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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

18 MAXELL, LTD.

19 Plaintiff,

20 v.

21 ASUSTEK COMPUTER INC., AND
22 ASUS COMPUTER
23 INTERNATIONAL, INC.

24 Defendants.

Case No. 2:17-cv-7528 R (MRWx)

**STIPULATED PROTECTIVE
ORDER**

Hon. Manuel L. Real

Complaint Filed: October 13, 2017

1 WHEREAS, Plaintiff Maxell, Ltd. (“Maxell”) and Defendants ASUSTeK
2 Computer, Inc. and ASUS Computer International, Inc. (“ASUS”) (collectively “the
3 Parties” and each individually is a separate “Party”) believe that certain information
4 that is or will be encompassed by discovery demands by the Parties involves the
5 production or disclosure of trade secrets, confidential business information, or other
6 proprietary information;

7 WHEREAS, the Parties seek a protective order limiting disclosure thereof in
8 accordance with Federal Rule of Civil Procedure 26(c):

9 THEREFORE, it is hereby stipulated among the Parties and ORDERED that:

10 1. Each Party may designate as confidential for protection under this
11 Order, in whole or in part, any document, information or material that constitutes or
12 includes, in whole or in part, confidential or proprietary information or trade secrets
13 of the Party or a Third Party to whom the Party reasonably believes it owes an
14 obligation of confidentiality with respect to such document, information or material
15 (“Protected Material”). Protected Material shall be designated by the Party
16 producing it by affixing a legend or stamp on such document, information or
17 material as follows: “CONFIDENTIAL.” The word “CONFIDENTIAL” shall be
18 placed clearly on each page of the Protected Material (except deposition and hearing
19 transcripts) for which such protection is sought. For deposition and hearing
20 transcripts, the word “CONFIDENTIAL” shall be placed on the cover page of the
21 transcript (if not already present on the cover page of the transcript when received
22 from the court reporter) by each attorney receiving a copy of the transcript after that
23 attorney receives notice of the designation of some or all of that transcript as
24 “CONFIDENTIAL.”

25 2. Any document produced before issuance of this Order with the
26 designation “Confidential” or “Confidential - Outside Attorneys’ Eyes Only” shall
27 receive the same treatment as if designated “RESTRICTED - OUTSIDE
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1 COUNSELS' EYES ONLY" under this Order, unless and until such document is
2 redesignated to have a different classification under this Order.

3 3. With respect to documents, information or material designated
4 "CONFIDENTIAL," "RESTRICTED – ATTORNEYS' EYES ONLY,"
5 "RESTRICTED – OUTSIDE COUNSELS' EYES ONLY," or "RESTRICTED –
6 CONFIDENTIAL SOURCE CODE" ("DESIGNATED MATERIAL"),¹ subject to
7 the provisions herein and unless otherwise stated, this Order governs, without
8 limitation: (a) all documents, electronically stored information, and/or things as
9 defined by the Federal Rules of Civil Procedure; (b) all pretrial, hearing or
10 deposition testimony, or documents marked as exhibits or for identification in
11 depositions and hearings; (c) pretrial pleadings, exhibits to pleadings and other court
12 filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests
13 and complete or partial summaries prepared from any DESIGNATED
14 MATERIALS shall also be considered DESIGNATED MATERIAL and treated as
15 such under this Order.

16 4. A designation of Protected Material (i.e., "CONFIDENTIAL,"
17 "RESTRICTED –ATTORNEYS' EYES ONLY," "RESTRICTED – OUTSIDE
18 COUNSELS' EYES ONLY," or "RESTRICTED – CONFIDENTIAL SOURCE
19 CODE") may be made at any time. Inadvertent or unintentional production of
20 documents, information or material that has not been designated as DESIGNATED
21 MATERIAL shall not be deemed a waiver in whole or in part of a claim for
22 confidential treatment. Any party that inadvertently or unintentionally produces
23 Protected Material without designating it as DESIGNATED MATERIAL may
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25 ¹ The term DESIGNATED MATERIAL is used throughout this Protective
26 Order to refer to the class of materials designated as "CONFIDENTIAL,"
27 "RESTRICTED – ATTORNEYS' EYES ONLY," "RESTRICTED – OUTSIDE
28 COUNSEL'S EYES ONLY," or "RESTRICTED – CONFIDENTIAL SOURCE
CODE," individually and collectively.

1 request destruction of that Protected Material by notifying the recipient(s), as soon
2 as reasonably possible after the producing Party becomes aware of the inadvertent or
3 unintentional disclosure, and providing replacement Protected Material that is
4 properly designated. The recipient(s) shall then destroy all copies of the
5 inadvertently or unintentionally produced Protected Materials and any documents,
6 information or material derived from or based thereon.

7 5. "CONFIDENTIAL" documents, information and material may be
8 disclosed only to the following persons, except upon receipt of the prior written
9 consent of the designating party, upon order of the Court, or as set forth in
10 paragraph 13 herein:

- 11 a. outside counsel of record in this Action for the Parties;
- 12 b. employees of such counsel assigned to and reasonably necessary
13 to assist such counsel in the litigation of this Action;
- 14 c. up to and including two (2) in-house counsel for the Parties who
15 either have responsibility for making decisions dealing directly with the
16 litigation of this Action, or who are assisting outside counsel in the litigation
17 of this Action provided that each such in-house counsel has agreed to be
18 bound by the provisions of the Protective Order by signing a copy of
19 Appendix A;
- 20 d. up to and including three (3) designated employee
21 representatives, including officers and directors, of each of the Parties to the
22 extent reasonably necessary for the litigation of this Action provided that each
23 such employee representative has agreed to be bound by the provisions of the
24 Protective Order by signing a copy of Appendix A, provided further, that
25 either party may in good faith request the other party's consent to designate
26 one or more additional employee representatives and the other party shall not
27 unreasonably withhold such consent; the requesting party may seek leave of
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1 Court to designate such additional employee representative(s) if the
2 requesting party believes the other party has unreasonably withheld such
3 consent;

4 e. outside consultants or experts (i.e., not existing employees or
5 affiliates of a Party or an affiliate of a Party) retained for the purpose of this
6 litigation, provided that: (1) such consultants or experts are not presently
7 employed by the Parties hereto for purposes other than this Action; (2) before
8 access is given, the consultant or expert has completed the Undertaking
9 attached as Exhibit A hereto and the same is served upon the producing Party
10 with a current curriculum vitae of the consultant or expert at least seven (7)
11 days before access to the Protected Material is to be given to that consultant
12 in order to allow the producing Party to object to and notify the receiving
13 Party in writing that it objects to disclosure of Protected Material to the
14 consultant or expert. The Parties agree to promptly confer and use good faith
15 to resolve any such objection. If the Parties are unable to resolve any
16 objection, the objecting Party may file a motion with the Court within fifteen
17 (15) days of the notice, or within such other time as the Parties may agree,
18 seeking a protective order with respect to the proposed disclosure. The
19 objecting Party shall have the burden of proving the need for a protective
20 order. No disclosure shall occur until all such objections are resolved by
21 agreement or Court order;

22 f. independent litigation support services, including persons
23 working for or as court reporters, translators, graphics or design services, jury
24 or trial consulting services, and photocopy, document imaging, and database
25 services retained by counsel and reasonably necessary to assist counsel with
26 the litigation of this Action;

1 g. mock jurors who have signed an agreement agreeing not to
2 publicly disclose DESIGNATED MATERIAL and to keep any information
3 concerning DESIGNATED MATERIAL confidential;

4 h. any mediator who is assigned to hear this matter, and his or her
5 staff, subject to their agreement to maintain confidentiality to the same degree
6 as required by this Order; and

7 i. the Court, jury, and the Court's personnel.

8 6. A Party shall designate documents, information or material as
9 "CONFIDENTIAL" only upon a good faith belief that the documents, information
10 or material contains confidential or proprietary information or trade secrets of the
11 Party or a Third Party to whom the Party reasonably believes it owes an obligation
12 of confidentiality with respect to such documents, information or material.

13 7. Documents, information or material produced pursuant to any
14 discovery request in this Action, including but not limited to Protected Material
15 designated as DESIGNATED MATERIAL, shall be used by the Parties only in the
16 litigation of this Action and shall not be used for any other purpose. Any person or
17 entity who obtains access to DESIGNATED MATERIAL or the contents thereof
18 pursuant to this Order shall not make any copies, duplicates, extracts, summaries or
19 descriptions of such DESIGNATED MATERIAL or any portion thereof except as
20 may be reasonably necessary in the litigation of this Action. Any such copies,
21 duplicates, extracts, summaries or descriptions shall be classified DESIGNATED
22 MATERIALS and subject to all of the terms and conditions of this Order.

23 8. To the extent a producing Party believes that certain Protected Material
24 qualifying to be designated CONFIDENTIAL is so sensitive that its dissemination
25 deserves even further limitation, the producing Party may designate such Protected
26 Material "RESTRICTED – ATTORNEYS' EYES ONLY," "RESTRICTED –
27 OUTSIDE COUNSELS' EYES ONLY," or to the extent such Protected Material
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1 includes computer source code and/or live data (that is, data as it exists residing in a
2 database or databases) (“Source Code Material”), the producing Party may designate
3 such Protected Material as “RESTRICTED CONFIDENTIAL SOURCE CODE.”

4 9. For Protected Material designated RESTRICTED – ATTORNEYS’
5 EYES ONLY, access to, and disclosure of, such Protected Material shall be limited
6 to individuals listed in paragraphs 5(a-c) and (e-g); provided, however, that access
7 by in-house counsel pursuant to paragraph 5(c) be limited to in-house counsel who
8 exercise no competitive decision-making authority on behalf of the client.

9 10. For Protected Material designated RESTRICTED – OUTSIDE
10 COUNSELS’ EYES ONLY, access to, and disclosure of, such Protected Material
11 shall be limited to individuals listed in paragraphs 5(a-b) and (e-g).

12 11. For Protected Material designated RESTRICTED – CONFIDENTIAL
13 SOURCE CODE, the following additional restrictions apply:

14 a. Access to a Party’s Source Code Material shall be provided to
15 the receiving Party’s outside counsel and/or experts in a secure room (“Source
16 Code Review Room”) and only on “stand-alone” computer(s) (that is, the
17 computer on which all access ports have been disabled (except for the printer
18 port) that may not be linked to any network, including a local area network
19 (“LAN”), an intranet or the Internet (“Source Code Computer”). The Source
20 Code Computer may only be connected to (i) a printer, or (ii) a device capable
21 of temporarily storing electronic copies solely for the limited purposes
22 permitted pursuant to paragraphs 11(h and k) below. Further, the Source
23 Code Computer shall be equipped with a reasonably current version of the
24 Microsoft Windows operating system or, if the code was developed in a
25 Linux environment, then a reasonably current version of Ubuntu. The
26 receiving Party may use appropriate tool software for the type of Source Code
27 on the Source Code Computer, which shall be installed by producing Party at
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1 the receiving Party's request. Such appropriate software tools shall include
2 without limitation Notepad++, dtSearch, UltraEdit, SciTools Understand,
3 Meld, git, tortoise git, Cygwin, Python, enscript, and Adobe Reader as long as
4 such software tools are not capable of executing or compiling source code and
5 are provided by Maxell. The provided Source Code Computer shall be
6 reasonably powerful, such that it operates the tool software in a reasonable
7 amount of time, e.g., conduct a grep search of the provided code in a
8 reasonable amount of time. The Source Code Computer shall be located in a
9 reasonably comfortable office environment and be equipped with a 19"
10 (diagonal measurement) or larger monitor running at its native resolution, as
11 well as a keyboard and mouse. In addition, ASUS agrees, that Maxell, at its
12 expense, may provide additional equipment including a monitor, keyboard,
13 mouse, an additional computer which shall have a reasonably current version
14 of the Microsoft Windows operating system and shall be equipped with at
15 least 16 GB of RAM, and solid state drive(s) with free space equal to at least
16 the greater of 100 GB, and after reasonable inspection by ASUS, Maxell shall
17 have the ability to use this equipment to conduct source code review using
18 this additional equipment with the same capabilities as with the equipment
19 provided by ASUS. Additionally, except as provided in paragraph 11(k)
20 below, the stand-alone computer(s) may only be located at the U.S. offices of
21 the producing Party's outside counsel. No recordable media or recordable
22 devices, including without limitation sound recorders, computers, cellular
23 telephones, peripheral equipment, cameras, CDs, DVDs, or drives of any
24 kind, shall be permitted into the Source Code Review Room;

25 b. The receiving Party shall make reasonable efforts to restrict its
26 requests for such access to the stand-alone computer(s) to normal business
27 hours, which for purposes of this paragraph shall be 8:00 a.m. through 6:00
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1 p.m. However, upon reasonable notice from the receiving party, the
2 producing Party shall make reasonable efforts to accommodate the receiving
3 Party's request for access to the stand-alone computer(s) outside of normal
4 business hours. The Parties agree to cooperate in good faith such that
5 maintaining the producing Party's Source Code Material at the offices of its
6 outside counsel shall not unreasonably hinder the receiving Party's ability to
7 efficiently and effectively conduct the prosecution or defense of this Action;

8 c. The producing Party shall provide the receiving Party with
9 information explaining how to start, log on to, and operate the stand-alone
10 computer(s) in order to access the produced Source Code Material on the
11 stand-alone computer(s);

12 d. The producing Party will produce Source Code Material in
13 computer searchable format on the stand-alone computer(s) as described
14 above;

15 e. Access to Protected Material designated RESTRICTED –
16 CONFIDENTIAL SOURCE CODE shall be limited to outside counsel,
17 persons reasonably necessary under 5(f), and up to four (4) outside
18 consultants or experts² (i.e., not existing employees or affiliates of a Party or
19 an affiliate of a Party) retained for the purpose of this litigation and approved
20 to access such Protected Materials pursuant to paragraph 5(e) above. All
21 persons who will review a producing Party's Source Code Material on behalf
22 of a receiving Party, including members of a receiving Party's outside law
23 firm, shall be identified in writing to the producing Party at least three (3)
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25 ² For the purposes of this paragraph, an outside consultant or expert is defined
26 to include the outside consultant's or expert's direct reports and other support
27 personnel, such that the disclosure to a consultant or expert who employs others
28 within his or her firm to help in his or her analysis shall count as a disclosure to a
single consultant or expert.

1 days in advance of the first time that such person reviews such Source Code.
2 Such identification shall be in addition to any other disclosure required under
3 this Order. All persons viewing Source Code shall sign on each day they
4 view Source Code a log that will include the names of persons who enter the
5 locked room to view the Source Code and when they enter and depart. Proper
6 identification of all authorized persons shall be provided prior to any access to
7 the Source Code Review Room or the Source Code Computer. Proper
8 identification requires showing, at a minimum, a passport or photo
9 identification card sanctioned by the government of any State of the United
10 States or by the government of the United States. The producing Party shall
11 be entitled to a copy of the log upon one (1) day's advance notice to the
12 receiving Party. A receiving Party may include excerpts of Source Code
13 Material in a pleading, exhibit, expert report, discovery document, deposition
14 transcript, other Court document, provided that the Source Code Documents
15 are appropriately marked under this Order, restricted to those who are entitled
16 to have access to them as specified herein, and, if filed with the Court, filed
17 under seal in accordance with the Court's rules, procedures and orders;

18 f. To the extent portions of Source Code Material are quoted in a
19 Source Code Document, either (1) the entire Source Code Document will be
20 stamped and treated as RESTRICTED – CONFIDENTIAL SOURCE CODE
21 or (2) those pages containing quoted Source Code Material will be separately
22 stamped and treated as RESTRICTED CONFIDENTIAL SOURCE CODE;

23 g. Except as set forth in paragraph 11(k) below, no electronic
24 copies of Source Code Material shall be made without prior written consent
25 of the producing Party, except as necessary to create documents which,
26 pursuant to the Court's rules, procedures and order, must be filed or served
27 electronically;
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1 h. The receiving Party's outside counsel and/or experts shall be
2 entitled to take notes in the Source Code Review Room but may not copy the
3 Source Code verbatim into such notes (except for small excerpts such as
4 variable names and method names and parameters as long as such small
5 excerpts do not include four or more consecutive lines of source code) and
6 may not take such notes electronically on the Source Code Computer itself.

7 i. The receiving Party shall be permitted to make a reasonable
8 number of printouts and photocopies of Source Code Material on a provided
9 laser printer with commercially reasonable printing speeds for on-site printing
10 during inspection of the Source Code Material. The receiving Party may print
11 limited portions of the Source Code only when necessary to prepare court
12 filings or pleadings or other papers (including a testifying expert's expert
13 report and claim charts supporting infringement contentions). Printed
14 portions of a continuous block of Source Code for the accused product shall
15 not exceed ten (10) pages unless otherwise agreed by the parties, whose
16 reasonable request for agreement shall not be denied. The receiving Party
17 may print no more than 50 pages for each accused product for each accused
18 patent, unless otherwise agreed by the Parties, whose reasonable request for
19 agreement shall not be withheld. The Parties agree to revisit the page limits
20 to the extent that agreement is reached with respect to one or more
21 representative products. The receiving Party shall not print Source Code in
22 order to review blocks of Source Code elsewhere in the first instance, i.e., as
23 an alternative to reviewing that Source Code electronically on the Source
24 Code Computer, as the Parties acknowledge and agree that the purpose of the
25 protections herein would be frustrated by printing portions of code for review
26 and analysis elsewhere, and that printing is permitted, only when necessary to
27 prepare court filings or pleadings or other papers (including a testifying
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1 expert's expert report and claim charts supporting infringement contentions).
2 Upon printing any such portions of Source Code, the printed pages shall be
3 collected by the producing Party. The producing Party shall Bates and line
4 number, copy, and clearly label as "RESTRICTED – CONFIDENTIAL
5 SOURCE CODE" any pages printed by the receiving Party. The receiving
6 Party shall maintain a log of all such files that are printed or photocopied.
7 Within three (3) business days, the producing Party shall either (i) provide
8 one copy set of such unobjected pages to the receiving Party or (ii) inform the
9 requesting Party of its objection, if any, that the printed portions withheld are
10 excessive and/or not done for a permitted purpose. If, after meeting and
11 conferring, the producing Party and the receiving Party cannot resolve the
12 objection, the producing Party shall be entitled to file a Motion for Further
13 Protection with the Court within five (5) days of the objection to resolve
14 whether the printed Source Code in question is narrowly tailored and was
15 printed for a permitted purpose. Failure to file within this period requires
16 immediate production of the disputed material. The burden shall be on the
17 producing Party to demonstrate that such printed portions are more than is
18 reasonably necessary for a permitted purpose and printed primarily for the
19 purposes of review and analysis elsewhere in the first instance, i.e., as an
20 alternative to reviewing that Source Code electronically on the Source Code
21 Computer. The printed pages shall constitute part of the Source Code
22 produced by the producing Party in each action, all of which shall be
23 designated and clearly labeled "RESTRICTED – CONFIDENTIAL SOURCE
24 CODE," and the receiving Party shall maintain a log of all such files that are
25 printed or photocopied;

26 j. The receiving Party's outside counsel of record may make no
27 more than five (5) additional paper copies of any portions of the Source Code
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1 received from a producing Party pursuant to Paragraph 11(i) not including
2 copies attached to court filings or used at depositions;

3 k. If the receiving Party's outside counsel, consultants, or experts
4 obtain printouts or photocopies of Source Code Material, the receiving Party
5 shall ensure that such outside counsel, consultants, or experts keep the
6 printouts or photocopies in a secured locked area in the offices of such outside
7 counsel, consultants, or expert. At least forty-eight (48) hours before the date
8 of deposition, the receiving Party shall notify the producing Party about the
9 specific portions of Source Code it wishes to use at the deposition, and the
10 producing Party shall bring printed copies of those portions to the deposition
11 for use by the receiving Party, with the understanding that for deposition
12 outside of the United States the Parties will work in good faith to provide
13 sufficient notice such that the Source Code Material can transported or made
14 available at the location of the deposition. Copies of Source Code that are
15 marked as deposition exhibits shall not be provided to the Court Reporter or
16 attached to deposition transcripts; rather, the deposition record will identify
17 the exhibit by its production numbers. All papers copies of Source Code
18 brought to the deposition shall remain with the producing Party's outside
19 counsel for secure destruction in a timely manner following the deposition or
20 proceeding. The receiving Party may also temporarily keep the printouts or
21 photocopies at the Court for any proceedings(s) relating to the Source Code
22 Material, for the dates associated with the proceeding(s); and (ii) one attorney
23 working copy at the sites where any deposition(s) relating to the Source Code
24 Material are taken, for the dates associated with the deposition(s) and any
25 intermediate location reasonably necessary to transport the working copy
26 (e.g., a hotel prior to a Court proceeding or deposition); and,
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1 1. A producing Party's Source Code Material may only be
2 transported by the receiving Party at the direction of a person authorized
3 under paragraph 11(e) above to another person authorized under paragraph
4 11(e) above, on paper via hand carry, Federal Express or other similarly
5 reliable courier. Source Code Material may not be transported or transmitted
6 electronically over a network of any kind, including a LAN, an intranet, or the
7 Internet. Except as provided in this sub-paragraph, absent express written
8 permission from the producing Party, the receiving Party may not create
9 electronic images, or any other images, or make electronic copies, of the
10 Source Code from any paper copy of Source Code for use in any manner
11 (including by way of example only, the receiving Party may not scan the
12 Source Code to a PDF or photograph the code). Images or copies of Source
13 Code shall not be included in correspondence between the Parties (references
14 to production numbers shall be used instead), and shall be omitted from
15 pleadings and other papers whenever possible. If a Party reasonably believes
16 that it needs to submit a portion of Source Code as part of a filing with the
17 Court, the Party shall make such a filing while protecting the confidentiality
18 of the Source Code. If such filing requires a certificate of conference
19 pursuant to Local Rule 7(i), the filing Party shall disclose to the producing
20 Party during the conference the amount of the Source Code to be included
21 with the filing. Following any filing, the filing Party shall disclose to the
22 producing Party the entirety of any Source Code that was imaged within two
23 days subsequent to the filing. If a producing Party agrees to produce an
24 electronic copy of all or any portion of its Source Code, access to the
25 receiving Party's submission, communication, and/or disclosure of electronic
26 files or other materials containing any portion of Source Code (paper or
27 electronic) shall at all times be limited solely to individuals who are expressly
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1 authorized to view Source Code under the provisions of this Order.
2 Additionally, any such electronic copies must be labeled “RESTRICTED –
3 CONFIDENTIAL SOURCE CODE” as provided for in this Order.

4 12. Absent the written consent of the producing Party, any attorney
5 representing a Party, whether in-house or outside counsel, and any person associated
6 with a Party and permitted to receive the other Party’s Protected Material that is
7 designated RESTRICTED – ATTORNEYS’ EYES ONLY, RESTRICTED –
8 OUTSIDE COUNSELS’ EYES ONLY, and/or RESTRICTED – CONFIDENTIAL
9 SOURCE CODE (collectively “HIGHLY SENSITIVE MATERIAL”), who obtains,
10 receives, has access to, or otherwise learns, in whole or in part, the other Party’s
11 HIGHLY SENSITIVE MATERIAL under this Order shall not prepare, prosecute,
12 supervise, or assist in the preparation or prosecution of any patent application
13 pertaining to the field of the invention of the patents-in-suit on behalf of the
14 receiving Party or its acquirer, successor, predecessor, or other affiliate during the
15 pendency of this Action and for one year after its conclusion, including any appeals.
16 To ensure compliance with the purpose of this provision, each Party shall create an
17 “Ethical Wall” between those persons with access to HIGHLY SENSITIVE
18 MATERIAL and any individuals who, on behalf of the Party or its acquirer,
19 successor, predecessor, or other affiliate, prepare, prosecute, supervise or assist in
20 the preparation or prosecution of any patent application pertaining to the field of
21 invention of the patents-in-suit. For sake of clarity, any attorney representing a
22 Party, whether in-house or outside counsel, and any person associated with a Party
23 and permitted to receive another Party’s HIGHLY SENSITIVE MATERIAL, may
24 participate, supervise and assist in any and all proceedings before the U.S. Patent
25 and Trademark Office related to the Party’s patents-in-suit, including without
26 limitation Inter Partes Review (IPR) proceedings, even if they have received the
27 other Party’s HIGHLY SENSITIVE MATERIAL, provided that they do not
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1 participate or assist in any claim drafting or amendment of claims in such
2 proceedings.

3 13. Nothing in this Order shall require production of documents,
4 information or other material that a Party contends is protected from disclosure by
5 the attorney-client privilege, the work product doctrine, or other privilege, doctrine,
6 or immunity. If documents, information or other material subject to a claim of
7 attorney-client privilege, work product doctrine, or other privilege, doctrine, or
8 immunity is inadvertently or unintentionally produced, such production shall in no
9 way prejudice or otherwise constitute a waiver of, or estoppel as to, any such
10 privilege, doctrine, or immunity. Any Party that inadvertently or unintentionally
11 produces documents, information or other material it reasonably believes are
12 protected under the attorney-client privilege, work product doctrine, or other
13 privilege, doctrine, or immunity may obtain the return of such documents,
14 information or other material by promptly notifying the recipient(s) and providing a
15 privilege log for the inadvertently or unintentionally produced documents,
16 information or other material. The recipient(s) shall gather and return all copies of
17 such documents, information or other material to the producing Party, except for any
18 pages containing privileged or otherwise protected markings by the recipient(s),
19 which pages shall instead be destroyed and certified as such to the producing Party.

20 14. There shall be no disclosure of any DESIGNATED MATERIAL by
21 any person authorized to have access thereto to any person who is not authorized for
22 such access under this Order. The Parties are hereby ORDERED to safeguard all
23 such documents, information and material to protect against disclosure to any
24 unauthorized persons or entities. If any one of Defendants in this litigation provides
25 DESIGNATED MATERIAL to Plaintiff, Plaintiff shall not share that material with
26 the other Defendant or with the experts or consultants of the other Defendant in this
27 litigation, absent express written permission from the producing Defendant.

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1 15. Nothing contained herein shall be construed to prejudice any Party's
2 right to use any DESIGNATED MATERIAL in taking testimony at any deposition
3 or hearing provided that the DESIGNATED MATERIAL is only disclosed to a
4 person(s) who is: (a) eligible to have access to the DESIGNATED MATERIAL by
5 virtue of his or her employment with the designating party, (b) identified in the
6 DESIGNATED MATERIAL as an author, addressee, or copy recipient of such
7 information, (c) although not identified as an author, addressee, or copy recipient of
8 such DESIGNATED MATERIAL, has, in the ordinary course of business, seen
9 such DESIGNATED MATERIAL, (d) a current or former officer, director or
10 employee of the producing Party or a current or former officer, director or employee
11 of a company affiliated with the producing Party; (e) counsel for a Party, including
12 outside counsel and in-house counsel (subject to paragraphs 9 and 10 of this Order);
13 (f) an independent contractor, consultant, and/or expert retained for the purpose of
14 this litigation; (g) court reporters and videographers; (h) the Court; or (i) other
15 persons entitled hereunder to access to DESIGNATED MATERIAL.
16 DESIGNATED MATERIAL shall not be disclosed to any other persons unless prior
17 authorization is obtained from counsel representing the producing Party or from the
18 Court. Counsel for any producing Party shall have the right to exclude from oral
19 depositions, other than the deponent, deponent's counsel, the reporter and
20 videographer (if any), and translators, any person who is not authorized by this
21 Protective Order to receive or access Protected Material based on the designation of
22 such Protected Material. Such right of exclusion shall be applicable only during
23 periods of examination or testimony regarding such Protected Material.

24 16. Parties may, at a deposition or hearing or within thirty (30) days after
25 receipt of a deposition or hearing transcript, designate the deposition or hearing
26 transcript or any portion thereof as "CONFIDENTIAL," "RESTRICTED –
27 ATTORNEY' EYES ONLY," "RESTRICTED – OUTSIDE COUNSELS' EYES
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1 ONLY,” or “RESTRICTED – CONFIDENTIAL SOURCE CODE” pursuant to this
2 Order. Access to the deposition or hearing transcript so designated shall be limited
3 in accordance with the terms of this Order. Until expiration of the 30-day period,
4 the entire deposition or hearing transcript shall be treated as confidential.

5 17. Any DESIGNATED MATERIAL that is filed with the Court shall be
6 filed under seal and shall remain under seal until further order of the Court. The
7 filing party shall be responsible for informing the Clerk of the Court that the filing
8 should be sealed and for placing the legend “FILED UNDER SEAL PURSUANT
9 TO PROTECTIVE ORDER” above the caption and conspicuously on each page of
10 the filing. Exhibits to a filing shall conform to the labeling requirements set forth in
11 this Order. If a pretrial pleading filed with the Court, or an exhibit thereto, discloses
12 or relies on confidential documents, information or material, such confidential
13 portions shall be redacted to the extent necessary and the pleading or exhibit filed
14 publicly with the Court.

15 18. The Order applies to pretrial discovery. Nothing in this Order shall be
16 deemed to prevent the Parties from introducing any DESIGNATED MATERIAL
17 into evidence at the trial of this Action, or from using any information contained in
18 DESIGNATED MATERIAL at the trial of this Action, subject to any pretrial order
19 issued by this Court.

20 19. A Party may request in writing to the other Party that the designation
21 given to any DESIGNATED MATERIAL be modified or withdrawn. If the
22 designating Party does not agree to redesignation within ten (10) days of receipt of
23 the written request, the requesting Party may apply to the Court for relief. Upon any
24 such application to the Court, the burden shall be on the designating Party to show
25 why its classification is proper. Such application shall be treated procedurally as a
26 motion to compel pursuant to Federal Rules of Civil Procedure 37, subject to the
27 Rule’s provisions relating to sanctions. In making such application, the requirements
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1 of the Federal Rules of Civil Procedure and the Local Rules of the Court shall be
2 met. Pending the Court’s determination of the application, the designation of the
3 designating Party shall be maintained.

4 20. Each outside consultant or expert to whom DESIGNATED
5 MATERIAL is disclosed in accordance with the terms of this Order shall be advised
6 by counsel of the terms of this Order, shall be informed that he or she is subject to
7 the terms and conditions of this Order, and shall sign an acknowledgment that he or
8 she has received a copy of, has read, and has agreed to be bound by this Order. A
9 copy of the acknowledgment form is attached as Appendix A.

10 21. To the extent that any discovery is taken of persons who are not Parties
11 to this Action (“Third Parties”) and in the event that such Third Parties contended
12 the discovery sought involves trade secrets, confidential business information, or
13 other proprietary information, then such Third Parties may agree to be bound by this
14 Order.

15 22. To the extent that discovery or testimony is taken of Third Parties, the
16 Third Parties may designate as “CONFIDENTIAL,” “RESTRICTED –
17 ATTORNEYS’ EYES ONLY,” or “RESTRICTED – OUTSIDE COUNSELS’
18 EYES ONLY” any documents, information or other material, in whole or in part,
19 produced or give by such Third Parties. The Third Parties shall have ten (10) days
20 after production of such documents, information or other materials to make such a
21 designation. Until that time period lapses or until such a designation has been made,
22 whichever occurs sooner, all documents, information or other material so produced
23 or given shall be treated as “CONFIDENTIAL” in accordance with this Order.

24 23. Within thirty (30) days of final termination of this Action, including
25 any appeals, all DESIGNATED MATERIAL, including all copies, duplicates,
26 abstracts, indexes, summaries, descriptions, and excerpts or extracts thereof
27 (excluding excerpts or extracts incorporated into any privileged memoranda of the
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1 Parties and materials which have been admitted into evidence in this Action), shall
2 at the producing Party's election either be returned to the producing Party or be
3 destroyed. The receiving Party shall verify the return or destruction by affidavit
4 furnished to the producing Party, upon the producing Party's request.

5 24. The failure to designate documents, information or material in
6 accordance with this Order and the failure to object to a designation at a given time
7 shall not preclude the filing of a motion at a later date seeking to impose such
8 designation or challenging the propriety thereof. The entry of this Order and/or the
9 production of documents, information and material hereunder shall in no way
10 constitute a waiver of any objection to the furnishing thereof, all such objections
11 being hereby preserved.

12 25. Any Party knowing or believing that any other party is in violation of
13 or intends to violate this Order and has raised the question of violation or potential
14 violation with the opposing party and has been unable to resolve the matter by
15 agreement may move the Court for such relief as may be appropriate in the
16 circumstances. Pending disposition of the motion by the Court, the Party alleged to
17 be in violation of or intending to violate this Order shall discontinue the
18 performance of and/or shall not undertake the further performance of any action
19 alleged to constitute a violation of this Order.

20 26. Production of DESIGNATED MATERIAL by each of the Parties shall
21 not be deemed a publication of the documents, information and material (or the
22 contents thereof) produced so as to void or make voidable whatever claim the
23 Parties may have as to the proprietary and confidential nature of the documents,
24 information or other material or its contents.

25 27. Nothing in this Order shall be construed to effect an abrogation, waiver
26 or limitation of any kind on the rights of each of the Parties to assert any applicable
27 discovery or trial privilege.

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1 28. Each of the Parties shall also retain the right to file a motion with the
2 Court (a) to modify this Order to allow disclosure of DESIGNATED MATERIAL
3 to additional persons or entities if reasonably necessary to prepare and present this
4 Action and (b) to apply for additional protection of DESIGNATED MATERIAL.

5
6 Date: January 30, 2018

Respectfully submitted,

7
8 /s/ David M. Stein
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Attorneys for Defendants ASUSTEK
COMPUTER INC. and ASUS COMPUTER
INTERNATIONAL

ORDER

GOOD CAUSE APPEARING, the Court hereby approves the Stipulated
Protective Order.

IT IS SO ORDERED.

Dated: February 6, 2018



HONORABLE MANUEL L. REAL
UNITED STATES DISTRICT JUDGE

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12 Attorney for Defendants ASUSTEK COMPUTER
13 INC. and ASUS COMPUTER INTERNATIONAL

15 **UNITED STATES DISTRICT COURT**

16 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

18 MAXELL, LTD.

19 Plaintiff,

20 v.

21 ASUSTEK COMPUTER INC., AND
22 ASUS COMPUTER
INTERNATIONAL, INC.

23 Defendants.

Case No. 2:17-cv-7528 R (MRWx)

APPENDIX A

Hon. Manuel L. Real

Complaint Filed: October 13, 2017

APPENDIX A
UNDERTAKING REGARDING PROTECTIVE ORDER

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I, _____, declare that:

1. My address is

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My current employer is

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My current occupation is

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2. I have received a copy of the Protective Order governing the Actions. I have carefully read and understand the provisions of the Protective Order.

3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of the actions any information designated as “CONFIDENTIAL,” “RESTRICTED – ATTORNEYS’ EYES ONLY,” “RESTRICTED – OUTSIDE COUNSELS’ EYES ONLY,” or “RESTRICTED – CONFIDENTIAL SOURCE CODE,” that is disclosed to me.

4. Promptly upon termination of these actions, I will return all documents and things designated as “CONFIDENTIAL,” “RESTRICTED – ATTORNEYS’ EYES ONLY,” “RESTRICTED – OUTSIDE COUNSELS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE” that came into my possession, and all documents and things that I have prepared relating thereto, to the outside counsel for the party by whom I am employed.

5. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order.

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For Experts or Consultants Only:

I have attached hereto a list disclosing (1) all parties who retained the expert for all current engagements, consulting or otherwise; (2) all parties who retained the expert for the last four years of testifying engagements; and (3) whether the expert has ever been retained by the other party in the Action.

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

Signature _____

Date _____