

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3
4 SAN FRANCISCO DIVISION

5 NETWORK APPLIANCE, INC.,

6 Plaintiff/Counterdefendant,

7 v.

8 SUN MICROSYSTEMS, INC.,

9 Defendant/Counterplaintiff.
10

CASE NO. 3:07-CV-06053 EDL

**STIPULATED ADDENDUM TO FIRST
AMENDED PROTECTIVE ORDER**

11 Plaintiff Network Appliance, Inc. (“Plaintiff”), Defendant Sun Microsystems, Inc.
12 (collectively, “Defendant”) and non-party Intel Corporation (“Intel”), by and through their
13 respective counsel, hereby stipulate to the following Addendum to the First Amended Protective
14 Order (“Protective Order”) in this action for the protection of “Highly Confidential” (as defined
15 in Paragraph 9 of the Protective Order) documents of non-party Intel, whether produced or
16 disclosed by Intel or by any party or third party, which may be revealed in connection with this
17 action (“Intel Confidential Information”).

18 WHEREAS, Intel is not a party to this litigation; and

19 WHEREAS Intel wishes to protect all Intel Confidential Information which may be
20 disclosed in this action by Intel or by any party or third party;

21 The parties and Intel agree and stipulate to the following Addendum to the Protective
22 Order (“Addendum”):

23 1. Notwithstanding paragraph 10 of the Protective Order permitting access to
24 “Highly Confidential” documents to designated in-house counsel, materials designated
25 “Attorneys’ Eyes Only-Non Party Intel” may only be disclosed to: (1) the court, jury, and court
26 personnel; (2) outside counsel of record for the parties to this action, which category is limited to
27 Weil, Gotshal and Manges LLP on behalf of Plaintiff and DLA Piper US LLP on behalf of

28 -1-

1 Defendant, including the partners, associates and employees of these firms; (3) non-party
2 consultants and experts (as defined in paragraph 10(d) of the Protective Order) actually retained
3 or employed by outside counsel of record to advise or to assist counsel in the preparation and/or
4 trial of this action to the extent reasonably necessary to advise or to assist counsel in the
5 preparation and/or trial of this action; and (4) outside vendors that provide photocopying,
6 document processing, translation or graphics services to outside counsel to assist such counsel in
7 the preparation and trial of this action.

8 2. In the event that a party plans to disclose Intel Confidential Information to an
9 expert (as defined by Paragraph 10(d) of the Protective Order), the party proposing such
10 disclosure shall, at least five (5) business days prior to such disclosure, provide notice to Intel. If
11 Intel objects to the disclosure of Intel Confidential Information to the expert, Intel will serve a
12 written objection within five (5) business days of receipt of the information set forth above, which
13 objection shall state the basis for Intel's objection. Intel and the party proposing disclosure shall
14 confer in an attempt to resolve the objection. If Intel and the party proposing disclosure are not
15 able to resolve the objection, Intel may file a motion in support of its objection within five (5)
16 business days after such conference. If no motion is filed, Intel shall be deemed to have
17 withdrawn its objection. In any motion pursuant to this paragraph, Intel shall bear the burden of
18 proof of establishing that the expert should not have access to the Intel Confidential Information.
19 No disclosure of Intel Confidential Information shall be made to the proposed expert until Intel
20 and the party proposing disclosure resolve the matter, the objection is withdrawn, or the Court
21 permits such disclosure.

22 3. Notwithstanding any contrary provision of the Protective Order, in the event that a
23 party wishes to elicit testimony or use or disclose documents or transcripts at trial, hearing or any
24 other proceeding which contain or refer to Intel Confidential Information, the party shall request
25 (i) that the Intel Confidential Information be filed under seal, (ii) that the portions of the record of
26 any proceeding containing Intel Confidential Information be sealed; (iii) that persons other than
27 outside counsel of record in this action (expressly excluding an in-house counsel of the parties),
28

1 outside consultants and experts (as defined by Paragraph 10(d) of the Protective Order), court
2 personnel, jurors, and court reporters be excluded from the proceedings during the disclosure of
3 Intel Confidential Information.

4 4. The party planning to use or disclose Intel Confidential Information during trial,
5 hearing or other proceeding shall provide written notice to Intel of such intent at least five (5)
6 business days prior to the proceeding. Such notice shall be served on counsel for Intel, Theresa
7 Sutton, Orrick, Herrington & Sutcliffe LLP, Silicon Valley Office, 1000 Marsh Road, Menlo
8 Park, CA 94025.

9 5. Notwithstanding any contrary provisions of the Protective Order, Intel
10 Confidential Information shall be used solely in preparation for the trial and/or appeal of the
11 above-identified action. Intel Confidential Information shall not be used or disclosed at any other
12 time or for any other purpose whatsoever.

13 6. Subject to the foregoing additional restrictions and limitations, Intel Confidential
14 Information shall be subject to the remaining terms of the original Protective Order in this case.

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED.

Dated: May 29, 2009

Dated: May 29, 2009

By /s/ Patricia Young (pro hac vice)

By /s/ Carrie L. Williamson

MATT POWERS
EDWARD R. REINES
JEFFREY G. HOMRIG
JILL J. HO
PATRICIA YOUNG (pro hac vice)
WEIL, GOTSHAL & MANGES LLP

MARK D. FOWLER
DAVID ALBERTI
CHRISTINE K. CORBETT
YAKOV M. ZOLOTOREV
CARRIE L. WILLIAMSON

Counsel for Plaintiff,
Network Appliance, Inc.

Counsel for Defendant,
Sun Microsystems, Inc.

Dated: May 29, 2009

By /s/Theresa A. Sutton

THERESA A. SUTTON

Counsel for Non-Party Intel Corporation

IT IS SO ORDERED

Dated: June 15, 2009

