

NOTE: CHANGES MADE BY THE COURT

1 Amanda Tessar (*pro hac vice*)
 ATessar@perkinscoie.com
 2 PERKINS COIE LLP
 1900 Sixteenth Street, Suite 1400
 3 Denver, CO 80202-5255
 Telephone: 303.291.2300
 4 Facsimile: 303.291.2400

5 **ATTORNEY FOR PLAINTIFFS**
 (Additional Counsel Listed On Signature Page)

6
 7 DAVID G. WILLE (*pro hac vice*)
 david.wille@bakerbotts.com
 8 BAKER BOTTS L.L.P.
 2001 Ross Avenue, Suite 600
 9 Dallas, TX 75201
 Telephone: 214.953.6500 Fax: 214.953.6503

10
 11 **ATTORNEY FOR DEFENDANTS**
 (Additional Counsel Listed On Signature Page)

12
 13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

15 MACOM TECHNOLOGY
 SOLUTIONS HOLDINGS, INC., *et al.*,
 16
 Plaintiffs,
 17
 v.
 18
 19 INFINEON TECHNOLOGIES AG, *et*
al.,
 20
 Defendants.

Case No. CV 16-02859 CAS (PLAx)
 STIPULATED PROTECTIVE
 ORDER¹
 [Discovery Proposed Stipulation:
 Referenced before Magistrate pursuant
 to Hon. Christina A. Snyder's
 procedures]
 Magistrate Judge: Hon. Paul L Abrams

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 28 ¹ This Stipulated Protective Order is based substantially on the model
 protective order provided under Magistrate Judge Paul L. Abrams's Procedures.

1 **1. INTRODUCTION**

2 **A. Purposes And Limitations**

3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may
6 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
7 enter the following Stipulated Protective Order. The parties acknowledge that this
8 Order does not confer blanket protections on all disclosures or responses to
9 discovery and that the protection it affords from public disclosure and use extends
10 only to the limited information or items that are entitled to confidential treatment
11 under the applicable legal principles. The parties further acknowledge, as set forth
12 in Section 14.3, below, that this Stipulated Protective Order does not entitle them to
13 file confidential information under seal; Civil Local Rule 79-5 sets forth the
14 procedures that must be followed and the standards that will be applied when a
15 party seeks permission from the Court to file material under seal.

16 **B. Good Cause Statement**

17 This action will involve the production of confidential, proprietary, or private
18 information including documents and discussions regarding trade secrets, customer
19 and pricing lists, and other valuable research, development, commercial, financial,
20 technical and/or proprietary information for which special protection from public
21 disclosure and from use for any purpose other than prosecution of this action is
22 warranted. Such confidential and proprietary materials and information consist of,
23 among other things, confidential business or financial information, confidential
24 business practices, or other confidential research, development, or commercial
25 information, information otherwise generally unavailable to the public and/or the
26 Parties' competitors, or which may be privileged or otherwise protected from
27 disclosure under state or federal statutes, court rules, case decisions, or common
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1 law. For example, this action involves disputes about patent infringement and,
2 thus, will require the production of confidential product information.

3 The Parties also anticipate the production of documents that are subject to
4 U.S. Export Control Laws such as the U.S. Arms Export Control Act (22 U.S.C. §§
5 2751-2799), the International Traffic in Arms Regulations (22 C.F.R §§ 120-130)
6 (“ITAR”), the Export Administration Regulations (15 C.F.R § 730 et seq.) (“EAR”)
7 and/or any regulations and orders administered by the Treasury Department’s
8 Office of Foreign Assets Control Regulations (31 CFR Chapter V) (collectively,
9 “U.S. Export Control Laws”). Accordingly, to expedite the flow of information, to
10 facilitate the prompt resolution of disputes over confidentiality of discovery
11 materials, to adequately protect information the parties are entitled and/or required
12 to keep confidential, to ensure that the parties are permitted reasonable necessary
13 uses of such material in preparation for and in the conduct of trial, to address their
14 handling at the end of the litigation, and serve the ends of justice, a protective order
15 for such information is justified in this matter. It is the intent of the parties that
16 information will not be designated as confidential for tactical reasons and that
17 nothing be so designated without a good faith belief that it has been maintained in a
18 confidential, non-public manner, and there is good cause why it should not be part
19 of the public record of this case.

20 **2. DEFINITIONS**

21 2.1 Action: the above-captioned case entitled *MACOM Technology*
22 *Solutions Holdings, Inc., et al. v. Infineon Technologies AG, et al.*, Case No. CV
23 16-02859, currently pending in the United States District Court for the Central
24 District of California.

25 2.2 Challenging Party: a Party or Non-Party that challenges the
26 designation of information or items under this Order.

27 2.3 Counsel: Outside Counsel of Record and House Counsel (as well as
28 their support staff).

1 2.4 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
4 ONLY,” and/or “ SENSITIVE – SUBJECT TO EXPORT CONTROL.”

5 2.5 Disclosure or Discovery Material: all items or information, regardless
6 of the medium or manner in which it is generated, stored, or maintained (including,
7 among other things, testimony, transcripts, and tangible things), that are produced
8 or generated in disclosures or responses to discovery in this matter.

9 2.6 Expert: a person with specialized knowledge or experience in a matter
10 pertinent to the litigation who has been retained by a Party or its Counsel to serve as
11 an expert witness or as a consultant in this Action.

12 2.7 House Counsel: attorneys who are employees of a party to this Action.
13 House Counsel does not include Outside Counsel of Record or any other outside
14 counsel.

15 2.8 Non-Party: any natural person, partnership, corporation, association,
16 or other legal entity not named as a Party to this action.

17 2.9 Outside Counsel of Record: attorneys who are not employees of a
18 party to this Action but are retained to represent or advise a party to this Action and
19 have appeared in this Action on behalf of that party or are affiliated with a law firm
20 that has appeared on behalf of that party, including support staff.

21 2.10 Party: any party to this Action, including all of its officers, directors,
22 employees, consultants, retained experts, and Outside Counsel of Record (and their
23 support staffs).

24 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
25 Discovery Material in this Action.

26 2.12 Professional Vendors: persons or entities that provide litigation
27 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
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1 demonstrations, and organizing, storing, or retrieving data in any form or medium)
2 and their employees and subcontractors.

3 2.13 Protected Material: any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’
5 EYES ONLY,” and/or “ SENSITIVE – SUBJECT TO EXPORT CONTROL.”

6 2.14 Receiving Party: a Party that receives Disclosure or Discovery
7 Material from a Producing Party.

8 **3. SCOPE**

9 The protections conferred by this Stipulation and Order cover not only
10 Protected Material (as defined above), but also (1) any information copied or
11 extracted from Protected Material; (2) all copies, excerpts, summaries, or
12 compilations of Protected Material; and (3) any testimony, conversations, or
13 presentations by Parties or their Counsel that might reveal Protected Material.

14 Any use of Protected Material at trial shall be governed by the orders of the
15 trial judge. This Order does not govern the use of Protected Material at trial.

16 **4. DURATION**

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

25 **5. DESIGNATING PROTECTED MATERIAL**

26 5.1 Exercise of Restraint and Care in Designating Material for Protection.

27 Each Party or Non-Party that designates information or items for protection under
28 this Order must take care to limit any such designation to specific material that

1 qualifies under the appropriate standards. The Designating Party must designate for
2 protection only those parts of material, documents, items, or oral or written
3 communications that qualify so that other portions of the material, documents,
4 items, or communications for which protection is not warranted are not swept
5 unjustifiably within the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations
7 that are shown to be clearly unjustified or that have been made for an improper
8 purpose (*e.g.*, to unnecessarily encumber the case development process or to
9 impose unnecessary expenses and burdens on other parties) may expose the
10 Designating Party to sanctions.

11 If it comes to a Designating Party's attention that information or items that it
12 designated for protection do not qualify for protection, that Designating Party must
13 promptly notify all other Parties that it is withdrawing the inapplicable designation.

14 5.2 Available Designations. Any Producing Party may designate
15 Disclosure or Discovery Material with any of the following designations, provided
16 that it meets the requirements for such designations as provided for herein: (a)
17 "CONFIDENTIAL"; (b) "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
18 ONLY"; or (c) "SENSITIVE – SUBJECT TO EXPORT CONTROL." Depending
19 on the nature and substance of the document, it may be designated with more than
20 one designation under this order.

21 (a) A Producing Party may designate Disclosure or Discovery Material as
22 "CONFIDENTIAL" if it contains or reflects confidential, proprietary, and/or
23 commercially-sensitive information.

24 (b) A Producing Party may designate Disclosure or Discovery Material as
25 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" if it contains or
26 reflects information that is extremely confidential and/or sensitive in nature and the
27 Producing Party reasonably believes that the disclosure of such Disclosure or
28 Discovery Material to a Party or to the public is likely to cause economic harm or

1 significant competitive disadvantage to the Producing Party. The Parties agree that
2 the following information, if non-public, shall be presumed to merit the “HIGHLY
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designation: trade secrets,
4 pricing information, financial data, sales information, sales or marketing forecasts
5 or plans, business plans, sales or marketing strategy, product development
6 information, engineering documents, testing documents, employee information, and
7 other non-public information of similar competitive and business sensitivity.

8 (c) A Producing Party may designate Disclosure or Discovery Material as
9 “SENSITIVE – SUBJECT TO EXPORT CONTROL” if the Producing Party has a
10 reasonable and good faith belief that such Disclosure or Discovery Material is
11 subject to U.S. Export Control Laws.

12 5.3 Manner and Timing of Designations. Except as otherwise provided in
13 this Order (see, e.g., second paragraph of section 5.3(a) below), or as otherwise
14 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
15 under this Order must be clearly so designated before the material is disclosed or
16 produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (*e.g.*, paper or electronic
19 documents, but excluding transcripts of depositions or other pretrial or trial
20 proceedings), that the Producing Party affix, at a minimum, a designation (*see* §
21 5.2), to each page that contains protected material.

22 A Party or Non-Party that makes original documents available for inspection
23 need not designate them for protection until after the inspecting Party has indicated
24 which documents it would like copied and produced. During the inspection and
25 before the designation, all of the material made available for inspection shall be
26 deemed Protected Material. After the inspecting Party has identified the documents
27 it wants copied and produced, the Producing Party must determine which
28 documents, or portions thereof, qualify for protection under this Order. Then,

1 before producing the specified documents, the Producing Party must affix a
2 designation to each page that contains Protected Material.

3 (b) for testimony given in deposition or in other pretrial proceedings, that
4 the Designating Party identifies on the record, before the close of the deposition,
5 hearing, or other proceeding, all protected testimony and specify the level of
6 protection being asserted. When it is impractical to identify separately each portion
7 of testimony that is entitled to protection and it appears that substantial portions of
8 the testimony may qualify for protection, the Designating Party may invoke on the
9 record (before the deposition, hearing, or other proceeding is concluded) a right to
10 have up to 21 days to identify the specific portions of the testimony as to which
11 protection is sought and to specify the level of protection being asserted, during
12 which time the transcript shall be treated as if it had been designated “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and “SENSITIVE – SUBJECT
14 TO EXPORT CONTROL.” The Designating Party shall ask the court reporter to
15 follow the convention that transcripts containing Protected Material should have an
16 obvious legend on the title page that the transcript contains Protected Material.
17 Only those portions of the testimony that are appropriately designated for protection
18 within the 21 days shall be covered thereafter by the provisions of this Stipulated
19 Protective Order. If deadlines and activities in the case require the designations to
20 be completed in less than 21 days, the Parties shall work together in good faith to
21 accommodate reasonable requests for designation of transcripts in less than 21
22 days. The use of a document as an exhibit at a deposition in a manner consistent
23 with the requirements of this Order shall not in any way affect its designation as
24 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
25 ONLY,” or “SENSITIVE – SUBJECT TO EXPORT CONTROL.”

26 (c) for information produced in some form other than documentary and
27 for any other tangible items, that the Producing Party affix an appropriate
28 designation (e.g., “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY," or "SENSITIVE – SUBJECT TO EXPORT
2 CONTROL") in a prominent place on the exterior of the container or containers in
3 which the information is stored, if it is impractical to mark the item itself. If only a
4 portion or portions of the information warrants protection, the Producing Party, to
5 the extent practicable, shall identify the protected portion(s).

6 5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent
7 failure to designate qualified information or items does not, standing alone, waive
8 the Designating Party's right to secure protection under this Order for such
9 material. Upon timely correction of a designation, the Receiving Party must make
10 reasonable efforts to assure that the material is treated in accordance with the
11 provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
14 designation of confidentiality at any time that is consistent with the Court's
15 Scheduling Order.

16 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
17 resolution process under Local Rule 37.1, et seq. Any motion challenging
18 confidentiality designations must strictly comply with the procedures set forth in
19 Local Rules 37-1, 37-2, and 37-3, unless the urgency of the matter justifies use of
20 the *ex parte* motion procedures of the Central District of California or the presiding
21 judge's rules.

22 6.3 Burden. The burden of persuasion in any such challenge proceeding
23 shall be on the Designating Party. Frivolous challenges, and those made for an
24 improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
25 other parties) may expose the Challenging Party to sanctions. Unless the
26 Designating Party has waived or withdrawn the confidentiality designation, all
27 parties shall continue to afford the material in question the level of protection to
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1 which it is entitled under the Producing Party’s designation until the Court rules on
2 the challenge.

3 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this
6 Action only for prosecuting, defending, or attempting to settle this Action or any
7 related appellate proceeding. For the avoidance of doubt, all Protected Material
8 shall not be used in any other litigation, patent prosecution or acquisition, patent
9 reexamination or reissue proceedings, or any business or competitive purpose or
10 function. Such Protected Material may be disclosed only to the categories of
11 persons and under the conditions described in this Order. When the Action has
12 been terminated, a Receiving Party must comply with the provisions of § 15
13 (FINAL DISPOSITION) below.

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

17 7.2 Disclosure or Discovery Material designated as “CONFIDENTIAL.”

18 (a) Unless otherwise ordered by the Court, Disclosure or Discovery
19 Material designated as “CONFIDENTIAL” may be disclosed only to the following:

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

23 (2) the officers, directors, and employees (including House Counsel)
24 of the Receiving Party to whom disclosure is reasonably necessary for this
25 Action;

26 (3) Experts (as defined in this Order) of the Receiving Party, after
27 following the procedures set forth in Section 8, to whom disclosure is
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1 reasonably necessary for this Action and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (4) the Court and its personnel;

4 (5) court reporters and their staff;

5 (6) professional jury or trial consultants, mock jurors, and
6 Professional Vendors to whom disclosure is reasonably necessary for this
7 Action and who have signed the “Acknowledgment and Agreement to Be
8 Bound” (Exhibit A);

9 (7) the author or recipient of a document containing the information or
10 a custodian or other person who otherwise possessed or knew the
11 information;

12 (8) Rule 30(b)(6) deponents for a Party that employed an author or
13 recipient of a document containing the information; and

14 (9) any mediator or settlement officer, and their supporting personnel,
15 mutually agreed upon by any of the Parties engaged in settlement
16 discussions.

17 7.3 Disclosure or Discovery Material designated “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

19 (a) Unless otherwise ordered by the Court, Disclosure or Discovery
20 Material designated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY” may be disclosed only to the following:

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

25 (2) Experts (as defined in this Order) of the Receiving Party, after
26 following the procedures set forth in Section 8, to whom disclosure is
27 reasonably necessary for this Action and who have signed the
28 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

1 (3) the Court and its personnel;

2 (4) court reporters and their staffs

3 (5) professional jury or trial consultants, mock jurors, and

4 Professional Vendors to whom disclosure is reasonably necessary for this
5 Action and who have signed the “Acknowledgment and Agreement to Be
6 Bound” (Exhibit A);

7 (6) the author or recipient of a document containing the information or
8 a custodian or other person who otherwise possessed or knew the
9 information;

10 (7) Rule 30(b)(6) deponents for a Party that employed an author or
11 recipient of a document containing the information; and

12 (8) any mediator or settlement officer, and their supporting personnel,
13 mutually-agreed upon by any of Parties engaged in settlement discussions.

14 7.4 Disclosure or Discovery Material Designated as “SENSITIVE –
15 SUBJECT TO EXPORT CONTROL.”

16 (a) Unless otherwise ordered by the Court, **and except as to the Court**
17 **and its personnel**, Disclosure of Discovery Material designated as “SENSITIVE –
18 SUBJECT TO EXPORT CONTROL” may be released, disclosed, or made
19 accessible only to U.S. Persons (as that term is defined at 22 C.F.R. § 120.15)
20 (hereafter “U.S. Persons”) that are not named on any restricted or denied
21 party/individual/entity list maintained by relevant government agencies, as
22 determined by an appropriate screening process performed by the Designating Party
23 releasing the Disclosure or Discovery Material designated “SENSITIVE –
24 SUBJECT TO EXPORT CONTROL” and who have signed the “Acknowledgment
25 and Agreement to Be Bound” (Exhibit A). This restriction applies to any
26 Disclosure or Discovery Material designated as “SENSITIVE – SUBJECT TO
27 EXPORT CONTROL,” whether stored electronically on a server or otherwise.
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1 (b) In addition to the other requirements of this Order, by accepting
2 Disclosure or Discovery Material designated as “SENSITIVE – SUBJECT TO
3 EXPORT CONTROL,” the Receiving Party represents and warrants that he/she/it
4 is a U.S. Person and that the Receiving Party will comply with all applicable
5 export, import, and sanction laws, regulations, orders, and authorizations.

6 (c) To the extent that any Disclosure or Discovery Material includes a
7 distribution limitation statement from the Department of Defense or any branch for
8 the U.S. Military, the Receiving Party further represents and warrants that he/she/it
9 will comply with the limitation restrictions as set forth in such Disclosure or
10 Discovery Material as to the disclosure and distribution of any such Disclosure or
11 Discovery Material.

12 (d) When testimony is given at a deposition about Disclosure or Discovery
13 Material that is designated “SENSITIVE – SUBJECT TO EXPORT CONTROL”
14 or when Disclosure or Discovery Material designated “SENSITIVE – SUBJECT
15 TO EXPORT CONTROL” is produced at a deposition, the Designating Party may
16 exclude from the deposition all persons other than those to whom the Protected
17 Material may be disclosed under this Order.

18 (e) Disclosure or Discovery Material that is designated as “SENSITIVE –
19 SUBJECT TO EXPORT CONTROL” may only be filed with a court under seal,
20 identified as being subject to this Protective Order as Disclosure or Discovery
21 Material that is designated as “SENSITIVE – SUBJECT TO EXPORT
22 CONTROL,” and protected from being opened except by court order.

23 (f) At a hearing, Disclosure or Discovery Material that is designated as
24 “SENSITIVE – SUBJECT TO EXPORT CONTROL” may only be introduced or
25 disclosed in a closed courtroom or in chambers, **subject to approval of the Court.**
26 No persons except for those permitted access by this Protective Order shall be
27 permitted to attend any hearing or trial at such time as Disclosure or Discovery
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1 Material that is designated as “SENSITIVE – SUBJECT TO EXPORT
2 CONTROL” is disclosed.

3 (g) A party which reasonably anticipates that it will produce or that it will
4 be requested to produce information or material at a hearing or discovery
5 proceeding that is or will be designated as “SENSITIVE – SUBJECT TO EXPORT
6 CONTROL” must notify all parties of the same within 5 days of receiving notice of
7 the hearing or discovery proceeding. Parties who expect to attend any hearing or
8 discovery proceeding where notice has been given about the possible disclosure of
9 Disclosure or Discovery Material designated as “SENSITIVE – SUBJECT TO
10 EXPORT CONTROL” pursuant to this paragraph must provide to the Designating
11 Party the names and sufficient personal information necessary to conduct the
12 screening described in § 7.4(a) above of all persons whom wish to attend the
13 hearing or discovery proceeding. The names and identifying information must be
14 provided to the Designating Party at least 14 calendar days before the date noticed
15 for the hearing or discovery proceeding. The Designating Party will respond no
16 later than 3 days before the hearing or discovery proceedings with the results of the
17 screening. Any party that fails to timely provide the names and necessary
18 identifying information may waive its right to be present at the subject hearing or
19 discovery proceeding.

20 **8. PROCEDURES FOR APPROVING OR OBJECTING TO**
21 **DISCLOSURE OF “CONFIDENTIAL” AND “HIGHLY**
22 **CONFIDENTIAL – ATTORNEYS’ EYES ONLY”**
INFORMATION OR ITEMS TO EXPERTS.

23 8.1 Unless otherwise ordered by the court or agreed to in writing by the
24 Designating Party, a Party that seeks to disclose to an Expert (as defined in this
25 Order) any information or item that has been designated “CONFIDENTIAL” or
26 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to
27 paragraphs 7.2(a)(3) or 7.3(a)(2) first must make a written request to the
28 Designating Party that (1) sets forth the full name of the Expert and his or her

1 business address, (2) attaches a copy of the Expert’s current resume, (3) identifies
2 the Expert’s current employer(s), (4) identifies each person or entity from whom the
3 Expert has received compensation or funding for work in his or her areas of
4 expertise or to whom the expert has provided professional services, including in
5 connection with a litigation, at any time during the preceding five years,² and
6 (5) identifies any previous or current relationship (personal or professional) with
7 any of the Parties to this action; (6) identifies (by name and number of the case,
8 filing date, and location of court) any litigation in connection with which the Expert
9 has offered expert testimony, including through a declaration, report, or testimony
10 at a deposition or trial, during the preceding five years; and (7) provides a copy of a
11 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) for the
12 Expert.

13 8.2 A Party that makes a request and provides the information specified in
14 the preceding respective paragraph may disclose the subject Protected Material to
15 the identified Expert unless, within 10 days of delivering the request, the Party
16 receives a written objection from the Designating Party. Any such objection must
17 set forth in detail the grounds on which it is based.

18 8.3 A Party that receives a timely written objection must meet and confer
19 with the Designating Party (through direct voice-to-voice dialogue) to try to resolve
20 the matter by agreement within seven days of the written objection. If no
21 agreement is reached, the Party seeking to make the disclosure to the Expert may
22 file a motion seeking permission from the court to do so. Any such motion must
23 describe the circumstances with specificity, set forth in detail the reasons why the
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25 ² If the Expert believes any of this information is subject to a confidentiality
26 obligation to a third-party, then the Expert should provide whatever information the
27 Expert believes can be disclosed without violating any confidentiality agreements,
28 and the Party seeking to disclose to the Expert shall be available to meet and confer
with the Designating Party regarding any such engagement.

1 disclosure to the Expert is reasonably necessary, assess the risk of harm that the
2 disclosure would entail, and suggest any additional means that could be used to
3 reduce that risk. In addition, any such motion must be accompanied by a competent
4 declaration describing the parties' efforts to resolve the matter by agreement (i.e.,
5 the extent and the content of the meet and confer discussions) and setting forth the
6 reasons advanced by the Designating Party for its refusal to approve the disclosure.
7 If circumstances warrant, the moving party may follow the *ex parte* motion
8 procedures of the Central District of California and the presiding judge.

9 In any such proceeding, the Party opposing disclosure to the Expert shall
10 bear the burden of proving that the risk of harm that the disclosure would entail
11 (under the safeguards proposed) outweighs the Receiving Party's need to disclose
12 the Protected Material to its Expert.

13 9. PROSECUTION BAR

14 (a) Absent written consent from the Producing Party, any individual who
15 reviews Protected Material designated as "HIGHLY CONFIDENTIAL –
16 ATTORNEYS' EYES ONLY" shall not be engaged in any Prosecution Activity (as
17 defined below) pertaining to semiconductor devices comprising gallium nitride
18 (GaN) epitaxial layers on either silicon (Si) or silicon carbide (SiC) substrates,
19 before any foreign or domestic agency, including the United States Patent and
20 Trademark Office ("the Patent Office") for a period of 1 year following the final
21 disposition of this action, as defined in Section 4 above. Prosecution Activity shall
22 mean any activity related to the preparation or prosecution (for any person or entity)
23 of patent applications pertaining to semiconductor devices comprising GaN
24 epitaxial layers on either Si or SiC substrates or counseling clients regarding such
25 preparation or prosecution, including but not limited to providing any advice,
26 counseling, preparing, prosecuting, editing, amending, and/or drafting of claims, or
27 communication with a domestic or foreign patent office for purpose of allowance of
28 any claims, for any patent application, reexamination, or reissue application before

1 any domestic or foreign patent office. Nothing in this paragraph shall prevent any
2 attorney from sending non-confidential prior art to an attorney involved in patent
3 prosecution for purposes of ensuring that such prior art is submitted to the Patent
4 Office (or any similar agency of a foreign government) to assist a patent applicant
5 in complying with its duty of candor. Nothing in this provision shall prohibit any
6 attorney of record in this litigation from discussing any aspect of this case that is
7 reasonably necessary for the prosecution or defense of any claim or counterclaim in
8 this litigation with his/her client. Additionally, nothing in this provision shall
9 prohibit any attorney of record in this litigation from developing or presenting any
10 arguments with respect to the question of whether the parties have fulfilled their
11 obligations under Section 4.01 of the 2010 IP Purchase Agreement (“Patent
12 Prosecution and Maintenance”).

13 (b) Notwithstanding anything to the contrary above, and for the avoidance
14 of any doubt, the patent prosecution bar above shall not be deemed to preclude
15 persons who have received Protected Material from participating directly or
16 indirectly in post issuance review proceedings before the Patent Office or any
17 similar agency of a foreign government (e.g., inter partes review proceedings, post-
18 grant review proceedings, covered business method proceedings, and reexamination
19 proceedings).

20 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
21 **PRODUCED IN OTHER LITIGATION**

22 If a Party is served with a subpoena or a court order issued in other litigation
23 that would compel disclosure of any Protected Material, that Party must:

24 (a) promptly, and in no event more than fourteen (14) days after receiving
25 the subpoena or order, notify the Designating Party in writing. Such notification
26 shall include a copy of the subpoena or court order;

27 (b) promptly notify in writing the party who caused the subpoena or order to
28 issue in the other litigation that some or all of the material covered by the subpoena

1 or order is subject to this Protective Order. Such notification shall include a copy
2 of this Stipulated Protective Order; and

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

5 If the Designating Party timely seeks a protective order, the Party served with
6 the subpoena or court order shall not produce any Protected Material before a
7 determination by the court from which the subpoena or order issued, unless the
8 Party has obtained the Designating Party's permission. The Designating Party shall
9 bear the burden and expense of seeking protection in that court of its confidential
10 material, and nothing in these provisions should be construed as authorizing or
11 encouraging a Receiving Party in this Action to disobey a lawful directive from
12 another court.

13 **11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
14 **PRODUCED IN THIS LITIGATION**

15 (a) The terms of this Order are applicable to information produced by a
16 Non-Party in this Action and designated as "CONFIDENTIAL," "HIGHLY
17 CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "SENSITIVE – SUBJECT
18 TO EXPORT CONTROL." Such information produced by Non-Parties in
19 connection with this litigation is protected by the remedies and relief provided by
20 this Order. Nothing in these provisions should be construed as prohibiting a Non-
21 Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to
23 produce a Non-Party's confidential information in its possession, and the Party is
24 subject to an agreement with the Non-Party not to produce the Non-Party's
25 confidential information, then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the Non-Party
27 that some or all of the information requested is subject to a confidentiality
28 agreement with a Non-Party;

1 (2) promptly provide the Non-Party with a copy of the Stipulated
2 Protective Order in this Action, the relevant discovery request(s), and a
3 reasonably specific description of the information requested; and

4 (3) make the information requested available for inspection by the
5 Non-Party, if requested.

6 (c) If the Non-Party fails to object or seek a protective order from this
7 Court within 14 days of receiving the notice and accompanying information, the
8 Receiving Party may produce the Non-Party's confidential information responsive
9 to the discovery request. If the Non-Party timely seeks a protective order, the
10 Receiving Party shall not produce any information in its possession or control that
11 is subject to the confidentiality agreement with the Non-Party before a
12 determination by the Court. Absent a court order to the contrary, the Non-Party
13 shall bear the burden and expense of seeking protection in this Court of its
14 Protected Material.

15 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED** 16 **MATERIAL**

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
18 Protected Material to any person or in any circumstance not authorized under this
19 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
20 writing the Designating Party of the unauthorized disclosures, (b) use its best
21 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
22 person or persons to whom unauthorized disclosures were made of all the terms of
23 this Order, and (d) request such person or persons to execute the "Acknowledgment
24 and Agreement to Be Bound" that is attached hereto as Exhibit A.

25 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR** 26 **OTHERWISE PROTECTED MATERIAL**

27 When a Producing Party gives notice to Receiving Parties that certain
28 inadvertently produced material is subject to a claim of privilege or other
protection, the obligations of the Receiving Parties are those set forth in Federal

1 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
2 whatever procedure may be established in an e-discovery order that provides for
3 production without prior privilege review.

4 **14. MISCELLANEOUS**

5 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
6 person to seek its modification by the Court in the future.

7 14.2 Right to Assert Other Objections. By stipulating to the entry of this
8 Protective Order, no Party waives any right it otherwise would have to object to
9 disclosing or producing any information or item on any ground not addressed in
10 this Stipulated Protective Order. Similarly, no Party waives any right to object on
11 any ground to use in evidence of any of the material covered by this Protective
12 Order.

13 14.3 Filing Protected Material. A Receiving Party that wishes to file
14 Designated Material of a Producing Party must seek to do so under Local Rule 79-
15 5. Protected Material may only be filed under seal pursuant to a court order
16 authorizing the sealing of the specific Protected Material at issue; good cause must
17 be shown in the request to file under seal. If a Party's request to file Protected
18 Material under seal is denied by the Court, then the Receiving Party may file the
19 information in the public record unless otherwise instructed by the Court.

20 14.4 Discovery From Experts. A testifying Expert's draft reports, notes,
21 outlines, and any other writing leading up to his final report(s) in this case are
22 exempt from discovery. In addition, all communications between Counsel and a
23 testifying Expert with respect to his or her work on this case are exempt from
24 discovery (including communications where House Counsel is involved in the
25 communication). This section does not apply to a testifying Expert's billing
26 statements or invoices, which shall be timely produced in advance of the testifying
27 Expert's deposition, if so requested at the time.
28

1 14.5 Binding Nature of this Protective Order. This Protective Order shall be
2 binding upon the parties and their attorneys, successors, executors, personal
3 representatives, administrators, heirs, legal representatives, assigns, subsidiaries,
4 divisions, employees, agents, independent contractors, or other persons or
5 organizations over which they have control.

6 **15. FINAL DISPOSITION**

7 After the final disposition of this Action, within 60 days without the need for
8 a written request by the Designating Party, each Receiving Party must return all
9 Protected Material to the Producing Party or destroy such material, with the
10 exception of copies stored on back-up tapes or other disaster recovery media. As
11 used in this subdivision, “all Protected Material” includes all copies, abstracts,
12 compilations, summaries, and any other format reproducing or capturing any of the
13 Protected Material. Whether the Protected Material is returned or destroyed, the
14 Receiving Party must submit a written certification to the Producing Party (and, if
15 not the same person or entity, to the Designating Party) by the 60 day deadline that
16 (1) identifies (by category, where appropriate) all the Protected Material that was
17 returned or destroyed and (2) affirms that the Receiving Party has not retained any
18 copies, abstracts, compilations, summaries or any other format reproducing or
19 capturing any of the Protected Material. Notwithstanding this provision, Outside
20 Counsel are not required to purge their individual emails, and they are entitled to
21 retain an archival copy of all pleadings, motion papers, trial, deposition, and
22 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
23 expert reports, attorney work product, and consultant and expert work product, even
24 if such materials contain Protected Material. Any such archival copies that contain
25 or constitute Protected Material remain subject to this Protective Order as set forth
26 in § 4 (DURATION).

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16. VIOLATIONS

Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

1 Dated: April 7, 2017

2 By: /s/ David G. Wille
David G. Wille
3 Texas State Bar No. 00785250
E-mail: david.wille@bakerbotts.com
4 Jeffery D. Baxter
Texas State Bar No. 24006816
5 E-mail: jeff.baxter@bakerbotts.com
Brian D. Johnston
6 Texas State Bar No. 24080965
E-mail: brian.johnston@bakerbotts.com
7 James C. Williams
Texas State Bar No. 24075284
8 E-mail: james.williams@bakerbotts.com
Charles Yeh
9 Texas State Bar No. 24075319
E-mail: charles.yeh@bakerbotts.com
10 BAKER BOTTS L.L.P.
2001 Ross Avenue
11 Dallas, Texas 75201
Telephone: (214) 953-6791
12 Facsimile: (214) 953-6503

13 Lind M. Burrow, Bar No. 194668
burrow@caldwell-leslie.com
14 Alison Mackenzie, Bar No. 242280
mackenzie@caldwell-leslie.com
15 CALDWELL LESLIE AND
16 PROCTOR PC
17 725 South Figueroa Street 31st Floor
Los Angeles, CA 90017-5524
18 Telephone: 213-629-9040
19 Fax: 213-629-9022

20 **ATTORNEYS FOR INFINEON**
TECHNOLOGIES AMERICAS
21 **CORP. AND INFINEON**
TECHNOLOGIES AG
22
23

By: /s/ Amanda Tessar
Lara J. Dueppen, Bar No. 259075
LDueppen@perkinscoie.com
PERKINS COIE LLP
1888 Century Park East, Suite 1700
Los Angeles, CA 90067-1721
Telephone: 310.788.9900
Facsimile: 310.788.3399

Jonathan M. James (pro hac vice)
JJames@perkinscoie.com
PERKINS COIE LLP
2901 North Central Avenue, Suite 2000
Phoenix, AZ 85012-2788
Telephone: 602.351.8000
Facsimile: 602.648.7000

Amanda Tessar (pro hac vice)
ATessar@perkinscoie.com
Elizabeth Banzhoff (pro hac vice)
EBanzhoff@perkinscoie.com
PERKINS COIE LLP
1900 Sixteenth Street, Suite 1400
Denver, CO 80202-5255
Telephone: 303.291.2300
Facsimile: 303.291.2400

Philip A. Morin, Bar No. 256864
PMorin@perkinscoie.com
PERKINS COIE LLP
11988 El Camino Real, Suite 350
San Diego, CA 92130-2594
Telephone: 858.720.5700
Facsimile: 858.720.5799

Daniel T. Keese, Bar No. 280683
DKeese@perkinscoie.com
PERKINS COIE LLP
1120 N.W. Couch Street, 10th Floor
Portland, OR 97209-4128
Telephone: 503.727.2000
Facsimile: 503.727.2222

Morgan Chu (State Bar No. 70446)
(mchu@irell.com)
Joseph M. Lipner (State Bar No.
155735)
(jlipner@irell.com)
Ellisen Turner (State Bar No. 224842)
(eturner@irell.com)
IRELL & MANELLA LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067-4276

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28

Telephone: 310-277-1010
Facsimile: 310-203-7199

Nima Hefazi (State Bar No. 272816)
(nhefazi@irell.com)
IRELL & MANELLA LLP
840 Newport Center Drive, Suite 400
Newport Beach, CA 92660
Telephone: 949-760-0991
Facsimile: 949-760-5200

**ATTORNEYS FOR PLAINTIFFS
MACOM TECHNOLOGY
SOLUTIONS HOLDINGS, INC.
AND NITRONEX, LLC**

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 *MACOM Technology Solutions Holdings, Inc., et al. v.*
8 *Infineon Technologies AG, et al.*, Case No. CV 16-02859. I agree to comply with
9 and to be bound by all the terms of this Stipulated Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to sanctions
11 and punishment in the nature of contempt. I also understand that the Arms Export
12 Control Act, ITAR, and EAR impose criminal and civil penalties for violations of
13 their provisions, such as the unlicensed export, disclosure, or transfer of technical
14 data to a foreign person. I solemnly promise that I will not disclose in any manner
15 any information or item that is subject to this Stipulated Protective Order to any
16 person or entity except in strict compliance with the provisions of this Order.

17 I further agree to submit to the jurisdiction of the United States District Court
18 for the Central District of California for the purpose of enforcing the terms of this
19 Stipulated Protective Order, even if such enforcement proceedings occur after
20 termination of this action. I hereby appoint _____ [print full
21 name] of _____ [print full address and telephone number]
22 as my California agent for service of process in connection with this action or any
23 proceedings related to enforcement of this Stipulated Protective Order.

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____

28