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10 **UNITED STATES DISTRICT COURT**
 11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 12 **SAN FRANCISCO DIVISION**

13
14 FUJIFILM CORPORATION, a Japanese corporation,

15 Plaintiff,

16 v.

17 MOTOROLA MOBILITY LLC, a Delaware limited liability company,

18 Defendant.
19

Case No. 12-03587 RS

**STIPULATED ORDER RE: DISCOVERY
 OF ELECTRONICALLY STORED
 INFORMATION AND THE FORMAT OF
 DOCUMENT PRODUCTION**

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 STIPULATED ORDER RE: DISCOVERY OF ELECTRONICALLY STORED INFORMATION
 AND THE FORMAT OF DOCUMENT PRODUCTION
 CASE NO. 12-03587 RS

1 **I. PURPOSE**

2 This Order will govern discovery of electronically stored information (“ESI”) in this
3 action. It supplements the Federal Rules of Civil Procedure, this Court’s guidelines for the
4 Discovery of Electronically Stored Information (“the ESI Guidelines”), and any other applicable
5 orders and rules, including any Protective Order entered in this action.

6 **II. COOPERATION**

7 The parties are aware of the importance the Court places on cooperation and commit to
8 cooperate in good faith throughout the matter consistent with this Court’s ESI Guidelines.

9 **III. LIAISON**

10 The parties have identified liaisons, at least one primary and one back up, who are and will be
11 knowledgeable about and responsible for discussing their respective ESI. Each e-discovery liaison
12 will be, or have access to those who are, knowledgeable about the technical aspects of e-discovery,
13 including the location, nature, accessibility, format, collection, search methodologies, and
14 production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer about
15 ESI and to help resolve disputes without court intervention.

16 **IV. PRODUCTION FORMATS**

17 **A.** The parties will make reasonable efforts to prepare responsive and nonprivileged
18 data for production in accordance with the agreed-upon specifications set forth below. These
19 specifications apply to hard copy documents or electronically stored information (“ESI”) which
20 are to be produced in this litigation.

21 **B.** Both parties will make reasonable efforts to ensure that any productions made are
22 free from viruses.

23 **C.** Responsive documents in TIFF format will be stamped with the appropriate
24 confidentiality designations in accordance with the Protective Order entered in this action. Each
25 responsive document produced in native format will have its confidentiality designation identified
26 in the filename of the native file.

27 **D.** The format of production of non-standard electronic files, large oversized
28 documents, etc. will be discussed before production to determine the optimal production format.

1 **E.** Documents shall be produced on external hard drives, readily accessible
2 computer(s), or electronic media (including file transfer sites) (“Production Media”). Each piece of
3 Production Media shall identify a production number corresponding to the production volume
4 (e.g., “VOL001”, “VOL002”), as well as the volume of the material in that production (e.g., “-
5 001”, “-002”). Each piece of production media shall also identify: (1) the producing party’s name;
6 (2) the production date; and (3) the Bates Number range of the materials contained on the
7 Production Media.

8 **F.** Bates numbers must start with FFC for Fujifilm and MML for Motorola.

9 **V. DATA PROCESSING**

10 **A.** To the extent that keywords are used in limiting the universe of potentially
11 responsive documents to be reviewed, the parties shall meet and confer to try to develop a
12 mutually agreeable list of search terms and protocols prior to the production of documents. Any
13 search methodology employed must open compound and nested files. The search utilities
14 employed must support Boolean searches.

15 **B.** Each party will use its best efforts to filter out common system files and application
16 executable files by using a commercially reasonable hash identification process. Hash values that
17 may be filtered out during this process are located in the National Software Reference Library
18 (“NSRL”) NIST hash set list. Additional culling of system file types based on file extension may
19 include, but are not limited to: WINNT, LOGS, DRVS, MP3, C source code (c), C++ source code
20 (cpp), Channel Definition Format (cdf), Creatures Object Source (cos), Dictionary file (dic),
21 Executable (exe), Hypertext Cascading Style Sheet (css), JavaScript Source Code (js), Label Pro
22 Data File (IPD), Office Data File (NICK), Office Profile Settings (ops), Outlook Rules Wizard File
23 (rwz), Scrap Object, System File (dll), Temporary File (tmp), Windows Error Dump (dmp),
24 Windows Media Player Skin Package (wmz), Windows NT/2000 Event View Log file (evt),
25 Python Script file (.py, .pyc, .pud, .pyw), and Program Installers.

26 **C.** The parties agree to utilize commercially reasonable efforts to open
27 password-protected or encrypted files, including commercially accessible software, when
28 appropriate and feasible.

1 **D.** A party is only required to produce a single copy of a responsive document and a
2 party may de-duplicate responsive ESI (based on MD5 or SHA-1 hash values at the document
3 family level) across Volumes. For emails with attachments, the hash value is generated based on
4 the parent/child document grouping. A party may also de-duplicate “near-duplicate” email threads
5 as follows: In an email thread, only the final-in-time document need be produced, assuming that
6 all previous emails in the thread are contained within the final message. Where a prior email
7 contains an attachment, that email and attachment shall not be removed as a “near-duplicate.” To
8 the extent that de-duplication through MD5 or SHA-1 hash values is not possible, the parties shall
9 meet and confer to discuss any other proposed method of de-duplication.

10 **VI. PRODUCTION OF HARD COPY DOCUMENTS**

11 **A.** Documents that exist in hard copy format only shall be scanned and produced as
12 single page Group IV TIFFs, with at least 300 dots per inch (dpi). Each TIFF image shall be
13 named according to the corresponding Bates number associated with the document. Each image
14 shall be branded according to the Bates number and agreed upon confidentiality designation.
15 TIFFs shall show all text and images that would be visible to a user of the hard copy documents.

16 **B.** A commercially acceptable technology for optical character recognition “OCR”
17 shall be used for all scanned, hard copy documents. OCR text shall be provided as a single text file
18 for each document, and the filename itself should match its respective TIFF filename. The text
19 files will not contain the redacted portions of the documents.

20 **C.** Documents should be provided with (a) an ASCII delimited data file (.txt, .dat, or
21 .csv), and (b) an image load file that can be loaded into commercially acceptable production
22 software (e.g., Concordance, Relativity, Summation). Each TIFF in a production must be
23 referenced in the corresponding image load file. The total number of documents referenced in a
24 production’s data load file should match the total number of designated document breaks in the
25 Image Load file(s) in the production.

26 **D.** The following information shall be produced in the delimited data file
27 accompanying hard copy documents: (a) BEGBATES (or PRODBEG), (b) ENDBATES (or
28 PRODEND), (c) CUSTODIAN, (d) CONFIDENTIALITY, and (e) REDACTED.

1 **E.** All images must be assigned a unique Bates number that is sequential within a
2 given document and across the production sets.

3 **F.** In scanning paper documents, distinct documents should not be merged into a
4 single record, and single documents should not be split into multiple records (i.e., paper
5 documents should be logically unitized). The parties will use reasonable efforts to unitize
6 documents correctly.

7 **G.** The parties will utilize best efforts to ensure that paper records for a particular
8 Custodian that are included in a single production are produced in consecutive Bates stamp order.

9 **VII. PRODUCTION OF ELECTRONICALLY STORED INFORMATION**

10 **A. METADATA.** Each of the metadata and coding fields set forth in Appendix 1 that
11 can be extracted shall be produced for that document. The parties are not obligated to populate
12 manually any of the fields in Appendix 1 if such fields cannot be extracted from a document, with
13 the exception of the following: (a) BEGBATES (or PRODBEG), (b) ENDBATES (PRODEND),
14 (c) BEGATTACH (or PRODBEG_ATT), (d) ENDATTACH (or PRODEND_ATT); (e)
15 CUSTODIAN, (f) CONFIDENTIALITY, and (g) REDACTED, which should be populated by the
16 party or the party's vendor. The parties will make reasonable efforts to ensure that metadata fields
17 automatically extracted from the documents are correct, however, the parties acknowledge that
18 such metadata may not always be accurate and might instead contain irrelevant or incorrect
19 information generated during the collection process.

20 **B. TIFF IMAGE.** Unless excepted below, single page Group IV TIFFs should be
21 provided, at least 300 dots per inch (dpi). Each TIFF image file should be one page and named
22 according to the unique Bates number, followed by the extension ".TIF". Original document
23 orientation should be maintained (i.e., portrait to portrait and landscape to landscape).

24 **C. EXTRACTED TEXT.** For each document, a text file should be provided along
25 with the image files and metadata. The text of native files should be extracted directly from the
26 native file. However, if a document has been redacted or does not contain extractable text, OCR of
27 the redacted document will suffice in lieu of extracted text.

28 **D. LOAD AND DATA FILES.** Each production must include (a) an ASCII delimited
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1 data load file (.txt, .dat, or .csv), and (b) an image load file that can be loaded into commercially
2 acceptable production software (e.g., Concordance, Relativity, Summation). Each TIFF in a
3 production must be referenced in the corresponding image load file. The total number of
4 documents referenced in a production's data load file should match the total number of designated
5 document breaks in the Image Load file(s) in the production. The total number of documents in a
6 production should match the total number of records in the database load file. Each TIFF in a
7 production must be referenced in the corresponding image load file. The total number of pages
8 referenced in a production's image load file should match the total number of TIFF files in the
9 production.

10 **E. BATES NUMBERING.** All images must be assigned a unique Bates number that
11 is sequential within a given document and across the production sets.

12 **F. NATIVE FILES.** Spreadsheets (e.g., Excel files) and presentations (e.g.,
13 Powerpoint files) should be produced natively, and any document not easily converted to TIFF
14 may be produced natively. Native copies should be produced with a link in the NativeLink field,
15 along with applicable metadata fields set forth in Appendix 1, where possible. A TIFF placeholder
16 indicating the document was provided in native format should accompany the database record.

17 **G. PROPRIETARY FILES.** To the extent a response to discovery requires
18 production of ESI accessible only through proprietary software, the parties should continue to
19 preserve each version of such information. The parties shall meet and confer to finalize the
20 appropriate production format.

21 **H. REDACTION OF INFORMATION.** If documents are produced containing
22 redacted information, the producing party shall supply a list of the documents for any such
23 claim(s) of privilege, indicating the grounds for the redaction and the nature of the redacted
24 material (e.g., privilege, privacy). During the course of the litigation, an electronic copy of the
25 originally, unredacted data shall be securely preserved in such a manner so as to preserve without
26 modification, alteration or addition the content of such data including any metadata therewith. If
27 scanning is necessary to create a redacted version of a document, the producing party shall
28 produce a corresponding load file identifying the custodian from whom the document was

1 collected, to the extent custodian information is available, and shall subject the TIFF files to
2 Optical Character Recognition (“OCR”) process if the TIFF files do not already have extractable
3 text, such that the processed files become searchable.

4 **VIII. PROCESSING OF THIRD-PARTY DOCUMENTS**

5 **A.** A party that issues a non-party subpoena (“Issuing Party”) shall include a copy of
6 this Order with the subpoena and state that the parties to the litigation request that third-parties
7 produce documents in accordance with the specifications set forth herein.

8 **B.** The Issuing Party shall produce any documents obtained pursuant to a non-party
9 subpoena to the opposing party.

10 **C.** If the non-party production is not Bates-stamped, the Issuing Party will endorse the
11 non-party production with unique prefixes and Bates numbers prior to producing them to the
12 opposing party.

13 **D.** Nothing in this stipulation is intended to or should be interpreted as narrowing,
14 expanding, or otherwise affecting the rights of the parties or third-parties to object to a subpoena.

15 **IX. SEARCHING & PHASED DISCOVERY**

16 The parties have discussed their preservation obligations and needs and agree that
17 preservation of potentially relevant ESI will be reasonable and proportionate.

18 **A. Preservation.** The parties have issued appropriate litigation holds and are
19 preserving ESI, subject to any limitations discussed in this stipulation.

20 **B. Initial Production.** The parties will initially produce basic documentation about
21 the patent(s)-in-suit and the accused instrumentalities, as specified in Section 3 of the Patent Local
22 Rules, in accordance with the deadlines set forth therein.

23 **C. Custodial Production and Email Production.** The parties agree that all Custodial
24 Productions and Email Productions shall be phased to occur after Initial Productions are made and
25 after the parties have completed their Rule 3-1, 3-2, 3-3 and 3-4 disclosures and accompanying
26 productions. Not more than two months after the completion of those disclosures, the parties
27 agree to meet and confer to discuss the appropriate limitations on both the number and scope of
28 email productions and custodial productions. The parties further agree that until an agreement is

1 reached as to Custodial and Email Productions, general production requests under Federal Rules
2 of Civil Procedure 34 and 45 and the Initial Production as described above shall not include
3 requests for email or other forms of electronic correspondence (collectively “email”).

4 **D. Locations That Will Be Searched for Responsive Documents.** The parties agree
5 to search central repositories, including central databases, or relevant portions thereof to the extent
6 that the party reasonably anticipates they contain non-duplicative Responsive Documents. The
7 parties agree to meet and confer to limit the scope of production from central repositories if the
8 search of central repositories (or relevant portions thereof) that the producing party anticipates
9 contain Responsive Documents is unduly burdensome or is likely to be unreasonably inefficient in
10 identifying relevant documents. Specifically, the parties recognize that certain repositories, by
11 their nature, may not effectively or reasonably be searched using electronic search strings, and the
12 parties agree to notify each other of any such repositories that contain Responsive Documents. The
13 parties will then meet and confer to discuss the collection of Responsive Documents from such
14 repositories, including potentially using other effective collection methodologies.

15 If custodial searches are performed, the parties will search all computers and/or external
16 storage devices for each identified Custodian that the Custodian reasonably anticipates may
17 contain non-duplicative Responsive Documents.

18 **E. Locations That Will Not Be Searched for Responsive Documents.** The
19 following locations will not be searched under any circumstances, and as such need not be
20 preserved: information stored on personal digital assistants, mobile phones, voicemail systems,
21 instant messaging systems, and automated disaster recovery backup systems and/or disaster
22 recovery backup tapes; deleted, slack, fragmented, or other data only accessible by forensics;
23 RAM, temporary files, or other ephemeral data that are difficult to preserve without disabling the
24 operating system; on-line access data such as temporary internet files, history, cache, cookies, and
25 the like; data in metadata fields that are frequently updated automatically, such as last-opened
26 dates; back-up data that are substantially duplicative of data that are more accessible elsewhere;
27 logs of calls made from mobile devices; server, system, or network logs; data temporarily stored
28 by laboratory equipment or attached electronic equipment, provided that such data is not ordinarily

1 preserved as part of a laboratory report; and data remaining from systems no longer in use that is
2 unintelligible on the systems in use.

3 Notwithstanding the foregoing, the parties agree that Responsive Documents that a
4 Custodian indicates are stored on an archival storage medium that the Custodian can readily identify
5 and locate, that cannot be located in any other repository of information, and that can reasonably be
6 searched, will be searched. In addition, nothing in this paragraph shall limit a receiving party's right
7 to request from a producing party more information about the nature of and burden associated with
8 obtaining documents from a particular location. The parties further recognize their obligations to
9 preserve any potentially relevant sources of data, whether live or in archival form, for purposes of
10 this litigation.

11 **F. Source Code.** To the extent relevant to the Litigation, source code will be made
12 available for inspection pursuant to the terms of the Protective Order. The parties agree that the
13 search terms will not be applied to source code.

14 **X. MISCELLANEOUS PROVISIONS**

15 **A. Objections Preserved.** Nothing in this protocol shall be interpreted to require
16 disclosure of irrelevant information or relevant information protected by the attorney-client
17 privilege, work-product doctrine, or any other applicable privilege or immunity. The parties do not
18 waive any objections as to the production, discoverability, admissibility, or confidentiality of
19 documents and ESI.

20 **B. No Effect on Cost Shifting.** Nothing in this Agreement shall affect, in any way, a
21 producing party's right to seek reimbursement for costs associated with collection, review, and/or
22 production of documents or ESI.

23 **C. No Waiver.**

24 1. Pursuant to Federal Rule of Evidence 502(d) and 502(e), the inadvertent
25 production of a privileged or work product protected ESI is not a waiver in the pending case or in
26 any other federal or state proceeding. Moreover, the mere production of ESI in a litigation as part
27 of a mass production shall not itself constitute a waiver for any purpose.

28 2. Communications involving counsel that post-date the filing of the complaint
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1 need not be placed on a privilege log. Communications may be identified on a privilege log by
2 category, rather than individually, if appropriate.

3 **XI. MODIFICATION**

4 This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court
5 for good cause shown.

6 **IT IS SO STIPULATED**, through Counsel of Record.

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Dated: February 8, 2013

Respectfully submitted,
MORGAN, LEWIS & BOCKIUS LLP

By /s/ Daniel Johnson, Jr.
DANIEL JOHNSON, JR.
Attorneys for Plaintiff
FUJIFILM CORPORATION

Dated: February 8, 2013

Respectfully submitted,
KILPATRICK TOWNSEND & STOCKTON LLP

By /s/ Jordan Trent Jones
JORDAN TRENT JONES
Attorneys for Defendant
MOTOROLA MOBILITY LLC

IT IS SO ORDERED.

Dated: February 8, 2013



Honorable Richard Seeborg
United States District Judge

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FILER'S ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3) regarding signatures, I, Daniel Johnson, Jr., attest that concurrence in the filing of this document has been obtained from each of the other signatories.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 8th day of February, 2013, at San Francisco.

/s/ Daniel Johnson, Jr.
Daniel Johnson, Jr.

1 **Appendix 1: ESI Metadata and Coding Fields**

2 **A. Image Load File** shall contain the following comma-delimited fields:
3 BEGBATES, VOLUME, IMAGE FILE PATH, DOCUMENT BREAK, FOLDER
4 BREAK, BOX BREAK, PAGE COUNT

5 **B. Metadata Load File** shall be delimited according to the following characters:
6 o Delimiter = | (pipe) (ASCII:0020)
7 o Text-Qualifier = ¨ (ASCII:00254)

8 **C.** The following fields will appear in the metadata load file in the order displayed below:

Field Name	Field Description
BEGBATES/PRODBEG	Beginning Bates number as stamped on the production image
ENDBATES/PRODEND	Ending Bates number as stamped on the production image
BEGATTACH/PRODBEG_ATT	First production Bates number of the first document in a family
ENDATTACH/PRODEND_ATT	Last production Bates number of the last document in a family
CUSTODIAN	Individual from whom the documents originated
NATIVELINK	Native File Link
SUBJECT	Subject line of email
DATESENT	Date email was sent (format: MM/DD/YYYY)
TIMESENT	Time email was sent
TO	All recipients that were included on the "To" line of the email
FROM	The name and email address of the sender of the email
CC	All recipients that were included on the "CC" line of the email
BCC	All recipients that were included on the "BCC" line of the email
AUTHOR	Any value populated in the Author field of the document properties
FILENAME(Edoc only)	Filename of an electronic document
DATECREATED (Edoc only)	Date the document was created (format: MM/DD/YYYY)

9 All text files will be delivered in a separate, easily identifiable directory.
10 The time zone for all email data sets shall be set at GMT.