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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

The CALIFORNIA INSTITUTE OF
TECHNOLOGY,

Plaintiff,

vs.

BROADCOM LIMITED, BROADCOM
CORPORATION, AVAGO
TECHNOLOGIES LIMITED, APPLE
INC., AND CYPRESS
SEMICONDUCTOR CORPORATION,

Defendants.

CASE NO. 2:16-cv-3714-GW-AGR_x

**INTERIM PROTECTIVE ORDER
– SOURCE CODE**

Ctrm: 10, Spring Street Floor

Judge: George H. Wu

1 Plaintiff California Institute of Technology (“Plaintiff”) and Defendants
2 Broadcom Limited, Broadcom Corporation, Avago Technologies Limited, Apple
3 Inc., and Cypress Semiconductor Corporation (“Defendants”) anticipate that
4 proprietary Source Code is likely to be produced for inspection during the course of
5 discovery in this case, and request that the Court enter this Interim Order setting
6 forth the conditions for treating, obtaining, and using such Source Code. The
7 Parties are in the process of drafting a proposed Protective Order governing all
8 discovery in this case, which they expect will supersede this Interim Order when
9 entered.

10 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court
11 finds good cause for the following Interim Protective Order governing Source Code
12 (“Order” or “Protective Order”):

13 **1. PURPOSES AND LIMITATIONS**

14 (a) Protected Material designated under the terms of this Protective Order
15 shall be used by a Receiving Party solely for this case, and shall not be used
16 directly or indirectly for any other purpose whatsoever.

17 (b) To the extent that any one of Defendants in this litigation provides
18 Protected Material under the terms of this Protective Order to Plaintiff, Plaintiff
19 shall not share that material with the other Defendants in this litigation, absent
20 express written permission from the producing Defendant or an order from the
21 Court. However, Plaintiff may share materials between Defendants if it is clear that
22 both Defendants have the information, *e.g.*, an email between Broadcom and Apple
23 that is produced by Broadcom could be shared with Apple. This Order does not
24 confer any right to any one Defendant to access the Protected Material of any other
25 Defendant that they would not otherwise have access to.

26 (c) The Parties acknowledge that this Order does not confer blanket
27 protections on all disclosures during discovery, or in the course of making initial or
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1 supplemental disclosures under Rule 26(a). Designations under this Order shall be
2 made with care and shall not be made absent a good faith belief that the designated
3 material satisfies the criteria set forth below. If it comes to a Producing Party’s
4 attention that designated material does not qualify for protection at all, or does not
5 qualify for the level of protection initially asserted, the Producing Party must
6 promptly notify all other Parties that it is withdrawing or changing the designation.

7 **2. DEFINITIONS**

8 (a) The following definitions apply to terms used in this Order:

9 (i) “Discovery Material” means all items or information, including
10 from any non-party, regardless of the medium or manner generated, stored,
11 or maintained (including, among other things, testimony, transcripts, and
12 tangible things) that are produced, disclosed, or generated in connection with
13 discovery or Rule 26(a) disclosures in this case.

14 (ii) “Outside Counsel” means (i) outside counsel who appear on the
15 pleadings as counsel for a Party and (ii) partners, associates, and staff of such
16 counsel to whom it is reasonably necessary to disclose or allow access to the
17 information for this litigation.

18 (iii) “Patents-in-Suit” means U.S. Patent No. 7,116,710, U.S. Patent
19 No. 7,421,032, U.S. Patent No. 7,916,781, and U.S. Patent No. 8,284,833.

20 (iv) “Party” means any party to this case, including all of its officers,
21 directors, employees and their support staffs.

22 (v) “Producing Party” means any Party or non-party that discloses
23 or produces any Discovery Material in this case.

24 (vi) “Protected Material” means any Discovery Material that is
25 designated as “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY
26 – SOURCE CODE,” as provided for in this Order.
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1 (vii) “Receiving Party” means any Party who receives Discovery
2 Material from a Producing Party.

3 (viii) “Source Code” means computer code, scripts, assembly,
4 binaries, object code, source code listings and descriptions of source code,
5 object code listings and descriptions of object code, and Hardware
6 Description Language (HDL) or Register Transfer Level (RTL) files that
7 describe the hardware design of any ASIC or other chip.

8 **3. COMPUTATION OF TIME**

9 The computation of any period of time prescribed or allowed by this Order
10 shall be governed by the provisions for computing time set forth in Federal Rule of
11 Civil Procedure 6.

12 **4. SCOPE**

13 (a) The protections conferred by this Order cover not only Discovery
14 Material governed by this Order as addressed herein, but also any information
15 copied or extracted therefrom, as well as all copies, excerpts, summaries, or
16 compilations thereof, plus testimony, conversations, or presentations by Parties or
17 their counsel in court or in other settings that might reveal Protected Material.

18 (b) Nothing in this Protective Order shall prevent or restrict a Producing
19 Party’s own disclosure or use of its own Protected Material for any purpose, and
20 nothing in this Order shall preclude any Producing Party from showing its Protected
21 Material to an individual who prepared or was involved in the preparation of the
22 Protected Material.

23 (c) Nothing in this Order shall be construed to prejudice any Party’s right
24 to use any Protected Material in court or in any court filing with the consent of the
25 Producing Party or by order of the Court.

26 (d) This Order is without prejudice to the right of any Party to seek further
27 or additional protection of any Discovery Material or to modify this Order in any
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1 way, including, without limitation, an order that certain matter not be produced at
2 all.

3 **5. DURATION**

4 Even after the termination of this case, the confidentiality obligations
5 imposed by this Order shall remain in effect until a Producing Party agrees
6 otherwise in writing or a court order otherwise directs.

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

8 (a) **Basic Principles.** All Protected Material shall be used solely for this
9 case or any related appellate proceeding, and not for any other purpose whatsoever,
10 including, without limitation, any other litigation, patent prosecution or acquisition,
11 patent reexamination, inter parties review, or reissue proceedings, or any business
12 or competitive purpose or function. Protected Material shall not be distributed,
13 disclosed, or made available to anyone except as expressly provided in this Order.

14 (b) **Patent Prosecution Bar.** Absent the written consent of the Producing
15 Party, any person on behalf of the Plaintiff who receives one or more items
16 designated “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY –
17 SOURCE CODE” by a Defendant (“Barred Person”) shall not be involved, directly
18 or indirectly, in any of the following activities: (i) preparing, prosecuting,
19 supervising, or otherwise assisting in the preparation or prosecution of any patent
20 application related by claim of priority to any of the Patents-in-Suit; (ii) amending
21 any claim of any of the Patents-in-Suit; and (iii) advising on, consulting on,
22 preparing, prosecuting, drafting, editing, and/or amending of patent applications,
23 specifications, claims, and/or responses to office actions, or otherwise affecting the
24 scope of claims in patent applications relating to the functionality, operation, and
25 design of either Irregular Repeat Accumulate (“IRA”) or Low-Density Parity Check
26 (“LDPC”) error correction codes for integrated circuits used for wireless
27 communications, before any foreign or domestic agency, including the United
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1 States Patent and Trademark Office. These prohibitions are not intended to and
2 shall not preclude counsel from participating in proceedings on behalf of a Party
3 challenging or defending the validity of any patent, including, but not limited to, as
4 part of any reexamination, inter partes review, or reissue proceedings, but Barred
5 Persons (including counsel for the Receiving Party) may not participate, directly or
6 indirectly, in drafting, amending, or altering the language of any patent claim(s) in
7 any such proceeding. These prohibitions shall begin when access to
8 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE
9 CODE” materials are first received by the Barred Person, and shall end two (2)
10 years after the final resolution of this action, including all appeals. Nothing in this
11 Protective Order shall prevent any attorney from sending Prior Art to persons
12 involved in prosecuting patent applications for purposes of ensuring that such Prior
13 Art is submitted to the U.S. Patent and Trademark Office (or any similar agency of
14 a foreign government) in compliance with any duty of candor. Nothing in this
15 paragraph shall prohibit any attorney of record in this litigation from discussing any
16 aspect of this case that is reasonably necessary for the prosecution or defense of any
17 claim or counterclaim in this litigation. This Prosecution Bar applies to each
18 individual reviewing the OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE
19 CODE” material and does not impute to the law firm, institution, or company who
20 employs the individual.

21 (c) **Secure Storage, No Export.** Protected Material must be stored and
22 maintained by a Receiving Party at a location in the United States and in a secure
23 manner that ensures that access is limited to the persons authorized under this
24 Order. To ensure compliance with applicable United States Export Administration
25 Regulations, Protected Material may not be exported outside the United States or
26 released to a foreign national (even if within the United States).

1 (d) **Legal Advice Based on Protected Material.** Nothing in this
2 Protective Order shall be construed to prevent counsel of record from advising their
3 clients with respect to this case based in whole or in part upon Protected Materials,
4 provided counsel does not (i) violate Section (b) or (ii) disclose the Protected
5 Material itself except as provided in this Order.

6 **7. DESIGNATING PROTECTED MATERIAL**

7 (a) **Available Designations.** Any Producing Party may designate
8 Discovery Material as “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES
9 ONLY – SOURCE CODE” provided that it meets the requirements for such
10 designation as provided for herein.

11 (b) **Written Discovery and Documents and Tangible Things.** Written
12 discovery, documents (which include “electronically stored information,” as that
13 phrase is used in Federal Rule of Procedure 34), and tangible things that meet the
14 requirements for the confidentiality designations listed in Paragraph 7(a) may be so
15 designated by placing the appropriate designation on every page of the written
16 material prior to production. For digital files being produced, the Producing Party
17 may mark each viewable page or image with the appropriate designation, and mark
18 the medium, container, and/or communication in which the digital files were
19 contained. In the event that original documents are produced for inspection, the
20 original documents shall be presumed “CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY – SOURCE CODE” during the inspection and re-designated, as appropriate
22 during the copying process.

23 **8. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL –**
24 **OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE”**

25 (a) A Producing Party may designate Source Code as “CONFIDENTIAL
26 – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” if it comprises or
27 includes confidential, proprietary, and/or trade secret Source Code.
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1 (b) Nothing in this Order shall be construed as a representation or
2 admission that Source Code is properly discoverable in this action, or to obligate
3 any Party to produce any Source Code.

4 (c) Unless otherwise ordered by the Court, Discovery Material designated
5 as “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE
6 CODE” shall be subject to the provisions set forth in Paragraph 9 below, and may
7 be disclosed, subject to Paragraph 9 below, solely to:

8 (i) The Receiving Party’s Outside Counsel, provided that such
9 Outside Counsel is not involved in competitive decision-making, as defined
10 by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984) and
11 *Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1471 (9th Cir.
12 1992), on behalf of a Party or a competitor of a Party, and such Outside
13 Counsel’s immediate paralegals and staff, and any copying, document
14 management, or clerical litigation support services or vendors working at the
15 direction of such counsel, paralegals, and staff;

16 (ii) Any outside expert or consultant retained by the Receiving Party
17 to assist in this action, as well as their immediate support staff, provided that
18 disclosure is only to the extent necessary to perform such work; and provided
19 that: (a) such expert or consultant has agreed to be bound by the provisions of
20 the Protective Order by signing a copy of Exhibit A; (b) such expert or
21 consultant is not a current officer, director, or employee of a Party or of a
22 competitor of a Party, nor anticipated at the time of retention to become an
23 officer, director, or employee of a Party or of a competitor of a Party; (c)
24 such expert or consultant is not involved in competitive decision-making, as
25 defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir.
26 1984) and *Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1471 (9th
27 Cir. 1992), on behalf of a Party or a competitor of a Party; and (d) no
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1 unresolved objections to such disclosure exist after proper notice has been
2 given to all Parties as set forth in Paragraph 10 below;

3 (iii) Any person who appears on the face of the Designated Material
4 as an author thereof;

5 (iv) Court reporters, stenographers, and videographers retained to
6 record testimony taken in this action;

7 (v) The Court, jury, and court personnel;

8 (vi) Any arbitrator or mediator who is assigned to hear this matter,
9 and his or her staff, subject to their agreement to maintain confidentiality to
10 the same degree as required by this Protective Order; and

11 (vii) Any other person with the prior written consent of the Producing
12 Party.

13 **9. DISCLOSURE AND REVIEW OF SOURCE CODE**

14 (a) Any Source Code that is produced by Plaintiff shall be made available
15 for inspection in electronic format at the Silicon Valley or Los Angeles offices of
16 its outside counsel, Quinn Emanuel Urquhart and Sullivan LLP, or any other
17 location mutually agreed by the Parties. Any Source Code that is produced by any
18 Defendant will be made available for inspection at the Palo Alto offices of its
19 outside counsel, WilmerHale LLP, or any other location mutually agreed by the
20 Parties. Source Code will be made available for inspection between the hours of 8
21 a.m. and 6 p.m. on business days (i.e., weekdays that are not Federal holidays),
22 although the Parties will be reasonable in accommodating reasonable requests to
23 conduct inspections at other times.

24 (b) Prior to the first inspection of any requested Source Code, the
25 Receiving Party shall provide seven (7) days notice of the Source Code that it
26 wishes to inspect. The Receiving Party shall provide three (3) days notice prior to
27 any additional inspections.
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1 (c) Source Code that is designated “CONFIDENTIAL – OUTSIDE
2 ATTORNEYS’ EYES ONLY – SOURCE CODE” shall be produced for inspection
3 and review subject to the following provisions, unless otherwise agreed by the
4 Producing Party:

5 (i) All Source Code shall be made available by the Producing Party
6 to the Receiving Party’s Outside Counsel and/or experts/consultants in a
7 secure room, in text searchable form on a secured computer without Internet
8 access or network access to other computers and on which all access ports
9 have been disabled (except for one printer port), as necessary and appropriate
10 to prevent and protect against any unauthorized copying, transmission,
11 removal, or other transfer of any Source Code outside or away from the
12 computer on which the Source Code is provided for inspection (the “Source
13 Code Computer” in the “Source Code Review Room”). In addition, and to
14 the extent it is feasible to do so, the Producing Party shall make the Source
15 Code available in hierarchical directory and file structures as close to the
16 original as possible. The Producing Party shall install tools that are sufficient
17 for viewing and searching the code produced, on the platform produced, if
18 such tools exist and are presently used in the ordinary course of the
19 Producing Party’s business. The Receiving Party’s Outside Counsel and/or
20 experts/consultants may request that commercially available software tools
21 for viewing and searching Source Code be installed on the Source Code
22 Computer, provided, however, that (a) the Receiving Party possesses an
23 appropriate license to such software tools; (b) the Producing Party approves
24 such software tools; and (c) such other software tools are reasonably
25 necessary for the Receiving Party to perform its review of the Source Code
26 consistent with all of the protections herein. The Producing Party shall
27 approve reasonable requests for additional commercially available software
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1 tools. The Receiving Party must provide the Producing Party with the CD or
2 DVD containing such licensed software tool(s) at least six (6) days in
3 advance of the date upon which the Receiving Party wishes to have the
4 additional software tools available for use on the Source Code Computer.

5 (ii) No recordable media or recordable devices, including, without
6 limitation, sound recorders, computers, cellular telephones, peripheral
7 equipment, cameras, CDs, DVDs, or drives of any kind, shall be permitted
8 into the Source Code Review Room. The Producing Party shall make a
9 space available outside the secure room in which persons reviewing
10 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE
11 CODE” may utilize such devices and/or transfer their notes to a personal
12 computer or other device.

13 (iii) The Receiving Party’s Outside Counsel and/or
14 experts/consultants shall be entitled to take hand-written notes relating to the
15 Source Code but may not copy the Source Code into the notes and may not
16 take such notes electronically on the Source Code Computer itself or any
17 other computer.

18 (iv) The Producing Party may visually monitor the activities of the
19 Receiving Party’s representatives during any Source Code review, but only
20 to ensure that no unauthorized electronic records of the Source Code and no
21 information concerning the Source Code are being created or transmitted in
22 any way.

23 (v) No copies of all or any portion of the Source Code may leave
24 the room in which the Source Code is inspected except as otherwise provided
25 herein. Further, no other written or electronic record of the Source Code is
26 permitted except as otherwise provided herein. The Producing Party shall
27 make available a laser printer with commercially reasonable printing speeds
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1 for on-site printing during inspection of the Source Code. The Receiving
2 Party may print limited portions of the Source Code only when necessary to
3 prepare court filings or pleadings or other papers (including a testifying
4 expert's expert report) or to be used as deposition and/or trial exhibits in
5 connection with testimony by the Producing Party's witnesses concerning the
6 Source Code. The burden shall be on the Receiving Party to demonstrate the
7 need for a printed copy of more than five (5) pages of a continuous block of
8 Source Code. The Receiving Party shall not print Source Code in order to
9 review blocks of Source Code elsewhere in the first instance, i.e., as an
10 alternative to reviewing that Source Code electronically on the Source Code
11 Computer, as the Parties acknowledge and agree that the purpose of the
12 protections herein would be frustrated by printing portions of code for review
13 and analysis elsewhere, and that printing is permitted only when necessary to
14 prepare court filings or pleadings or other papers (including a testifying
15 expert's expert report) or to be used as deposition and/or trial exhibits in
16 connection with testimony by the Producing Party's witnesses concerning the
17 Source Code. Upon printing any such portions of Source Code, the printed
18 pages shall be collected by the Producing Party. The Producing Party shall
19 Bates number, copy, and label "CONFIDENTIAL – OUTSIDE
20 ATTORNEYS' EYES ONLY – SOURCE CODE" any pages printed by the
21 Receiving Party. Within three (3) days, the Producing Party shall either (i)
22 provide one copy set of such pages to the Receiving Party or (ii) inform the
23 Requesting Party that it objects that the printed portions are excessive and/or
24 not done for a permitted purpose. If, after meeting and conferring, either via
25 telephone or in person, the Parties cannot resolve the objection, the
26 Producing Party and the Receiving Party shall be entitled to seek a Court
27 resolution of whether the printed Source Code is narrowly tailored and was
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1 printed for a permitted purpose. The burden shall be on the Receiving Party
2 to demonstrate that such printed portions are no more than is reasonably
3 necessary for a permitted purpose and not merely printed for the purpose of
4 analysis elsewhere. The printed pages shall constitute part of the Source
5 Code produced by the Producing Party in this action.

6 (vi) All persons who will review a Producing Party's Source Code
7 on behalf of a Receiving Party, including members of a Receiving Party's
8 outside law firm, shall be identified in writing to the Producing Party at least
9 five (5) days in advance of the first time that such person reviews such
10 Source Code. Such identification shall be in addition to any other disclosure
11 required under this Order. All persons viewing Source Code shall sign, on
12 each day they view Source Code, a log that will include the names of persons
13 who enter the locked room to view the Source Code and when they enter and
14 depart. The Producing Party shall be entitled to a copy of the log upon three
15 (3) day's advance notice to the Receiving Party.

16 (vii) Unless otherwise agreed in advance by the Parties in writing,
17 following each day on which inspection is done under this Order, the
18 Receiving Party's Outside Counsel and/or experts/consultants shall remove
19 all notes, documents, and all other materials from the Source Code Review
20 Room. The Producing Party shall not be responsible for any items left in the
21 room following each inspection session, and the Receiving Party shall have
22 no expectation of confidentiality for any items left in the room following
23 each inspection session without a prior agreement to that effect. Proper
24 identification of all authorized persons shall be provided prior to any access
25 to the Source Code Review Room or the Source Code Computer. Proper
26 identification requires showing, at a minimum, a photo identification card
27 sanctioned by the government of any State of the United States, by the
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1 government of the United States, or by the nation state of the authorized
2 person's current citizenship. Access to the secure room or the Source Code
3 Computer may be denied, at the discretion of the Producing Party, to any
4 individual who fails to provide proper identification.

5 (viii) Other than as provided above, the Receiving Party will not copy,
6 remove, or otherwise transfer any Source Code from the Source Code
7 Computer including, without limitation, copying, removing, or transferring
8 the Source Code onto any recordable media or recordable device. After an
9 inspection, the Receiving Party will not transmit any Source Code in any way
10 from the Producing Party's facilities or the offices of its outside counsel of
11 record.

12 (ix) The Receiving Party's Outside Counsel may make no more than
13 three (3) additional paper copies of any portions of the Source Code received
14 from a Producing Party pursuant to Paragraph 9(c)(v), not including copies
15 attached to court filings or used at depositions, and shall maintain a log of all
16 paper copies of the Source Code. The log shall include the names of the
17 reviewers and/or recipients of paper copies and locations where the paper
18 copies are stored. Upon three (3) day's advance notice to the Receiving
19 Party by the Producing Party, the Receiving Party shall provide a copy of this
20 log to the Producing Party.

21 (x) The Receiving Party's Outside Counsel and any person
22 receiving a copy of any Source Code shall maintain and store any paper
23 copies of the Source Code at their offices in a manner that prevents
24 duplication of or unauthorized access to the Source Code, including, without
25 limitation, storing the Source Code in a locked room or cabinet at all times
26 when it is not in use. No more than a total of ten (10) persons identified by
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1 the Receiving Party, excluding Outside Counsel, shall have access to the
2 Source Code.

3 (xi) For depositions, the Receiving Party may bring one (1) working
4 copy of printed Source Code selected from among the three (3) copies of
5 printed Source Code permitted under Paragraph 9(c)(ix). At least seven (7)
6 days before the date of the deposition, the Receiving Party shall notify the
7 Producing Party about the specific portions of Source Code it wishes to use
8 at the deposition, and the Producing Party shall bring printed copies of those
9 portions to the deposition for use by the Receiving Party. Copies of Source
10 Code that are marked as deposition exhibits shall not be provided to the
11 Court Reporter or attached to deposition transcripts; rather, the deposition
12 record will identify the exhibit by its production numbers. All paper copies
13 of Source Code brought to the deposition shall remain with the Producing
14 Party's Outside Counsel for secure destruction in a timely manner following
15 the deposition.

16 (xii) On seven (7) days advanced notice, the Receiving Party may
17 request that an electronic copy of the Source Code be made available by the
18 Producing Party at a deposition of any fact witness who may properly access
19 such Source Code consistent with the terms of this Protective Order. The
20 Source Code will be provided by the Producing Party at the deposition on a
21 stand-alone computer, and access to the computer will be controlled by the
22 Producing Party.

23 (xiii) Except as provided in this sub-paragraph, absent express written
24 permission from the Producing Party, the Receiving Party may not create
25 electronic images, or any other images, or make electronic copies, of the
26 Source Code from any paper copy of Source Code for use in any manner
27 (including by way of example only, the Receiving Party may not scan the
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1 Source Code to a PDF or photograph the code). Images or copies of Source
2 Code shall not be included in correspondence between the Parties (references
3 to production numbers shall be used instead), and shall be omitted from
4 pleadings and other papers except to the extent permitted herein.

5 The Receiving Party may create an electronic copy or image of limited
6 excerpts of Source Code only to the extent necessary in a pleading, court
7 filing, expert report or trial exhibit or demonstrative, and drafts of these
8 documents. The Receiving Party shall include only such excerpts of Source
9 Code as are reasonably necessary for the purposes for which such part of the
10 Source Code is used. The Receiving Party may create an electronic image of
11 a selected portion of the Source Code only when the electronic file
12 containing such image has been encrypted using commercially reasonable
13 encryption software including password protection. The communication
14 and/or disclosure of electronic files containing any portion of Source Code
15 shall at all times be limited to individuals who are expressly authorized to
16 view Source Code under the provisions of this Protective Order. The
17 Receiving Party shall maintain a log of all such electronic copies of any
18 portion of Source Code in its possession or in the possession of its retained
19 consultants, including the names of the reviewers and/or recipients of any
20 such electronic copies, and the locations and manner in which the electronic
21 copies are stored. Additionally, any such electronic copies must be labeled
22 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” as
23 provided for in this Order.

24 A party seeking to file with the court documents containing excerpts of
25 Source Code as permitted by this subparagraph must file an Application for
26 Leave to File Under Seal under the provisions of Local Rule 79-5 or 79-6, as
27 applicable.
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1 (xiv) The parties agree to promptly meet and confer, either via
2 telephone or in person, to discuss modifications to the time limits in Section
3 11 if deadlines in the case so require.

4 **10. NOTICE OF DISCLOSURE**

5 (a) Prior to disclosing any Protected Material to any person described in
6 Paragraphs 8(c)(ii) (referenced below as “Person”), the Party seeking to disclose
7 such information shall provide the Producing Party with written notice that
8 includes:

- 9 (i) the name of the Person;
- 10 (ii) an up-to-date curriculum vitae of the Person;
- 11 (iii) the present employer and title of the Person;
- 12 (iv) an identification of the Person’s past and current employment
13 and consulting relationships within the last six (6) years, including consulting
14 relationships through entities owned or controlled by the Person, including
15 but not limited to an identification of any individual or entity with or for
16 whom the person is employed or to whom the person provides consulting
17 services relating to the design, development, operation, or patenting of error
18 correction codes for integrated circuits used for wireless communications, or
19 relating to acquisition of intellectual property assets relating to error
20 correction codes for integrated circuits used for wireless communications;
- 21 (v) an identification of all pending patent applications on which the
22 Person is named as an inventor or in which the Person has any ownership
23 interest; and
- 24 (vi) a list of the cases in which the Person has testified at deposition
25 or trial within the last five (5) years.

26 (b) Further, the Party seeking to disclose Protected Material shall provide
27 such other information regarding the Person’s past and current employment and
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1 consulting relationships reasonably requested by the Producing Party for it to
2 evaluate whether good cause exists to object to the disclosure of Protected Material
3 to the Person. To the extent certain information identified in Paragraph 10(a) or
4 requested per this Paragraph cannot be disclosed because of confidentiality
5 obligations, the parties agree to meet and confer, either via telephone or in person,
6 to negotiate alternate information that can be provided.

7 (c) Within fourteen (14) days of receipt of the disclosure of the Person, the
8 Producing Party or Parties may object in writing to the Person for good cause. In
9 the absence of an objection at the end of the fourteen (14) day period, the Person
10 shall be deemed approved under this Protective Order. There shall be no disclosure
11 of Protected Material to the Person prior to expiration of this fourteen (14) day
12 period. If the Producing Party objects to disclosure to the Person within such
13 fourteen (14) day period, the Parties shall meet and confer via telephone or in
14 person within seven (7) days following the objection and attempt in good faith to
15 resolve the dispute on an informal basis. If the dispute is not resolved, the Party
16 objecting to the disclosure will have seven (7) days from the date of the meet and
17 confer to seek relief from the Court. If relief is not sought from the Court within
18 that time, the objection shall be deemed withdrawn. If relief is sought, designated
19 materials shall not be disclosed to the Person in question until the Court resolves
20 the objection.

21 (d) For purposes of this section, “good cause” shall include an objectively
22 reasonable concern that the Person will, advertently or inadvertently, use or disclose
23 Discovery Materials in a way or ways that are inconsistent with the provisions
24 contained in this Order.

25 (e) Prior to receiving any Protected Material under this Order, the Person
26 must execute a copy of the “Agreement to Be Bound by Protective Order” (Exhibit
27 A hereto) and serve it on all Parties.
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1 (f) An initial failure to object to a Person under this Paragraph 10 shall not
2 preclude the non-objecting Party from later objecting to continued access by that
3 Person for good cause. If an objection is made, the Parties shall meet and confer
4 via telephone or in person within seven (7) days following the objection and
5 attempt in good faith to resolve the dispute informally. If the dispute is not
6 resolved, the Party objecting to the disclosure will have seven (7) days from the
7 date of the meet and confer to seek relief from the Court. The designated Person
8 may continue to have access to information that was provided to such Person prior
9 to the date of the objection. If a later objection is made, no further Protected
10 Material shall be disclosed to the Person until the Court resolves the matter or the
11 Producing Party withdraws its objection. Notwithstanding the foregoing, if the
12 Producing Party fails to move for a protective order within three (3) business days
13 after the meet and confer, further Protected Material may thereafter be provided to
14 the Person.

15 (g) The parties agree to promptly meet and confer, either via telephone or
16 in person, to discuss modifications to the time limits in Section 10 if deadlines in
17 the case so require.

18 **11. SUBPOENAS OR COURT ORDERS**

19 If at any time Protected Material is subpoenaed by any court or arbitral,
20 administrative, or legislative body, the Party to whom the subpoena or other request
21 is directed shall immediately give prompt written notice thereof to every Party who
22 has produced such Discovery Material and to its counsel and shall provide each
23 such Party with an opportunity to move for a protective order regarding the
24 production of or otherwise protect Protected Materials implicated by the subpoena.

25 **12. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

26 (a) Nothing in this Protective Order shall require production of
27 information that a Party contends is protected from disclosure by the attorney-client
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1 privilege, the patent agent-client privilege, the work product immunity or other
2 privilege, doctrine, right, or immunity.

3 (b) The inadvertent production by a Party of Discovery Material subject to
4 the attorney-client privilege, the patent agent-client privilege, work-product
5 protection, or any other applicable privilege or protection, despite the Producing
6 Party's reasonable efforts to prescreen such Discovery Material prior to production,
7 will not waive the applicable privilege and/or protection if a request for return of
8 such inadvertently produced Discovery Material is made promptly after the
9 Producing Party learns of its inadvertent production. This Order shall be
10 interpreted to provide the maximum protection allowed by Federal Rule of
11 Evidence 502(d).

12 (c) Upon a request from any Producing Party who has inadvertently
13 produced Discovery Material that it believes is privileged and/or protected, each
14 Receiving Party shall immediately destroy such Protected Material or Discovery
15 Material and certify as such by the Receiving Party to the Producing Party.
16 Notwithstanding this provision, outside litigation counsel of record are not required
17 to delete information that may reside on their respective firms' electronic back-up
18 systems.

19 (d) After inadvertently or unintentionally produced information subject to
20 a claim of immunity or privilege has been returned or destroyed, the Receiving
21 Party may challenge that assertion of immunity or privilege, but may not use the
22 contents of that information for any purpose, including, without limitation,
23 submission of the information for *in camera* review by the Court in asserting a
24 challenge of the assertion of immunity or privilege.

25 (e) Nothing in this Order modifies any person's ethical duties regarding
26 information to which a claim of attorney-client privilege and/or work product
27 protection may attach.
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1 **13. INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER**

2 (a) In the event of a disclosure of any Discovery Material pursuant to this
3 Order to any person or persons not authorized to receive such disclosure under this
4 Protective Order, the Party responsible for having made such disclosure, and each
5 Party with knowledge thereof, shall immediately notify counsel for the Producing
6 Party whose Discovery Material has been disclosed and provide to such counsel all
7 known relevant information concerning the nature and circumstances of the
8 disclosure. The responsible disclosing Party shall also promptly take all reasonable
9 measures to retrieve the improperly disclosed Discovery Material and to ensure that
10 no further or greater unauthorized disclosure and/or use thereof is made.

11 (b) Unauthorized or inadvertent disclosure does not change the status of
12 Discovery Material or waive the right to hold the disclosed document or
13 information as Protected.

14 **14. FINAL DISPOSITION**

15 (a) Not later than ninety (90) days after the Final Disposition of this case,
16 each Party shall return all Discovery Material of a Producing Party to the respective
17 Outside Counsel of the Producing Party or destroy such Material, at the option of
18 the Producing Party. For purposes of this Order, “Final Disposition” occurs after
19 an order, mandate, or dismissal finally terminating the above-captioned action with
20 prejudice, including all appeals.

21 (b) All Parties that have received any such Discovery Material shall
22 certify in writing that all such materials have been returned to the respective
23 Outside Counsel of the Producing Party or destroyed. Notwithstanding the
24 provisions for return of Discovery Material, Outside Counsel may retain one set of
25 pleadings, correspondence and attorney and consultant work product (but not
26 document productions) for archival purposes, but must return any pleadings,
27 correspondence, and consultant work product that contain Source Code. Copies of
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1 pleadings, correspondence and attorney and consultant work product (but not
2 document productions) created by the operation of Outside Counsel’s backup and
3 disaster recovery tools need not be destroyed, but, if they are not destroyed, the
4 person in possession of that Discovery Material remains bound by this Order with
5 respect to all such retained formation.

6 **15. MISCELLANEOUS**

7 (a) **Right to Further Relief.** Nothing in this Order abridges the right of
8 any person to seek its modification by the Court in the future. By stipulating to this
9 Order, the Parties do not waive the right to argue that certain material may require
10 additional or different confidentiality protections than those set forth herein.

11 (b) **Termination of Matter and Retention of Jurisdiction.** The Parties
12 agree that the terms of this Protective Order shall survive and remain in effect after
13 the Final Determination of the above-captioned matter.

14 (c) **Successors.** This Order shall be binding upon the Parties hereto, their
15 attorneys, and their successors, executors, personal representatives, administrators,
16 heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents,
17 retained consultants and experts, and any persons or organizations over which they
18 have direct control.

19 (d) **Right to Assert Other Objections.** By stipulating to the entry of this
20 Protective Order, no Party waives any right it otherwise would have to object to
21 disclosing or producing any information or item. Similarly, no Party waives any
22 right to object on any ground to use in evidence of any of the material covered by
23 this Protective Order. This Order shall not constitute a waiver of the right of any
24 Party to claim in this action or otherwise that any Discovery Material, or any
25 portion thereof, is privileged or otherwise non-discoverable, or is not admissible in
26 evidence in this action or any other proceeding.

1 (e) **Burdens of Proof.** Notwithstanding anything to the contrary above,
2 nothing in this Protective Order shall be construed to change the burdens of proof
3 or legal standards applicable in disputes regarding whether particular Discovery
4 Material is confidential, which level of confidentiality is appropriate, whether
5 disclosure should be restricted, and if so, what restrictions should apply.

6 (f) **Modification by Court.** This Order is subject to further court order
7 based upon public policy or other considerations, and the Court may modify this
8 Order sua sponte in the interests of justice. The parties prefer that the Court
9 provide them with notice of the Court's intent to modify this Order and the content
10 of those modifications, prior to entry of such an order. The Court may further
11 modify the terms and conditions of this Order at the request of a Party or the Parties
12 for good cause, or in the interest of justice, at any time in these proceedings. The
13 United States District Court for the Central District of California is responsible for
14 the interpretation and enforcement of this Order. All disputes concerning Protected
15 Material, however designated, produced under the protection of this Order shall be
16 resolved by the United States District Court for the Central District of California.

17 (g) **Modification by the Parties.** The Parties may jointly agree to modify
18 this Order without the Court's leave.

19 (h) **Discovery Rules Remain Unchanged.** Nothing herein shall alter or
20 change in any way the discovery provisions of the Federal Rules of Civil
21 Procedure, the Local Rules for the United States District Court for the Central
22 District of California, or the Court's own orders. Identification of any individual
23 pursuant to this Protective Order does not make that individual available for
24 deposition or any other form of discovery outside of the restrictions and procedures
25 of the Federal Rules of Civil Procedure, the Local Rules for the United States
26 District Court for the Central District of California, or the Court's own orders.
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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: December 29, 2016

By: /s/[—]

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*Attorneys for Defendants Broadcom Limited,
Broadcom Corporation, Avago Technologies
Limited, Apple Inc., and Cypress
Semiconductor Corporation*

IT IS SO ORDERED



Dated: December 29, 2016

ALICIA G. ROSENBERG
United States Magistrate Judge

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FILER’S ATTESTATION OF CONCURRENCE

Pursuant to Civil L.R. 5-4.3.4(a)(2) relating to documents requiring multiple signatures, I, [—], attest that all other signatories concur in the content of the foregoing document and authorize the filing of the same.

/s/[FILER]

[FILER]

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EXHIBIT A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____, declare and say that:

1. I am employed as _____ by _____.
2. I have read the Protective Order entered in the above-captioned matter and have received a copy of the Protective Order.
3. I promise that I will use any and all “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” information (as defined in the Protective Order) that is given to me, only in a manner authorized by the Protective Order, and only to assist counsel in the litigation of these matters.
4. I promise that I will not disclose or discuss such “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” information with anyone other than the persons described in the Protective Order.
5. I acknowledge that, by signing this agreement, I am subjecting myself to the jurisdiction of the United States District Court for the Central District of California with respect to enforcement of the Protective Order.
6. I understand that any disclosure or use of “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” information in any manner contrary to the provisions of the Protective Order may subject me to sanctions for contempt of court.

I declare under penalty of perjury that the foregoing is true and correct.

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Date: _____
