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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KARL STORZ ENDOSCOPY-AMERICA,  
INC.,  
  
Plaintiff,  
  
v.  
  
STRYKER CORPORATION and STRYKER  
COMMUNICATIONS, INC.,  
  
Defendants.

Case No. C 14-00876 RS  
  
PROTECTIVE ORDER FOR  
LITIGATION INVOLVING PATENTS,  
HIGHLY SENSITIVE CONFIDENTIAL  
INFORMATION AND/OR TRADE  
SECRETS

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. 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 12.3, below, that this 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.

1        2.        DEFINITIONS

2            2.1        Challenging Party: a Party or Non-Party that challenges the designation of  
3 information or items under this Order.

4            2.2        “CONFIDENTIAL” Information or Items: information (regardless of how it is  
5 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of  
6 Civil Procedure 26(c).

7            2.3        Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well  
8 as their support staff).

9            2.4        Designating Party: a Party or Non-Party that designates information or items that it  
10 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

12           2.5        Disclosure or Discovery Material: all items or information, regardless of the  
13 medium or manner in which it is generated, stored, or maintained (including, among other things,  
14 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
15 responses to discovery in this matter.

16           2.6        Expert: a person with specialized knowledge or experience in a matter pertinent to  
17 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as  
18 a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s  
19 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or  
20 of a Party’s competitor.

21           2.7        “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
22 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another  
23 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less  
24 restrictive means.

25           2.8        House Counsel: attorneys who are employees of a party to this action. House  
26 Counsel does not include Outside Counsel of Record or any other outside counsel.

27           2.9        Non-Party: any natural person, partnership, corporation, association, or other legal  
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1 entity not named as a Party to this action.

2 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this  
3 action but are retained to represent or advise a party to this action and have appeared in this action  
4 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

5 2.11 Party: any party to this action, including all of its officers, directors, employees,  
6 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

7 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
8 Material in this action.

9 2.13 Professional Vendors: persons or entities that provide litigation support services  
10 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
11 storing, or retrieving data in any form or medium) and their employees and subcontractors.

12 2.14 Protected Material: any Disclosure or Discovery Material that is designated as  
13 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

14 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
15 Producing Party.

### 16 3. SCOPE

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

1 or order.

2 4. DURATION

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

10 5. DESIGNATING PROTECTED MATERIAL

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

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

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

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
27 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
28 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so

1 designated before the material is disclosed or produced.

2 Designation in conformity with this Order requires:

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

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

22 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
23 Designating Party identify on the record, before the close of the deposition, hearing, or other  
24 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
25 impractical to identify separately each portion of testimony that is entitled to protection and it  
26 appears that substantial portions of the testimony may qualify for protection, the Designating Party  
27 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right  
28 to have up to 21 days after receipt of the rough transcript to identify the specific portions of the

1 testimony as to which protection is sought and to specify the level of protection being asserted.  
2 Only those portions of the testimony that are appropriately designated for protection within the 21  
3 days shall be covered by the provisions of this Protective Order. Alternatively, a Designating Party  
4 may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that  
5 the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
6 ATTORNEYS’ EYES ONLY.”

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

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

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

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
28 designate qualified information or items does not, standing alone, waive the Designating Party’s

1 right to secure protection under this Order for such material. Upon timely correction of a  
2 designation, the Receiving Party must make reasonable efforts to assure that the material is treated  
3 in accordance with the provisions of this Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
6 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
8 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
9 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
10 original designation is disclosed.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
12 by providing written notice of each designation it is challenging and describing the basis for each  
13 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
14 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
15 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
16 begin the process by conferring directly (in voice to voice dialogue; other forms of communication  
17 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging  
18 Party must explain the basis for its belief that the confidentiality designation was not proper and  
19 must give the Designating Party an opportunity to review the designated material, to reconsider the  
20 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
21 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
22 has engaged in this meet and confer process first or establishes that the Designating Party is  
23 unwilling to participate in the meet and confer process in a timely manner.

24 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
25 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
26 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of  
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1 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer  
2 process will not resolve their dispute, whichever is earlier.<sup>1</sup> Each such motion must be  
3 accompanied by a competent declaration affirming that the movant has complied with the meet and  
4 confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make  
5 such a motion including the required declaration within 21 days (or 14 days, if applicable) shall  
6 automatically waive the confidentiality designation for each challenged designation. In addition,  
7 the Challenging Party may file a motion challenging a confidentiality designation at any time if  
8 there is good cause for doing so, including a challenge to the designation of a deposition transcript  
9 or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a  
10 competent declaration affirming that the movant has complied with the meet and confer  
11 requirements imposed by the preceding paragraph.

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

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
21 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
22 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
23 the categories of persons and under the conditions described in this Order. When the litigation has  
24 been terminated, a Receiving Party must comply with the provisions of section 14 below (FINAL  
25 DISPOSITION).

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28 <sup>1</sup> The burden to move shall shift to the Challenging Party after four challenges are made to avoid an abuse of the process. The burden of persuasion remains on the Designating Party.



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

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
4 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
5 information or item designated “CONFIDENTIAL” only to:

6 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
7 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
8 information for this litigation;

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

12 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
13 reasonably necessary for this litigation, who have signed the “Acknowledgment and Agreement to  
14 Be Bound” (Exhibit A), and who have been disclosed pursuant to paragraph 7.4(a);

15 (d) the court and its personnel;

16 (e) court reporters and their staff, and Professional Vendors to whom disclosure is  
17 reasonably necessary for this litigation;

18 (f) professional jury or trial consultants, graphics vendors, and mock jurors to whom  
19 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment  
20 and Agreement to Be Bound” (Exhibit A);

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

27 (h) the author or recipient of a document containing the information, employee of  
28 the Designating Party, or a custodian or other person who otherwise possessed or knew the

1 information.

2 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

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

6 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
7 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
8 information for this litigation;

9 (b) Experts of the Receiving Party to whom disclosure is reasonably necessary for  
10 this litigation, who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
11 and who have been disclosed pursuant to paragraph 7.4(a);

12 (c) the court and its personnel;

13 (d) court reporters and their staff, and Professional Vendors to whom disclosure is  
14 reasonably necessary for this litigation;

15 (e) professional jury or trial consultants, graphics vendors, and mock jurors to whom  
16 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment  
17 and Agreement to Be Bound” (Exhibit A);

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

24 (g) the author or recipient of a document containing the information, employee of  
25 the Designating Party, or a custodian or other person who otherwise possessed or knew the  
26 information.

27 7.4 Procedures for Approving or Objecting to Disclosure of “Protected Material” to  
28 Experts.

1 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating  
2 Party, a Party that seeks to disclose Protected Material to an Expert (as defined in this Order) first  
3 must make a written request to the Designating Party that (1) sets forth its desire to disclose  
4 Protected Material to the Expert; (2) identifies the general categories of Protected Material the  
5 Receiving Party seeks to disclose to the Expert; (3) sets forth the full name of the Expert and the  
6 city and state of his or her primary residence; (4) attaches a copy of the Expert's current resume;  
7 (5) identifies the Expert's current employer(s); (6) identifies each person or entity from whom the  
8 Expert has received compensation or funding for work in his or her areas of expertise or to whom  
9 the expert has provided professional services, including in connection with a litigation, at any time  
10 during the preceding five years;<sup>2</sup> and (7) identifies (by name and number of the case, filing date,  
11 and location of court) any litigation in connection with which the Expert has offered expert  
12 testimony, including through a declaration, report, or testimony at a deposition or trial, during the  
13 preceding five years.

14 (b) A Party that makes a request and provides the information specified in the  
15 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,  
16 within 14 days of delivering the request, the Party receives a written objection from the  
17 Designating Party. Any such objection must set forth in detail the grounds on which it is based, and  
18 cannot merely challenge the qualifications of the Expert.

19 (c) A Party that receives a timely written objection must meet and confer with the  
20 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement  
21 within 7 days of the written objection. If no agreement is reached, the Party seeking to make the  
22 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance  
23 with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such  
24 motion must describe the circumstances with specificity, set forth in detail the reasons why the  
25 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would

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27 <sup>2</sup> 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 entail, and suggest any additional means that could be used to reduce that risk. In addition, any  
2 such motion must be accompanied by a competent declaration describing the parties' efforts to  
3 resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions)  
4 and setting forth the reasons advanced by the Designating Party for its refusal to approve the  
5 disclosure.

6 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of  
7 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
8 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

9 8. PROSECUTION BAR

10 Absent written consent from the Producing Party, any individual who receives  
11 access to information marked "HIGHLY CONFIDENTIAL – SUBJECT TO PATENT  
12 PROSECUTION BAR" shall not be involved in the prosecution of patents or patent applications  
13 relating to the subject matter of this action, including without limitation the patents asserted in this  
14 action and any patent or application claiming priority to or otherwise related to the patents asserted  
15 in this action, before any foreign or domestic agency, including the United States Patent and  
16 Trademark Office ("the Patent Office"). For purposes of this paragraph, "prosecution" includes  
17 directly or indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance  
18 of patent claims.<sup>3</sup> To avoid any doubt, "prosecution" as used in this paragraph does not include  
19 representing a party challenging a patent before a domestic or foreign agency (including, but not  
20 limited to, a reissue protest, *ex parte* reexamination or *inter partes* reexamination). This  
21 Prosecution Bar shall begin when access to "HIGHLY CONFIDENTIAL – SUBJECT TO  
22 PATENT PROSECUTION BAR" information is first received by the affected individual and shall  
23 end two (2) years after final termination of this action.

24 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
25 LITIGATION

26 If a Party is served with a subpoena or a court order issued in other litigation that  
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28 <sup>3</sup> Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or  
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

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

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

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

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

18 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
19 LITIGATION

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

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

28 1. promptly notify in writing the Requesting Party and the Non-Party that some

1 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

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

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

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

13 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

21 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
22 MATERIAL

23 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
24 produced material is subject to a claim of privilege or other protection, the obligations of the  
25 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). If information  
26 is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation  
27 material, the party making the claim may notify any party that received the information of the  
28 claim and the basis for it. After being notified, a party must promptly return or destroy the

1 specified information and any copies it has and may not sequester, use or disclose the information  
2 until the claim is resolved. This includes a restriction against presenting the information to the  
3 court for a determination of the claim. This provision is not intended to modify whatever procedure  
4 may be established in an e-discovery order that provides for production without prior privilege  
5 review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an  
6 agreement on the effect of disclosure of a communication or information covered by the attorney-  
7 client privilege or work product protection, the parties may incorporate their agreement in the  
8 stipulated protective order submitted to the court.

9 13. MISCELLANEOUS

10 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
11 seek its modification by the court in the future.

12 13.2 Right to Assert Other Objections. By entry of this Protective Order no Party waives  
13 any right it otherwise would have to object to disclosing or producing any information or item on  
14 any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on  
15 any ground to use in evidence of any of the material covered by this Protective Order.

16 13.3 Filing Protected Material. Without written permission from the Designating Party or  
17 a court order secured after appropriate notice to all interested persons, a Party may not file in the  
18 public record in this action any Protected Material. A Party that seeks to file under seal any  
19 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
20 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
21 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing  
22 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled  
23 to protection under the law. If a Receiving Party's request to file Protected Material under seal  
24 pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the  
25 Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise  
26 instructed by the court.


27 14. FINAL DISPOSITION

28 Within 60 days after the final disposition of this action, as defined in paragraph 4,

1 each Receiving Party must return all Protected Material to the Producing Party or destroy such  
2 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
3 compilations, summaries, and any other format reproducing or capturing any of the Protected  
4 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit  
5 a written certification to the Producing Party (and, if not the same person or entity, to the  
6 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all  
7 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
8 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
9 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
10 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
11 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
12 product, and consultant and expert work product, even if such materials contain Protected Material.  
13 Any such archival copies that contain or constitute Protected Material remain subject to this  
14 Protective Order as set forth in Section 4 (DURATION).

15  
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17  
18  
19 IT IS SO ORDERED.

20 DATED: February 4, 2015

  
21 \_\_\_\_\_  
22 Honorable ~~Richard G. Seeborg~~ Jacqueline Scott Corley  
23 United States ~~District~~ Judge  
24 Magistrate  
25  
26  
27  
28



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  
5 penalty of perjury that I have read in its entirety and understand the Protective Order that was  
6 issued by the United States District Court for the Northern District of California on  
7 \_\_\_\_\_ [date] in the case of Karl Storz Endoscopy-America, Inc. v. Stryker  
8 Corporation et al., Case No. C 14-00876 RS. I agree to comply with and to be bound by all the  
9 terms of this Protective Order and I understand and acknowledge that failure to so comply could  
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will  
11 not disclose in any manner any information or item that is subject to this Protective Order to any  
12 person or entity except in strict 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 Protective Order, even  
15 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  
18 telephone number] as my California agent for service of process in connection with this action or  
19 any proceedings related to enforcement of this Protective Order.

20  
21 Date: \_\_\_\_\_

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

23 Printed name: \_\_\_\_\_

24 [printed name]

25 Signature: \_\_\_\_\_

26 [signature]  
27  
28