 redacted to protect the concerns of the designating party. Failure to meet and
21 confer as such will be grounds for having the filing containing CONFIDENTIAL,
22 or CONFIDENTIAL-ATORNEY’S EYES ONLY information stricken.

23 V. CHALLENGE TO CONFIDENTIALITY DESIGNATION:

24 Any party who disagrees with the designation by a party of a document or
25 other information as “CONFIDENTIAL” or “CONFIDENTIAL--ATTORNEYS’
26 EYES ONLY” may bring a motion before the Court requesting that the Court find
27 that the document or other information is, in fact, not confidential. Prior to
28 bringing such motion, a party who objects to any other party’s designation of

1 documents or other information as “CONFIDENTIAL” or “CONFIDENTIAL--
2 ATTORNEYS’ EYES ONLY” shall notify the other party in writing of the
3 objection and meet and confer in good faith to resolve the objection. The
4 interested parties or other persons shall attempt to resolve such disagreements
5 before submitting them to the Court. Pending resolution of any dispute concerning
6 such designation, all parties and persons governed by this Protective Order shall
7 treat as “CONFIDENTIAL” or “CONFIDENTIAL--ATTORNEYS’ EYES
8 ONLY” all documents and information previously designated as
9 “CONFIDENTIAL” or “CONFIDENTIAL--ATTORNEYS’ EYES ONLY” under
10 the terms of this Protective Order. If a motion challenging the confidentiality
11 designation is brought, the party or person asserting that a document or other
12 information is properly designated as “CONFIDENTIAL” or “CONFIDENTIAL--
13 ATTORNEYS’ EYES ONLY” shall bear the burden of proving that the document
14 or other information is Confidential Information.

15 VI. SURVIVAL OF ORDER - RETURN OF DOCUMENTS:

16 A. The provisions of this Order shall continue in effect until otherwise
17 ordered by the Court after notice and an opportunity to be heard is
18 afforded to the parties to this action. The final determination or
19 settlement of this action shall not relieve any person who has received
20 Confidential Information or agreed to be bound by the terms of this
21 Protective Order of his, her, or its obligations hereunder. This Court
22 shall retain jurisdiction after such final determination or settlement to
23 enforce the provisions of this Order. Upon completion of the
24 litigation, all documents (including copies of documents) containing
25 Confidential Information shall be destroyed or returned to counsel for
26 the producing party, except that the parties’ respective attorneys of
27 record may retain one copy of each such document for use in
28 connection with any disputes which may arise under the Court’s

1 retention of jurisdiction as provided for herein. Within sixty days of
2 the conclusion of this litigation, the attorneys for the receiving party
3 shall notify the attorneys for the producing party that such return or
4 destruction occurred.

5 B. Except as provided in Sections 4 or 7 hereof, documents or things
6 containing the other party's Confidential Information shall at all times
7 be in the physical possession of those persons qualifying under
8 Section 3 hereunder, or kept by counsel of record either at the
9 premises regularly maintained by such counsel of record as and for
10 their respective law offices, or otherwise in their sole custody or
11 control.

12 VII. USE OF OWN DOCUMENTS BY PRODUCING PARTY:

13 Nothing in this Protective Order shall limit the use by any party or other
14 person of his, her or its own document(s) or information, or any other documents
15 or information obtained independently of discovery, even if such document(s) or
16 information have been designated as "CONFIDENTIAL" or "CONFIDENTIAL--
17 ATTORNEYS' EYES ONLY."

18 VIII. APPLICATIONS TO COURT:

19 A. This Protective Order shall not preclude or limit any party's right to
20 oppose or object to discovery on any ground which otherwise would
21 be available. This Protective Order shall not preclude or limit any
22 party's right to seek in camera review or to seek further and additional
23 protection against or limitation upon production or dissemination of
24 information produced in response to discovery, including documents
25 and their contents.

26 B. Any person to or by whom disclosure or inspection is made in
27 violation of this Protective Order, and who has knowledge of this
28 Protective Order, shall be bound by the terms hereof.

1 C. The parties hereby, and all other persons who receive Confidential
2 Information pursuant hereto, agree that any party or other person
3 injured by a violation of this Order does not have an adequate remedy
4 at law and that an injunction against such violation is an appropriate
5 remedy. In the event any person shall violate or threaten to violate
6 any terms of this Order, the parties agree that the aggrieved party may
7 immediately apply to obtain injunctive relief against any such person.
8 In the event the aggrieved party shall do so, the respondent person
9 subject to the provisions of this Order shall not employ as a defense
10 thereto the claim that the aggrieved party has an adequate remedy at
11 law. Any persons subject to the terms of this Order agree that this
12 Court shall retain jurisdiction over it and them for the purposes of
13 enforcing this Order. The remedies set forth in this Section 8(c) are
14 not exclusive to any other remedies that an aggrieved party may elect
15 to pursue.

16 IX. NO ADMISSIONS:

17 Neither entering into this Stipulation for Protective Order nor receiving any
18 documents or other information designated as “CONFIDENTIAL” or
19 “CONFIDENTIAL--ATTORNEYS’ EYES ONLY” shall be construed as an
20 agreement or admission (1) that any document or information designated as
21 “CONFIDENTIAL” or “CONFIDENTIAL--ATTORNEYS’ EYES ONLY” is in
22 fact Confidential Information; (2) as to the correctness or truth of any allegation
23 made or position taken relative to any matter designated as “CONFIDENTIAL” or
24 “CONFIDENTIAL--ATTORNEYS’ EYES ONLY;” or (3) as to the authenticity,
25 competency, relevancy, or materiality of any information or document designated
26 as “CONFIDENTIAL” or “CONFIDENTIAL--ATTORNEYS’ EYES ONLY.”
27 This Order is not intended to modify or waive the provisions of the California
28 Rules of Civil Procedure or of the California Rules of Evidence. This Order does

1 not require the production of documents or information that would otherwise be
2 non-discoverable.

3 X. SUBPOENA BY OTHER COURTS OR AGENCIES:

4 If another court or an administrative agency subpoenas or orders production
5 of “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY”
6 documents which a party has obtained under the terms of this Order, before
7 complying with such subpoenas or orders, such party shall promptly notify the
8 party or other person who designated the documents of the pendency of such
9 subpoena or order.

10 XI. MODIFICATION - FURTHER AGREEMENTS:

11 Nothing contained herein shall preclude any party from seeking from the
12 Court modification of this Order upon proper notice or preclude the parties from
13 entering into other written agreements designed to protect Confidential
14 Information.

15 Further, the Court may modify the protective order in the interests of justice
16 or for public policy reasons.

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18 Dated: April 12, 2016

/S/ Frederick F. Mumm
FREDERICK F. MUMM
United States Magistrate Judge

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EXHIBIT A

I have been provided with a copy of, read, and understand the Stipulation and Order Regarding the Treatment of Confidential Information Produced in Discovery in the case of *Mitsui Sumitomo, etc., et al. v. Kyocera, etc., et al.*, Central District of California Case No. 2-15-CV-01860-ODW-FFM, and agree to be bound by the terms thereof.

Date: _____

Signature: _____

Print name: _____

Company: _____

Title: _____

Address: _____

Tel: _____