

1 PARTIES LISTED ON SIGNATURE PAGE  
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6 UNITED STATES DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA

8  
9 CISCO SYSTEMS, INC.,

10 Plaintiff,

11 v.

12 TELECONFERENCE SYSTEMS, LLC, and  
13 MARGALLA COMMUNICATIONS INC.,

14 Defendants.

Case No. C 09-1550 JSW (NMC)

~~PROPOSED~~ STIPULATED  
PROTECTIVE ORDER

15 This protective order ("Protective Order") is issued to expedite the flow of discovery  
16 materials, to facilitate the prompt resolution of disputes over confidentiality of discovery  
17 materials, to adequately protect information the parties are entitled to keep confidential, to ensure  
18 that only materials the parties are entitled to keep confidential are subject to such treatment, and  
19 to ensure that the parties are permitted reasonable necessary uses of such materials in preparation  
20 for and in the conduct of trial, pursuant to Fed. R. Civ. P. 26(c) and any other applicable rule of  
21 this Court. Unless modified, superseded or terminated pursuant to the terms contained in this  
22 Order, this Protective Order shall remain in effect through the conclusion of this litigation and  
23 thereafter as set forth below.

24 In support of this Protective Order, the Court finds that:

25 1. Documents or information containing confidential research, development,  
26 business or commercial information or trade secrets within the meaning of Rule 26(c)  
27 ("Confidential Information") is likely to be disclosed or produced during the course of discovery  
28 in this litigation;

1           2.       The parties to this litigation may assert that public dissemination and disclosure of  
2 Confidential Information could severely injure or damage the party disclosing or producing the  
3 Confidential Information and/or could place that party at a competitive disadvantage;

4           3.       Counsel for the party or parties receiving Confidential Information are presently  
5 without sufficient information to accept the representation(s) made by the party or parties  
6 producing Confidential Information as to the confidential, proprietary, and/or trade secret nature  
7 of such Confidential Information; and

8           4.       To protect the respective interests of the parties and to facilitate the progress of  
9 disclosure and discovery in this case, the following Protective Order should issue.

10                           **IT IS THEREFORE ORDERED THAT:**

11           1.       This Protective Order shall apply to all information, documents and things subject  
12 to discovery in this Action produced either by a party or a non-party in discovery in this Action  
13 (“Action” shall include without limitation this litigation and any adjunct subpoena proceedings  
14 incident hereto before any tribunal) including, without limitation, testimony adduced at deposition  
15 upon oral examination or upon written questions, answers to interrogatories, documents and  
16 things produced, information obtained from inspection of premises or things, and answers to  
17 requests for admission, or information disclosed pursuant to subpoena under Fed. R. Civ. P. 45  
18 (“Discovery Material”).

19           2.       Discovery Material containing Confidential Information is referred to as  
20 “Confidential Material.” The following is not Confidential Material: (i) material which, on its  
21 face, shows or which, through other evidence, the receiving party can show has been published to  
22 the general public; (ii) information that the receiving party can show was lawfully in the receiving  
23 party’s possession prior to being designated as Confidential Material in this litigation and that the  
24 receiving party is not otherwise obligated to treat as confidential; (iii) information that the  
25 receiving party can show was obtained (without any benefit or use of Confidential Material) from  
26 a third party having the right to disclose such information to the receiving party without  
27 restriction or obligation of confidentiality; (iv) information which, after its disclosure to a  
28 receiving party, is published to the general public by a party having the right to publish such

1 information; (v) information that the receiving party can show by written record was  
2 independently developed by it after the time of disclosure by personnel who did not have access  
3 to the producing party's Confidential Material, or (vi) information that was submitted to a  
4 governmental entity without request for confidential treatment.

5 3. In determining the scope of information that a party may designate as its  
6 Confidential Material, each party acknowledges the importance of client access to information  
7 necessary to client decision-making in the prosecution or defense of litigation, and therefore  
8 agrees that designations of information as Confidential Material and responses to requests to  
9 permit further disclosure of Confidential Material shall be made in good faith and not (1) to  
10 impose burden or delay on an opposing party or (2) for tactical or other advantage in litigation.

11 4. The producing party shall label or mark each document and thing that it deems to  
12 be Confidential Materials with the following term: "CONFIDENTIAL."

13 5. The parties may designate as "CONFIDENTIAL -- OUTSIDE COUNSEL  
14 ONLY" those Confidential Materials that contain Confidential Information that is especially  
15 sensitive and could cause significant competitive harm if disclosed to an unauthorized person,  
16 including, without limitation, pending but unpublished patent applications, information  
17 concerning research, development and other activities related to unreleased products, license  
18 agreements and other highly confidential technical, research and development, and financial  
19 information. This designation shall be made in good faith. The parties shall label or mark each  
20 such document or thing with the following term: "CONFIDENTIAL -- OUTSIDE COUNSEL  
21 ONLY."

22 6. The parties acknowledge that a distinct level of protection is required for certain  
23 Confidential Materials as to which CONFIDENTIAL -- OUTSIDE COUNSEL ONLY  
24 designation would not provide adequate protection to the interests of the designating party and  
25 whose wrongful dissemination could result in irreparable harm to the designating party. Such  
26 information may be designated as "HIGHLY RESTRICTED CONFIDENTIAL" by labeling or  
27 marking each such document or thing with the term: "HIGHLY RESTRICTED  
28 CONFIDENTIAL." Such designations should be made only in good faith and should be used

1 only for source code, configuration files, or other electronic files used in network operations,  
2 comments for source code or network operation files, revision histories, or other material whose  
3 wrongful dissemination could result in irreparable harm to the designating party.

4         7.       The labeling or marking of a document or tangible thing with the designation  
5 “CONFIDENTIAL,” “CONFIDENTIAL -- OUTSIDE COUNSEL ONLY” or “HIGHLY  
6 RESTRICTED CONFIDENTIAL” shall be made when a copy of the document or thing is  
7 provided to the receiving party by placing the legend “CONFIDENTIAL,” “CONFIDENTIAL --  
8 OUTSIDE COUNSEL ONLY” or “HIGHLY RESTRICTED CONFIDENTIAL,” on the face of  
9 each such document or thing. All copies of documents or things stamped “CONFIDENTIAL,”  
10 “CONFIDENTIAL -- OUTSIDE COUNSEL ONLY” or “HIGHLY RESTRICTED  
11 CONFIDENTIAL” shall again be stamped if the duplicating process by which copies of such  
12 documents or things are made does not reproduce the original stamp. Any such designation that  
13 is inadvertently omitted or misdesignated may be corrected by written notification to counsel for  
14 the receiving party, and the receiving party shall thereafter mark and treat the materials as  
15 “CONFIDENTIAL,” “CONFIDENTIAL -- OUTSIDE COUNSEL ONLY,” or “HIGHLY  
16 RESTRICTED CONFIDENTIAL,” as appropriate, and such material shall be subject to this  
17 Protective Order as if it had been initially so designated. If, prior to receiving such notice, the  
18 receiving party has disseminated the Confidential Material to individuals not authorized to  
19 receive it hereunder, it shall make a reasonable effort to retrieve the Confidential Material or to  
20 otherwise assure that the recipient(s) properly mark the Confidential Material and maintain the  
21 confidentiality of the Confidential Material in accordance with the terms of this Protective Order,  
22 but shall have no other responsibility or obligation with respect to the information disseminated.

23         8.       In the case of deposition upon oral examination or written questions, such  
24 testimony shall be deemed “CONFIDENTIAL -- OUTSIDE COUNSEL ONLY” until the  
25 expiration of thirty (30) days after the deposition unless otherwise designated at the time of the  
26 deposition or during the thirty (30) day period. Pages or entire transcripts of testimony given at a  
27 deposition or hearing may be designated as containing “CONFIDENTIAL,” “CONFIDENTIAL -  
28 - OUTSIDE COUNSEL ONLY,” or “HIGHLY RESTRICTED CONFIDENTIAL” information

1 by an appropriate statement either at the time of the giving of such testimony or by written  
2 notification within thirty (30) days after the deposition. If the testimony is not otherwise  
3 designated at the time of the deposition or during the thirty (30) day period after the deposition,  
4 the testimony will be deemed to be "CONFIDENTIAL." Any portion or separately bound  
5 volume of a deposition so designated shall not be filed with the Court, except in accordance with  
6 Paragraph 21 of this Protective Order.

7 9. In the case of written discovery responses and the information contained therein,  
8 the responses may be designated as containing "CONFIDENTIAL," "CONFIDENTIAL --  
9 OUTSIDE COUNSEL ONLY," or "HIGHLY RESTRICTED CONFIDENTIAL" information by  
10 means of a statement at the beginning of each response that contains such information specifying  
11 the level of designation of the Confidential Information and by placing a legend at the front page  
12 of such discovery responses stating: "CONTAINS CONFIDENTIAL INFORMATION/[the  
13 highest level of designation contained in the answers]." Any such designation that is  
14 inadvertently omitted or misdesignated may be corrected within thirty (30) days of service of  
15 such discovery responses by written notification to counsel for the receiving party, and the  
16 receiving party shall thereafter mark and treat the materials as "CONFIDENTIAL,"  
17 "CONFIDENTIAL -- OUTSIDE COUNSEL ONLY," or "HIGHLY RESTRICTED  
18 CONFIDENTIAL," as appropriate, and such material shall be subject to this Protective Order as  
19 if it had been initially so designated. If, prior to receiving such notice, the receiving party has  
20 disseminated the Confidential Material to individuals not authorized to receive it hereunder, it  
21 shall make a reasonable effort to retrieve the Confidential Material or to otherwise assure that the  
22 recipient(s) properly mark and maintain the confidentiality of the Confidential Material, but shall  
23 have no other responsibility or obligation with respect to the information disseminated.

24 10. In the case of Confidential Information not reduced to documentary or tangible  
25 form or which cannot be conveniently designated as set forth above, such information may be  
26 designated "CONFIDENTIAL," "CONFIDENTIAL -- OUTSIDE COUNSEL ONLY," or  
27 "HIGHLY RESTRICTED CONFIDENTIAL" information by informing the receiving party of  
28 the designation in writing either at the time of transfer of such information or within thirty (30)

1 days after the transfer of such information.

2 11. Any documents or tangible things made available for inspection prior to producing  
3 copies of selected items shall initially be deemed "CONFIDENTIAL -- OUTSIDE COUNSEL  
4 ONLY" unless otherwise designated at the time of inspection and shall be subject to this  
5 Protective Order. Thereafter, the producing party shall have a reasonable time to review and  
6 designate the documents as set forth in Paragraph 7 above prior to furnishing copies to the  
7 receiving party.

8 12. **Disclosure of CONFIDENTIAL -- OUTSIDE COUNSEL ONLY Material.**  
9 CONFIDENTIAL -- OUTSIDE COUNSEL ONLY material and any information contained  
10 therein shall be disclosed only to the following persons:

11 a. Counsel of record in this Action for the receiving party, including both local and  
12 trial counsel, provided such persons agree to be bound by this Protective Order.

13 b. Employees and agents of such counsel including paralegals, litigation support  
14 services, secretarial and clerical staff as well as the following categories of persons provided that  
15 such persons have no involvement in addressing any matter regarding the substantive issues in the  
16 case; independent legal translators retained to translate in connection with this Action;  
17 independent stenographic reporters and videographers retained to record and transcribe testimony  
18 in connection with this Action; graphics, translation, or design services retained by counsel of  
19 record for purposes of preparing demonstrative or other exhibits for deposition, trial, or other  
20 court proceedings in this Action; and non-technical jury or trial consulting services (expressly  
21 excluding mock jurors) provided such individuals agree to be bound by this Protective Order;

22 c. The Court, its personnel and stenographic reporters (with such CONFIDENTIAL -  
23 - OUTSIDE COUNSEL ONLY Material having been filed under seal or with other suitable  
24 precautions as determined by the Court);

25 d. At a deposition or at trial, any person who authored or previously received the  
26 Confidential Material and, subject to timely objection, including objection that such person is not  
27 internally authorized to receive such information, any person currently employed by the  
28 designating party; and

1 e. Any independent experts or consultants, and employees and assistants under the  
2 control of such expert or consultant, who (1) is engaged by counsel of record in this Action,  
3 whether or not such expert or consultant is paid directly by a party, and (2) is not regularly  
4 employed by or associated with a party hereto, other than by the designating party, provided  
5 however that disclosure to such persons shall be made only on the conditions set forth in  
6 Paragraph 19 below.

7 13. **Disclosure of CONFIDENTIAL Material.** CONFIDENTIAL material and any  
8 information contained therein may be disclosed to the persons designated in Paragraphs 12(a),  
9 12(b), 12(c), 12(d) and 12(e) above and additionally may be disclosed to no more than two (2) in-  
10 house counsel who act in a legal capacity for the receiving party, who are responsible for  
11 supervising this Action and, with respect to Defendants, presently are not directly involved in  
12 patent prosecution activities or in other competitive decision-making (including decisions relating  
13 to licensing technology or intellectual property), provided however that disclosure to such persons  
14 shall be made only on the conditions set forth herein. Such in-house counsel must be approved in  
15 advance by the parties pursuant to the procedure set forth in Paragraph 19. The parties recognize  
16 that the responsibilities of such in-house counsel may change during the litigation, and that the  
17 replacement of a previously approved in-house counsel with a new in-house counsel may  
18 therefore become appropriate. Replacement in-house counsel must be approved pursuant to the  
19 procedure set forth in Paragraph 19. In the event that the responsibilities of in-house counsel  
20 change and the parties wish that individual to remain a designee pursuant to this paragraph, the  
21 designating party will notify the other party of the change in responsibilities, and the other party  
22 will have the right to object pursuant to the procedure set forth in Paragraph 19.

23 Disclosure and dissemination of documents marked "CONFIDENTIAL" to such in-house  
24 counsel shall be made only under the following conditions:

25 a. In-house counsel for Plaintiff may not review any documents marked  
26 "CONFIDENTIAL" by any Third Party Defendant without the express written approval of the  
27 producing party. In-house counsel for any Third Party Defendant may not review any documents  
28 marked "CONFIDENTIAL" by any other Third Party Defendant or by the Plaintiff without the

1 express written approval of the producing party.

2 b. One copy of any document marked “CONFIDENTIAL” may be provided by the  
3 party receiving it to each in-house counsel where such documents are made exhibits to, are  
4 referred to or are relied on in connection with any motions, briefs or other papers filed with the  
5 Court or served by the producing party in this Action; and

6 c. Otherwise, such individuals may only view materials marked “CONFIDENTIAL”  
7 in the presence of outside counsel of record for the receiving party at outside counsel’s offices,  
8 and shall not be provided with or be permitted to create or remove copies of such documents, nor  
9 be provided with or be permitted to create or remove any summaries, abstracts, compilations,  
10 notes or any other type of memorial or record of such documents.

11 14. **Disclosure of HIGHLY RESTRICTED CONFIDENTIAL Material.** HIGHLY  
12 RESTRICTED CONFIDENTIAL material and any information contained therein may be  
13 disclosed only to the following persons and in strict accordance with the following procedures:

14 a. HIGHLY RESTRICTED CONFIDENTIAL material, to the extent in electronic  
15 format, will be provided on a standalone computer with all ports, software, network connections,  
16 and other avenues that could be used to copy or transfer such data blocked (“Standalone  
17 Computer”). The Standalone Computer shall be maintained in the sole control and custody of  
18 counsel of record for the producing party and shall be maintained in the United States at an office  
19 of counsel of record for the producing party or at such other location as shall be mutually agreed  
20 to by the parties. Inspection of HIGHLY RESTRICTED CONFIDENTIAL materials made  
21 available on the Standalone Computer may be conducted during normal business hours, 9 am to 5  
22 pm local time, Monday through Friday (excluding holidays), and other days and/or times upon  
23 reasonable request. Such inspections may be supervised by the designating party’s outside  
24 attorneys and/or others working with such counsel in a manner that will not interfere with the  
25 receiving party’s confidential communications or otherwise invade the receiving party’s attorney  
26 work product.

27 b. HIGHLY RESTRICTED CONFIDENTIAL material, to the extent not in  
28 electronic format, shall be designated using the same processes applied to CONFIDENTIAL and



1 CONFIDENTIAL -- OUTSIDE COUNSEL ONLY materials described in Paragraphs 7 – 10  
2 above.

3 c. Only persons designated under Paragraph 12(a) and 12(e) above shall have access  
4 to the Standalone Computer provided however that the following additional restrictions shall  
5 apply to such access:

6 (i) At least ten (10) business days prior to the date on which access is sought  
7 to such Standalone Computer (“ten day notice period”), counsel of record for the receiving party  
8 shall provide a list of individuals including attorneys seeking to access such Standalone Computer  
9 and the designating party shall have the right to object to such access;

10 (ii) During the pendency of the ten day notice period, no listed individual shall  
11 have access to the Standalone Computer;

12 (iii) If an objection to any specific listed individual is made, that individual  
13 shall not have access to the Standalone Computer until resolution of such objection; and

14 (iv) Each time a person accesses the Standalone Computer, the person shall  
15 sign a sign-in sheet prior to, and a sign-out sheet subsequent to, accessing the Standalone  
16 Computer including the name of the person accessing, the date and time in and out, and whether  
17 any hard copies were made.

18 d. The receiving party shall not have the right to, and agrees not to, copy, transmit or  
19 duplicate HIGHLY RESTRICTED CONFIDENTIAL materials in any manner, including copying  
20 such HIGHLY RESTRICTED CONFIDENTIAL materials into notes, scanning, or otherwise  
21 creating an electronic image of the HIGHLY RESTRICTED CONFIDENTIAL materials, except  
22 as set forth herein.

23 (i) A printer shall be attached to the Standalone Computer and the receiving  
24 party may print portions of HIGHLY RESTRICTED CONFIDENTIAL materials they consider in  
25 good faith to be necessary to proving elements of their case. The receiving party may not print  
26 out 10 or more consecutive pages of source code without the express written consent of the  
27 producing party. The parties shall negotiate reasonable limitations on the amount and scope of  
28 HIGHLY RESTRICTED CONFIDENTIAL material that is printed and released by the producing

1 party to the receiving party.

2 (ii) Whenever hard copies are made, copies of the hard copies printed shall be  
3 provided to counsel for the producing party along with an identification of when the copies were  
4 made and who made them. To be clear, the hard copies shall not be removed from the location of  
5 the Standalone Computer by the receiving party. Such hard copies shall be provided to the  
6 producing party's counsel for Bates labeling and production to the receiving party in accordance  
7 with this Protective Order.

8 (iii) Any hard copies shall be conspicuously marked HIGHLY RESTRICTED  
9 CONFIDENTIAL in conformity with Paragraphs 6 – 10 above.

10 (iv) The receiving party shall be entitled to only a single hard copy of any  
11 HIGHLY RESTRICTED CONFIDENTIAL materials. Receiving party shall keep a log  
12 including: (a) the custodian of each copy of any HIGHLY RESTRICTED CONFIDENTIAL  
13 materials; (b) the name of all persons accessing the HIGHLY RESTRICTED CONFIDENTIAL  
14 materials; and (c) the date and time of access of the HIGHLY RESTRICTED CONFIDENTIAL  
15 materials.

16 e. All HIGHLY RESTRICTED CONFIDENTIAL materials in the possession of the  
17 receiving party shall be maintained in a secured, locked area. The outside counsel for the  
18 receiving party shall notify the producing party within 24 hours of becoming aware of any loss,  
19 theft, or unauthorized copying of the HIGHLY RESTRICTED CONFIDENTIAL material.

20 f. All HIGHLY RESTRICTED CONFIDENTIAL materials utilized during a  
21 deposition or marked as an exhibit at a deposition will be retrieved by the party conducting the  
22 deposition at the end of each day. At no time, will any HIGHLY RESTRICTED  
23 CONFIDENTIAL material be given to or left with the Court Reporter or any other individual.

24 g. Receiving party shall not convert any of the information contained in the hard  
25 copies into an electronic format, except when reproducing excerpts of the information in an  
26 expert report or a court filing, and then only according to the additional restrictions on HIGHLY  
27 RESTRICTED CONFIDENTIAL materials contained in this Order.

28 15. **Disclosure of Third Party Materials.** In the event that a party reasonably

1 believes that, due to a confidentiality obligation owed to a nonparty, it cannot produce certain  
2 information, of which the party has possession, ("Restricted Information") in this Action, said  
3 party shall within seven (7) business days of discovering such obligation or of entry of this Order,  
4 whichever is later: (i) provide written notification to the nonparty that Restricted Information is  
5 subject to disclosure in this Action, and (ii) provide the nonparty with a copy of this Order. No  
6 more than ten (10) business days after making such notification, the Party in possession of the  
7 Restricted Information shall inform the party requesting such information of the third party's  
8 response to the notification, or lack thereof. Nothing in this agreement shall be construed to  
9 supersede, or in any way alter, any other agreement that a party has with a nonparty.

10       16.     Protected Material Subpoenaed or Ordered Produced in Other Litigation. If  
11 a Party is served with a subpoena or a court order issued in other litigation that compels  
12 disclosure of any information or items designated in this Action as "CONFIDENTIAL,"  
13 "CONFIDENTIAL -- OUTSIDE COUNSEL ONLY," or "HIGHLY RESTRICTED  
14 CONFIDENTIAL," that Party must:

15       a.       promptly notify in writing the designating party. Such notification shall include a  
16 copy of the subpoena or court order;

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

20       c.       cooperate with respect to all reasonable procedures sought to be pursued by the  
21 Designating Party whose Protected Material may be affected.

22       If the designating party timely seeks a protective order, the party served with the subpoena  
23 or court order shall not produce any information designated in this Action as  
24 "CONFIDENTIAL," "CONFIDENTIAL -- OUTSIDE COUNSEL ONLY," or "HIGHLY  
25 RESTRICTED CONFIDENTIAL," before a determination by the court from which the subpoena  
26 or order issued, unless the party has obtained the designating party's permission. The designating  
27 party shall bear the burden and expense of seeking protection in that court of its confidential  
28 material – and nothing in these provisions should be construed as authorizing or encouraging a

1 receiving party in this Action to disobey a lawful directive from another court.

2 17. **Export Control Requirements:**

3 Notwithstanding anything to the contrary contained herein, the following additional  
4 requirements apply to all Confidential Materials:

5 a. The receiving party acknowledges that the Confidential Materials received under  
6 this Protective Order may be subject to export controls under the laws of the United States and  
7 other applicable laws. The receiving party shall comply with such laws and agrees not to  
8 knowingly export, re-export or transfer Confidential Materials of the producing party without first  
9 obtaining all required United States or any other applicable authorizations or licenses. The  
10 receiving party acknowledges that Confidential Materials disclosed by the producing party may  
11 be subject to, including but not limited to, the U.S. Export Administration Regulations (EAR),  
12 Export Control Classification Number (ECCN) 5E001 pertaining to Dynamic Adaptive Routing,  
13 Optical Switching, SS7, non-aggregated port speed data transfer rates exceeding 15Gbps; and  
14 ECCN 5E002 cryptography.

15 b. The receiving party agrees to maintain adequate controls to prevent nationals of  
16 countries listed in the EAR, Part 740 Supplement No. 1, Country Group D:1 or E from accessing  
17 the producing party's Confidential Materials, subject to ECCN 5E001; or nationals outside the  
18 U.S. and Canada from accessing such Confidential Materials, subject to ECCN 5E002 -- without  
19 U.S. Government authorization. The receiving party furthermore, agrees to notify the producing  
20 party prior to granting a foreign national, of countries listed in the groups D:1 or E, access to the  
21 Standalone Computer, access to hard copies of Confidential Materials, or placement on a project  
22 requiring receipt or review of the producing party's Confidential Materials. The term "national"  
23 is defined as any person who is not a U.S. person or national/citizen, lawful permanent resident,  
24 person granted asylee or refugee status, or temporary resident granted amnesty.

25 18. Defendants, and any attorney representing Defendants, whether in-house or  
26 outside counsel, any person retained by Defendants or attorneys of Defendants, and any other  
27 person, who has accessed, or otherwise learns, in whole or in part, technical information  
28 designated CONFIDENTIAL, CONFIDENTIAL -- OUTSIDE COUNSEL ONLY, or HIGHLY

1 RESTRICTED CONFIDENTIAL under this Protective Order shall not prepare, prosecute,  
2 supervise or assist in the prosecution of any patent application, including the reexamination of  
3 such patent application, pertaining to the subject matter of U.S. Patent No. 6,980,526, including  
4 patent applications relating to provisional application No. 60/191,819 and/or patent application  
5 No. 11/236,121, or the disclosed technical information designated CONFIDENTIAL,  
6 CONFIDENTIAL -- OUTSIDE COUNSEL ONLY, or HIGHLY RESTRICTED  
7 CONFIDENTIAL during the pendency of this case and for two years after the conclusion of this  
8 litigation, including any appeals. To ensure compliance with the purpose of this provision,  
9 Defendants shall create an ethical wall between those persons with access to technical  
10 information designated CONFIDENTIAL, CONFIDENTIAL -- OUTSIDE COUNSEL ONLY,  
11 or HIGHLY RESTRICTED CONFIDENTIAL and those individuals who prepare, prosecute,  
12 supervise, or assist in the prosecution of any patent application pertaining to the same or  
13 substantially the same subject matter of U.S. Patent No. 6,980,526, including patent applications  
14 relating to provisional application No. 60/191,819 and/or patent application No. 11/236,121, or  
15 the disclosed technical information designated CONFIDENTIAL, CONFIDENTIAL --  
16 OUTSIDE COUNSEL ONLY, or HIGHLY RESTRICTED CONFIDENTIAL. Nothing in this  
17 paragraph shall be construed as a waiver of the other provisions of this Order, including but not  
18 limited to those provisions restricting the use and disclosure of technical information designated  
19 CONFIDENTIAL, CONFIDENTIAL -- OUTSIDE COUNSEL ONLY, or HIGHLY  
20 RESTRICTED CONFIDENTIAL. The provisions of this paragraph shall not prevent  
21 Defendants' Outside Counsel who has accessed, or otherwise learns, in whole or in part, technical  
22 information designated CONFIDENTIAL, CONFIDENTIAL -- OUTSIDE COUNSEL ONLY,  
23 or HIGHLY RESTRICTED CONFIDENTIAL under this Protective Order from reviewing  
24 communications from the United States Patent Office regarding a re-examination proceeding or  
25 from discussing claim interpretation issues or ways of distinguishing claims in any such  
26 reexamination from any cited prior art, including with re-examination patent counsel, except for  
27 re-examination proceedings initiated by Teleconference Systems, LLC, Margalla  
28 Communications, Inc., or any entity acting on their behalf or in their interest. For the purposes of

1 reexamination, such Outside Counsel may not prosecute any such reexamination, may not  
2 participate in any such reexamination after the first Patent Office action in response to which  
3 claims may be drafted or amended, and any Defendants' Outside Counsel's participation in  
4 reexamination proceeding(s) is also expressly conditioned on his/her/its legal obligation,  
5 established by Order of the Court, not to use or reveal in any way the content of  
6 CONFIDENTIAL, CONFIDENTIAL -- OUTSIDE COUNSEL ONLY, or HIGHLY  
7 RESTRICTED CONFIDENTIAL information, including, in particular, express condition not to  
8 use or reveal such information to draft new claims, or to amend previously existing claims,  
9 through the reexamination process.

10 19. Trial counsel desiring to disclose Confidential Materials to in-house counsel,  
11 experts or consultants specified in Paragraphs 12(e) or 13 above shall first obtain a signed  
12 undertaking, in the form of Exhibit A attached hereto, from each such in-house counsel, expert or  
13 consultant, and such counsel shall retain in his/her files the original of each such signed  
14 undertaking. For the disclosure of in-house counsel, a copy of the proposed undertaking shall be  
15 forwarded to opposing counsel with the current curriculum vitae for such in-house counsel. For  
16 the disclosure of an expert or consultant, a copy of the proposed undertaking shall be forwarded  
17 to opposing counsel with the current curriculum vitae, a list of all publications by such proposed  
18 expert or consultant for the past ten (10) years, and a list identifying: (1) all employers of such  
19 expert or consultant for the past ten (10) years; (2) all lawsuits (identified by name and number of  
20 the case, and location of court) in which such proposed expert or consultant has testified in  
21 deposition, hearing, or trial during the preceding five years; and (3) all parties in any dispute and  
22 all other entities on behalf of which such expert or consultant has worked as an expert or  
23 consultant or from which the expert or consultant received compensation during the preceding  
24 five years, or where a protective order or confidentiality provision would prohibit such disclosure,  
25 a confirmation that those undisclosed engagements do not involve a relationship with any of the  
26 named parties in this litigation. No Confidential Materials shall be disclosed to such in-house  
27 counsel, expert or consultant until after the expiration of a seven (7) business day period  
28 commencing with the service of a copy of the proposed undertaking, curriculum vitae, and lists,

1 provided, however, that if during that seven (7) business day period opposing counsel makes an  
2 objection to such disclosure, there shall be no disclosure of Confidential Materials to such in-  
3 house counsel, expert or consultant, except by mutual agreement of the parties or further order of  
4 the Court. Any objection to such disclosure must set forth in detail the grounds on which it is  
5 based. A party that receives a timely written objection must meet and confer with the designating  
6 party to try to resolve the matter by agreement within five (5) business days of the written  
7 objection. If no agreement is reached, the party opposing disclosure of such Confidential  
8 Materials shall have the burden of filing a motion with the Court for a Protective Order opposing  
9 such disclosure and shall bear the burden of proving that the risk of harm that the disclosure  
10 would entail (under the safeguards proposed) outweighs the receiving party's need to disclose the  
11 Confidential Materials to its designated in-house counsel, expert or consultant. However, the  
12 parties will be reasonable in shortening the time for objection under this paragraph if necessary to  
13 allow an in-house counsel to review Confidential Material in conjunction with their review of  
14 documents to be filed with the Court or participation in a deposition or hearing.

15         20. The restrictions on the use of Confidential Materials established by this Protective  
16 Order are applicable only to the use of information received by a party from another party or from  
17 a nonparty. A party is free to use its own information as it pleases.

18         21. Any party may file or lodge with the Court documents or tangible items designated  
19 as CONFIDENTIAL, CONFIDENTIAL -- OUTSIDE COUNSEL ONLY, or HIGHLY  
20 RESTRICTED CONFIDENTIAL. Any briefs, transcripts, exhibits, depositions, or documents  
21 which are filed with the Court which comprise, embody, summarize, discuss, or quote from  
22 documents or tangible things designated as CONFIDENTIAL, CONFIDENTIAL -- OUTSIDE  
23 COUNSEL ONLY or HIGHLY RESTRICTED CONFIDENTIAL material shall be sealed, unless  
24 the parties otherwise agree in writing or the Court otherwise orders. Where reasonably  
25 practicable, only the portions of documents consisting of such items or information shall be  
26 lodged under seal. Filing or lodging such information or items under seal shall be made in  
27 compliance with Civil L.R. 79-5. Such items or information shall be filed or lodged in sealed  
28 envelopes or other appropriate sealed containers. Each sealed envelope or container shall be

1 endorsed with the title and case number of this Action, and a statement in substantially the  
2 following form: CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER. THE  
3 MATERIALS CONTAINED HEREIN HAVE BEEN DESIGNATED AS CONFIDENTIAL  
4 [CONFIDENTIAL -- OUTSIDE COUNSEL ONLY or HIGHLY RESTRICTED  
5 CONFIDENTIAL] PURSUANT TO PROTECTIVE ORDER AND MAY NOT BE EXAMINED  
6 OR COPIED EXCEPT BY THE COURT OR PURSUANT TO COURT ORDER.

7 22. The acceptance by a party of documents designated as CONFIDENTIAL,  
8 CONFIDENTIAL -- OUTSIDE COUNSEL ONLY or HIGHLY RESTRICTED  
9 CONFIDENTIAL shall not constitute an agreement, admission or concession, or permit an  
10 inference, that the material(s) are in fact properly the subject for protection under Fed. R. Civ. P.  
11 26(c), or some other basis. Documents designated CONFIDENTIAL, CONFIDENTIAL --  
12 OUTSIDE COUNSEL ONLY or HIGHLY RESTRICTED CONFIDENTIAL shall be treated in  
13 accordance with the provisions of this Protective Order, except that any party may at any time  
14 seek an Order from the Court determining that specified information or categories of information  
15 are not properly designated as CONFIDENTIAL, CONFIDENTIAL -- OUTSIDE COUNSEL  
16 ONLY, or HIGHLY RESTRICTED CONFIDENTIAL, *provided that* prior to making such a  
17 motion the parties shall meet and confer in good faith to resolve any differences over the  
18 designation. In response to the filing of such a motion, the party asserting confidentiality shall  
19 have the burden of proving that the Confidential Material in question is protectable under Fed. R.  
20 Civ. P. 26(c) or some other basis, or, as the case may be, that the designation of  
21 CONFIDENTIAL -- OUTSIDE COUNSEL ONLY or HIGHLY RESTRICTED  
22 CONFIDENTIAL is necessary under the circumstances. A party shall not be obligated to  
23 challenge the propriety of a designation of Confidential Material at the time made, and failure to  
24 do so shall not preclude subsequent challenge. Should any party (or non-party) seek an Order  
25 from the Court to determine whether specified information or categories of information are not  
26 properly designated as CONFIDENTIAL, CONFIDENTIAL -- OUTSIDE COUNSEL ONLY,  
27 or HIGHLY RESTRICTED CONFIDENTIAL, the claimed designation shall remain operative  
28 and respected by all the parties and non-parties pending the Court's ruling.



1           23.     Nothing in this Protective Order shall require disclosure of material that a party  
2 contends is protected from disclosure by the attorney-client privilege or the attorney work-  
3 product immunity or any other applicable privilege. This shall not preclude any party from  
4 moving the Court for an Order directing the disclosure of such material.

5           24.     Production or disclosure of documents or information subject to the attorney-client  
6 privilege, work product immunity, or any other applicable privilege shall not constitute a waiver  
7 of, nor a prejudice to, any claim that such or related material is privileged or protected by the  
8 work product immunity or any other applicable privilege. A producing party may notify the  
9 receiving party in writing that produced documents or information are subject to the attorney-  
10 client privilege, work product immunity, or any other applicable privilege. Within five (5)  
11 business days of this notice, the receiving party shall return or destroy all such documents or  
12 information and all copies thereof, including those that have been shared with experts,  
13 consultants, and vendors, and confirm in writing that all such documents or information have  
14 been returned or destroyed. No use shall be made of such documents or information during  
15 depositions, through motion practice, or at trial. In the case of such returned production, the  
16 producing party shall provide a privilege log identifying such documents or information within  
17 ten (10) business days of its original notice to the receiving party. The receiving party may move  
18 the Court for an Order compelling production of any such documents or information in  
19 accordance with the Federal Rules of Civil Procedure. The motion shall be filed under seal and  
20 shall not assert as a ground for production the fact of the earlier production, nor shall the motion  
21 disclose or otherwise use the content of the previously produced and returned documents or  
22 information in any way (beyond any information appearing on the above-referenced privilege  
23 log).

24           25.     In the event of any accidental or inadvertent disclosure of Confidential Material  
25 other than in a manner authorized by this Protective Order, counsel for the party responsible for  
26 the disclosure shall immediately notify opposing counsel of all the pertinent facts, and make  
27 every effort to prevent further unauthorized disclosure including retrieving all copies of the  
28 Confidential Material from the recipient(s) thereof and securing the agreement of the recipients

1 not to further disseminate the Confidential Material in any form. Compliance with the foregoing  
2 shall not prevent a party from seeking further relief from the Court.

3 26. In addition the specific requirements set forth in Paragraph 14 hereof regarding the  
4 handling of HIGHLY RESTRICTED CONFIDENTIAL materials, the recipient of any  
5 Confidential Material shall maintain such information in a secure and safe place, and shall  
6 exercise at least the same degree of care in handling the Confidential Material as is exercised by  
7 the recipient with respect to its own Confidential Material and to confidential information of a  
8 similar nature, but in no event less than due care. Each recipient of any Confidential Material  
9 hereby agrees to be subject to the jurisdiction of this Court for purposes of the implementation  
10 and enforcement of this Protective Order.

11 27. This Protective Order shall not prevent the parties from applying to the Court for  
12 relief therefrom or modification thereto, or from applying to the Court for further or additional  
13 relief by way of protective orders or otherwise, or from agreeing between themselves to  
14 modifications of this Protective Order.

15 28. Confidential Materials shall be used solely for the purposes of this Action and  
16 shall not be used for any other purpose except as expressly provided herein or by further Order of  
17 the Court.

18 29. In the event that a party desires to provide access to or disseminate Confidential  
19 Materials to any person not entitled to access under this Protective Order, it may move the Court  
20 for an order that such person be given access thereto if the parties cannot, after negotiating in  
21 good faith, agree to such additional access or dissemination.

22 30. Within thirty (30) days after the final conclusion of this Action ("Termination of  
23 Action"), including any appeals, all Confidential Materials (except HIGHLY RESTRICTED  
24 CONFIDENTIAL materials) produced by any party, and all copies of such information, shall be  
25 returned to the producing party, or counsel of record shall certify in writing that such material has  
26 been destroyed. Within ten (10) days after the final conclusion of this Action, including any  
27 appeals, all HIGHLY RESTRICTED CONFIDENTIAL materials produced by any party shall be  
28 returned to the producing party along with certification by outside counsel of record and any other

1 individuals who accessed such materials that all such materials have been returned. Counsel of  
2 record may retain a copy of all correspondence, pleadings, motion papers, discovery responses,  
3 deposition and trial transcripts, legal memoranda and work product.

4 31. This Protective Order shall survive the final termination of this Action with respect  
5 to any retained Confidential Materials.

6 32. Nothing in this Protective Order shall prevent or otherwise restrict outside counsel  
7 from rendering advice to their clients and, in the course thereof, relying generally on Confidential  
8 Material; provided, however, that in rendering such advice counsel shall not disclose, reveal or  
9 describe any such materials except insofar as allowed (if allowed at all) under the terms of this  
10 Order.

11 33. If a party wishes to use Confidential Material at the examination at deposition or  
12 trial of any witness not entitled to have access to such Confidential Materials, such Party shall  
13 obtain the consent of the producing party, in advance, and the failure of the examining attorney to  
14 obtain such consent or order of the Court shall not be grounds for delaying the deposition or trial  
15 or their progress, unless, in the case of a deposition, all persons attending the deposition consent,  
16 and in the case of trial the Court so rules. Where Confidential Material may be revealed or  
17 referred to in a question that will be put to the witness at a deposition upon oral examination or  
18 Confidential Materials will be used as exhibits during the examination, the producing party may  
19 require that all persons in attendance who are not entitled access to such Confidential Material  
20 under this Protective Order leave the room until such line of inquiry is completed. Where  
21 Confidential Material may be revealed or referred to in a question that will be put to the witness  
22 at trial upon oral examination or Confidential Materials will be used as exhibits during the  
23 examination, the producing party may request that the Court require that all persons in attendance  
24 who are not entitled access to such Confidential Material under this Protective Order leave the  
25 courtroom until such line of inquiry is completed

26 34. No copy of any transcript of any deposition which is designated, in part or in  
27 whole, as CONFIDENTIAL, CONFIDENTIAL -- OUTSIDE COUNSEL ONLY, or HIGHLY  
28 RESTRICTED CONFIDENTIAL shall be furnished by the court reporter to any person other

1 than to counsel of record and counsel for a non-party, if the furnished transcript is of the non-  
2 party's own deposition.

3 35. The terms of this Protective Order may be applied to the Confidential Materials of  
4 a non-party, as long as that non-party agrees in writing to be bound by the terms of this Protective  
5 Order.

6 36. By affixing their signatures below, the parties agree to abide by the terms of this  
7 Stipulation until this Protective Order or a further protective order is entered by the Court. Upon  
8 the signing of this Order by the District Court Judge, this Protective Order shall be effective as  
9 against all party signatories hereto as of the date of such signature of that party or party's  
10 representative, thereby rendering this Protective Order effective nunc pro tunc to the date of such  
11 party's signature.

12 SO ORDERED.

13 SIGNED this 19 day of October, 2011

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16 \_\_\_\_\_  
Honorable Nathanael Cousins  
United States Magistrate Judge

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1 AGREED TO AND APPROVED FOR ENTRY:

2 Dated: October 12, 2011

WEIL, GOTSHAL & MANGES LLP

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By:                   /s/ Sonal Mehta                  

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Company

Dated: October 12, 2011

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By:                   /s/ Jennifer Forte                  

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Dated: October 12, 2011

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**EXHIBIT A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CISCO SYSTEMS, INC.,  
Plaintiff,

Case No. C 09-1550 JSW (NMC)

v.

TELECONFERENCE SYSTEMS, LLC, and  
MARGALLA COMMUNICATIONS INC.,  
Defendants.

UNDERTAKING CONCERNING RECEIPT OF  
CONFIDENTIAL MATERIALS SUBJECT TO PROTECTIVE  
ORDER

I, \_\_\_\_\_ declare that:

1. My present residential address

is \_\_\_\_\_.

2. My present employer is \_\_\_\_\_

and the address of my present employer is

\_\_\_\_\_.

3. My present occupation or job description is

\_\_\_\_\_.

4. I have received and carefully read the Protective Order in this Action dated

\_\_\_\_\_, and understand its provisions. As a condition precedent to receiving any

Confidential Materials, as such are defined in the Protective Order, I agree to subject myself to

the personal jurisdiction of this Court with respect to the enforcement of the provisions of the

attached Protective Order. I understand that I am obligated, under Order of the Court, to hold in

confidence and not to disclose the contents of any document marked or later designated pursuant

to the Protective Order as CONFIDENTIAL, CONFIDENTIAL -- OUTSIDE COUNSEL ONLY

1 or HIGHLY RESTRICTED CONFIDENTIAL to anyone other than those persons identified in  
2 Paragraphs 12, 13, or 14 of the Protective Order, respectively, to the extent that such persons are  
3 qualified to review such information. I further understand that I am not to disclose to persons  
4 other than those persons identified in Paragraphs 12, 13, or 14 of the Protective Order any words,  
5 substances, summaries, abstracts or indices of Confidential Materials or transcripts disclosed to  
6 me. In addition to the foregoing, I understand that I must abide by all of the provisions of the  
7 Protective Order.

8 5. At the termination of this Action or at any time requested by counsel of record in  
9 this Action, I will return to counsel of record in this Action all documents and other materials,  
10 including notes, computer data, summaries, abstracts, or any other materials including or  
11 reflecting HIGHLY RESTRICTED CONFIDENTIAL material which have come into my  
12 possession, and will return all documents or things I have prepared relating to or reflecting such  
13 information.

14 6. At the termination of this Action or at any time requested by counsel of record in  
15 this Action, I will destroy or return to counsel of record in this Action all documents and other  
16 materials, including notes, computer data, summaries, abstracts, or any other materials including  
17 or reflecting CONFIDENTIAL or CONFIDENTIAL -- OUTSIDE COUNSEL ONLY material  
18 which have come into my possession, and will destroy or return all documents or things I have  
19 prepared relating to or reflecting such information.

20 7. I understand that if I violate the provisions of this Protective Order, I will be in  
21 violation of a Court Order and subject to sanctions or other remedies that may be imposed by the  
22 Court and potentially liable in a civil Action for damages by the disclosing party.

23 8. I declare under penalty of perjury of the laws of the United States that the  
24 foregoing is true and correct.

25  
26 Executed on: \_\_\_\_\_ Name: \_\_\_\_\_  
27  
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