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

United States District Court  
Northern District of California

UBIQUITI NETWORKS, INC.,  
  
Plaintiff,  
  
v.  
  
KOZUMI USA CORP., et al.,  
  
Defendants.

Case No.: 12-cv-2582 CW (JSC)  
  
**ORDER RE: JOINT STATEMENT  
REGARDING PROTECTIVE ORDER  
(Dkt. No. 100)**

Pending before the Court is the parties' Joint Statement Regarding Protective Order (Dkt. No. 100) wherein Plaintiff seeks modification of the Stipulated Protective Order (Dkt. No. 89). Plaintiff requests that the Protective Order be modified to 1) allow in-house counsel access to all items designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" ("AEO") under the protective agreement, and 2) eliminate the "prosecution bar" language. Having carefully considered the parties filing, the Court finds the matter suitable for disposition without a hearing pursuant to Civil Local Rule 7-1(b) and hereby DENIES Plaintiff's request without prejudice.



1 documents as confidential. (Dkt. No. 89 at ¶ 6 (requiring the designating party to bring a  
2 motion to retain confidentiality of challenged material if the parties are unable to resolve a  
3 dispute following meet and confer).) Accordingly, if Plaintiff contends that the documents  
4 identified in the joint letter brief, and any others, were improperly designated as AEO,  
5 Plaintiff should utilize the mechanism provided for in the Protective Order to challenge the  
6 designations, a mechanism that requires the designating party to prove that the documents are  
7 highly confidential. Given that the purportedly “highly confidential” documents include  
8 emails sent to third parties with no apparent obligation to keep them confidential, and the  
9 sheer number of documents designated as highly confidential, it appears likely that  
10 Defendants have overused the AEO designation.

11 With respect to Plaintiff’s substantive challenge, the Court finds that a blanket  
12 modification of the protective order to allow access to all AEO materials is not appropriate.  
13 The Declaration of Jessica Zhou, General Counsel for Plaintiff, (Dkt. No. 94) states that she  
14 needs “to see all of the information that defendants produce in this litigation . . . in order to  
15 assess the strengths and weaknesses in our case and evaluate the desirability of settlement.  
16 This information will also help me direct the course of the litigation.” (Dkt. No. 94 ¶ 5.)  
17 While this may provide a basis for Ms. Zhou to view some of Defendants’ confidential  
18 information, it does not provide a basis for Ms. Zhou to have access to source code or other  
19 technical confidential information. Under the second prong of the balancing test set forth in  
20 *Brown Bag*, the Court looks to potential prejudice to the moving party of being denied this  
21 information. Plaintiff has not shown why in-house counsel needs access to highly confidential  
22 technical information to evaluate settlement or manage the litigation. Plaintiff’s generalized  
23 assertion that all in-house counsel need copies of all AEO materials fails to provide the Court  
24 with all of the information it needs to “factually [examine] all the risks and safeguards  
25 surrounding inadvertent disclosure by any counsel, whether in-house or retained. . . [and] the  
26 nature of the claims and of a party’s opportunity to develop its case through alternative  
27 discovery procedures.” *Brown Bag Software*, 960 F.2d at 1470. Plaintiff’s request to modify  
28 the Protective Order is thus denied without prejudice to renewal accompanied by a specific

1 showing regarding which particular AEO material Plaintiff contends in-house counsel needs  
2 access to and why.

3 Finally, with respect to Plaintiff's challenge to the "prosecution bar" language in the  
4 protective order, the parties are ordered to meet and confer regarding this matter. The parties  
5 could agree to a more narrowly tailored version of the prosecution bar which would limit the  
6 bar to prosecution of patents against Defendants rather than any patents "relating to wireless  
7 networking equipment design or operation." (Dkt. No. 89 ¶ 8.) The threshold inquiry into the  
8 propriety of a prosecution bar looks at whether "the information designed to trigger the bar,  
9 the scope of activities prohibited by the bar, the duration of the bar and the subject matter  
10 covered by the bar reasonably reflect the risk presented by the disclosure of proprietary  
11 competitive information." *Applied Signal Tech., Inc. v. Emerging Markets Communications,*  
12 *Inc.*, No. 09-02180, 2011 WL 197811, at \*2 (N.D. Cal. Jan. 20, 2011) (internal citations and  
13 quotations omitted). On the present record, the Court lacks sufficient information to evaluate  
14 the propriety of the prosecution bar. If the parties are not able to resolve this issue through  
15 further meet and confer, Plaintiff may renew its request to modify the prosecution bar portion  
16 of the Protective Order.

### 17 CONCLUSION

18 Whether the protective order requires modification, and how and to what extent,  
19 depends on what documents are at issue. For example, it may be perfectly appropriate for the  
20 protective order as currently written to apply to Defendant's source code as currently  
21 designated (AEO). On the other hand, there may be other documents which Plaintiff's in-  
22 house counsel desire to review which, in fact, should not be designated AEO at all. Similarly,  
23 the prosecution bar may be warranted as to some documents and not as to others, or a  
24 different version of the bar may be appropriate, again, depending on the documents at issue.  
25 The first step in this analysis is to determine what documents should, in fact, be designated  
26 AEO. When the category of AEO documents is narrowed, the Court can determine whether  
27 and which properly-designated AEO documents in-counsel should be allowed to review.

28 This Order disposes of Docket No. 100.

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**IT IS SO ORDERED.**

Dated: November 26, 2012

  
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JACQUELINE SCOTT CORLEY  
UNITED STATES MAGISTRATE JUDGE