

EXHIBIT F

Dalton, Amy

From: Avalos, Julio
Sent: Thursday, November 11, 2010 10:38 AM
To: 'Brian Hancock'
Cc: Chatterjee, I. Neel; Gray, Thomas
Subject: RE: Stipulated Protective Order (Redlined Draft)
Attachments: HTI LLC Protective Order Opinion.pdf

Brian,

I think we're just about there on the protective order. However, I wanted to get your thoughts on Section 8(e) regarding source code inspection logs.

As currently drafted, the provision reads:

(e) The Receiving Party shall maintain a record of any individual who has inspected any portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall not create any electronic or other images of the paper copies and shall not convert any of the information contained in the paper copies into any electronic format. The Receiving Party shall only make additional paper copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including a testifying expert's expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies used during a deposition shall be retrieved by the Producing Party at the end of each day and must not be given to or left with a court reporter or any other individual.

Though the Receiving Party is required to "maintain a record of any individual who has inspected" source code, the Order currently says nothing regarding what rights, if any, the Producing Party has to review that record/log. Indeed, the Order currently says nothing whatsoever about what may or may not be done with those logs or what purpose they're supposed to serve. Given the sensitivity of source code likely to be targeted in this litigation, this omission presents a problem.

I've just come across an October 20, 2010 Southern District of California opinion highlighting the risks associated with such an omission. I've attached the case here, *HTI IP LLC, et al. v. Webtech Wireless, Inc., et al.*, 2010 U.S. Dist. LEXIS 111441 (S.D. Cal. Oct. 20, 2010).

The producing party asked for access to the receiving party's logs. The Court held that under the language of the protective order, the receiving party was under no obligation to make the logs available for inspection to the other side: "[T]he plain language of ... [the disputed provision] only requires Plaintiffs to maintain their own log of files that are printed out or photocopied from the source code. The parties negotiated the terms of this detailed protective order, and if they had intended that a log or copies of printouts be provided to the producing party ... they would have included the specifics of that procedure in the protective order."

In order to avoid unnecessary ambiguity later on, we suggest that 8(e) be amended to expressly require that source code "inspection logs" be made available upon request to the Producing Party. If you agree, we'll go ahead and draft up some proposed language for you to review.

Thanks,

Julio

From: Brian Hancock [mailto:bdhancock@hgdlawfirm.com]
Sent: Tuesday, November 09, 2010 12:28 PM
To: Avalos, Julio
Cc: Chatterjee, I. Neel; Gray, Thomas
Subject: FW: Stipulated Protective Order (Redlined Draft)

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From: Brian Hancock
Sent: Tuesday, November 09, 2010 2:25 PM
To: 'Avalos, Julio'
Cc: Chatterjee, I. Neel; Gray, Thomas
Subject: Stipulated Protective Order (Redlined Draft)

Julio,
Per your request in your email dated November 4th, please find attached a redlined version of the Protective Order agreed to by Mr. Miller and Facebook. There should be no disputes left as to the terms of the present draft. Please confirm.

I would also ask that if the parties are in agreement as to the terms of the Protective Order as set forth in the attached version, that Facebook proceed with full production and responses to the Plaintiff's First Consolidated Discovery Requests prior to entry of an Order by the Court. The Plaintiff agrees to be fully bound by the terms of the agreed-upon order prior to the Court's formal entry of same, and in light of the fact that Facebook's responses and document production is past due and the non-expert discovery cut-off is presently little more than two months away (January 31, 2011), the Plaintiff does not consider this to be an unreasonable request. Please confirm whether or not Facebook is willing to proceed with discovery as requested.

Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,

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1 of 9 DOCUMENTS

HTI IP, LLC; NETWORK FLEET, INC., Plaintiffs, v. WEBTECH WIRELESS INC.; WEBTECH WIRELESS USA LTD.; XIRGO TECHNOLOGIES, LLC; PROCON, INC., Defendants. AND ALL RELATED COUNTERCLAIMS.

Civil No. 10cv1783 DMS (NLS)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

2010 U.S. Dist. LEXIS 111441

October 20, 2010, Decided

October 20, 2010, Filed

COUNSEL: [*1] For HTI IP, LLC, Networkfleet, Inc., Plaintiffs, Counter Defendants: Samuel Franklin Baxter, LEAD ATTORNEY, McKool Smith - Marshall, Marshall, TX; Amy E Simpson, PRO HAC VICE, Paul Hastings Janofsky & Walker - San Diego, San Diego, CA; Bhaskar Kakarla, Robert M. Masters, PRO HAC VICE, Paul Hastings Janofsky & Walker LLP, Washington, DC; Elizabeth L Brann, PRO HAC VICE, Paul Hastings Janofsky and Walker, San Diego, CA; Martin C. Robson , III, McKool Smith, P.C., Dallas, TX; Robert Marc Manley, McKool Smith, Dallas, TX; Terrance J Wikberg, Timothy P Cremen, PRO HAC VICE, Paul Hastings Janofsky & Walker - Washington, Washington, DC.

For DriveOK, Inc. (d.b.a. Vehiclepath), Defendant, Counter Claimant: Andrew William Stinson, Ramey & Flock, Tyler, TX; Geoffrey D Kressin, Mark P Crockett, PRO HAC VICE, Luedeka Neely & Graham, PC, Knoxville, TN.

For Webtech Wireless Inc., Webtech Wireless USA LTD., Defendants: Brett Christopher Govett, Miriam Latorre Quinn, LEAD ATTORNEYS, PRO HAC VICE, Fulbright & Jaworski, LLP, Dallas, TX; John Anthony O'Malley, LEAD ATTORNEY, Fulbright and Jaworski LLP, Los Angeles, CA; Ryan T. McCoy, LEAD ATTORNEY, Fulbright & Jaworski LLP, Los Angeles, CA; Kirby Blair [*2] Drake, Klemchuk Kubasta LLP, Dallas, TX.

For Xirgo Technologies, LLC, Defendant: Michael D Harris, LEAD ATTORNEY, SoCal IP Law Group, Westlake Village, CA; Allen Franklin Gardner, Michael E. Jones, Potter Minton PC, Tyler, TX; Meenakshi Kala Sarvaiya, So Cal IP Law Group LLP, Westlake Village, CA; Steven C Sereboff, PRO HAC VICE, SoCal IP Law Group LLP, Westlake Village, CA.

For Procon, Inc., formerly known as DriveOK, Inc. (d.b.a. Vehiclepath), Defendant: Kurt M Kjelland, Nicole Sara Cunningham, LEAD ATTORNEYS, Goodwin Procter LLP, San Diego, CA; Andrew William Stinson, Ramey & Flock, Tyler, TX; Geoffrey D Kressin, Mark P Crockett, Luedeka Neely & Graham, PC, Knoxville, TN.

For Procon, Inc., formerly known as DriveOK, Inc. (d.b.a. Vehiclepath), Counter Claimant: Kurt M Kjelland, Nicole Sara Cunningham, LEAD ATTORNEYS, Goodwin Procter LLP, San Diego, CA.

For Reynolds & Reynolds Company, Movant: John C Allen, LEAD ATTORNEY, Law Office of John C Allen, Houston, TX.

For Xirgo Technologies, LLC, Counter Claimant: Meenakshi Kala Sarvaiya, So Cal IP Law Group LLP, Westlake Village, CA; Steven C Sereboff, PRO HAC VICE, SoCal IP Law Group LLP, Westlake Village, CA.

For HTI IP, LLC, Networkfleet, [*3] Inc., Counter Defendant: Bhaskar Kakarla, Robert M. Masters, PRO

HAC VICE, Paul Hastings Janofsky & Walker LLP, Washington, DC.

For HTI IP, LLC, Networkfleet, Inc., Counter Defendants: Samuel Franklin Baxter, LEAD ATTORNEY, McKool Smith - Marshall, Marshall, TX; Bhaskar Kakarla, Robert M. Masters, PRO HAC VICE, Paul Hastings Janofsky & Walker LLP, Washington, DC; Martin C. Robson, III, McKool Smith, P.C., Dallas, TX; Robert Marc Manley, McKool Smith, Dallas, TX; Robert M. Masters, PRO HAC VICE, Paul Hastings Janofsky & Walker LLP, Washington, DC; Terrance J Wikberg, Paul Hastings Janofsky & Walker - Washington, Washington, DC.

For Webtech Wireless Inc., Counter Claimant: Brett Christopher Govett, Miriam Latorre Quinn, LEAD ATTORNEYS, PRO HAC VICE, Fulbright & Jaworski, LLP, Dallas, TX; John Anthony O'Malley, LEAD ATTORNEY, Fulbright and Jaworski LLP, Los Angeles, CA.

For Procon, Inc., Counter Claimant: Kurt M Kjelland, Nicole Sara Cunningham, LEAD ATTORNEYS, Goodwin Procter LLP, San Diego, CA; Andrew William Stinson, Ramey & Flock, Tyler, TX; Geoffrey D Kressin, Mark P Crockett, Luedeka Neely & Graham, PC, Knoxville, TN.

For HTI IP, LLC, Networkfleet, Inc., Counter Defendant: Bhaskar [*4] Kakarla, Robert M. Masters, PRO HAC VICE, Paul Hastings Janofsky & Walker LLP, Washington, DC.

For Webtech Wireless Inc., Counter Claimant; Brett Christopher Govett, Miriam Latorre Quinn, LEAD ATTORNEYS, PRO HAC VICE, Fulbright & Jaworski, LLP, Dallas, TX; John Anthony O'Malley, LEAD ATTORNEY, Fulbright and Jaworski LLP, Los Angeles, CA; Kirby Blair Drake, Klemchuk Kubasta LLP, Dallas, TX.

JUDGES: Hon. Nita L. Stormes, U.S. Magistrate Judge.

OPINION BY: Nita L. Stormes

OPINION

ORDER REGARDING JOINT MOTION FOR DETERMINATION OF DISCOVERY DISPUTE NO. 1, DENYING DEFENDANT'S REQUEST FOR CLARIFICATION

[Doc. No. 150]

Plaintiffs HTI IP, LLC and Networkfleet, Inc. (Plaintiffs) filed this patent infringement suit in the Eastern District of Texas against Procon, Inc., Xirgo Technologies, LLC, and Web Tech Wireless, Inc. and WebTech Wireless USA, LTD (WebTech). The four patents asserted relate to a wireless appliance placed in a car and a host computer that analyzes the data received from that appliance. On February 5, 2010, the district judge in Texas signed a stipulated **protective order** negotiated by all parties. The case was then transferred to this district on August 26, 2010. On October 8, 2010, Plaintiffs and WebTech filed [*5] a joint motion asking this court to interpret paragraph 21(h) of the **protective order**. WebTech seeks clarification of paragraph 21(h) while Plaintiff disagrees that any clarification is needed. For the following reasons, the court **GRANTS** the joint motion to determine the discovery dispute and denies WebTech's request for clarification of paragraph 21(h).

Background.

In response to discovery requests, on May 14, 2010 WebTech made available a limited set of **source code** relevant to Plaintiffs' requests for **source code** and documents relating to that **source code**. Quinn Decl. P 4. Those files were made available to Plaintiffs' consultant, Stephen Gray, for him to review at the Los Angeles office of WebTech's outside counsel, Fullbright & Jaworski. The files are on a non-networked Fullbright & Jaworski computer and Gray can make printouts of any files that he selects.

Gray signed the "Undertaking Concerning Confidentiality," attesting that he had read the **protective order** and agreed to use the confidential information provided to him under the **protective order** only for the purposes of the litigation. Quinn Decl. Ex. J. After his first visit to Fullbright & Jaworski, WebTech did not ask for, [*6] and Gray did not provide to WebTech's counsel, a **log** or copy of the files that he printed out. Quinn Decl. P 6.

In response to other discovery requests, WebTech eventually made available for inspection by Gray the entirety of its **source code**. Gray visited the office of Fullbright & Jaworski on July 28, 2010 and reviewed the **source code**. Again, WebTech did not ask for, and Gray did not provide to WebTech's counsel, a **log** or copy of the files that he printed out. Quinn Decl. P 12.

Plaintiffs requested that Gray again have access to review the **source code**. WebTech replied that the inspection could go forward but that Gray would have to provide a **log** or copies of any printouts he made. Plaintiffs refused, alleging that the **protective order** does not require Plaintiffs to provide WebTech with a **log** or printouts, and that Gray's selected printouts are protected

as work-product. The parties agreed that no further printouts would be made, and then sought this court's intervention to determine what, if anything, Plaintiffs are required to do under the **protective order** in terms of providing a **log** or printouts of the **source code** that its consultant has selected for review.

Paragraph 21(h) of the [*7] **protective order** reads:

The Receiving Party **shall** be permitted to make printouts and photocopies of **Source Code Material**, all of which **shall** be designated and clearly labeled "CONFIDENTIAL-OUTSIDE ATTORNEY'S EYES ONLY" and **the Receiving Party shall maintain a log** of all such files that are printed or photocopied.

Quinn Decl. Ex. A, p.7 (emphasis added).

WebTech argues that the words "maintain a **log**" mean that "Plaintiffs are required to prepare" a **log**. *Jt. Mtn.*, p.4. It asks this court to clarify paragraph 21(h) so that it be read to require Plaintiffs to produce the **source code log** at the time of the inspection in order to achieve the purpose of the **protective order** to protect the producing party's confidential and trade secret information. WebTech argues that Gray's selection of documents is not protectable as opinion work product because it is only ordinary work product. It also asserts that Plaintiffs have been careless with WebTech's highly confidential **source code** because in Plaintiffs' infringement contentions, Plaintiffs describe in detail the **source code** but did not designate those contentions as highly confidential.

Plaintiffs argue that the word "maintain" only requires them [*8] to maintain their own **log** of files that are printed out or photocopied. They argue that the **protective order** already protects the confidentiality of the **source code** and provides a remedy in case of disclosure of that code. Further, Plaintiffs have agreed to provide WebTech with a copy of their **log** if they designate Stephen Gray as a testifying expert, at the conclusion of the litigation, or if WebTech has a reasonable suspicion that Plaintiffs or their representatives have violated the **protective order**.

Order.

The court finds that the plain language of paragraph 21(h) only requires Plaintiffs to maintain their own **log** of files that are printed out or photocopied from the **source code**. The parties negotiated the terms of this detailed **protective order**, and if they had intended that a **log** or copies of printouts be provided to the producing party at

the time of the inspection, they would have included the specifics of that procedure in the **protective order**. The court, therefore, denies WebTech's request to clarify and consequently modify the **protective order**.

While the **protective order** appears clear on its face, to avoid any further confusion regarding the confidentiality of the **source code** [*9] produced, the court amends paragraphs 21(i) and 21(j), and adds 21(l), so that it is clear that any **log** produced and maintained is also protected by the **protective order**. The changes are noted in bold:

(i) Should such **log**, printouts or photocopies be transferred back to electronic media, such media **shall** be labeled "CONFIDENTIAL-OUTSIDE ATTORNEYS' EYES ONLY" and **shall** continue to be treated as such;

(j) If the Receiving Party's outside counsel, consultants, or experts obtain the **log**, printouts or photocopies of **Source Code Material**, the Receiving Party **shall** ensure that such outside counsel, consultants, or experts keep the **log**, printouts or photocopies in a secured locked area in the offices of such outside counsel, consultants, or expert. The Receiving Party may also temporarily keep the **log**, printouts or photocopies at: (i) the Court for any proceedings(s) relating to the **Source Code Material**, for the dates associated with the proceeding(s); (ii) the sites where any deposition(s) relating to the **Source Code Material** are taken, for the dates associated with the deposition(s); and (iii) any intermediate location reasonably necessary to transport the **log**, printouts or photocopies (e.g., [*10] a hotel prior to a Court proceeding or deposition);

(1) The Receiving Party shall produce the log, printouts or photocopies of Source Code Material to the Producing Party either at the time of expert witness designation, if that designated witness's testimony will involve the Producing Party's Source Code, or at the conclusion of the litigation.

Finally, regarding WebTech's concerns about maintaining the confidentiality of its **source code**, the outside reviewing consultant at issue here has already executed

an agreement to be bound by the **protective order**, and WebTech has remedies through the **protective order** should it reasonably suspect that the consultant has violated the terms of the **protective order**. Regarding the lack of confidential designation of Plaintiffs' infringement contentions, paragraph 21(f) provides that documents containing quoted **source code shall** be stamped and treated as "CONFIDENTIAL-OUTSIDE ATTORNEYS' EYES ONLY," and paragraph 4 of the **protective order** provides a procedure for WebTech to challenge

the confidential designation (or lack thereof) of the documents produced.

IT IS SO ORDERED.

DATED: October 20, 2010

/s/ Nita L. Stormes

Hon. Nita L. Stormes

U.S. Magistrate [*11] Judge

United States District Court

1056M8

***** Print Completed *****

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