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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ATN HOLDING INC., a California corporation, and GREEN WORLD WINDOWS AND DOORS CORP., dba CR WINDOWS AND DOORS, a California corporation,

Plaintiffs

vs.

QUANEX IG SYSTEMS, INC, an Ohio corporation; and DOES 1-10, inclusive,

Defendants

QUANEX IG SYSTEMS, INC, an Ohio corporation

Counterclaimant

vs.

ATN HOLDING INC., a California corporation, GREEN WORLD WINDOWS AND DOORS CORP, a California corporation; CR WINDOWS AND DOORS, INC. a California Corporation; REY NEA, an individual; and DOES 1 through 10, inclusive,

Counterdefendants

Case No. 5:14-cv-01860-ODW(SPx)
Hon. Otis D. Wright II

PROTECTIVE ORDER

1 On consideration of the Stipulated Protective Order jointly submitted by
2 Plaintiffs-Counterdefendants ATN Holding Inc. Counterdefendants Rey Nea and CR
3 Windows and Doors, Inc.; and Defendant-Counterclaimant Quanex IG Systems,
4 Inc., and it appearing to the Court that such a Protective Order is necessary and
5 appropriate and will facilitate discovery,

6 IT IS THEREFORE ORDERED THAT:

7 1. PURPOSE AND LIMITATIONS

8 Disclosure and discovery activity in this action are likely to involve
9 production of confidential, proprietary, or private information for which special
10 protection from public disclosure and from use for any purpose other than
11 prosecuting this litigation may be warranted. This Order does not confer blanket
12 protections on all disclosures or responses to discovery and the protection it affords
13 from public disclosure and use extends only to the limited information or items that
14 are entitled to confidential treatment under the applicable legal principles. As set
15 forth in Section 14.4 below, this Protective Order does not entitle the Parties to file
16 confidential information under seal.

17 2. DEFINITIONS

18 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
19 information or items under this Order.

20 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how
21 it is generated, stored or maintained) or tangible things that qualify for protection
22 under Federal Rule of Civil Procedure 26(c).

23 2.3 Counsel (without qualifier): Outside Counsel of Record and House
24 Counsel (as well as their support staff).

25 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

27 2.5 Designating Party: a Party or Non-Party that designates information or
28 items that it produces in disclosures or in responses to discovery as

1 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY.”

3 2.6 Disclosure or Discovery Material: all items or information, regardless of
4 the medium or manner in which it is generated, stored, or maintained (including,
5 among other things, testimony, transcripts, and tangible things), that are produced or
6 generated in disclosures or responses to discovery in this matter.

7 2.7 Expert: a person with specialized knowledge or experience in a matter
8 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve
9 as an expert witness or as a consultant in this action, (2) is not a past or current
10 employee of a Party or of a Party's competitor, and (3) at the time of retention, is not
11 anticipated to become an employee of a Party or of a Party's competitor.

12 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
13 Information or Items: extremely sensitive “Confidential Information or Items,”
14 disclosure of which to another Party or Non-Party would create a substantial risk of
15 serious harm that could not be avoided by less restrictive means.

16 2.9 House Counsel: attorneys who are employees of a party to this action.
17 House Counsel does not include Outside Counsel of Record or any other outside
18 counsel.

19 2.10 Non-Party: any natural person, partnership, corporation, association,
20 or other legal entity not named as a Party to this action.

21 2.11 Outside Counsel of Record: attorneys who are not employees of a
22 party to this action but are retained to represent or advise a party to this action and
23 have appeared in this action on behalf of that party or are affiliated with a law firm
24 which has appeared on behalf of that party.

25 2.12 Party: any party to this action, including all of its officers, directors,
26 employees, consultants, retained experts, and Outside Counsel of Record (and their
27 support staffs).

28 2.13 Producing Party: a Party or Non-Party that produces Disclosure or

1 Discovery Material in this action.

2 2.14 Professional Vendors: persons or entities that provide litigation
3 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
4 demonstrations, and organizing, storing, or retrieving data in any form or medium)
5 and their employees and subcontractors.

6 2.15 Protected Material: any Disclosure or Discovery Material that is
7 designated as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY.”

9 2.16 Receiving Party: a Party that receives Disclosure or Discovery
10 Material from a Producing Party.

11 3. SCOPE

12 The protections conferred by this Order cover not only Protected Material (as
13 defined above), but also (1) any information copied or extracted from Protected
14 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
15 and (3) any testimony, conversations, or presentations by Parties or their Counsel
16 that might reveal Protected Material. However, the protections conferred by this
17 Order do not cover the following information: (a) any information that is in the
18 public domain at the time of disclosure to a Receiving Party or becomes part of the
19 public domain after its disclosure to a Receiving Party as a result of publication not
20 involving a violation of this Order, including becoming part of the public record
21 through trial or otherwise; and (b) any information known to the Receiving Party
22 prior to the disclosure or obtained by the Receiving Party after the disclosure from a
23 source who obtained the information lawfully and under no obligation of
24 confidentiality to the Designating Party. Any use of Protected Material at trial shall
25 be governed by a separate agreement or order.

26 4. DURATION

27 Even after final disposition of this litigation, the confidentiality obligations
28 imposed by this Order shall remain in effect until a Designating Party agrees

1 otherwise in writing or a court order otherwise directs. Final disposition shall be
2 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
3 or without prejudice; and (2) final judgment herein after the completion and
4 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
5 including the time limits for filing any motions or applications for extension of time
6 pursuant to applicable law.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

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

16 Mass, indiscriminate, or routinized designations are prohibited. Designations
17 that are shown to be clearly unjustified or that have been made for an improper
18 purpose (e.g., to unnecessarily encumber or retard the case development process or
19 to impose unnecessary expenses and burdens on other parties) expose the
20 Designating Party to sanctions.

21 If it comes to a Designating Party's attention that information or items that it
22 designated for protection do not qualify for protection at all or do not qualify for the
23 level of protection initially asserted, that Designating Party must promptly notify all
24 other Parties that it is withdrawing the mistaken designation.

25 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
26 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
27 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
28 under this Order must be clearly so designated before the material is disclosed or

1 produced.

2 Designation in conformity with this Order requires:

3 (a) for information in documentary form (e.g., paper or electronic documents,
4 but excluding transcripts of depositions or other pretrial or trial proceedings), that
5 the Producing Party affix the legend “CONFIDENTIAL,” or “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains
7 protected material. If only a portion or portions of the material on a page qualifies
8 for protection, the Producing Party also must clearly identify the protected portion(s)
9 (e.g., by making appropriate markings in the margins) and must specify, for each
10 portion, the level of protection being asserted.

11 A Party or Non-Party that makes original documents or materials available for
12 inspection need not designate them for protection until after the inspecting Party has
13 indicated which material it would like copied and produced. During the inspection
14 and before the designation, all of the material made available for inspection shall be
15 deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
16 inspecting Party has identified the documents it wants copied and produced, the
17 Producing Party must determine which documents, or portions thereof, qualify for
18 protection under this Order. Then, before producing the specified documents, the
19 Producing Party must affix the appropriate legend (“CONFIDENTIAL,” or
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”) to each page that
21 contains Protected Material. If only a portion or portions of the material on a page
22 qualifies for protection, the Producing Party also must clearly identify the protected
23 portion(s) (e.g., by making appropriate markings in the margins) and must specify,
24 for each portion, the level of protection being asserted.

25 (b) for testimony given in deposition or in other pretrial or trial proceedings,
26 that the Designating Party identify on the record, before the close of the deposition,
27 hearing, or other proceeding, all protected testimony and specify the level of
28 protection being asserted. When it is impractical to identify separately each portion

1 of testimony that is entitled to protection and it appears that substantial portions of
2 the testimony may qualify for protection, the Designating Party may invoke on the
3 record (before the deposition, hearing, or other proceeding is concluded) a right to
4 have up to 21 days to identify the specific portions of the testimony as to which
5 protection is sought and to specify the level of protection being asserted. Only those
6 portions of the testimony that are appropriately designated for protection within the
7 21 days shall be covered by the provisions of this Protective Order. Alternatively, a
8 Designating Party may specify, at the deposition or up to 21 days afterwards if that
9 period is properly invoked, that the entire transcript shall be treated as
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
11 ONLY.”

12 Parties shall give the other parties notice if they reasonably expect a
13 deposition, hearing, or other proceeding to include Protected Material so that the
14 other parties can ensure that only authorized individuals who have signed the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
16 proceedings. The use of a document as an exhibit at a deposition shall not in any
17 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
18 ATTORNEYS’ EYES ONLY.”

19 Transcripts containing Protected Material shall have an obvious legend on the
20 title page that the transcript contains Protected Material, and the title page shall be
21 followed by a list of all pages (including line numbers as appropriate) that have been
22 designated as Protected Material and the level of protection being asserted by the
23 Designating Party. The Designating Party shall inform the court reporter of these
24 requirements. Any transcript that is prepared before the expiration of a 21-day period
25 for designation shall be treated during that period as if it had been designated
26 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
27 otherwise agreed. After the expiration of that period, the transcript shall be treated
28 only as actually designated.

1 (c) for information produced in some form other than documentary and for
2 any other tangible items, that the Producing Party affix in a prominent place on the
3 exterior of the container or containers in which the information or item is stored the
4 legend “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
5 EYES ONLY.” If only a portion or portions of the information or item warrant
6 protection, the Producing Party, to the extent practicable, shall identify the protected
7 portion(s) and specify the level of protection being asserted.

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
9 failure to designate qualified information or items does not, standing alone, waive
10 the Designating Party’s right to secure protection under this Order for such material.
11 Upon timely correction of a designation, the Receiving Party must make reasonable
12 efforts to assure that the material is treated in accordance with the provisions of this
13 Order.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
16 designation of confidentiality at any time. Unless a prompt challenge to a
17 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
18 substantial unfairness, unnecessary economic burdens, or a significant disruption or
19 delay of the litigation, a Party does not waive its right to challenge a confidentiality
20 designation by electing not to mount a challenge promptly after the original
21 designation is disclosed.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
23 resolution process by providing written notice of each designation it is challenging
24 and describing the basis for each challenge. To avoid ambiguity as to whether a
25 challenge has been made, the written notice must recite that the challenge to
26 confidentiality is being made in accordance with this specific paragraph of the
27 Protective Order. The parties shall attempt to resolve each challenge in good faith
28 and must begin the process by conferring directly (in voice to voice dialogue; other

1 forms of communication are not sufficient) within 14 days of the date of service of
2 notice. In conferring, the Challenging Party must explain the basis for its belief that
3 the confidentiality designation was not proper and must give the Designating Party
4 an opportunity to review the designated material, to reconsider the circumstances,
5 and, if no change in designation is offered, to explain the basis for the chosen
6 designation. A Challenging Party may proceed to the next stage of the challenge
7 process only if it has engaged in this meet and confer process first or establishes that
8 the Designating Party is unwilling to participate in the meet and confer process in a
9 timely manner.

10 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
11 court intervention, the Designating Party shall file and serve a motion to retain
12 confidentiality under U.S. District Court for the Northern District of California Civil
13 Local Rule 7 within 21 days of the initial notice of challenge or within 14 days of
14 the parties agreeing that the meet and confer process will not resolve their dispute,
15 whichever is earlier. Each such motion must be accompanied by a competent
16 declaration affirming that the movant has complied with the meet and confer
17 requirements imposed in the preceding paragraph. Failure by the Designating Party
18 to make such a motion including the required declaration within 21 days (or 14 days,
19 if applicable) shall automatically waive the confidentiality designation for each
20 challenged designation. In addition, the Challenging Party may file a motion
21 challenging a confidentiality designation at any time if there is good cause for doing
22 so, including a challenge to the designation of a deposition transcript or any portions
23 thereof. Any motion brought pursuant to this provision must be accompanied by a
24 competent declaration affirming that the movant has complied with the meet and
25 confer requirements imposed by the preceding paragraph.

26 The burden of persuasion in any such challenge proceeding shall be on the
27 Designating Party. Frivolous challenges and those made for an improper purpose
28 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may

1 expose the Challenging Party to sanctions. Unless the Designating Party has waived
2 the confidentiality designation by failing to file a motion to retain confidentiality as
3 described above, all parties shall continue to afford the material in question the level
4 of 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 litigation. Such
10 Protected Material may be disclosed only to the categories of persons and under the
11 conditions described in this Order. When the litigation has been terminated, a
12 Receiving Party must comply with the provisions of section 15 below (FINAL
13 DISPOSITION).

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

17 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
18 ordered by the court or permitted in writing by the Designating Party, a Receiving
19 Party may disclose any information or item designated "CONFIDENTIAL" only to:

20 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
21 employees of said Outside Counsel of Record to whom it is reasonably necessary to
22 disclose the information for this litigation and who have signed the

23 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
24 A;

25 (b) the officers, directors, and employees (including House Counsel) of the
26 Receiving Party to whom disclosure is reasonably necessary for this litigation and
27 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28 (c) Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this litigation and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court and its personnel;

4 (e) court reporters and their staff, professional jury or trial consultants, and
5 Professional Vendors to whom disclosure is reasonably necessary for this litigation
6 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
7 A);

8 (f) during their depositions, witnesses in the action to whom disclosure is
9 reasonably necessary and who have signed the “Acknowledgment and Agreement to
10 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
11 by the court. Pages of transcribed deposition testimony or exhibits to depositions
12 that reveal Protected Material must be separately bound by the court reporter and
13 may not be disclosed to anyone except as permitted under this Protective Order.

14 (g) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information.

16 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
17 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
18 writing by the Designating Party, a Receiving Party may disclose any information or
19 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only
20 to:

21 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
22 employees of said Outside Counsel of Record to whom it is reasonably necessary to
23 disclose the information for this litigation and who have signed the
24 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
25 A;

26 (b) Designated House Counsel of the Receiving Party (1) who has no
27 involvement in competitive decision-making, (2) to whom disclosure is reasonably
28 necessary for this litigation, (3) who has signed the “Acknowledgment and

1 Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth in
2 paragraph 7.4(a)(1), below, have been followed. For purposes of this order, the term
3 “competitive decision-making” shall mean: (1) patent prosecution activity that
4 involves drafting, amending, or surrendering patent claims directed to flexible spacer
5 assemblies; and (2) design or development of technical features of flexible spacer
6 assemblies;

7 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
8 necessary for this litigation, (2) who have signed the “Acknowledgment and
9 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
10 paragraph 7.4(a)(2), below, have been followed;

11 (d) the court and its personnel;

12 (e) court reporters and their staff, professional jury or trial consultants, and
13 Professional Vendors to whom disclosure is reasonably necessary for this litigation
14 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
15 A); and

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

18
19 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to
21 Designated House Counsel or Experts.

22 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
23 Designating Party, a Party that seeks to disclose to Designated House Counsel any
24 information or item that has been designated “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a
26 written request to the Designating Party that (1) sets forth the full name of the
27 Designated House Counsel and the city and state of his or her residence and (2)
28 describes the Designated House Counsel’s current and reasonably foreseeable future

1 primary job duties and responsibilities in sufficient detail to determine if House
2 Counsel is involved, or may become involved, in any competitive decision-making.

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

24 (b) A Party that makes a request and provides the information specified in the
25 preceding respective paragraphs may disclose the subject Protected Material to the
26 identified Designated House Counsel or Expert unless, within 14 days of delivering
27 the request, the Party receives a written objection from the Designating Party. Any
28 such objection must set forth in detail the grounds on which it is based.

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

15 In any such proceeding, the Party opposing disclosure to Designated House
16 Counsel or the Expert shall bear the burden of proving that the risk of harm that the
17 disclosure would entail (under the safeguards proposed) outweighs the Receiving
18 Party's need to disclose the Protected Material to its Designated House Counsel or
19 Expert.

20 8. PROSECUTION BAR

21 Absent written consent from the Producing Party, any individual who receives
22 access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
23 information shall not be involved in the prosecution of patents or patent applications
24 asserted in this action and any patent or application claiming priority to or otherwise
25 related to the patents asserted in this action, before any foreign or domestic agency,
26 including the United States Patent and Trademark Office ("the Patent Office"). For
27 purposes of this paragraph, "prosecution" includes directly or indirectly drafting,
28 amending, advising, or otherwise affecting the scope or maintenance of patent

1 claims (prosecution includes, for example, original prosecution, reissue and
2 reexamination proceedings). To avoid any doubt, “prosecution” as used in this
3 paragraph does not include representing a party challenging a patent before a
4 domestic or foreign agency (including, but not limited to, a reissue protest, ex parte
5 reexamination or inter partes reexamination). This Prosecution Bar shall begin when
6 access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
7 information is first received by the affected individual and shall end the earlier of
8 two (2) years after the date of last access by the individual or two (2) years after final
9 termination of this action.

10 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
11 OTHER LITIGATION

12 If a Party is served with a subpoena or a court order issued in other litigation
13 that compels disclosure of any information or items designated in this action as
14 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
15 ONLY,” that Party must:

16 (a) promptly notify in writing the Designating Party. Such notification shall
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena
20 or order is subject to this Protective Order. Such notification shall include a copy of
21 this Protective Order; and

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

24 If the Designating Party timely seeks a protective order, the Party served with
25 the subpoena or court order shall not produce any information designated in this
26 action as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
27 EYES ONLY” before a determination by the court from which the subpoena or
28 order issued, unless the Party has obtained the Designating Party’s permission. The

1 Designating Party shall bear the burden and expense of seeking protection in that
2 court of its confidential material – and nothing in these provisions should be
3 construed as authorizing or encouraging a Receiving Party in this action to disobey a
4 lawful directive from another court.

5 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
6 PRODUCED IN THIS LITIGATION

7 (a) The terms of this Order are applicable to information produced by a Non-
8 Party in this action and designated as “CONFIDENTIAL,” or “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by
10 Non-Parties in connection with this litigation is protected by the remedies and relief
11 provided by this Order. Nothing in these provisions should be construed as
12 prohibiting a Non-Party from seeking additional protections.

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

17 1. promptly notify in writing the Requesting Party and the Non-Party
18 that some or all of the information requested is subject to a confidentiality agreement
19 with a Non-Party;

20 2. promptly provide the Non-Party with a copy of the Protective Order
21 in this litigation, the relevant discovery request(s), and a reasonably specific
22 description of the information requested; and

23 3. make the information requested available for inspection by the Non-
24 Party.

25 (c) If the Non-Party fails to object or seek a protective order from this court
26 within 14 days of receiving the notice and accompanying information, the Receiving
27 Party may produce the Non-Party’s confidential information responsive to the
28 discovery request. If the Non-Party timely seeks a protective order, the Receiving

1 Party shall not produce any information in its possession or control that is subject to
2 the confidentiality agreement with the Non-Party before a determination by the
3 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
4 expense of seeking protection in this court of its Protected Material.

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

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

14 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
15 **PROTECTED MATERIAL**

16 When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other protection,
18 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
19 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
20 may be established in an e-discovery order that provides for production without prior
21 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
22 parties reach an agreement on the effect of disclosure of a communication or
23 information covered by the attorney-client privilege or work product protection, the
24 parties may incorporate their agreement in a stipulated protective order submitted to
25 the court.

26 **13. MISCELLANEOUS**

27 **13.1 Right to Further Relief.** Nothing in this Order abridges the right of
28 any person to seek its modification by the court in the future.

1 13.2 Right to Assert Other Objections. No Party waives any right it
2 otherwise would have to object to disclosing or producing any information or item
3 on any ground not addressed in this Protective Order. Similarly, no Party waives any
4 right to object on any ground to use in evidence of any of the material covered by
5 this Protective Order.

6 13.3 Export Control. Disclosure of Protected Material shall be subject to
7 all applicable laws and regulations relating to the export of technical data contained
8 in such Protected Material, including the release of such technical data to foreign
9 persons or nationals in the United States or elsewhere. The Producing Party shall be
10 responsible for identifying any such controlled technical data, and the Receiving
11 Party shall take measures necessary to ensure compliance.

12 13.4 Filing Protected Material. Without written permission from the
13 Designating Party or a court order secured after appropriate notice to all interested
14 persons, a Party may not file in the public record in this action any Protected
15 Material. A Party that seeks to file under seal any Protected Material must comply
16 with U.S. District Court for the Northern/Central District [the Parties request
17 clarification of the choice of rules the Court requires] of California Civil Local Rule
18 79-5.

19 14. FINAL DISPOSITION

20 Within 60 days after the final disposition of this action, as defined in
21 paragraph 4, each Receiving Party must return all Protected Material to the
22 Producing Party or destroy such material. As used in this subdivision, “all Protected
23 Material” includes all copies, abstracts, compilations, summaries, and any other
24 format reproducing or capturing any of the Protected Material. Whether the
25 Protected Material is returned or destroyed, the Receiving Party must submit a
26 written certification to the Producing Party (and, if not the same person or entity, to
27 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
28 appropriate) all the Protected Material that was returned or destroyed and (2) affirms

1 that the Receiving Party has not retained any copies, abstracts, compilations,
2 summaries or any other format reproducing or capturing any of the Protected
3 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
4 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
5 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
6 work product, and consultant and expert work product, even if such materials
7 contain Protected Material. Any such archival copies that contain or constitute
8 Protected Material remain subject to this Protective Order as set forth in Section 4
9 (DURATION).

11 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**



14 Dated: March 30, 2015

The Honorable Otis D. Wright II
United States District Judge

17 Submitted by:
18 Jeffrey G. Sheldon (SBN 67516)
jsheldon@leechtishman.com
19 Laura M. Lloyd (SBN 242224)
llloyd@leechtishman.com
20 LEECH TISHMAN FUSCALDO & LAMPL
21 100 East Corson Street, Third Floor
Pasadena, California 91103-3842
22 Telephone: (626) 796-4000
23 Facsimile: (626) 795-6321
24 Attorneys for Plaintiffs and Counterdefendants
ATN HOLDING INC. and GREEN WORLD
25 WINDOWS AND DOORS CORP; and
26 Counterdefendants REY NEA and
CR WINDOWS AND DOORS, INC.

28 and

1 Katherine K. Huang (SBN 219798)
2 Katherine.Huang@hysmlaw.com
3 Carlos A. Singer (SBN 236284)
4 Carlos.Singer@hysmlaw.com
5 HUANG YBARRA SINGER & MAY, LLP
6 550 South Hope Street, Suite 1850
7 Los Angeles, CA 90071-2604
8 Telephone: (213) 884-4900
9 Attorneys for Defendant and Counterclaimant
10 QUANEX IG SYSTEMS, INC.
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I have
5 read in its entirety and understand the Protective Order that was issued by the United
6 States District Court for the Central District of California on _____ [date] in the
7 case of ATN Holding Inc. et al v. Quanex IG Systems, Inc. et al (ED CV 14-01860-
8 ODW(SPx)). I agree to comply with and to be bound by all the terms of this
9 Protective Order, and I understand and acknowledge that failure to so comply could
10 expose me to sanctions and punishment in the nature of contempt. I solemnly
11 promise that I will not disclose in any manner any information or item that is subject
12 to this Protective Order to any person or entity except in strict compliance with the
13 provisions of this Order.

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

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Protective Order.

22
23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____
[printed name]

26 Signature: _____
[signature]

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