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 17 INTEGRATED SILICON SOLUTION, INC.

18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA

20 JAMES B. GOODMAN,

21 Plaintiff,

22 v.

23 INTEL CORPORATION, et al.,

24 Defendants.

Case No. 11-CV-2607 MMC MED

PROPOSED STIPULATED PROTECTIVE
 ORDER BASED ON PATENT LOCAL
 RULE 2-2 INTERIM MODEL
 PROTECTIVE ORDER

25 1. PURPOSES AND LIMITATIONS

26 Disclosure and discovery activity in this action are likely to involve production of
 27 confidential, proprietary, or private information for which special protection from public disclosure
 28 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures
 or responses to discovery and that the protection it affords from public disclosure and use extends

1 only to the limited information or items that are entitled to confidential treatment under the
2 applicable legal principles. The parties further acknowledge, as set forth in Section 14.4 below, that
3 this Stipulated Protective Order does not entitle them to file confidential information under seal;
4 Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the
5 standards that will be applied when a party seeks permission from the court to file material under
6 seal.

7 2. DEFINITIONS

8 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
9 information or items under this Order.

10 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
11 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
12 Civil Procedure 26(c).

13 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
14 as their support staff).

15 2.4 Designated House Counsel: House Counsel who seek access to "HIGHLY
16 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information in this matter.

17 2.5 Designating Party: a Party or Non-Party that designates information or items that it
18 produces in disclosures or in responses to discovery as "CONFIDENTIAL," "HIGHLY
19 CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE
20 CODE."

21 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium
22 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
23 transcripts, and tangible things), that are produced or generated in disclosures or responses to
24 discovery in this matter.

25 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
26 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
27 consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor,
28 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's

1 competitor.

2 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
3 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another Party
4 or Non-Party would create a substantial risk of serious harm that could not be avoided by less
5 restrictive means.

6 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
7 sensitive “Confidential Information or Items” representing computer code and associated comments
8 and revision histories, formulas, engineering specifications, or schematics that define or otherwise
9 describe in detail the algorithms or structure of software or hardware designs, disclosure of which to
10 another Party or Non-Party would create a substantial risk of serious harm that could not be avoided
11 by less restrictive means.

12 2.10 House Counsel: attorneys who are employees of a party to this action. House
13 Counsel does not include Outside Counsel of Record or any other outside counsel.

14 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
15 entity not named as a Party to this action.

16 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action
17 but are retained to represent or advise a party to this action and have appeared in this action on
18 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

19 2.13 Party: any party to this action, including all of its officers, directors, employees,
20 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

21 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
22 Material in this action.

23 2.15 Professional Vendors: persons or entities that provide litigation support services
24 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
25 storing, or retrieving data in any form or medium) and their employees and subcontractors.

26 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
27 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
28 CONFIDENTIAL – SOURCE CODE.”

1 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
2 Producing Party.

3 3. SCOPE

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

16 4. DURATION

17 Even after final disposition of this litigation, the confidentiality obligations imposed by this
18 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
19 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
20 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
21 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
22 time limits for filing any motions or applications for extension of time pursuant to applicable law.

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
25 Non-Party that designates information or items for protection under this Order must take care to
26 limit any such designation to specific material that qualifies under the appropriate standards. To the
27 extent it is practical to do so, the Designating Party must designate for protection only those parts of
28 material, documents, items, or oral or written communications that qualify – so that other portions of

1 the material, documents, items, or communications for which protection is not warranted are not
2 swept unjustifiably within the ambit of this Order.

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

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

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
12 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
13 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
14 designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
17 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
18 legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or
19 "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains protected material. If
20 only a portion or portions of the material on a page qualifies for protection, the Producing Party also
21 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins)
22 and must specify, for each portion, the level of protection being asserted.

23 A Party or Non-Party that makes original documents or materials available for inspection
24 need not designate them for protection until after the inspecting Party has indicated which material it
25 would like copied and produced. During the inspection and before the designation, all of the material
26 made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS'
27 EYES ONLY." After the inspecting Party has identified the documents it wants copied and
28 produced, the Producing Party must determine which documents, or portions thereof, qualify for

1 protection under this Order. Then, before producing the specified documents, the Producing Party
2 must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE”) to each page
4 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
5 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
6 appropriate markings in the margins) and must specify, for each portion, the level of protection
7 being asserted.

8 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
9 Designating Party identify on the record, before the close of the deposition, hearing, or other
10 proceeding, all protected testimony and specify the level of protection being asserted. When it is
11 impractical to identify separately each portion of testimony that is entitled to protection and it
12 appears that substantial portions of the testimony may qualify for protection, the Designating Party
13 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
14 to have up to 21 days to identify the specific portions of the testimony as to which protection is
15 sought and to specify the level of protection being asserted. Only those portions of the testimony that
16 are appropriately designated for protection within the 21 days shall be covered by the provisions of
17 this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition or
18 up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated
19 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

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

26 Transcripts containing Protected Material shall have an obvious legend on the title page that
27 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
28 (including line numbers as appropriate) that have been designated as Protected Material and the

1 level of protection being asserted by the Designating Party. The Designating Party shall inform the
2 court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day
3 period for designation shall be treated during that period as if it had been designated “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the
5 expiration of that period, the transcript shall be treated only as actually designated.

6 (c) for information produced in some form other than documentary and for any other tangible
7 items, that the Producing Party affix in a prominent place on the exterior of the container or
8 containers in which the information or item is stored the legend “CONFIDENTIAL,” “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
10 CODE.” If only a portion or portions of the information or item warrant protection, the Producing
11 Party, to the extent practicable, shall identify the protected portion(s) and specify the level of
12 protection being asserted.

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
14 designate qualified information or items does not, standing alone, waive the Designating Party’s
15 right to secure protection under this Order for such material. Upon timely correction of a
16 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
17 in accordance with the provisions of this Order.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
20 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
21 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
22 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
23 confidentiality designation by electing not to mount a challenge promptly after the original
24 designation is disclosed.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
26 by providing written notice of each designation it is challenging and describing the basis for each
27 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
28 recite that the challenge to confidentiality is being made in accordance with this specific paragraph

1 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
2 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
3 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
4 Party must explain the basis for its belief that the confidentiality designation was not proper and
5 must give the Designating Party an opportunity to review the designated material, to reconsider the
6 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
7 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
8 has engaged in this meet and confer process first or establishes that the Designating Party is
9 unwilling to participate in the meet and confer process in a timely manner.

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

24 The burden of persuasion in any such challenge proceeding shall be on the Designating
25 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
26 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
27 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
28 retain confidentiality as described above, all parties shall continue to afford the material in question

1 the level of protection to which it is entitled under the Producing Party's designation until the court
2 rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
5 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
6 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
7 the categories of persons and under the conditions described in this Order. When the litigation has
8 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
9 DISPOSITION).

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

12 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
13 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
14 information or item designated "CONFIDENTIAL" only to:

15 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees
16 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
17 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is
18 attached hereto as Exhibit A;

19 (b) the officers, directors, and employees (including House Counsel) of the Receiving
20 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
21 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

22 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
23 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement
24 to Be Bound" (Exhibit A);

25 (d) the court and its personnel;

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

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

7 (g) the author or recipient of a document containing the information or a custodian or
8 other person who otherwise possessed or knew the information.

9 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
10 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered
11 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
12 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
13 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

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

18 (b) Designated House Counsel of the Receiving Party (1) who has no involvement in
19 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3)
20 who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to
21 whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;¹

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

25 (d) the court and its personnel;

26 _____
27 ¹ This Order contemplates that Designated House Counsel shall not have access to any information
28 or items designated “HIGHLY CONFIDENTIAL – SOURCE CODE.”

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

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

6 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
8 CODE” Information or Items to Designated House Counsel or Experts.

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

17 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating
18 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item
19 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
20 “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a
21 written request to the Designating Party that (1) identifies the general categories of “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
23 CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets
24 forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a
25 copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies
26 each person or entity from whom the Expert has received compensation or funding for work in his or
27
28

1 her areas of expertise or to whom the expert has provided professional services, including in
2 connection with a litigation, at any time during the preceding five years,² and (6) identifies (by name
3 and number of the case, filing date, and location of court) any litigation in connection with which the
4 Expert has offered expert testimony, including through a declaration, report, or testimony at a
5 deposition or trial, during the preceding five years.

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

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

23 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the
24 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under
25

26
27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-
28 party, then the Expert should provide whatever information the Expert believes can be disclosed
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 the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to
2 its Designated House Counsel or Expert.

3 8. PROSECUTION BAR

4 Absent written consent from the Producing Party, any individual who receives access to
5 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" technical information relating to
6 pseudo-SRAM or memory systems comprising a plurality of volatile solid state memory devices
7 operable to retain information in a low power mode, self refresh mode, among other modes, when
8 the memory is not being accessed, or "HIGHLY CONFIDENTIAL – SOURCE CODE" information
9 shall not be involved in the prosecution of patents or patent applications relating to pseudo-SRAM
10 or memory systems comprising a plurality of volatile solid state memory devices operable to retain
11 information in a low power mode, self refresh mode, among other modes, when the memory is not
12 being accessed, including without limitation the patents asserted in this action and any patent or
13 application claiming priority to or otherwise related to the patents asserted in this action, before any
14 foreign or domestic agency, including the United States Patent and Trademark Office ("the Patent
15 Office"). For purposes of this paragraph, "prosecution" includes directly or indirectly drafting,
16 amending, advising, or otherwise affecting the scope or maintenance of patent claims.³ To avoid any
17 doubt, "prosecution" as used in this paragraph does not include representing a party challenging a
18 patent before a domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte*
19 reexamination or *inter partes* reexamination). This Prosecution Bar shall begin when access to
20 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
21 SOURCE CODE" information is first received by the affected individual and shall end two (2) years
22 after final termination of this action.

23 9. DISCOVERY, DISCLOSURE, AND REVIEW OF MATERIAL DESIGNATED AS
24 "HIGHLY CONFIDENTIAL – SOURCE CODE"

25 Plaintiff has not yet requested and Defendant has not yet sought to produce source code
26 material in this action. However, the parties agree should either party determine that source code
27 _____

28 ³ Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 material is relevant to this action and wish to have the same produced in discovery, the parties will
2 meet and confer in good faith, over a period not to exceed five business days absent consent of the
3 other party, to prepare an agreed upon Source Code Protective Order governing any such production
4 for entry by the Court. As to those provisions on which the parties are unable to reach agreement,
5 each party shall be entitled to submit for decision by the Court briefing not to exceed five total pages
6 regarding whether any disputed provision should be adopted or rejected. During the pendency of the
7 parties' briefing the parties agree that the provisions of Section 9 of the Protective Order authorized
8 by the Northern District of California shall govern..

9 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
10 LITIGATION

11 If 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," "HIGHLY
13 CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE
14 CODE," 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 the
18 other litigation that some or all of the material covered by the subpoena or order is subject to this
19 Protective Order. Such notification shall include a copy of this Stipulated 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.⁴

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 "CONFIDENTIAL,"
24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." or "HIGHLY CONFIDENTIAL –
25 SOURCE CODE" before a determination by the court from which the subpoena or order issued,
26

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

1 unless the Party has obtained the Designating Party's permission. The Designating Party shall bear
2 the burden and expense of seeking protection in that court of its confidential material – and nothing
3 in these provisions should be construed as authorizing or encouraging a Receiving Party in this
4 action to disobey a lawful directive from another court.

5 11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
6 LITIGATION

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

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

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

22 (c) If the Non-Party fails to object or seek a protective order from this court within 14
23 days of receiving the notice and accompanying information, the Receiving Party may produce the
24 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
25 seeks a protective order, the Receiving Party shall not produce any information in its possession or
26 control that is subject to the confidentiality agreement with the Non-Party before a determination by
27
28

1 the court.⁵ 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
7 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
8 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
9 terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and
10 Agreement to Be Bound” that is attached hereto as Exhibit A.

11 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
12 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
23 seek 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 no Party waives any right it otherwise would have to object to disclosing or producing any
26 _____

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

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

4 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
5 laws and regulations relating to the export of technical data contained in such Protected Material,
6 including the release of such technical data to foreign persons or nationals in the United States or
7 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
8 data, and the Receiving Party shall take measures necessary to ensure compliance.

9 14.4 Filing Protected Material. Without written permission from the Designating Party or
10 a court order secured after appropriate notice to all interested persons, a Party may not file in the
11 public record in this action any Protected Material. A Party that seeks to file under seal any
12 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected
13 Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific
14 Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order
15 will issue only upon a request establishing that the Protected Material at issue is privileged,
16 protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's
17 request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) and General Order
18 62 is denied by the court, then the Receiving Party may file the Protected Material in the public
19 record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

20 15. FINAL DISPOSITION

21 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
22 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
23 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
24 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
25 the Protected Material is returned or destroyed, the Receiving Party must submit a written
26 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
27 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
28 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,

1 abstracts, compilations, summaries or any other format reproducing or capturing any of the
2 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of
3 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
4 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
5 and expert work product, even if such materials contain Protected Material. Any such archival
6 copies that contain or constitute Protected Material remain subject to this Protective Order as set
7 forth in Section 4 (DURATION).

8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9 DATED: April 13, 2012

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

10
11 By: /s/ Natalie J. Morgan
Natalie J. Morgan

12 Attorneys for Defendant
13 INTEGRATED SILICON SOLUTION, INC.

14 DATED: April 13, 2012

FINK & JOHNSON

15 By: /s/ David Fink
16 David Fink

17 Attorneys for Plaintiff
18 JAMES B. GOODMAN
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ATTESTATION PURSUANT TO GENERAL ORDER 45.X

I, Natalie J. Morgan, hereby attest that concurrences in the filing of this document have been obtained from each of the signatories.

DATED: April 13, 2012

By: /s/ Natalie J. Morgan
Natalie J. Morgan

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: April 19, 2012


THE HONORABLE MAXINE M. CHESNEY
UNITED STATES DISTRICT/MAGISTRATE 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
5 its entirety and understand the Stipulated Protective Order that was issued by the United States
6 District Court for the Northern District of California on _____ [date] in the case of _____
7 **[insert formal name of the case and the number and initials assigned to it by the court]**. I agree
8 to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand
9 and acknowledge that failure to so comply could expose me to sanctions and punishment in the
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
11 item that is subject to this Stipulated Protective Order to any person or entity except in strict
12 compliance with the provisions of this Order.

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

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

20
21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____
24 [printed name]

25 Signature: _____
26 [signature]