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11 IN THE UNITED STATES DISTRICT COURT
 12
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA,
 14 WESTERN DIVISION

15 CARL ZEISS AG and ASML
 16 NETHERLANDS B.V.,
 17 Plaintiffs,
 18 v.
 19 NIKON CORPORATION, SENDAI
 20 NIKON CORPORATION, and NIKON
 21 INC.,
 22 Defendants.

Case No. 2:17-cv-07083-RGK (MRWx)
STIPULATED [~~PROPOSED~~]
PROTECTIVE ORDER
 Judge: Hon. R. Gary Klausner
 Magistrate Judge: Hon. Michael R. Wilner

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1 **1. INTRODUCTION**

2 1.1 PURPOSES AND LIMITATIONS

3 Disclosure and discovery activity in this Action are likely to involve
4 production of confidential, proprietary, or private information for which special
5 protection from public disclosure and from use for any purpose other than
6 prosecuting this Action may be warranted. Accordingly, the parties hereby stipulate
7 to and petition the court to enter the following Stipulated Protective Order. The
8 parties acknowledge that this Order does not confer blanket protections on all
9 disclosures or responses to discovery and that the protection it affords from public
10 disclosure and use extends only to the limited information or items that are entitled
11 to confidential treatment under the applicable legal principles. The parties further
12 acknowledge, as set forth in Section 13.3, below, that this Stipulated Protective
13 Order does not entitle them to file confidential information under seal; Civil Local
14 Rule 79-5 sets forth the procedures that must be followed and the standards that will
15 be applied when a party seeks permission from the court to file material under seal.

16 1.2 GOOD CAUSE STATEMENT

17 Some of the material expected to be exchanged between the parties is
18 information that is not generally available to the public, and that is maintained in
19 confidence by the Producing Party. Special protection from public disclosure and
20 from use for any purpose other than prosecution of this Action is warranted.
21 Examples of confidential information that the parties may seek to protect from
22 unrestricted or unprotected disclosure include:

- 23 (a) Information that is the subject of a non-disclosure or confidentiality
24 agreement or obligation;
- 25 (b) The names, or other information tending to reveal the identity of a
26 party's supplier, designer, distributor, or customer;

- 1 (c) Agreements with third parties, including license agreements, distributor
2 agreements, manufacturing agreements, design agreements,
3 development agreements, supply agreements, sales agreements, or
4 service agreements;
- 5 (d) Research and development information;
- 6 (e) Proprietary engineering or technical information, including product
7 design, manufacturing techniques, processing information, drawings,
8 memoranda, source code, and reports;
- 9 (f) Information related to budgets, sales, profits, costs, margins, licensing
10 of technology or designs, product pricing, or other internal
11 financial/accounting information, including non-public information
12 related to financial condition or performance and income or other non-
13 public tax information;
- 14 (g) Information related to internal operations including personnel
15 information and confidential business practices;
- 16 (h) Information related to past, current and future product development;
- 17 (i) Information related to past, current and future market analyses and
18 business and marketing development, including plans, strategies,
19 forecasts and competition;
- 20 (j) Trade secrets (as defined by the jurisdiction in which the information is
21 located); and
- 22 (k) Information that may be privileged or otherwise protected from
23 disclosure under state or federal statutes, court rules, case decisions, or
24 common law.

25 Unrestricted or unprotected disclosure of such confidential technical,
26 commercial or personal information would result in prejudice or harm to the
27 Producing Party by revealing the Producing Party's competitive confidential
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1 information, which has been developed at the expense of the Producing Party and
2 which represents valuable tangible and intangible assets of that party. Additionally,
3 privacy interests must be safeguarded. Accordingly, the parties respectfully submit
4 that there is good cause for the entry of this Protective Order.

5 It is the intent of the parties that information will not be designated as
6 confidential for tactical reasons and that nothing will be so designated without a
7 good faith belief that there is good cause why it should not be part of the public
8 record of this case.

9 The parties agree, subject to the Court's approval, that the following terms and
10 conditions shall apply to this Action.

11 **2. DEFINITIONS**

12 2.1 Action: CARL ZEISS AG and ASML NETHERLANDS B.V. v.
13 NIKON CORPORATION, SENDAI NIKON CORPORATION, and NIKON INC.,
14 Case No. 2:17-cv-07083-RGK (MRWx).

15 2.2 Challenging Party: A Party or Non-Party that challenges the designation
16 of information or items under this Order.

17 2.3 "CONFIDENTIAL" Information or Items: Protected Data, information
18 (regardless of how it is generated, stored or maintained), and/or tangible things that
19 qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified
20 above in the Good Cause Statement. For the purposes of the Protective Order,
21 Protected Data means any information that a party believes in good faith to be
22 subject to federal, state or foreign data protection laws or other privacy obligations.
23 Such data protection laws include the Federal Data Protection Act,
24 (Bundesdatenschutzgesetz) (BDSG), which regulates data protection in Germany
25 and the Dutch Personal Data Protection Act, which applies in the Netherlands. Other
26 examples of such data protection laws include, without limitation, the Gramm-
27 Leach-Bliley Act, 15 U.S.C. § 6801 et seq. (financial information); The Health
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1 Insurance Portability and Accountability Act and the regulations thereunder, 45 CFR
2 Part 160 and Subparts A and E of Part 164 (medical information); Directive
3 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the
4 Protection of Individuals with Regard to the Processing of Personal Data and on the
5 Free Movement of Such Data, 1995 O.J. (L281/31) (European Union personal
6 information); Data Protection Act 1998 (c. 29) (United Kingdom personal
7 information); the Belgian Law of December 8, 1992 on Privacy Protection in
8 relation to the Processing of Personal Data (Belgium personal information); and The
9 Personal Information Protection Act (Law No. 57 of 2003) (Japan personal
10 information).

11 Protected Data constitutes highly sensitive materials requiring special
12 protection, including, but not limited to, “information concerning the personal or
13 material circumstances of an identified or identifiable individual” as defined in
14 Section 3(1) of the Federal Data Protection Act.

15 2.4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
16 Information or Items: Extremely sensitive “Confidential Information or Items,”
17 disclosure of which to another Party or Non-Party would create a substantial risk of
18 serious harm that could not be avoided by less restrictive means.

19 2.5 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or
20 Items: Extremely sensitive discovery material that contains or substantively relates
21 to a party’s Source Code. For purposes of this Order, “Source Code” means source
22 code, computer code, object code (*i.e.*, computer instructions and data definitions
23 expressed in a form suitable for input to an assembler, compiler, or other translator),
24 microcode, pseudocode, source code listings and descriptions of source code, object
25 code listings and descriptions of object code, register transfer language (“RTL”),
26 firmware, and hardware description language (“HDL”), as well as any and all
27 programmer notes, annotations, revision histories, and other comments of any type

1 appeared in this Action on behalf of that party or are affiliated with a law firm which
2 has appeared on behalf of that party, and includes support staff.

3 2.13 Party: Any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 2.14 Producing Party: A Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 2.15 Professional Vendors: Persons or entities that provide litigation support
9 services (e.g., stenographers, photocopying, videotaping, translating, preparing
10 exhibits or demonstrations, and organizing, storing, or retrieving data in any form or
11 medium) and their employees and subcontractors.

12 2.16 Protected Material: Any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’
14 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

15 2.17 Receiving Party: A Party that receives Disclosure or Discovery Material
16 from a Producing Party.

17 **3. SCOPE**

18 The protections conferred by this Stipulation and Order cover not only
19 Protected Material (as defined above), but also (1) any information copied or
20 extracted from Protected Material; (2) all copies, excerpts, summaries, or
21 compilations of Protected Material; and (3) any testimony, conversations, or
22 presentations by Parties or their Counsel that might reveal Protected Material.
23 However, the protections conferred by this Stipulation and Order do not cover the
24 following information: (a) any information that is in the public domain at the time of
25 disclosure to a Receiving Party or becomes part of the public domain after its
26 disclosure to a Receiving Party as a result of publication not involving a violation of
27 this Order, including becoming part of the public record through trial or otherwise;

1 and (b) any information known to the Receiving Party prior to the disclosure or
2 obtained by the Receiving Party after the disclosure from a source who obtained the
3 information lawfully and under no obligation of confidentiality to the Designating
4 Party.

5 Any use of Protected Material at trial will be governed by the orders of the
6 trial judge.

7 **4. DURATION**

8 Even after final disposition of this Action, the confidentiality obligations
9 imposed by this Order shall remain in effect until a Designating Party agrees
10 otherwise in writing or a court order otherwise directs. Final disposition shall be
11 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
12 or without prejudice; and (2) final judgment herein after the completion and
13 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
14 including the time limits for filing any motions or applications for extension of time
15 pursuant to applicable law.

16 **5. DESIGNATING PROTECTED MATERIAL**

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.

18 Each Party or Non-Party that designates information or items for protection under
19 this Order must take care to limit any such designation to specific material that
20 qualifies under the appropriate standards. To the extent it is practical to do so, the
21 Designating Party must designate for protection only those parts of material,
22 documents, items, or oral or written communications that qualify – so that other
23 portions of the material, documents, items, or communications for which protection
24 is not warranted are not swept unjustifiably within the ambit of this Order.

25 If it comes to a Designating Party’s attention that information or items that it
26 designated for protection do not qualify for protection at all or do not qualify for the
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1 (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE”) to each page that
3 contains Protected Material. If only a portion or portions of the material on a page
4 qualifies for protection, the Producing Party also must clearly identify the protected
5 portion(s) (e.g., by making appropriate markings in the margins) and must specify,
6 for each portion, the level of protection being asserted.

7 (b) For testimony given in deposition or in other pretrial or trial proceedings,
8 that the Designating Party identify on the record, before the close of the deposition,
9 hearing, or other proceeding, all protected testimony and specify the level of
10 protection being asserted. When it is impractical to identify separately each portion
11 of testimony that is entitled to protection and it appears that substantial portions of
12 the testimony may qualify for protection, the Designating Party may invoke on the
13 record (before the deposition, hearing, or other proceeding is concluded) a right to
14 have up to 30 days to identify the specific portions of the testimony as to which
15 protection is sought and to specify the level of protection being asserted. Only those
16 portions of the testimony that are appropriately designated for protection within the
17 30 days shall be covered by the provisions of this Stipulated Protective Order.
18 Alternatively, a Designating Party may specify, at the deposition or up to 30 days
19 afterwards if that period is properly invoked, that the entire transcript shall be treated
20 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY.”

22 The use of a document as an exhibit at a deposition shall not in any way
23 affect the document’s designation as “CONFIDENTIAL,” “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
25 CONFIDENTIAL – SOURCE CODE.”

26 Transcripts containing Protected Material shall have an obvious legend on the
27 title page that the transcript contains Protected Material, and the title page shall be

1 followed by a list of all pages (including line numbers as appropriate) that have been
2 designated as Protected Material and the level of protection being asserted by the
3 Designating Party. The Designating Party shall inform the court reporter of these
4 requirements. Any transcript that is prepared before the expiration of a 30-day period
5 for designation shall be treated during that period as if it had been designated
6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
7 otherwise agreed. After the expiration of that period, the transcript shall be treated
8 only as actually designated.

9 (c) For information produced in some form other than documentary and for
10 any other tangible items, that the Producing Party affix in a prominent place on the
11 exterior of the container or containers in which the information or item is stored the
12 legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
13 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” If only a portion or
14 portions of the information or item warrant protection, the Producing Party, to the
15 extent practicable, shall identify the protected portion(s) and specify the level of
16 protection being asserted.

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
18 failure to designate qualified information or items does not, standing alone, waive
19 the Designating Party’s right to secure protection under this Order for such material.
20 Upon timely correction of a designation, the Receiving Party must make reasonable
21 efforts to assure that the material is treated in accordance with the provisions of this
22 Order.

23 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
25 designation of confidentiality at any time that is consistent with the Court’s
26 Scheduling Order. Unless a prompt challenge to a Designating Party’s
27 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
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1 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
2 expose the Challenging Party to sanctions. Unless the parties submit a joint
3 stipulation, all parties shall continue to afford the material in question the level of
4 protection to which it is entitled under the Producing Party's designation until the
5 court rules on the challenge.

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

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is
8 disclosed or produced by another Party or by a Non-Party in connection with this
9 case only for prosecuting, defending, or attempting to settle this Action. Specifically,
10 all Protected Material shall be used solely for this case or any related appellate
11 proceeding, and not for any other purpose whatsoever, including without limitation
12 any other litigation, patent prosecution or acquisition, patent reexamination or
13 reissue proceedings, or any business or competitive purpose or function, unless
14 otherwise agreed to by the Parties or ordered by the court. Protected Material shall
15 not be distributed, disclosed or made available to anyone except as expressly
16 provided in this Order.

17 Such Protected Material may be disclosed only to the categories of persons
18 and under the conditions described in this Order. When the Action has been
19 terminated, a Receiving Party must comply with the provisions of Section 15 below
20 (FINAL DISPOSITION).

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

24 Any party receiving Protected Material shall take technical and organizational
25 security measures that are appropriate to the risks, such as unauthorized access,
26 presented by the processing. Any person acting under the authority of a Receiving
27 Party, including a data processor, must not process the data except on instructions

1 from the Receiving Party. Any party receiving Protected Material shall have in place
2 procedures so that any third party it authorizes to have access to the Protected
3 Material, including processors, will respect and maintain the confidentiality and
4 security of the Protected Material.

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
6 otherwise ordered by the court or permitted in writing by the Designating Party, a
7 Receiving Party may disclose any information or item designated
8 “CONFIDENTIAL” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
10 employees of said Outside Counsel of Record to whom it is reasonably necessary to
11 disclose the information for this Action and who have signed the “Acknowledgment
12 and Agreement to Be Bound” that is attached hereto as Exhibit A;

13 (b) the officers, directors, and employees (including House Counsel) of the
14 Receiving Party to whom disclosure is reasonably necessary for this Action and who
15 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (c) Experts (as defined in this Order) of the Receiving Party to whom
17 disclosure is reasonably necessary for this Action and who have signed the
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (d) the Court and its personnel;

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

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

26 (g) during their depositions, witnesses, and attorneys for witnesses, in the
27 Action to whom disclosure is reasonably necessary provided: (1) the deposing party

1 requests that the witness sign the form attached as Exhibit A hereto; and (2) they
2 will not be permitted to keep any confidential information unless they sign the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
4 agreed by the Designating Party or ordered by the Court. Pages of transcribed
5 deposition testimony or exhibits to depositions that reveal Protected Material must
6 be separately bound by the court reporter and may not be disclosed to anyone except
7 as permitted under this Stipulated Protective Order; and

8 (h) any mediator or settlement officer, and their supporting personnel,
9 mutually agreed upon by any of the parties engaged in settlement discussions.

10 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
11 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
12 writing by the Designating Party, a Receiving Party may disclose any information or
13 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only
14 to:

15 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
16 employees of said Outside Counsel of Record to whom it is reasonably necessary to
17 disclose the information for this Action and who have signed the “Acknowledgment
18 and Agreement to Be Bound” that is attached hereto as Exhibit A;

19 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
20 necessary for this Action, (2) who have signed the “Acknowledgment and
21 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
22 Section 7.4(a), below, have been followed;

23 (d) the Court and its personnel;

24 (e) court reporters and their staff, professional jury or trial consultants, and
25 Professional Vendors to whom disclosure is reasonably necessary for this Action
26 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
27 A); and

1 (f) the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information.

3 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
5 – SOURCE CODE” Information or Items to Experts.

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7 (a) Unless otherwise ordered by the court or agreed to in writing by the
8 Designating Party, a Party that seeks to disclose to an Expert (as defined in this
9 Order) any Information or Item that has been designated “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
11 – SOURCE CODE” pursuant to Section 7.3(b) first must make a written request to
12 the Designating Party that (1) identifies the general categories of “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
14 – SOURCE CODE” information that the Receiving Party seeks permission to
15 disclose to the Expert, (2) sets forth the full name of the Expert and the city and state
16 of his or her primary residence, (3) attaches a copy of the Expert’s current resume,
17 (4) identifies the Expert’s current employer(s), (5) identifies each person or entity
18 from whom the Expert has received compensation or funding for work in his or her
19 areas of expertise or to whom the Expert has provided professional services,
20 including in connection with a litigation, at any time during the preceding five
21 years,¹ and (6) identifies (by name and number of the case, filing date, and location
22 of court) any litigation in connection with which the Expert has offered expert
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24 ¹ If the Expert believes any of this information is subject to a confidentiality
25 obligation to a third party, then the Expert should provide whatever information the
26 Expert believes can be disclosed without violating any confidentiality agreements,
27 and the Party seeking to disclose to the Expert shall be available to meet and confer
28 with the Designating Party regarding any such engagement.

1 testimony, including through a declaration, report, or testimony at a deposition or
2 trial, during the preceding five years.

3 (b) A Party that makes a request and provides the information specified in the
4 preceding respective paragraphs may disclose the subject Protected Material to the
5 identified Expert unless, within 14 days of delivering the request, the Party receives
6 a written objection from the Designating Party. Any such objection must set forth in
7 detail the grounds on which it is based.

8 (c) A Party that receives a timely written objection must meet and confer with
9 the Designating Party (through direct voice to voice dialogue) to try to resolve the
10 matter by agreement within seven days of the written objection. If no agreement is
11 reached, the Party seeking to make the disclosure to the Expert may file a motion as
12 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
13 applicable) seeking permission from the court to do so. Any such motion must
14 describe the circumstances with specificity, set forth in detail the reasons why the
15 disclosure to the Expert is reasonably necessary, assess the risk of harm that the
16 disclosure would entail, and suggest any additional means that could be used to
17 reduce that risk. In addition, any such motion must be accompanied by a competent
18 declaration describing the parties' efforts to resolve the matter by agreement (i.e., the
19 extent and the content of the meet and confer discussions) and setting forth the
20 reasons advanced by the Designating Party for its refusal to approve the disclosure.

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

25 7.5 Disclosure of "HIGHLY CONFIDENTIAL – SOURCE CODE"
26 Information or Items. A party or non-party may designate Source Code as
27 "HIGHLY CONFIDENTIAL – SOURCE CODE" if it comprises or includes

1 confidential, proprietary, or trade secret Source Code. Unless otherwise ordered by
2 the Court or permitted in writing by the Designating Party, Source Code designated
3 as HIGHLY CONFIDENTIAL – SOURCE CODE shall be subject to the following
4 provisions:

5 (a) Protected Material designated as “HIGHLY CONFIDENTIAL –
6 SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information and may be
8 disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in
10 Sections 7.3 and 7.4.

11 (b) Any Source Code produced in discovery shall be made available for
12 inspection, in a format allowing it to be reasonably reviewed and searched, during
13 normal business hours or at other mutually agreeable times, at an office of the
14 Producing Party’s counsel or another mutually agreed upon location. Unless
15 otherwise agreed to by the Parties, Source Code produced by Nikon will be made
16 available in Nikon’s outside counsel’s offices in Los Angeles or San Francisco.
17 Source code produced by Zeiss/ASML will be made available in Zeiss/ASML’s
18 outside counsel’s offices in at least Washington D.C. and San Diego. The Source
19 Code shall be made available for inspection on a secured computer in a secured
20 room without Internet access or network access to other computers, and the
21 Receiving Party shall not copy, remove, or otherwise transfer any portion of the
22 Source Code onto any recordable media or recordable device. The Producing Party
23 may visually monitor the activities of the Receiving Party’s representatives during
24 any Source Code review from outside the review room, but only to ensure that there
25 is no unauthorized recording, copying, or transmission of the Source Code. Such
26 monitoring shall not entail review of any work product generated by the Receiving
27 Party, e.g., monitoring the screen of the secure computer, monitoring any surface

1 reflecting any notes or work product of the Receiving Party, or monitoring the key
2 strokes of the Receiving Party. There will be no video supervision by the Producing
3 Party.

4 (c) The Receiving Party may request that commercially available software
5 tools for viewing and searching Source Code be installed on the secured PC. The
6 Receiving party must provide the Producing Party a CD, DVD, or other media
7 containing such software tools, or links for a download at least 4 days in advance of
8 the inspection. The Receiving Party shall be responsible for providing a license for
9 the use of the review and search tools.

10 (d) The Receiving Party may request paper copies of limited portions of
11 Source Code that are reasonably necessary for the preparation of court filings,
12 pleadings, expert reports, or other papers, or for deposition or trial, but shall not
13 request paper copies for the purposes of reviewing the Source Code other than
14 electronically as set forth in Subsection (b) in the first instance. The Producing
15 Party shall provide all such Source Code in paper form including bates numbers and
16 the label “HIGHLY CONFIDENTIAL – SOURCE CODE.” The Producing Party
17 may challenge the amount of Source Code requested in hard copy form pursuant to
18 the dispute resolution procedure and timeframes set forth in Section 6 whereby the
19 Producing Party is the “Challenging Party” the and Receiving Party is the
20 “Designating Party” for purposes of dispute resolution. As a general matter, no
21 more than an aggregate total of 2,000 pages of Source Code should be printed during
22 the duration of the case. If the Receiving Party wishes to print more pages beyond
23 this page limit, the parties shall meet and confer in good faith and the Producing
24 Party shall not unreasonably withhold permission to the Receiving Party to exceed
25 the page limit.

26 (e) The Receiving Party shall maintain a record of any individual who has
27 inspected any portion of the Source Code in electronic or paper form. The Receiving
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1 Party shall maintain all paper copies of any printed portions of the Source Code in a
2 secured, locked area. Similarly, the Receiving Party shall maintain derivative
3 materials created using Source Code, such as any notes of an Expert, in a secured,
4 locked area. The Receiving Party shall not create any electronic or other images of
5 the paper copies and shall not convert any of the information contained in the paper
6 copies into any electronic format. The Receiving Party shall only make additional
7 paper copies if such additional copies are (1) necessary to prepare court filings,
8 pleadings, or other papers (including a testifying expert's expert report), (2)
9 necessary for deposition, or (3) otherwise necessary for the preparation of its case.
10 Any paper copies used during a deposition shall be retrieved by the Producing Party
11 at the end of each day and must not be given to or left with a court reporter or any
12 other individual.

13 **8. DISCOVERY FROM EXPERTS OR CONSULTANTS**

14 (a) Absent good cause, drafts of reports of testifying experts, and reports and
15 other written materials, including drafts, of consulting experts, shall not be
16 discoverable.

17 (b) Reports and materials exempt from discovery under the foregoing
18 Subsection 8(a) shall be treated as attorney work product for the purposes of this
19 case and Protective Order.

20 (c) Testifying experts shall not be subject to discovery with respect to any
21 draft of his or her report(s) in this case. Draft reports, notes, or outlines for draft
22 reports developed and drafted by the testifying expert and/or his or her staff are also
23 exempt from discovery.

24 (d) Discovery of materials provided to testifying experts shall be limited to
25 those materials, facts, consulting expert opinions, and other matters actually relied
26 upon by the testifying expert in forming his or her final report, trial, or deposition
27 testimony or any opinion in this case. No discovery can be taken from any non-

1 testifying expert except to the extent that such non-testifying expert has provided
2 information, opinions, or other materials to a testifying expert relied upon by that
3 testifying expert in forming his or her final report(s), trial, and/or deposition
4 testimony or any opinion in this case.

5 (e) No conversations or communications between counsel and any testifying
6 or consulting expert will be subject to discovery unless the conversations or
7 communications are relied upon by such experts in formulating opinions that are
8 presented in reports or trial or deposition testimony in this case.

9 (f) Materials, communications, and other information exempt from discovery
10 under the foregoing Subsections 8(a)–(e) shall be treated as attorney work product
11 for the purposes of this litigation and Order.

12 (g) Nothing in Protective Order, include Subsections 8(a)–(e), shall alter or
13 change in any way the requirements in Section 7.5 regarding Source Code, and
14 Section 7.5 shall control in the event of any conflict.

15 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
16 **PRODUCED IN OTHER LITIGATION**

17 If a Party is served with a subpoena or a court order issued in other litigation
18 that compels disclosure of any information or items designated in this Action as
19 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
20 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” that Party must:

21 (a) Promptly notify in writing the Designating Party. Such notification shall
22 include a copy of the subpoena or court order;

23 (b) Promptly notify in writing the party who caused the subpoena or order to
24 issue in the other litigation that some or all of the material covered by the subpoena
25 or order is subject to this Protective Order. Such notification shall include a copy of
26 this Stipulated Protective Order; and

1 (c) Cooperate with respect to all reasonable procedures sought to be pursued
2 by the Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with
4 the subpoena or court order shall not produce any information designated in this
5 Action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’
6 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a
7 determination by the court from which the subpoena or order issued, unless the Party
8 has obtained the Designating Party’s permission. The Designating Party shall bear
9 the burden and expense of seeking protection in that court of its confidential material
10 – and nothing in these provisions should be construed as authorizing or encouraging
11 a Receiving Party in this Action to disobey a lawful directive from another court.

12 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
13 **PRODUCED IN THIS ACTION**

14 (a) The terms of this Order are applicable to information produced by a
15 Non-Party in this Action and designated as “CONFIDENTIAL,” “HIGHLY
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
17 CONFIDENTIAL – SOURCE CODE.” Such information produced by Non-Parties
18 in connection with this Action is protected by the remedies and relief provided by
19 this Order. Nothing in these provisions should be construed as prohibiting a Non-
20 Party from seeking additional protections.

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

25 1. Promptly notify in writing the Requesting Party and the Non-Party that
26 some or all of the information requested is subject to a confidentiality agreement
27 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 reasonably
3 specific description of the information requested; and

4 3. Make the information requested available for inspection by the Non-
5 Party.

6 (c) If the Non-Party fails to object or seek a protective order from this court
7 within 21 days of receiving the notice and accompanying information, the Receiving
8 Party may produce the Non-Party’s confidential information responsive to the
9 discovery request. If the Non-Party timely seeks a protective order, the Receiving
10 Party shall not produce any information in its possession, custody, or control that is
11 subject to the confidentiality agreement with the Non-Party before a determination
12 by the court. Absent a court order to the contrary, the Non-Party shall bear the
13 burden and expense of seeking protection in this court of its Protected Material.

14 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

23 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
24 **PROTECTED MATERIAL**

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other protection,
27 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
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1 **13. MISCELLANEOUS**

2 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the court in the future.

4 13.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in this
7 Stipulated Protective Order. Similarly, no Party waives any right to object on any
8 ground to use in evidence of any of the material covered by this Protective Order.

9 13.3 Filing Protected Material. Without written permission from the
10 Designating Party or a court order secured after appropriate notice to all interested
11 persons, a Party may not file in the public record in this Action any Protected
12 Material. A Party that seeks to file under seal any Protected Material must comply
13 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant
14 to a court order authorizing the sealing of the specific Protected Material at issue.
15 Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
16 establishing that the Protected Material at issue is privileged, protectable as a trade
17 secret, or otherwise entitled to protection under the law. If a Receiving Party's
18 request to file Protected Material under seal pursuant to Civil Local Rule 79-5 is
19 denied by the court, then the Receiving Party may file the Protected Material in the
20 public record pursuant to Civil Local Rule 79-5 unless otherwise instructed by the
21 court.

22 **14. PATENT PROSECUTION BAR**

23 Absent the written consent of the Producing Party, any person on behalf of the
24 Receiving Party who receives one or more items designated “CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – ATTORNEYS’ EYES
26 ONLY – SOURCE CODE” by a Producing Party shall not be involved, directly or
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1 indirectly, in any of the following activities: (i) advising on, consulting on,
2 preparing, prosecuting, drafting, editing, and/or amending of patent applications,
3 specifications, claims, and/or responses to office actions, or otherwise affecting the
4 scope of claims in patents or patent applications relating to the functionality,
5 operation, and/or design of technology concerning digital cameras and components
6 thereof (generally, or as described in any patent in suit), before any foreign or
7 domestic agency, including the United States Patent and Trademark Office; and (ii)
8 the acquisition of patents (including patent applications), or the rights to any such
9 patents or patent applications with the right to sublicense, relating to the
10 functionality, operation, and design of technology concerning digital cameras and
11 components thereof. These prohibitions are not intended to and shall not preclude
12 counsel from participating in proceedings on behalf of a Party challenging the
13 validity of any patent, and these prohibitions are not intended to and shall not
14 preclude counsel for the Receiving Party from participating in reexamination, inter
15 partes review proceedings, or covered business method review to defend the validity
16 of any challenged patent, but counsel for the Receiving Party may not participate in
17 the crafting of amended claims in any such proceedings. These prohibitions shall
18 begin when access to “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
19 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” materials
20 are first received by the affected individual, and shall end two (2) years after the
21 final resolution of this action, including all appeals. Attached as Exhibit B is the
22 parties’ further agreement regarding the patent prosecution bar as it relates to Dr.
23 Vivek Subramanian and is fully incorporated by reference herein into this Stipulated
24 Protective Order.

25 **15. REUSE**

26 The Parties agree that documents and deposition testimony produced in CARL
27 ZEISS AG and ASML NETHERLANDS B.V. v. NIKON CORPORATION,
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1 SENDAI NIKON CORPORATION, and NIKON INC., Case No. 2:17-cv-03221-
2 RGK (MRWx) may be used in this Action, if relevant, without requiring the re-
3 production of such documents and testimony. Corporate witnesses deposed in the
4 3221 case shall not be deposed for a second time in this Action on corporate
5 deposition topics that are co-extensive with topics from the 3221 case. Rather, the
6 deposition testimony from the 3221 case shall be afforded the same treatment in this
7 Action as though it were elicited originally in this Action for any and all co-
8 extensive topics.

9 To be clear, absent written permission to the contrary, the Parties may not use
10 any documents or depositions from the case pending between the parties in the
11 International Trade Commission in In re Matter of Certain Digital Cameras,
12 Devices, and Components Thereof, Investigation No. 337-TA-1059. Additionally,
13 the Parties may not use any documents or depositions produced in Case No. 2:17-cv-
14 07083-RGK (MRWx) for Case No. 2:17-cv-03221-RGK (MRWx).

15 **16. FINAL DISPOSITION**

16 Within 60 days after the final disposition of this Action, as defined in Section
17 4, each Receiving Party must return all Protected Material to the Producing Party or
18 destroy such material. As used in this subdivision, “all Protected Material” includes
19 all copies, abstracts, compilations, summaries, and any other format reproducing or
20 capturing any of the Protected Material. Whether the Protected Material is returned
21 or destroyed, the Receiving Party must submit a written certification to the
22 Producing Party (and, if not the same person or entity, to the Designating Party) by
23 the 60-day deadline that (1) identifies (by category, where appropriate) all the
24 Protected Material that was returned or destroyed and (2) affirms that the Receiving
25 Party has not retained any copies, abstracts, compilations, summaries or any other
26 format reproducing or capturing any of the Protected Material. Notwithstanding this
27 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
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1 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
2 deposition and trial exhibits, expert reports, attorney work product, and consultant
3 and expert work product, even if such materials contain Protected Material. Any
4 such archival copies that contain or constitute Protected Material remain subject to
5 this Protective Order as set forth in Section 4 (DURATION).

6 **17. VIOLATIONS**

7 Any willful violation of this Order may be punished by civil or criminal
8 contempt proceedings, financial or evidentiary sanctions, reference to disciplinary
9 authorities, or other appropriate action at the discretion of the Court.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 Dated: April 5, 2018

FISH & RICHARDSON P.C.

4
5 By: /s/ Christopher S. Marchese

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27 Attorneys for Plaintiffs
28 CARL ZEISS AG AND ASML
NETHERLANDS B.V.

Dated: April 5, 2018

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By: */s/ Vincent J. Belusko*

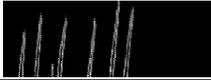
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Attorneys for Defendants
NIKON CORPORATION, SENDAI
NIKON CORPORATION, and NIKON
INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: April 9, 2018


United States District/Magistrate Judge
Michael R. Wilner

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of

4 _____
5 [print or type full address], declare under penalty of perjury that I have read in its
6 entirety and understand the Stipulated Protective Order that was issued by the United
7 States District Court for the Central District of California on _____ [date] in
8 the case of CARL ZEISS AG and ASML NETHERLANDS B.V. v. NIKON
9 CORPORATION, SENDAI NIKON CORPORATION, and NIKON INC., Case No.
10 2:17-cv-7083-RGK (MRWx). I agree to comply with and to be bound by all the
11 terms of this Stipulated Protective Order and I understand and acknowledge that
12 failure to so comply could expose me to sanctions and punishment in the nature of
13 contempt. I solemnly promise that I will not disclose in any manner any information
14 or item that is subject to this Stipulated Protective Order to any person or entity
15 except in strict compliance with the provisions of this Order.

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

20 I hereby appoint _____ [print or type full name] of

21 _____
22 [print or type full address and telephone number] as my California agent for service
23 of process in connection with this action or any proceedings related to enforcement
24 of this Stipulated Protective Order.

25 Date: _____

26 City and State where sworn and signed: _____

1 Printed name: _____

2 Signature: _____

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1 Exhibit B

2 Joint Stipulation Regarding Patent Prosecution Bar

3 The parties further agree as follows:

4 1. Plaintiffs shall identify to Defendants any Nikon CONFIDENTIAL,
5 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY, or HIGHLY
6 CONFIDENTIAL – SOURCE CODE (collectively, “Nikon Confidential
7 Information”) information that Plaintiffs propose to disclose to Dr. Subramanian.
8 This identification to Defendants shall take place no less than 4 business days before
9 the proposed date of disclosure to Dr. Subramanian, a period of time that shall be
10 extended in good faith depending on the volume of materials identified by Plaintiffs
11 and that may be shortened in good faith to 3 business days if needed to
12 accommodate the procedural schedule in this case.

13 2. Defendants shall within the time period mentioned in paragraph 1 above
14 designate those portions of the Nikon Confidential Information to which Defendants
15 object to Dr. Subramanian having access unless he agrees to comply with Paragraph
16 14 of the Protective Order (“Designated Nikon Confidential Information”).

17 3. Upon receiving Defendants’ designations, Plaintiffs at their option may (a)
18 redact all Designated Nikon Confidential Information before providing the
19 documents to Dr. Subramanian; (b) share the documents with the Designated Nikon
20 Confidential Information with Dr. Subramanian subject to the provisions of the
21 prosecution bar described in Paragraph 5 below; or (c) not provide the documents to
22 Dr. Subramanian at all. Plaintiffs will inform Defendants of their election at the
23 time they make it.

24 4. If there are any disputes regarding the scope of the Designated Nikon
25 Confidential Information, then within 2 business days after receiving Defendants’
26 designations the parties shall meet and confer in good faith to attempt to resolve the
27 issue. If the parties are unable to resolve the issue during that meet and confer, then

1 Plaintiffs may raise the issue with the assigned Magistrate Judge in accordance with
2 the Magistrate Judge's procedures. No disclosure of the Designated Nikon
3 Confidential Information shall be made to Dr. Subramanian in the interim absent an
4 order by the Magistrate Judge in Plaintiffs' favor or Defendants' written agreement.
5 While awaiting a ruling from the Magistrate Judge, Plaintiffs may disclose a version
6 of the documents in dispute to Dr. Subramanian with the Designated Nikon
7 Confidential Information redacted.

8 5. Dr. Subramanian shall be precluded from engaging in the following
9 activities for 2 (two) years after final resolution of this action including any appeals:

10 (i) advising on, consulting on, preparing, prosecuting, drafting, editing,
11 and/or amending of patent applications, specifications, claims, and/or
12 responses to office actions, or otherwise affecting the scope of claims in
13 patents or patent applications concerning or relating to the functionality,
14 operation, and/or design of technology concerning digital cameras and
15 components thereof (as described in any patent in suit or any Designated
16 Nikon Confidential information shared with Dr. Subramanian), before any
17 foreign or domestic agency, including the United States Patent and Trademark
18 Office; and

19 (ii) the acquisition of patents (including patent applications), or the
20 rights to any such patents or patent applications with the right to sublicense,
21 concerning or relating to the functionality, operation, and design of
22 technology concerning digital cameras and components thereof (as described
23 in any patent in suit or any Designated Nikon Confidential information shared
24 with Dr. Subramanian).

25 6. Except as expressly stated herein, Dr. Subramanian will comply with all
26 provisions of the Protective Order in this action, including any amendments thereto.

1 7. This stipulation does not affect the provisions of the Protective Order for
2 anyone other than Dr. Subramanian.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on April 6, 2018, to all counsel of record who are deemed to have consented to electronic service via the Court’s CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

/s/ Jonathan M. Smith
Jonathan McNeal Smith