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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

LG ELECTRONICS, INC.,)
)
 Plaintiff/Counterclaim Defendant,)
)
 v.)
)
 HITACHI, LTD., HITACHI AMERICA, LTD.,)
 HITACHI DATA SYSTEMS CORPORATION,)
 and HITACHI COMPUTER PRODUCTS)
 (AMERICA), INC.,)
)
 Defendants and Counterclaimants.)
)
)

Case No: 4:07 CV 6511 CW

AMENDED STIPULATED PROTECTIVE ORDER

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AMENDED STIPULATED PROTECTIVE ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff LG Electronics Inc., (“LGE”), and Defendants Hitachi, Ltd., Hitachi America, Ltd., Hitachi Data Systems Corporation, and Hitachi Computer Products (America), Inc. (collectively, “Defendants”) (Plaintiff and Defendants collectively, the “Parties”; individually, each a “Party”) that, consistent with the terms set forth herein, this Amended Stipulated Protective Order ("Stipulated Protective Order") shall govern the handling of all materials produced in this action (“Produced Material”), by any Party or non-party (the “Producing Party”), including, but not limited to, documents (including electronically-stored information) and things produced pursuant to Rule 34 or Rule 45; testimony upon written questions pursuant to Rule 31; testimony adduced at depositions upon oral examination and transcripts, videotapes, and exhibits thereof pursuant to Rule 30; discovery requests and written responses thereto pursuant to Rules 33 or 35; source code; and discoverable materials derived from any of the foregoing.

1. “Confidential Material.”

The Producing Party, whether or not a Party to this action, may designate as “Confidential Material” pursuant to this Stipulated Protective Order any Produced Material that the Producing Party in good faith believes not to be in the public domain and to contain: (i) any trade secret, or other confidential intellectual property or proprietary technical information, including, without limitation, research or development information, source code, design and technical documents, drawings and internal product specifications; (ii) confidential or proprietary business, strategic, non-public financial or marketing information, or any other personal or commercial information including, without limitation, any agreement such as purchase, joint development or licenses, forecasts, customer lists, pricing data, cost data, customer orders, customer quotations and marketing plans; (iii) pending or abandoned patents, trademark and copyright applications, foreign

1 or domestic, unless published or otherwise publicly available; or (iv) any other information not
2 normally revealed to third parties or, if revealed to third parties, is such that the Producing Party
3 would require that the material be held in confidence. Any Produced Material that a Producing Party
4 is required, by agreement or court order, to treat as “Confidential Material” may be designated as
5 “Confidential Material” in accordance with this Stipulated Protective Order. A Producing Party may
6 also designate as “Confidential Material” any information that the Producing Party believes in good
7 faith falls within the right to privacy guaranteed by the laws of the United States, the Republic of
8 Korea, Japan, California, Oklahoma and/or any other jurisdictions where the parties are located.
9 Any copies or reproductions, excerpts, summaries or other documents or media that paraphrase,
10 excerpt or contain Confidential Material shall also be treated, and shall hereinafter be referred to, as
11 “Confidential Material.”
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14 **2. Scope of Stipulated Protective Order.**

15 (a) This Stipulated Protective Order shall govern Confidential Material that is,
16 directly or indirectly, set forth, revealed, produced, or provided (i) in discovery requests promulgated
17 under the Federal Rules of Civil Procedure, and under Local Rules and Patent Rules of the Northern
18 District of California and responses thereto; (ii) in any documents (including electronically-stored
19 information), things, or premises produced pursuant to, or made available for inspection in response
20 to, a discovery request or subpoena under the Federal Rules of Civil Procedure; (iii) during
21 depositions upon oral or written examination under the Federal Rules of Civil Procedure; (iv) in
22 connection with any other discovery taken in this action, whether pursuant to the Federal Rules of
23 Civil Procedure, informally, or by agreement; (v) in correspondence (including attachments and
24 enclosures) relating to this litigation; (vi) in submissions to or before the Court, including testimony,
25 briefs, exhibits and declarations; (vii) in response to any Order of the Court; and (viii) in connection
26 with any mediation or settlement negotiation. This Stipulated Protective Order shall also govern the
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1 handling of documents, and all other forms of recorded information, containing or derived from the
2 information in any Confidential Material. This Stipulated Protective Order also shall govern any oral
3 or written conveyance of the contents of Confidential Material. This Stipulated Protective Order
4 also shall apply to (i) Confidential Material inadvertently or unintentionally produced without
5 designation consistent with the provisions set forth in Paragraph 14 and (ii) inadvertently or
6 unintentionally produced privileged information consistent with the provisions set forth in
7 Paragraph 15.

8
9 (b) This Stipulated Protective Order has no effect upon, and shall not apply to,
10 (i) any Producing Party's use of its own Confidential Material for any purpose; (ii) any person's use
11 of documents or other information developed or obtained independently of discovery in this
12 litigation for any purpose, whether or not such documents or other information also were Produced
13 Material in this litigation; (iii) information that is or becomes part of the public domain through no
14 breach of the provisions of this Stipulated Protective Order; or (iv) information that is disclosed by a
15 third party without restriction as to disclosure, provided such third party has the right to make the
16 disclosure.
17

18 **3. Designation of Confidential Material.**

19 The designation of any information as Confidential Material for purposes of this
20 Stipulated Protective Order shall be made in the following manner:

21 (a) Hard Copy / Written Material (except transcripts and discovery requests and
22 responses). With regard to any hard copy / written material (excluding transcripts to depositions or
23 other testimony and discovery requests and responses), a legend "Confidential Material" (or
24 substantially similar legend) shall be affixed to each page containing Confidential Material.

25
26 (b) Electronically-Stored Information. With regard to any electronically-stored
27 information produced in searchable .tiff format, a legend "Confidential Material" (or substantially
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1 similar legend) shall be included on each image containing any Confidential Material. With regard
2 to electronically-stored information produced in a format other than searchable .tiff, an appropriate
3 legend shall be included on each image, page or document to the extent practicable. Where it is not
4 practicable to include a legend on each image, page or document, an appropriate legend shall be
5 affixed to the CD or other media on which the Producing Party produces the electronically-stored
6 information. Any printout made from the CD or other media shall be immediately and
7 conspicuously marked “Confidential Material” consistent with the legend affixed to the CD or other
8 media, and also with a unique page identifier.

10 (c) Materials, Things, and Premises Produced for Inspection. (i) When files and
11 records are produced for inspection, no legend need be affixed in advance of the inspection. For
12 purposes of the initial inspection, all Produced Material shall be considered designated as
13 Confidential Material. Thereafter, upon a selection of specified documents for copying by the
14 inspecting Party, a legend in the form set forth in Paragraph 3(a) shall be affixed to each page
15 containing Confidential Material. (ii) For information revealed by inspection of things or premises,
16 prior to or during the inspection, the Producing Party shall state in writing that its Confidential
17 Material will be disclosed by the inspections and specify in writing those parts of the things or those
18 areas of the premises in which its Confidential Material will be revealed.

21 (d) Discovery Requests and Responses. With respect to discovery requests and
22 responses, by stating in each relevant request or response that it contains “Confidential Material” or
23 clearly indicating on the cover that requests or responses therein contain Confidential Material.

24 (e) Deposition Procedures.

25 (i) If information to be treated as Confidential Material is revealed during
26 a deposition, trial, hearing, or other testimony, then the transcript (and related
27 machine readable media, if any) may be designated as containing Confidential
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1 Material by notifying the other Parties on the record at the time of the testimony, or
2 by notifying the other Parties in writing, within twenty-one (21) calendar days of
3 receipt of the transcript by the Producing Party (*i.e.*, the deponent) of the specific
4 pages and lines of the transcript which contain Confidential Material.
5

6 (ii) All depositions, regardless of whether a designation of confidentiality
7 was made on the record, shall be treated as containing Confidential Material until
8 twenty-one (21) calendar days after a transcript of the deposition is received by the
9 Producing Party, unless expressly waived on the record or in writing by the Producing
10 Party. After such twenty-one (21) calendar day period has expired and in the absence
11 of any written notice concerning the specific portions of the transcript that the
12 Producing Party believes contain Confidential Material, the transcript of testimony
13 shall be treated as designated on the record at the time of testimony or, if no
14 designations were made, then the transcript of testimony shall not be afforded any
15 confidentiality pursuant to this Stipulated Protective Order.
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17 (iii) Where deposition, trial, hearing, or other testimony has been
18 designated as Confidential Material, a legend in the form set forth in Paragraph 3(a)
19 shall be affixed to each page of the transcript volume containing such Confidential
20 Material and to each videotape (or other storage media) on which the testimony was
21 recorded and/or is stored or maintained.
22

23 (f) Any Producing Party may also apply for an order to supplement the foregoing
24 categories of Confidential Material or to designate particular information not within the foregoing
25 categories as confidential. The designation by any Producing Party of any Produced Material as
26 Confidential Material shall constitute a representation that such Produced Material has been
27 reviewed by an attorney for the Producing Party and that there is a valid basis for such designation.
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4. Challenges to Designations of Confidential Material.

(a) If any Party disagrees with the designation of any Produced Material as Confidential Material, then the parties to the dispute, after providing notice to all Parties in the action, shall attempt to resolve the dispute informally and in good faith before presenting the dispute to the Court.

(b) All such Produced Material objected to shall continue to be treated as Confidential Material, as originally designated by the Producing Party, pending resolution of the dispute. If the dispute is resolved, then all Parties shall promptly be informed of the resolution. If the dispute cannot be resolved informally, then the objecting Party may bring a motion to change the designation. If the Producing Party is a party to this action, then it bears the burden of persuading the Court that the Produced Material is Confidential within the definitions of Paragraph 1. If the Producing Party is not a party to this action, then the objecting Party bears the burden of persuading the Court that the Produced Material is not Confidential within the definitions of Paragraph 1. The Produced Materials shall continue to be treated as Confidential, as originally designated by the Producing Party, during the pendency of any motion and resulting writ or related appeal.

(c) A Party may challenge the Producing Party's designation of the material at any time and is not obligated to challenge the propriety of a designation when the Produced Material initially is produced. Failure of any Party to challenge the claim of confidentiality with respect to any Produced Material shall not constitute a waiver of the right to assert at any subsequent time that the same is not in fact confidential or not an appropriate designation for any reason.

5. Disclosure and Use of Confidential Material.

Subject to Paragraph 2(b) and Paragraph 5(b), Confidential Material shall be used solely for the purpose of this litigation and not for any other purpose and disclosed only to those persons identified in Paragraphs 5(a).

1 (a) Confidential Material. Confidential Material may be disclosed, summarized,
2 described, revealed, or otherwise made available in whole or in part only in accordance with the
3 terms of this Stipulated Protective Order and only to the following persons and under the following
4 conditions:

5 (i) Outside Counsel. Attorneys who are admitted to practice law in the
6 United States, who subject themselves to the jurisdiction of the United States District
7 Court for the Northern District of California and who are employed by or are partners
8 of, or of counsel of, Kirkland & Ellis LLP (retained by Defendants) or Sidley Austin
9 LLP or Finnegan, Henderson, Farabow, Garrett & Dunner, LLP (retained by LGE)
10 and who actively are involved in this litigation, as well as secretarial, stenographic,
11 clerical, technical, and paralegal employees to the extent necessary to assist such
12 outside counsel in the conduct of this litigation;
13

14 (ii) Experts or Consultants. Subject to the conditions set forth in
15 Paragraph 6, outside experts or outside consultants (who are not current employees of
16 or otherwise affiliated with any of the Parties or their affiliates), including their
17 administrative and clerical staff, retained by the Parties for purposes of this litigation;
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19 (iii) Litigation Vendors. Outside photocopy, imaging, database, graphics,
20 translation, and design services retained by the outside counsel set forth in
21 Paragraph 5(a)(i), to the extent necessary to assist such counsel in this litigation;
22

23 (iv) Court Reporters. Stenographic and videotape court reporters engaged
24 in proceedings incident to preparation for deposition or trial;

25 (v) Court Personnel. Officers of this Court (including the jury) and their
26 supporting personnel, or officers of any appellate court to which any appeal may be
27 taken or in which review is sought and their supporting personnel;
28

1 (vi) Drafters or Recipients. Any person who was an author, addressee, or
2 intended and/or authorized recipient of the Confidential Material, provided, however,
3 that, other than at trial or in deposition, if the person to whom disclosure is made is a
4 former employee of a Producing Party or its affiliate, then the disclosure shall be
5 made only after the following conditions have been satisfied: (i) the Producing Party
6 has received notice of the proposed disclosure and (ii) the Producing Party has
7 approved of the disclosure pursuant to this Paragraph or the Court has ruled that the
8 person may receive the Confidential Material. Each such Producing Party shall have
9 ten (10) calendar days from the date of service of such notice to object to the
10 proposed disclosure if service is accomplished by hand, email or facsimile. If service
11 is accomplished by other means, then the Producing Party shall have fourteen (14)
12 calendar days from the date of service of such notice to object to the proposed
13 disclosure. Service after 5:00 p.m. local time of counsel for the Producing Party shall
14 be deemed effective the following day. Any objection by the Producing Party must
15 be for good cause, stating with particularity the reasons for the objection, and must be
16 in writing served on all Parties. Failure to object within the foregoing applicable time
17 period, shall constitute approval of the disclosure by the Producing Party. If the
18 Parties are unable to resolve the Producing Party's objections, then application may
19 be made to the Court to resolve the matter;
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22 (vii) Producing Party Witness. Persons described in Paragraph 10; and

23 (viii) Jury or Trial Consultants. Subject to the conditions set forth in
24 Paragraph 6, jury or trial consultants retained by counsel for the Parties for the
25 purpose of trial preparation in this litigation, their employees, and any mock jurors
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1 engaged by such jury or trial consultants in connection with trial preparation in this
2 litigation.

3 (b) Advice to Client. Nothing in this Stipulated Protective Order shall bar or
4 otherwise restrict counsel, who is a qualified recipient under the terms of Paragraph 5(a)(i) from
5 rendering advice to his or her client with respect to this litigation, and in the course thereof, from
6 generally relying upon his or her examination of Confidential Material. In rendering such advice or
7 in otherwise communicating with the client, counsel shall not disclose the specific content of any
8 Confidential Material of a Producing Party where such disclosure would not otherwise be permitted
9 under the terms of this Stipulated Protective Order.
10

11 (c) Prosecution Bar. (i) Notwithstanding the other provisions in this Paragraph,
12 no Party shall disclose any Confidential Material to any lawyer, patent agent, or other person who
13 (A) writes or prosecutes patent applications in the blade-server, network-attached storage, or disk-
14 array storage fields (“Server/Storage field”); or (B) reviews or provides input to patent applications
15 being prosecuted in the Server/Storage field; provided, however, this Paragraph shall not prohibit
16 personnel identified in this Paragraph (a)(i) from advising third-party clients with respect to the
17 reexamination of patents in the Server/Storage field (other than the patents subject to this litigation,
18 and any patents related thereto). (ii) Anyone who receives Confidential Material who desires to (A)
19 write or prosecute any patent application in the Server/Storage field, or (B) provide input to a patent
20 application in the Server/Storage field, shall forthwith notify the Producing Party to whose
21 Confidential Material the person has been exposed in writing. The Producing Party shall have
22 fifteen (15) calendar days to object which objection shall preclude participation in writing,
23 prosecuting or providing input to a patent application in the Server/Storage field. With respect to
24 any person covered by this Paragraph, these provisions shall survive until the earlier of: (A) one (1)
25 year from the Termination of the Litigation (defined in Paragraph 18); or (B) one (1) year from the
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1 termination of the covered person's affiliation with their current law firm and the covered person's
2 representation of a party to this action.

3 (d) Notwithstanding the other terms of this Stipulated Protective Order, the
4 Producing Party may request in writing (or on the deposition record in the case of testimony) that
5 Confidential Material not be disclosed to particular persons or categories of persons to whom
6 Confidential Material would otherwise be permitted to be disclosed. Such a request shall be made
7 only if the Producing Party believes in good faith that disclosure of Confidential Material to the
8 particular person or categories of persons is reasonably likely to cause serious injury to the
9 Producing Party's business interests. Any disagreement over such a request shall be resolved
10 promptly or, absent such resolution, the Parties hereby consent to an expedited hearing upon the
11 motion of the Producing Party to resolve their disagreement and, pending such resolution, the
12 confidentiality of Confidential Material shall be maintained in accordance with the Producing
13 Party's request.
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16 **6. Undertaking.**

17 (a) All proposed experts, consultants, and jury or trial consultants may receive
18 Confidential Material only after the following conditions have been satisfied: (i) the proposed
19 recipient has executed the undertaking attached hereto as Exhibit A; (ii) the undertaking has been
20 served on the Producing Party together with the following information (A) any and all current
21 professional relationship(s) with any of the Parties, any known competitor of the Parties, any Person
22 or entity involved in the Server/Storage industry, or any known affiliate of any of the foregoing
23 Persons or entities and (B) for experts or consultants, a curriculum vitae showing
24 employment/consulting history, including any prior employment or affiliation with any of the
25 Parties, any known competitor of the Parties, any Person or entity involved in the Server/Storage
26 industry, or any known affiliate of any of the foregoing Persons or entities; publications; and prior
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1 testimony; and (iii) the Producing Party has approved the recipient pursuant to Paragraph 6(b) or the
2 Court has ruled on an application that the proposed recipient may receive the Confidential Material.
3 To the extent that the specific identification of an expert or consultant's client cannot be provided
4 due to a confidentiality agreement, or otherwise, the Party seeking to make the disclosure must
5 provide sufficient disclosure so that the Producing Party can reasonably assess any concerns
6 regarding the disclosure of such information to such expert or consultant.
7

8 (b) The Producing Party shall have ten (10) calendar days after notice complying
9 with the requirements of Paragraph 6(a) is received to object to the disclosure of the Produced
10 Material to the person(s) identified if service of the notice under Paragraph 6(a) is accomplished by
11 hand, email or facsimile. If service is accomplished by other means, then the Producing Party shall
12 have fourteen (14) calendar days to object. Service after 5:00 p.m. local time of counsel for the
13 Producing Party shall be deemed effective the following day. Any objection shall be made in good
14 faith, stating with particularity the reasons for the objection, and must be served in writing on all
15 Parties. Failure to object within the period referenced above shall be deemed approval, and the
16 person(s) shall thereafter be qualified to have access to the Confidential Material of the Producing
17 Party. Should the parties be unable to resolve the objection, then the party objecting to the
18 disclosure shall raise this matter with the Court and request an Order restricting such person's access
19 to the Confidential Material.
20

21 (c) The administrative and clerical staff of an outside consultant or expert
22 identified Paragraph 5(a)(ii) shall be deemed to have signed the undertaking in the form of Exhibit A
23 when the outside expert or consultant supervising such individuals has executed the undertaking.
24 Likewise, the support, administrative, or clerical staff of a jury or trial consultant under Paragraph
25 5(a)(viii) shall be deemed to have signed the undertaking in the form of Exhibit A when the jury
26 consultant supervising or employing such individuals has executed the undertaking.
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7. Deposition Procedures.

(a) At any deposition, when counsel for a Party or the deponent deems that the answer to a question will result in the disclosure of Confidential Material, counsel shall have the option, in lieu of taking other steps available under the Federal Rules of Civil Procedure, to request that all persons other than the reporter, videographer, counsel and individuals specified in Paragraph 5(a) who have access to the confidential information, leave the deposition room during the Confidential portion of the deposition. The failure of such other persons to comply with such requests shall constitute substantial justification for counsel to advise the witness that he or she need not answer the question pending.

(b) Any deposition testimony concerning Confidential Material produced by a non-party will be marked by the court reporter as Confidential on the deposition transcript.

8. Maintenance of Confidential Material.

(a) Confidential Material shall be maintained at all times in secure facilities with reasonable precautions taken to ensure that access to such material is restricted to persons entitled to have such access pursuant to this Stipulated Protective Order.

(b) Notwithstanding Paragraph 8(a), Confidential Material may be (i) submitted to the Court and used as exhibits at trial or a hearing in this action pursuant to Paragraph 11; (ii) submitted to court reporters as deposition exhibits in this action; and (iii) temporarily removed from the facilities identified above for the purposes of conducting witness interviews or depositions (consistent with the terms of this Stipulated Protective Order), for consultation with experts or consultants (as described in Paragraph 5(a)(ii) and 5(a)(viii) hereof), photocopying, imaging and database preparation (as described in Paragraphs 5(a)(iii)), and for hearings, conferences and trial of this action in this Court and any appeals of this action. Reasonable precautions shall be taken to

1 ensure that access to all Confidential Material temporarily removed from the secure facilities is
2 restricted to persons entitled to have such access pursuant to this Stipulated Protective Order.

3 **9. Filing Under Seal.**

4 All Confidential Material filed with the Court shall be filed under seal in accordance
5 with Local Rule 79-5 and pursuant to the following procedures:

6 (a) Where possible, only Confidential portions of filings with the Court shall be
7 filed under seal.
8

9 (b) Information filed under seal shall be clearly marked with the words “FILED
10 UNDER SEAL” and a statement substantially in the following form:

11 This document is filed under seal pursuant to order of the Court and
12 contains Confidential Material filed in this case by [name of Party] and
13 is not to be reviewed, displayed or revealed except by order of the
14 Court.

15 (c) Where documents filed under seal are transmitted between the Parties, they
16 shall be clearly marked as having been filed under seal and disclosed and used solely in accordance
17 with the terms and conditions of this Stipulated Protective Order.

18 (d) Portions of discovery materials, deposition transcripts, trial exhibits,
19 demonstrative exhibits, trial testimony, briefs, memoranda, and all other documents and things filed
20 with the Court or presented at trial that contain Confidential Material shall become part of the in
21 camera record and shall not be made part of the public record in the above-captioned proceeding
22 unless the Court determines otherwise after providing an opportunity for the Producing Party to
23 argue in favor of maintaining its confidentiality.

24 **10. Use During Examination or Cross-Examination.**

25 Nothing herein shall limit a Party’s ability to use Confidential Material to examine or
26 cross-examine deposition or trial witnesses (a) who are present during the examination/cross-
27 examination of other deposition or trial witnesses who wrote or received the information; (b) who
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1 are current or former officers, employees, experts, agents, consultants or attorneys of the Producing
2 Party from which the Confidential Material originated or was received; and/or (c) whom the
3 Producing Party has designated under Federal Rule of Civil Procedure 30(b)(6).

4 **11. Disclosure of Confidential Material at Trial or Hearing.**

5 (a) The Parties shall confer and attempt in good faith to agree before any trial or
6 other hearing on the procedures under which Confidential Material may be introduced into evidence
7 or otherwise used at such trial or hearing. Upon reaching agreement, the Parties shall give notice of
8 the terms of such agreement to each non-party producing any Confidential Material which may be
9 used or introduced at such trial or hearing. Absent agreement, the Court shall be asked to issue an
10 order governing the use of such Confidential Material at trial or hearing upon reasonable notice to all
11 parties and non-parties who have produced such information.

12 (b) The Parties shall provide non-parties with notice of potential use at trial of any
13 Confidential Material produced by them as soon as practicable if and when they are listed as
14 potential exhibits in the required filings prior to commencement of trial. The Parties shall give
15 notice as soon as practicable after Confidential Material which is not listed on the exhibit list is
16 determined to be used by counsel for a Party in the course of examination or cross-examination at
17 trial.

18 (c) In the event that any Confidential Material is used in any pre-trial court
19 hearing or proceeding in these actions, and there is any dispute as to whether such material continues
20 to be Confidential, the Parties will meet and confer to resolve such dispute.

21 **12. Special Handling of Computer Source Code**

22 (a) Certain information may be designated “Confidential Material —Source
23 Code.” The “Confidential Material — Source Code” designation is reserved for information that
24 includes source code, object code, Hardware Descriptive Language (“HDL” including, for example,
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1 Verilog or VHDL files) for integrated circuits, and documentation relating to any such source code,
2 object code or HDL files (for the purposes of this Order only, such source code, object code, HDL
3 files will be referred to for convenience as “Source Code”), including, but not limited to, technical
4 specifications that explain the operation of the Source Code, functional specifications,
5 communications and messaging protocols, information technology (“IT”) specifications and IT
6 platforms. Information designated “Confidential Material — Source Code” shall be provided the
7 following further protections described in this Paragraph 12.
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9 (b) Access to Source Code shall be provided only to those persons authorized in
10 Paragraphs 5(a)(i) and 5(a)(ii), subject to the Prosecution Bar pursuant to Paragraph 5(c); and to the
11 extent applicable, to those persons authorized in Paragraphs 5(a)(vi) and 5(a)(vii);
12

13 (c) When producing Source Code in its native or searchable electronic form, a
14 party shall produce a copy of the Source Code on a CD, DVD, or stand-alone hard drive, to the
15 extent such Source Code exists in native or searchable electronic form. To the extent such Source
16 Code exists only in hard copy form, the Parties shall have no obligation to create an electronic
17 version thereof.

18 (d) A party producing Source Code shall provide the receiving party with a
19 single, stand-alone computer (“Secure Computer”), on which a CD, DVD, or hard drive containing
20 Source Code will be available for inspection by the receiving party. The Secure Computer shall be
21 kept in a secure location under lock and key at the offices of outside counsel for the receiving party,
22 and the Secure Computer shall be the only computer on which Source Code not previously produced
23 and designated “Confidential Material – Source Code” may be inspected by the receiving party.
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25 (e) The Secure Computer shall be provisioned with sufficient tools and have
26 sufficient capability to review Source Code. The receiving party shall notify the Producing Party of
27 the specific tools that the receiving party requires to review the produced Source Code, and the
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1 parties shall meet-and-confer in good faith to determine the most efficient manner in which the
2 required tools will be loaded onto the Secure Computer.

3 (f) The Secure Computer shall not be connected to any network or any printer,
4 and the use of the Secure Computer by the receiving party shall be restricted only to the sole purpose
5 of reviewing the Source Code produced by the Producing Party.
6

7 (g) If the receiving party desires printouts of the Source Code, the receiving party
8 shall notify the Producing Party. Upon notification by the receiving party of a request for a printout
9 of Source Code, the Producing Party shall print the requested portions of the Source Code, Bates
10 number the printouts, label the printouts as “Confidential Material – Source Code,” and produce the
11 printouts to outside counsel for the receiving party. Except as provided in Paragraph 12(k), such
12 Bates-numbered printouts shall be the only permitted Source Code printouts.
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14 (h) Excerpts of Source Code may be included in a pleading, exhibit, expert report,
15 discovery document, deposition transcript, other Court document, or any drafts of these documents
16 (“Source Code Documents”). Each excerpt of Source Code quoted in a Source Code Document
17 shall be insubstantial when compared to the entire Source Code produced by the Producing Party –
18 as an example, excerpts of approximately 25 to 40 lines in length would be allowed. To the extent
19 portions of Source Code are quoted in a Source Code Document, either (1) the entire document will
20 be stamped and treated as “Confidential Material — Source Code” or (2) those pages containing
21 quoted Source Code will be separately bound, stamped, and treated as “Confidential Material —
22 Source Code.”
23

24 (i) Except for scanned versions of documents designated “Confidential Material
25 – Source Code,” no electronic copies of Source Code shall be made. However, to the extent portions
26 of Source Code are quoted in a Source Code Document, the persons described in Paragraph 12(b)
27 shall be permitted to store and access Source Code Documents on a computer and on a computer
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1 network that limits access to only necessary viewers; the persons described in Paragraph 12(b) may
2 also send Source Code Documents to other persons described in Paragraph 12(b), and to persons
3 described in Paragraphs 5(a)(iii-vii) to the extent necessary.

4 (j) Scanned versions of documents designated “Confidential Material – Source
5 Code” and Source Code Documents stored on a computer or computer network shall be password
6 protected so as to limit access only to persons described in Paragraph 12(b), and to persons described
7 in Paragraphs 5(a)(iii-vii) to the extent necessary.

8 (k) If persons described in Paragraph 12(b), and to the extent necessary, persons
9 described in Paragraphs 5(a)(iii-vii), make printouts or photocopies of Source Code Documents,
10 such persons shall keep the printouts or photocopies of Source Code Documents in a secure location
11 under lock and key in their offices. The persons described in Paragraph 12(b) may also temporarily
12 keep the printouts or photocopies of Source Code Documents at: (1) the sites where any depositions
13 relating to Source Code are taken for the dates associated with the taking of the deposition; (2) the
14 Court; or (3) any intermediate location reasonably necessary to transport the information (*e.g.*, a
15 hotel prior to a deposition).

16 **13. Unauthorized Disclosure and Use.**

17 (a) If Confidential Material is disclosed to any person other than in the manner
18 authorized by this Stipulated Protective Order (an “Unauthorized Person”), the party responsible for
19 the unauthorized disclosure, and any party with knowledge of the unauthorized disclosure shall,
20 immediately upon learning of such disclosure, inform the Producing Party of all pertinent facts
21 relating to such disclosure including, without limitation, an identification of the Confidential
22 Material disclosed and the Unauthorized Persons to whom the disclosure was made.

23 (b) The party responsible for the disclosure also promptly shall take all reasonable
24 measures to recover the Confidential Material disclosed without authorization and to ensure that no
25

1 further or greater unauthorized disclosure or use of such information or Confidential Materials is
2 made by doing the following, without limitation, (i) promptly informing the Unauthorized Person
3 that the material contains Confidential Material and of the provisions of this Stipulated Protective
4 Order; (ii) requesting that the Unauthorized Person sign an undertaking in the form attached as
5 Exhibit A (to be promptly provided to the Producing Party); and (iii) retrieving all copies of
6 Confidential Material disclosed to the Unauthorized Person. The Producing Party and party that
7 disclosed the Confidential Material shall cooperate in good faith in this effort.
8

9 (c) Any person found to have made an impermissible use of any Produced
10 Material will be subject to, without limitation, appropriate civil penalties, including contempt of
11 court.
12

13 **14. Inadvertent or Unintentional Production of Confidential Material.**

14 (a) The inadvertent or unintentional production of Confidential Material without
15 designation, or failure to otherwise designate, shall not be deemed a waiver in whole or in part of the
16 Producing Party's claim of confidentiality, either as to the specific information disclosed or as to any
17 other information relating thereto on the same or related subject matter, so long as the inadvertent or
18 unintentional disclosure was not the result of recklessness or gross negligence on the part of the
19 Producing Party.
20

21 (b) Any such inadvertently or unintentionally disclosed Confidential Material
22 may subsequently be appropriately designated by written request of the Producing Party. The Party
23 to whom such inadvertent disclosure is made shall, upon written request by the Producing Party,
24 treat such material as Confidential Material in accordance with this Stipulated Protective Order. The
25 receiving party also shall make a good faith effort to retrieve any previously disclosed Confidential
26 Material from unauthorized recipients. If the receiving party is unable to arrange for the return or
27 destruction of such documents and things from such unauthorized parties or individuals, then the
28

1 receiving party shall notify the Producing Party within fourteen (14) calendar days of notice from the
2 Producing Party of the identity of such unauthorized parties or individuals and the efforts made to
3 secure the return or destruction of such documents and things. The receiving party's disclosures,
4 prior to the receipt of notice from the Producing Party of a new designation, of Confidential Material
5 to unauthorized parties or individuals shall not be deemed a violation of this Stipulated Protective
6 Order.
7

8 (c) The Producing Party shall promptly provide substitute copies of Produced
9 Material bearing the appropriate confidentiality legend in accordance with Paragraph 3. Within
10 fourteen (14) calendar days of the receipt of substitute copies of the Produced Material, the receiving
11 party shall return or destroy said originally Produced Material and not retain any copies thereof.
12

13 (d) If the receiving party disagrees with the redesignation of the Produced
14 Material it may challenge the confidentiality designation pursuant to and in the manner prescribed in
15 Paragraph 4.

16 **15. Inadvertent or Unintentional Production of Privileged Material.**

17 (a) The inadvertent or unintentional production of any Produced Material that the
18 Producing Party later claims should have been withheld on grounds of attorney-client privilege, the
19 work product doctrine or any other applicable privilege, doctrine or immunity ("Inadvertently
20 Produced Privileged Material") will not be deemed a waiver of or estoppel as to any claim of
21 privilege, protection, or immunity. Consistent with Federal Rule of Civil Procedure 26(b)(5)(B), a
22 Producing Party may notify the other parties of the Inadvertently Produced Privileged Material by
23 identifying the material and stating the basis for withholding such Inadvertently Produced Privileged
24 Material from production.
25

26 (b) Upon receiving notification of Inadvertently Produced Privileged Material, the
27 parties possessing said material shall within five (5) calendar days destroy or return to the Producing
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1 Party the Inadvertently Produced Privileged Material and all copies thereof and shall expunge from
2 any other document or material information solely derived from the Inadvertently Produced
3 Privileged Material. The Parties recognize that this protection is stricter than that provided for under
4 Federal Rule of Civil Procedure 26(b)(5)(B). After the Inadvertently Produced Privileged Material
5 is destroyed or returned pursuant to this Paragraph, a Party may move the Court for an order
6 compelling production of the Inadvertently Produced Privileged Material, but said Party may not
7 assert as a ground for compelling production the fact or circumstance that the Inadvertently
8 Produced Privilege Material had already been produced.
9

10 **16. Efforts by Non-Parties to Obtain Confidential Material.**

11 (a) If any Party (i) is subpoenaed in another action, (ii) is served with a demand in
12 another action to which it is a party, or (iii) is served with any other legal process by one not a party
13 to this litigation, seeking Produced Material that was designated as Confidential Material (the
14 “Subpoenaed Party”) under this Stipulated Protective Order, then the Subpoenaed Party shall
15 transmit a copy of such subpoena, demand, or legal process within five (5) business days of receipt
16 of such subpoena, demand or legal process, to the Producing Party that produced the Produced
17 Material and shall reasonably cooperate with the Producing Party in preparing timely objections to
18 its production.
19

20 (b) Should the person seeking access to the Confidential Material take action
21 against the Subpoenaed Party to enforce such a subpoena, demand or other legal process, the
22 Subpoenaed Party shall respond by setting forth the existence of this Stipulated Protective Order.
23 The Subpoenaed Party shall not produce any Confidential Material without the prior written consent
24 of the Producing Party unless in response to an order of a court of competent jurisdiction.
25 Notwithstanding the foregoing, nothing herein shall be construed as requiring the Subpoenaed Party
26 to challenge or appeal any order requiring production of Confidential Material covered by this
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1 Stipulated Protective Order, or to subject itself to any penalties for noncompliance with any legal
2 process or order, or to seek any relief from this Court.

3 **17. Termination of Access.**

4 (a) In the event that any person or party ceases to be engaged in the conduct of
5 this litigation, such person's or party's access to any and all Confidential Material shall be
6 terminated. In addition, all copies of Confidential Material shall be returned or destroyed consistent
7 with the procedure in Paragraph 18 as soon as practicable, and no later than forty-five (45) calendar
8 days, after such person or party ceases to be engaged in the conduct of this litigation.

9
10 (b) The provisions of this Stipulated Protective Order shall remain in full force
11 and effect as to any person or party who previously had access to any Confidential Material, except
12 as may be specifically ordered by the Court or consented to by the Producing Party.

13 **18. Procedures Upon Termination of Litigation.**

14 (a) Within sixty (60) calendar days after the conclusion in its entirety of the last to
15 conclude of this litigation, after all appeals periods have expired or execution of a settlement
16 agreement finally disposing of the action ("Termination of the Litigation"), all parties to whom
17 Confidential Material were produced shall return such material to counsel for the Producing Party or
18 destroy such material in a manner that ensures that it will not be disclosed to or disseminated or
19 recovered by any person, and shall certify their compliance with this provision by affidavit.

20
21 (b) All Confidential Material returned to the parties or their counsel by the Court
22 shall also be disposed of in accordance with the terms of this Paragraph 18. Outside counsel for the
23 parties (as identified in Paragraph 5(a)(i)) shall be entitled to retain all court papers, deposition and
24 trial transcripts, exhibits used in affidavits, at depositions and at trial, and attorney work product
25 (except for certain litigation databases, as set forth in the second sentence of this subparagraph),
26 including such materials containing, quoting, discussing or analyzing Confidential Material,
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1 provided, however, that such counsel, and employees of such counsel, shall not disclose such court
2 papers, deposition and trial transcripts, exhibits or attorney work product containing Confidential
3 Material to any third party unless, after reasonable prior notice to the Producing Party, the disclosing
4 counsel has obtained permission pursuant to Court order or by express written agreement with the
5 Producing Party. Litigation databases (or portions of databases) containing either the full text of
6 Confidential Material or abstracts thereof shall be disposed of in accordance with Paragraph 18(a),
7 except that any portion of any such database containing materials described in the first sentence of
8 this subparagraph may be retained by counsel for the parties. The Confidential Material kept by
9 counsel pursuant to this subparagraph shall be maintained in accordance with the terms of this
10 Stipulated Protective Order, including, but not limited to, the restrictions of Paragraphs 5, 8, 10, 14,
11 15 and 18.

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14 **19. Survival of Termination of the Litigation.**

15 This Stipulated Protective Order shall survive the Termination of the Litigation and
16 the Court shall retain jurisdiction to enforce its terms and to make such amendments and
17 modifications to this Stipulated Protective Order as may be appropriate. Notwithstanding the
18 foregoing, a Party may seek the written permission of the Producing Party or further order of the
19 Court with respect to dissolution or modification of this Stipulated Protective Order.

20 **20. Injunctive Relief.**

21 In the event anyone shall violate or threaten to violate the terms of this Stipulated
22 Protective Order, the Parties agree that the aggrieved party may immediately apply to obtain
23 injunctive relief against any such person.

24 **21. Additional Parties.**

25 In the event an additional party joins or is joined in this litigation, said additional
26 party shall not have access to Confidential Material until the newly joined party by its counsel has
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1 executed and filed with the Court its agreement to be fully bound by this Stipulated Protective Order
2 or until other appropriate arrangements have been made for the protection of Confidential Material
3 with respect to the newly joined party.

4 **22. Modifications to Stipulated Protective Order.**

5 Any Party may, on motion or other request to the Court and for good cause shown,
6 seek a modification of this Stipulated Protective Order, and, by its agreement to this Stipulated
7 Protective Order, no Party shall be deemed to have waived the right to modifications later sought by
8 such Party. No modification in this Stipulated Protective Order that adversely affects the protection
9 of any document produced or given by a non-party in this case shall be made without giving to that
10 non-party appropriate notice and opportunity to be heard by the Court. Nothing in this Stipulated
11 Protective Order shall limit the Parties' ability to stipulate to the receipt of Confidential Material by
12 a particular individual, to the manner in which an individual may receive such information, whether
13 or not such individuals are listed under Paragraphs 5(a)(i)-5(a)(viii), or to modifications to deadlines
14 required by this order.
15

16 **23. Limits of Stipulated Protective Order.**

17 Entering into, agreeing to or producing or receiving Confidential Material or
18 otherwise complying with the terms of this Stipulated Protective Order shall not:
19

20 (a) operate as an admission or concession by any Party that any Confidential
21 Material (or other Produced Material) reflects, or does not reflect, confidential or proprietary
22 information, any trade secrets, or otherwise sensitive information or other type of confidential
23 information;
24

25 (b) prevent the Parties to this Stipulation and Order from agreeing to alter or
26 waive the provisions or protections provided for herein with respect to any Confidential Material;
27

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1 (c) prejudice in any way the rights of a Party to object to any discovery request
2 seeking production of material it considers not subject to discovery on any ground permitted by the
3 Federal Rules of Civil Procedure of Rules of this Court, including any applicable privilege;

4 (d) prejudice in any way the rights of a Party to seek a determination by the Court
5 that particular materials be produced;

6 (e) prejudice in any way the rights of a Party to object to the authenticity or
7 admissibility into evidence of any document, testimony or other evidence subject to this Stipulated
8 Protective Order;

9 (f) prejudice in any way the rights of a Party to apply to the Court for further
10 protective orders, including a higher level of protection then provided for by this Stipulated
11 Protective Order; nor

12 (g) prejudice in any way the rights of a Party to seek modification of this
13 Stipulated Protective Order upon due notice to all Parties and affected non-parties.

14 **24. Jurisdiction of the Court.**

15 The Parties, all persons subject to discovery in these proceedings and all persons who receive
16 Confidential Material pursuant to this Stipulated Protective Order, consent to and shall be subject to
17 the jurisdiction of this Court in any proceeding relating to performance under, compliance with, or
18 violation of this Stipulated Protective Order. The Court hereby retains jurisdiction to interpret and
19 enforce this Stipulated Protective Order during the pendency of this action and following dismissal,
20 if any, and further retains jurisdiction to modify, amend or make additions to this Order as it may
21 from time to time deem appropriate.
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Respectfully submitted,

Dated: September 18, 2008

Dated: September 18, 2008

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28 ***Counsel for Plaintiff LG Electronics,
Inc.***

Entered on this 24th day of September, 2008.



Hon. Claudia Wilken
United States District Judge

1 **SIGNATURE ATTESTATION**

2
3 I am the ECF User whose identification and password are being used to file the foregoing
4 **AMENDED STIPULATED PROTECTIVE ORDER**. In compliance with General Order
5 45.X.B., I hereby attest that the other signatory has concurred in this filing.
6

7 Dated: September 18, 2008

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

8
9 By: /s/ Scott R. Mosko
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Attorneys for Plaintiff LG Electronics, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

LG ELECTRONICS, INC.,) Case No: 4:07 CV 6511 CW

Plaintiff/Counterclaim Defendant,)

v.)

STIPULATED PROTECTIVE ORDER

HITACHI, LTD., HITACHI AMERICA, LTD.,)
HITACHI DATA SYSTEMS CORPORATION,)
and HITACHI COMPUTER PRODUCTS)
(AMERICA), INC.,)

Defendants and Counterclaimants.)

UNDERTAKING TO ABIDE BY PROTECTIVE ORDER

I, _____, declare that my address is

_____. My current employer is _____. My
current occupation is _____.

1. I have received a copy of the Stipulated Protective Order in the above-captioned
action. I have carefully read and understand the provisions of the Stipulated Protective Order. I am
being designated under the Stipulated Protective Order.

2. I understand that I am to retain all documents or other materials designated as
“Confidential Material,” that I receive pursuant to the Order, and all copies or other reproductions
thereof made by me, for me, or at my direction, in a safe and secure place and allow limited access
thereto consistent with the Order. I understand that all such documents and materials are to remain
in my custody until I have completed my assigned duties, at which time they are to be returned to

1 counsel of record for the party who provided them to me. I understand that, upon completion of my
2 assigned duties, any materials, memoranda, work notes, or other documents derived from such
3 documents or materials, or containing any confidentially-designated information provided in such
4 materials, shall be destroyed. I understand that such destruction shall not relieve me from any of the
5 continuing obligations of confidentiality imposed upon me by the Order.
6

7 3. I agree to notify all secretarial, clerical, or other personnel who are required to assist
8 me in my assigned duties of the terms of the Order.

9 4. I will comply with all of the provisions of the Stipulated Protective Order. I will hold
10 in confidence, will not disclose to anyone not qualified under the Stipulated Protective Order, and
11 will use only for purposes of this action any information marked Confidential Material that is
12 disclosed to me.
13

14 5. Promptly upon termination of this action, I will return or destroy all materials
15 containing information marked Confidential Material that came into my possession, custody or
16 control and all documents and things that I have prepared relating thereto, to the outside attorneys
17 for the party by whom I am employed or retained, or who noticed my deposition.

18 6. I hereby submit to the jurisdiction of this Court (the United States District Court for
19 the Northern District of California) for the purpose of enforcement of the Stipulated Protective Order
20 in this action.
21

22
23
24 I declare under penalty of perjury that the foregoing is true and correct.

25
26 Dated: _____