

1 Laura Kabler Oswell (SBN 241281)
 Thomas E. Fullerton (SBN 305104)
 2 Daniel A. Loevinsohn (SBN 311807)
 SULLIVAN & CROMWELL LLP
 3 1870 Embarcadero Road
 Palo Alto, CA 94303
 4 Telephone: (650) 461-5600
 Facsimile: (650) 461-5700

5 *Attorneys for Plaintiff*

6
 7 Robert J. Benson (SBN 155971)
 ORRICK, HERRINGTON & SUTCLIFFE LLP
 8 2050 Main Street, Suite 1100
 Irvine, CA 92614
 9 Telephone: (949) 567-6700
 Facsimile: (949) 567-6710

10
 11 *Attorneys for Defendants*

12 [Additional counsel listed on signature page]

13
 14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**

16
 17 VIA LICENSING CORPORATION,

18 Plaintiff,

19 v.

20 HISENSE INTERNATIONAL CO., LTD and
 HISENSE USA CORPORATION,

21 Defendants.
 22

Case No. 4:18-cv-01206-YGR

**STIPULATION AND ~~PROPOSED~~
 ORDER RE: PRODUCTION OF
 DOCUMENTS AND
 ELECTRONICALLY STORED
 INFORMATION**

1 Upon the stipulation of the parties, the Court ORDERS as follows:

2 **I. PURPOSE**

3 1. This Stipulation and Order Regarding Production of Documents and
4 Electronically Stored Information (the “ESI Protocol”) will govern the production of documents
5 and electronically stored information (“ESI”) by the parties in the above-captioned action as a
6 supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the Discovery of
7 Electronically Stored Information, and any other applicable orders and rules.

8 **II. MODIFICATION**

9 2. This ESI Protocol may be modified in the Court’s discretion or by
10 stipulation.

11 **III. PRODUCTION OF DOCUMENTS ORIGINATING AS PAPER**

12 3. The following specifications govern the production of documents
13 originating as paper:

14 4. **TIFFs.** Documents should be produced as single-page, black and white,
15 group IV TIFFs imaged at 300 dpi. Bates numbers, confidentiality designations (in accordance
16 with the protective order governing the case), and redactions (to the extent they are necessary)
17 should be burned into the image. TIFF image files should be provided in an “Images” folder.

18 5. **Unitizing Documents.** In scanning paper documents, distinct documents
19 should not be merged into a single record, and single documents should not be split into multiple
20 records (*i.e.*, paper documents should be logically unitized). As an example, the documents
21 contained in a binder should be produced in the same order in which they appear in the binder.
22 The parties will undertake reasonable efforts to have their vendors logically unitize documents
23 correctly, maintain parent-child relationships, and will commit to address situations of
24 improperly unitized documents.

25 6. **OCR.** The producing party shall use optical character recognition
26 (“OCR”) to digitize the text of documents originating as paper. Text shall be provided on a
27 document-level in an appropriately formatted text file (.txt) that is named to match the first Bates
28 number of the document. Text files should be provided in a “Text” folder. To the extent that a

1 document is redacted, the text files should not contain the text of the redacted portions.

2 7. **Unique IDs.** Each TIFF image should have a unique filename, which
3 corresponds to the Bates number of that page. The filename should not contain any blank spaces
4 and should be zero-padded (*e.g.*, ABC-000001), taking into consideration the estimated number
5 of pages to be produced. If a Bates number or set of Bates numbers is skipped in a production,
6 the producing party will so note in a cover letter or production log accompanying the production.

7 8. **Data Load Files.** Documents should be provided with an Opticon Cross-
8 Reference File and Concordance data load file using standard Concordance delimiters:

- 9 a. Field Separator: ASCII character 20 (“**¶**”);
- 10 b. Quote: ASCII character 254 (“**”**”); and
- 11 c. New Line: ASCII character 174 (“**®**”).

12 Concordance-compatible image and data load files should be provided in a “Data”
13 folder.

14 9. **Metadata.** Appendix 1 sets forth the minimum metadata fields that must
15 be produced to the extent that metadata exists for a particular document. To the extent that such
16 metadata does not exist, is not reasonably accessible or available, or would be unduly
17 burdensome to collect, nothing in this ESI Protocol shall require any party to extract, capture,
18 collect, or produce such data.

19 **IV. PRODUCTION OF EMAIL AND ESI**

20 10. **TIFFs.** Documents should be produced as single-page, black and white,
21 group IV TIFFs imaged at 300 dpi. The document’s original orientation should be maintained
22 (*i.e.*, portrait to portrait and landscape to landscape). Bates numbers, confidentiality designations
23 (in accordance with the protective order governing the above-captioned action), and redactions
24 (to the extent they are necessary) should be burned into the image. TIFF image files should be
25 provided in an “Images” folder.

26 11. **Extracted Text Files.** For each electronic document, a text file (not OCR
27 text) should be provided along with the TIFF. The full text of native files should be extracted
28 directly from the native file and should be delivered in an appropriately formatted text file (.txt)

1 that is named to match the first Bates number of the document. Text files should be provided in
2 a “Text” folder. To the extent that a document is redacted, the text files should not contain the
3 text of the redacted portions.

4 12. **Unique IDs.** Each image should have a unique filename, which
5 corresponds to the Bates number of that page. The filename should not contain any blank spaces
6 and should be zero-padded (*e.g.*, ABC-000001), taking into consideration the estimated number
7 of pages to be produced. If a Bates number or set of Bates numbers is skipped in a production,
8 the producing party will so note in a cover letter or production log accompanying the production.

9 13. **Parent-Child Relationships.** The relationship between attachments,
10 enclosures, embedded files, and/or exhibits to any parent document shall be preserved. The
11 child-document(s) should be consecutively produced immediately after the parent-document,
12 except attachments withheld on privilege grounds, which will be indicated on the associated
13 privilege log and the withheld attachment will be replaced with a slip sheet stating “Document
14 withheld for privilege.”

15 14. **Native Format.** The processed native for all spreadsheets (*i.e.*, MS Excel,
16 .CSV, or similar) and electronic information containing audio or visual components should be
17 produced and linked to the database by the above metadata field “Path to Native File.” The
18 requesting party may ask for certain other documents and/or databases initially produced in their
19 petrified (TIFF or PDF) format to be produced in their native format in the event that the
20 petrified format is not reasonably usable, and the parties will meet and confer in good faith
21 regarding the form of production of that information. The requesting party shall identify the
22 documents by their Bates numbers and the documents should be produced in their unaltered
23 native format, subject to any meet and confer discussions conducted by the parties.

24 15. To the extent that a native spreadsheet must be redacted, the producing
25 party may redact either the native file or produce TIFF images with burned in redactions in lieu
26 of a Native File and TIFF placeholder image. If redacting TIFF images, the producing party
27 should make reasonable efforts to ensure that it, or its ediscovery vendor, (1) reveals hidden cells
28 prior to converting the document to TIFF; (2) clears any filters that may conceal information;

1 (3) adjusts column widths so that numbers do not appear as “#####”; (4) ensures that column
2 and row headings print; and (5) ensures that the tab name appears in the header or footer of the
3 document.

4 16. **Request for Native Files.** Other than as specifically set forth above, a
5 producing party need not produce documents in native format. If good cause exists for the
6 receiving party to request production of certain documents in native format, the receiving party
7 may request production in native format by providing (1) a list of the Bates numbers of
8 documents it requests to be produced in native format; and (2) an explanation of the need for
9 reviewing such documents in native format. The producing party shall not unreasonably deny
10 such requests, but will meet and confer in good faith with the requesting party concerning the
11 format of production. Each document produced in response to such requests shall be produced
12 with a “Link to Native Path” entry in the data load file indicating the relative file path to each
13 Native File on the production media, and all extracted text and applicable metadata fields set
14 forth in paragraph 21, subject to any meet and confer discussions conducted by the parties.

15 17. **Track Changes and Comments.** To the extent that a document contains
16 tracked changes or comments, those tracked changes and comments should be preserved when
17 images of the document are created.

18 18. **Password Protected Files.** The producing party shall produce passwords
19 for any non-privileged password-protected files to the extent the passwords are reasonably
20 available.

21 19. **System Files.** Common system and program files as defined by the NIST
22 library (which is commonly used by-discovery vendors to exclude system and program files
23 from document review and production) need not be processed, reviewed, or produced.

24 20. **Data Load Files.** Documents should be provided with an Opticon Cross-
25 Reference File and Concordance data load file using standard Concordance delimiters:

- 26 a. Field Separator: ASCII character 20 (“**¶**”);
- 27 b. Quote: ASCII character 254 (“**”**”); and
- 28 c. New Line: ASCII character 174 (“**®**”).

1 Concordance-compatible image and data load files should be provided in a “Data”
2 folder. Parties have the option to exchange sample load files. If this exchange occurs, the
3 receiving party will have 14 days to respond with load file change requests. Nothing in this ESI
4 Protocol will limit the parties from discussing load file changes throughout the course of the
5 litigation.

6 21. **Metadata.** Appendix 1 sets forth the minimum metadata fields that must
7 be produced to the extent that metadata exists for a particular document. To the extent that such
8 metadata does not exist, is not reasonably accessible or available, or would be unduly
9 burdensome to collect, nothing in this ESI Protocol shall require any party to extract, capture,
10 collect or produce such data. The parties are not obligated to populate manually any metadata
11 fields.

12 22. **Deduplication.** Documents may be globally de-duplicated at the family-
13 group level.

14 **V. PRODUCTION OF DATABASES AND OTHER STRUCTURED DATA**

15 23. If a database or other source of structured data contains responsive
16 information, the parties should meet and confer to determine a mutually agreeable format for
17 producing the database or other structured data or an appropriate alternative means for producing
18 information sought from the structured data.

19 **VI. PRODUCTION OF AUDIO AND VIDEO RECORDINGS**

20 24. If audio and/or video recordings are responsive, the parties should meet
21 and confer to determine a mutually agreeable format for producing the audio and/or video
22 recording.

23 **VII. PROCESSING OF THIRD-PARTY DOCUMENTS**

24 25. A party that issues a non-party subpoena (“Issuing Party”) shall include a
25 copy of this ESI Protocol with the subpoena and request that the non-party produce documents in
26 accordance with the specifications set forth herein.

27 26. The Issuing Party may request that the non-party simultaneously produce
28 documents to the Issuing Party and all other parties. If the non-party produces documents only

1 to the Issuing Party, to the extent practical given the data volume, productions by a non-party
2 should be produced by the Issuing Party to all other parties within seven days of the non-party's
3 production to the Issuing Party.

4 27. Nothing in this ESI Protocol is intended to or should be interpreted as
5 narrowing, expanding, or otherwise affecting the rights of the parties or non-parties to object to a
6 subpoena.

7 **VIII. DOCUMENTS PROTECTED FROM DISCOVERY**

8 28. Pursuant to Federal Rule of Evidence 502(d), the production of a
9 privileged or work-product-protected document, whether inadvertent or otherwise, is not a
10 waiver of privilege or protection from discovery in this case or in any other federal or state
11 proceeding. For example, the mere production of privileged or work-product-protected
12 documents in this case as part of a mass production is not itself a waiver in this case or in any
13 other federal or state proceeding.

14 29. Communications subject to a claim of privilege that post-date the filing of
15 the complaint need not be placed on a privilege log.

16 30. The parties shall meet and confer regarding the scope and timing for
17 identifying documents or other information withheld from production on the basis of the
18 attorney-client privilege or any other applicable privilege or protection from disclosure.

19 **IX. MISCELLANEOUS PROVISIONS**

20 31. The following specifications govern the production of all documents
21 regardless of source, unless otherwise noted in this ESI Protocol:

22 32. **Custodian or Originating Source.** The custodian or originating source
23 shall be identified in the Custodian field of the database load files. Documents found in the
24 possession of a natural person (or on a natural person's hardware or storage media) should be
25 produced in such fashion as to identify the natural person. Documents found in the possession of
26 a department, group, entity, or other common facility (*e.g.*, office, file room, archive, network
27 storage, file share, back-up, hard drive, etc.) should be produced in such a fashion as to identify
28 the department, group, entity, or facility. A producing party shall use a uniform description of a

1 particular custodian across productions.

2 33. **Color.** Documents containing color need not be produced in color in the
3 first instance. However, if good cause exists for the receiving party to request production of
4 certain documents in color, the receiving party may request production of such documents in
5 color by providing (1) a list of the Bates numbers of documents it requests to be produced in
6 color format; and (2) an explanation of the need for production in color format. The producing
7 party shall not unreasonably deny such requests, but will meet and confer in good faith with the
8 requesting party concerning the format of production.

9 34. **Foreign Language.** Foreign language text files and metadata should be
10 delivered with the correct encoding to enable the preservation of the documents' original
11 language.

12 35. **Production Media.** The preferred means of producing documents is via
13 secure FTP or a secure file sharing site. However, documents may also be produced via CD,
14 DVD, thumb drive, or hard drive if the size of the production exceeds the size limitations
15 applicable to the producing party's secure FTP or file sharing site.

16 36. **Encrypted Data.** To the extent data is encrypted before it is produced,
17 the producing party shall contemporaneously transmit the credentials necessary to decrypt the
18 data.

19 37. **Non-Waiver.** Nothing in this ESI Protocol shall be interpreted to require
20 disclosure of irrelevant information or relevant information protected by the attorney-client
21 privilege, work-product doctrine, or any other applicable privilege or immunity. The parties do
22 not waive any objections to the production, discoverability, admissibility, or confidentiality of
23 documents.

24 38. **Protective Order.** All productions are subject to the Stipulated Protective
25 Order entered by the Court in this Action.

26 **X. MEET AND CONFER**

27 39. **Good Faith Resolution of Disputes.** The parties shall make good faith
28 efforts to comply with and resolve any differences concerning compliance with this ESI

1 Protocol. If a producing party, notwithstanding their good faith efforts, cannot comply with any
2 material aspect of this ESI Protocol or if compliance with such material aspect would be
3 unreasonable, such party shall inform the requesting party in writing a reasonable time before the
4 date of production as to why compliance with the ESI Protocol is impossible or unreasonable.
5 No party may seek relief from the Court concerning compliance with the ESI Protocol unless it
6 has conferred in good faith with the affected parties.

7 40. The parties agree that in responding to an initial Federal Rule of Civil
8 Procedure 34 request, or earlier if appropriate, they will meet and confer about methods to search
9 ESI in order to identify ESI that is subject to production in discovery and filter out ESI that is not
10 subject to discovery.

11
12 **IT IS SO STIPULATED**, through Counsel of Record.

13 _____
14 /s/ Laura Kabler Oswell

15 Laura Kabler Oswell (SBN 241281)
16 Thomas E. Fullerton (SBN 305104)
17 Daniel A. Loevinsohn (SBN 311807)
18 SULLIVAN & CROMWELL LLP
19 1870 Embarcadero Road
20 Palo Alto, CA 94303
21 Telephone: (650) 461-5600
22 Facsimile: (650) 461-5700

23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

Attorneys for Plaintiff

/s/ Robert J. Benson
Robert J. Benson (SBN 155971)
ORRICK, HERRINGTON &
SUTCLIFFE LLP
2050 Main Street, Suite 1100
Irvine, CA 92614
Telephone: (949) 567-6700
Facsimile: (949) 567-6710

Xiang Wang
ORRICK, HERRINGTON &
SUTCLIFFE, LLP
5701 China World Tower A
No. 1 Jianguomenwai Avenue, Chaoyang
District
Beijing, 100004 China
Telephone: +011 86 10 8595 5600
Facsimile: +011 86 10 8595 5700

John A. Jurata, Jr. (SBN 478602)
ORRICK, HERRINGTON &
SUTCLIFFE, LLP
Columbia Center
1152 15th Street, N.W.
Washington, D.C. 20005-1706
Telephone: +1 202 339 8400
Facsimile: +1 202 339 8500

Attorneys for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the other signatories above.


Dated: June 20, 2018

/s/ Laura Kabler Oswell
Laura Kabler Oswell

* * *

IT IS ORDERED that the forgoing Agreement is **APPROVED**.

Dated: June 21, 2018



THE HONORABLE YVONNE GONZALES ROGERS
UNITED STATES DISTRICT JUDGE