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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

In re subpoenas to BROADCOM,  
CORPORATION, a California  
corporation.

Case No. MC17-00111-PA (ASx)

~~Proposed~~ AMENDED  
PROTECTIVE ORDER*Underlying litigation:*

TQ DELTA, LLC, v. 2WIRE, INC.,

Case No. 13-cv-1835-RGA

TQ DELTA, LLC, v. ZHONE

1 TECHNOLOGIES, INC.,  
Case No. 13-cv-1836-RGA

2 TQ DELTA, LLC, v. ZYXEL  
3 COMMUNICATIONS, INC. and  
4 ZYXEL COMMUNICATIONS  
CORPORATION,  
Case No. 13-cv-2013-RGA

5 TQ DELTA, LLC, v. ADTRAN, INC.,  
6 Case No. 14-cv-954-RGA

7 ADTRAN, INC., v. TQ DELTA, LLC,  
8 Case No. 15-cv-121-RGA

9  
10 WHEREAS, The Honorable Richard G. Andrews, United States District  
11 Judge, entered a Protective Order to govern discovery in the above-referenced  
12 underlying actions (“the action”) (“the Underlying Protective Order”) (Case No.  
13 1:13-cv-01835-RGA, Dkt. 72 (D. Del.)); and

14 WHEREAS, Broadcom Corporation (“Broadcom”), a non-party to these  
15 action has been subpoenaed by TQ Delta, LLC (“TQ Delta”) to produce Source  
16 Code and other documents in this action that include or incorporate confidential  
17 information belonging to Broadcom (“Broadcom Confidential Information”);

18 WHEREAS TQ Delta and Broadcom have agreed to additional provisions to  
19 protect against misuse or improper disclosure of such Broadcom Confidential  
20 Information; and

21 WHEREAS TQ Delta and Broadcom have jointly filed a Motion for a  
22 Protective Order in this Court; and

23 THE COURT HAVING FOUND GOOD CAUSE;

24 THEREFORE the following Protective Order is entered. Broadcom  
25 Confidential Information produced in connection with the above-captioned matter  
26 that is designated as “BROADCOM – OUTSIDE ATTORNEYS’ EYES ONLY –  
27 SOURCE CODE” shall be subject to the following restrictions:  
28

1 **A. Definitions**

2 1. “Defendants”: the following defendants 2Wire, Inc., Zhone  
3 Technologies, Inc., ZyXEL Technologies, Inc., ZyXEL Communications Corp.,  
4 and Adtran, Inc., who may have a need to access Broadcom Confidential  
5 Information.

6 2. “Broadcom Material”: all information, documents, testimony, and  
7 things produced, served, or otherwise provided in this action by any Party or by  
8 Non-Party Broadcom, that include or incorporate Broadcom Confidential  
9 Information.

10 3. “Personnel Retained by a Receiving Party in this Action” means any  
11 consultants, experts, or outside counsel (including their support staff) that have  
12 been and continue to be retained by a Receiving Party in these action. For the sake  
13 of clarity, any person who was retained by a Receiving Party in this action will no  
14 longer fall under this definition if that person ceases to be retained by a Receiving  
15 Party in these action.

16 4. “Party” shall have the same meaning ascribed to it in the Underlying  
17 Protective Order.

18 5. “Producing Party” and “Receiving Party” shall have the same  
19 meanings as ascribed to those terms in the Underlying Protective Order, except that  
20 both definitions as used herein shall also extend to “Designated Broadcom  
21 Material” as defined herein.

22 6. “Authorized Reviewer(s)” shall mean persons authorized to review  
23 “BROADCOM – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”  
24 material in accordance with this Order and the Underlying Protective Order.

25 7. For purposes of this Order, “Source Code” includes human-readable  
26 programming language text that defines software, firmware, or hardware  
27 representations. Text files containing Source Code shall hereinafter be referred to  
28 as “Source Code Files.” Source Code Files include, but are not limited to files

1 containing Source Code in “C”, “C++”, assembler, digital signal processor (DSP),  
2 or any other programming languages. Source Code Files further include “.include  
3 files,” “make” files, “link” files, and other human-readable text files used in the  
4 generation and/or building of software directly executed on a microprocessor,  
5 micro-controller, or DSP. Source Code Files also include code content that  
6 represents hardware design, including code in HDL (VHDL, Verilog), RTL, etc.,  
7 that translates into gates after synthesis.

8 8. “BROADCOM – OUTSIDE ATTORNEYS’ EYES ONLY –  
9 SOURCE CODE” material: Source Code that Broadcom believes in good faith  
10 includes or incorporates Broadcom’s Confidential Information that is not generally  
11 known to others, and has significant competitive value such that unrestricted  
12 disclosure to others would create a substantial risk of serious injury, and that Non-  
13 Party Broadcom would not normally reveal to third parties except in confidence, or  
14 has undertaken with others to maintain in confidence. This includes Broadcom  
15 Source Code in the Producing Party’s possession, custody, or control, and made  
16 available for inspection by the Producing Party.

17 9. “Designated Broadcom Material”: material that is designated  
18 “BROADCOM – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”  
19 under this Order.

20 10. “Counsel of Record”: (i) outside counsel who appears on the  
21 pleadings, or have entered an appearance in the underlying litigation, as counsel for  
22 a Party, (ii) partners, principals, counsel, associates, employees and contract  
23 attorneys of such outside counsel to whom it is reasonably necessary to disclose the  
24 information for this litigation, including supporting personnel employed by the  
25 attorneys, such as paralegals, legal translators, legal secretaries, legal clerks and  
26 shorthand reporters, and/or (iii) independent legal translators retained to translate in  
27 connection with this action, or independent shorthand reporters retained to record  
28

1 and transcribe testimony in connection with this action. This definition is subject to  
2 the requirements of Judge Andrews' Order dated September 26, 2016.

3 11. "Outside Consultant": a person with specialized knowledge or  
4 experience in a matter pertinent to the litigation who has been retained by Counsel  
5 of Record to serve as an expert witness or a litigation consultant in this action  
6 (including any necessary support personnel of such person to whom disclosure is  
7 reasonably necessary for this litigation), and who is not a current employee of a  
8 Party or of a competitor of a Party and who, at the time of retention, is not  
9 anticipated to become an employee of, or a non-litigation consultant of: 1) a Party,  
10 2) a competitor of a Party, or 3) a competitor of Non-Party Broadcom.

11 12. "Professional Vendors": persons or entities that provide litigation  
12 support services (e.g., photocopying; videotaping; translating; designing and  
13 preparing exhibits, graphics, or demonstrations; organizing, storing, retrieving data  
14 in any form or medium; etc.) and their employees and subcontractors who have  
15 been retained or directed by Counsel of Record in this action, and who are not  
16 current employees of a Party or of a competitor of a Party and who, at the time of  
17 retention, are not anticipated to become employees of: 1) a Party, 2) a competitor  
18 of a Party, or 3) a competitor of Non-Party Broadcom. This definition includes ESI  
19 vendors, and professional jury or trial consultants retained in connection with this  
20 litigation to assist a Party, as well as companies retained to perform escrow and  
21 hosting services for Source Code. Professional vendors do not include consultants  
22 who fall within the definition of Outside Consultant.

23 **B. Relationship to Underlying Protective Order**

24 1. This Order shall not diminish any existing restriction with respect to  
25 Designated Broadcom Material. TQ Delta acknowledges and agrees that this Order  
26 is a supplement to the Underlying Protective Order entered in this action. The  
27 Underlying Protective Order applies to all material designated pursuant to this  
28

1 Order. To the extent that any provisions in this Order and the Underlying  
2 Protective Order conflict or otherwise differ, this Order shall govern.

3 **C. Scope**

4 1. The protections conferred by this Order cover not only Designated  
5 Broadcom Material (as defined above), but also any information copied or extracted  
6 therefrom, as well as all copies, excerpts, summaries, or compilations thereof.

7 2. This Order shall not prevent a disclosure to which Non-Party  
8 Broadcom consents in writing before that disclosure takes place.

9 3. This Order shall apply to all Broadcom Source Code designated as  
10 "BROADCOM – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE"  
11 that is produced or provided for inspection by Broadcom in this action, including all  
12 Broadcom Source Code that is in the possession, custody or control of Broadcom.

13 **D. Designating Protected Material**

14 1. Designations of protected material under this Supplemental Protective  
15 Order will be governed by the provisions specified in the Underlying Protective  
16 Order's section on "DESIGNATING PROTECTED MATERIAL."

17 **E. Challenging Confidentiality Designations**

18 1. Any Party may object to the designation of particular  
19 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL -ATTORNEYS' EYES ONLY,"  
20 or "HIGHLY CONFIDENTIAL - SOURCE CODE" information by specifically  
21 identifying the information to which the objection is made in a written notice to the  
22 party designating the disputed information. However, a Party shall not be obligated  
23 to challenge the propriety of such designations at the time made, and the failure to  
24 do so shall not preclude a subsequent challenge thereto. If the parties cannot resolve  
25 the objection, it shall be the obligation of the party challenging the  
26  
27  
28

1 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES  
2 ONLY," or "HIGHLY CONFIDENTIAL SOURCE CODE" designation to file and  
3  
4 serve a motion under L.R. 37-1 to 37-3 (and in compliance with any other  
5 applicable Local Civil Rule(s)) that specifically identifies the challenged material  
6 and sets forth in detail the basis for the challenge. Each such motion must be  
7  
8 accompanied by a competent declaration that affirms that the movant has complied  
9 with the meet and confer requirements imposed in L.R. 37-1. Until the Court rules  
10 on the challenge, all Parties shall continue to afford the material in question the  
11 level of protection to which it is entitled under the Producing Party's designation.

13 **F. Access To Designated Broadcom Material**

14 1. Access to "BROADCOM – OUTSIDE ATTORNEYS' EYES ONLY  
15 – SOURCE CODE" material: Unless otherwise ordered by the Court or permitted  
16 in writing by Non-Party Broadcom, Receiving Party may disclose any information,  
17 document or thing designated "BROADCOM – OUTSIDE ATTORNEYS' EYES  
18 ONLY – SOURCE CODE" only to:

19 a. Persons who appear on the face of Designated Broadcom  
20 Material as an author, addressee or recipient thereof, or persons who have been  
21 designated under FRCP 30(b)(6) to provide testimony of behalf of a Producing  
22 Party or Broadcom regarding the same;

23 b. During their depositions, witnesses in this Action to whom  
24 disclosure is reasonably necessary for the Underlying Litigation and who have  
25 signed the "Agreement to Be Bound By Supplemental Protective Order" (Exhibit  
26 A), or who qualify under Section F(1)(a), unless otherwise agreed by the Producing  
27 Party or ordered by the court; however, pages of transcribed deposition testimony  
28



1 or exhibits to depositions that reveal Protected Material must be separately bound  
2 by the court reporter and may not be disclosed to anyone except as permitted under  
3 this Order;

4 c. Counsel of Record;

5 d. Outside Consultants of a Party to whom disclosure is reasonably  
6 necessary for this litigation, and who have signed the acknowledgement form  
7 annexed to the Protective Order as Exhibit A, the “Acknowledgement and  
8 Agreement To Be Bound By Supplemental Protective Order,” and the  
9 “Certification Of Consultant” attached hereto as Exhibit B;

10 e. Any designated arbitrator or mediator who is assigned to hear  
11 this matter or who has been selected by the Parties, and his or her staff;

12 f. The Court, the United States District Court for the District of  
13 Delaware, and any seated jury;

14 g. Court reporters and videographers employed in connection with  
15 this case; and

16 h. Professional Vendors to whom disclosure is reasonably  
17 necessary for this litigation.

18 2. Absent a court order or agreement of the Producing Party, Designated  
19 Broadcom Material may not be disclosed to employees of a Receiving Party,  
20 including its in-house attorneys and support staff.

21 3. The Parties acknowledge that Designated Broadcom Material also may  
22 be subject to the US government export control and economic sanctions laws,  
23 including the Export Administration Regulations (“EAR”, 15 CFR 730 et seq.,  
24 <http://www.bis.doc.gov/> ) administered by the Department of Commerce, Bureau of  
25 Industry and Security, and the Foreign Asset Control Regulations (31 CFR 500 et  
26 seq., <http://www.treas.gov/offices/enforcement/ofac/>) administered by the  
27 Department of Treasury, Office of Foreign Assets Control (“OFAC”). Receiving  
28 Parties and their Outside Consultants may not directly or indirectly export, re-



1 export, transfer or release (collectively, “Export”) any Designated Broadcom  
2 Material to any destination, person, or entity outside the United States.

3 4. Absent written permission from Non-Party Broadcom, persons not  
4 permitted access to Designated Broadcom Material under the terms of this Order  
5 shall not be present at depositions while Designated Broadcom Material is  
6 discussed or otherwise disclosed. Any Party intending to disclose or discuss  
7 Designated Broadcom Material at pretrial or trial proceedings must give reasonable  
8 advance notice to the Producing Party to assure the implementation of the terms of  
9 this Protective Order.

#### 10 **G. Access By Outside Consultants**

11 1. **Notice.** If a Party wishes to disclose Designated Broadcom Material to  
12 the Party’s Outside Consultant, the Party must, prior to the Outside Consultant  
13 being granted access to any Designated Broadcom Material, provide notice to  
14 counsel for Non-Party Broadcom, which notice shall include: (a) the individual's  
15 name and business title; (b) business address; (c) business or profession; (d) the  
16 individual's CV; (e) any previous or current relationship (personal or professional)  
17 with Non-Party Broadcom or any of the Parties to this action; (f) a list of other  
18 cases in which the individual has testified (at trial or deposition) within the last five  
19 years; (g) a list of all companies with which the individual has consulted or by  
20 which the individual has been employed within the last four years, the dates of the  
21 consultancy or employment, a brief description of the subject matter of the  
22 consultancy or employment, and copies of the “Acknowledgement and Agreement  
23 To Be Bound By Supplemental Protective Order” attached as Exhibit A, and the  
24 “Certification Of Consultant” attached hereto as Exhibit B, that have both been  
25 signed by that Outside Consultant. Broadcom shall have seven calendar days to  
26 raise any objections for good cause to those Outside Consultants, starting from the  
27 first business day following the date upon which Receiving Party expressly notifies  
28 Broadcom of that expert and provides the information set forth above, whereby

1 such express notification shall be provided to Broadcom directly by Receiving  
2 Party.

3 2. Designated Broadcom Material may not be disclosed to mock jurors  
4 without Broadcom's express written consent, which shall not be unreasonably  
5 withheld.

6 3. Objections. With respect to Outside Consultants that have not been  
7 previously disclosed to Non-Party Broadcom, Non-Party Broadcom shall have  
8 seven (7) calendar days from receipt of the notice specified in Paragraph G to  
9 object for good cause in writing to such disclosure (plus three (3) extra days if  
10 notice is given in any manner other than by hand delivery, e-mail delivery or  
11 facsimile transmission). After the expiration of the 7-day (plus 3-days, if  
12 appropriate) period, if no objection for good cause has been asserted by Broadcom,  
13 then Designated Broadcom Material may be disclosed to the Outside Consultant  
14 pursuant to the terms of this Supplemental Protective Order. Any objection by  
15 Non-Party Broadcom must be made for good cause, and must set forth in detail the  
16 grounds on which it is based. Should Receiving Party disagree with the basis for  
17 the objection(s), Receiving Party must first attempt to resolve the objection(s)  
18 informally with Non-Party Broadcom. If the informal efforts do not resolve the  
19 dispute within five (5) business days from the date upon which Receiving Party was  
20 first notified of any objection for good cause by Non-Party Broadcom, Receiving  
21 Party may file a motion requesting that the objection(s) be quashed after that five  
22 (5) day period has passed. Non-Party Broadcom shall have the burden of proof by  
23 a preponderance of the evidence on the issue of the sufficiency of the objection(s).  
24 Pending a ruling by the Court upon any such objection(s), or the subsequent  
25 resolution of the objection for good cause by Receiving Party and Non-Party  
26 Broadcom, the discovery material shall not be disclosed to the person objected to  
27 by Non-Party Broadcom.

28

1           4.     The Notice requirements, Objections procedure, and related deadlines  
2 outlined in this subsection do not apply to Outside Consultants who have already  
3 been disclosed to Broadcom under the terms of the Underlying Protective Order  
4 entered in this action. For those Outside Consultants, the Procedures for Approving  
5 Disclosure of that Protective Order govern this issue. These Outside Consultants  
6 are still required to submit to Broadcom signed copies of the “Acknowledgement  
7 and Agreement To Be Bound By Supplemental Protective Order” attached as  
8 Exhibit A, and the “Certification Of Consultant” attached as Exhibit B, before  
9 viewing any Source Code designated BROADCOM – OUTSIDE ATTORNEYS’  
10 EYES ONLY – SOURCE CODE. But for these Outside Consultants, submission  
11 of these materials does not begin another objections period.

12 **H.     Production of BROADCOM – ATTORNEYS’ EYES ONLY – SOURCE**  
13 **CODE Material**

14           1.     Broadcom Source Code:

15           a.     TQ Delta shall provide to the Producing Party two stand-alone,  
16 non-networked personal computers running a reasonably current version of the  
17 Microsoft Windows operating system, a printer as well as any monitors, keyboards,  
18 and mice for the computers to be deposited with the third-party escrow service  
19 (each computer being a "Source Code Computer"). The Receiving Party’s outside  
20 counsel and/or experts may place commercially-available software tools reasonably  
21 necessary for the Receiving Party to perform its review consistent with its review  
22 under this Protective Order on the review computer provided to the Producing  
23 Party, and Receiving Party shall provide a list of all such software tools on the  
24 review computers. Specific tools that may be used include, but are not limited to,  
25 Eclipse, Notepad++ (with SourceCookifier plug-in), kdiff (with Windows-Explorer  
26 integration – shell extension Diff-Ext-for-KDiff3 installed and enabled), Effective  
27 File Search, Google Chrome (or any other browser to view XML or web-page-  
28 related source-code files), Microsoft Office (to the extent any files produced are in

1 Microsoft Office format), Visual Slick Edit, Araxis Merge, and “grep.” The  
2 Receiving Party shall not at any time use any compilers, interpreters or simulators  
3 in connection with the Source Code review.

4           b.     To the extent Broadcom makes BROADCOM – OUTSIDE  
5 ATTORNEYS’ EYES ONLY – SOURCE CODE material available for inspection,  
6 Broadcom shall deposit such Source Code available electronically and in text  
7 searchable form with a third-party escrow service Iron Mountain, located at 9450  
8 Bloomington Freeway, Bloomington, MN 55431, or another location as Broadcom  
9 and TQ Delta may agree, within 7 days of the last of the following three events that  
10 occurs: (1) entry of this protective order, (2) execution the escrow agreement, and  
11 (3) receipt from TQ Delta of the Equipment identified in the escrow service  
12 agreement, until October 25, 2019. All expenses related to the third party escrow  
13 service will be paid by TQ Delta. Source Code shall be made available by the  
14 third-party escrow service during the regular business hours of the escrow service,  
15 and other times as mutually agreed by TQ Delta and the escrow service, pursuant to  
16 the terms of this Protective Order and the agreement between TQ Delta, Broadcom,  
17 and Iron Mountain. Broadcom or its counsel may supervise the inspection at its  
18 discretion, but may not unreasonably interfere with the inspection or attempt to  
19 listen to any conversation by the reviewers. The Source Code Computer shall be  
20 configured to permit review of the Source Code through a password-protected  
21 account having read-only access.

22           c.     The Source Code Computer shall be equipped to print copies of  
23 the Source Code on watermarked pre-Bates numbered paper, which shall be  
24 provided by the Producing Party to the third party escrow service. Under no  
25 circumstances are original printouts of the Source Code to be made except for  
26 directly onto the watermarked and numbered sides of the paper provided by the  
27 Producing Party. Additionally, Authorized Reviewer(s) may not print any  
28 continuous block of Source Code that results in more than 50 consecutive printed

1 pages. Counsel for the Producing Party will keep the original printouts, and shall  
2 provide copies of such original printouts to counsel for the Receiving Party within  
3 three (3) business days of (1) any request by the Receiving Party, or (2) otherwise  
4 being notified that such original printouts have been made. Counsel of Record for  
5 the Receiving Party may request up to 10 copies of each original printout of Source  
6 Code.

7 d. No more than 700 pages of the total Source Code may be in  
8 printed form at any one time. In addition, the Receiving Party shall not print more  
9 than 700 pages of other Broadcom Designated Material stored with the Source  
10 Code (which documents typically contain Broadcom Source Code and shall be  
11 treated as Source Code under the Protective Order). All printed Source Code shall  
12 be logged by Receiving Party's Counsel of Record and/or other Personnel Retained  
13 by a Receiving Party in this Action as noted below. Receiving Party may request to  
14 print additional pages in excess of the limits stated above, which request the  
15 Producing Party shall not unreasonably deny. No additional electronic copies of  
16 the Source Code shall be provided by the Producing Party. Hard copies of the  
17 Source Code also may not be converted into an electronic document, and may not  
18 be scanned using optical character recognition ("OCR") technology.

19 e. Authorized Reviewer(s) in this Action shall not print Source  
20 Code which has not been reviewed on the Source Code Computer, or in order to  
21 review the Source Code elsewhere in the first instance, *i.e.*, as an alternative to  
22 reviewing that Broadcom sSource Code electronically on the Source Code  
23 Computer, as TQ Delta and Broadcom, and Defendants acknowledge and agree that  
24 the purpose of the protections herein would be frustrated by such action.

25 f. Authorized Reviewer(s) are prohibited from bringing outside  
26 electronic devices, including but not limited to laptops, floppy drives, zip drives, or  
27 other hardware into the secure room. Nor shall any cellular telephones, personal  
28 digital assistants (PDAs), Blackberries, cameras, voice recorders, Dictaphones,

1 external or portable telephone jacks or other outside electronic devices be permitted  
2 inside the secure room, except for medical devices, implants, or equipment  
3 reasonably necessary for any legitimate medical reason. Notwithstanding the  
4 preceding prohibitions, in the event a deposition is taken in the secure room,  
5 stenographers or videographers may bring outside electronic devices reasonably  
6 necessary to record the deposition into the review subject to the provisions of  
7 section (i) below.

8 g. If any Authorized Reviewer(s) seeks to take notes inside the  
9 secure room, all such notes will be taken on bound (spiral or other type of  
10 permanently bound) notebooks. No loose paper or other paper that can be used in a  
11 printer may be brought into the secure room. All such notes must be marked as  
12 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.”

13 h. Where absolutely necessary or required by the Court, the  
14 Receiving Party and the Producing Party may make further copies of original  
15 source code printouts in the form required to be included in pleadings filed under  
16 seal, to be included as exhibits in expert reports, or to be used as exhibits in  
17 depositions or at trial, where such pleadings, expert reports, and transcripts from  
18 such depositions or trial are designated “BROADCOM – OUTSIDE  
19 ATTORNEYS’ EYES ONLY – SOURCE CODE”. In the event copies of printouts  
20 of Designated Broadcom Material are used as exhibits in a deposition, further  
21 copies of the Designated Broadcom Material printouts made for the deposition or  
22 trial shall be destroyed at the conclusion of the deposition or trial.

23 i. If a depositions of an individual authorized under this Protective  
24 Order to view Broadcom-Attorneys’ Eyes Only Source Code occurs at the location  
25 of the third party escrow service, then a Source Code Computer may be used during  
26 the deposition, except that the screen of the Source Code Computer shall not be  
27 recorded on any videographic record of the deposition. This provision does not  
28



1 otherwise limit a party from using print-outs of Designated Broadcom Material at  
2 depositions.

3           j.       In addition to other reasonable steps to maintain the security and  
4 confidentiality of Non-Party Broadcom's Source Code, printed copies of the Source  
5 Code maintained by the Authorized Reviewer(s) must be kept in a locked storage  
6 container when not being actively reviewed or otherwise being transferred as  
7 permitted by this Supplemental Protective Order.

8           k.       The Receiving Party's Counsel of Record shall keep log(s)  
9 recording the identity of each individual beyond Counsel of Record to whom each  
10 hard copy of each Producing Party's Source Code was provided and when it was  
11 provided to that person. Non-Party Broadcom or its outside counsel may request in  
12 writing (including email) the Receiving Party's Counsel of Record to serve the log  
13 relating to Source Code produced by Non-Party Broadcom upon Broadcom or its  
14 outside counsel at any time after the issuance of a final, non-appealable decision  
15 resolving all issues in this case, and the Receiving Party's Counsel of Record must  
16 serve the log(s) as requested within thirty (30) days of any such written request  
17 from each Producing Party's Counsel of Record. In addition, at any time after the  
18 issuance of a final, non-appealable decision resolving all issues in these cases, each  
19 Producing Party's Counsel of Record may also request any Outside Consultants of  
20 the Authorized Reviewer(s) to whom the paper copies of the Source Code were  
21 provided to certify in writing that all copies of the Source Code were returned to the  
22 counsel who provided them the information and that they will make no use of the  
23 Source Code or of any knowledge gained from the Source Code in any future  
24 endeavor, whereupon such certification shall be provided to Broadcom's Counsel of  
25 Record within thirty (30) days of that request.

26           l.       The Producing Party and the Receiving Party may agree on  
27 alternative arrangements on how Broadcom Source Code will be produced.

28



1 **I. Prosecution, Development, and Patent Acquisition Consulting Bar**

2 1. Unless otherwise permitted in writing between Producing Party and  
3 Receiving Party, any individual who personally receives, other than on behalf of  
4 Producing Party, any material designated “BROADCOM – OUTSIDE  
5 ATTORNEYS’ EYES ONLY – SOURCE CODE” shall not participate in  
6 amending or drafting patent specifications or claims before a Patent Office of any  
7 patent or patent application substantially related to the particular technology or  
8 information disclosed in the Designated Broadcom Material, from the time of  
9 receipt of such material through until at least two years after the individual  
10 person(s) cease to have access to materials designated “BROADCOM – OUTSIDE  
11 ATTORNEYS’ EYES ONLY – SOURCE CODE,” as well as any materials that  
12 contain or disclose Broadcom Material so designated. This provision shall not  
13 apply to post-grant adversarial proceedings, including reexamination or opposition  
14 proceedings filed in relation to the patents-in-suit or foreign counterparts.

15 2. Unless otherwise permitted in writing between Producing Party and  
16 Receiving Party, any Outside Consultant retained on behalf of Receiving Party who  
17 is to be given access to documents or Source Code designated as “BROADCOM –  
18 OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” produced by another  
19 Party must agree in writing not to perform hardware or software development work  
20 or product development work intended for commercial purposes substantially  
21 related to the particular technology or information disclosed in the Designated  
22 Broadcom Material from the time of first receipt of such material through until at  
23 least two years after the Outside Consultant ceases to have access to any material  
24 designated “BROADCOM – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE  
25 CODE,” as well as any materials that contain or disclose Broadcom Material so  
26 designated.

27 3. Unless otherwise permitted in writing between Producing Party and  
28 Receiving Party, any Outside Consultant retained on behalf of Receiving Party who

1 is to be given access to “BROADCOM – OUTSIDE ATTORNEYS’ EYES ONLY  
2 – SOURCE CODE” must agree in writing not to advise anyone regarding the  
3 purchase or acquisition of patents for assertion against Producing Party having  
4 claims that read on the Source Code that Outside Consultant reviews, from the time  
5 of first review of such material by Outside Consultant and through until two years  
6 after the Outside Consultant last accesses any material designated “BROADCOM –  
7 OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE,” as well as any  
8 materials that contain or disclose Broadcom Material so designated. The Parties’  
9 counsel will maintain a log indicating which Source Code printouts that each  
10 Outside Consultant views. For avoidance of doubt, this provision does not prevent  
11 Outside Consultants from working on matters adverse to Broadcom where they are  
12 not asked to advise on the purchase or acquisition of patents.

13 **J. Protected Material Subpoenaed or Ordered Produced In Other**  
14 **Litigation**

15 1. If a Receiving Party is served with a subpoena or a court order that  
16 would compel disclosure of any information, documents or things designated in this  
17 action as “BROADCOM –OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE  
18 CODE,” Receiving Party must endeavor to so notify the Producing Party of such  
19 information, documents or things, in writing (by fax and email) promptly, and in no  
20 event more than ten (10) calendar days after receiving the subpoena or order. Such  
21 notification must include a copy of the subpoena or order. Receiving Party also  
22 must immediately inform, in writing, the party who caused the subpoena or order to  
23 issue that some or all of the material covered by the subpoena or order is subject to  
24 this Supplemental Protective Order and the Protective Order. In addition, the  
25 Receiving Party must provide a copy of this Supplemental Protective Order and the  
26 Protective Order promptly to the party in the other action that caused the subpoena  
27 or order to issue. The purpose of imposing these duties is to alert the interested  
28 parties to the existence of this Supplemental Protective Order and the Protective

1 Order, and to afford the Party whose Designated Broadcom Material in this case, is  
2 at issue in the other case, an opportunity to try to protect its confidentiality interests  
3 in the court from which the subpoena or order issued. Producing Party shall bear  
4 the burdens and the expenses of seeking protection in that court of Designated  
5 Broadcom Material. Nothing in these provisions should be construed as  
6 authorizing or encouraging any Authorized Reviewer(s) in this action to disobey a  
7 lawful directive from another court.

8 **K. Unauthorized Disclosure Of Designated Broadcom Material**

9 1. If a Receiving Party learns that, by inadvertence or otherwise, it has  
10 disclosed Designated Broadcom Material to any person or in any circumstance not  
11 authorized under this Order, the Receiving Party must immediately (a) notify in  
12 writing Producing Party of the unauthorized disclosures, (b) use its best efforts to  
13 retrieve all copies of the Designated Broadcom Material, (c) inform the person or  
14 persons to whom unauthorized disclosures were made of all the terms of this Order,  
15 and (d) request such person or persons to execute the “Acknowledgment and  
16 Agreement to Be Bound” that is attached hereto as Exhibit A. Nothing in these  
17 provisions should be construed as limiting any Producing Party’s rights to seek  
18 remedies for a violation of this Order.

19 **L. Duration**

20 1. Even after the termination of this action, the confidentiality obligations  
21 imposed by this Order shall remain in effect for two (2) years following the  
22 termination of this action, or until Non-Party Broadcom agrees otherwise in writing  
23 or a court order otherwise directs.

24 **M. Final Disposition**

25 1. Unless otherwise ordered or agreed in writing by Producing Party,  
26 within thirty (30) days of the termination of all of these action, whether through  
27 settlement or final judgment (including any and all appeals therefrom), all  
28 Designated Broadcom Material produced by any Party in this action, and all

1 secondary materials incorporating Designated Broadcom Material (*e.g.*, work  
2 product, expert reports, motions, etc.), shall either be returned to the Producing  
3 Party or be destroyed. The Receiving Party shall verify the return or destruction of  
4 Designated Broadcom Material by notification furnished to the Producing Party  
5 within 30 days of termination of this action.

6  
7 SO STIPULATED.

8  
9 Dated: August 24, 2018

Respectfully submitted,

10 ROBINS KAPLAN LLP

11 By: /s/ Daniel L. Allender

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17 Facsimile: (310) 229-5800

18 *Attorneys for TQ DELTA, LLC*

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25 Telephone: 303.291.2300  
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Facsimile: 310.788.3399

*Attorneys for Broadcom Corporation*

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**Filer's Attestation**

Pursuant to Local Rule 5-4.3.4(a)(2)(i), Daniel L. Allender hereby attests that concurrence in the filing of this document has been obtained.

I, Daniel L. Allender, further hereby attest that all other signatories on whose behalf this filing is submitted concur to the filing of its content and have authorized the filing.

/s/ Daniel L. Allender

Daniel L. Allender

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: September 6, 2018

/ s /  
Honorable Alka Sagar  
United States Magistrate Judge

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**EXHIBIT A**  
**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY**  
**SUPPLEMENTAL PROTECTIVE ORDER GOVERNING CONFIDENTIAL**  
**INFORMATION OF NON-PARTY BROADCOM IN THIS CASE**

I, \_\_\_\_\_ [print or type full name],  
state: My business address is \_\_\_\_\_.

1. My present employer is \_\_\_\_\_.  
2. My present occupation or job description is \_\_\_\_\_.

3. I have been informed of and have reviewed the Supplemental Protective Order Governing Discovery From Non-Party Broadcom (“Supplemental Protective Order”) entered in this case, and understand and agree to abide by its terms. I agree to keep confidential all information provided to me in this matter, in accordance with the restrictions in the Supplemental Protective Order, and to be subject to the authority of the U.S. District Court for the Central District of California in the event of any violation or dispute related to this Supplemental Protective Order.

4. I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed On \_\_\_\_\_.

\_\_\_\_\_  
[Printed Name]

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[Signature]

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**EXHIBIT B**  
**CERTIFICATION OF CONSULTANT RE SUPPLEMENTAL**  
**PROTECTIVE ORDER GOVERNING CONFIDENTIAL INFORMATION**  
**OF NON-PARTY BROADCOM IN THIS CASE**

I, \_\_\_\_\_ [print or type full name],  
of \_\_\_\_\_ am not an employee of the  
Party who retained me or of a competitor of any Party or Non-Party Broadcom and  
will not use any information, documents, or things that are subject to the  
Supplemental Protective Order Governing Discovery From Non-Party Broadcom in  
this case for any purpose other than this litigation. I agree not to perform hardware  
or software development work or product development work intended for  
commercial purposes relating to the particular technology or information disclosed  
in the Designated Broadcom Material and I agree not to advise anyone regarding  
the purchase or acquisition of patents for assertion against Producing Party having  
claims that read on the code that I review, from the time of my first review of such  
material and through until two years after I last access any material designated  
“BROADCOM – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE,” as  
well as any materials that contain or disclose Broadcom Material so designated.

I state under penalty of perjury under the laws of the United States of  
America that the foregoing is true and correct.

Executed On \_\_\_\_\_.

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
[Signature]