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

Jongerius Panoramic Technologies, LLC

Plaintiff and  
Counterclaim-Defendant,

v.

Google Inc. and Apple Inc.

Defendants, and  
Counterclaim-Plaintiffs.

Case No. C 12-03797-YGR

**STIPULATED PROTECTIVE ORDER  
REGARDING DISCLOSURE AND  
USE OF DISCOVERY MATERIALS**

Plaintiff and Counterclaim-Defendant Jongerius Panoramic Technologies, LLC (“JPT”), and Defendant and Counterclaim-Plaintiff Apple Inc. (“Apple”) and Defendant and Counterclaim-Plaintiff Google Inc. (“Google”) (collectively, the “Parties”) anticipate that documents, testimony, or information containing or reflecting confidential, proprietary, trade secret, and/or commercially sensitive information are likely to be disclosed or produced during the course of discovery, initial disclosures, and supplemental disclosures in this case and request that the Court enter this Order setting forth the conditions for treating, obtaining, and using such information. This Stipulated Protective Order does not confer any right to any Defendant to access the Protected Material of any other Defendant, and nothing in this Order shall be construed to allow Plaintiff to disclose any Protected Material from one Defendant to any other Defendant absent explicit written permission from the Producing Defendant. Further, no Defendant shall be required to produce its Protected Material to any other Defendant, but nothing in this Order shall

1 preclude such production.

2 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds good cause  
3 for the following Stipulated Protective Order Regarding the Disclosure and Use of Discovery  
4 Materials (“Order” or “Protective Order”).

5 1. PURPOSES AND LIMITATIONS

6 A. Unless otherwise agreed by the Parties, Protected Material designated under the terms  
7 of this Protective Order shall be used by a Receiving Party solely in this case, and shall not be  
8 used directly or indirectly for any other purpose whatsoever.

9  
10 B. Disclosure and discovery activity in this action are likely to involve production of  
11 confidential, proprietary, or private information for which special protection from public  
12 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
13 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
14 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
15 all disclosures or responses to discovery and that the protection it affords from public disclosure  
16 and use extends only to the limited information or items that are entitled to confidential treatment  
17 under the applicable legal principles. The parties further acknowledge, as set forth in Section  
18 14.4 below, that this Stipulated Protective Order does not entitle them to file confidential  
19 information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that  
20 must be followed and the standards that will be applied when a party seeks permission from the  
21 court to file material under seal.  
22

23  
24 2. DEFINITIONS

25 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
26 information or items under this Order.

27 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
28 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule

1 of Civil Procedure 26(c).

2 2.3 Counsel (without qualifier): Outside Counsel of Record and In-House Counsel (as  
3 well as their support staff).

4 2.4 Designated In-House Counsel: In-House Counsel who seek access to  
5 “CONFIDENTIAL” information in this matter.

6 2.5 Designating Party: a Party or Non-Party that designates information or items that it  
7 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY  
8 CONFIDENTIAL – ATTORNEYS' EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
9 CODE.”

10 2.6 Disclosure or Discovery Material: all items or information, regardless of the  
11 medium or manner in which it is generated, stored, or maintained (including, among other things,  
12 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
13 responses to discovery in this matter.

14 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to  
15 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or  
16 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's  
17 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
18 or of a Party's competitor.

19 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
20 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another  
21 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
22 less restrictive means.

23 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:  
24 extremely sensitive “Confidential Information or Items” representing computer code and  
25 associated comments and revision histories, formulas, engineering specifications, documents  
26 containing Source Code, or schematics that define or otherwise describe in detail the algorithms  
27 or structure of software or hardware designs, disclosure of which to another Party or Non-Party  
28 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

1           2.10 In-House Counsel: attorneys who are employees of a party to this action and are  
2 not competitive decision-makers or otherwise involved in the general management of the Party.  
3 In-House Counsel does not include Outside Counsel of Record or any other outside counsel.

4           2.11 Non-Party: any natural person, partnership, corporation, association, or other legal  
5 entity not named as a Party to this action.

6           2.12 Outside Counsel of Record: attorneys who are not employees of a party to this  
7 action but are retained to represent or advise a party to this action and have appeared in this action  
8 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

9           2.13 Party: any party to this action, including all of its officers, directors, employees,  
10 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

11           2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
12 Material in this action.

13           2.15 Professional Vendors: persons or entities that provide litigation support services  
14 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
15 organizing, storing, or retrieving data in any form or medium) and their employees and  
16 subcontractors.

17           2.16 Protected Material: any Disclosure or Discovery Material that is designated as  
18 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or  
19 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

20           2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
21 Producing Party.

22           2.18 Patent-in-Suit: U.S. Patent No. 6,563,529 (“the ‘529 Patent”).

23           2.19 Source Code: any confidential and proprietary computer code, scripts, assembly,  
24 object code, source code listings and descriptions of source code, object code listings and  
25 descriptions of object code, and Hardware Description Language (HDL) or Register Transfer  
26 Level (RTL) files that describe the hardware design of any ASIC or other chip.

27 3. SCOPE

28 A. The protections conferred by this Stipulation and Order cover not only Protected

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

13 B. Nothing in this Protective Order shall prevent or restrict a Producing party's own  
14 disclosure or use of its own Discovery Material for any purpose and nothing in this Order shall  
15 preclude any Producing party from showing its Discovery material to an individual who prepared  
16 the Discovery Material.  
17

18 C. Nothing in this Order shall be construed to prejudice any Party's right to use any  
19 Protected Material in court or in any court filing, provided that such material is filed under seal  
20 with consent of the Producing party or by order of court.  
21

22 D. This Order is without prejudice to the right of any Party to seek further or additional  
23 protection of any Discovery Material or to modify this Order in any way, including, without  
24 limitation, an order that certain matter not be produced at all.

25 4. DURATION

26 Even after final disposition of this litigation, the confidentiality obligations imposed by  
27 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
28

1 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
2 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
3 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
4 including the time limits for filing any motions or applications for extension of time pursuant to  
5 applicable law.

6 5. DESIGNATING PROTECTED MATERIAL

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

14 Parties shall use good faith efforts to provide appropriate designations. Mass,  
15 indiscriminate, or routinized designations are prohibited. If it comes to a Designating Party's  
16 attention that information or items that it designated for protection do not qualify for protection at  
17 all or do not qualify for the level of protection initially asserted, that Designating Party must  
18 promptly notify all other Parties that it is withdrawing the mistaken designation, and upon such  
19 notification, the Receiving Party shall return or destroy the mistakenly designated information  
20 upon receipt of replacement pages with the proper designation or no designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
22 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
23 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
24 designated before the material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic documents, but  
27 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
28 Party affix the legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS'

1 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains  
2 protected material. If only a portion or portions of the material on a page qualifies for protection,  
3 the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
4 appropriate markings in the margins) and must specify, for each portion, the level of protection  
5 being asserted.

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

19 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
20 Designating Party identify on the record, before the close of the deposition, hearing, or other  
21 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
22 impractical to identify separately each portion of testimony that is entitled to protection and it  
23 appears that substantial portions of the testimony may qualify for protection, the Designating  
24 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)  
25 a right to have up to 21 days to identify the specific portions of the testimony as to which  
26 protection is sought and to specify the level of protection being asserted. Only those portions of  
27 the testimony that are appropriately designated for protection within the 21 days shall be covered  
28 by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may

1 specify, at the deposition or up to 30 days afterwards if that period is properly invoked, that the  
2 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
3 ATTORNEYS’ EYES ONLY.”

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

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

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

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
27 designate qualified information or items does not, standing alone, waive the Designating Party’s  
28 right to secure protection under this Order for such material. Upon timely correction of a



1 designation, the Receiving Party must make reasonable efforts to assure that the material is  
2 treated in accordance with the provisions of this Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
5 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
7 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
9 original designation is disclosed.

10 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
11 process by providing written notice of each designation it is challenging and describing the basis  
12 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
13 notice must recite that the challenge to confidentiality is being made in accordance with this  
14 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
15 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
16 forms of communication are not sufficient) within 7 days of the date of service of notice. If the  
17 parties cannot resolve a challenge and have not yet conferred in person, then the parties shall  
18 continue the process by conferring directly in person within 14 days of the date of service of  
19 notice. In conferring, the Challenging Party must explain the basis for its belief that the  
20 confidentiality designation was not proper and must give the Designating Party an opportunity to  
21 review the designated material, to reconsider the circumstances, and, if no change in designation  
22 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to  
23 the next stage of the challenge process only if it has engaged in this meet and confer process first.

24 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
25 intervention, the Parties shall file a joint letter brief under Judge Gonzalez Rogers' Standing  
26 Order in Civil Cases ¶ 8 (and in compliance with Civil Local Rule 79-5 and General Order 62, if  
27 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties  
28 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.

1 Each such joint letter brief must concisely summarize the unresolved confidentiality issues and  
2 must attest that, prior to filing the request for relief, the parties met and conferred in person and  
3 complied with the meet and confer requirements imposed in the preceding paragraph. The joint  
4 letter brief may cite to limited and specific legal authority only for resolution of dispositive  
5 issues. The joint letter brief may not be accompanied by declarations; however any specific  
6 excerpt of disputed discovery material may be attached. The Court will then advise the parties if  
7 additional briefing, a telephonic conference, or a personal appearance will be necessary.

8 Unwillingness by the Designating Party to participate in the meet and confer process, or failure  
9 by the Designating Party to summarize its position in a joint letter brief within 21 days (or 14  
10 days, if applicable) shall automatically waive the confidentiality designation for each challenged  
11 designation.

12 6.3.1 The burden of persuasion in any such challenge proceeding shall be on the  
13 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass  
14 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party  
15 to sanctions. Unless the Designating Party has waived the confidentiality designation by failing  
16 to participate in the meet and confer process or failing to summarize its position in a joint letter  
17 brief as described above, all parties shall continue to afford the material in question the level of  
18 protection to which it is entitled under the Producing Party's designation until the court rules on  
19 the challenge.

## 20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

21 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
22 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
23 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
24 to the categories of persons and under the conditions described in this Order. When the litigation  
25 has been terminated, a Receiving Party must comply with the provisions of section 15 below  
26 (FINAL DISPOSITION).

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

1 No Protected Information may leave the territorial boundaries of the United States of  
2 America. Without limitation, this prohibition extends to Protected Information (including copies)  
3 in physical and electronic form. The viewing of Protected Information through electronic means  
4 outside the territorial limits of the United States of America is similarly prohibited.

5 Notwithstanding this prohibition, Protected Information, exclusive of material designated  
6 HIGHLY CONFIDENTIAL - SOURCE CODE, and to the extent otherwise permitted by law,  
7 may be taken outside the territorial limits of the United States if it is reasonably necessary for a  
8 deposition taken in a foreign country. The restrictions contained within this paragraph may be  
9 amended through the consent of the producing Party to the extent that such agreed to procedures  
10 conform with applicable export control laws and regulations.

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

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

18 (b) Designated In-House Counsel of the Receiving Party (1) to whom disclosure is  
19 reasonably necessary for this litigation, (2) who has signed the "Acknowledgment and Agreement  
20 to Be Bound" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(1),  
21 below, have been followed;

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

25 (d) the court and its personnel;

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

1 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
2 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
3 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
4 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
5 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
6 Stipulated Protective Order.

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

9 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
10 “HIGHLY CONFIDENTIAL – SOURCE CODE” 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 “HIGHLY CONFIDENTIAL – ATTORNEYS’  
13 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

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

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

21 (c) the court and its personnel;

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

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

27 7.4 Procedures for Approving or Objecting to Disclosure of “CONFIDENTIAL”,  
28 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –

1 SOURCE CODE” Information or Items to Designated In-House Counsel or Experts.

2 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating  
3 Party, a Party that seeks to disclose to Designated In-House Counsel any information or item that  
4 has been designated “CONFIDENTIAL” first must make a written request to the Designating  
5 Party that (1) sets forth the full name of the Designated House Counsel and the city and state of  
6 his or her residence and (2) describes the Designated In-House Counsel’s current and reasonably  
7 foreseeable future primary job duties and responsibilities in sufficient detail to determine if House  
8 Counsel is involved, or may become involved, in any competitive decision-making.

9 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating  
10 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item  
11 that has been designated “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’  
12 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.2(c)  
13 and 7.3(b) first must make a written request to the Designating Party that (1) identifies the general  
14 categories of “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
15 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the Receiving  
16 Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the  
17 city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume,  
18 (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the  
19 Expert has received compensation or funding for work in his or her areas of expertise or to whom  
20 the expert has provided professional services, including in connection with a litigation, at any  
21 time during the preceding five years,<sup>1</sup> and (6) identifies (by name and number of the case, filing  
22 date, and location of court) any litigation in connection with which the Expert has offered expert  
23 testimony, including through a declaration, report, or testimony at a deposition or trial, during the  
24 preceding five years.

25 \_\_\_\_\_  
26  
27 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-  
28 party, then the Expert should provide whatever information the Expert believes can be disclosed  
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 (b) A Party that makes a request and provides the information specified in the  
2 preceding respective paragraphs may disclose the subject Protected Material to the identified  
3 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party  
4 receives a written objection from the Designating Party. Any such objection must set forth in  
5 detail the grounds on which it is based.

6 (c) A Party that receives a timely written objection must meet and confer with the  
7 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
8 agreement within seven days of the written objection.

9 If the Parties cannot resolve an objection without court intervention, the Parties shall  
10 file a joint letter brief under Judge Gonzalez Rogers' Standing Order in Civil Cases ¶ 8 (and in  
11 compliance with Civil Local Rule 79-5 and General Order 62, if applicable). Each such joint  
12 letter brief must concisely summarize the unresolved disclosure issues and must attest that, prior  
13 to filing the request for relief, the parties met and conferred *in person* and complied with the meet  
14 and confer requirements imposed in this paragraph. The joint letter brief may cite to limited and  
15 specific legal authority only for resolution of dispositive issues. The joint letter brief may not be  
16 accompanied by declarations; however any specific excerpt of disputed discovery material may  
17 be attached. The Court will then advise the parties if additional briefing, a telephonic conference,  
18 or a personal appearance will be necessary.

19 In any such proceeding, the Party opposing disclosure to Designated In-House  
20 Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure  
21 would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose  
22 the Protected Material to its Designated House Counsel or Expert.

23 8. PROSECUTION BAR

24 A. Absent written consent from the Producing Party, any individual who receives access  
25 to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY  
26 CONFIDENTIAL – SOURCE CODE" information that is technical in nature shall not be  
27 involved in any Prosecution Activity, as defined in section B below. This Prosecution Bar shall  
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1 begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
2 “HIGHLY CONFIDENTIAL – SOURCE CODE” information that is technical in nature is first  
3 received by the affected individual and shall end two (2) years after final termination of this  
4 action (including any appeals).

5 B. For purposes of this paragraph, “Prosecution Activity” includes directly or indirectly  
6 drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims.  
7

8 Nothing in this paragraph shall prevent any attorney from sending non-confidential prior  
9 art to an attorney involved in patent prosecution for purposes of ensuring that such prior art is  
10 submitted to the U.S. Patent and Trademark Office (or any similar agency of a foreign  
11 government) to assist a patent applicant in complying with its duty of candor. Nothing in this  
12 provision shall prohibit any attorney of record in this litigation from discussing any aspect of this  
13 case that is reasonably necessary for the prosecution or defense of any claim or counterclaim in  
14 this litigation with his/her client. The parties expressly agree that the Prosecution Bar set forth  
15 herein shall be personal to any attorney who review Prosecution Bar Materials and shall not be  
16 imputed to any other persons or attorneys at the attorneys’ law firm. It is expressly agreed that  
17 attorneys who work on this matter without reviewing Prosecution Bar Materials shall not be  
18 restricted from engaging in Prosecution Activity on matters that fall within the Prosecution Bar.

19 9. SOURCE CODE

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

23 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE  
24 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –  
25 ATTORNEYS’ EYES ONLY” information, including the Prosecution Bar set forth in Paragraph  
26 8, and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –  
27 ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and  
28 7.4.

1 (c) Any source code produced in discovery shall be made available for inspection, in a  
2 format allowing it to be reasonably reviewed and searched, during normal business hours or at  
3 other mutually agreeable times, (1) for source code produced by Apple, at the East Palo Alto  
4 offices of its outside Counsel, Ropes & Gray; and (2) for source code produced by Google, at the  
5 East Palo Alto offices of its outside Counsel, Greenberg Traurig. Prior to the inspection of any  
6 requested Source Code, the Receiving Party shall provide ten (10) days notice of the Source Code  
7 that it wishes to inspect.

8 The source code shall be made available for inspection on a secured computer in a secured  
9 room without Internet access or network access to other computers, and the Receiving Party shall  
10 not copy, remove, or otherwise transfer any portion of the source code onto any recordable media  
11 or recordable device. The Producing Party may visually monitor the activities of the Receiving  
12 Party's representatives during any source code review, but only to ensure that there is no  
13 unauthorized recording, copying, or transmission of the source code. The Receiving Party's  
14 outside counsel and/or expert shall be entitled to take notes relating to the Source Code and may  
15 make notes relating to file names, file paths, and/or line numbers, but may not copy the Source  
16 Code into the notes and may not take such notes electronically on the Source Code Computer  
17 itself or any other Computer. No copies of all or any portion of the Source Code may leave the  
18 room in which the Source Code is inspected except as otherwise provided herein. Further, no  
19 other written or electronic record of the Source Code is permitted except as otherwise provided  
20 herein. No recordable media or recordable devices, including without limitation sound recorders,  
21 computers, cellular telephones, peripheral equipment, cameras, CDs, DVDs, or drives of any  
22 kind, shall be permitted into the Source Code Review Room.

23 (d) The Receiving Party may request paper copies of limited portions of source code that are  
24 reasonably necessary for the preparation of court filings, pleadings, expert reports, or other  
25 papers, or for deposition or trial, but shall not request paper copies for the purpose of reviewing  
26 the source code other than electronically as set forth in paragraph (c) in the first instance. The  
27 Producing Party shall make available a laser printer with commercially reasonable printing speeds  
28 for on-site printing during inspection of the Source Code. The Receiving Party may print limited  
portions of the Source Code only when necessary to prepare court filings or pleadings or other



1 papers (including a testifying expert's expert report). Upon printing any such portions of Source  
2 Code, the printed pages shall be collected by the Producing Party. The Producing Party shall  
3 Bates number, copy, and label "HIGHLY CONFIDENTIAL - SOURCE CODE" any pages  
4 printed by the Receiving Party. Within ten (10) days, the Producing Party shall either (i) provide  
5 one copy set of such pages to the Receiving Party or (ii) inform the Receiving Party that it objects  
6 that the printed portions are excessive and/or not done for a permitted purpose. If, after meeting  
7 and conferring, the Producing Party and the Receiving Party cannot resolve the objection, they  
8 shall be entitled to seek a Court resolution of whether the printed Source Code in question is  
9 narrowly tailored and was printed for a permitted purpose. The burden shall be on the Producing  
10 Party to demonstrate that such printed portions are more than is reasonably necessary for a  
11 permitted purpose and printed for the purposes of review and analysis elsewhere. The printed  
12 pages shall constitute part of the Source Code produced by the Producing Party in this action.

13 (e) The Receiving Party shall not request printed Source Code in order to review blocks of  
14 Source Code elsewhere in the first instance, i.e., as an alternative to reviewing that Source Code  
15 electronically on the Source Code Computer, as the Parties acknowledge and agree that the  
16 purpose of the protections herein would be frustrated by printing portions of code for review and  
17 analysis elsewhere, and that printing is permitted only when necessary to prepare court filings or  
18 pleadings or other papers (including a testifying expert's expert report). The Receiving Party's  
19 outside counsel of record may make no more than four (4) additional paper copies of any portions  
20 of the Source Code received from a Producing Party pursuant to this paragraph, not including  
21 copies attached to court filings or used at depositions, and shall maintain a log of all such paper  
22 copies of the Source Code.

23 (f) The Receiving Party's outside counsel of record and any person receiving a copy of  
24 any Source Code shall maintain and store any paper copies of the Source Code at their offices in a  
25 manner that prevents duplication of or unauthorized access to the Source Code, including, without  
26 limitation, storing the Source Code in a locked room or cabinet at all times when it is not in use.

27 (g) Any paper copies designated "HIGHLY CONFIDENTIAL - SOURCE CODE"  
28 shall be stored or viewed only at (i) the offices of outside counsel for the Receiving Party, (ii) the

1 offices of outside experts or consultants who have been approved to access Source Code; (iii) the  
2 site where any deposition is taken (iv) the Court; or (v) any intermediate location necessary to  
3 transport the information to a hearing, trial or deposition. Any such paper copies shall be  
4 maintained at all times in secure location under the direct control of counsel responsible for  
5 maintaining the security and confidentiality of the designated materials.

6 (h) All persons who will review a Producing Party's Source Code on behalf of a  
7 Receiving Party, including members of a Receiving Party's outside law firm, shall be identified in  
8 writing to the Producing Party at least two (2) days in advance of any such review of any such  
9 Source Code. All persons viewing Source Code shall sign on each day they view Source Code a  
10 log that will include the names of persons who enter the locked room to view the Source Code  
11 and when they enter and depart.

12 (i) Unless otherwise agreed in advance by the parties in writing, following each  
13 inspection, the Receiving Party's outside counsel and/or experts shall remove all notes,  
14 documents, and all other materials from the room that may contain work product and/or attorney-  
15 client privileged information. The producing party shall not be responsible for any items left in  
16 the room following each inspection session.

17 (j) For depositions, the Receiving Party shall not bring copies of any printed Source  
18 Code for use as deposition exhibits or courtesy copies. Rather, at least two (2) days before the  
19 date of the deposition, the Receiving Party shall notify the Producing Party about the specific  
20 portions of Source Code it wishes to use at the deposition, and the Producing Party shall bring  
21 printed copies of those portions to the deposition for use by the Receiving Party. Copies of  
22 Source Code that are marked as deposition exhibits shall not be provided to the Court Reporter or  
23 attached to deposition transcripts; rather, the deposition record will identify the exhibit by its  
24 production numbers. All paper copies of Source Code brought to the deposition by the Producing  
25 Party shall remain with the Producing Party's outside counsel for secure destruction in a timely  
26 manner following the deposition.

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1 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
2 LITIGATION

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

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

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

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

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

24  
25  
26 \_\_\_\_\_  
27 <sup>2</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this  
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect  
its confidentiality interests in the court from which the subpoena or order issued.

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

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

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

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

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

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

1 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

9 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED\_  
10 MATERIAL

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

21 14. MISCELLANEOUS

22 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
23 seek its modification by the court in the future.

24 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
25 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
26 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,  
27 no Party waives any right to object on any ground to use in evidence of any of the material  
28 covered by this Protective Order.

1           14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable  
2 laws and regulations relating to the export of technical data contained in such Protected Material,  
3 including the release of such technical data to foreign persons or nationals in the United States or  
4 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical  
5 data, and the Receiving Party shall take measures necessary to ensure compliance.

6           14.4 Filing Protected Material. Without written permission from the Designating Party  
7 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
8 the public record in this action any Protected Material. A Party that seeks to file under seal any  
9 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected  
10 Material may only be filed under seal pursuant to a court order authorizing the sealing of the  
11 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a  
12 sealing order will issue only upon a request establishing that the Protected Material at issue is  
13 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a  
14 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-  
15 5(d) and General Order 62 is denied by the court, then the Receiving Party may file the Protected  
16 Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by  
17 the court.

18       15. FINAL DISPOSITION

19           Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
20 Receiving Party must return all Protected Material to the Producing Party or destroy such  
21 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
22 compilations, summaries, and any other format reproducing or capturing any of the Protected  
23 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
24 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
25 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all  
26 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
27 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
28 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to

1 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
2 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
3 product, and consultant and expert work product, even if such materials contain Protected  
4 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
5 this Protective Order as set forth in Section 4 (DURATION).

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7  
8 DATED: January 22, 2013

/s/ Brent N. Bumgardner  
Brent N. Bumgardner  
Nelson Bumgardner Casto, P.C.

10 Attorneys for Plaintiff

11  
12 DATED: January 22, 2013

/s/ Kakoli Caprihan  
Kakoli Caprihan  
Greenberg Traurig, LLP

14 Attorneys for Defendant Google, Inc.


15  
16 DATED: January 22, 2013

/s/ Khue V. Hoang (w/permission)  
Khue V. Hoang  
Ropes & Gray LLP

18 Attorneys for Defendant Apple, Inc.

19  
20 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

21  
22 DATED: February 13, 2013

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on \_\_\_\_\_ [date] in the case of *Jongerius Panoramic Technologies, LLC v. Google Inc. and Apple Inc., Case No. 4:12-cv-003797-YGR*. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

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

Date: \_\_\_\_\_

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

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

Signature: \_\_\_\_\_  
[signature]