

**** E-filed February 10, 2010 ****

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SYNOPSYS, INC.,

Plaintiff,

vs.

RICOH COMPANY, LTD.,

Defendant.

CASE NO. C03-02289-JW (HRL)

**STIPULATED PROTECTIVE ORDER
AS AMENDED BY THE COURT**

1. All Confidential Information produced or exchanged in the course of this litigation shall be used solely for the purpose of preparation and trial of this litigation and for no other purpose whatsoever, and shall not be disclosed to any person except in accordance with the terms hereof.

2. "Confidential Information," as used herein, means any information of any type, kind or character that is designated as "Confidential" by any of the supplying or receiving parties, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer or otherwise. In designating information as "Confidential," a party will make such designation only as to that information that it in good faith believes contains "Confidential Information."

3. (a) "Confidential Information" includes, but is not limited to, (i) proprietary technical

1
2
3 information and specifications, (ii) trade secrets (iii) confidential know-how, and (iv) proprietary
4 business and financial information and any other non-public information, the disclosure of which is
5 likely to have the effect of causing significant competitive harm to the disclosing party or party from
6 which the information was obtained. Nothing in this paragraph shall be construed to limit the
7 description of "Confidential Information" set forth in paragraph 2.

8 (b) Nothing shall be regarded as "Confidential Information" if it is information that:
9 (i) is in the public domain at the time of disclosure, as evidenced by a written document;
10 (ii) becomes part of the public domain through no fault of the other party, as evidenced
11 by a written document;
12 (iii) was in the receiving party's rightful and lawful possession at the time of disclosure,
13 as evidenced by a written document; or
14 (iv) is lawfully received by the receiving party from a third party at a later date without
15 restriction as to disclosure, provided such third party has the right to make the disclosure to the
16 receiving party.
17

18 4. "Qualified Persons," as used herein means:

19 (a) To the Court and its officers and staff, including court reporters;

20 (b) Outside attorneys of record for the parties in this litigation and employees of such
21 attorneys to whom it is necessary that the material be shown for purposes of this litigation;

22 (c) Outside experts, consultants, advisors or investigators (collectively referred to
23 hereafter as "experts") who have signed an undertaking pursuant to paragraph 5 but only after
24 compliance with the provisions of paragraph 5 below;

25 (d) To non-party support services including, but not limited to, court reporters, outside
26 copy services, document imaging and database services, design services who have signed confidentiality
27 agreements, jury consultants who have signed confidentiality agreements, mock jurors who have signed
28 confidentiality agreements, and language translators who have signed confidentiality agreements

1
2
(including support staff) as may be reasonably necessary in connection with the preparation or conduct
3
of this action;
4

5 (e) Anyone to whom the parties consent in writing; and

6 (f) If this Court so elects, any other person may be designated as a Qualified Person by
order of this Court, after notice and opportunity to be heard to all parties.
7

8 5. Prior to the disclosure of any “Confidential Information” to any expert under Paragraph
4(c), counsel for the Party seeking to make the disclosure shall: (i) deliver a copy of this Protective
Order as entered to such person, explain its terms to such person, and secure the signature of such
person on a written undertaking in the form attached hereto as Exhibit A, and (ii) transmit by facsimile
and mail to counsel for the other Parties a copy of the signed Exhibit A, accompanied by a curriculum
vitae, at least ten (10) calendar days before any “Confidential Information” designated under this
Protective Order is to be disclosed to the signator. The curriculum vitae should identify the general
area(s) of expertise of the expert, provide a brief job history, specify all employment, expert or
consulting engagements by the expert within the past five (5) years, and state all present or prior
relationships between the expert and any entity directly or indirectly involved in this litigation or
providing an indemnity to any such entity, its subsidiaries or its affiliates. Any Party may object to the
proposed disclosure to an expert within the ten (10) calendar day period following the transmittal of
Exhibit A and the curriculum vitae, by stating specifically in writing the reasons why the Party believes
such expert should not receive designated “Confidential Information.” If during that ten (10) calendar
day period a Party makes such a written objection, there shall be no disclosure of “Confidential
Information” to the expert absent mutual agreement of the Parties, waiver of the objection as stated
below, or further order of the Court. After a Party objects to the proposed disclosure to an expert, the
objecting Party shall move, by noticed motion or by ex parte application, for an order that disclosure not
be made to such expert within five (5) business days following the date that the objection is made, or the
Party’s objection shall be deemed waived and disclosure may be made to the expert. The burden shall

1
2
3 be on the objecting Party to establish why the disclosure should not be made. Each Party shall maintain
4 a file of all such signed copies of Exhibit A. However, it shall not be necessary for administrative,
5 secretarial or clerical personnel working for such Qualified Person to sign a written undertaking.

6 6. (a) Documents produced in this action may be designated by any party or parties as
7 “Confidential” by marking each page of the document(s) with the designation “Confidential.”

8 (b) In lieu of marking the original of a document, if the original is not produced, the
9 designating party may mark the copies that are produced or exchanged. Originals shall be preserved for
10 inspection.

11 (c) If the document is not in paper form, the producing person or entity shall use other
12 such reasonable means as necessary to identify clearly the document or information as “Confidential.”

13 7. Discovery responses or other litigation materials may be designated by any party or
14 parties as “Confidential” by marking each page of the response with the designation “Confidential.”

15 8. The designation of information disclosed during a deposition as “Confidential” shall be
16 made either by a statement on the record at the deposition or within twenty (20) calendar days after
17 receipt by counsel of a copy of the deposition transcript. Such designation will be applied to only those
18 portions of the deposition transcript that include a specific question and response or series of questions
19 and responses containing “Confidential Information.” The deposition transcript shall be printed in
20 consecutive pages (whether or not some pages are designated as “Confidential”) with a marking on the
21 cover of the deposition transcript indicating the “Confidential” designation contained therein. Unless
22 previously designated otherwise, all deposition transcripts shall be treated as “Confidential” in their
23 entirety prior to the end of the twenty (20) calendar day period following receipt by counsel of a copy of
24 the deposition transcript.
25

26 9. “Confidential Information” shall not be disclosed or made available by the receiving
27 party to persons other than Qualified Persons except that nothing herein is intended to prevent
28 individuals who are in-house counsel or a member of the professional legal department of the Parties

1
2
3 from having access to pleadings, briefs and exhibits or declarations filed with the Court and expert
4 reports, including exhibits that are designated as “Confidential.”

5 10. (a) Documents to be inspected shall be treated as “Confidential” although such
6 documents need not be marked as “Confidential” prior to inspection. At the time of copying for the
7 receiving parties, any documents containing “Confidential Information” shall be stamped prominently
8 “Confidential” by the producing party.

9 (b) Nothing herein shall prevent disclosure beyond the terms of this Order if each party
10 designating the information as “Confidential” consents to such disclosure or if the Court, after notice to
11 all effected parties, orders such disclosures. Nothing herein shall prevent any counsel of record from
12 utilizing “Confidential Information” in the examination or cross- examination of any person who is
13 indicated on the document as being an author, source or recipient of the “Confidential Information,”
14 irrespective of which party produced such information. Nothing herein shall prevent any counsel of
15 record from utilizing “Confidential Information” in the examination or cross-examination of any person
16 who is a current or former officer, director or employee of the party so designating the information as
17 “Confidential” or of the party that produced the information or of a related entity.
18

19 11. If a party inadvertently discloses any document or thing containing information that it
20 deems confidential without designating it as “Confidential,” the disclosing party shall promptly upon
21 discovery of such inadvertent disclosure inform the receiving party in writing, and the receiving party
22 and all Qualified Persons possessing such information shall thereafter treat the information as
23 “Confidential” under this Order. To the extent such information may have been disclosed to persons
24 other than Qualified Persons described in this document, the receiving party shall make every
25 reasonable effort to retrieve the information promptly from such persons and to avoid any further
26 disclosure to and by such persons.
27

28 12. A party shall not be obligated to challenge the propriety of a designation as
“Confidential” at the time made, and a failure to do so shall not preclude a subsequent challenge thereto.

1
2
3 Nor will the failure to object be construed as an admission that any particular "Confidential
4
5 Information" contains or reflects currently valuable trade secrets or confidential commercial
6
7 information. In the event that any party to this litigation disagrees at any stage of these proceedings
8
9 with the designation by the designating party of any information as "Confidential," or the designation of
10
11 any person as a Qualified Person, the parties shall first try to resolve such dispute in good faith on an
12
13 informal basis, such as production of redacted copies. If the parties are unsuccessful in informally
14
15 resolving any disputes regarding the designation of any document or information as "Confidential," the
16
17 Court shall resolve all such disputes. It shall be the burden of the party making any designation to
18
19 establish that the information so designated is "Confidential" within the meaning of this Protective
20
21 Order. The "Confidential Information" that is the subject of the dispute shall be treated as originally
22
23 designated pending resolution of the dispute.
24

25 13. The parties may, by written stipulation filed and approved by the Court, amend this
26
27 Order, and any party may seek an order of this Court modifying this Protective Order. The parties agree
28
29 to meet and confer prior to seeking to modify this Protective Order. In addition, the Court may modify
30
31 this Protective Order in the interest of justice or otherwise at the Court's discretion.
32

33 14. In the event a party wishes to use any "Confidential Information" in any affidavits,
34
35 briefs, memoranda of law, or other papers filed with the Court in this litigation, such "Confidential
36
37 Information" used therein shall be filed under seal with the Court. In addition to placing documents in a
38
39 sealed envelope with instructions that the document is filed pursuant to the Stipulated Protective Order
40
41 and that the envelope is not to be opened absent further order of the Court, the envelope should be
42
43 labeled to identify the title of the case, the case number, and the title of the document.
44

45 15. The Clerk of this Court is directed to maintain under seal all documents and transcripts of
46
47 deposition testimony and answers to interrogatories, admissions and other pleadings filed under seal
48
49 with the Court in this litigation that have been designated, in whole or in part, as "Confidential" by a
50
51 party to this action.

1
2
3 16. If a Party intends to offer into evidence or otherwise disclose in open court any
4 “Confidential Information” designated by another person or entity, counsel for such Party shall notify
5 the designating person or entity that the Party intends to disclose “Confidential Information” in open
6 court prior to the disclosure, so that the designating person or entity may confer with the Court
7 concerning appropriate procedures for protecting its “Confidential Information.”

8 17. In the event any person or party that has possession, custody, or control of any
9 information designated as “Confidential” pursuant to the terms of this Protective Order receives a
10 subpoena or other process or order to produce such information, such person or party shall notify by
11 mail within five (5) business days of the Party’s receipt of the request, the counsel for the party or
12 persons claiming confidential treatment of the documents sought by such subpoenas or other process or
13 order, shall furnish such counsel with a copy of said subpoena or other process or order, and shall
14 cooperate with respect to any procedure sought to be pursued by the party whose interests may be
15 affected. The party asserting the “Confidential” treatment shall have the burden of defending against
16 such subpoena, process or order. The person or party receiving the subpoena or process or order shall
17 be entitled to comply with it except: (a) to the extent the party asserting the “Confidential” treatment is
18 successful in obtaining an order modifying or quashing it; and (b) in complying with the process or
19 order shall, at a minimum, seek to obtain “Confidential” treatment of the “Confidential Information”
20 before producing it in the other proceeding or action.

22 18. If the discovery process calls for the production of information that a Party or Non-Party
23 does not wish to produce because the Party or Non-Party believes its disclosure would breach an
24 agreement with another person or entity to maintain such information in confidence, the disclosing Party
25 or Non-Party promptly shall give written notice to the other person or entity that its information is
26 subject to discovery in this litigation, and shall provide such person or entity with a copy of this
27 Protective Order. When such written notice is given to the person or entity, the disclosing Party or Non-
28 Party will advise the potential receiving Party that such notice has been given. The person or entity

1
2
3 whose information may be subject to discovery shall have ten (10) business days from receipt of the
4 written notice in which to seek relief from the Court, if the person or entity so desires. If the ten (10)
5 business days elapse without the person or entity seeking relief from the Court, the requested
6 information shall be produced in accordance with the terms of this Protective Order.

7 19. In the event that additional persons or entities become Parties, none of such Parties'
8 counsel, experts or consultants retained to assist said counsel, shall have access to "Confidential
9 Information" produced by or obtained from any other producing person or entity until said Party has
10 executed and filed with the Court its agreement to be fully bound by this Protective Order.

11 20. This Protective Order shall apply to the parties and any non-party from whom discovery
12 may be sought and who desires protection for the discovery sought. Thus, any non-party requested or
13 required to produce or disclose information in this proceeding, through subpoena or otherwise, may
14 designate such information pursuant to the terms of this Protective Order.

15 21. (a) Nothing herein requires disclosure of information, documents or things which the
16 disclosing entity contends is protected from disclosure by the attorney-client privilege or the work-
17 product exception. Nothing herein shall preclude any party from moving this Court for an order
18 directing the disclosure of such information, documents or things.

19
20 (b) In the event that any privileged attorney-client or work product documents or things
21 are inadvertently produced for inspection and/or provided, the disclosing party shall identify such
22 documents or things within five (5) days of when it discovers that the privileged materials were
23 inadvertently produced for inspection and/or provided, and either (1) copies shall not be provided, or (2)
24 if copies have already been provided, all copies in the receiving party's possession shall be promptly
25 returned (and not relied upon) by the receiving party. Nothing in this paragraph shall prevent the
26 receiving party from contending that the identified materials are not privileged, that the material was not
27 inadvertently produced, or that privilege was waived for reasons other than mere inadvertent production
28 of the material.

1
2
3 22. Within ninety (90) days after conclusion of this litigation and any and all appeals thereof,
4 any document and all reproductions of "Confidential" documents produced by a party that are in the
5 possession of any Qualified Person shall be returned to the producing party or, with the consent of the
6 producing party, destroyed. If destroyed, counsel for the receiving party shall certify to counsel for the
7 producing party compliance with this paragraph within fourteen (14) calendar days of such destruction.
8 Outside counsel for each party may maintain in its files one copy of all material produced as well as all
9 materials filed with or otherwise presented to the Court, deposition and trial transcripts, and work
10 product (regardless of whether such materials contain or refer to "Confidential" materials). If counsel
11 retains such materials, the materials which contain Confidential Information shall be accessible only by
12 Qualified Persons defined in paragraph 4(b) above. As far as the provisions of any protective orders
13 entered in this action restrict the communication and use of the documents produced thereunder, such
14 orders shall continue to be binding after the conclusion of this litigation including any subsequent
15 appeals or later proceedings, except that (a) there shall be no restriction on documents that are used as
16 exhibits in Court unless such exhibits were filed under seal, and (b) a party may seek the written
17 permission of the producing party or order of the Court with respect to dissolution or modification of
18 such protective orders. The Court shall retain jurisdiction to enforce the performance of said obligations.
19

20
21 23. (a) At the election of the Producing Party, a Receiving Party's access to a Producing
22 Party's discoverable source code may be limited to inspection of the code at a secured facility provided
23 by the Producing Party. Such inspection may be conducted only by persons identified in advance by the
24 Receiving Party on a list of "Qualified Inspecting Personnel" which may include:

- 25 (1) the Receiving Party's Outside Counsel of record in this action; and
26 (2) up to three Experts (as defined in this Order) of the Receiving Party to
27 whom disclosure is reasonably necessary for this litigation and who have signed the
28 "Agreement to Be Bound by Protective Order (Exhibit A) and who have been approved
pursuant to the "Procedures for Approving Disclosure of 'CONFIDENTIAL' information

1
2 of Items to 'Experts'" as set forth in paragraph 5.
3 (b) The following provisions relate to Synopsys' provision of access to the Source
Code for versions of its commercial products:

4 (1) Synopsys will make available a closed room at its facility in Bethesda,
5 Maryland for use by Ricoh's Qualified Inspecting Personnel. The room will be set aside
6 for the exclusive use of Ricoh's Qualified Inspecting Personnel and will not be used by
7 Synopsys or any other party when Ricoh's Qualified Inspecting Personnel are not present.
8 The room will be available for a minimum of twelve weeks. After twelve weeks, and
9 after consultation with Ricoh, Synopsys may close the facility pursuant to the procedures
10 described in paragraph 4 below. If the facility is closed, Synopsys agrees to make the
11 source code available for inspection under similar procedures at another date prior to the
12 close of expert discovery.

13 (2) Synopsys will equip the closed room with a private phone if a phone jack
14 is already available in the room, a stand-alone, non-networked, computer and high-speed
15 printer. The computer will be loaded with copies of the source code to be produced and
16 utilities required to review the code. The source code shall include the code which is
17 used by Synopsys and no notes, comments, or any segments shall be removed before
18 being made available. The computer will be equipped with the text editors available in a
standard Unix distribution, suitable for use in editing the source code. Synopsys will
assist Ricoh in loading software that Ricoh may require for analysis of the source code.
The computer shall also be loaded with a complete distribution of the Synopsys software
that is fully operable and executable.

19 (3) Ricoh may print copies of a reasonable subset of the source code for the
20 Synopsys products at issue. Any printing done at the secure facility will be done
21 exclusively on paper supplied by Synopsys. Synopsys may elect to place preprinted
22 confidential designations on the margins of the paper. Ricoh's Qualified Inspecting
23 Personnel are not to bring blank paper into the closed room except for the purpose of
24 making handwritten notes. Synopsys will initially supply Ricoh with 5,000 pages of
25 paper for use with the printer. This figure is based on the estimate that 5,000 pages
26 should be sufficient to print approximately 5% of the source code for Design Compiler. If
27 at any time, Ricoh believes that additional printing and paper is required, Ricoh may
28 submit additional requests for paper to Synopsys with a general statement of the basis of
the request. Synopsys will respond within one week to any such request. If the parties

1
2
3 are unable to come to agreement after conferral, the matter may be presented to the
4 Court. In evaluating requests for paper, the relevant standard to be applied is that Ricoh
5 should be allowed to print hardcopies of a reasonable subset of the Synopsys source code
6 and that what is reasonable shall be evaluated in light of relevance of the code to Ricoh's
7 allegations and Synopsys' interest in preventing release in hardcopy of more than a
8 fraction of its source code.

9 (4) Ricoh will be permitted to send individuals from the list of Qualified
10 Inspecting Personnel to participate in and/or witness the closing of the secured facility.
11 Before closing of the facility, Ricoh's representatives may provide a list of procedures
12 that they wish to perform to ensure that any electronic record of their use of the machine
13 has been erased.

14 (c) The Receiving Party will provide the Producing Party with a copy of its list of
15 "Qualified Inspecting Personnel" no later than 5 business days before any person on the list attempts to
16 access the secured facility. The Receiving Party may revise the list to add or remove individuals,
17 provided that no more than a total of three Experts are ever provided with access to the source code
18 during the entire course of the litigation absent an agreement by the parties or a Court Order to expand
19 this number.

20 (d) Any notes taken or any other information created by Outside Counsel or the
21 experts of the Receiving Party at or based on any inspection of the source code shall be treated as
22 "CONFIDENTIAL" under this Protective Order.

23 24. This Order shall not bar any attorney herein in the course of rendering advice to his client
24 with respect to this litigation from conveying to any party client his evaluation in a general way of
25 "Confidential Information" produced or exchanged herein; provided, however, that in rendering such
26 advice and otherwise communicating with his client, the attorney shall not disclose the specific contents
27 of any "Confidential Information" produced by another party herein, which disclosure would be contrary
28 to the terms of this Protective Order.

29 25. The Court shall retain jurisdiction to enforce the terms of this order for six (6) months
30 after the final termination of this action.

31 Dated: March 23, 2004

HOWREY SIMON ARNOLD & WHITE, LLP

32
33 /s/ Christopher L. Kelley
Teresa M. Corbin, Esq.

1
2
3
4
5
6
7
Dated: March 23, 2004

Christopher Kelley, Esq.
Erik K. Moller, Esq.
Attorneys for Plaintiff SYNOPSYS, INC.
301 Ravenswood Avenue
Menlo Park, CA 94025
Telephone: (650) 463-8100
Facsimile: (650) 463-8400

DICKSTEIN SHAPIRO MORIN & OSHINSKY, LLP

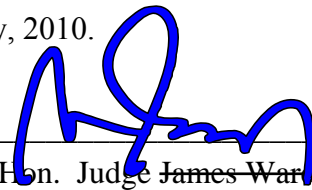
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
/s/ Kenneth W. Brothers
Kenneth W. Brothers, Esq. (*pro hac vice*)
Attorneys for Defendant RICOH COMPANY, LTD.
2101 L Street NW
Washington, DC 20037
Telephone: (202) 785-9700
Facsimile: (202) 887-0689

ORDER

SO ORDERED this 24th day of March, 2004.

/s/
Magistrate Judge Edward M. Chen

SO ORDERED this 10th day of February, 2010.


Hon. Judge ~~James War~~ Howard R. Lloyd
UNITED STATES DISTRICT JUDGE
MAGISTRATE

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

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SYNOPSYS, INC.,

Plaintiff,

vs.

RICOH COMPANY, LTD.,

Defendant.

CASE NO. C03-2289-JW (HRL)

UNDERTAKING

My name is _____. I hereby acknowledge that I have been provided with a copy of, have read, and am fully familiar with, the terms of the Stipulated Protective Order entered in this action on _____, **2010**. I agree to be bound by, and to comply fully with, the terms of the Stipulated Protective Order. I agree not to disclose or disseminate any "Confidential Information," as defined by the Stipulated Protective Order, except as permitted therein.

I hereby submit myself to the jurisdiction of the United States District Court for the Northern District of California, **San Jose** Division in connection with the enforcement of the Stipulated Protective Order.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on _____, **2010**.
