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8 Attorneys for Defendant,  
 9 **ILLINOIS TOOL WORKS INC.**

10 **UNITED STATES DISTRICT COURT**  
 11 **EASTERN DISTRICT OF CALIFORNIA**

12 CALIFORNIA NATURAL PRODUCTS  
 (d/b/a POWER AUTOMATION SYSTEMS),  
 13 a California Corporation,

14 Plaintiff,

15 vs.

16 ILLINOIS TOOL WORKS INC.  
 (d/b/a HARTNESS INTERNATIONAL, INC.),  
 17 a Delaware Corporation,

18 Defendant.

CASE NO. 2:12-CV-00593-JAM-GGH  
**AGREED PROTECTIVE ORDER**

19 WHEREAS, discovery in this matter may involve the disclosure of trade secrets or other  
 20 confidential proprietary, technical, business or financial information;

21 WHEREAS, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the parties  
 22 hereby stipulate to the entry of this Order limiting the disclosure of certain information produced  
 23 or otherwise discovered and agree to be bound by the restrictions of this Order limiting the use of  
 24 such information as provided;

25 IT IS HEREBY STIPULATED, AGREED AND ORDERED that the following protective  
 26 provisions shall govern any discovery conducted by the parties in this action:

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1           1.       In responding to discovery requests from a party in this action (the “Requesting  
2 Entity”), any party or non-party responding to the discovery requests (the “Responding Entity”)  
3 may designate documents, information or material pursuant to the terms of this Protective Order  
4 that the Responding Entity believes contains proprietary information, trade secrets, confidential  
5 research, confidential financial information, or commercial or sensitive information. This  
6 includes, but is not limited to proprietary financial information, technical or marketing  
7 information or other business information, the disclosure of which would tend to cause substantial  
8 harm to the Responding Entity’s legitimate business interests, competitive interests, privacy  
9 interests, or privacy interests of the Responding Entity’s employees or customers.

10           2.       Prior to physical production of copies of documents, the Responding Entity shall  
11 conspicuously mark the copies of documents that contain confidential information with the  
12 appropriate designation as described herein: CONFIDENTIAL, HIGHLY CONFIDENTIAL,  
13 ATTORNEYS EYES ONLY, or OUTSIDE COUNSEL ONLY. Material so designated may be  
14 used by persons other than the Responding Entity only for the purpose of preparing for and  
15 conducting the case California Natural Products v. Illinois Tool Works Inc., No. 2:12-CV-00593-  
16 JAM-GGH (E.D. CA) (“the Litigation”) and for no other purpose.

17           3.       Without comment on the relevance or discoverability of such documents, the  
18 categories for designations include the below itemized categories, but no others without further  
19 order of the Court or written agreement of the parties. The parties agree to meet and confer  
20 should additional categories for various designations be sought by a party, but without written  
21 agreement or further order of the Court, no additional categories of documents can be designated  
22 more than CONFIDENTIAL. The designating party bears the burden of establishing the  
23 necessity of any designation to the Court.

24           4.       The designation of any document or information pursuant to this Protective Order  
25 shall constitute the verification of counsel for the Responding Entity that the documents have  
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1 been reviewed for compliance with the criteria of this Protective Order and that any designation  
2 is, in the good faith judgment of counsel, consistent with the terms of this Order.

3 **OUTSIDE COUNSEL ONLY DESIGNATION**

4 5. Except by written agreement of the parties or as the Court may otherwise expressly  
5 direct, and subject to the further conditions imposed by this Order, material that is designated as  
6 “OUTSIDE COUNSEL ONLY” under this Protective Order may constitute only the following  
7 categories of information, and be disclosed only to the following categories of persons.

8 6. To the extent possible, all material designated OUTSIDE COUNSEL ONLY shall  
9 prepare a redacted version of the document, such that redacted version can be designated  
10 ATTORNEYS EYES ONLY and shown to the categories of persons eligible to review documents  
11 designated as ATTORNEYS EYES ONLY.

12 7. Agreed categories of material eligible for OUTSIDE COUNSEL ONLY  
13 designation:

- 14 A. Confidential technical information developed since January 1, 2011.
- 15 B. Profit margins;
- 16 C. Current bids being pursued;
- 17 D. Financial terms of bids;
- 18 E. Sales and revenue information on a per-project or per-site basis;
- 19 F. Strategic business and marketing plans that disclose information of use  
20 currently;
- 21 G. Confidential software programming code, source code and software  
22 specifications.

23 8. Agreed categories of persons eligible to review materials designated as OUTSIDE  
24 COUNSEL ONLY:

1           A.     Outside Counsel. Outside trial counsel for the parties to this action and  
2 paralegal assistants, office clerks, secretaries and other such personnel working under such  
3 counsel’s supervision;

4           B.     Experts. Expert witnesses consulted, employed or designated by a party  
5 (including any interpreters or translators), as well as associates, assistants, and other  
6 personnel employed directly by such experts;

7           C.     Court. The Court, court personnel and court reporters;

8           D.     Pre-existing Holders. Persons who authored, were an addressee, had  
9 access to or were copied on the confidential information;

10          E.     By Stipulation or Order. Such other persons as may be agreed by written  
11 stipulation of the Responding Entity and the party seeking to make the disclosure, or by  
12 further order of the Court.

13 **ATTORNEYS EYES ONLY DESIGNATION**

14          9.     The use of certain extremely sensitive information may be further restricted by the  
15 designation of such information as “ATTORNEYS EYES ONLY.” Except by written agreement  
16 of the parties or as the Court may otherwise expressly direct, and subject to the further conditions  
17 imposed by this Order, material that is designated as ATTORNEYS EYES ONLY under this  
18 Protective Order may constitute only the following categories of information, and be disclosed  
19 only to the following categories of persons.

20          10.    Agreed categories of material eligible for ATTORNEYS EYES ONLY  
21 designation:

22           A.     Confidential technical information developed since January 1, 2011.

23           B.     Profit margins;

24           C.     Current bids being pursued;

25           D.     Financial terms of bids;

1 E. Strategic business and marketing plans that disclose information of use  
2 currently;

3 F. Confidential software programming code, source code and software  
4 specifications.

5 G. Confidential financial information;

6 H. Sales and revenue information

7 11. Agreed categories of persons eligible to review materials designated as  
8 ATTORNEYS EYES ONLY:

9 A. Outside Counsel. Outside trial counsel for the parties to this action and  
10 paralegal assistants, office clerks, secretaries and other such personnel working under such  
11 counsel's supervision;

12 B. Experts. Expert witnesses consulted, employed or designated by a party  
13 (including any interpreters or translators), as well as associates, assistants, and other  
14 personnel employed directly by such experts;

15 C. Court. The Court, court personnel and court reporters;

16 D. Pre-existing Holders. Persons who authored, were an addressee, had  
17 access to or were copied on the confidential information;

18 E. By Stipulation or Order. Such other persons as may be agreed by written  
19 stipulation of the Responding Entity and the party seeking to make the disclosure, or by  
20 further order of the Court.

21 F. In-house Counsel. In-house counsel with responsibility for this action and  
22 paralegal assistants, office clerks, secretaries and other personnel working under their  
23 supervision;

1 **HIGHLY CONFIDENTIAL DESIGNATION**

2 12. The HIGHLY CONFIDENTIAL designation includes only those documents for  
3 which dissemination to non-control people would raise a risk of significant competitive harm and  
4 the restriction for CONFIDENTIAL documents are inadequate to prevent such risk.

5 13. Except by written agreement of the parties or as the Court may otherwise expressly  
6 direct, and subject to the further conditions imposed by this Order, material that is designated as  
7 HIGHLY CONFIDENTIAL under this Protective Order may constitute only the following  
8 categories of information, and be disclosed only to the following categories of persons:

9 14. Agreed categories of material eligible for HIGHLY CONFIDENTIAL  
10 designation:

- 11 A. Confidential technical information developed since January 1, 2011.
- 12 B. Profit margins;
- 13 C. Current bids being pursued;
- 14 D. Financial terms of bids;
- 15 E. Strategic business and marketing plans that disclose information of use  
16 currently;
- 17 F. Confidential software programming code, source code and software  
18 specifications.
- 19 G. Confidential financial information;
- 20 H. Sales and revenue information;
- 21 I. Technical information about the parties' products not generally known in  
22 the industry, and not previously shared between the parties.

23 15. Agreed categories of persons eligible to review materials designated as HIGHLY  
24 CONFIDENTIAL:

1           A.     Outside Counsel. Outside trial counsel for the parties to this action and  
2 paralegal assistants, office clerks, secretaries and other such personnel working under such  
3 counsel's supervision;

4           B.     Experts. Expert witnesses consulted, employed or designated by a party  
5 (including any interpreters or translators), as well as associates, assistants, and other  
6 personnel employed directly by such experts;

7           C.     Court. The Court, court personnel and court reporters;

8           D.     Pre-existing Holders. Persons who authored, were an addressee, had  
9 access to or were copied on the confidential information;

10          E.     By Stipulation or Order. Such other persons as may be agreed by written  
11 stipulation of the Responding Entity and the party seeking to make the disclosure, or by  
12 further order of the Court.

13          F.     In-house Counsel. In-house counsel with responsibility for this action and  
14 paralegal assistants, office clerks, secretaries and other personnel working under their  
15 supervision;

16          G.     Key Persons. Up to two (2) client representatives of the parties to this  
17 Order including the parties' employees as well as employees of affiliates of the party  
18 receiving Highly Confidential Information, but only to the extent counsel determines in  
19 good faith that the employee's assistance is reasonably necessary to the conduct of the  
20 litigation in which the information is disclosed. For the avoidance of doubt, the parties  
21 agree that Rodney Tipton, Bern McPheely and Doug Stambaugh would be acceptable  
22 designees. Before any client representative other than the people listed above receive any  
23 Highly Confidential Information, they will be designated and the other party shall have  
24 two (2) business days in which to object to that individual's selection. The parties will  
25 work in good faith to resolve any dispute regarding the party representative and consent to  
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1 another party's designation of additional client representatives shall not be unreasonably  
2 withheld.

3 **CONFIDENTIAL DESIGNATION**

4 16. The CONFIDENTIAL designation includes any proprietary information, trade  
5 secrets, confidential research, confidential financial information, or commercial or sensitive  
6 information. This includes, but is not limited to proprietary financial information, technical or  
7 marketing information or other business information, the disclosure of which would tend to cause  
8 substantial harm to the Responding Entity's legitimate business interests, competitive interests,  
9 privacy interests, or privacy interests of the Responding Entity's employees or customers.

10 17. Except as the Court may otherwise expressly direct and subject to the further  
11 conditions imposed by this Order, material that is designated as CONFIDENTIAL under this  
12 Protective Order may be disclosed only to the following categories of persons:

13 A. Outside Counsel. Outside trial counsel for the parties to this action and  
14 paralegal assistants, office clerks, secretaries and other such personnel working under such  
15 counsel's supervision;

16 B. Experts. Expert witnesses consulted, employed or designated by a party  
17 (including any interpreters or translators), as well as associates, assistants, and other  
18 personnel employed directly by such experts who have read and agree in writing to be  
19 bound by the terms of this Order by executing the "Agreement of Confidentiality" set  
20 forth in ¶ 12 herein;

21 C. Court. The Court, court personnel and court reporters;

22 D. Pre-existing Holders. Persons who authored, were an addressee, had  
23 access to or were copied on the confidential information;

24 E. By Stipulation or Order. Such other persons as may be agreed by written  
25 stipulation of the Responding Entity and the party seeking to make the disclosure, or by  
26 further order of the Court.



1 F. In-house Counsel. In-house counsel with responsibility for this action and  
2 paralegal assistants, office clerks, secretaries and other personnel working under their  
3 supervision;

4 G. Employees. Employees and former employees of the parties and affiliates  
5 of the parties, but only to the extent that counsel determines in good faith that the  
6 employee or former employee's assistance is reasonably necessary to the conduct of the  
7 litigation in which the information is disclosed.

8 **DEPOSITION TESTIMONY**

9 18. In providing deposition testimony in response to a deposition notice or subpoena  
10 from a party in this action (the "Requesting Entity"), or providing written responses to  
11 interrogatories or requests for admission or written deposition questions from a Requesting  
12 Entity, any party or non-party (the "Responding Entity") may designate such testimony or written  
13 responses as allowed by this Protective Order. With respect to deposition testimony, the  
14 Responding Entity shall have up to 21 days after receipt of the final deposition transcript , or 21  
15 days after the signing of this Agreed Protective Order, whichever occurs later, to identify the  
16 specific portions of the testimony as to which protection is sought and to specify the level of  
17 protection being asserted. Only those portions of the testimony that are appropriately designated  
18 for protection within the above-referenced 21-day period shall be covered by the provisions of  
19 this Agreed Protective Order.

20 19. Other than the deponent, court reporter and videographer, only outside counsel, in-  
21 house counsel, retained experts and business representatives identified in advance pursuant  
22 Paragraph 15(G) may attend depositions without the prior written agreement of the parties. A  
23 Requesting Entity shall give the other parties notice if they reasonably expect a deposition to call  
24 for information that will be designated ATTORNEYS EYES ONLY or OUTSIDE COUNSEL  
25 ONLY. When deposition proceedings (either the showing of a witness a document designated as  
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1 ATTORNEYS EYES ONLY or OUTSIDE COUNSEL ONLY, or a question or the anticipated  
2 answer to a question) cover material subject to designation pursuant to this Protective Order, any  
3 party may limit attendees of the pertinent portion of the deposition to only those individuals  
4 authorized to receive such information pursuant to this Order.

5 20. Deposition transcripts containing designated material or material subject to  
6 designation under this Protective Order shall have an obvious legend on the title page, and the  
7 title page shall be followed by a list of all pages (including line numbers as appropriate) that have  
8 been designated, and the designations being asserted. The Responding Entity shall inform the  
9 court reporter of these requirements. Before the expiration of a 21-day period for designation, the  
10 entire transcript shall be treated during that period as if it had been designated "OUTSIDE  
11 COUNSEL ONLY" unless otherwise agreed. After the expiration of that period, the transcript  
12 shall be treated only as actually designated.

13 **PROCEDURES FOR DISCLOSURE**

14 21. Counsel for each party shall take all reasonable precautions necessary to prevent  
15 the unauthorized or inadvertent disclosure of any information designated pursuant to this  
16 Protective Order. If any designated information produced in accordance with the terms of this  
17 Order is disclosed to any person other than in the manner authorized by this Protective Order, the  
18 party responsible for the disclosure must immediately bring all pertinent facts relating to such  
19 disclosure to the attention of the other party and, without prejudice to other rights and remedies of  
20 the other parties, must make every effort to prevent further disclosure by the party responsible for  
21 said disclosure.

22 22. A party shall not be obligated to challenge the propriety of any designation at the  
23 time it is produced, and failure to do so shall not preclude subsequent challenge thereto. At any  
24 stage of these proceedings or thereafter, any party may challenge a designation of certain  
25 materials. If any party objects to the designation of any document, such party shall state the  
26 objection by letter to counsel for the entity (whether a party or non-party) making the designation.

1 Grounds for such objections may include, but are not limited to, the fact that the challenged  
2 materials or information (a) is in the public domain; (b) was known or possessed by the  
3 Requesting Entity at the time of disclosure; (c) was received from a third party under no  
4 obligation of confidentiality; or (d) was derived or obtained independently of the disclosure from  
5 a third party under no obligation of confidentiality.

6 23. The parties shall attempt to resolve any disagreement as to the protected nature of  
7 the information on an informal basis before seeking relief from the Court. Until an objection to  
8 the designation of a document has been resolved by written agreement of counsel or by order of  
9 the Court, the document shall be treated as so designated. Nothing herein shall affect the  
10 Responding Entity's obligation to show good cause for the protection of the information in the  
11 event any person files a motion disputing the Responding Entity's designation of discovery  
12 material.

13 24. Subject to Paragraph 25, prior to giving possession of any designated material to  
14 any person permitted under this Order other than the Court, court personnel and court reporters,  
15 counsel for the party that receives such material shall first provide the intended recipient with a  
16 copy of this Order, and shall cause him or her to execute the following written Agreement of  
17 Confidentiality, which Requesting Entity's counsel shall thereafter retain:

18 Agreement of Confidentiality

19 I understand that I am being given access to information covered by  
20 a Protective Order entered in the matter California Natural Products  
21 v. Illinois Tool Works Inc., No. 2:12-CV-00593-JAM-GGH (E.D.  
22 CA). I have read the Protective Order and agree to be bound by its  
23 terms with respect to the handling, use and disclosure of such  
24 information. I further agree and attest to my understanding that, in  
25 the event that I fail to abide by the terms of the Protective Order, I  
26 may be subject to sanctions, including sanctions by way of contempt  
of court, imposed by the Court for such failure. In consideration for  
me being allowed access to said information and documents in  
connection with this litigation, I further agree to be contractually  
bound by the terms of the Protective Order and I agree and attest to  
my understanding that, in the event that I fail to abide by the terms  
of the Protective Order, I may be subject to financial liability for any  
loss or damage caused on account thereof.

1           25.     Anything in this Order to the contrary notwithstanding, any party may use the  
2 services of a photocopying service, printing and binding service, or computer input service with  
3 regard to designated information, provided such services are advised of the confidential nature of  
4 the documents and agree to maintain their confidentiality.

5           26.     If a party produces documents or information that that party believes to be  
6 confidential but the party inadvertently fails to properly designate the documents or information  
7 as such, the party may designate or re-designate the documents or information with the  
8 appropriate designation. Disclosure or production of documents or information without  
9 appropriate marking or redaction shall not constitute a waiver of the right by any party to seek  
10 protection under this Order and compliance with the procedures of this paragraph shall not  
11 prejudice the right of any party to challenge the designation of documents or information.

12           27.     All materials designated pursuant to this Protective Order that are filed with the  
13 Court, and any pleadings, motions or other papers filed with the Court disclosing designated  
14 information, shall be filed under seal and kept under seal until further ordered by the Court.  
15 Where possible, only designated portions of filings with the Court shall be filed under seal. The  
16 procedure for sealing documents shall adhere to Local Rule 141 of the United States District  
17 Court for the Eastern District of California.

18           28.     Prior to any hearing or trial at which designated documents or information shall be  
19 introduced, the parties will meet and confer to discuss redaction of the material. The parties agree  
20 that, upon request, they will redact material that is not relevant to the issues being heard. For  
21 example, if narrative descriptions contained in bids are relevant to the issues being heard or tried,  
22 but financial terms are not, the parties agree that those financial terms can be redacted upon  
23 request in order to avoid their public disclosure.

24           29.     Subject to the Rules of Evidence and applicable written agreements or Court  
25 orders, information designated pursuant to this Protective Order may be offered into evidence in  
26 open court unless a party objecting to such unrestricted use obtains an appropriate protective  
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1 order from this Court or the appellate court. The Responding Entity must be given notice and a  
2 sufficient opportunity to seek such a protective order.

3 30. If a party in possession of information designated under this Protective Order  
4 receives a subpoena or other request seeking production or other disclosure of designated  
5 information, that party shall immediately give written notice to counsel for the party that initially  
6 produced the designated information, stating the nature and type of information that has been  
7 sought and the date and time proposed for production or disclosure of the material. Any party  
8 objecting to the production or disclosure shall have the obligation to take timely action in the  
9 appropriate court or courts. In the event that such action is taken (*e.g.*, a motion is filed), no  
10 designated information that is the subject of said action to prevent disclosure shall be produced or  
11 disclosed without written approval by counsel of the objecting party or by further order of the  
12 appropriate court(s).

13 31. In addition to any other remedies set forth herein, any party violating this Order  
14 and thereby causing damage to the interests of the Responding Entity may be liable to the  
15 Responding Entity for all damages so caused.

16 32. Nothing contained in this Order shall prejudice in any way or waive in any respect  
17 the right of any Responding Entity (including non-parties) to assert any privilege as to any  
18 documents, whether or not designated pursuant to this Order.

19 33. This Order shall be binding upon the parties and their attorneys.

20 34. Nothing contained in this Order shall prejudice in any way the right of any party to  
21 seek, by way of consent of all parties or by motion to the Court,

22 a. Additional protection for specific items; or

23 b. Relief from the provisions of this Order with respect to specific items or  
24 categories of information. Moreover, if a party does not comply with the terms of this  
25 Order, the complaining party may petition the Court for sanctions, or other appropriate  
26 relief.

1           35.     In the event that at the time a document is produced the designation is lacking, and  
2 it is later determined, in good faith, that such a designation should have appeared on the  
3 document, the Responding Entity may restrict future disclosure of the document, consistent with  
4 this Protective Order, by notifying the Requesting Entity in writing of the change in or addition of  
5 a restrictive designation. The notice shall include a description of the document and the  
6 designation under which future disclosure of the documents is to be governed. The Responding  
7 Entity will appropriately label the documents, or the Requesting Entity will return all copies of  
8 the documents to the Responding Entity, who will provide a properly labeled copy promptly.

9           36.     Pursuant to the Federal Rules of Civil Procedure, if information produced in  
10 discovery is subject to a claim of privilege or of protection as trial-preparation material, the party  
11 making the claim may notify the receiving party, including the basis for the claim. After being  
12 notified, the receiving party must promptly return to the Responding Entity or destroy the  
13 specified information and any copies it has; must not use or disclose the information until the  
14 claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it  
15 before being notified; and may promptly present the information to the court under seal for a  
16 determination of the claim. The Responding Entity must preserve the information until the claim  
17 is resolved.

18           37.     This Protective Order is entered solely for the purpose of facilitating the exchange  
19 of documents and information between the parties to this action without involving the Court  
20 unnecessarily in the process. Nothing in this Order nor the production of any information or  
21 document under the terms of this Order nor any proceedings pursuant to this Order shall be  
22 deemed to have the effect of an admission or waiver by either party or of altering the  
23 confidentiality or non-confidentiality of any such document or information.

24           38.     This Order shall survive the final termination of this action to the extent that the  
25 designated information is not or does to become known to the public, and the Court shall retain  
26 jurisdiction to resolve any dispute concerning the use of information disclosed hereunder.

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Entered this 22<sup>nd</sup> day of July, 2013.

/s/ John A. Mendez  
Honorable John A. Mendez  
United States District Court Judge

PROPOSED BY:

/s/ Gregory S. Cavallo  
One of Its Attorneys  
  
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Gregory S. Cavallo (Bar No. 173270)  
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**ILLINOIS TOOL WORKS INC.**