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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MARC OPPERMAN, et al.,

Plaintiffs,

v.

PATH, INC., et al.

Defendants.

Case No. 13-cv-00453-JST

STIPULATED PROTECTIVE ORDER
GOVERNING THE PRODUCTION AND
HANDLING OF SOURCE CODE

THIS DOCUMENT RELATES TO ALL
CASES:

Opperman v. Path, Inc., No. 13-cv-00453-JST
Hernandez v. Path, Inc., No. 12-cv-1515-JST
Pirozzi v. Apple, Inc., No. 12-cv-1529-JST

On January 29, 2014, the Court entered a stipulated Protective Order in this Action (Dkt. 444-1) concerning the handling and use of documents and depositions in this case. That Stipulated Protective Order expressly does not apply to the production and handling of source code. (Dkt. 444-1, Section 8.) The parties were unable to reach agreement on a supplemental order regarding source code. On January 6, 2016, having heard oral argument on the issue, the Court adopted the Northern District of California Model Protective Order for Litigation Involving Patents, Highly Sensitive Confidential Information and/or Trade Secrets as its order in this case with respect to the production and handling of source code. (Dkt. 602.) As directed by the Court, the parties now submit that order conformed to this action and approved as to form by all parties.

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure 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 only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

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

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

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

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

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

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

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

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

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

14 2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel does
15 not include Outside Counsel of Record or any other outside counsel.

16 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity
17 not named as a Party to this action.

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

21 2.13 Party: any party to this action, including all of its officers, directors, employees, consultants,
22 retained experts, and Outside Counsel of Record (and their support staffs).

23 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
24 this action.

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

28 2.16 Protected Material: any Disclosure or Discovery Material that is designated as

1 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as “HIGHLY
2 CONFIDENTIAL – SOURCE CODE.”

3 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
4 Party.

5 3. SCOPE

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

17 4. DURATION

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

24 5. DESIGNATING PROTECTED MATERIAL

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

1 oral or written communications that qualify – so that other portions of the material, documents, items, or
2 communications for which protection is not warranted are not swept unjustifiably within the ambit of this
3 Order.

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

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

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
12 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery

13 Material that qualifies for protection under this Order must be clearly so designated before the
14 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 legend
18 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
19 CONFIDENTIAL – SOURCE CODE” to each page that contains protected material. If only a portion or
20 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the
21 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
22 portion, the level of protection being asserted.

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

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

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

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

24 Transcripts containing Protected Material shall have an obvious legend on the title page that the
25 transcript contains Protected Material, and the title page shall be followed by a list of all pages (including
26 line numbers as appropriate) that have been designated as Protected Material and the level of protection
27 being asserted by the Designating Party. The Designating Party shall inform the court reporter of these
28 requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall

1 be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
2 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall
3 be treated only as actually designated.

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

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
11 qualified information or items does not, standing alone, waive the Designating Party’s right to secure
12 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party
13 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this
14 Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
17 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is
18 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
19 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality
20 designation by electing not to mount a challenge promptly after the original designation is disclosed.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
22 providing written notice of each designation it is challenging and describing the basis for each challenge. To
23 avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to
24 confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties
25 shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in
26 voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of
27 service of notice. In conferring, the Challenging Party must explain the basis for its belief that the
28 confidentiality designation was not proper and must give the Designating Party an opportunity to review the

1 designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain
2 the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge
3 process only if it has engaged in this meet and confer process first or establishes that the Designating Party
4 is unwilling to participate in the meet and confer process in a timely manner.

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

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

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
27 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,
28 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of

1 persons and under the conditions described in this Order. When the litigation has been terminated, a
2 Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

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

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

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

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

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

18 (d) the court and its personnel;

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

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

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

1 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
2 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered by the
3 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or
4 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
5 CONFIDENTIAL – SOURCE CODE” only to:

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

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

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 (3) as
16 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 other
22 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 or Items
25 to Designated House Counsel or Experts.

26 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating
27 Party, a Party that seeks to disclose to Designated House Counsel any information or item that has been
28 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL

1 – SOURCE CODE” pursuant to paragraph 7.3(b) first must make a written request to the Designating Party
2 that (1) sets forth the full name of the Designated House Counsel and the city and state of his or her
3 residence, and (2) describes the Designated House Counsel’s current and reasonably foreseeable future
4 primary job duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may
5 become involved, in any competitive decision-making.

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

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

24 (c) A Party that receives a timely written objection must meet and confer with the
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27 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should
28 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 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within
2 seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to
3 Designated House Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in
4 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such
5 motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to
6 Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure
7 would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such
8 motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter
9 by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the
10 reasons advanced by the Designating Party for its refusal to approve the disclosure.

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

15 8. PROSECUTION BAR

16 Absent written consent from the Producing Party, any individual who receives access to "HIGHLY
17 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE"
18 information shall not be involved in the prosecution of patents or patent applications relating to the subject
19 matter of this litigation, including without limitation the patents asserted in this action and any patent or
20 application claiming priority to or otherwise related to the patents asserted in this action, before any foreign
21 or domestic agency, including the United States Patent and Trademark Office ("the Patent Office"). For
22 purposes of this paragraph, "prosecution" includes directly or indirectly drafting, amending, advising, or
23 otherwise affecting the scope or maintenance of patent claims.² To avoid any doubt, "prosecution" as used
24 in this paragraph does not include representing a party challenging a patent before a domestic or foreign
25 agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes*

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27 ² Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.
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1 reexamination). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information is first
3 received by the affected individual and shall end two (2) years after final termination of this action.

4 9. SOURCE CODE

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

8 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”
9 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY” information including the Prosecution Bar set forth in Paragraph 8, and may be disclosed only to
11 the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be
12 disclosed, as set forth in Paragraphs 7.3 and 7.4.

13 (c) Any source code produced in discovery shall be made available for inspection, in a
14 format allowing it to be reasonably reviewed and searched, during normal business hours or at other
15 mutually agreeable times, at an office of the Producing Party’s counsel or another mutually agreed upon
16 location. The source code shall be made available for inspection on a secured computer in a secured room
17 without Internet access or network access to other computers, and the Receiving Party shall not copy,
18 remove, or otherwise transfer any portion of the source code onto any recordable media or recordable
19 device. The Producing Party may visually monitor the activities of the Receiving Party’s representatives
20 during any source code review, but only to ensure that there is no unauthorized recording, copying, or
21 transmission of the source code. The Receiving Party must keep a paper log indicating the names of any
22 individuals inspecting the source code and dates and times of inspection, and the names of any individuals
23 to whom paper copies of portions of source code are provided.

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

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

20 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
21 LITIGATION

22 If a Party is served with a subpoena or a court order issued in other litigation that compels
23 disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”
25 that Party must:

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

28 (b) promptly notify in writing the party who caused the subpoena or order to issue in the

1 other litigation that some or all of the material covered by the subpoena or order is subject to this Protective
2 Order. Such notification shall include a copy of this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
4 Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with the subpoena
6 or court order shall not produce any information designated in this action as “CONFIDENTIAL” or
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
8 CODE” before a determination by the court from which the subpoena or order issued, unless the Party has
9 obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of
10 seeking protection in that court of its confidential material – and nothing in these provisions should be
11 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
12 another court.

13 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
14 LITIGATION

15 (a) The terms of this Order are applicable to information produced by a Non-Party in
16 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
17 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced by Non-Parties in
18 connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in
19 these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

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

23 1. promptly notify in writing the Requesting Party and the Non-Party that some or all
24 of the information requested is subject to a confidentiality agreement with a Non-Party;

25 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in
26 this litigation, the relevant discovery request(s), and a reasonably specific description of the information
27 requested; and

28 3. make the information requested available for inspection by the Non-Party.

1 (c) If the Non-Party fails to object or seek a protective order from this court within 14
2 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-
3 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a
4 protective order, the Receiving Party shall not produce any information in its possession or control that is
5 subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a
6 court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this
7 court of its Protected Material.

8 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

16 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
17 MATERIAL

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

26 14. MISCELLANEOUS

27 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
28 modification by the court in the future.

1 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
2 Party waives any right it otherwise would have to object to disclosing or producing any information or item
3 on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to
4 object on any ground to use in evidence of any of the material covered by this Protective Order.

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

10 14.4 Filing Protected Material. Without written permission from the Designating Party or a court
11 order secured after appropriate notice to all interested persons, a Party may not file in the public record in
12 this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply
13 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order
14 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a
15 sealing order 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 request
17 to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the
18 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2)
19 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. As used
23 in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any
24 other format reproducing or capturing any of the Protected Material. Whether the Protected Material is
25 returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if
26 not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by
27 category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
28 the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format

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

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 DATED: January 12, 2016

/s/

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FILER'S ATTESTATION

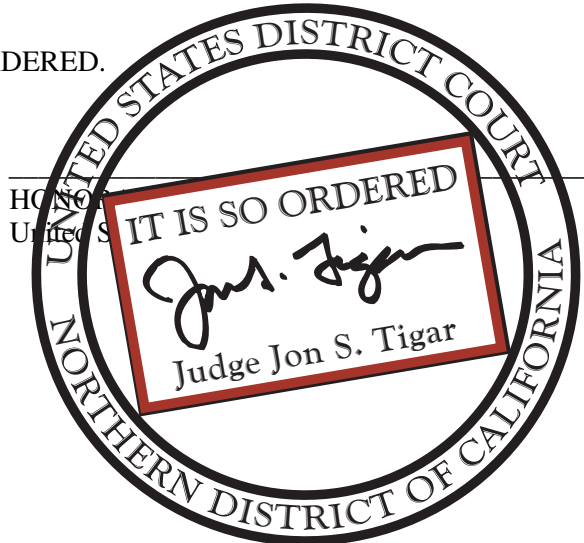
I, Robert B. Hawk, attest that the above-listed counsel read and approved this STIPULATED PROTECTIVE ORDER GOVERNING THE PRODUCTION AND HANDLING OF SOURC CODE and consent to its filing in these actions.

DATED: January 12, 2016

/s/ Robert B. Hawk

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: January 12, 2016



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 understand
5 the Stipulated Protective Order that was issued by the United States District Court for the Northern District
6 of California on [date] in the case of _____ **[insert formal name of the case and the number and**
7 **initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this
8 Stipulated 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 any
10 manner any information or item that is subject to this Stipulated Protective Order to any person or entity
11 except in strict compliance with the provisions of this Order.

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

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

19
20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____
23 [printed name]

24 Signature: _____
25 [signature]