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16  
 17 **UNITED STATES DISTRICT COURT**  
 18 **NORTHERN DISTRICT OF CALIFORNIA**  
 19 **OAKLAND DIVISION**

20 MEDIATEK INC.

21 Plaintiff,

22 v.

23 FREESCALE SEMICONDUCTOR, INC.

24 Defendant.

No.4:11-cv-05341 YGR (JSC)

~~[PROPOSED]~~ STIPULATED  
 PROTECTIVE ORDER

**DEMAND FOR JURY TRIAL**

25  
 26 1. PURPOSES AND LIMITATIONS

27 Disclosure and discovery activity in this action are likely to involve production of  
 28 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 seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

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

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

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

2.4 [INTENTIONALLY LEFT BLANK]

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

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

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to

1 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or  
2 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's  
3 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
4 or of a Party's competitor.

5 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or  
6 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another  
7 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
8 less restrictive means.

9 2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:  
10 extremely sensitive "Confidential Information or Items" representing computer code and  
11 associated comments and revision histories, formulas, engineering specifications, or schematics  
12 that define or otherwise describe in detail the algorithms or structure of software or hardware  
13 designs, disclosure of which to another Party or Non-Party would create a substantial risk of  
14 serious harm that could not be avoided by less restrictive means.

15 2.10 House Counsel: attorneys who are employees of a party to this action. House  
16 Counsel does not include Outside Counsel of Record or any other outside counsel.

17 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal  
18 entity not named as a Party to this action.

19 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this  
20 action but are retained to represent or advise a party to this action and have appeared in this action  
21 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

22 2.13 Party: any party to this action, including all of its officers, directors, employees,  
23 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

24 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
25 Material in this action.

26 2.15 Professional Vendors: persons or entities that provide litigation support services  
27 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
28 organizing, storing, or retrieving data in any form or medium) and their employees and

1 subcontractors.

2 2.16 Protected Material: any Disclosure or Discovery Material that is designated as  
3 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or  
4 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

5 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
6 Producing Party.

7 3. SCOPE

8 The protections conferred by this Stipulation and Order cover not only Protected Material  
9 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
10 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
11 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
12 However, the protections conferred by this Stipulation and Order do not cover the following  
13 information: (a) any information that is in the public domain at the time of disclosure to a  
14 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
15 a result of publication not involving a violation of this Order, including becoming part of the  
16 public record through trial or otherwise; and (b) any information known to the Receiving Party  
17 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
18 obtained the information lawfully and under no obligation of confidentiality to the Designating  
19 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

20 4. DURATION

21 Even after final disposition of this litigation, the confidentiality obligations imposed by  
22 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
23 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
24 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
25 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
26 including the time limits for filing any motions or applications for extension of time pursuant to  
27 applicable law.  
28

1       5.       DESIGNATING PROTECTED MATERIAL

2           5.1       Exercise of Restraint and Care in Designating Material for Protection. Each Party  
3 or Non-Party that designates information or items for protection under this Order must take care  
4 to limit any such designation to specific material that qualifies under the appropriate standards.  
5 To the extent it is practical to do so, the Designating Party must designate for protection only  
6 those parts of material, documents, items, or oral or written communications that qualify – so that  
7 other portions of the material, documents, items, or communications for which protection is not  
8 warranted are not swept unjustifiably within the ambit of this Order. Indiscriminate designations  
9 are prohibited.

10           If it comes to a Designating Party’s attention that information or items that it designated  
11 for protection do not qualify for protection at all or do not qualify for the level of protection  
12 initially asserted, that Designating Party must promptly notify all other Parties that it is  
13 withdrawing the mistaken designation.

14           5.2       Manner and Timing of Designations. Except as otherwise provided in this Order  
15 (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
16 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
17 designated before the material is disclosed or produced.

18           Designation in conformity with this Order requires:

19           (a) for information in documentary form (*e.g.*, paper or electronic documents, but  
20 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
21 Party affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’  
22 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains  
23 protected material.

24           A Party or Non-Party that makes original documents or materials available for inspection  
25 need not designate them for protection until after the inspecting Party has indicated which  
26 material it would like copied and produced. During the inspection and before the designation, all  
27 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
28 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants

1 copied and produced, the Producing Party must determine which documents, or portions thereof,  
2 qualify for protection under this Order. Then, before producing the specified documents, the  
3 Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY  
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
5 CODE”) to each page that contains Protected Material. If only a portion or portions of the  
6 material on a page qualifies for protection, the Producing Party also must clearly identify the  
7 protected portion(s) (*e.g.*, by making appropriate markings in the margins) and must specify, for  
8 each portion, the level of protection being asserted.

9 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
10 Designating Party identify on the record, before the close of the deposition, hearing, or other  
11 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
12 impractical to identify separately each portion of testimony that is entitled to protection and it  
13 appears that substantial portions of the testimony may qualify for protection, the Designating  
14 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)  
15 a right to have up to 21 days to identify the specific portions of the testimony as to which  
16 protection is sought and to specify the level of protection being asserted. Only those portions of  
17 the testimony that are appropriately designated for protection within the 21 days shall be covered  
18 by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may  
19 specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the  
20 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
21 ATTORNEYS’ EYES ONLY.”

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

28 Transcripts containing Protected Material shall have an obvious legend on the title page

1 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
2 pages (including line numbers as appropriate) that have been designated as Protected Material and  
3 the level of protection being asserted by the Designating Party. The Designating Party shall  
4 inform the court reporter of these requirements. Any transcript that is prepared before the  
5 expiration of a 21-day period for designation shall be treated during that period as if it had been  
6 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
7 otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
8 actually designated.

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

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
17 designate qualified information or items does not, standing alone, waive the Designating Party’s  
18 right to secure protection under this Order for such material. Upon timely correction of a  
19 designation, the Receiving Party must make reasonable efforts to assure that the material is  
20 treated in accordance with the provisions of this Order.

## 21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
23 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
24 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
25 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
26 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
27 original designation is disclosed.

28 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution

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

14         6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
15 intervention, the Challenging Party shall file and serve a motion to change or remove  
16 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and  
17 General Order 62, if applicable) within 21 days of the initial notice of challenge or within 14 days  
18 of the parties agreeing that the meet and confer process will not resolve their dispute, whichever  
19 is earlier. Each such motion must be accompanied by a competent declaration affirming that the  
20 movant has complied with the meet and confer requirements imposed in the preceding paragraph.  
21 Failure by the Challenging Party to make such a motion including the required declaration within  
22 21 days (or 14 days, if applicable) shall automatically waive any challenge made to the  
23 confidentiality designations in question.

24         The burden of persuasion in any such challenge proceeding shall be on the Challenging  
25 Party. Frivolous challenges and those made for an improper purpose (*e.g.*, to harass or impose  
26 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
27 sanctions. All parties shall continue to afford the material in question the level of protection to  
28 which it is entitled under the Producing Party's designation until the court rules on the challenge.

1       7.     ACCESS TO AND USE OF PROTECTED MATERIAL

2           7.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed  
3 or 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  
5 to the categories of persons and under the conditions described in this Order. When the litigation  
6 has been terminated, a Receiving Party must comply with the provisions of section 15 below  
7 (FINAL DISPOSITION).

8           Protected Material must be stored and maintained by a Receiving Party at a location and  
9 in a 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  
11 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
12 disclose any 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;

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

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

22           (d) the court and its personnel;

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

26           (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
27 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
28 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed

1 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
2 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
3 Stipulated Protective Order.

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

6 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
7 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise  
8 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
9 disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
10 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” 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;

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

18 (c) the court and its personnel;

19 (d) court reporters and their staff and Professional Vendors to whom disclosure is  
20 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
21 Agreement to Be Bound” (Exhibit A); and

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

24 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
26 CODE” 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” or  
2 “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(b) first must make a  
3 written request to the Designating Party that (1) sets forth the full name of the Expert and the city  
4 and state of his or her primary residence, (2) attaches a copy of the Expert’s current resume, (3)  
5 identifies the Expert’s current employer(s), (4) identifies each person or entity from whom the  
6 Expert has received compensation or funding for work in his or her areas of expertise or to whom  
7 the expert has provided professional services, including in connection with a litigation, at any  
8 time during the preceding five years,<sup>1</sup> and (5) identifies (by name and number of the case, filing  
9 date, and location of court) any litigation in connection with which the Expert has offered expert  
10 testimony, including through a declaration, report, or testimony at a deposition or trial, during the  
11 preceding five years.

12 (b) A Party that makes a request and provides the information specified in the  
13 preceding respective paragraphs may disclose the subject Protected Material to the identified  
14 Expert unless, within 14 days of delivering the request, the Party receives a written objection  
15 from the Designating Party. Any such objection must set forth in detail the grounds on which it is  
16 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  
19 agreement within seven days of the written objection. If no agreement is reached, the Party  
20 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7  
21 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) seeking  
22 permission from the court to do so. Any such motion must describe the circumstances with  
23 specificity, set forth in detail the reasons why disclosure to the Expert is reasonably necessary,  
24

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25  
26 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-  
27 party, then the Expert should provide whatever information the Expert believes can be disclosed  
28 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert  
shall be available to meet and confer with the Designating Party regarding any such engagement.

1 assess the risk of harm that the disclosure would entail, and suggest any additional means that  
2 could be used to reduce that risk. In addition, any such motion must be accompanied by a  
3 competent declaration describing the parties' efforts to resolve the matter by agreement (*i.e.*, the  
4 extent and the content of the meet and confer discussions) and setting forth the reasons advanced  
5 by the Designating Party for its refusal to approve the disclosure.

6 In any such proceeding, the Party opposing disclosure to the Expert shall bear the  
7 burden of proving that the risk of harm that the disclosure would entail (under the safeguards  
8 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

9 8. PROSECUTION BAR

10 Absent written consent from the Producing Party, any individual who receives  
11 access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY  
12 CONFIDENTIAL – SOURCE CODE" information shall not be involved in the prosecution of  
13 patents or patent applications relating to the subject matter claimed in the patents asserted in this  
14 action, including the support in the specification for those claims, or to any highly confidential  
15 technical information disclosed in the "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
16 ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" material, including without  
17 limitation the patents asserted in this action and any patent or application claiming priority to or  
18 otherwise related to the patents asserted in this action, before any foreign or domestic agency,  
19 including the United States Patent and Trademark Office ("the Patent Office"). For purposes of  
20 this paragraph, "prosecution" includes directly or indirectly drafting, amending, advising, or  
21 otherwise affecting the scope or maintenance of patent claims. To avoid any doubt,  
22 "prosecution" as used in this paragraph does not include representing a party challenging a patent  
23 before a domestic or foreign agency (including, but not limited to, a reissue protect, *ex parte*  
24 reexamination or *inter partes* reexamination). This Prosecution Bar shall begin when access to  
25 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –  
26 SOURCE CODE" information is first received by the affected individual and shall end after the  
27 later of (i) two (2) years after final termination of this action and exhaustion of all appeals or (ii)  
28 the conclusion of prosecution of any United States or foreign patent or patent application related

1 in any manner to the patents asserted in this action (including without limitation any continuation,  
2 divisional, or continuation-in-part patent application thereof).

3 9. SOURCE CODE

4 (a) To the extent production of source code becomes necessary in this case, a  
5 Producing Party may designate source code as “HIGHLY CONFIDENTIAL – SOURCE CODE”  
6 if it comprises or includes confidential, proprietary or trade secret source code.

7 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE  
8 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –  
9 ATTORNEYS’ EYES ONLY” information, including the Prosecution Bar set forth in Paragraph  
10 8, and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –  
11 ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and  
12 7.4.

13 (c) Any source code produced in discovery shall be made available for inspection, in a  
14 format allowing it to be reasonably reviewed and searched, during normal business hours or at  
15 other mutually agreeable times, at an office of the Producing Party’s counsel or another mutually  
16 agreed upon location. The source code shall be made available for inspection on a secured  
17 computer in a secured room without Internet access or network access to other computers, and the  
18 Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto  
19 any recordable media or recordable device. The Producing Party shall install reasonably  
20 commercially available tools that are sufficient for viewing and searching the code produced on  
21 the secured computer. The Receiving Party’s Outside Counsel and/or Experts may request that  
22 commercially available software tools for viewing and searching the source code be installed on  
23 the secured computer. The Receiving Party must provide the Producing Party with the CD or  
24 DVD containing such software tool(s) at least seven (7) days in advance of the date upon which  
25 the Receiving Party wishes to have the additional software tools available for use on the secured  
26 computer. The Producing Party retains the right to refuse to permit installation or use of such  
27 additional software tools on the secured computer. The Producing Party may visually monitor the  
28 activities of the Receiving Party’s representatives during any source code review, but only to

1 ensure that there is no unauthorized recording, copying, or transmission of the source code.

2 (d) The Receiving Party may request paper copies of limited portions of source code  
3 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or  
4 other papers, or for deposition or trial, but shall not request paper copies for the purpose of  
5 reviewing the source code other than electronically as set forth in paragraph (c) in the first  
6 instance. The Producing Party shall provide all such source code in paper form, including bates  
7 numbers and the label “HIGHLY CONFIDENTIAL – SOURCE CODE.” The Producing Party  
8 may challenge the amount of source code requested in hard copy form pursuant to the dispute  
9 resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the  
10 “Challenging Party” and the Receiving Party is the “Designating Party” for purposes of dispute  
11 resolution.

12 (e) The Receiving Party shall maintain a record of any individual who has inspected  
13 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all  
14 paper copies of any printed portions of the source code in a secured, locked area. The Receiving  
15 Party shall not create any electronic or other images of the paper copies and shall not convert any  
16 of the information contained in the paper copies into any electronic format. The Receiving Party  
17 shall only make additional paper copies if such additional copies are (1) necessary to prepare  
18 court filings, pleadings, or other papers (including a testifying expert’s expert report), (2)  
19 necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper  
20 copies used during a deposition shall be retrieved by the Producing Party at the end of each day  
21 and must not be given to or left with a court reporter or any other unauthorized individual.

22 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
23 LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation that compels  
25 disclosure of any information or items designated in this action as “CONFIDENTIAL,”  
26 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL  
27 – SOURCE CODE,” that Party must:

28 (a) promptly notify in writing the Designating Party. Such notification shall include a

1 copy of the subpoena or court order;

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

6 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
7 Designating Party whose Protected Material may be affected.<sup>2</sup>

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

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

19 (a) The terms of this Order are applicable to information produced by a Non-Party in  
20 this action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
21 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such  
22 information produced by Non-Parties in connection with this litigation is protected by the  
23 remedies and relief provided by this Order. Nothing in these provisions should be construed as  
24 prohibiting a Non-Party from seeking additional protections.

25 \_\_\_\_\_  
26 <sup>2</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this  
27 Protective Order and to afford the Designating Party in this case an opportunity to try to protect  
28 its confidentiality interests in the court from which the subpoena or order issued.

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

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

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.<sup>3</sup> Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

## 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the

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<sup>3</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

2 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
3 MATERIAL

4 The inadvertent production of material subject to the attorney-client privilege, work-  
5 product protection, or any other applicable privilege or protection, despite the Producing Party’s  
6 reasonable efforts to prescreen such material prior to production, will not waive the applicable  
7 privilege and/or protection if a request for return of such inadvertently produced material is made  
8 promptly after the Producing Party learns of its inadvertent production. Upon such a request from  
9 the Producing Party, the Receiving Party shall immediately return such material and all copies,  
10 summaries, compilations, or derivations thereof to the Producing Party, except for any pages  
11 containing privileged markings or information by the Receiving Party, which shall instead be  
12 destroyed and certified as such in writing by the Receiving Party to the Producing Party. The  
13 Producing Party shall promptly provide a privilege log identifying such inadvertently produced  
14 material. This provision is not intended to modify whatever procedure may be established in an e-  
15 discovery order that provides for production without prior privilege review.

16 14. MISCELLANEOUS

17 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
18 seek its modification by the court in the future.

19 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
20 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
21 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
22 Party waives any right to object on any ground to use in evidence of any of the material covered  
23 by this Protective Order.

24 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable  
25 laws and regulations relating to the export of technical data contained in such Protected Material,  
26 including the release of such technical data to foreign persons or nationals in the United States or  
27 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical  
28 data, and the Receiving Party shall take measures necessary to ensure compliance.

1           14.4   Filing Protected Material. Without written permission from the Designating Party  
2 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
3 the public record in this action any Protected Material. A Party that seeks to file under seal any  
4 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected  
5 Material may only be filed under seal pursuant to a court order authorizing the sealing of the  
6 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a  
7 sealing order will issue only upon a request establishing that the Protected Material at issue is  
8 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a  
9 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-  
10 5(d) and General Order 62 is denied by the court, then the Receiving Party may file the Protected  
11 Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by  
12 the court.

13   15.   FINAL DISPOSITION

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

1  
2 16. DISCOVERY OF EXPERT COMMUNICATIONS

3 The parties agree that discovery of communications between a party's counsel and an  
4 expert as that term is defined in Section 2.7 of this agreement will not be permitted.  
5

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
7

8 DATED: May 9, 2013

/s/Christopher A. Franklin  
Attorneys for Plaintiff

9  
10 DATED: May 9, 2013

s/Joshua A. Hartman  
Attorneys for Defendant

11  
12  
13 **ATTESTATION OF CONCURRENCE IN FILING**

14 Pursuant to the United States District Court for the Northern District of California's  
15 General Order No. 45, Section X.B, I, Christopher A. Franklin attests that concurrence in the  
16 filing of this document has been obtained from Joshua A. Hartman.  
17

18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19  
20 DATED: May 10, 2013

Jacqueline S. Corley  
The Honorable Jacqueline Scott Corley  
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, [print or type full name], of [print or type full address], declare under penalty of  
4 perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
5 issued by the United States District Court for the Northern District of California on [date] in the  
6 case of **MediaTek, Inc. v. Freescale Semiconductor, Inc., 4:11-cv-05341 (YGR)**. I agree to  
7 comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand  
8 and acknowledge that failure to so comply could expose me to sanctions and punishment in the  
9 nature of contempt. I solemnly promise that I will not disclose in any manner any information or  
10 item that is subject to this Stipulated Protective Order to any person or entity except in strict  
11 compliance with the provisions of this Order.

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

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

18  
19 Date: \_\_\_\_\_

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

21 Printed name: \_\_\_\_\_  
22 [printed name]

23 Signature: \_\_\_\_\_  
24 [signature]