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[COMPLETE LIST OF COUNSEL  
IDENTIFIED ON SIGNATURE PAGES]

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

HUNTER DOUGLAS, INC. and  
ANDREW J. TOTI TESTAMENTARY  
TRUST,

Plaintiffs,

v.

CHING FENG HOME FASHIONS CO.,  
LTD.,

Defendant.

**CASE NO. 3:17-CV-01069-RS**

**STIPULATION AND ~~PROPOSED~~  
ORDER RE: DISCOVERY OF  
ELECTRONICALLY STORED  
INFORMATION FOR PATENT  
LITIGATION**

1           WHEREAS, Hunter Douglas, Inc. and the Andrew J. Toti Testamentary Trust  
2 (collectively, “Plaintiffs”), and Ching Feng Home Fashions Co., Ltd. (“Ching Feng”), have  
3 stipulated to certain modifications to the Court’s Model Stipulation & Order Re: Discovery of  
4 Electronically Stored Information For Patent Litigation, and for good cause shown and upon the  
5 stipulation of the parties, the Court ORDERS as follows:

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

9           2.       This Order may be modified in the Court’s discretion or by stipulation.

10          3.       As in all cases, costs may be shifted for disproportionate ESI production requests  
11 pursuant to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory  
12 discovery tactics are cost-shifting considerations.

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

15          5.       The parties are expected to comply with the District’s E-Discovery Guidelines  
16 (“Guidelines”) and are encouraged to employ the District’s Model Stipulated Order Re: the  
17 Discovery of Electronically Stored Information and Checklist for Rule 26(f) Meet and Confer  
18 regarding Electronically Stored Information.

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

22          7.       Email production requests shall only be propounded for specific issues, rather than  
23 general discovery of a product or business.

24          8.       Email production requests shall be phased to occur after the parties have exchanged  
25 initial disclosures and basic documentation about the patents, the prior art, the accused  
26 instrumentalities, and the relevant finances. While this provision does not require the production  
27 of such information, the Court encourages prompt and early production of this information to  
28 promote efficient and economical streamlining of the case.

1           9.       Email production requests shall identify the custodian, search terms, and time  
2 frame. The parties shall cooperate to identify the proper custodians, proper search terms and  
3 proper timeframe as set forth in the Guidelines.

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

9           11.       Each requesting party shall limit its email production requests to a total of five  
10 search terms per custodian per party. The parties may jointly agree to modify this limit without the  
11 Court's leave. The Court shall consider contested requests for additional search terms per  
12 custodian, upon showing a distinct need based on the size, complexity, and issues of this specific  
13 case. The Court encourages the parties to confer on a process to test the efficacy of the search  
14 terms. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms, such  
15 as the producing company's name or its product name, are inappropriate unless combined with  
16 narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive  
17 combination of multiple words or phrases (e.g., "computer" and "system") narrows the search and  
18 shall count as a single search term. A disjunctive combination of multiple words or phrases (e.g.,  
19 "computer" or "system") broadens the search, and thus each word or phrase shall count as a  
20 separate search term unless they are variants of the same word. Use of narrowing search criteria  
21 (e.g., "and," "but not," "w/x") is encouraged to limit the production and shall be considered when  
22 determining whether to shift costs for disproportionate discovery. Should a party serve email  
23 production requests with search terms beyond the limits agreed to by the parties or granted by the  
24 Court pursuant to this paragraph, this shall be considered in determining whether any party shall  
25 bear all reasonable costs caused by such additional discovery.

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

1           13. Absent further Court order, the following parameters shall apply to general ESI  
2 production requests under Federal Rules of Civil Procedure 34 and 45:

3           13.1. Absent a showing of good cause, general ESI production requests or  
4 compliance with a mandatory disclosure requirement of this Court shall not include or require the  
5 production of metadata with the exception of the following information which shall be included:  
6 BEGBATES, ENDBATES, BEGATTACH, ENDATTACH, ATT\_COUNT, CUSTODIAN\_ALL,  
7 AUTHOR, SUBJECT, TITLE, SUBJ\_EMAIL, FILE\_NAME, CONFIDENTIALITY,  
8 COMMENTS,<sup>1</sup> TEXT LINK, NATIVELINK, REDACTED, TO, FROM, CC, BCC, DATE SENT,  
9 TIME SENT, DATE RECEIVED, TIME RECEIVED, CREATE\_DATE, LASTMODDATE,  
10 LASTPRNTDATE, DOC\_TYPE, DOCEXT, PAGE\_COUNT, DUPSTATUS, MD5HASH, TEXT,  
11 VOLUME, NATIVE LINK, and FOREIGN\_LANG which should be populated by the party or the  
12 party's vendor. Fields showing the date and time that the document was sent and received, as well  
13 as the complete distribution list, shall generally be included in the production if such fields exist.  
14 The parties will make reasonable efforts to ensure that metadata fields automatically extracted from  
15 the documents are correct, however, the parties acknowledge that such metadata may not always be  
16 accurate and might instead contain irrelevant or incorrect information generated during the  
17 collection process. Parties may request other native files be produced as described in Section IV  
18 below. To the extent that the term "native" is used in this agreement, it means either in native or  
19 otherwise comparable format. Thus, for example, if a Google slide presentation is to be produced in  
20 native format, producing the document as a .ppt file would be appropriate.

21           13.2. **Accessible ESI.** The parties agree that reasonably accessible sources of ESI  
22 for the purposes of this case include electronic documents stored on computer networks, hard  
23 drives, shared network drives, and workstation or laptop hard drives.

24           13.3. **General Document Image Format.** Each electronic document shall be  
25 produced in black and white or color single-page Group IV Tagged Image File Format ("TIFF") or  
26 native format. TIFF files shall be single page and shall be named with a unique production number

27 \_\_\_\_\_  
28 <sup>1</sup> The parties agree that an acceptable alternative to producing COMMENTS metadata as a separate  
field is to make comments visible in TIFF format.

1 followed by the appropriate file extension. Load files stating the location and unitization of the  
2 TIFF files shall be provided. If a document is more than one page, the unitization of the document  
3 and any attachments and/or affixed notes shall be maintained as they existed in the original  
4 document.

5           13.4. **Hard Copy Documents.** Documents that exist in hard copy format only  
6 shall be scanned and produced as black and white or color single page Group IV TIFFs, with at least  
7 300 dpi. Each TIFF image shall be named according to the corresponding Bates number associated  
8 with the document. Each image shall be branded according to the production number and  
9 applicable confidentiality designation. TIFFs shall show all text and images that would be visible to  
10 a user of the hard copy documents. The documents should be unitized as they currently exist in the  
11 ordinary course of business.

12           13.5. **De-Duplication.** A party is only required to produce a single copy of a  
13 responsive document and a party may de-duplicate responsive ESI (based on MD5 or SHA-1 hash  
14 values at the document family level) across volumes. To the extent that a base document may  
15 contain nonprivileged handwriting, notes or other modifications or marginalia which render the  
16 document non-identical, a copy of each non-identical document shall be produced. To the extent  
17 that de-duplication through MD5 or SHA-1 hash values is not possible, the parties shall meet and  
18 confer to discuss any other proposed methods of de-duplication.

19           13.6. **Text-Searchable Documents.** Documents shall be produced in text-  
20 searchable format at no cost to the receiving party. However, documents that do not have  
21 extractable text or text that can be generated by optical character recognition (OCR) need not be  
22 produced in text-searchable format.

23           13.7. **Footer.** Each document image shall contain a footer with a sequentially  
24 ascending production number.

25           13.8. **Native Files.** Excel spreadsheets shall be produced in their native format  
26 when requested. However, native format production shall not be required if an Excel spreadsheet  
27 requires redaction (for privilege or otherwise). Moreover, document types that cannot be reduced to  
28 TIFF image (e.g., media files, etc.) shall be produced in their native format with an accompanying

1 slip-sheet branded with the appropriate production number and confidentiality designation. For  
2 other documents, a party may make a reasonable request to receive the document in its native  
3 format, and upon receiving such a request, the producing party shall produce the document in its  
4 native format with an accompanying slip-sheet branded with the appropriate production number and  
5 confidentiality designation.

6 13.9. **Color.** A party that receives a document produced in a format specified  
7 above may make a reasonable request to receive a color version. Upon receipt of such a request, the  
8 producing party shall produce color images in single-page JPEG format.

9 13.10. **No Backup Restoration Required.** Absent a showing of good cause, no  
10 party need restore any form of media upon which backup data is maintained in a party's normal or  
11 allowed processes, including but not limited to backup tapes, disks, SAN, and other forms of media.

12 13.11. **Inaccessible ESI.** Absent a showing of good cause, voicemails; instant  
13 messages; legacy data; residual, fragment, damaged, permanently deleted slack and unallocated  
14 data; PDAs; and mobile phones are all deemed not reasonably accessible and need not be collected  
15 and preserved.

16 14. Under Federal Rule of Evidence 502(d), the inadvertent production of privileged or  
17 work product protected ESI is not a waiver in this case or in any other federal or state proceeding.

18 15. The mere production of ESI in litigation as part of a mass production shall not itself  
19 constitute a waiver for any purpose.

20 16. Except as expressly stated, nothing in this order affects the parties' discovery  
21 obligations under the Federal or Local Rules.

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

DATED: June 8, 2017

Respectfully submitted,

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Dated: June 8, 2017

K&L GATES LLP

By: /s/ Peter E. Soskin (with permission)

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**PURSUANT TO STIPULATION, IT IS ORDERED** that the forgoing Order is approved.

Dated: 6/12/17



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UNITED STATES DISTRICT/~~MAGISTRATE~~ JUDGE

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