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16
 17 IN THE UNITED STATES DISTRICT COURT
 18 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 19 SOUTHERN DIVISION

20 ÖSSUR HF, an Icelandic limited 21 liability company, and ÖSSUR AMERICAS, INC., a California 22 corporation, 23 Plaintiffs, 24 v. 25 IWALK, INC., a Delaware corporation, 26 Defendant.) Case No. SACV11-01759 JST(MLGx))) STIPULATED PROTECTIVE) ORDER)) Hon. Josephine Staton Tucker) Hon. Marc L. Goldman)) DISCOVERY MATTER))) AND RELATED COUNTERCLAIMS)
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STIPULATED PROTECTIVE ORDER

Plaintiffs ÖSSUR HF and ÖSSUR AMERICAS, INC. (collectively, “Össur”) and Defendant IWALK, INC. (“iWalk”), agree that disclosure and discovery activity in the above-captioned action are likely to involve production of confidential, proprietary, and/or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Such information likely will include, among other things, sensitive product information, product design and development materials, engineering materials, strategic decision-making information, marketing and sales information, purchase orders, invoices, and customer information relating to bionic prosthetic products (collectively, the “Sensitive Information”).

GOOD CAUSE STATEMENT

Össur and iWalk (collectively, the “Parties,” or singularly, a “Party”) respectfully believe that good cause exists to enter the instant Protective Order in order to protect the Sensitive Information from public disclosure. The Sensitive Information includes information and data that could be used by actual or potential competitors to gain an improper and unlawful competitive advantage in the marketplace.

For example, the Parties agree that disclosure and discovery activity in the above-captioned action will include technology embodied in iWalk’s PowerFoot BiOM product, which iWalk contends includes Sensitive Information such as proprietary technical information, product design and development materials, source code, and engineering materials. Össur contends that disclosure and discovery activity in the above-captioned action will include information relating to Össur’s PROPRIO FOOT® product, which Össur contends is a commercial embodiment of one or more claims of the asserted patents and which Össur contends includes Sensitive Information such as

1 proprietary product design and development materials. In addition, the Parties
2 agree that disclosure and discovery activity in the above-captioned action will
3 include proprietary financial information, including Sensitive Information such
4 as sales information and market share data, relating to iWalk's PowerFoot
5 BiOM and Össur's PROPRIO FOOT®.

6 The Parties are competitors in the design, manufacture, and sale of bionic
7 prosthetic products for the lower leg. Due to the competitive relationship
8 between the Parties, it is highly likely that disclosure of the Sensitive
9 Information of one Party, especially that Party's product design, development,
10 financial, sales, and customer information regarding bionic prosthetic products,
11 will provide an improper or unlawful competitive advantage to the other Party.
12 This Protective Order is necessary to prevent such harm to each of the Parties.
13 The Parties have attempted to draft this Protective Order narrowly and in a
14 manner no more restrictive than necessary to protect the Sensitive Information
15 from public disclosure.

16 IT IS HEREBY STIPULATED and agreed by and between counsel for
17 the Parties that the terms and conditions of this Stipulated Protective Order shall
18 be entered as follows:

19 **DEFINITIONS**

20 1. The term "Confidential Information" shall mean and include
21 information contained or disclosed in any materials, including documents,
22 portions of documents, answers to interrogatories, responses to requests for
23 admissions, trial testimony, hearing testimony, deposition testimony, and
24 transcripts of trial testimony, hearings, and depositions, including data,
25 summaries, and compilations derived therefrom that is deemed to be
26 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL ATTORNEYS' EYES
27 ONLY" in accordance with Paragraph 8, by any Party or witness to which it
28 belongs. Confidential Information shall not include any information, document,

1 or thing which: (a) at the time of disclosure hereunder is available to the public;
2 (b) after disclosure hereunder becomes available to the public through no act, or
3 failure to act, by the receiving Party; or (c) the receiving Party can show the
4 information, document, or thing (i) was already known to the receiving Party;
5 (ii) was independently developed by the receiving Party; or (iii) was received by
6 the receiving Party, after the time of disclosure hereunder, from a non-party
7 having the right to make such disclosure.

8 2. The terms “material” and “materials” shall include, but shall not be
9 limited to: documents; correspondence; memoranda; e-mail messages;
10 bulletins; specifications; customer lists or other materials that identify customers
11 or potential customers; price lists or schedules or other matter identifying
12 pricing; minutes; telegrams; letters; statements; cancelled checks; contracts;
13 invoices; drafts; books of account; worksheets; notes of conversations; desk
14 diaries; appointment books; expense accounts; recordings; photographs; motion
15 pictures; source code; compilations from which information can be obtained and
16 translated into reasonably usable form through detection devices; sketches;
17 drawings; notes; reports; instructions; disclosures; other writings; models,
18 prototypes, and other physical objects.

19 3. The terms “discovery material” and “discovery materials” shall
20 include all deposition testimony, all transcripts and other written or oral
21 recordings of deposition or pre-trial testimony, all answers, documents, and
22 other discovery materials produced in response to notices of depositions,
23 interrogatories, requests for admissions, requests for production of documents
24 and things, or subpoenas in this action, as well as all information thereby
25 disclosed or communicated, all copies and summaries thereof, and all references
26 thereto.

27 4. The term “counsel” shall include outside counsel of record, and
28 other attorneys, paralegals, assistants, summer associates, and other support

1 staff employed in the law firms of KNOBBE, MARTENS, OLSON & BEAR,
2 LLP and COOLEY LLP who do not prosecute patents for any Party (see
3 Paragraphs 35 and 36 below).

4 **GENERAL RULES**

5 5. This Protective Order shall govern all disclosures of discovery
6 materials made pursuant to Rule 26(a) of the Federal Rules of Civil Procedure.

7 6. All materials and discovery materials containing Confidential
8 Information shall be used solely in connection with this litigation and not for
9 any other purpose. All materials and discovery materials whose disclosure is
10 restricted by this Protective Order shall not be disclosed to anyone except as
11 provided herein.

12 7. This Order shall not bar counsel (as defined in Paragraph 4) in the
13 course of rendering advice to his or her client from referring to or relying in a
14 general way upon his or her examination of Confidential Information produced
15 or exchanged herein; provided, however, that in rendering such advice and
16 otherwise communicating with his or her client, the attorney shall not disclose
17 the specific contents or substance of any Confidential Information produced by
18 another Party.

19 **Designation of Materials**

20 8. Each Party or witness to this litigation that produces or discloses
21 any materials, discovery materials, or information that the producing Party or
22 witness reasonably believes in good faith should be subject to this Protective
23 Order may designate the same as “CONFIDENTIAL” or “HIGHLY
24 CONFIDENTIAL ATTORNEYS’ EYES ONLY” as follows:

25 (a) Designation as “CONFIDENTIAL”: A party or non-party
26 may designate as “CONFIDENTIAL,” in whole or in part, any document,
27 thing, or information which contains trade secrets or other confidential
28 research, development, or commercial information that the disclosing

1 party reasonably believes in good faith would have a high likelihood of
2 causing competitive harm to the disclosing party if it were publicly
3 disclosed, and which is to be disclosed or produced to a party in this
4 action.

5 (b) Designation as “HIGHLY CONFIDENTIAL ATTORNEYS’
6 EYES ONLY”: A party or non-party may designate as “HIGHLY
7 CONFIDENTIAL ATTORNEYS’ EYES ONLY,” in whole or in part,
8 any material which contains highly confidential information that the
9 producing party or non-party reasonably believes in good faith to be so
10 commercially sensitive or confidential that disclosure to persons other
11 than those authorized under Paragraph 13 would have a high likelihood of
12 causing serious competitive harm to the disclosing party if it were
13 publicly disclosed, and which is to be disclosed or produced to a party in
14 this action. Examples of such “HIGHLY CONFIDENTIAL
15 ATTORNEYS’ EYES ONLY” material may include the following, in
16 accordance with the conditions of Paragraphs 1 and 8(b): trade secrets;
17 research and development information; engineering drawings, software
18 code, source code, or test data; existing and potential customer
19 information; sales, revenue, margins, profit, or cost of production
20 information; performance data and projections; business strategies,
21 decisions, or negotiations; and employee personnel files.

22 (c) Documents containing Confidential Information shall be so
23 designated by stamping or marking copies of the document produced to a
24 Party with the legend “CONFIDENTIAL” or “HIGHLY
25 CONFIDENTIAL ATTORNEYS’ EYES ONLY” (whichever notation is
26 appropriate pursuant to the other provisions herein) on each page of the
27 document, preferably in the lower right-hand corner of the document, or
28 as close thereto as feasible. In the event that only selected pages of a

1 bound multiple-page document are stamped or marked with the
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’
3 EYES ONLY” legend (e.g., responses to discovery requests), the first
4 page of the bound document shall also be stamped with the
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’
6 EYES ONLY” legend to prevent inadvertent disclosure of the contents of
7 the document which contain Confidential Information. When an
8 electronic file is produced in its native format, the disclosing Party shall
9 include the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
10 ATTORNEYS’ EYES ONLY” legend in the title of the electronic file, on
11 the cover of any disc containing the electronic file, and in a cover letter or
12 e-mail accompanying production of the electronic file to prevent
13 inadvertent disclosure of the contents of the electronic file which contain
14 Confidential Information.

15 9. No Party shall be responsible to another Party for disclosure of
16 Confidential Information under this Order if the information in question is not
17 labeled or otherwise identified as such in accordance with this Order.

18 10. Care shall be taken by the producing Party or witness to use the
19 designation “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” only
20 where the producing Party or witness and its counsel have a reasonable and
21 good faith belief that such protection is needed.

22 **Persons Who May View Designated Materials**

23 12. Information designated “CONFIDENTIAL” shall be viewed only
24 by the following persons:

25 (a) the Court, court personnel, court reporters, and other persons
26 connected with the Court;

27 (b) counsel (as defined in Paragraph 4) of the receiving Party;
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1 (c) independent experts or consultants under the conditions set
2 forth in Paragraph 15;

3 (d) officers, directors, in-house counsel, or employees of each
4 Party, deemed necessary by outside counsel to aid in the prosecution,
5 defense, or settlement of this action, who have executed the agreement in
6 Exhibit A;

7 (e) stenographic and clerical employees associated with the
8 individuals identified above in subparts (b), (c), and (d) , but only as part
9 of a disclosure to said persons in accordance with this stipulation and
10 order;

11 (f) outside vendors who perform litigation services including, but
12 not limited to, computer database preparation, photocopying, translation,
13 graphics, design, animation, or exhibit preparation in connection with this
14 action, but only for so long as necessary to perform those services;

15 (g) trial consultants and mock jurors who have executed the
16 agreement in Exhibit A (which shall be maintained by the retaining
17 party); and

18 (h) any other person as to whom the Parties in writing agree.
19 Counsel desiring to make a disclosure to individuals pursuant to this
20 Subparagraph shall provide written notice to Counsel for the designating
21 party of its intent to make the disclosure, stating therein the specific
22 information, documents, or things to be disclosed at least fourteen (14)
23 calendar days before any Confidential Information is made available to
24 such person(s). With the written notice shall be included a fully executed
25 copy of Exhibit A and an explanation of the background of the person(s)
26 and the intended purpose for the disclosure to the person(s) sufficient to
27 allow the designating Party to determine whether such disclosure might
28 cause injury to the designating Party. If the designating Party makes a

1 written objection to the disclosure to such person(s) within the fourteen
2 (14) day period, no disclosure of the designating Party's Confidential
3 Information may be made to the person(s). If the Parties cannot resolve
4 the issue, the Party seeking disclosure may thereupon seek an appropriate
5 order from the Court for permission to disclose the Confidential
6 Information to such person(s), and the procedures set forth in
7 Paragraph 15 for independent experts or consultants shall be employed in
8 seeking such relief.

9 13. Information designated "HIGHLY CONFIDENTIAL
10 ATTORNEYS' EYES ONLY" shall be viewed only by the persons listed in
11 Subparagraphs 12(a), (b), (c), (e), (f), (g), and (h). Such information shall not be
12 disclosed to an officer, director, in-house counsel, or any employee of a Party,
13 unless otherwise agreed in writing or ordered by the Court. If disclosure of
14 "HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY" material is made
15 pursuant to this Paragraph, all other provisions in this Order with respect to its
16 confidentiality shall also apply.

17 14. All materials or discovery materials designated as
18 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL ATTORNEYS' EYES
19 ONLY" shall not be disclosed by the receiving Party to anyone other than those
20 persons designated herein and shall be handled in the manner set forth below
21 unless and until such designation is removed either by agreement of the Parties,
22 or by order of the Court, and, in any event, shall not be used for any purpose
23 other than in connection with this litigation. The designation of materials or
24 discovery materials as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL
25 ATTORNEYS' EYES ONLY" shall not preclude any Party from showing the
26 materials or discovery materials to any person (a) who appears as the author or
27 as an addressee on the face of the document and is not otherwise shown prior to
28 such disclosure not to have received the document; (b) who has been identified

1 by the designating Party as having been provided with the document or thing or
2 with all of the information therein; or (c) who participated in any meeting or
3 communication in which the document or thing was included. In addition,
4 nothing in this Protective Order shall bar or otherwise restrict a producing party
5 or non-party from having access to or using, without notification of any other
6 party or non-party, “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
7 ATTORNEYS’ EYES ONLY” materials that the producing party or non-party
8 has produced in this action. Where a receiving party designates a document
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES
10 ONLY” solely because it contains the Confidential Information of a disclosing
11 party (for example, in a pleading or brief), nothing limits the disclosing party
12 from showing the designated document to anyone.

13 **Experts and Consultants**

14 15. Independent experts or consultants, including their secretarial and
15 clerical personnel, may receive Confidential Information subject to the advance
16 approval of such expert or consultant by the producing Party or by permission
17 of the Court through the following procedure:

- 18 a. The Party seeking approval of an independent expert or consultant
19 shall provide the producing Party with the name, present employer
20 and title, *curriculum vitae*, a description of any work/employment,
21 consultations, and/or engagements relating to prosthetics or
22 orthotics technology the expert or consultant has had in the
23 preceding ten years, an identification of all past or present
24 affiliations with any Party, and an executed copy of the form
25 attached hereto as Exhibit A, in advance of providing any
26 Confidential Information of the producing Party to the expert or
27 consultant. To the extent that there is a confidential employment or
28 consultation arrangement, the proposing party may designate the

1 necessary portion(s) of the expert disclosure as
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
3 ATTORNEYS’ EYES ONLY”, as appropriate, and shall also
4 concurrently provide a redacted version of the expert disclosure
5 containing no confidentiality designations.

6 b. The producing Party shall have ten (10) calendar days after receipt
7 of the identification of the expert or consultant and the signed form
8 of Exhibit A to object in good faith, in writing, to disclosure of
9 Confidential Information on the basis that disclosure of
10 Confidential Information to the proposed expert or consultant
11 would result in material risk of disclosure or misuse of the
12 Confidential Information, and to request a conference of counsel in
13 accordance with Local Rule 37-1. The producing Party shall
14 specify the grounds for objection, including a description of any
15 alleged prejudice to the producing Party if the proposed disclosure
16 is made.

17 c. Unless a party notifies the proposing counsel of its objection to any
18 such proposed expert or consultant, and the basis therefor, within
19 ten (10) calendar days after the receipt of a copy of the Notice
20 referred to in Subparagraph (a) above, such expert or consultant
21 shall thereafter be deemed a qualified recipient and entitled to
22 receive the designating party’s “HIGHLY CONFIDENTIAL
23 ATTORNEYS’ EYES ONLY” material pursuant to the terms and
24 conditions of the Protective Order.

25 d. Should the opposing Party timely notify proposing counsel of its
26 objection, the Parties shall meet and confer within seven (7)
27 calendar days and, if not resolved, the objecting Party shall have
28 seven (7) calendar days from the conference of counsel within

1 which to provide its portion of a Joint Stipulation seeking a
2 protective order preventing the proposed disclosure. The parties
3 shall follow the procedures set forth in Local Rule 37 for
4 completing the filing of the Joint Stipulation and any other related
5 papers.

6 e. Where a timely objection is made, no designated material shall be
7 disclosed to the consultant or expert until the day after the last day
8 for the objecting party to provide its portion of a Joint Stipulation
9 seeking a protective order (where the objecting party does not
10 timely provide its portion of such a Joint Stipulation), or upon entry
11 of the Court's order denying the producing party's motion for
12 protection. Failure of the objecting party to timely provide its
13 portion of such a Joint Stipulation shall be deemed a waiver of any
14 objection to the disclosure of information to the proposed
15 independent expert or consultant, subject to the terms of this
16 protective order.

17 16. Following the first proper disclosure of Confidential Information to
18 each independent expert or consultant, the procedures of Paragraph 15 need not be
19 repeated for subsequent disclosures to that same independent expert or consultant.

20 **Designations Relating to Depositions and Inspections**

21 17. Testimony taken at a deposition may be designated as
22 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL ATTORNEYS' EYES
23 ONLY" by making a statement to that effect on the record at the deposition.
24 Arrangement shall be made with the court reporter taking and transcribing such
25 deposition to conspicuously mark the cover page and any pages designated
26 during the deposition, conference, hearing, or trial as "CONFIDENTIAL" or
27 "HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY". Further, the
28 transcript of any deposition shall be considered "HIGHLY CONFIDENTIAL

1 ATTORNEYS' EYES ONLY" material for a period of fourteen (14) calendar
2 days after receipt of the transcript by counsel taking the deposition, during
3 which period either Party may designate information as Confidential
4 Information by preparing a list of the page and line numbers of the transcript
5 identifying the "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL
6 ATTORNEYS' EYES ONLY" material. The list shall be set forth on one or
7 more separate pieces of paper, the first one of which shall bear the caption of the
8 action and information sufficient to clearly identify the deposition. Each
9 counsel shall affix the list to the face of the transcript, and shall mail copies of
10 the list to counsel for all Parties so that the list shall be affixed to the face of the
11 original and each copy of the transcript. Absent any such designation on the
12 record or during the above-stated fourteen-day period, the undesignated
13 transcripts (or portions thereof) shall be deemed non-confidential following the
14 fourteen-day period.

15 18. If during the course of a deposition taken in this action any
16 questions are to be asked or any answers are to be given regarding (a)
17 "CONFIDENTIAL" material, then only persons designated in Paragraph 12
18 above (and the deponent's counsel in the case of a separately represented
19 non-party) shall be allowed to be present during such portion of the deposition;
20 or (b) "HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY" material,
21 then only persons designated in Paragraph 13 above (and the deponent's counsel
22 in the case of a separately represented non-party) shall be allowed to be present
23 during such portion of the deposition. This Paragraph shall not be deemed to
24 authorize disclosure of any "CONFIDENTIAL" or "HIGHLY
25 CONFIDENTIAL ATTORNEYS' EYES ONLY" material to any person to
26 whom disclosure is prohibited under this Protective Order. It shall be the
27 obligation of the party that produced the "CONFIDENTIAL" or "HIGHLY
28 ///

1 CONFIDENTIAL ATTORNEYS' EYES ONLY" material to invoke this
2 provision.

3 19. If a producing Party elects to produce documents and things for
4 inspection at its premises rather than producing documents through its counsel,
5 that Party need not label the documents and things in advance of that inspection.
6 For purposes of the inspection, all documents within the produced files will be
7 considered as having been preliminarily marked "HIGHLY CONFIDENTIAL
8 ATTORNEYS' EYES ONLY". During the inspection, the inspecting Party
9 shall select specific documents or groups of documents for copying by a
10 professional copy service at the inspecting Party's own expense. No copies
11 shall be made or retained during the inspection. After receiving the copies of
12 the selected documents from the copy service, the producing Party shall have
13 fourteen (14) calendar days to review and mark the copies as
14 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL ATTORNEYS' EYES
15 ONLY" material, as appropriate, and thereafter produce those copies to the
16 inspecting Party within the above-stated fourteen-day period. All documents
17 selected for production by the inspecting Party must be produced by the
18 producing Party within the fourteen-day review period, or must be otherwise
19 identified on an accompanying privilege log. Any document identified on the
20 privilege log may be withheld, and its inclusion in the documents for inspection
21 shall not be deemed a waiver of any privilege.

22 **Objections to Designations**

23 20. At any stage of these proceedings, any Party may object to a
24 designation of materials as "CONFIDENTIAL" or "HIGHLY
25 CONFIDENTIAL ATTORNEYS' EYES ONLY." The Party objecting to the
26 confidentiality designation shall notify, in writing, counsel for the designating
27 Party of the objected-to materials and the grounds for the objection. If the
28 dispute is not resolved by agreement between the Parties within ten (10)

1 calendar days of receipt of such notice, then the objecting Party may apply to
2 the Court for relief by motion. Any such Motion for Protective Order shall be
3 filed in strict compliance with Local Rules 37-1 and 37-2, including specifically
4 the requirement of filing a Joint Stipulation in accordance with Local Rule 37-2.
5 The materials at issue shall be treated as “CONFIDENTIAL” or “HIGHLY
6 CONFIDENTIAL ATTORNEYS’ EYES ONLY,” as designated by the
7 designating Party, until the Court has ruled on the motion or the matter has been
8 otherwise resolved.

9 21. If any Party disagrees at any stage of the proceedings with a
10 confidentiality designation, the Parties shall first attempt to resolve any such
11 dispute in good faith on an informal basis:

12 (a) The Party challenging the designation shall provide to the
13 producing Party written notice of the disagreement, specifically
14 identifying the Confidential Information in dispute and articulating the
15 challenging Party’s basis for its challenge of the confidentiality
16 designation.

17 (b) The Producing party shall respond in writing to the
18 challenging Party’s notice within seven (7) calendar days, articulating the
19 basis for the producing Party’s designation with sufficient particularity to
20 enable the challenging Party to move the Court for permission to disclose
21 the Confidential Information.

22 (c) If the dispute cannot be resolved between the Parties without
23 intervention from the Court, the Party challenging the confidentiality
24 designation may move the Court requesting appropriate relief. Any such
25 Motion for Protective Order shall be filed in strict compliance with Local
26 Rules 37-1 and 37-2, including specifically the requirement of filing a
27 Joint Stipulation in accordance with Local Rule 37-2. In any such
28 question brought before the Court, the Party asserting the confidentiality

1 designation shall bear the burden of proving by clear and convincing
2 evidence that the information should be maintained at the level designated
3 by the designating Party. The materials at issue shall be treated as
4 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’
5 EYES ONLY,” as designated by the producing Party, until the Court has
6 ruled on the motion or the matter has been otherwise resolved.

7 **Inadvertent Disclosure or Production**

8 22. If a Party, through inadvertence, produces any Confidential
9 Information without labeling or marking or otherwise designating it as such in
10 accordance with this Order, then the producing Party may give written notice to
11 the receiving Party that the document or thing produced is deemed
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES
13 ONLY,” and that the document or thing produced should be treated as such in
14 accordance with that designation under this Order. The receiving Party must
15 treat the materials or discovery materials accordingly, once the designating
16 Party so notifies the receiving Party. If the receiving Party has disclosed the
17 materials or discovery materials before receiving the designation, then the
18 receiving Party must notify the designating Party in writing of each such
19 disclosure. Counsel for the Parties shall agree on a mutually acceptable manner
20 of labeling or marking the inadvertently produced materials as
21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES
22 ONLY.”

23 23. Pursuant to Rule 502 of the Federal Rules of Evidence, the
24 inadvertent disclosure of privileged or work product protected material shall not
25 constitute a waiver of, nor prejudice to, any privilege or immunity with respect
26 to such information or document(s) or of any work product doctrine or other
27 immunity that may attach thereto, including without limitation the attorney-
28 client privilege, the joint defense privilege, and the work product doctrine.

1 Employing electronic keyword searching to identify and prevent disclosure of
2 privileged material constitutes “reasonable steps to prevent disclosure” under
3 Rule 502(b)(2) of the Federal Rules of Evidence. The entry of this Protective
4 Order by the Court constitutes a court order under Rule 502(d) of the Federal
5 Rules of Evidence.

6 24. If information is produced in discovery in this matter that is subject
7 to a claim of privilege or protection as trial-preparation material, then the Party
8 making the claim may notify any Party that received the information of the
9 claim and the basis for it within fourteen (14) calendar days of having
10 discovered that such information was produced. After being notified of the
11 claim, a Party receiving such information must promptly return or destroy the
12 specified information, any copies thereof, and any notes regarding those
13 materials. The receiving Party must confirm in writing that it has returned or
14 destroyed the specified information and any copies thereof. If the receiving
15 Party disclosed the information before being notified, then it must take
16 reasonable steps to retrieve it. The party returning such information may move
17 the Court for an order compelling production of such information, including on
18 the grounds that such production was not inadvertent or unintentional. However,
19 the inadvertent production of privileged or otherwise protected materials cannot
20 be a basis for seeking production. The producing Party must preserve the
21 information until the claim is resolved.

22 **Discovery from Non-Parties**

23 25. Non-party witnesses may invoke all of the provisions of this Order
24 which are available to the Parties. This provision does not abridge a non-party’s
25 right to seek to quash any subpoena served on it, or to seek to protect
26 information sought by a Party, either on the non-party’s own motion or on a
27 motion brought on its behalf by an objecting party. The Party seeking
28 production from a non-party witness who may possess Confidential Information

1 of the other Party shall have the duty to provide a copy of this Order to that
2 non-party witness prior to any production from that witness. The Party seeking
3 production shall also have the duty to inform that non-party witness of its rights
4 under this Order and its ability to designate any material it produces as
5 Confidential Information. In addition, the Parties shall treat the Confidential
6 Information of non-parties in accordance with the terms of this Order.

7 **Filing Documents with the Court**

8 26. Any pleading, brief, exhibit or other paper that is filed with the
9 Court or served on another party that contains, quotes, discusses or otherwise
10 reveals material designated “CONFIDENTIAL” or “HIGHLY
11 CONFIDENTIAL ATTORNEYS’ EYES ONLY” shall be marked on the front
12 cover with the appropriate legend set forth in Paragraph 8. All
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES
14 ONLY” materials that are filed with the Court for any purpose shall be filed
15 under seal. Any party seeking to file any “CONFIDENTIAL” or “HIGHLY
16 CONFIDENTIAL ATTORNEYS’ EYES ONLY” materials under seal shall
17 first seek permission from the Court in accordance with the Court’s Local
18 Rules, including L.R. 79-5, and the Court’s Initial Standing Order entered in this
19 action (Dkt. No. 12). With respect to the materials sought to be filed under seal,
20 the filing Party shall select only those documents, or portions thereof, that it
21 reasonably believes in good faith are necessary to be included in its papers to
22 support the filing, and shall (as required by the Court’s Initial Standing Order)
23 prepare a proposed redacted version of the materials that would be available for
24 public viewing.

25 27. If the filing Party has carefully complied with L.R. 79-5 and the
26 Court’s Initial Standing Order, but the Court nevertheless denies the filing
27 Party’s application to file certain materials under seal, and those certain
28 materials were designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL

1 ATTORNEYS' EYES ONLY" by the opposing Party, then it shall be the
2 opposing Party's burden and obligation to demonstrate why those materials
3 have been designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL
4 ATTORNEYS' EYES ONLY." Within five (5) calendar days of the Court's
5 decision, the opposing Party that designated the materials in question may file a
6 renewed application to seal the materials. If the opposing Party does not file a
7 renewed application within that time period or the Court denies the renewed
8 application, the filing Party shall be permitted to file those materials with the
9 Court without seeking further permission so that the materials are available to
10 the public upon filing. Notwithstanding the foregoing, if the Court denies the
11 original application to file certain materials under seal because the filing Party
12 has not complied with L.R. 79-5 and/or the Court's Initial Standing Order, then
13 it shall be the obligation of the filing Party to first comply with that Local Rule
14 and/or Order before imposing the obligations of this Paragraph on the opposing
15 Party.

16 **Disclosure Required by Law, Court Order, or Subpoena**

17 28. Nothing herein shall be construed to prevent disclosure of
18 Confidential Information if such disclosure is required by law or by order of the
19 Court. Nothing herein shall be construed as authorizing a party to disobey a
20 lawful subpoena issued in another action.

21 29. If any Party is subpoenaed in another action, served with a demand
22 in another action to which it is a Party, or served by any legal process by one not
23 a Party to the above-captioned action, seeking information that was designated
24 by an opposing Party as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL
25 ATTORNEYS' EYES ONLY," then the Party shall give written notice by hand
26 delivery or e-mail transmission within ten (10) calendar days of receipt of such
27 subpoena, demand, or legal process to the opposing Party who designated the

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1 information and shall object to its production to the extent permitted by law,
2 setting forth the existence and terms of this Protective Order.

3 30. Nothing herein shall be construed as requiring the Party or anyone
4 else covered by this Protective Order to challenge or appeal any court or
5 administrative order requiring production of information subject to this
6 Protective Order, or subject itself to any penalties for noncompliance with any
7 legal process or order, or to seek any relief from this Court.

8 **Retention of Materials**

9 31. All information that has been designated as “CONFIDENTIAL” or
10 “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” by the producing
11 or disclosing Party, and any and all reproductions thereof, shall be retained in
12 the custody of the counsel for the receiving Party identified in Paragraph 4,
13 except that (a) any court reporter who transcribes testimony given in this action
14 may maintain any such designated documents for the purpose of rendering his
15 or her normal transcribing services; and (b) independent experts or consultants
16 authorized to view such information under the terms of this Order may retain
17 custody of such copies as are necessary for their participation in this litigation
18 but only for so long as is necessary for their participation in the litigation.

19 32. All Confidential Information shall be held in confidence by those
20 inspecting or receiving it and shall be used only for purposes of this action.
21 Counsel for each Party, and each person receiving Confidential Information,
22 shall maintain such material in a secure, safe area and shall exercise the same
23 standard of care with respect to the storage, custody, use and dissemination of
24 such material as is exercised by the recipient with respect to his or her own
25 confidential and proprietary material. If Confidential Information is disclosed to
26 any person other than a person authorized by this Order, then the Party
27 responsible for the unauthorized disclosure must immediately bring all pertinent
28 facts relating to the unauthorized disclosure to the attention of the other Parties

1 and, without prejudice to any rights and remedies of the other Parties, make
2 every effort to prevent further disclosure by the Party and by the person(s)
3 receiving the unauthorized disclosure.

4 33. Nothing herein shall restrict a qualified recipient from making
5 working copies, abstracts, digests, and analyses of such information for use in
6 connection with this litigation, and such working copies, abstracts, digests, and
7 analyses shall be deemed to have the same level of protection under the terms of
8 this Order. Further, nothing herein shall restrict a qualified recipient from
9 converting or translating such information into machine-readable form for
10 incorporation in a data retrieval system used in connection with this litigation,
11 provided that access to such information, whatever form stored or reproduced,
12 shall be limited to qualified recipients.

13 **Obligations after Termination of Action**

14 34. This Protective Order, and all obligations and duties arising under
15 this Protective Order, shall remain in effect after the final termination of this
16 action, unless otherwise ordered by the Court. The Court retains jurisdiction
17 indefinitely over the parties, and any persons provided access to Confidential
18 Information under the terms of this Protective Order, with respect to any dispute
19 over the improper use of such Confidential Items and with respect to any orders
20 permitting materials to be filed and maintained under seal. Within sixty (60)
21 calendar days after the final termination of this action, including any and all
22 appeals, counsel for each Party shall, upon request of the producing Party, return
23 all Confidential Information to the Party that produced the information,
24 including any copies, excerpts, and summaries thereof, or shall destroy the same
25 at the option of the receiving Party and shall purge all such information from all
26 machine-readable media on which it resides. Notwithstanding the foregoing,
27 counsel for each Party may retain all pleadings, briefs, memoranda, motions,
28 and other documents filed with the Court that refer to or incorporate

1 Confidential Information, and counsel will continue to be bound by this Order
2 with respect to all such retained information. Further, attorney work product
3 materials that contain Confidential Information need not be destroyed; however,
4 if they are not destroyed, then the person in possession of the attorney work
5 product will continue to be bound by this Order with respect to all such retained
6 information.

7 **Patent Prosecution Bar**

8 35. [SCOPE AND CONTENT OF PATENT PROSECUTION BAR
9 TO BE PRESENTED FOR RESOLUTION BY THE COURT VIA LOCAL
10 RULE 37 JOINT STIPULATION, TO BE FILED PROMPTLY BY THE
11 PARTIES. PATENT PROSECUTION BAR TO BE INCORPORATED
12 HEREIN UPON RESOLUTION BY THE COURT. UNTIL PATENT
13 PROSECUTION BAR SCOPE AND CONTENT RESOLVED BY THE
14 COURT, THE PARTIES AGREE TO ABIDE BY IWALK'S PROPOSED
15 PATENT PROSECUTION BAR ATTACHED HERETO AS EXHIBIT B.]

16 36. [SCOPE AND CONTENT OF PATENT PROSECUTION BAR
17 TO BE PRESENTED FOR RESOLUTION BY THE COURT VIA LOCAL
18 RULE 37 JOINT STIPULATION, TO BE FILED PROMPTLY BY THE
19 PARTIES. PATENT PROSECUTION BAR TO BE INCORPORATED
20 HEREIN UPON RESOLUTION BY THE COURT. UNTIL PATENT
21 PROSECUTION BAR SCOPE AND CONTENT RESOLVED BY THE
22 COURT, THE PARTIES AGREE TO ABIDE BY IWALK'S PROPOSED
23 PATENT PROSECUTION BAR ATTACHED HERETO AS EXHIBIT B.]

24 **Modification of Protective Order**

25 37. This Order may be modified by agreement of the Parties, subject to
26 approval by the Court. No modifications by the Parties shall have the force or
27 effect of a Court order unless the Court approves the modification.

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1 38. The Court may modify the terms and conditions of this Order for
2 good cause, or in the interest of justice, or on its own order at any time. The
3 Parties prefer that the Court provide them with notice of the Court's intent to
4 modify the Order and the content of those modifications, prior to entry of such
5 an order.

6 **Miscellaneous Provisions**

7 39. The restrictions and obligations set forth herein shall not apply to
8 any information that: (a) the Parties agree should not be designated
9 Confidential Information; (b) the Parties agree, or the Court rules, is already
10 public knowledge; (c) the Parties agree, or the Court rules, has become public
11 knowledge other than as a result of disclosure by the receiving Party, its
12 employees, or its agents in violation of this Order; or (d) has come or shall come
13 into the receiving Party's knowledge legitimately and independently of the
14 production by the designating Party. Prior knowledge must be established by
15 pre-production documentation.

16 40. This Order shall be without prejudice to the right of any Party to
17 oppose production of any information for lack of relevance or any other ground
18 other than the mere presence of Confidential Information. The existence of this
19 Order shall not be used by any Party as a basis for discovery that is otherwise
20 improper under the Federal Rules of Civil Procedure.

21 41. During the course of this action, a party may be requested to
22 produce to another party material subject to contractual or other obligations of
23 confidentiality, express or implied, owed to a non-party by the party receiving
24 the request. The party subject to such contractual or other obligation of
25 confidentiality ("the disclosing party") shall timely contact the non-party to
26 determine whether such non-party is willing to permit disclosure of the
27 confidential document or information under the terms of this Protective Order
28 and shall inform the non-party of the contents of this Protective Order and

1 specifically of this Paragraph. When such written notice is given to the non-
2 party, the disclosing party will advise the potential receiving party that such
3 notice has been given. The non-party shall have fourteen (14) calendar days
4 from receipt of the written notice in which to object to the disclosure in writing,
5 if the non-party so desires. If the non-party consents to disclosure or if the
6 fourteen (14) calendar days elapse without the non-party objecting to the
7 disclosure, the requested information shall be produced in accordance with the
8 terms of this Protective Order. The parties may ask the Court to amend this
9 Paragraph to add provisions governing circumstances where the non-party does
10 not consent to the disclosure.

11 42. Transmission by e-mail is acceptable for all notification purposes
12 herein.

13 43. Nothing in this Protective Order shall be construed to prevent a
14 party or non-party from seeking such further provisions regarding
15 confidentiality as may be appropriate.

16 44. Nothing in this Protective Order shall be construed as a waiver by a
17 party of any objections that might be raised as to the admissibility at trial of any
18 evidentiary materials.

19 45. This Protective Order is not intended to govern any protections or
20 restrictions related to the production, receipt, or maintenance of source code.
21 The parties intend to negotiate a separate agreement regarding the process for
22 receiving and maintaining source code.

23 46. Nothing in this Order shall be construed as authorizing a party to
24 disobey a lawful subpoena issued in another action.

25 **IT IS SO ORDERED.**

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27 Dated: May 3, 2012



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MARC L. GOLDMAN, U.S. Magistrate Judge

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ÖSSUR HF, an Icelandic limited liability company, and ÖSSUR AMERICAS, INC., a California corporation, Plaintiffs, v. IWALK, INC., a Delaware corporation, Defendant.	}	Case No. SACV11-01759 JST(MLGx) AGREEMENT TO BE BOUND BY PROTECTIVE ORDER Hon. Josephine Staton Tucker Hon. Marc L. Goldman DISCOVERY MATTER
AND RELATED COUNTERCLAIMS	}	

In consideration of the disclosure to me or production by me of certain information that is designated or, upon production, may be designated as subject to a Protective Order of the Court, I, _____, declare and agree as follows:

1. I am employed as _____ by _____, which has the following address: _____.

2. I have read the Protective Order entered in the above-captioned case, and I have received a copy of the Protective Order.

3. I agree to be bound by the terms of the Protective Order.

4. I agree that I will use any and all "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY" information, as defined in the Protective Order, given to me only in a manner authorized by the Protective Order and only to assist counsel in the litigation of this matter.

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1 5. I agree that I will not disclose or discuss such “CONFIDENTIAL”
2 or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” information
3 with anyone other than the persons designated in Paragraphs 4, 12, and 13 of the
4 Protective Order.

5 6. I agree to submit to the jurisdiction of the United States District
6 Court for the Central District of California for the purpose of enforcement of the
7 Protective Order.

8 7. I understand that if I violate the terms of the Protective Order, then
9 I may be subject to a contempt of court proceeding.

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Dated: _____ Signed: _____

1 **EXHIBIT B**

2 **IWALK'S PROPOSED PATENT PROSECUTION BAR**

3 35. Absent written consent from the producing Party, any individual
4 who receives access to “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES
5 ONLY” information (hereinafter “Barred Individual”) shall not be involved in
6 the prosecution of patents or patent applications relating to systems or methods
7 for controlling lower-extremity prosthetic or orthotic foot and/or ankle devices
8 (including, but not limited to, the patents asserted in this action and any patent
9 or patent application claiming priority to or otherwise related to the patents
10 asserted in this action) (hereinafter “Barred Subject Matter”) on behalf of any
11 patent applicant or patentee (including, but not limited, any Party to this action),
12 before any foreign or domestic agency, including the United States Patent and
13 Trademark Office. For purposes of this Paragraph, “prosecution” includes
14 directly or indirectly drafting, amending, advising, or otherwise affecting the
15 preparation or presentation of unallowed and/or unissued patent claims for or to
16 any foreign or domestic agency. Prosecution includes, for example, original
17 prosecution, reissue proceedings, and reexamination proceedings. To avoid any
18 doubt, “prosecution” as used in this Paragraph does not include advising or
19 representing a party in litigation or in pre-litigation, including conducting
20 analyses and rendering advice regarding the scope, assertion, or maintenance of
21 allowed and/or issued patent claims vis-à-vis a system or method for controlling
22 lower-extremity prosthetic or orthotic foot and/or ankle devices. Further, to
23 avoid any doubt, “prosecution” as used in this Paragraph does not include
24 representing a party challenging a patent or patent application before a domestic
25 or foreign agency (including, but not limited to, a reissue, protest, *ex parte*
26 reexamination or *inter partes* reexamination). This Prosecution Bar shall begin
27 when access to “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY”
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1 information is first received by the affected individual and shall end two (2)
2 years after final termination of this action.

3 36. The preceding Paragraph shall not restrict consultation regarding
4 strictly procedural or legal aspects of patent prosecution involving the Barred
5 Subject Matter (including, but not limited to, reissue, reexamination, *inter*
6 *partes* review, or post-grant review proceedings) that do not involve the merits,
7 substance, or technical nature of the patent prosecution. With respect to issued
8 patents related to the Barred Subject Matter that are not the subject of a reissue,
9 protest, *ex parte* reexamination, or *inter partes* reexamination, the preceding
10 Paragraph shall not restrict consultation regarding the prior art to those issued
11 patents provided however that such consultation shall not include any Barred
12 Individuals. Further, the preceding Paragraph shall not restrict the Barred
13 Individuals from providing to non-Barred Individuals invalidity contentions,
14 prior art, claim construction arguments or positions that have been exchanged in
15 litigation, and information or materials that do not contain Confidential
16 Information (including in connection with patent prosecution, including, but not
17 limited to, a reissue, protest, *ex parte* reexamination, or *inter partes*
18 reexamination).

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