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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

INTRI-PLEX TECHNOLOGIES, INC.

Plaintiff,

v.

NHK INTERNATIONAL CORPORATION;  
NHK SPRING CO., LTD.; OGAKI SEIKO  
CO., LTD.; and SEIKO HIGH TEC CORP.

Defendants.

Case No. 3:17-cv-01097-EMC

STIPULATED 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. 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

1 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that  
2 will be applied when a party seeks permission from the court to file material under seal.

3 2. DEFINITIONS

4 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
5 information or items under this Order.

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

9 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well  
10 as their support staff).

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

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

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

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

27 2.8 House Counsel: attorneys who are employees of a party to this action. House  
28 Counsel does not include Outside Counsel of Record or any other outside counsel.

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

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

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

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

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

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

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

17   3.    SCOPE

18           The protections conferred by this Stipulation and Order cover not only Protected Material  
19 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
20 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
21 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

22           However, the protections conferred by this Stipulation and Order do not cover the following  
23 information: (a) any information that is in the public domain at the time of disclosure to a  
24 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a  
25 result of publication not involving a violation of this Order, including  
26 becoming part of the public record through trial or otherwise; and (b) any information known to the  
27 Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from  
28 a source who obtained the information lawfully and under no obligation of confidentiality to the

1 Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement  
2 or order.

3 4. DURATION

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

11 5. DESIGNATING PROTECTED MATERIAL

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

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

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

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
28 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,

1 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
2 designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

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

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

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

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

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

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

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

28 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to

1 designate qualified information or items does not, standing alone, waive the Designating Party's  
2 right to secure protection under this Order for such material. Upon timely correction of a  
3 designation, the Receiving Party must make reasonable efforts to assure that the material is treated  
4 in accordance with the provisions of this Order.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

25 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
26 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
27 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the  
28 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process

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

21         The burden of persuasion in any such challenge proceeding shall be on the Designating  
22 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
23 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.  
24 Unless the Designating Party has waived the confidentiality designation by failing to file a motion  
25 to retain confidentiality as described above, all parties shall continue to afford the material in  
26 question the level of protection to which it is entitled under the Producing Party's designation until  
27 the court rules on the challenge.  
28

1     7.     ACCESS TO AND USE OF PROTECTED MATERIAL

2             7.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
3 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
4 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
5 the categories of persons and under the conditions described in this Order. When the litigation has  
6 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL  
7 DISPOSITION).

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

10            7.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
11 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
12 information or item designated “CONFIDENTIAL” only to:

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

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

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

23                   (d) the court and its personnel;

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

27                   (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
28 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),

1 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
2 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
3 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
4 Stipulated Protective Order.

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

7 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
8 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
9 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY  
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

15 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary  
16 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”  
17 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been  
18 followed;

19 (c) the court and its personnel;

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

23 (e) the author or recipient of a document containing the information or a custodian or  
24 other person who otherwise possessed or knew the information.

25 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –  
26 ATTORNEYS’ EYES ONLY” Information or Items to Experts.

27 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating  
28 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item

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

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

17 (c) A Party that receives a timely written objection must meet and confer with the  
18 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement  
19 within seven days of the written objection. If no agreement is reached, the Party seeking to make  
20 the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance  
21 with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such  
22 motion must describe the circumstances with specificity, set forth in detail the reasons why the  
23 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would  
24 entail, and suggest any additional means that could be used to reduce that risk. In addition, any such  
25 motion must be accompanied by a competent declaration describing the parties’ efforts to resolve  
26 the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and  
27 setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

28 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of

1 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
2 outweighs the Receiving Party’s need to disclose the Protected Material to its Expert.

3 8. PROSECUTION BAR

4 Absent written consent from the Producing Party, any individual who receives access to  
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information shall not be involved in  
6 the prosecution of patents or patent applications relating to swage mounts or base plates for  
7 attachment of a suspension assembly to an actuator arm in a hard disk drive, including without  
8 limitation the patents asserted in this action and any patent or application claiming priority to or  
9 otherwise related to the patents asserted in this action, before any foreign or domestic agency,  
10 including the United States Patent and Trademark Office (“the Patent Office”). For purposes of this  
11 paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise  
12 affecting the scope or maintenance of patent claims. To avoid any doubt, “prosecution” as used in  
13 this paragraph does not include representing a party challenging a patent before a domestic or  
14 foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter*  
15 *partes* reexamination). This Prosecution Bar shall begin when access to “HIGHLY  
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information is first received by the affected  
17 individual and shall end two (2) years after final termination of this action.

18 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
19 LITIGATION

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

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

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

28 (c) cooperate with respect to all reasonable procedures sought to be pursued by the

1 Designating Party whose Protected Material may be affected.

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

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

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

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

- 20 1. promptly notify in writing the Requesting Party and the Non-Party that some  
21 or all of the information requested is subject to a confidentiality agreement with a Non-Party;
- 22 2. promptly provide the Non-Party with a copy of the Stipulated Protective  
23 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of  
24 the information requested; and
- 25 3. make the information requested available for inspection by the Non-Party.

26 (c) If the Non-Party fails to object or seek a protective order from this court  
27 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
28 produce the Non-Party’s confidential information responsive to the discovery request. If the Non-

1 Party timely seeks a protective order, the Receiving Party shall not produce any information in its  
2 possession or control that is subject to the confidentiality agreement with the Non-Party before a  
3 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the  
4 burden and expense of seeking protection in this court of its Protected Material.

5 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

14 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
15 MATERIAL

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

24 13. MISCELLANEOUS

25 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
26 seek its modification by the court in the future.

27 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order  
28 no Party waives any right it otherwise would have to object to disclosing or producing any

1 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
2 Party waives any right to object on any ground to use in evidence of any of the material covered by  
3 this Protective Order.

4           13.3 Filing Protected Material. Without written permission from the Designating Party or  
5 a court order secured after appropriate notice to all interested persons, a Party may not file in the  
6 public record in this action any Protected Material. A Party that seeks to file under seal any  
7 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
8 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
9 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing  
10 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled  
11 to protection under the law. If a Receiving Party's request to file Protected Material under seal  
12 pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the  
13 Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise  
14 instructed by the court.

15 14. FINAL DISPOSITION

16           Within 60 days after the final disposition of this action, as defined in paragraph 4,  
17 each Receiving Party must return all Protected Material to the Producing Party or destroy such  
18 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
19 compilations, summaries, and any other format reproducing or capturing any of the Protected  
20 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit  
21 a written certification to the Producing Party (and, if not the same person or entity, to the  
22 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all  
23 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
24 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
25 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
26 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
27 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
28 product, and consultant and expert work product, even if such materials contain Protected Material.

1 Any such archival copies that contain or constitute Protected Material remain subject to this  
2 Protective Order as set forth in Section 4 (DURATION).

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 DATED: August 8, 2017 SIMPSON THACHER & BARTLETT LLP

5  
6 /s/ Jeffrey E. Ostrow

7 Jeffrey E. Ostrow (SBN 213118)  
8 Jason M. Bussey (SBN 227185)  
9 Michael H. Joshi (SBN 302184)

10 Attorneys for Plaintiff

11 DATED: August 8, 2017 SINGULARITY LLP

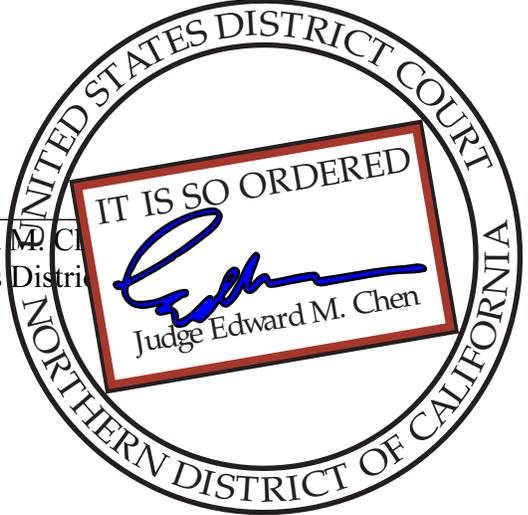
12  
13 /s/ Frank L. Bernstein

14 Frank L. Bernstein (SBN 189504)  
15 Attorneys for Defendants

16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

17  
18 DATED: 8/10/17

19 Hon. Edward M. Chen  
20 United States District Judge



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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  
5 its entirety and understand the Stipulated Protective Order that was issued by the United States  
6 District Court for the Northern District of California on [date] in the case of Intri-Plex  
7 Technologies, Inc. v. NHK International Corporation et al., 3:17-cv-01097-EMC. I agree to comply  
8 with and to be bound by all the terms of this Stipulated Protective Order and I understand and  
9 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature  
10 of contempt. I solemnly promise that I will not disclose in any manner any information or item that  
11 is subject to this Stipulated Protective Order to any person or entity except in strict compliance with  
12 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 Stipulated Protective  
15 Order, even 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 telephone number]  
18 as my California agent for service of process in connection with this action or any proceedings  
19 related to enforcement of this Stipulated Protective Order.

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

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

23 Printed name: \_\_\_\_\_  
24 [printed name]

25 Signature: \_\_\_\_\_  
26 [signature]

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**ATTESTATION OF CONCURRENCE IN FILING**

Pursuant to the Northern District of California’s Local Rule 5-1(i)(3), I attest that all signatories listed, and on whose behalf the filing is submitted, concur in the filing’s content and have authorized the filing.

Dated: August 8, 2017

SIMPSON THACHER & BARTLETT LLP

By:  /s/ Jeffrey E. Ostrow

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