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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SEMICONDUCTOR ENERGY  
LABORATORY CO., LTD.,

Plaintiff,

vs.

TCL CHINA STAR  
OPTOELECTRONICS  
TECHNOLOGY CO., LTD.; TCL  
TECHNOLOGY GROUP  
CORPORATION; TTE  
TECHNOLOGY, INC.; TCL  
COMMUNICATION TECHNOLOGY  
HOLDINGS LIMITED; TCT MOBILE,  
INC.; AND TCT MOBILE (US) INC.

Defendants.

Case No. 8:21-cv-00554-JAK-ADS

**(MODIFIED) PROTECTIVE  
ORDER FOR PATENT CASES  
ASSIGNED TO JUDGE JOHN A.  
KRONSTADT**

[Discovery Document: Referred to  
Magistrate Judge Autumn D. Spaeth]

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**1. PURPOSE AND LIMITS OF THIS ORDER**

Discovery in this action is likely to involve confidential, proprietary or private information requiring special protection from public disclosure and from use for any purpose other than this litigation. Thus, the Court enters this Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it gives from public disclosure and use extends only to the specific material entitled to confidential treatment under the applicable legal principles. This Order does not automatically authorize the filing under seal of material designated under this Order. Instead, the parties must comply with Local Rule 79-5.1 and this Order if they seek to file anything under seal. This Order does not govern the use at trial of material designated under this Order.

**2. DESIGNATING PROTECTED MATERIAL**

2.1. **Over-Designation Prohibited.** Any party or non-party who designates information or items for protection under this Order as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” (a “designator”) must only designate specific material that qualifies under the appropriate standards. To the extent practicable, only those parts of documents, items or oral or written communications that require protection shall be designated. Designations with a higher confidentiality level when a lower level would suffice are prohibited. Mass, indiscriminate, or routinized designations are prohibited. Unjustified designations expose the designator to sanctions, including the Court’s striking all confidentiality designations made by that designator. Designation under this Order is allowed only if the designation is necessary to protect material that, if disclosed to persons not authorized to view it, would cause competitive or other recognized harm. Material may not be designated if it has been made public, or if designation is otherwise unnecessary to protect a secrecy interest. If a designator learns that information or

1 items that it designated for protection do not qualify for protection at all or do not  
2 qualify for the level of protection initially asserted, that designator must promptly  
3 notify all parties that it is withdrawing the mistaken designation.

4           2.2.           **Manner and Timing of Designations.** Designation under this  
5 Order requires the designator to affix the applicable legend (“CONFIDENTIAL,”  
6 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY  
7 CONFIDENTIAL – SOURCE CODE”) to each page that contains protected  
8 material. For testimony given in deposition or other proceeding, the designator shall  
9 specify all protected testimony and the level of protection being asserted. It may  
10 make that designation during the deposition or proceeding, or may invoke, on the  
11 record or by written notice to all parties on or before the next business day, a right  
12 to have up to 21 days from the deposition or proceeding to make its designation.

13           2.2.1.           A party or non-party that makes original documents or materials  
14 available for inspection need not designate them for protection until after the  
15 inspecting party has identified which material it would like copied and produced.  
16 During the inspection and before the designation, all material shall be treated as  
17 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY. After the inspecting  
18 party has identified the documents it wants copied and produced, the producing  
19 party must designate the documents, or portions thereof, that qualify for protection  
20 under this Order.

21           2.2.2.           Parties shall give advance notice if they expect a deposition or  
22 other proceeding to include designated material so that the other parties can ensure  
23 that only authorized individuals are present at those proceedings when such  
24 material is disclosed or used. The use of a document as an exhibit at a deposition  
25 shall not in any way affect its designation. Transcripts containing designated  
26 material shall have a legend on the title page noting the presence of designated  
27 material, and the title page shall be followed by a list of all pages (including line  
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1 numbers as appropriate) that have been designated, and the level of protection being  
2 asserted. The designator shall inform the court reporter of these requirements. Any  
3 transcript that is prepared before the expiration of the 21-day period for designation  
4 shall be treated during that period as if it had been designated HIGHLY  
5 CONFIDENTIAL – ATTORNEY EYES ONLY unless otherwise agreed. After the  
6 expiration of the 21-day period, the transcript shall be treated only as actually  
7 designated.

8           2.3.           **Inadvertent Failures to Designate.** An inadvertent failure to  
9 designate does not, standing alone, waive protection under this Order. Upon timely  
10 assertion or correction of a designation, all recipients must make reasonable efforts  
11 to ensure that the material is treated according to this Order.

12           **3.           CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13           All challenges to confidentiality designations shall proceed under Local Rule  
14 37-1 through Local Rule 37-4.

15           **4.           ACCESS TO DESIGNATED MATERIAL**

16           4.1.           **Basic Principles.** A receiving party may use designated material  
17 only for this litigation. Designated material may be disclosed only to the categories  
18 of persons and under the conditions described in this Order.

19           4.2.           **Disclosure of CONFIDENTIAL Material Without Further**  
20 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the  
21 designator, a receiving party may disclose any material designated  
22 CONFIDENTIAL only to:

23           4.2.1.           The receiving party's outside counsel of record in this action  
24 and employees of outside counsel of record to whom disclosure is reasonably  
25 necessary;

1           4.2.2.       The officers, directors, and employees of the receiving party to  
2 whom disclosure is reasonably necessary, and who have signed the Agreement to  
3 Be Bound (Exhibit E-1);

4           4.2.3.       Experts and their staff retained by the receiving party's outside  
5 counsel of record to whom disclosure is reasonably necessary, provided the experts  
6 have signed the Agreement to Be Bound (Exhibit E-1);

7           4.2.4.       The Court and its personnel, and any mediator(s) selected by the  
8 parties;

9           4.2.5.       Outside court reporters and their staff, professional jury or trial  
10 consultants, and professional vendors to whom disclosure is reasonably necessary,  
11 and who have signed the Agreement to Be Bound (Exhibit E-1);

12          4.2.6.       During their depositions, witnesses in the action to whom  
13 disclosure is reasonably necessary and who have signed the Agreement to Be  
14 Bound (Exhibit E-1); and

15          4.2.7.       The author or recipient of a document containing the material, or  
16 a custodian or other person who otherwise possessed or knew the information.

17          4.2.8.       To the extent reasonably necessary to conduct mock trials or  
18 focus group exercises, material designated CONFIDENTIAL may be shown to  
19 mock trial or focus group participants provided: (a) the participants are required to  
20 sign a confidentiality agreement to participate in the study; (b) the  
21 CONFIDENTIAL material is only displayed in presentation materials by counsel  
22 and not provided in any material given to the participants as a handout; (c) the  
23 participants are not permitted to retain any materials from the exercise, other than a  
24 copy of their confidentiality agreement and documents related to payment for their  
25 participation in the exercise.

26           4.3.           **Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY**  
27 **EYES ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material**

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1 **Without Further Approval.** Unless permitted in writing by the designator, a  
2 receiving party may disclose material designated HIGHLY CONFIDENTIAL –  
3 ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE  
4 without further approval only to:

5 4.3.1. The receiving party's outside counsel of record in this action  
6 and employees of outside counsel of record to whom it is reasonably necessary to  
7 disclose the information;

8 4.3.2. The Court and its personnel, and any mediator(s) selected by the  
9 parties;

10 4.3.3. Outside court reporters and their staff, professional jury or trial  
11 consultants, and professional vendors to whom disclosure is reasonably necessary,  
12 and who have signed the Agreement to Be Bound (Exhibit E-1); and

13 4.3.4. The author or recipient of a document containing the material, or  
14 a custodian or other person who otherwise possessed or knew the information.

15 4.3.5. To the extent reasonably necessary to conduct mock trials or  
16 focus group exercises, material designated HIGHLY CONFIDENTIAL –  
17 ATTORNEY EYES ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE  
18 may be shown to mock trial or focus group participants provided: (a) the  
19 participants are required to sign a confidentiality agreement to participate in the  
20 study; (b) the HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY and  
21 HIGHLY CONFIDENTIAL – SOURCE CODE material is only displayed in  
22 presentation materials by counsel and not provided in any material given to the  
23 participants as a handout; (c) the participants are not permitted to retain any  
24 materials from the exercise, other than a copy of their confidentiality agreement and  
25 documents related to payment for their participation in the exercise.

26 4.4. **Procedures for Approving or Objecting to Disclosure of**  
27 **HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY**  
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1 **CONFIDENTIAL – SOURCE CODE Material to Experts.** Unless agreed to in  
2 writing by the designator:

3 4.4.1. A party seeking to disclose to an expert retained by outside  
4 counsel of record any information or item that has been designated HIGHLY  
5 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –  
6 SOURCE CODE must first make a written request to the designator that (1) sets  
7 forth the full name of the expert and the city and state of his or her primary  
8 residence, (2) attaches a copy of the expert’s current resume, (3) identifies the  
9 expert’s current employer(s), (4) identifies each person or entity from whom the  
10 expert has received compensation or funding for work in his or her areas of  
11 expertise (including in connection with litigation) in the past five years, and (5)  
12 identifies (by name and number of the case, filing date, and location of court) any  
13 litigation where the expert has offered expert testimony, including by declaration,  
14 report or testimony at deposition or trial, in the past five years. If the expert believes  
15 any of this information at (3) - (5) is subject to a confidentiality obligation to a third  
16 party, then the expert should provide whatever information the expert believes can  
17 be disclosed without violating any confidentiality agreements, and the party seeking  
18 to disclose the information to the expert shall be available to meet and confer with  
19 the designator regarding any such confidentiality obligations.

20 4.4.2. A party that makes a request and provides the information  
21 specified in paragraphs 4.4.1 may disclose the designated material to the identified  
22 expert unless, within seven days of delivering the request, the party receives a  
23 written objection from the designator providing detailed grounds for the objection.

24 4.4.3. All challenges to objections from the designator shall proceed  
25 under Local Rule 37-1 through Local Rule 37-4.

26 4.4.4. Experts disclosed under paragraphs 4.4.1-4.4.2 may have staff  
27 assist them in this matter that may receive any information or item that has been  
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1 designated CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEY EYES  
2 ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE. The staff need not be  
3 identified to the designator, but must comply with and be bound by all the terms of  
4 this Protective Order.

5 **5. SOURCE CODE**

6 5.1. **Designation of Source Code.** If production of source code is  
7 necessary, a party may designate it as HIGHLY CONFIDENTIAL – SOURCE  
8 CODE if it is, or includes, confidential, proprietary, or trade secret source code.

9 5.2. **Location and Supervision of Inspection.** Any HIGHLY  
10 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made  
11 available for inspection, in a format allowing it to be reasonably reviewed and  
12 searched, during normal business hours or at other mutually agreeable times, at an  
13 office of the designating party’s counsel in California or another mutually agreeable  
14 location. The parties agree that source code will be hosted in the United States.  
15 The source code shall be made available for inspection on a secured computer in a  
16 secured room, and the inspecting party shall not copy, remove or otherwise transfer  
17 any portion of the source code onto any recordable media or recordable device. An  
18 extra monitor, keyboard, and a mouse will be provided by the designator. At the  
19 inspecting party’s request, the designator will accommodate reasonable requests to  
20 install additional review programs on the secure computer to facilitate review of the  
21 source code, but such programs may not be used to copy, remove, or otherwise  
22 transfer any portion of the source code onto any recordable media or recordable  
23 device. The inspecting party will be responsible for obtaining the any software  
24 licenses required for installing the additional software. The designator may visually  
25 monitor the activities of the inspecting party’s representatives during any source  
26 code review, but only to ensure that there is no unauthorized recording, copying or  
27 transmission of the source code. The designator shall not monitor in a manner that  
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1 reveals the inspecting party’s inspection process and work product, including  
2 conversations between representatives of the inspecting party and the inspecting  
3 party’s decisions regarding which files to inspect, how long they were inspected, or  
4 which files were viewed when notes were taken. Upon request by the inspecting  
5 party reasonably in advance of a deposition, the designator will make the source  
6 code available on a secured computer for use at the deposition.

7           **5.3. Paper Copies of Source Code Excerpts.** The inspecting party  
8 may request paper copies of limited portions of source code that are reasonably  
9 necessary for the preparation of court filings, pleadings, expert reports, other papers  
10 or for deposition or trial. The designator shall provide three (3) copies of all such  
11 source code in paper form promptly after the request is made, including Bates  
12 numbers and the label “HIGHLY CONFIDENTIAL – SOURCE CODE.”

13           **5.4. Access Record.** The inspecting party shall maintain a record of  
14 any individual who has inspected any portion of the source code in electronic or  
15 paper form, and shall maintain all paper copies of any printed portions of the source  
16 code in a secured, locked area. The inspecting party shall not convert any of the  
17 information contained in the paper copies into any electronic format other than for  
18 the preparation of a pleading, exhibit, expert report, discovery document, deposition  
19 transcript, or other Court document. Any paper copies used during a deposition  
20 shall be retrieved at the end of each day and must not be left with a court reporter or  
21 any other unauthorized individual.

22           **6. PROTECTED MATERIAL SUBPOENAED OR**  
23 **ORDERED PRODUCED IN OTHER LITIGATION**

24           **6.1. Subpoenas and Court Orders.** This Order in no way excuses  
25 noncompliance with a lawful subpoena or court order. The purpose of the duties  
26 described in this section is to alert the interested parties to the existence of this  
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1 Order and to give the designator an opportunity to protect its confidentiality  
2 interests in the court where the subpoena or order issued.

3           6.2.           **Notification Requirement.** If a party is served with a subpoena  
4 or a court order issued in other litigation that compels disclosure of any information  
5 or items received by that party in this action and designated in this action as  
6 CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY, or  
7 HIGHLY CONFIDENTIAL – SOURCE CODE, that party must do the following.

8           6.2.1.           Promptly notify the designator in writing. Such notification shall  
9 include a copy of the subpoena or court order.

10           6.2.2.           Promptly notify in writing the party who caused the subpoena or  
11 order to issue in the other litigation that some or all of the material covered by the  
12 subpoena or order is subject to this Order. Such notification shall include a copy of  
13 this Order.

14           6.2.3.           Cooperate with all reasonable procedures sought by the  
15 designator whose material may be affected.

16           6.3.           **Wait For Resolution of Protective Order.** If the designator  
17 promptly seeks a protective order, the party served with the subpoena or court order  
18 shall not produce any information designated in this action as CONFIDENTIAL,  
19 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY  
20 CONFIDENTIAL – SOURCE CODE before a determination by the court where  
21 the subpoena or order issued, unless the party has obtained the designator’s  
22 permission. The designator shall bear the burden and expense of seeking protection  
23 of its confidential material in that court.

24           7.           **UNAUTHORIZED DISCLOSURE OF DESIGNATED**  
25 **MATERIAL**

26           If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
27 designated material to any person or in any circumstance not authorized under this  
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1 Order, it must immediately (1) notify in writing the designator of the unauthorized  
2 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the  
3 designated material, (3) inform the person or persons to whom unauthorized  
4 disclosures were made of all the terms of this Order, and (4) use reasonable efforts  
5 to have such person or persons execute the Agreement to Be Bound (Exhibit E-1).

6 **8. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
7 **OTHERWISE PROTECTED MATERIAL**

8 When a producing party gives notice that certain inadvertently produced  
9 material is subject to a claim of privilege or other protection, the obligations of the  
10 receiving parties are those set forth in Fed. R. Civ. P. 26(b)(5)(B). This provision is  
11 not intended to modify whatever procedure may be established in an e-discovery  
12 order that provides for production without prior privilege review pursuant to Fed.  
13 R. Evid. 502(d) and (e).

14 **9. FILING UNDER SEAL**

15 Without written permission from the designator or a Court order, a party may  
16 not file in the public record in this action any designated material. A party seeking  
17 to file under seal any designated material must comply with Local Rule 79-5.  
18 Filings may be made under seal only pursuant to a court order authorizing the  
19 sealing of the specific material at issue. The fact that a document has been  
20 designated under this Order is insufficient to justify filing under seal. Instead,  
21 parties must explain the basis for confidentiality of each document sought to be  
22 filed under seal. Because a party other than the designator will often be seeking to  
23 file designated material, cooperation between the parties in preparing, and in  
24 reducing the number and extent of, requests for under seal filing is essential.  
25 Accordingly, counsel are ordered to meet and confer in person or by telephone at  
26 least three (3) calendar days prior to the filing of an application wherein the basis  
27 for the sealing is that it has been deemed confidential by the other party. Not later  
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1 than two (2) calendar days after the meet and confer process, the opposing party  
2 shall confirm whether such information shall be designated as confidential or  
3 whether it can be made available to the public. Such an application shall contain the  
4 dates and method by which the parties met and conferred otherwise it will be  
5 denied without prejudice to an amended application being filed after counsel have  
6 completed this process. If a *receiving party's* request to file designated material  
7 under seal pursuant to Local Rule 79-5.1 is denied by the Court, then the receiving  
8 party *may file the material in the public record* unless (1) *the designator* seeks  
9 reconsideration within four (4) days of the denial, or (2) as otherwise instructed by  
10 the Court. See Dkt. No. 10, sec. 11.

11 **10. FINAL DISPOSITION**

12 Within 60 days after the final disposition of this action, each party and  
13 recipients of designated material shall return all designated material to the  
14 designator or destroy such material, including all copies, abstracts, compilations,  
15 summaries and any other format reproducing or capturing any designated material.  
16 The receiving party must submit a written certification to the designator by the 60-  
17 day deadline that (1) identifies (by category, where appropriate) all the designated  
18 material that was returned or destroyed, and (2) affirms that the receiving party has  
19 not retained any copies, abstracts, compilations, summaries or any other format  
20 reproducing or capturing any of the designated material. This provision shall not  
21 prevent counsel from retaining an archival copy of all pleadings, motion papers,  
22 trial, deposition and hearing transcripts, legal memoranda, correspondence,  
23 deposition and trial exhibits, expert reports, attorney work product, and consultant  
24 and expert work product, even if such materials contain designated material. Any  
25 such archival copies remain subject to this Order.

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IT IS SO ORDERED.

DATED: November 18, 2021

/s/ Autumn D. Spaeth  
HONORABLE AUTUMN D. SPAETH  
United States Magistrate Judge

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**EXHIBIT E-1**

**AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury  
that I have read in its entirety and understand the Protective Order that was issued  
by the United States District Court for the Central District of California on \_\_\_\_\_  
[date] in the case of SEMICONDUCTOR ENERGY LABORATORY CO., LTD.  
v. TCL CHINA STAR OPTOELECTRONICS TECHNOLOGY CO., LTD., ET  
AL. Case No. 8:21-cv-00554-JAK-ADS. I agree to comply with and to be bound  
by all the terms of this Protective Order, and I understand and acknowledge that  
failure to so comply could expose me to sanctions and punishment for contempt. I  
solemnly promise that I will not disclose in any manner any information or item  
that is subject to this Protective Order to any person or entity except in strict  
compliance with this Order.

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

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

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_ [printed name]

Signature: \_\_\_\_\_ [signature]