

1 John P. Schnurer, Bar No. 185725
JSchnurer@perkinscoie.com
2 Thomas N. Millikan, Bar No. 234430
TMillikan@perkinscoie.com
3 PERKINS COIE LLP
11988 El Camino Real, Suite 350
4 San Diego, CA 92130-2594
Telephone: 858.720.5700
5 Facsimile: 858.720.5799

6 Attorneys for Plaintiff
MONOLITHIC POWER SYSTEMS, INC.
7

8 Andrew J. Gray IV, Bar No. 202137
agray@morganlewis.com
9 Corey R. Houmand, Bar No. 268366
choumand@morganlewis.com
10 MORGAN, LEWIS & BOCKIUS LLP
2 Palo Alto Square
11 3000 El Camino Real, Suite 700
Palo Alto, CA 94306-2122
12 Tel: 650.843.4000
Fax: 650.843.4001
13

14 Attorneys for Defendants SILERGY CORP,
SILERGY TECHNOLOGY, COMPAL
ELECTRONICS, INC., AND BIZCOM
15 ELECTRONICS, INC.

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 MONOLITHIC POWER SYSTEMS,
INC.,

Case No. 14-cv-01745-VC (KAW)

20 Plaintiff,
21 v.
22 SILERGY CORPORATION, SILERGY
TECHNOLOGY, COMPAL
ELECTRONICS, INC., BIZCOM
23 ELECTRONICS, INC., and DR. WEI
CHEN,
24

STIPULATED [PROPOSED] ORDER RE:
DISCOVERY OF ELECTRONICALLY
STORED INFORMATION FOR PATENT
LITIGATION

Judge: Hon. Vince Chhabria

25 Defendants.
26

1
2 Upon the stipulation of the parties, the Court ORDERS as follows:

3 1. This Order supplements all other discovery rules and orders. It streamlines
4 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive
5 determination of this action, as required by Federal Rule of Civil Procedure 1.”

6 2. This Order may be modified in the Court’s discretion or by stipulation. As in all
7 cases, costs may be shifted for disproportionate ESI production requests pursuant to Federal Rule
8 of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory discovery tactics are cost-
9 shifting considerations.

10 3. A party’s meaningful compliance with this Order and efforts to promote efficiency
11 and reduce costs will be considered in cost-shifting determinations.

12 4. The parties are expected to comply with the District’s E-Discovery Guidelines
13 (“Guidelines”) and are encouraged to employ the District’s Model Stipulated Order Re: the
14 Discovery of Electronically Stored Information and Checklist for Rule 26(f) Meet and Confer
15 regarding Electronically Stored Information. In this respect, the parties have identified liaisons to
16 each other who are and will be knowledgeable about and responsible for discussing their
17 respective ESI. Each e-discovery liaison will be, or have access to those who are, knowledgeable
18 about the technical aspects of e-discovery, including the location, nature, accessibility, format,
19 collection, search methodologies, and production of ESI in this matter. The parties will rely on
20 the liaisons, as needed, to confer about ESI and to help resolve disputes without court
21 intervention.

22 5. General ESI production requests under Federal Rules of Civil Procedure 34 and 45
23 shall not include email or other forms of electronic correspondence (collectively “email”). To
24 obtain email parties must propound specific email production requests.

25 6. Email production requests shall only be propounded for specific issues, rather than
26 general discovery of a product or business.

27 7. Email production requests shall be phased to occur after the parties have
28 exchanged initial disclosures and basic documentation about the patents, the prior art, the accused
 instrumentalities, and the relevant finances. While this provision does not require the production

1
2 of such information, the Court encourages prompt and early production of this information to
3 promote efficient and economical streamlining of the case.

4 8. Email production requests shall identify the custodian, search terms, and time
5 frame. The parties shall cooperate to identify the proper custodians, proper search terms and
6 proper timeframe as set forth in the Guidelines.

7 9. Each requesting party shall limit its email production requests to a total of five
8 custodians per producing party for all such requests. The parties may jointly agree to modify this
9 limit without the Court's leave. The Court shall consider contested requests for additional
10 custodians, upon showing a distinct need based on the size, complexity, and issues of this specific
11 case. Cost-shifting may be considered as part of any such request.

12 10. Each requesting party shall limit its email production requests to a total of twenty
13 search terms per custodian per party. The parties may jointly agree to modify this limit without
14 the Court's leave. The Court shall consider contested requests for additional search terms per
15 custodian, upon showing a distinct need based on the size, complexity, and issues of this specific
16 case. The Court encourages the parties to confer on a process to test the efficacy of the search
17 terms, which shall be done as soon as possible after a party first serves email search terms. If,
18 after testing the efficacy of the search terms, the responding party contends the search terms are
19 overly broad and/or unduly burdensome, the parties shall meet and confer to discuss appropriate
20 narrowing of the search terms. If the parties are unable to reach agreement on appropriate
21 narrowing, they shall submit any disputes in this regard to the Court for resolution. The search
22 terms shall be narrowly tailored to particular issues. Indiscriminate terms, such as the producing
23 company's name or its product name, are inappropriate unless combined with narrowing search
24 criteria that sufficiently reduce the risk of overproduction. A conjunctive combination of multiple
25 words or phrases (*e.g.*, "computer" and "system") narrows the search and shall count as a single
26 search term. A disjunctive combination of multiple words or phrases (*e.g.*, "computer" or
27 "system") broadens the search, and thus each word or phrase shall count as a separate search term
28 unless they are variants of the same word. Use of narrowing search criteria (*e.g.*, "and," "but
not," "w/x") is encouraged to limit the production~~s~~ and shall be considered when determining

1
2 whether to shift costs for disproportionate discovery. Should a party serve email production
3 requests with search terms beyond the limits agreed to by the parties or granted by the Court
4 pursuant to this paragraph, this shall be considered in determining whether any party shall bear all
5 reasonable costs caused by such additional discovery.

6 11. Nothing in this Order prevents the parties from agreeing to use technology assisted
7 review and other techniques insofar as their use improves the efficacy of discovery. Such topics
8 should be discussed pursuant to the District's E-Discovery Guidelines.

9 PRODUCTION FORMATS

10 12. Documents and electronically stored information shall be produced electronically
11 (e.g., on compact discs or via secure file transfer) in an imaged format (e.g., TIFF), with load
12 files. The parties agree to produce single page TIFFs, multi-page/document level TEXT files,
13 with Concordance .DAT and IPRO .LFP load files, unless it is more convenient for the producing
14 party to produce the documents in a different format that is consistent with F.R.C.P. 34(b)(E).
15 The TEXT files for any electronic documents should be created by extracting the text from the
16 native file. TIFF files shall be single-page, group IV, and shall be named based on the unique
17 page ID, which will begin with the BegDoc number for the first page of each document and
18 continue sequentially for each page thereafter, followed by the extension ".TIF". The documents
19 should be logically unitized (i.e., contain correct document breaks: for instance, a five page fax
20 consisting of a cover page and a four page memo should be unitized as a five-page document)
21 with the beginning and ending Bates ranges to account for the breaks between documents. An
22 image load file for use with Opticon/IPRO, preferably an .LFP or .OPT file, shall be provided to
23 indicate the location of the TIFF. A data load file compatible with Concordance (DAT) or
24 Summation (DII) shall also be provided that includes the following objective coding fields:
25 "BegProd," "EndProd," "Pages" and "Volume." Document level OCR text files will be provided.
26 Each file will be named using the bates number of the first page of the document (e.g., a four
27 page document that starts with ABC0000001 will bear the name ABC0000001.TXT). With
28 respect to documents containing redacted text, OCR will be provided for the non-redacted text.
To the extent any paper documents or images are OCRed, the OCR text file should be provided.

1
2 Notwithstanding the foregoing, if by their nature, certain documents are best viewable in their
3 native formats (e.g., financial documentation), a party will accommodate reasonable requests by
4 the requesting parties to produce such documents in their respective native format, so long as the
5 burden is not cumulative or overly burdensome. In addition, where computer source code is
6 made part of a party's production or a third party's production of documents and things, one or
7 more of the producing parties or third parties may require the use of a secure facility wherein
8 electronic copies of such source code may be searched and traced in a non-networked, protected
9 environment, subject to the terms of an appropriate Protective Order entered by the Court.

10 13. No party has an obligation to make its production text-searchable; however, if a
11 party's documents already exist in text-searchable format independent of this litigation, or are
12 converted to text-searchable format for use in this litigation, including for use by the producing
13 party's counsel, then such documents shall be produced in the same text-searchable format at no
14 cost to the receiving party.

15 14. Each document image shall contain a footer with a sequentially ascending
16 production number.

17 15. A party that receives a document produced in a format specified above may make
18 a reasonable request to receive the document in its native format, and such requests shall not be
19 unreasonably denied.

20 DOCUMENTS PROTECTED FROM DISCOVERY

21 16. Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-
22 protected document, whether inadvertent or otherwise, is not a waiver of privilege or protection
23 from discovery in this case or in any other federal or state proceeding. For example, the mere
24 production of privileged or work-product-protected documents in this case as part of a mass
25 production is not itself a waiver in this case or in any other federal or state proceeding.

26 17. The parties agree that a party's communications related to this litigation for which
27 attorney-client privilege protection is sought need not be placed on a privilege log if and only if:
28 (1) the communication post-dates the filing of the complaint in this litigation; (2) the author
and/or at least one recipient of the communication was, at the time the communication was made,

1
2 a registered attorney and employed by or retained as trial counsel of the party in this litigation; (3)
3 the communication does not include any third parties other than those retained by the party to
4 assist with this litigation at the direction of trial counsel; and (4) the communication was for the
5 purpose of securing legal advice related to this litigation.

6 18. The parties further agree that a party's documents related to this litigation for
7 which work product protection is sought need not be placed on a privilege log if and only if: (1)
8 the document's creation post-dates the filing of the complaint in this litigation; (2) the author of
9 the document at the time it was created was a registered attorney and employed by or retained as
10 trial counsel of the party in this litigation; (3) the document was not disclosed to any third parties
11 other than those retained by the party to assist with this litigation at the direction of trial counsel;
12 (4) the document was prepared in anticipation of this litigation.

13 19. The parties agree that a party's communications related to either or both
14 *Monolithic Power Systems, Inc., v. Silergy Corp. and Silergy Tech.*, No. 10-1533 (C.D. Cal. filed
15 Mar. 2, 2010) or *Monolithic Power Systems, Inc. v. Wei Chen*, Civil Action No. 110-CV-172961
16 (Santa Clara Cty. Sup. Ct., filed May 25, 2010) (the "prior litigations") for which attorney-client
17 privilege protection is sought can be categorically logged on a privilege log under a single entry if
18 and only if: (1) the communication post-dates March 2, 2010 and pre-dates December 31, 2011;
19 (2) the author and/or at least one recipient of the communication was, at the time the
20 communication was made, a registered attorney and employed by or retained as trial counsel of
21 the party in either or both of the prior litigations; (3) the communication does not include any
22 third parties other than those working on either or both of the prior litigations at the direction of
23 trial counsel in the prior litigations; and (4) the communication was for the purpose of securing
24 legal advice related to either or both of the prior litigations.

25 20. The parties further agree that a party's documents related to the prior litigations for
26 which work production protection is sought can be categorically logged on a privilege log under a
27 single entry if and only if: (1) the document's creation post-dates post-dates March 2, 2010 and
28 pre-dates December 31, 2011; (2) the author of the document at the time it was created was a
registered attorney and employed by or retained as trial counsel of the party in either or both of

1
2 the prior litigations; (3) the document was not disclosed to any third parties other than those
3 retained by the party to assist with this litigation at the direction of trial counsel; and (4) the
4 document was prepared in anticipation of either or both of the prior litigations.

5 21. The parties further agree that communications and documents may be identified on
6 a privilege log by category, rather than individually, if and only if such categorical identification
7 provides enough detail for the receiving party to appropriately assess the whether the privilege
8 designations are justified. The following is an example of a categorical entry that provides
9 sufficient detail for the receiving party to assess whether the privilege designation is justified.

Date(s)	Author ¹	Recipient(s) ²	Description	Nature of Protection Asserted
June 22, 2010 to December 31, 2011	Wei Chen, PhD, CEO Silergy Corporation	Andrew Gray, Lorraine Casto, Corey Houmand, Morgan Lewis attorneys	200 Emails dated between June 22, 2010 and December 31, 2011 reflecting confidential communications between Dr. Chen and trial counsel about the California state court action filed by MPS against Dr. Chen in May 2010.	Attorney-Client Privilege

21 22. Absent a showing of good cause, no party need restore any form of media upon
22 which backup data is maintained in a party's normal or allowed processes, including but not
23 limited to backup tapes, disks, SAN, and other forms of media, to comply with its discovery
24 obligations in the present case.

25
26
27

¹ In this example, Dr. Wei Chen is the only author for documents that have been logged
28 categorically with this entry.

² In this example, the recipients for documents that have been logged categorically with
this entry include one or more of the individuals listed, and no others.

23. Absent a showing of good cause, voicemails, PDAs and mobile phones are deemed not reasonably accessible and need not be collected and preserved.

IT IS SO STIPULATED, through Counsel of Record.

DATED: June 17, 2015

PERKINS COIE LLP

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ John D. Esterhay
John P. Schnurer, Bar No. 185725
JSchnurer@perkinscoie.com
Thomas N. Millikan, Bar No. 234430
TMillikan@perkinscoie.com
Kevin J. Patariu, Bar No. 256755
KPatariu@perkinscoie.com
John D. Esterhay, Bar No. 282330
JEsterhay@perkinscoie.com

By: /s/ Lorrain M. Casto
Andrew J. Gray IV
Corey R. Houmand
Lorrain M. Casto

Attnorneys for Plaintiff
MONOLITHIC POWER SYSTEMS, INC.

FILER'S ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), John D. Esterhay, hereby attests that the concurrence in the filing of this document has been obtained from the other signatories, which shall serve in lieu of their signatures.

/s/John D. Esterhay
John D. Esterhay

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 6/23/15

Kandis Westmore
Hon. Kandis A. Westmore
United States Magistrate Judge