

1 CLARK S. STONE (SBN 202123)
 2 STEVEN M. LEVITAN (SBN 148716)
 3 JASON M. GONDER (SBN 257522)
 4 INCHAN A. KWON (SBN 247614)
 5 **HAYNES AND BOONE, LLP**
 6 2033 Gateway Place, Suite 400
 7 San Jose, California 95110
 8 Phone: (408) 392-9250
 9 Facsimile: (408) 392-9262
 10 clark.stone@haynesboone.com
 11 steve.levitan@haynesboone.com
 12 jason.gonder@haynesboone.com
 13 inchan.kwon@haynesboone.com

Attorneys for Plaintiff
 LANDMARK SCREENS, LLC

9 ELLIOT R. PETERS (SBN 158708)
 10 WENDY J. THURM (SBN 163558)
 11 STEVEN P. RAGLAND (SBN 221076)
 12 JOHN E. TRINIDAD (SBN 250468)

13 **KEKER & VAN NEST, LLP**
 14 710 Sansome Street
 15 San Francisco, California 94111
 16 Phone: (415) 391-5400
 17 Facsimile: (415) 397-7188
 18 epeters@kvn.com
 19 wthurm@kvn.com
 20 ragland@kvn.com
 21 jtrinidad@kvn.com

Attorneys for Defendants
 MORGAN, LEWIS & BOCKIUS LLP and
 THOMAS D. KOHLER

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

LANDMARK SCREENS, LLC, a Delaware
 Limited Liability Company,

Plaintiff,

v.

MORGAN, LEWIS & BOCKIUS LLP, a limited
 liability partnership and THOMAS D. KOHLER,
 an individual,

Defendants.

Case No: 5:08-cv-2581 JF (HRL)

**STIPULATED PROTECTIVE
 ORDER CONCERNING
 CONFIDENTIAL DISCOVERY
 MATERIALS**

1 This action is likely to involve discovery of documents and testimony containing trade
2 secrets and other confidential research, development, financial, and commercial information of
3 the parties to this action and third parties who may be subpoenaed to provide deposition
4 testimony and documents, including confidential and commercially sensitive information
5 relating to business strategies, manufacturing and distribution capabilities, sales, costs, pricing,
6 profitability, customers, suppliers, and other business and financial data, which, if disclosed
7 other than as specified herein, will pose a significant risk of injury to the legitimate business
8 interests of the disclosing party. This Order is necessary to protect the legitimate business
9 interests of the disclosing parties in such information, and good cause exists for the entry of this
10 Order.

11 Therefore, pursuant to Rule 26 of the Federal Rules of Civil Procedure, discovery taken
12 in the above-captioned case shall be conducted subject to this Stipulated Protective Order
13 Concerning Confidential Discovery Materials (the "Protective Order"):

14 1. Any party or non-party that is called upon to provide discovery in this
15 action may designate any document, electronically stored information, testimony, discovery
16 request, discovery response, motion, filing with the Court, thing, or any portion thereof
17 (collectively, "Discovery Materials"), produced by any party or non-party, as
18 CONFIDENTIAL under the terms of this Protective Order.

19 2. A party or non-party may designate as CONFIDENTIAL any Discovery
20 Materials that it reasonably and in good faith believes contain or reflect confidential material,
21 including without limitation those materials identified in Rule 26(c)(1)(G) of the Federal Rules
22 of Civil Procedure and any materials that the party or non-party reasonably and in good faith
23 believes are not public.

24 3. Discovery Materials containing CONFIDENTIAL information as
25 defined herein shall be so designated by labeling the Discovery Materials (on each page for
26 multi-page documents or, in the case of computer disc, tape, or other media, on the cover of
27 each disc, tape, or other media) with the legend "CONFIDENTIAL". Except as otherwise
28

1 agreed by the parties, such marking shall be done before such Discovery Materials are
2 reproduced, made available for inspection, served, or filed with the Court.

3 4. For testimony given in deposition, the party or non-party offering or
4 sponsoring the testimony shall identify on the record, before the close of the deposition, any
5 portions of the testimony that qualify as CONFIDENTIAL. When it is impractical to identify
6 separately each portion of testimony that is entitled to protection, and when it appears that
7 substantial portions of the testimony may qualify for protection, the party or non-party that
8 sponsors, offers, or gives the testimony may invoke on the record (before the deposition or
9 proceeding is concluded) a right to have up to 20 days to identify the specific portions of the
10 testimony as to which protection is sought. Only those portions of the testimony that are
11 appropriately designated for protection within the 20 days shall be covered by the provisions of
12 this Protective Order. Transcript pages containing CONFIDENTIAL Discovery Materials must
13 be separately bound by the court reporter, who must affix to the top of each such page the
14 legend "CONFIDENTIAL," as instructed by the Party or nonparty offering or sponsoring the
15 witness or presenting the testimony.

16 5. Testimony or information offered at a conference or hearing may be
17 designated as CONFIDENTIAL by making a statement to that effect on the record during the
18 conference or hearing. Alternatively, if no such statement of designation is made, a party
19 wishing to designate in whole or in part the conference or hearing, and any transcript or
20 recording thereof, as CONFIDENTIAL shall notify all other parties in writing of such
21 designation, within FIVE (5) business days of such conference or hearing. The parties may
22 modify the procedures in this paragraph by mutual agreement without further order of this
23 Court.

24 6. Discovery Materials designated as CONFIDENTIAL, and any
25 summaries, abstracts, or documents derived from such Discovery Materials, shall be used by
26 the parties solely in connection with this litigation, and not for any business, competitive, legal,
27 or governmental purpose or function, including in connection with any application pending
28

1 before the U.S. Patent & Trademark Office or other patent office, and such Discovery Materials
2 shall not be disclosed to anyone except as provided herein.

3 7. Unless otherwise ordered by the Court, Discovery Materials designated
4 CONFIDENTIAL that are produced pursuant to this Protective Order may be disclosed or
5 made available only to outside counsel for the parties, and to the parties and/or officers,
6 members, directors, and employees of the parties to whom access to CONFIDENTIAL
7 Discovery Materials is reasonably necessary for the purpose of this litigation, including the
8 professional, paralegal, clerical, secretarial or other employees thereof, and to the “qualified
9 persons” designated below:

10 a. this Court, any juror, any court reporter, or videographer
11 employed in this action, or any other entity or person authorized by this Court or required by
12 law;

13 b. any commercial copy service, translator, or data entry and
14 computer support organization hired by and assisting counsel for a party; and

15 c. any outside expert or consultant (together with his/her staff),
16 including outside counsel not of record, retained to assist in the prosecution or defense of this
17 action or any exhibit preparation service (together with its staff) retained to prepare exhibits,
18 subject to the terms of Paragraph 8.

19 8. Any outside expert or consultant, including any outside counsel not of
20 record, to whom a party desires to disclose CONFIDENTIAL Discovery Materials pursuant to
21 Paragraph 7, shall sign a CONFIDENTIALITY UNDERTAKING in the form attached hereto
22 as Exhibit A prior to any such disclosure.

23 9. In the event any party or any other individual authorized under this
24 Protective Order to receive CONFIDENTIAL Discovery Materials is served with a subpoena or
25 other judicial process demanding the production or disclosure of any Discovery Materials
26 designated CONFIDENTIAL, such party or individual shall: (a) provide all parties with a copy
27 of such subpoena or other judicial process promptly, but under no circumstances later than the
28 earlier of FIVE (5) business days following receipt thereof or THREE (3) business days prior to

1 the return date of such subpoena or other judicial process; and (b) cooperate with the parties to
2 protect any CONFIDENTIAL Discovery Materials from production or disclosure.

3 10. Nothing herein is intended in any way to restrict the ability of the
4 receiving party to use CONFIDENTIAL Discovery Materials produced to it in examining or
5 cross-examining any current or former employee, expert, consultant of the producing party,
6 witness to any of the events at issue, or any person who authored, received, or is a named
7 recipient of the CONFIDENTIAL Discovery Materials.

8 11. Nothing herein shall impose any restrictions on the use or disclosure by a
9 party of Discovery Materials obtained by such party independent of discovery from another
10 party in this action, whether or not such Discovery Materials are also obtained through
11 discovery in this action. Nor shall this Protective Order restrict the use or disclosure of
12 Discovery Materials that: (a) are in the public domain at the time of the use or disclosure
13 (unless the particular collection of public documents or information is otherwise protectable);
14 or (b) become part of the public domain through no fault of the receiving party. The receiving
15 party shall bear the burden of proving the applicability of any of the foregoing conditions.

16 12. The Stipulation and Protective Order entered in Case No. 1-05-CV-
17 053568 by the Santa Clara County Superior Court shall continue to govern materials and
18 information produced pursuant to such Stipulation and Protective Order.

19 13. Pursuant to Local Rule 79-5 of the U.S. District Court for the Northern
20 District of California, no Discovery Materials designated CONFIDENTIAL under this
21 protective order may be filed under seal with the Court, unless the Court, on the submitting
22 party's Administrative Motion (regardless of whether the Discovery Materials were originally
23 produced by the submitting party, a non-submitting party, or a non-party) that establishes that
24 the Discovery Materials are privileged or protectable as a trade secret or otherwise entitled to
25 protection under the law, issues an Order that authorizes the sealing of the particular Discovery
26 Materials. If such an Order is issued, Discovery Materials designated CONFIDENTIAL filed
27 with this Court shall be filed only in sealed envelopes or containers bearing the caption of this
28 action and a statement substantially in the following form:

1 **CONFIDENTIAL**

2 This envelope (or container) contains Discovery Materials filed in
3 this action by [name of party] pursuant to the Protective Order
4 entered _____, 2009, and is not to be opened nor the
5 contents thereof displayed or revealed except to counsel of record in
6 this action and the Court unless a Court Order or Stipulation signed
7 by counsel for the producing party provides otherwise.

8 Discovery Materials so designated shall be maintained as CONFIDENTIAL by the Clerk of
9 this Court pending final disposition of this action, and said Discovery Materials shall be
10 released only upon further Order of this Court.

11 14. All Discovery Materials filed in, lodged with, or delivered to this Court
12 that are marked in compliance with Paragraph 13 shall be maintained under Seal and shall not
13 be disclosed or displayed, except as provided herein or as ordered by this Court.

14 15. If CONFIDENTIAL Discovery Materials produced in accordance with
15 this Protective Order are disclosed to any person other than in the manner authorized by this
16 Protective Order, the party responsible for the disclosure shall immediately bring all facts
17 pertinent to such disclosure to the attention of all counsel of record and, without prejudice to
18 other rights and remedies of the party that produced the Discovery Materials, shall make all
19 reasonable efforts to prevent any further disclosure by it or by any person who received such
20 Discovery Materials.

21 16. The provisions of this Protective Order shall govern discovery and all
22 pre-trial proceedings related to this action.

23 17. In the event that any CONFIDENTIAL Discovery Materials are used in
24 any Court proceeding in this action, they shall not lose their CONFIDENTIAL status through
25 such use, and the party using such Discovery Materials shall take all steps reasonably available
26 to protect their confidentiality during such use.

27 18. This Protective Order is entered solely for the purpose of facilitating the
28 exchange of Discovery Materials and protecting the confidential information and trade secrets
29 of the parties without involving the Court unnecessarily in the process. Nothing in this
30 Protective Order, nor the production of any Discovery Materials under the terms of this

1 Protective Order, nor any proceedings pursuant to this Protective Order shall be deemed: (a) to
2 have the effect of an admission or waiver by any party; (b) to alter the confidentiality or
3 nonconfidentiality of any Discovery Materials; or (c) to alter any existing obligation of any
4 party.

5 19. If timely corrected upon actual notice, an inadvertent failure to designate
6 Discovery Materials as CONFIDENTIAL does not, standing alone, waive the designating
7 party's right to secure protection under this Protective Order for such materials. If Discovery
8 Materials are appropriately designated CONFIDENTIAL after the materials were initially
9 produced, the receiving party on timely receipt of properly labeled Discovery Materials, shall
10 promptly return to the designating party's counsel or destroy all unmarked Discovery Materials
11 (and any copies that may have been made). The receiving party shall, to the extent reasonably
12 possible, cooperate in restoring the confidentiality of such inadvertently produced Discovery
13 Materials and shall make reasonable efforts to assure that the materials are thereafter treated in
14 accordance with the provisions of this Protective Order.

15 20. The inadvertent production of CONFIDENTIAL Discovery Materials
16 without a proper designation shall not be deemed a waiver in whole or in part of the producing
17 party's claim of confidentiality, either as to the specific information disclosed or as to any other
18 information relating thereto or on the same or related subject matter, provided that the receiving
19 party is notified and properly marked Discovery Materials are supplied as provided herein
20 promptly after discovery of the inadvertent disclosure.

21 21. If a producing party inadvertently discloses information that is privileged
22 or otherwise immune from discovery, the producing party shall promptly upon discovery of the
23 inadvertent disclosure so advise the receiving party in writing and request that the item or items
24 of information be returned, and if that request is made, no party to this action shall assert that
25 the disclosure waived any privilege or immunity. The receiving party shall return or destroy
26 the inadvertently produced item or items of information, and all copies and derivations, within
27 FIVE (5) business days of the earlier of (a) discovery by the receiving party of the inadvertent
28 production, or (b) the receiving party receiving a written request for the return of the

1 information. The party having returned the inadvertently produced item or items of information
2 may thereafter seek production of the information or otherwise challenge the producing party's
3 assertion of privilege or protection. But the inadvertent production of privileged or otherwise
4 protected Discovery Materials cannot be a basis for seeking production.

5 22. This Protective Order shall survive the final termination of this action to
6 the extent that the information contained in CONFIDENTIAL Discovery Materials is not or
7 does not become known to the public, and this Court shall retain jurisdiction for a period of six
8 months after final termination of this action in order to enforce the terms of this Protective
9 Order. Within SIXTY (60) days of final termination of this action and all appeals, each party
10 subject to this Protective Order and/or its representatives shall either destroy and certify the
11 destruction of, or return to the producing party or non-party, all the producing party's or non-
12 party's CONFIDENTIAL Discovery Materials, and any copies of such Discovery Materials.
13 Outside counsel, however, may retain for their files copies of pleadings, deposition testimony
14 and exhibits, trial testimony and exhibits, admissions, answers to interrogatories, attorney
15 work-product, and documents contained within individual attorneys' working files as counsel
16 deems necessary to preserve an accurate record of the proceedings.

17 23. Any and all disputes between the parties regarding the interpretation or
18 enforcement of this Protective Order or any other issue related to the disclosure or protection
19 from disclosure of any Discovery Materials designated CONFIDENTIAL shall be submitted to
20 this Court for a binding ruling. This paragraph expressly acknowledges the right of any party to
21 apply to this Court to have any Discovery Materials that have been designated
22 CONFIDENTIAL released from the protection of this Protective Order. No party, however,
23 shall be obligated to challenge the propriety or correctness of the other party's designation of
24 Discovery Materials as CONFIDENTIAL at any particular time, and a failure to do so shall not
25 preclude a subsequent challenge to such designation. Before making such an application, any
26 party or non-party must notify all parties and/or the non-party provider of its intention to seek
27 the removal of the CONFIDENTIAL designation from said Discovery Materials and provide
28 the specific identities of the Discovery Materials (including document numbers where

1 applicable or other identifying information). The parties shall meet and confer within THREE
2 (3) business days of receiving such notice. Only if agreement cannot be reached should a
3 motion be filed with the Court. In proceeding on any application, the party making the
4 designation shall have the burden of sustaining it. Until agreement is reached by the parties or
5 an Order of the Court is issued changing the designation, all Discovery Materials about which a
6 disagreement exists shall be treated as originally designated.

7 24. Any party bound by this agreement who receives CONFIDENTIAL
8 Discovery Materials agrees to take all reasonable precautions in handling the materials to
9 maintain their confidentiality. For example, employees of a party who require access to
10 CONFIDENTIAL Discovery Materials pursuant to Paragraph 7 must take all reasonable
11 precautions to make CONFIDENTIAL Discovery Materials inaccessible to employees who do
12 not require access to CONFIDENTIAL Discovery Materials pursuant to Paragraph 7.

13 25. Nothing in this Protective Order shall preclude any party from seeking
14 and obtaining, by motion to the Court, additional protection with respect to the confidentiality
15 or non-confidentiality of Discovery Materials, or relief from this Protective Order with respect
16 to particular Discovery Materials designated as CONFIDENTIAL hereunder.

17 26. When a time specified herein is TEN (10) days or fewer, such time shall
18 mean business days (*i.e.*, excluding any intermediate Saturday, Sunday, or “legal holiday” as
19 defined by Rule 6(a)(4) of the Federal Rules of Civil Procedure). When a time specified herein
20 is ELEVEN (11) days or more, such time shall mean calendar days.

21 27. The Court retains the right to allow disclosure of any subject covered by
22 this Protective Order or to modify this Protective Order at any time in the interests of justice.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **AGREED TO:**

2 DATED: March 27, 2009

HAYNES AND BOONE, LLP

3

By /s/ Clark S. Stone
CLARK S. STONE
Attorneys for Plaintiff
LANDMARK SCREENS, LLC

4

5

6 DATED: March 27, 2009

KEKER & VAN NEST LLP

7

By /s/ Steven P. Ragland
STEVEN P. RAGLAND
Attorneys for Defendants
MORGAN, LEWIS & BOCKIUS LLP
and THOMAS D. KOHLER

8

9

10

Filer's Attestation: Pursuant to General Order 45, Clark S. Stone hereby attests that concurrence in the filing of this document has been obtained from Steven P. Ragland.

11

12

13

14

PURSUANT TO STIPULATION, IT IS SO ORDERED:

15

DATED: 4/13, 2009

16


Honorable Howard R. Lloyd
United States Magistrate Judge

17

18

19

20

21

22

23

24

25

26

27

28

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LANDMARK SCREENS, LLC, a Delaware
Limited Liability Company,

Plaintiff,

v.

MORGAN, LEWIS & BOCKIUS LLP, a limited
liability partnership and THOMAS D. KOHLER,
an individual,

Defendants.

Case No: 5:08-cv-2581 JF (HRL)

**CONFIDENTIALITY
UNDERTAKING PURSUANT
TO STIPULATED
PROTECTIVE ORDER
CONCERNING
CONFIDENTIAL DISCOVERY
MATERIALS**

I, _____, state as follows:

1. My current address is: _____

and my current employer and position are _____
_____.

2. I have been provided with a copy of the Stipulated Protective Order
Concerning Confidential Discovery Materials (the "Protective Order") entered in this action
and I have reviewed its terms and conditions.

3. I understand the terms and conditions of the Protective Order and I agree to be
bound by it.

4. At the termination of this matter, I agree to either return or destroy all Discovery
Materials containing CONFIDENTIAL information and any abstract, extract, excerpt,
summary, memorandum, or other materials embodying or containing such information, and
copies thereof, which come into my possession, and any materials which I have prepared
relating thereto, upon request by counsel for the party by which I have been designated or
retained.

1 5. I hereby submit to the jurisdiction of this Court for the purposes of enforcement
2 of the Protective Order.

3 I declare under penalty of perjury that the foregoing is true and correct.

4
5 Dated: _____

_____ (Signature)

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