



1     1.     PURPOSES AND LIMITATIONS

2             Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public disclosure  
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,  
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective  
6 Order. The parties acknowledge that this Order does not confer blanket protections on all  
7 disclosures or responses to discovery and that the protection it affords from public disclosure and use  
8 extends only to the limited information or items that are entitled to confidential treatment under the  
9 applicable legal principles. The parties further acknowledge, as set forth in Section 14.4 below, that  
10 this Stipulated Protective Order does not entitle them to file confidential information under seal;  
11 Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the  
12 standards that will be applied when a party seeks permission from the court to file material under  
13 seal.

14     2.     DEFINITIONS

15             2.1     Challenging Party: a Party or Non-Party that challenges the designation of  
16 information or items under this Order.

17             2.2     “CONFIDENTIAL” Information or Items: information (regardless of how it is  
18 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of  
19 Civil Procedure 26(c).

20             2.3     Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well  
21 as their support staff).

22             2.4     Designated House Counsel: House Counsel who seek access to “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

24             2.5     Designating Party: a Party or Non-Party that designates information or items that it  
25 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY  
26 CONFIDENTIAL – ATTORNEYS' EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
27 CODE.”

1           2.6    Disclosure or Discovery Material: all items or information, regardless of the medium  
2 or manner in which it is generated, stored, or maintained (including, among other things, testimony,  
3 transcripts, and tangible things), that are produced or generated in disclosures or responses to  
4 discovery in this matter.

5           2.7    Expert: a person with specialized knowledge or experience in a matter pertinent to  
6 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a  
7 consultant in this action; (2) is not a past or current employee of a Party or of a Party's competitor;  
8 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's  
9 competitor.

10          2.8    “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:  
11 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or  
12 Non-Party would create a substantial risk of serious harm that could not be avoided by less  
13 restrictive means.

14          2.9    “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely  
15 sensitive “Confidential Information or Items” representing computer code and associated comments  
16 and revision histories, formulas, engineering specifications, or schematics that define or otherwise  
17 describe in detail the algorithms or structure of software or hardware designs, disclosure of which to  
18 another Party or Non-Party would create a substantial risk of serious harm that could not be avoided  
19 by less restrictive means.

20          2.10   House Counsel: attorneys who are employees of a party to this action. House  
21 Counsel does not include Outside Counsel of Record or any other outside counsel.

22          2.11   Non-Party: any natural person, partnership, corporation, association, or other legal  
23 entity not named as a Party to this action.

24          2.12   Outside Counsel of Record: attorneys who are not employees of a party to this action  
25 but are retained to represent or advise a party to this action and have appeared in this action on  
26 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

27          2.13   Party: any party to this action, including all of its officers, directors, employees,

1 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
3 Material in this action.

4 2.15 Professional Vendors: persons or entities that provide litigation support services  
5 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
6 storing, or retrieving data in any form or medium) and their employees and subcontractors.

7 2.16 Protected Material: any Disclosure or Discovery Material that is designated as  
8 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY  
9 CONFIDENTIAL – SOURCE CODE.”

10 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
11 Producing Party.

### 12 3. SCOPE

13 The protections conferred by this Stipulation and Order cover not only Protected Material (as  
14 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
15 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
16 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
17 However, the protections conferred by this Stipulation and Order do not cover the following  
18 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
19 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
20 publication not involving a violation of this Order, including becoming part of the public record  
21 through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
22 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
23 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of  
24 Protected Material at trial shall be governed by a separate agreement or order.

### 25 4. DURATION

26 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
27 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order

1 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
2 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion  
3 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the  
4 time limits for filing any motions or applications for extension of time pursuant to applicable law.

5 This Order supersedes and replaces the Patent L.R. 2-2 Interim Model Protective Order that  
6 was in effect pursuant to Patent L.R. 2-2 prior to the entry of this Order, and this Order, upon its  
7 entry, shall govern the treatment of information designated hereunder, including any obligations or  
8 potential remedies relating to same, regardless of whether such information was received prior to or  
9 following the entry of this Order.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
12 Non-Party that designates information or items for protection under this Order must take care to  
13 limit any such designation to specific material that qualifies under the appropriate standards. To the  
14 extent it is practical to do so, the Designating Party must designate for protection only those parts of  
15 material, documents, items, or oral or written communications that qualify – so that other portions of  
16 the material, documents, items, or communications for which protection is not warranted are not  
17 swept unjustifiably within the ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown  
19 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily  
20 encumber or retard the case development process or to impose unnecessary expenses and burdens on  
21 other parties) expose the Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it designated for  
23 protection do not qualify for protection at all or do not qualify for the level of protection initially  
24 asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the  
25 mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
27 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,

1 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
2 designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents, but excluding  
5 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the  
6 legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or  
7 “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains protected material. If  
8 only a portion or portions of the material on a page qualifies for protection, the Producing Party also  
9 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins)  
10 and must specify, for each portion, the level of protection being asserted.

11 A Party or Non-Party that makes original documents or materials available for inspection  
12 need not designate them for protection until after the inspecting Party has indicated which material it  
13 would like copied and produced. During the inspection and before the designation, all of the  
14 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
16 copied and produced, the Producing Party must determine which documents, or portions thereof,  
17 qualify for protection under this Order. Then, before producing the specified documents, the  
18 Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY  
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
20 CODE”) to each page that contains Protected Material. If only a portion or portions of the material  
21 on a page qualifies for protection, the Producing Party also must clearly identify the protected  
22 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion,  
23 the level of protection being asserted.

24 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
25 Designating Party identify on the record, before the close of the deposition, hearing, or other  
26 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
27 impractical to identify separately each portion of testimony that is entitled to protection and it

1 appears that substantial portions of the testimony may qualify for protection, the Designating Party  
2 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right  
3 to have up to 21 days to identify the specific portions of the testimony as to which protection is  
4 sought and to specify the level of protection being asserted. Only those portions of the testimony  
5 that are appropriately designated for protection within the 21 days shall be covered by the provisions  
6 of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition  
7 or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be  
8 treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9 Parties shall give the other parties notice if they reasonably expect a deposition, hearing, or  
10 other proceeding to include Protected Material so that the other parties can ensure that only  
11 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
12 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
13 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
14 ATTORNEYS’ EYES ONLY.”

15 Transcripts containing Protected Material shall have an obvious legend on the title page that  
16 the transcript contains Protected Material, and the title page shall be followed by a list of all pages  
17 (including line numbers as appropriate) that have been designated as Protected Material and the level  
18 of protection being asserted by the Designating Party. The Designating Party shall inform the court  
19 reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day  
20 period for designation shall be treated during that period as if it had been designated “HIGHLY  
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the  
22 expiration of that period, the transcript shall be treated only as actually designated.

23 (c) for information produced in some form other than documentary and for any other tangible  
24 items, that the Producing Party affix in a prominent place on the exterior of the container or  
25 containers in which the information or item is stored the legend “CONFIDENTIAL,” “HIGHLY  
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
27 CODE.” If only a portion or portions of the information or item warrant protection, the Producing

1 Party, to the extent practicable, shall identify the protected portion(s) and specify the level of  
2 protection being asserted.

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
4 designate qualified information or items does not, standing alone, waive the Designating Party's  
5 right to secure protection under this Order for such material. Upon timely correction of a  
6 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in  
7 accordance with the provisions of this Order.

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
10 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
12 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
13 confidentiality designation by electing not to mount a challenge promptly after the original  
14 designation is disclosed.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
16 by providing written notice of each designation it is challenging and describing the basis for each  
17 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
18 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
19 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
20 begin the process by conferring directly (in voice to voice dialogue; other forms of communication  
21 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging  
22 Party must explain the basis for its belief that the confidentiality designation was not proper and  
23 must give the Designating Party an opportunity to review the designated material, to reconsider the  
24 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
25 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
26 has engaged in this meet and confer process first or establishes that the Designating Party is  
27 unwilling to participate in the meet and confer process in a timely manner.



1           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
2 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
3 Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable)  
4 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the  
5 meet and confer process will not resolve their dispute, whichever is earlier. Each such motion must  
6 be accompanied by a competent declaration affirming that the movant has complied with the meet  
7 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
8 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
9 shall automatically waive the confidentiality designation for each challenged designation. In  
10 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
11 time if there is good cause for doing so, including a challenge to the designation of a deposition  
12 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
13 accompanied by a competent declaration affirming that the movant has complied with the meet and  
14 confer requirements imposed by the preceding paragraph.

15           The burden of persuasion in any such challenge proceeding shall be on the Designating  
16 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
17 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.  
18 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to  
19 retain confidentiality as described above, all parties shall continue to afford the material in question  
20 the level of protection to which it is entitled under the Producing Party's designation until the court  
21 rules on the challenge.

22     7.       ACCESS TO AND USE OF PROTECTED MATERIAL

23           7.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
24 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
25 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
26 the categories of persons and under the conditions described in this Order. When the litigation has  
27 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL

1 DISPOSITION).

2 Protected Material must be stored and maintained by a Receiving Party at a location and in a  
3 secure manner that ensures that access is limited to the persons authorized under this Order.

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
5 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
6 information or item designated “CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees  
8 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for  
9 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is  
10 attached hereto as Exhibit A;

11 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
12 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
15 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement  
16 to Be Bound” (Exhibit A);

17 (d) the court and its personnel;

18 (e) court reporters and their staff, professional jury or trial consultants, and Professional  
19 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
22 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
23 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
24 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
25 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
26 Stipulated Protective Order.

27 (g) the author or recipient of a document containing the information or a custodian or

1 other person who otherwise possessed or knew the information.

2           7.3     Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
3 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered  
4 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
5 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
6 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

7           (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees  
8 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for  
9 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is  
10 attached hereto as Exhibit A;

11           (b) Designated House Counsel of the Receiving Party (1) who are not competitive  
12 decision-makers; (2) to whom disclosure is reasonably necessary for this litigation; and (3) who have  
13 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);<sup>1</sup>

14           (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this  
15 litigation; (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and  
16 (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

17           (d) the court and its personnel;

18           (e) court reporters and their staff, professional jury or trial consultants, and Professional  
19 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

21           (f) the author or recipient of a document containing the information or a custodian or  
22 other person who otherwise possessed or knew the information.

23           7.4     Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL  
24 – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information

25 \_\_\_\_\_  
26 <sup>1</sup> This Order contemplates that Designated House Counsel shall not have access to any information  
27 or items designated “HIGHLY CONFIDENTIAL – SOURCE CODE.”

1 or Items to Designated House Counsel or Experts.

2 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating  
3 Party, a Party that seeks to disclose to Designated House Counsel any information or item that has  
4 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to  
5 paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the full  
6 name of the Designated House Counsel and the city and state of his or her residence; and (2)  
7 describes the Designated House Counsel’s current and reasonably foreseeable future primary job  
8 duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may  
9 become involved, in any competitive decision-making.

10 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating  
11 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item  
12 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
13 “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a  
14 written request to the Designating Party that (1) identifies the general categories of “HIGHLY  
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
16 CODE” information that the Receiving Party seeks permission to disclose to the Expert; (2) sets  
17 forth the full name of the Expert and the city and state of his or her primary residence; (3) attaches a  
18 copy of the Expert’s current resume; (4) identifies the Expert’s current employer(s); (5) identifies  
19 each person or entity from whom the Expert has received compensation or funding for work in his or  
20 her areas of expertise or to whom the expert has provided professional services, including in  
21 connection with a litigation, at any time during the preceding five years;<sup>2</sup> and (6) identifies (by name  
22 and number of the case, filing date, and location of court) any litigation in connection with which the  
23 Expert has offered expert testimony, including through a declaration, report, or testimony at a  
24 deposition or trial, during the preceding five years.

25 \_\_\_\_\_  
26 <sup>2</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-  
27 party, then the Expert should provide whatever information the Expert believes can be disclosed  
28 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert  
shall be available to meet and confer with the Designating Party regarding any such engagement.

1 (b) A Party that makes a request and provides the information specified in the preceding  
2 respective paragraphs may disclose the subject Protected Material to the identified Designated House  
3 Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written  
4 objection from the Designating Party. Any such objection must set forth in detail the grounds on  
5 which it is based.

6 (c) A Party that receives a timely written objection must meet and confer with the  
7 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement  
8 within seven days of the written objection. If no agreement is reached, the Party seeking to make the  
9 disclosure to Designated House Counsel or the Expert may file a motion as provided in Civil Local  
10 Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) seeking  
11 permission from the court to do so. Any such motion must describe the circumstances with  
12 specificity, set forth in detail the reasons why disclosure to Designated House Counsel or the Expert  
13 is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any  
14 additional means that could be used to reduce that risk. In addition, any such motion must be  
15 accompanied by a competent declaration describing the parties' efforts to resolve the matter by  
16 agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the  
17 reasons advanced by the Designating Party for its refusal to approve the disclosure.

18 In any such proceeding, the Party opposing disclosure to Designated House Counsel or  
19 the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail  
20 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected  
21 Material to its Designated House Counsel or Expert.

22 7.5 Isolation of Sony's "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
23 ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE"

24 Sony competes with other co-defendants. Any information provided by Sony and  
25 designated by Sony as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY  
26 CONFIDENTIAL – SOURCE CODE" shall not be disclosed to any co-defendant. Without waiver  
27 of or prejudice to Positive's right to challenge any such designation under Section 6 of this

1 Protective Order, any discovery request served by one of Sony’s co-defendants on Plaintiff Positive  
2 Technologies shall not be understood to cover any “HIGHLY CONFIDENTIAL – ATTORNEYS’  
3 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” material produced by Sony to  
4 Plaintiff Positive Technologies.

5 8. PROSECUTION BAR

6 Absent written consent from the Producing Party, any individual who receives access to  
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
8 SOURCE CODE” information shall not be involved in the prosecution of patents or patent  
9 applications relating to e-readers with electrophoretic displays and the patents asserted in this action  
10 and any patent or application claiming priority to or otherwise related to the patents asserted in this  
11 action, before any foreign or domestic agency, including the United States Patent and Trademark  
12 Office (“the Patent Office”). For purposes of this paragraph, “prosecution” includes directly or  
13 indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent  
14 claims.<sup>3</sup> To avoid any doubt, “prosecution” as used in this paragraph does not include representing a  
15 party challenging a patent before a domestic or foreign agency (including, but not limited to, a  
16 reissue protest, *ex parte* reexamination or *inter partes* reexamination). This Prosecution Bar shall  
17 begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
18 CONFIDENTIAL – SOURCE CODE” information is first received by the affected individual and  
19 shall end one (1) year after final termination of this action.

20 9. SOURCE CODE

21 (a) To the extent production of source code becomes necessary in this case, a Producing  
22 Party may designate source code as “HIGHLY CONFIDENTIAL – SOURCE CODE” if it  
23 comprises or includes confidential, proprietary or trade secret source code.

24 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”  
25 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’  
26

1 EYES ONLY” information, including the Prosecution Bar set forth in Paragraph 8, and may be  
2 disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
3 ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with the exception of  
4 Designated House Counsel.

5 (c) Any source code produced in discovery shall be made available for inspection, in a  
6 format allowing it to be reasonably reviewed and searched, during normal business hours or at other  
7 mutually agreeable times, at an office of the Producing Party’s counsel or another mutually agreed  
8 upon location. The source code shall be made available for inspection on a secured computer in a  
9 secured room without Internet access or network access to other computers, and the Receiving Party  
10 shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable  
11 media or recordable device. The Producing Party may visually monitor the activities of the  
12 Receiving Party’s representatives during any source code review, but only to ensure that there is no  
13 unauthorized recording, copying, or transmission of the source code.

14 (d) The Receiving Party may request paper copies of limited portions of source code that  
15 are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other  
16 papers, or for deposition or trial, but shall not request paper copies for the purpose of reviewing the  
17 source code other than electronically as set forth in paragraph (c) in the first instance. The  
18 Producing Party shall provide all such source code in paper form, including bates numbers and the  
19 label “HIGHLY CONFIDENTIAL – SOURCE CODE.” The Producing Party may challenge the  
20 amount of source code requested in hard copy form pursuant to the dispute resolution procedure and  
21 timeframes set forth in Paragraph 6 whereby the Producing Party is the “Challenging Party” and the  
22 Receiving Party is the “Designating Party” for purposes of dispute resolution.

23 (e) The Receiving Party shall maintain a record of any individual who has inspected any  
24 portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper  
25 copies of any printed portions of the source code in a secured, locked area. The Receiving Party  
26 shall not create any electronic or other images of the paper copies and shall not convert any of the  
27 information contained in the paper copies into any electronic format. The Receiving Party shall only

1 make additional paper copies if such additional copies are (1) necessary to prepare court filings,  
2 pleadings, or other papers (including a testifying expert's expert report); (2) necessary for  
3 deposition; or (3) otherwise necessary for the preparation of its case. Any paper copies used during  
4 a deposition shall be retrieved by the Producing Party at the end of each day and must not be given  
5 to or left with a court reporter or any other unauthorized individual.

6 10. PROTECTED MATERIAL SUBPOENAED OR  
7 ORDERED PRODUCED IN OTHER LITIGATION

8 If a Party is served with a subpoena or a court order issued in other litigation that compels  
9 disclosure of any information or items designated in this action as "CONFIDENTIAL," "HIGHLY  
10 CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE  
11 CODE," that Party must:

12 (a) promptly notify in writing the Designating Party. Such notification shall include a  
13 copy of the subpoena or court order;

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

17 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
18 Designating Party whose Protected Material may be affected.<sup>4</sup>

19 If the Designating Party timely seeks a protective order, the Party served with the subpoena  
20 or court order shall not produce any information designated in this action as "CONFIDENTIAL,"  
21 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL –  
22 SOURCE CODE" before a determination by the court from which the subpoena or order issued,  
23 unless the Party has obtained the Designating Party's permission. The Designating Party shall bear  
24 the burden and expense of seeking protection in that court of its confidential material – and nothing  
25

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26 <sup>4</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this  
27 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its  
28 confidentiality interests in the court from which the subpoena or order issued.



1 in these provisions should be construed as authorizing or encouraging a Receiving Party in this  
2 action to disobey a lawful directive from another court.

3 11. A NON-PARTY'S PROTECTED MATERIAL

4 SOUGHT TO BE PRODUCED IN THIS LITIGATION

5 (a) The terms of this Order are applicable to information produced by a Non-Party in this  
6 action and designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS'  
7 EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE." Such information produced  
8 by Non-Parties in connection with this litigation is protected by the remedies and relief provided by  
9 this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking  
10 additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-  
12 Party's confidential information in its possession, and the Party is subject to an agreement with the  
13 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

- 14 1. promptly notify in writing the Requesting Party and the Non-Party that some or  
15 all of the information requested is subject to a confidentiality agreement with a Non-Party;
- 16 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in  
17 this litigation, the relevant discovery request(s), and a reasonably specific description of the  
18 information requested; and
- 19 3. make the information requested available for inspection by the Non-Party.

20 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
21 days of receiving the notice and accompanying information, the Receiving Party may produce the  
22 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely  
23 seeks a protective order, the Receiving Party shall not produce any information in its possession or  
24 control that is subject to the confidentiality agreement with the Non-Party before a determination by  
25  
26  
27

1 the court.<sup>5</sup> Absent a court order to the contrary, the Non-Party shall bear the burden and expense of  
2 seeking protection in this court of its Protected Material.

3 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
5 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,  
6 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized  
7 disclosures; (b) use its best efforts to retrieve all unauthorized copies of the Protected Material; (c)  
8 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
9 Order; and (d) request such person or persons to execute the “Acknowledgment and Agreement to  
10 Be Bound” that is attached hereto as Exhibit A.

11 13. INADVERTENT PRODUCTION OF PRIVILEGED  
12 OR OTHERWISE PROTECTED MATERIAL

13 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced  
14 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties  
15 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to  
16 modify whatever procedure may be established in an e-discovery order that provides for production  
17 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
18 parties reach an agreement on the effect of disclosure of a communication or information covered by  
19 the attorney-client privilege or work product protection, the parties may incorporate their agreement  
20 in the stipulated protective order submitted to the court.

21 14. MISCELLANEOUS

22 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek  
23 its modification by the court in the future.

24 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order  
25

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26 <sup>5</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality  
27 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality  
28 interests in this court.

1 no Party waives any right it otherwise would have to object to disclosing or producing any  
2 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
3 Party waives any right to object on any ground to use in evidence of any of the material covered by  
4 this Protective Order.

5 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable  
6 laws and regulations relating to the export of technical data contained in such Protected Material,  
7 including the release of such technical data to foreign persons or nationals in the United States or  
8 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical  
9 data, and the Receiving Party shall take measures necessary to ensure compliance.

10 14.4 Filing Protected Material. Without written permission from the Designating Party or  
11 a court order secured after appropriate notice to all interested persons, a Party may not file in the  
12 public record in this action any Protected Material. A Party that seeks to file under seal any  
13 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected  
14 Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific  
15 Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order  
16 will issue only upon a request establishing that the Protected Material at issue is privileged,  
17 protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's  
18 request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) and General Order  
19 62 is denied by the court, then the Receiving Party may file the Protected Material in the public  
20 record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

21 15. FINAL DISPOSITION

22 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
23 Receiving Party must return all Protected Material to the Producing Party or destroy such material.  
24 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
25 summaries, and any other format reproducing or capturing any of the Protected Material. Whether  
26 the Protected Material is returned or destroyed, the Receiving Party must submit a written  
27 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)

1 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material  
2 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,  
3 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected  
4 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
5 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
6 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant  
7 and expert work product, even if such materials contain Protected Material. Any such archival  
8 copies that contain or constitute Protected Material remain subject to this Protective Order as set  
9 forth in Section 4 (DURATION).

10  
11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12  
13 DATED: May 27, 2012

14  
15 ATTORNEYS FOR PLAINTIFF POSITIVE  
16 TECHNOLOGIES, INC.

17 /s/ Bradley D. Coburn (with permission)

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jimglass@quinnemanuel.com

7 PURSUANT TO STIPULATION, IT IS SO ORDERED.

8 DATED: 8/2/12



Hon. Susan Illston  
United States District Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
5 understand the Stipulated Protective Order that was issued by the United States District Court for the  
6 Northern District of California on \_\_\_\_\_ [date] in the case of Positive Technologies v. Sony et al.,  
7 Case No.: 3:11-cv-02226-SI agree to comply with and to be bound by all the terms of this Stipulated  
8 Protective Order, and I understand and acknowledge that failure to so comply could expose me to  
9 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in  
10 any manner any information or item that is subject to this Stipulated Protective Order to any person  
11 or entity except in strict compliance with the provisions of this Order.  
12

13  
14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
16 Order, even if such enforcement proceedings occur after termination of this action.  
17

18 I hereby appoint \_\_\_\_\_ [print or type full name] of  
19 \_\_\_\_\_ [print or type full address and telephone number] as  
20 my California agent for service of process in connection with this action or any proceedings related  
21 to enforcement of this Stipulated Protective Order.  
22

23  
24 Date: \_\_\_\_\_

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

26 Printed name: \_\_\_\_\_  
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Signature: \_\_\_\_\_

Dated this \_\_ day of \_\_\_\_\_, \_\_\_\_.

Respectfully submitted,

By: /s/ \_\_\_\_\_