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 14 as Trustee of SORENSEN RESEARCH AND
 15 DEVELOPMENT TRUST

16 UNITED STATES DISTRICT COURT
 17 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 18 OAKLAND DIVISION

| | | | |
|----|------------------------------------|---|-------------------------|
| 17 | JENS ERIK SORENSEN, as Trustee of |) | Case No. C08-000096 CW |
| 18 | SORENSEN RESEARCH AND |) | |
| 19 | DEVELOPMENT TRUST, |) | |
| 20 | |) | STIPULATED |
| 21 | Plaintiff |) | PROTECTIVE ORDER |
| 22 | v. |) | |
| 23 | AMPRO TOOLS CORPORATION, a |) | |
| 24 | California Corporation; FRENWAY |) | |
| 25 | PRODUCTS INC., a Taiwanese |) | |
| 26 | Corporation; AMPRO NORTH |) | |
| 27 | AMERICA CORPORATION, a |) | |
| 28 | Washington Corporation; SCOTT |) | |
| | WANG, and individual, and DOES 1 – |) | |
| | 100, |) | |
| | Defendants. |) | |

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation would be warranted. Accordingly, the parties hereby
6 stipulate to and petition the court to enter the following Stipulated Protective Order.
7 The parties acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords extends only
9 to the limited information or items that are entitled under the applicable legal
10 principles to treatment as confidential. The parties further acknowledge, as set forth
11 in Section 10, below, that this Stipulated Protective Order creates no entitlement to
12 file confidential information under seal; Civil Local Rule 79-5 sets forth the
13 procedures that must be followed and reflects the standards that will be applied when
14 a party seeks permission from the court to file material under seal.

15
16 2. DEFINITIONS

17 2.1 Party: any party to this action, including all of its officers, directors,
18 employees, consultants, retained experts, and outside counsel (and their support
19 staff).

20 2.2 Disclosure or Discovery Material: all items or information, regardless of
21 the medium or manner generated, stored, or maintained (including, among other
22 things, testimony, transcripts, or tangible things) that are produced or generated in
23 disclosures or responses to discovery in this matter.

24 2.3 “Confidential” Information or Items: information (regardless of how
25 generated, stored or maintained) or tangible things that qualify for protection under
26 standards developed under F.R.Civ.P. 26(c).

27 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
28 extremely sensitive “Confidential Information or Items” whose disclosure to another

1 Party or nonparty would create a substantial risk of serious injury that could not be
2 avoided by less restrictive means.

3 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
4 from a Producing Party.

5 2.6 Producing Party: a Party or non-party that produces Disclosure or
6 Discovery Material in this action.

7 2.7. Designating Party: a Party or non-party that designates information or
8 items that it produces in disclosures or in responses to discovery as “Confidential” or
9 “Highly Confidential — Attorneys’ Eyes Only.”

10 2.8 Protected Material: any Disclosure or Discovery Material that is
11 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

12 2.9. Outside Counsel: attorneys who are not employees of a Party but who are
13 retained to represent or advise a Party in this action.

14 2.10 House Counsel: attorneys who are employees of a Party.

15 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well
16 as their support staffs).

17 2.12 Expert: a person with specialized knowledge or experience in a matter
18 pertinent to the litigation who has been retained by a Party or its counsel to serve as
19 an expert witness or as a consultant in this action and who is not a past or a current
20 employee of a Party or of a competitor of a Party’s and who, at the time of retention,
21 is not anticipated to become an employee of a Party or a competitor of a Party’s. This
22 definition includes a professional jury or trial consultant retained in connection with
23 this litigation.

24 2.13 Professional Vendors: persons or entities that provide litigation support
25 services (e.g., photocopying; videotaping; translating; preparing exhibits or
26 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and
27 their employees and subcontractors.

28

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also any information copied or extracted
4 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
5 testimony, conversations, or presentations by parties or counsel to or in court or in
6 other settings that might reveal Protected Material.

7
8 4. DURATION

9 Even after the termination of this litigation, the confidentiality obligations
10 imposed by this Order shall remain in effect until a Designating Party agrees
11 otherwise in writing or a court order otherwise directs.

12
13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection.

15 Each Party or non-party that designates information or items for protection under this
16 Order must take care to limit any such designation to specific material that qualifies
17 under the appropriate standards. A Designating Party must take care to designate for
18 protection only those parts of material, documents, items, or oral or written
19 communications that qualify – so that other portions of the material, documents,
20 items, or communications for which protection is not warranted are not swept
21 unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized
22 designations are prohibited. Designations that are shown to be clearly unjustified, or
23 that have been made for an improper purpose (e.g., to unnecessarily encumber or
24 retard the case development process, or to impose unnecessary expenses and burdens
25 on other parties), expose the Designating Party to sanctions. If it comes to a Party's
26 or a non-party's attention that information or items that it designated for protection
27 do not qualify for protection at all, or do not qualify for the level of protection
28 initially asserted, that Party or non-party must promptly notify all other parties that it

1 is withdrawing the mistaken designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in this
3 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise
4 stipulated or ordered, material that qualifies for protection under this Order must be
5 clearly so designated before the material is disclosed or produced. Designation in
6 conformity with this Order requires:

7 (a) for information in documentary form (apart from transcripts of depositions
8 or other pretrial or trial proceedings), that the Producing Party affix the legend
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY” at the top of each page that contains protected material. If only a portion or
11 portions of the material on a page qualifies for protection, the Producing Party also
12 must clearly identify the protected portion(s) (e.g., by making appropriate markings
13 in the margins) and must specify, for each portion, the level of protection being
14 asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY”). A Party or non-party that makes original documents
16 or materials available for inspection need not designate them for protection until
17 after the inspecting Party has indicated which material it would like copied and
18 produced. During the inspection and before the designation, all of the material made
19 available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
20 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
21 documents it wants copied and produced, the Producing Party must determine which
22 documents, or portions thereof, qualify for protection under this Order, then, before
23 producing the specified documents, the Producing Party must affix the appropriate
24 legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
25 EYES ONLY”) at the top of each page that contains Protected Material. If only a
26 portion or portions of the material on a page qualifies for protection, the Producing
27 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
28 markings in the margins) and must specify, for each portion, the level of protection

1 being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY”).

3 (b) for testimony given in deposition or in other pretrial or trial proceedings,
4 that the Party or non-party offering or sponsoring the testimony identify on the
5 record, before the close of the deposition, hearing, or other proceeding, all protected
6 testimony, and further specify any portions of the testimony that qualify as
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” When it is
8 impractical to identify separately each portion of testimony that is entitled to
9 protection, and when it appears that substantial portions of the testimony may qualify
10 for protection, the Party or non-party that sponsors, offers, or gives the testimony
11 may invoke on the record (before the deposition or proceeding is concluded) a right
12 to have up to 20 days to identify the specific portions of the testimony as to which
13 protection is sought and to specify the level of protection being asserted
14 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
15 ONLY”). Only those portions of the testimony that are appropriately designated for
16 protection within the 20 days shall be covered by the provisions of this Stipulated
17 Protective Order. Transcript pages containing Protected Material must be separately
18 bound by the court reporter, who must affix to the top of each such page the legend
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
20 ONLY,” as instructed by the Party or nonparty offering or sponsoring the witness or
21 presenting the testimony. (c) for information produced in some form other than
22 documentary, and for any other tangible items, that the Producing Party affix in a
23 prominent place on the exterior of the container or containers in which the
24 information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the
26 information or item warrant protection, the Producing Party, to the extent
27 practicable, shall identify the protected portions, specifying whether they qualify as
28 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items as “Confidential” or “Highly
3 Confidential – Attorneys’ Eyes Only” does not, standing alone, waive the
4 Designating Party’s right to secure protection under this Order for such material. If
5 material is appropriately designated as “Confidential” or “Highly Confidential –
6 Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party,
7 on timely notification of the designation, must make reasonable efforts to assure that
8 the material is treated in accordance with the provisions of this Order.

9
10 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
12 confidentiality designation is necessary to avoid foreseeable substantial unfairness,
13 unnecessary economic burdens, or a later significant disruption or delay of the
14 litigation, a Party does not waive its right to challenge a confidentiality designation
15 by electing not to mount a challenge promptly after the original designation is
16 disclosed.

17 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
18 Designating Party’s confidentiality designation must do so in good faith and must
19 begin the process by conferring directly (in voice to voice dialogue; other forms of
20 communication are not sufficient) with counsel for the Designating Party. In
21 conferring, the challenging Party must explain the basis for its belief that the
22 confidentiality designation was not proper and must give the Designating Party an
23 opportunity to review the designated material, to reconsider the circumstances, and,
24 if no change in designation is offered, to explain the basis for the chosen designation.
25 A challenging Party may proceed to the next stage of the challenge process only if it
26 has engaged in this meet and confer process first. 6.3 Judicial Intervention. A Party
27 that elects to press a challenge to a confidentiality designation after considering the
28 justification offered by the Designating Party may file and serve a motion under

1 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that
2 identifies the challenged material and sets forth in detail the basis for the challenge.
3 Each such motion must be accompanied by a competent declaration that affirms that
4 the movant has complied with the meet and confer requirements imposed in the
5 preceding paragraph and that sets forth with specificity the justification for the
6 confidentiality designation that was given by the Designating Party in the meet and
7 confer dialogue. The burden of persuasion in any such challenge proceeding shall be
8 on the Designating Party. Until the court rules on the challenge, all parties shall
9 continue to afford the material in question the level of protection to which it is
10 entitled under the Producing Party's designation.

11 12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is
14 disclosed or produced by another Party or by a non-party in connection with this case
15 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
16 Material may be disclosed only to the categories of persons and under the conditions
17 described in this Order. When the litigation has been terminated, a Receiving Party
18 must comply with the provisions of section 11, below (FINAL DISPOSITION).
19 Protected Material must be stored and maintained by a Receiving Party at a location
20 and in a secure manner that ensures that access is limited to the persons authorized
21 under this Order.

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
23 ordered by the court or permitted in writing by the Designating Party, a Receiving
24 Party may disclose any information or item designated CONFIDENTIAL only to:

25 (a) the Receiving Party's Outside Counsel of record in this action, as well as
26 employees of said Counsel to whom it is reasonably necessary to disclose the
27 information for this litigation and who have signed the "Agreement to Be Bound by
28 Protective Order" that is attached hereto as Exhibit A;

1 (b) the officers, directors, and employees (including House Counsel) of the
2 Receiving Party to whom disclosure is reasonably necessary for this litigation and
3 who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

4 (c) experts (as defined in this Order) of the Receiving Party to whom
5 disclosure is reasonably necessary for this litigation and who have signed the
6 “Agreement to Be Bound by Protective Order” (Exhibit A);

7 (d) the Court and its personnel;

8 (e) court reporters, their staffs, and professional vendors to whom disclosure is
9 reasonably necessary for this litigation and who have signed the “Agreement to Be
10 Bound by Protective Order” (Exhibit A);

11 (f) during their depositions, witnesses in the action to whom disclosure is
12 reasonably necessary and who have signed the “Agreement to Be Bound by
13 Protective Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits
14 to depositions that reveal Protected Material must be separately bound by the court
15 reporter and may not be disclosed to anyone except as permitted under this
16 Stipulated Protective Order.

17 (g) the author of the document or the original source of the information.

18
19 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
20 Information or Items.

21 Unless otherwise ordered by the court or permitted in writing by the
22 Designating Party, a Receiving Party may disclose any information or item
23 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

24 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
25 employees of said Counsel to whom it is reasonably necessary to disclose the
26 information for this litigation and who have signed the “Agreement to Be Bound by
27 Protective Order” that is attached hereto as Exhibit A;

28 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably

1 necessary for this litigation, and (2) who have signed the “Agreement to Be Bound
2 by Protective Order” (Exhibit A);

3 (c) the Court and its personnel;

4 (d) court reporters, their staffs, and professional vendors to whom disclosure is
5 reasonably necessary for this litigation and who have signed the “Agreement to Be
6 Bound by Protective Order” (Exhibit A); and

7 (e) the author of the document or the original source of the information.
8

9 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
10 OTHER LITIGATION.

11 If a Receiving Party is served with a subpoena or an order issued in other
12 litigation that would compel disclosure of any information or items designated in this
13 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
14 EYES ONLY,” the Receiving Party must so notify the Designating Party, in writing
15 (by fax, if possible) immediately and in no event more than three court days after
16 receiving the subpoena or order. Such notification must include a copy of the
17 subpoena or court order. The Receiving Party also must immediately inform in
18 writing the Party who caused the subpoena or order to issue in the other litigation
19 that some or all the material covered by the subpoena or order is the subject of this
20 Protective Order. In addition, the Receiving Party must deliver a copy of this
21 Stipulated Protective Order promptly to the Party in the other action that caused the
22 subpoena or order to issue. The purpose of imposing these duties is to alert the
23 interested parties to the existence of this Protective Order and to afford the
24 Designating Party in this case an opportunity to try to protect its confidentiality
25 interests in the court from which the subpoena or order issued. The Designating
26 Party shall bear the burdens and the expenses of seeking protection in that court of its
27 confidential material – and nothing in these provisions should be construed as
28 authorizing or encouraging a Receiving Party in this action to disobey a lawful

1 directive from another court.

2
3 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

12
13 **10. FILING PROTECTED MATERIAL.**

14 Without written permission from the Designating Party or a court order
15 secured after appropriate notice to all interested persons, a Party may not file in the
16 public record in this action any Protected Material. A Party that seeks to file under
17 seal any Protected Material must comply with Civil Local Rule 79-5.

18
19 **11. FINAL DISPOSITION.**

20 Unless otherwise ordered or agreed in writing by the Producing Party, within
21 sixty days after the final termination of this action, each Receiving Party must return
22 all Protected Material to the Producing Party. As used in this subdivision, “all
23 Protected Material” includes all copies, abstracts, compilations, summaries or any
24 other form of reproducing or capturing any of the Protected Material. With
25 permission in writing from the Designating Party, the Receiving Party may destroy
26 some or all of the Protected Material instead of returning it. Whether the Protected
27 Material is returned or destroyed, the Receiving Party must submit a written
28 certification to the Producing Party (and, if not the same person or entity, to the

1 Designating Party) by the sixty day deadline that identifies (by category, where
2 appropriate) all the Protected Material that was returned or destroyed and that
3 affirms that the Receiving Party has not retained any copies, abstracts, compilations,
4 summaries or other forms of reproducing or capturing any of the Protected Material.
5 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
6 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
7 work product, even if such materials contain Protected Material. Any such archival
8 copies that contain or constitute Protected Material remain subject to this Protective
9 Order as set forth in Section 4 (DURATION), above.

10
11 12. MISCELLANEOUS

12 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
13 person to seek its modification by the Court in the future.

14 12.2 Right to Assert Other Objections. By stipulating to the entry of this
15 Protective Order no Party waives any right it otherwise would have to object to
16 disclosing or producing any information or item on any ground not addressed in this
17 Stipulated Protective Order. Similarly, no Party waives any right to object on any
18 ground to use in evidence of any of the material covered by this Protective Order.

19
20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

21
22 DATED: April 21, 2009

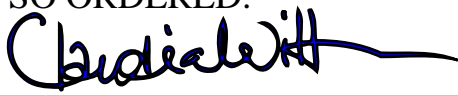
Melody A. Kramer
Attorneys for Plaintiff

23 DATED: April 21, 2009

Bruce Kaser
Attorneys for Defendant

24
25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

26 DATED: 4/24/09


Honorable Claudia Wilkin Wilken
United States District Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Stipulated Protective Order that
7 was issued by the United States District Court for the Northern District of California
8 on [date] in the case of _____ [**insert formal name of the case and the**
9 **number and initials assigned to it by the court**]. I agree to comply with and to be
10 bound by all the terms of this Stipulated Protective Order and I understand and
11 acknowledge that failure to so comply could expose me to sanctions and punishment
12 in the nature of contempt. I solemnly promise that I will not disclose in any manner
13 any information or item that is subject to this Stipulated Protective Order to any
14 person or entity except in strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court
16 for the Northern District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action.

19 I hereby appoint _____ [print or type full name] of
20 _____ [print or type full address and
21 telephone number] as my California agent for service of process in connection with
22 this action or any proceedings related to enforcement of this Stipulated Protective
23 Order.

24 Date: _____

25
26 City and State where sworn and signed: _____

27 Printed name: _____

28 Signature: _____